

## **Retirement Enhancement (Spiking) Review Policy**

---

### **Purpose and Background**

1. California Government Code section 31542 (Section 31542) requires the Orange County Employees Retirement System (OCERS) Board of Retirement (Board) to establish a procedure for assessing and determining whether an element of compensation was paid to inappropriately enhance an OCERS member's benefit, sometimes referred to as "spiking". The purpose of this policy is to establish a procedure in compliance with Section 31542.

### **Policy Objectives**

2. The objectives of this policy are to comply with the requirements of the County Employees Retirement Law (CERL; California Government Code Title 3, Part 3, Chapters 3 & 3.9), as amended by the Public Employees Pension Reform Act (PEPRA; California Government Code sections 7522 - 7522.74) and to ensure OCERS' effective assessment and determination of whether an element of compensation was paid to inappropriately enhance or "spike" a member's retirement benefit, while providing the member and employer required notice and due process with respect to OCERS' determinations regarding the member's retirement benefit.

### **Policy Guidelines**

3. OCERS staff shall review all items of compensation included within the calculation of the member's final compensation within the meaning of California Government Code sections 7522.32 & 7522.34 (Pensionable Compensation), and sections 31460, 31461 & 31462 (Compensation Earnable), and related sections, for the purpose of making an initial assessment as to whether there is any evidence that any item of compensation included in final compensation was paid to "spike" a member's retirement benefit. In conducting such review and making such initial assessment, staff shall consider:
  - a. Whether the item of compensation was only earned within the period during which final compensation is to be calculated;
  - b. As to each pay code or element of pay, whether it meets the definition of, as applicable, compensation earnable or pensionable compensation under statutory and case law and the Board's policies interpreting such law;
  - 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 OCERS' written 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.
4. If, after concluding the foregoing assessment, OCERS staff determines that one or more items of compensation were paid to enhance a member's retirement benefit, OCERS staff shall send written notification to the member and the employer of staff's initial determination.

## **Retirement Enhancement (Spiking) Review Policy**

---

5. The notice shall set out the reasons for staff's determination, including the specific supporting facts, circumstances and analyses. Staff may conduct such written and oral follow-up communication with the member and/or employer as appropriate in the exercise of reasonable diligence. Staff shall document any such communication and when concluded, shall issue a final notice of determination and provide that notice to the member and employer.
6. The member and employer shall have 90 days from the date of staff's notice of final determination within which to request an administrative review of the staff determination by the Board. Failure of the member or employer to timely request Board review shall constitute a waiver of further administrative review.
7. A request for administrative review of the staff determination by the Board shall be in writing and delivered to the CEO or his/her designee within the time period set forth in Paragraph 6, above. The request shall set forth in reasonable detail the evidence and analysis supporting the member's or employer's argument that the staff determination is erroneous.
8. Upon receipt of a timely request for administrative review by the Board, staff shall place the matter on the agenda of a future meeting of the Board and shall prepare a written report to the Board making a recommendation to the Board that the item, or items, should not be included in the calculation of the member's retirement benefit.
  - a. The report shall contain a description of the reasons for staff's recommendation, including the specific facts and circumstances supporting staff's recommendation.
  - b. Before the Board acts, the member and the employer shall be given an opportunity to be heard by the Board and to submit any additional materials for the Board's consideration.
  - c. Written notice of the Board meeting and a copy of staff's report and all materials to be considered by the Board shall be provided to the member and the employer no less than five business days before the scheduled Board meeting.
  - d. At the meeting, the Board shall consider the all written materials submitted as well as any arguments by the member or the member's employer. The Board shall then make a final determination as to whether the item of compensation was paid to enhance the member's retirement benefit.
  - e. OCERS shall provide the member and the employer written notice of the Board's final determination, along with information regarding the rights of the member and the employer to seek judicial review of the Board's action by filing a petition for writ of mandate within 30 days after the mailing of that notice as required by Section 31542.
  - f. If the Board finds the item of compensation should be included, staff shall adjust the member's benefits accordingly, retroactive to the effective date of retirement.
9. If the payment of the member's benefit would be delayed as a result of these administrative processes, OCERS staff shall process the benefit excluding the compensation in question. If it is later determined the compensation should be included, OCERS shall adjust the benefit retroactive to the effective retirement date.

## **Retirement Enhancement (Spiking) Review Policy**

---

### **Policy Review**

10. The Board shall review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

### **Policy History**

11. The Board adopted this policy on March 18, 2019 and revised on June 20, 2022.

### **Secretary's Certificate**

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney  
Secretary of the Board

**06/20/2022**

Date