MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION

DETERMINATION OF PENSIONABLE COMPENSATION AND COMPENSATION EARNABLE POLICY

I. PURPOSE AND BACKGROUND

This policy establishes a procedure for assessing and determining whether an element of compensation was paid to enhance a MCERA member's benefit, pursuant to Government Code Section 31542[1] and all adopted Pensionable Compensation Resolutions and Compensation Earnable Resolutions.

II. STAFF REVIEW AND DETERMINATION

With respect to payroll transmittals after January 1, 2013 and retirement applications with an effective date of retirement on or after January 1, 2013, the Board authorizes MCERA staff to review 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 and all adopted Pensionable Compensation Resolutions and Compensation Earnable Resolutions, 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.

[1] 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.

When reviewing items of compensation, MCERA staff will audit pay items to identify those that may have a primary purpose to enhance retirement benefits (e.g. conversion of pay items from in-kind to cash payment in the FAS period), involve the manipulation of compensation by MCERA members or employers to enhance benefits, receipt of ad hoc payments or any other compensation considered to be inconsistent with the pension reform legislation provisions.

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 pay 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/or the employer in response to MCERA'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.

Staff may conduct such written and oral follow-up communication as staff believes is appropriate in the exercise of reasonable diligence.

If after conducting the initial assessment described above, MCERA staff believes that an item of compensation was paid to enhance a member's retirement benefit, MCERA staff will notify the member and the employer in writing of the staff determination. The member and/or the employer may appeal the staff decision in accordance with the MCERA Administrative Hearing Policy. Failure to exercise that option by the member or the employer shall constitute a waiver of further administrative or judicial review.

If payment of the member's benefit would be delayed by seeking resolution through the Administrative Hearing process, MCERA may process the benefit excluding the compensation in question. If it is later determined the compensation should be included, MCERA will adjust the benefit retroactive to the effective retirement date.

III. POLICY REVIEW

This Policy is subject to change in the exercise of the Board's judgement. The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate and consistent with state and federal laws and regulations. In the event of legislative changes to the pertinent sections addressed in this policy, the Board will review the policy as appropriate.

IV. POLICY HISTORY

This Policy was adopted by the Board of Retirement on March 20, 2013.

This Policy was reviewed and amended by the Board of Retirement on May 18, 2016.

This Policy was reviewed and amended by the Board of Retirement on April 17, 2019.