



COUNTY OF TULARE BOARD OF RETIREMENT

David J. Kehler
Retirement Administrator

136 N. AKERS STREET
VISALIA, CA 93291

TELEPHONE (559) 713-2900
FAX (559) 730-2631
WEBSITE: www.tcera.org

PROCEDURE FOR IDENTIFYING AND ASSESSING ENHANCEMENTS TO FINAL COMPENSATION

Background

Effective January 1, 2013, Government Code section 31542 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." This procedure is necessary to implement other recent changes to the laws governing TCERA, which now require the Board to exclude from the amounts used to calculate a member's benefits, among other things, "any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system". (See Government Code §7522.34 for "new members" and §31461 for legacy members.)

Section 31542 also requires that:

- 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, the board may reverse its determination that compensation was paid to enhance the member's retirement benefits.
- 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.
- 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.

Procedures

- I. TCERA staff will establish parameters for identifying and reviewing potential cases of questionable enhancements to a member's benefits. Those parameters will consider the following circumstances related to an increase in a member's "compensation earnable" or "pensionable compensation" in the member's one-year or three-year "final compensation" period:
 - The amount of an increase relative to amounts of "compensation earnable" paid to the member in prior years.
 - Whether the increase was due to a payment that was not available to similarly situated employees of the member's employer.
 - 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.
 - Whether the increase was due to a payment related to the termination of the member's employment.

- Whether the increase was due to any other significant change in the member's elements of compensation.
 - Other parameters as established from time-to-time by action of the Board of Retirement.
- II. When a member's compensation has been identified for review. TCERA staff will conduct further investigation to determine whether an element of compensation appears to have been paid to enhance a member's retirement benefit. Such investigation may include, among other things, obtaining documents or other information from the member and/or the member's employer. If payment of benefits to the member would be delayed by the administrative processes discussed herein, TCERA staff may process benefits excluding the compensation in question. If it is later determined the compensation should be included, staff will adjust the benefit retroactive to the effective date of retirement.
- III. Upon completion of TCERA's review, if staff concludes that the compensation was not paid to enhance a member's retirement benefit, no further action will be necessary.

If staff concludes that the compensation in question was paid to enhance a member's retirement benefit, staff will prepare a recommendation to the Board that such compensation be excluded from the member's benefit calculations and will specify the reason(s) for the action. The staff recommendation will be agendaized for a regular meeting of the Administrative Committee and, following Committee review, will be agendaized for a meeting of the Board of Retirement. A copy of the recommendation will be provided to the member and to the member's employer by certified mail not less than ten (10) days before the appropriate meetings of the Administrative Committee and Board of Retirement. The member and the employer shall be given opportunity to address the Committee and Board, subject to applicable provisions of the Brown Act.

- IV. If the Board of Retirement determines that the compensation in question may be included in calculating the retirement benefit, no further action is necessary and the amount(s) at issue shall be included as compensation earnable.

If the Board adopts staff's recommendation, the member and/or the member's employer will be notified of that determination. Within 10 days of receiving such notice by certified mail, the member and/or the employer may request a hearing before a hearing officer. The procedures for all such hearings and subsequent Board consideration of the hearing officer's proposed decision will be conducted in accordance with the applicable provisions of TCERA's Disability Hearings, except that judicial review of the Board's final decision will require filing a petition for writ of mandate within 30 days of the mailing of the notice of the Board's final determination to the member and his or her employer, pursuant to Government Code section 31542(b).

Approved by the Board of Retirement on April 10, 2013.