

MEMO

MEETING DATE

APR 24 2013

AGENDA ITEM

#4

Date: April 10, 2013
To: CCCERA Board of Retirement
From: Kurt Schneider, Deputy Chief Executive Officer
Subject: Assessment and Determination of Compensation Enhancements

At the January 9, 2013 meeting, the Retirement Board adopted a Policy Regarding Assessment and Determination of Compensation Enhancements. This policy was established to comply with new Gov. Code §31542, which requires the Board to establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. Any compensation element which the Board determines was paid to enhance a member's benefit must be excluded from "pensionable compensation" under Gov. Code §7522.34 and "compensation earnable" under Gov. Code §31461 (as amended by AB 197).

The purpose of this memo is to summarize the implementation of staff's review and assessment of final compensation as directed by the Board. The assessment policy requires staff to take the following steps when reviewing compensation for this purpose.

1. Assess whether the item of compensation was earned within the period during which final compensation is to be calculated;
2. Assess whether the compensation exceeds a members' base pay, and if so, whether the earnings codes reported are retirement compensable;
3. Review any other factors that cause staff to believe that an item of compensation included in final compensation was paid to enhance a member's retirement benefit; and
4. Review information and explanation provided by the member and the employer in response to CCCERA's request as to the facts and circumstances concerning an item of compensation that staff believes may have been paid to enhance the member's retirement benefit.

The first two steps have always been undertaken by CCCERA staff when calculating retirement benefits and are not new to this policy. The third step is now required for the first time by the new legislation, effective January 1, 2013. The Board has asked staff for an overview of the review process and what factors staff is considering in its determination.

As staff completes steps one and two above, the compensation during the final averaging period is broken out by pay item. The amounts during the final averaging period are then compared to recent periods both by individual pay item and in total. Any increase in compensation (for an individual pay item or in total) above a certain threshold is flagged for further review.

If further review is required, the member's pay history is reviewed as far back as possible to determine how the amount of the pay item varied over time. A statistical analysis is done to determine the likelihood that the increase witnessed in the final averaging period is due to chance alone. If that likelihood is below a certain threshold, the member and the employer are asked for an explanation of the increase. If the explanation provided is insufficient, a written report is prepared and presented to the Board for their determination.

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**POLICY REGARDING ASSESSMENT AND DETERMINATION OF
COMPENSATION ENHANCEMENTS**

Adopted: 1/9/2013

PURPOSE:

The CCCERA Board of Retirement is required to establish a procedure for assessing and determining whether an element of compensation was paid to enhance a CCCERA member's benefit. (Government Code Section 31542, eff. January 1, 2013.) In keeping with this requirement, the Retirement Board has set forth the following procedure.

LEGAL AUTHORITY:

Government Code Section 31542 provides:

- (a) The board shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. If the board determines that compensation was paid to enhance a member's benefit, the member or the employer may present evidence that the compensation was not paid for that purpose. Upon receipt of sufficient evidence to the contrary, a board may reverse its determination that compensation was paid to enhance a member's retirement benefits.
- (b) Upon a final determination by the board that compensation was paid to enhance a member's retirement benefit, the board shall provide notice of that determination to the member and employer. The member or employer may obtain judicial review of the board's action by filing a petition for writ of mandate within 30 days of the mailing of that notice.
- (c) Compensation that a member was entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement shall be considered compensation earnable and shall not be deemed to have been paid to enhance a member's retirement benefit.

POLICY:

The following policies and procedures shall be effective as to the assessment and determination of whether an element of compensation was paid to enhance a member's retirement benefit.

I. STAFF REVIEW AND ASSESSMENT

With respect to all retirement applications with an effective date of retirement on or after January 1, 2013, the Board directs CCCERA staff to review all compensation included within the calculation of the member's final compensation within the meaning of California Government Code Sections 7522.32, 7522.34, 31461, 31462, 31462.1, 31462.11, and 31462.2, as applicable, for the purpose of making an initial assessment as to whether any item of compensation included in final compensation was paid to enhance a member's retirement benefit. In conducting such review and making such initial assessment, staff shall consider:

- a. Whether the item of compensation was earned within the period during which final compensation is to be calculated;
- b. Whether the compensation exceeds a members' base pay, and if so, whether the earnings codes reported are retirement compensable;
- c. Any other factors that cause staff to believe that an item of compensation included in final compensation was paid to enhance a member's retirement benefit; and
- d. Information and explanation provided by the member and the employer in response to CCCERA's request as to the facts and circumstances concerning an item of compensation that staff believes may have been paid to enhance the member's retirement benefit.

A member and the employer shall be given no less than 15 days to respond to such a written request. Staff may conduct such written and oral follow-up communication as staff believes is appropriate in the exercise of reasonable diligence.

II. PREPARATION OF WRITTEN ADMINISTRATIVE RECOMMENDATION AND BOARD ACTION

- a. If after conducting the initial assessment described above, CCCERA staff believes that an item of compensation was paid to enhance a member's retirement benefit, staff shall prepare a written report to the Board of Retirement making an administrative recommendation to the Board that any item not be included in the calculation of the member's retirement benefit. The report shall contain a description of the reasons for staff's recommendation, including the specific facts and circumstances supporting staff's recommendation.
- b. The report shall be noticed and agendized for a regular meeting of the Board, at which time the Board will act upon staff's administrative recommendation.

Before the Board acts, CCCERA, the member, and the employer shall be given an opportunity to be heard by the Board.

- c. Written notice of the Board meeting and a copy of staff's report shall be provided to the member and the employer no later than 10 days before the recommendation is presented to the Board for action.
- d. At the meeting, the Board will make a decision as to whether the item of compensation was paid to enhance the member's retirement benefit.
- e. CCCERA will provide the member and the employer written notice of the Board's decision with 5 days, which will inform the member and the employer of their right to seek judicial review of the Board's action by filing a petition for writ of mandate within 30 days after the mailing of that notice.
- f. If the Board finds the item of compensation should be included, staff will adjust the member's benefit to include said item, retroactive to the effective date of retirement.
- g. If the payment of the member's benefit would be delayed by seeking resolution through the administrative processes set forth herein, CCCERA may process the benefit excluding the compensation in question. If it is later determined the compensation should be included, CCCERA will adjust the benefit retroactive to the effective retirement date.