

# VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## COMPENSATION REVIEW POLICY

### **I. Purpose and Objectives**

- 1) The Ventura County Employees' Retirement Association ("VCERA") Board of Retirement ("Board") is required to establish a procedure for assessing and determining whether an element of compensation was paid to enhance a VCERA member's benefit per Government Code Section 31542, effective January 1, 2013. In keeping with this requirement, the Board has set forth this policy and the following guidelines and procedures.

### **II. Legal Authority:**

- 2) 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.

### **III. Guidelines and Procedures**

- 3) The following guidelines 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.

#### Staff Review and Assessment

- 4) With respect to all retirement applications with an effective date of retirement on or after January 1, 2013, the Board directs VCERA 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 VCERA's written 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.
- 5) 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.

#### Preparation of Written Recommendation and Board Action

- 6) If after conducting the initial assessment described above, VCERA staff believes that an item, or items, of compensation was, or were, paid to enhance a member's retirement benefit, staff shall prepare a written report to the Board of Retirement making a recommendation to the Board that the item, or items, 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.
  - a) The report shall be noticed and agendized for a regular meeting of the Board, at which time the Board will act upon staff's recommendation.
    - i) Before the Board acts, VCERA staff, the member, and the employer shall be given an opportunity to be heard by the Board.
  - b) 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.
  - c) 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.

- d) VCERA will provide the member and the employer written notice of the Board's decision within 5 business 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.
- e) 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.
- f) If the payment of the member's benefit would be delayed by seeking resolution through the administrative processes set forth herein, VCERA may process the benefit excluding the compensation in question. If it is later determined the compensation should be included, VCERA will adjust the benefit retroactive to the effective retirement date.

#### **IV. Process Review**

- 7) The Board will review the Compensation Review Policy at least once every three (3) years to ensure that it remains relevant and appropriate.

#### **V. Process History**

- 8) The Board first reviewed and approved this policy on October 7, 2013.