



## Board Administration Policy

# Final Compensation Review Policy

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### I. Statement of Purpose

- A. To establish fair and impartial guidelines to determine whether the pay elements in the final average compensation period qualify as “compensation earnable” or “pensionable compensation” as applicable, as required by Government Code Section 31542.

### II. Staff Review, Assessment, and Determination

- A. Upon receipt of a retirement application, SJERA staff will then compare the gross compensation in the final compensation period to the gross compensation in similar periods of time, and then analyze the cause of the increase.
  1. SJERA staff shall rely on the following four principals to guide its decision:
    - a. Inconsistent use of special pay elements at or near the end of member’s career;
    - b. Frequent use of special pay elements over time, which appear to be random;
    - c. End of career pay increases that are routine and customary;
    - d. Special pay elements that are accumulated through work completed, voluntarily or employer directed.
    - e. Board payroll events during the final compensation period.

SJERA will evaluate each situation on a case-by-case basis, considering all facts.

2. Staff may consider 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 conduct such written and oral follow-up communication with the employer, member, others, as staff believes is appropriate in the exercise of reasonable diligence.
3. If the analysis indicates that specific elements of compensation were routinely paid during the review period(s) at or near the same frequency as found during the final average compensation period, the final average compensation will be used to determine the member’s retirement benefits.

4. If the analysis indicates that an element of compensation was paid to enhance the retirement benefit, the member or the employer shall be given the opportunity to present evidence to SJCERA that the compensation was not paid for the purpose of enhancing the member's retirement benefit.
  5. The Chief Executive Officer (CEO) will evaluate all evidence provided, and if in the opinion of the CEO, it appears an element of compensation was paid to enhance a member's benefit, the CEO will deny the use of the element(s) in calculating the final average compensation. If the member disagrees with the CEO's decision, the member may request the item be placed on the Board of Retirement agenda for review.
- B. If payment of the member's benefit would be delayed by seeking resolution through the administrative or judicial processes set forth herein, SJCERA may process the benefit excluding the compensation in question. If it is later determined the compensation should be included, SJCERA will adjust the benefit retroactive to the retirement effective date.
- C. A member or employer shall have 15 calendar days from the date of written notification of staff's determination within which to request reconsideration by the Board of Retirement, and provide any additional evidence to rebut staff's recommendation. Failure to exercise this option by the member or the employer shall constitute a waiver of further administrative or judicial review.

### **III. Board Review of Staff Determination**

- A. Staff shall prepare a written report to the Board of Retirement describing the reasons for staff's determination that a pay element should be excluded from the member's final compensation. The report shall also include any evidence submitted by the member or employer to rebut staff's determination and support reconsideration by the Board of Retirement.
- B. The report shall be noticed and agendized for open session of a regular meeting of the Board. Written notice of the Board meeting and a copy of staff's report shall be provided to the member and the employer no less than 5 business days before the meeting date.
- C. The Board will make a final determination at the meeting, as to whether the item of compensation was paid to enhance the member's retirement benefit. SJCERA will provide the member and employer written notice of the Board's final determination.
  1. If the Board approves staff's recommendation, the written notice of the Board's final determination 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 date of mailing of that notice.

2. If the Board overturns staff's recommendation, staff will include the compensation in the determination of the member's final compensation, and adjust the member's benefit retroactively to the retirement effective date.

**IV. Policy Review**

- A. Staff shall review this Policy at least once every three years to ensure that it remains relevant, appropriate, and in compliance. Any revisions or amendments to this policy must be approved by the Board of Retirement, pursuant to the Bylaws.

**V. History**

- 08/09/2013 Adopted by Board of Retirement
- 06/29/2018 Staff updated format
- 04/12/2019 Policy Review section amended to at least once every three years
- 07/09/2021 Added the principals for review, clarified the administrative role and other non-substantive changes

**Certification of Board Adoption**

  
Clerk of the Board

07/09/2021

Date