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San Bernardino County Employees'
Retirement Association

POLICY NO.	026	Issue No.	2-0-13-0
Committee:	Admin Committee	Effective Date:	03/07/2019
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<i>Approved</i>		By: _____	
		Chair of the Board	

Subject: COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION ASSESSMENT

COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION

Effective January 1, 2013, Government Code section 31452 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." Additionally, the Board is required by Government Code section 31461 and 7522.34 to determine what items of a member's compensation are included or excluded in employee compensation to determine appropriate contribution rates to be applied and calculate retirement benefits.

(1) Basis Of Contributions/Benefits: The amount upon which appropriate member contribution rates are applied or upon which retirement benefits are calculated shall be based upon compensation earnable or pensionable compensation, as applicable, as determined by the Board of Retirement (Board) in a manner consistent with applicable law. The Board will coordinate pay code items included in compensation earnable or pensionable compensation, as applicable, with each of the Employers who are members of the system.

(2) Compensation Earnable (Definition): For purposes of calculating retirement benefits for Tier 1 members, "compensation earnable" means that term as defined by Government Code section 31461 or such other statute as may become applicable.

(3) Pensionable Compensation (Definition): For purposes of calculating retirement benefits for Tier 2 members, "pensionable compensation" means that term as defined by Government. Code section 7522.34 or such other statute as may become applicable.

(4) Process for Determining the Pensionability of New Pay Items Offered by Participating Employers:

Quarterly, the Board shall, adopt and revise a resolution designating which employer pay items, for each participating plan sponsor, shall be included in "compensation earnable" and "pensionable compensation," as applicable. Prior to the adoption or amendment of such resolution, the Chief Executive Officer (CEO) or designee shall request, and each participating plan sponsor shall provide, a copy of its publicly available pay schedule

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identifying all such pay items in sufficient detail to permit SBCERA to determine whether such items will be considered "compensation earnable" or "pensionable compensation," as applicable. Upon receiving such pay schedules or other information about such pay items, the Chief Counsel in consultation with the CEO or designee shall initially determine whether such items will be considered "compensation earnable" or "pensionable compensation," as applicable, which determination shall be effective immediately, and subject to ratification by the Board as provided in this paragraph.

(5) Staff Review, Assessment, and Determination

Below is a process to establish fair and impartial guidelines used in determining if an element of compensation was paid during a member's final average compensation period to enhance a retirement benefit in violation of applicable law.

a. The Board authorizes SBCERA staff to review compensation included in the calculation of the member's final compensation within the meaning of Government Code sections 7522.32, 7522.34, 31461, 31462 and 31462.1 as applicable, for the purposes of making an initial assessment as to whether any pay element included in the determination of final compensation was paid to enhance a member's retirement benefit.

b. When reviewing items of compensation, SBCERA staff will audit pay items to identify those that may have been paid to enhance a member's retirement benefit, involve the manipulation of compensation by SBCERA members or employers to enhance benefits or compensation considered to be inconsistent with statutory pension reform provisions.

c. Upon receipt of the member's application for retirement, staff will compare a member's final average compensation (FAC) period to previous years to determine the following:

i. Whether there was an increase in the FAC greater than 12.5% paid to the member in prior years; and

ii. Whether the increase was due to a payment that was not available and/or provided to similarly situated employees of the member's employer;

iii. Whether the increase was due to the conversion to a cash payment of a benefit previously provided in kind to the member or paid to a third party for the benefit of the member;

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iv. Whether there was an inconsistent use of special pay items at or near the end of member's career;

v. Whether the increase was due to any other significant change in the member's elements of compensation; or

vi. Such other fact that may be relevant to the Board's determination.

d. If SBCERA determines there is evidence that a pay item may have been provided for the purpose of enhancing the member's retirement benefit, then the member and the employer shall be notified and given an opportunity to submit additional information to rebut that assessment within 15 days of receipt of such notice. Staff will assess, in light of additional information received, if any, whether the pay item(s) was paid to enhance a member's retirement benefit and if the pay item should be included in or excluded from FAC.

i. In the event the assessment concludes that such pay item was paid to enhance the member's retirement benefit, the member may appeal such determination as outlined in Benefits Policy No. 025.

ii. In the alternative, if the assessment concludes that such pay item was not paid to enhance a member's benefit, no further proceedings are necessary and the amounts at issue will be included in the member's benefit calculation.

iii. However, in all cases and to avoid any delay of paying the member's retirement benefit, staff will calculate the retirement benefit without the excluded item(s) and place the member on payroll so long as all other necessary documents are received.