

PROCEDURE FOR IDENTIFYING AND ASSESSING
IMPROPER 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 FCERA, 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 provides in full:

(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.

The FCERA Board already has in place a “Policy Re Administrative Proceedings and Appeals to the Board” (“Hearings Policy”), which governs the procedures for a member who wishes to dispute a determination made by FCERA staff.

Procedures

(1) FCERA 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 (or soon before) the member’s one-year or three-year “final compensation” period, among others:

- The amount of an increase relative to amounts of “compensation earnable” or “pensionable compensation” 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...

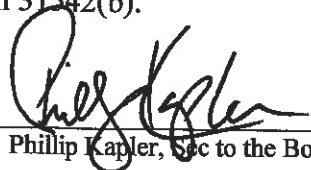
(2) When a member's compensation has been identified for review, FCERA staff will conduct a further investigation to determine whether an element of compensation appears to have been paid to enhance a member's retirement benefit. Such investigation may include, among other things, seeking documents or 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, FCERA staff may process benefits excluding the compensation in question. If it is later determined the compensation should be included, FCERA staff will adjust the benefit retroactive to the effective retirement date, with interest if applicable.

(3) Upon completion of FCERA staff's review, if staff concludes that the compensation at issue was not paid to enhance a member's retirement benefit, no further proceedings are necessary and the amounts at issue will be included in the member's benefit calculations. If staff concludes that the compensation at issue was paid to enhance a member's retirement benefit, then staff will prepare an administrative recommendation to the Board that such compensation be excluded from a member's benefit calculations, with the reasons specified. The administrative recommendation will be agendized for a regularly noticed Board meeting, and a copy of the recommendation will be provided to the member and his or her employer by confirmed delivery no less than 10 days before the noticed Board meeting. The member and his or her employer will be given an opportunity to address the Board, subject to the Brown Act. At that meeting, the Board will make its determination, by majority vote, as to whether to adopt or decline to follow staff's administrative recommendation, or take further action the Board deems appropriate under the circumstances.

(4) If the Board declines to follow the administrative recommendation and decides that the compensation in question properly may be included in calculating the retirement benefit, no further proceedings are necessary and the amounts at issue shall be included in the member's benefit calculations. If the Board adopts FCERA staff's administrative recommendation, the member and/or the member's employer will be notified of that determination. Within 10 days of receiving such notice by confirmed delivery, 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 FCERA's Hearings Policy, except that judicial review of the Board's final decision may be had only by 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).

Adopted by the Board : February 20, 2013
Date

Attest:


Phillip Kapler, Sec to the Board