

June 25, 2013

TO: Each Member,
Board of Retirement

FROM: Operations Oversight Committee
Yves Chery, Chair
William de la Garza, Vice Chair
Marvin Adams
Vivian H. Gray
Shawn R. Kehoe, Alternate

FOR: Board of Retirement Meeting of July 11, 2013

SUBJECT: **Administrative Appeals Procedures for Retirement and Health Benefits**

RECOMMENDATION

Approve the Administrative Appeals Procedures for Retirement and Health Benefits.

INTRODUCTION

At the June 6, 2013 meeting, the Operations Oversight Committee directed staff to submit an Administrative Appeals Policy to the Board of Retirement for approval. The appeals process is designed to provide members who disagree with a decision by staff regarding a benefits related issue to formally request their matter be reviewed by management and ultimately by the Board of Retirement if necessary.

The recent passage of the Public Employees Pension Retirement Act of 2013 requires boards to establish procedures for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit (Government Code Section 31542). The Board adopts a policy to:

- 1) Assess and determine whether an element of compensation was paid to enhance a LACERA's member's retirement benefit; and
- 2) Establish a procedure for members and employers to file an administrative appeal related to the member's determination of final compensation.

Currently LACERA does not have a formal review process that is applicable to meet the requirements of Government Code Section 31542 or that covers other administrative appeals such as: payment of allowances, benefits or refunds, correction of records, assessment and waiver of interest, health benefits and services, and other benefit issues.

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The attached policy will provide clear guidelines for members and staff to follow in situations where the member disagrees with a decision by staff while keeping LACERA in compliance with newly passed legislation.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

Approve the Administrative Appeals Procedures for Retirement and Health Benefits.

Jjp/jf

[Attachment](#)

LACERA POLICY STATEMENT**Administrative Appeals Procedures for Retirement Benefits**
(Effective July 11, 2013)**Purpose**

The LACERA Board of Retirement is required to establish a procedure for assessing and determining whether an element of compensation was paid to enhance a LACERA member's retirement benefit (Government Code Section 31542). In addition, a member and/or survivor may disagree with staff's decision regarding their retirement benefits.

Therefore the Board adopts this policy to:

- 1) Assess and determine whether an element of compensation was paid to enhance a LACERA member's retirement benefit (Section 1); and,
- 2) Establish a procedure for members and employers to file an administrative appeal related to the member's determination of final compensation. (See Sections 1, 2, and 3); and,
- 3) Establish a procedure for all administrative appeals (other than the determination of whether an element of compensation was included to enhance final compensation) including, but not limited to the following: payment of allowances, benefits or refunds, correction of records, assessment and waiver of interest, or other benefits. (See Section 4)

I. Statement of Policy**Section 1: Staff Review Regarding Assessment and Determination of Compensation Enhancements**

With respect to all retirement applications with an effective date of retirement on or after January 1, 2013, the Board directs LACERA 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 audit the member's account prior to payment of the retirement benefit. In conducting the review and making the initial assessment, staff shall consider:

- a. Whether an item of compensation was earned within the period during which final compensation is to be calculated;
- b. Whether the compensation exceeds a members' normal base pay, and if so, whether earnings codes reported for additional pay are consistent with categories of compensation properly included in pension calculation pursuant to Board Resolutions and statute;
- 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 LACERA staff's request as to facts and circumstances concerning an item of compensation that staff believes may have been paid to enhance the member's retirement benefit.

Section 2: Notification to Member and Employer of Staff's Decision Related to Final Compensation

LACERA staff shall notify the employer and the member of LACERA's initial determination that a pay item is not pensionable, in writing, and will summarize the rationale for that determination. In this letter, staff will notify the member and the employer that if they wish to challenge staff's initial determination, they may administratively appeal to the Board of Retirement within 30 days of the date of the mailing of staff's decision. The appeal shall contain a statement of the facts and the law forming the basis for the appeal. The appeal shall be in writing and mailed to the following address: LACERA Legal Office, 300 N. Lake Avenue, Suite 620, Pasadena, and CA. 91101.

Section 3: Preparation of Written Administrative Recommendation and Board Action

The Board of Retirement will make the final determination regarding staff's recommendation

- a) If after conducting the initial assessment described above, LACERA staff believes that an item of compensation was paid to enhance a member's retirement benefit; staff shall prepare a written report to the Board of Retirement making an administrative recommendation to the Board that an item 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.

- b) The report shall be noticed and agendized for a regular meeting of the Board, at which time the Board will act upon staff's administrative recommendation. The member and the employer shall be given an opportunity to be heard by the Board.
- c) 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.
- d) At the meeting, the Board will make a decision as to whether an item of compensation was paid to enhance the member's retirement benefit.
- e) LACERA staff will provide the member and the employer written notice of the Board's decision and 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 such notice.
- f) If the Board finds the item of compensation should be included, staff will adjust the member's benefit to include the item, retroactive to the effective date of retirement.
- g) If the payment of the member's benefit would be delayed by seeking resolution through the administrative process set forth herein, LACERA may process the benefit excluding the disputed item of compensation. If it is later determined the compensation should be included, LACERA will adjust the benefit retroactive to the effective retirement date.

Section 4: Procedure for Appeals of Retirement Benefits

For purposes of this policy, an applicant for an administrative remedy is defined as any member, former member, survivor or beneficiary with respect to payment of allowances, retirement benefits, refunds, or correction of records. If an applicant disagrees with a staff's decision related to retirement benefits, the applicant may file an administrative appeal. There are three levels to the administrative appeal process.

First Level:

An applicant who is dissatisfied with staff's response may send a written appeal addressed to the Division Manager of Member Services. The member should provide a clear description of what they are appealing and provide any supporting documentation. The Division Manager, or his/ her designee, will send a response within 60 days of receipt of the appeal.

Second Level

If the applicant is dissatisfied with the Division Manager's response, the applicant may send their appeal to the Assistant Executive Officer (AEO) within 60 days of the date of the Division Manager's decision. The appeal should provide a clear explanation of why the member disagrees with the Division Manager's response and provide supporting documents for the appeal. If the applicant's request for review by the AEO does not contain information or legal basis for review, the applicant's request for executive review shall be denied.

If the AEO determines that the applicant has provided sufficient information or legal basis for review, the AEO and the LACERA's Legal Office will review the appeal and make a determination.

Third Level

If the applicant disagrees with the AEO's determination, the applicant may request an administrative appeal to the Board of Retirement. The request for an administrative appeal shall be directed to LACERA's Legal Office within 60 days of the date of the determination signed by the AEO. The request shall be in writing and mailed to the following address: LACERA Legal Office, 300 N. Lake Avenue, Suite 620, Pasadena, and CA. 91101. The appeal shall contain a statement of the facts and the law forming the basis of the appeal. The matter will be placed on the Board of

Retirement's agenda, at which time the Legal Office's analysis and recommendations will be discussed with the Board in closed-session. The applicant will have the opportunity to address the Board in open-session prior to the closed-session.

Following the Board meeting, the Legal Office will provide the applicant written notice of the Board's decision and of their right to seek judicial review of the Board's action by filing a petition for writ of mandate.

II. Implementation

This policy is established pursuant to the Board of Retirement's fiduciary responsibility to administer the retirement plan in accordance with the County Employees Retirement Law of 1937 and the Board of Retirement Bylaws. This policy may be modified in the future by Board of Retirement action.

Staff is directed to establish materials explaining the appeals process describing the right to appeal and include a pamphlet and/or instructions where to locate the appeals process explanation on lacera.com, in all notices and letters to members where staffs decision impacts a member's/survivor's retirement benefits.

Adopted:

Approved by Board of Retirement (07/11/13)