

MEMO

Date: September 4, 2013

To: CCCERA Board of Retirement
Marilyn Leedom, Retirement Chief Executive Officer

From: Kurt Schneider, Deputy Chief Executive Officer
Karen Levy, General Counsel

Subject: Compensation Policy, Pay Items and Compensation Enhancements

At its August 14, 2013 meeting, the CCCERA Board of Retirement requested information about what is included in compensation for retirement purpose, and how to deal with extraordinary compensation enhancements (spiking) that occur in members' final compensation period. The Board requested more information regarding pay items reported in the media:

- (1) on-call pay reportedly paid to members who volunteered to work additional on call hours during their final compensation period; and
- (2) additional on-call pay reportedly paid to physicians who did not provide on call services for the time paid.

This memorandum provides information and summarizes the policies and process of making enhancement determinations, and makes some suggestions for the Board's consideration.

I. Background

When the final *Ventura Decision* become effective October 1, 1997, the Board made a determination as to what would be included in "compensation earnable" going forward and established a process to guard against spiking. On September 9, 1997, in advance of the effective date of the *Ventura Decision*, the Board adopted a policy on *Monitoring for Final Average Salary Spiking*, which guards against spiking by formally approving which pay items can be included in the calculation of final average salary. The Board determined that each CCCERA participating employer would be provided with a list of includible differentials (pay items beyond base pay). The list of includable differentials is included as Attachment 1.

On December 5, 1997, the Board adopted its policy for *Determining Which Pay Items are "Compensation" for Retirement Purposes*. (See Attachment 2 for the current policy.) This policy states that compensation includes,

All cash payments given as remuneration either for services rendered or for special skills or qualifications (ie. merit pay, longevity pay, standby pay, bilingual pay, holiday pay, educational incentive pay, etc.) are included in compensation.

Overtime, on the other hand, is excluded under the policy to the extent “it is in excess of what is considered normal working hours.” There are separate pay codes for includable and excludable overtime.

II. Policy Regarding Assessment and Determination of Compensation Enhancements

On September 12, 2012, the Governor signed AB 340 and AB 197. AB 340 added §31542 to the Government Code, 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, but this section does not allow the Board to act on that determination. To that end, the Board adopted the *Policy Regarding Assessment and Determination of Compensation Enhancements* with instructions for staff to return to the Board with operational guidelines for implementing the policy. (See Attachment 3.).

III. AB 197

AB 197 inserted language into Government Code Section 31461 that changed the definition of "compensation earnable." AB 197 provides that "compensation earnable" does not include “any compensation determined by the board to have been paid to enhance a member’s retirement benefit under that system.” This provides clear authority for the board to **exclude** from compensation earnable any compensation determined to be an **enhancement** of the member's retirement benefit. The implementation of AB 197 has been stayed pursuant to the court order entered in the current lawsuit. The Order states: "The Stay shall operate to suspend implementation of all aspects of AB 197 that concern the definition of 'compensation earnable' under CERL."

IV. Implementation of Policy Regarding Assessment and Determination of Compensation Enhancements

As set forth in an April 10, 2013 report to the Board (included as Attachment 4), the implementation of the new policy could result in the exclusion of a portion of a pay item that had been determined by the Board to be includible. This would be a departure from past practice, but AB 197 gives clear authority to do exactly that.

Nevertheless, staff has implemented the procedure to analyze compensation for spikes in the final compensation period. Two important findings have been made.

- **Call Back Pay** – call back pay is additional pay for employees who are called back to duty afterhours. Call back pay could, for example, be pay for the call back time worked plus an hourly differential. The system had been including, and the County had been reporting, “call back pay” as compensation for retirement purposes since 1998 even though the Board’s determination in 1997 and the instructions to the County in 1998 were to exclude call back pay as overtime. The Board originally included scheduled call back pay. CCCERA has been working on the correction of this error.

- **On Call Pay** – Some pay items enhance compensation during members' final compensation period. The most egregious examples found have been for on-call pay for several job classifications within County Health Services. On-call pay is pay for time during which the employee is not actually on duty but must be ready to immediately report for duty. On-call pay could, for example, be one hour of actual work time credit for each four hours of on-call time. While some members could have on-call pay consistently throughout much of their career, others could have none throughout much of their career, but a high amount during the final compensation period.

The Board has requested to know, in advance of approving a retirement, if compensation has been paid to enhance a benefit. To that end, included as Attachment 5 is a memo describing a pending retirement where potential enhancements have been found. This is the type of information that could be provided to the board going forward.

As to this as well as similar situations, the Board could consider whether County on-call pay should be excluded from compensation for retirement purposes to the extent it is voluntary rather than mandatory for everyone in the class or grade of position. This would be a change from previous Board approval of County on-call pay as an includable item. This would be consistent with how on-call pay is treated and reported to CCCERA by some Districts within CCCERA. It would also be consistent with how the County currently treats and reports to CCCERA overtime pay. Only overtime pay that is mandatory of all in the class or grade is an included item.¹ Limiting reportable on-call pay to that which is mandatory of all in the class or grade would help avoid future unfunded costs to the system and the County resulting from an unexpected increase in on-call pay during the final compensation period.

V. On-Call Credits Reportedly Paid to Certain Physicians

Lastly, the Board also requested information about additional on-call pay reportedly paid by the County to some physicians who did not provide on-call services for the time paid. This pay practice was highlighted in a recent newspaper column. CCCERA is following up with the County and has requested information regarding this item. Adjustments to the county reporting of this pay item may be needed, if indeed the pay was not provided for on-call work but reported to CCCERA as on-call pay.

¹ Government Code Section 31461.6 defines “compensation earnable” follows: “‘Compensation earnable’ shall not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under [the Fair Labor Standards Act].” Government Code Section 31461 defines “compensation earnable” as: “the average compensation . . . for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.” A recent court case upheld a retirement board’s determination that overtime pay was not “compensation earnable” because it was not required of and worked by all members of the job classification. *Stevenson v. Board of Retirement of OCERS*, 186 Cal. App. 4th 498 (2010).

Attachment #1

MEMO

Date: January 14, 1998

To: Roger Edwards

From: Pat Wiegert *PW*

Subject: County DOE's includible in Compensation under the "Ventura County Decision"

Attached is what we understand to be the complete list of the County's pay items, their DOE code, and an indication of whether or not they are to be reported as "compensation" for retirement purposes pursuant to the Retirement Board's actions on November 25, December 5, and December 9

What's now reported under DOE code 32 (On call Pay) will need to be separated into those pay items that are includible and those which aren't. As I understand it, DOE 32 now includes pay for those times an employee is scheduled to be in "on call" status and pay for time once an "on call" employee is actually called in to work. The first instance is includible compensation, the second is a form of overtime and therefore not includible. Because both types of pay reported under DOE code 32 in the past, the payroll system will need to distinguish between the two in future.

DOE 70 (Miscellaneous) presents a real problem because this, too, could be used to report just about anything. We would prefer that there not be a "Miscellaneous" category at all. This would eliminate the mystery of "What is it?" and avoid the potential for this DOE to be the dumping ground for anything new or unique. If you feel the continued need for a Miscellaneous pay item, we ask that this be included in compensation rather than excluded.

See "Special Notes" on the attached for other pay items of concern,

I understand that Craig was able to handle the problems identified at our recent meeting which had to do with not enough "accumulators" and an old, less than user friendly, payroll system. I understand further that testing of the modifications is being conducted with the hope that it'll all be ready by the February 10 payroll.

I applaud you and Craig for the extraordinary effort you're putting forth on this issue. None of us wanted to be in the position of having to modify the old payroll system when the new PeopleSoft system is just around the corner. Your work is much appreciated!

If you have questions on the attached, give me a call.

attachment



**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE COUNTY PAY ITEMS
 DECEMBER 9, 1997**

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
yes	06	Career Incentive	Similar to Longevity Pay
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	08	Management Incentive	Similar to Longevity Pay
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
yes	11	Agric.Differential	For possession of Commisioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift
yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments
yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to mental health lead positions under terms of The Local 1 contract.
yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient ilnes.
yes	20	Scheduled FLSA	Overtime that's normally expected to be worked
no	21	FLSA Overtime	

no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
no *	25	Gross Pay Adj.	Used for multiple purposes. Negative offset for SDI Buybacks, late time reporting, late WC clearances. All require negative offset to previously taxed wages that are to be changed to nontaxable. At times has been used for regular or differential pay missed in prior periods.
no	26	AWOP	Reported as a negative number.
yes	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions.
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes *	32	On Call Pay	Pay for being in "on call" status.
No *	new	On-Call Overtime	Pay for work when actually called in while in "on call" status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus
yes	34	ER Bonus	Emergency room differential
no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
yes	36	Retirement Allotment	
yes	37	Word Processing	Pay for work on keyboard/VDT's
yes	38	VDT diferential	Pay for work on keyboard/VDT's.
yes	39	Prof Acct Differential	CPA/CIA/CMA certification
no	40	Reserve Pay	The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
yes	41	OES Differential	Pay for assignment to Office of Emergency Services.
yes	42	Grade All Differential	Pay for work on a particular piece of equipment.
yes	43	Investigator Pay	Paid to Sheriff's investigators.
yes	44	Charge Nurse Diff	Assignment to charge nurse duties.
yes	45	Building Inspector Diff.	Self-explanatory

yes	47	Acting Pay	Pay for work in a temporary assignment. Currently paid to San Ramon firefighters only.
Yes	48	Performance Stipend	
yes	49	Double Shift Premium	self explanatory
yes	52	Shift Pay	Pay for working any shift after 5:00 p.m.
yes	53	Shift Pay Adj.	Adjustment to Shift Pay previously recorded.
yes	54	Hazard Duty Pay	Pay for exposure to hazards on the job.
yes	55	Hazard Pay Adjustment	Adjustment to Hazard Duty Pay
yes	56	Board and Commission	Paid to Board of Supervisors while "sitting" in the capacity of a commission. Also paid to Ret. Bd. Sheriff, Planning Dept. and Transportation Dept.
yes	57	Bilingual Pay	Bonus for being bilingual in specified positions
yes	58	Truck Allowance	Received by 7 Animal Services and Health Services employees for using a truck while commuting to and from work.
no	59	Mgmt. Disability Pay	This is in lieu of salary paid to managers under a special disability insurance program
no	60	Court Reporter Pay	Per diem paid to hourly court reporters not in the Retirement System
yes	62	Sale of Vacation	Value of vacation time sold back to county annually
yes *	63	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final comp period.
no *	new	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was NOT earned in the final compensation period.
yes	64	Uniform Allowance	Pay in recognition that uniforms must be worn for the Job. Paid to non-safety employees: animal services, Plumbers, painters, etc.
yes	65	Structural Engineer	Pay for achieving/maintaining this certification.
yes	66	Haz Mat	Pay for working with hazardous materials
yes	67	Officer in Charge	Self explanatory
yes	68	Standby Diff.	Similar to On Call pay
yes	70	Miscellaneous	To the extent that this pay code continues, it will be includible.

no	71	Pay in Lieu	Extra amount received by employees who don't receive regular County benefits and aren't covered by CCCERA
yes *	72	Sickleave Payoff	Paid to hourly employees, not covered by CCCERA. Paid to CCCERA members who terminate without retiring.
yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.
no	76	Hospital Contract Pay	
no	77	Contract Pay	
yes	78	Uniform-Safety	Pay in recognition that uniforms must be worn for the job: safety members
yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	83	Evening Clinic Bonus	Similar to shift differential.
Yes	84	Holiday overtime adj.	Adjustment to Holiday Pay
yes	85	Graveyard Pay	Similar to shift differential.
no	86	SDI Buyback	Offsetting payments in the state disability insurance program. Not a wage item.
yes	87	Rad/Angio Pay	A form of hazardous duty pay.
yes	90	Phys. Weekend Rounds	A form of shift differential for physicians.
yes	94	RN Hospital Diff.	Registered nurses.
yes	95	Incident Response Team	Pay for serving on this team.
yes	96	Lead Worker Bonus	self explanatory.

*** SPECIAL NOTES:**

13 We understand that this pay item is used to reflect a variety of lump sum payments not otherwise given their own code. This pay item should be used in the future for only those lump sum pay items which are includible as compensation under the Board's policy.

19 We understand that this pay item has been used to report time both scheduled and unscheduled. In this pay item should be used to report pay for scheduled work on a weekend.

32 The payroll system will have to distinguish between the pay for being in "on call" status (which is includible) versus the additional pay received if an employee is actually called in to work (which is not includible and will need a new pay item code.).

- 63 The payroll system will have to distinguish between that portion of a lump sum payoff which is includible under the Board's policy and that portion which is not includible.
- 72 For those employees who are covered by CCCERA, we will expect that only the portion of a lump sum sick leave payoff which could have been earned in the final compensation period will be reported here.

1/14/98

Attachment #2

CONTRA COSTA COUNTY EMPLOYEE'S RETIREMENT ASSOCIATION

**DETERMINING WHICH PAY ITEMS ARE "COMPENSATION"
FOR RETIREMENT PURPOSES**

Adopted: 12/05/97
Amended: 01/13/98
Amended: 03/10/10
Amended: 12/12/12

PURPOSE:

The California Supreme Court decision in Ventura County Deputy Sheriff's Association v. Board of Retirement, 16 Cal.4th 483 (1997) changed a previously accepted construction of the statutory framework governing the compensation includible in the calculation of pensions under the 1937 Retirement Act.

In keeping with this ruling, the Retirement Board has re-examined the criteria it previously used to determine which pay items are compensation includible under Government Code Section 31460. The Board recognizes that any change in policy must not jeopardize the actuarial soundness of the retirement system.

Effective October 1, 1997, the following general principles will be applied in determining which pay items are subject to retirement contributions and included in pension calculations.

POLICY:

1. Compensation includes all payments for services performed.

All cash payments given as remuneration either for services rendered or for special skills or qualifications (ie. merit pay, longevity pay, standby pay, bilingual pay, holiday pay, educational incentive pay, etc.) are included in compensation.

2. Compensation does not include "the monetary value of other advantages furnished to a member," but does include cash payments in lieu of such other advantages.

In-kind benefits and reimbursements for job-related expenses are excluded.

With regard to cash payments in lieu of such advantages, the Board will evaluate how closely the pay item in question resembles, or functions as an effective substitute for salary.

Cash payments for items of “advantage” that the employee would otherwise purchase with salary are included.

3. “Overtime” compensation is not included in compensation earnable if it is in excess of what is considered normal working hours.

If the time worked is ordinarily expected to be worked, then it is included regardless of its formal characterization as overtime for pay purposes.

The fact that payments are made in a lump-sum will not prevent their inclusion within compensation earnable if they are accrued for time regularly worked, and simply withheld to a later date within the same year.

4. Remuneration paid in cash for time earned is considered “final compensation” and is limited by the following:

- a. Annual “cash-out”
The value of accrued time, such as vacation, holiday or sick leave, that is sold back to the employer by the employee each year under a “cash-out” agreement, is includible in compensation earnable.
- b. Lump sum at termination
Only the portion of accrued time (such as vacation, holiday or sick leave) that is paid in the form of a lump sum at termination, and that represents time earned during the final compensation period is includible in compensation.

5. Members affected

This Policy shall be effective as to the calculation of retirement allowances for those members of CCCERA whose original date of membership in the retirement system is on or before December 31, 2010.

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**ADDENDUM TO POLICY FOR DETERMINING WHICH PAY ITEMS ARE
"COMPENSATION" FOR RETIREMENT PURPOSES**

PURPOSE:

This Addendum to the Policy for Determining Which Pay Items are "Compensation" for Retirement Purposes, adopted December 5, 1997, and amended January 13, 1998 ("Policy"), reflects the Retirement Board's re-examination of the Policy since its adoption and the Retirement Board's decision to revise certain aspects of the Policy with respect to persons who become members of the retirement system on and after January 1, 2011. This Addendum is made as of March 10, 2010 and shall be referenced in communications to affected members regarding the Policy following its adoption.

POLICY:

Notwithstanding anything to the contrary in the Policy, the following policies and procedures shall be effective as to the determination of "compensation," "compensation earnable" and "final compensation," as defined in the County Employees Retirement Law of 1937, Government Code sections 31450, et seq.

1. Remuneration paid in cash for time earned is considered "final compensation" and is limited by the following:

- a. Annual "cash out"
The value of accrued time, such as vacation, holiday, sick or administrative leave, that is both earned and sold back to the employer by the employee during the final compensation period under a "cash-out" agreement, is includable in compensation earnable.
- b. Lump sum at termination
Only the portion of accrued time (such as vacation, holiday, sick or administrative leave) that is paid in the form of a lump sum at termination, and that represents time both earned and cashable during the final compensation period, is includable in compensation earnable.

2. Additional examples of amounts that are not included in "compensation earnable"

- a. For each year of the final compensation period, leave amounts sold back during any twelve-month period that were accrued over two or more fiscal or calendar years, and that exceed the amount that was both earned and cashable during service in that twelve-month period.

- b. Incentives, bonuses and other payments to the extent they may not be received in cash during service, but only upon termination or retirement.
- c. Conversion of in-kind benefits and other advantages to cash during the final compensation period.

3. Members affected

This Addendum shall be effective as to the calculation of retirement allowances for those members of CCCERA whose original date of membership in the retirement system is on or after January 1, 2011 and before January 1, 2013.

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

SECOND ADDENDUM TO POLICY FOR DETERMINING WHICH PAY ITEMS ARE "COMPENSATION" FOR RETIREMENT PURPOSES

PURPOSE:

The Policy for Determining Which Pay Items are "Compensation" for Retirement Purposes was adopted on December 5, 1997 and amended January 13, 1998 and March 10, 2010 ("Policy"). This Second Addendum is made as of December 12, 2012 and shall be referenced in communications to affected members regarding the Policy following its adoption. The purpose of this Second Addendum is to implement provisions of the California Public Employees' Pension Reform Act of 2013 ("PEPRA") relating to member compensation included in pensionable compensation. (California Government Code Article 4; § 7522.34.)

LEGAL AUTHORITY:

Pursuant to PEPRA, "pensionable compensation" is used to calculate members' retirement allowances.

Government Code Section 7522.34(a) defines "pensionable compensation" as:

"Pensionable compensation" of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

Government Code Section 7522.34(b) provides:

Compensation that has been deferred shall be deemed pensionable compensation when earned rather than when paid.

Government Code Section 7522.34(c) excludes from "pensionable compensation" the following:

- (1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.
- (2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.
- (3) Any one-time or ad hoc payments made to a member.

- (4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.
- (5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.
- (6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
- (7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.
- (8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.
- (9) Employer contributions to deferred compensation or defined contribution plans.
- (10) Any bonus paid in addition to the compensation described in subdivision (a).
- (11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).
- (12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

POLICY:

Notwithstanding anything to the contrary in the Policy, the following policies and procedures shall be effective as to the determination of "pensionable compensation" as defined in the PEPRA, Government Code section 7522.34.

1. **"Pensionable compensation" is limited as defined in Government Code Section 7522.34 to "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules."**
2. **The following are examples of amounts that are *not* included in "pensionable compensation":**
 - (a) **Payments during service and termination payments for unused vacation, annual leave, personal leave, sick leave or compensatory time off, regardless of when reported or paid.**
 - (b) **Allowance, reimbursement, or payment such as housing allowance, automobile allowance, or uniform allowance.**
 - (c) **Payments for services rendered outside of normal working hours, including standby pay, on-call pay and call-back pay. Payments for overtime are also *not* included in "pensionable compensation."**
 - (d) **Conversion of in-kind benefits and other advantages to cash during the final compensation period. Examples: conversion of the use of an automobile to an automobile allowance during the final compensation period.**

- (e) One-time or ad hoc payments made to a member.
 - (f) Bonus payments.
 - (g) Severance pay, retirement incentive pay, separation bonus, or other form of payment provided to a member in connection to the extent they may not be received in cash during service, but only upon termination or retirement.
3. Each of the CCCERA participating employers shall provide to CCCERA its publicly available pay schedules for all of its employees. CCCERA staff will determine pensionable compensation based on each employer's publicly available pay schedules.

MEMBERS AFFECTED

This Second Addendum shall be effective as to the calculation of retirement allowances for those members of CCCERA who are "new members" of the retirement system (as defined in the PEPRA, Government Code section 7522.04(f), on or after January 1, 2013.

Attachment #3

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.

A13-1

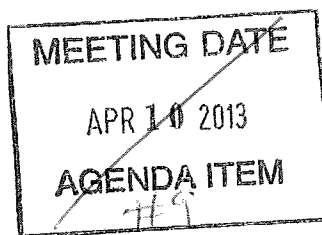
Before the Board acts, CCCERA, the member, and the employer shall be given an opportunity to be heard by the Board.

- 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.

Attachment #4

MEMO

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.

Attachment #5

MEMO

Date: September 4, 2013
To: CCCERA Board of Retirement
From: Kurt Schneider, Deputy Chief Executive Officer
Subject: Compensation Enhancement

In accordance with the Board's Policy Regarding Assessment and Determination of Compensation Enhancements, CCCERA reviews all retirement calculations for any factors that indicate that an item of compensation included in final compensation was paid to enhance a member's retirement benefit. An example of one such factor would be if a pay item was paid to the member only during the final compensation period.

Staff is currently reviewing the following retirement:

- Retirement date: July 1, 2013
- Job position: various
- Type of additional pay in last year: On call pay not previously reported or paid.
- Amount of additional pay in final year: approximately \$10,000
- Resulting increase to monthly retirement benefit: \$350
- Increase to present value of retirement benefit: \$60,000
- Increase to unfunded liability (employer cost): \$56,000

Note: Because the on call pay was only paid in the final year, employee and employer contributions were only collected for the final year, thus leaving the new unfunded liability at \$56,000.