Board Pay Code Policy

I. Purpose

This Board Pay Code Policy provides guidelines for participating employers and ACERA staff regarding the types of pay that are reported to ACERA as “compensation earnable” for Tier 1, 2 and 3 members and as “pensionable compensation” for Tier 4 members.

II. Policy Guidelines

A. To the extent this Policy and applicable law are in conflict, applicable law governs.

B. If applicable law is ambiguous, this Policy states the Board’s interpretation of that law.

C. The Board finds that there is value in stability and consistency with respect to which types of pay are reported to ACERA as “compensation earnable” and “pensionable compensation.” Thus, the Board will make determinations that are consistent with its prior determinations and ordinarily will change prior determinations only when the law clearly requires a change. This Policy ratifies ACERA’s existing practices as of the adoption of this Policy unless it is later determined that a practice is not consistent with a reasonable interpretation of applicable law, in which case the matter will be brought to the Board to determine appropriate corrective action.

D. The reporting of a pay code as “compensation earnable” or “pensionable compensation” in compliance with this Policy does not preclude ACERA from reviewing all facts and circumstances at the time of a member’s retirement and removing reported compensation from a member’s “final compensation” when doing so is consistent with applicable law.

III. Procedures

A. New Pay Codes

1. Employers must provide information about all new pay codes to ACERA staff as soon as practicable. Such information must include, at minimum, a completed Pay Code Questionnaire and documentation related to the creation of pay code, such as the applicable MOU and formal resolution of the employer’s governing authority.

2. Employers must promptly provide any further information that ACERA staff requests after staff receives the employer’s initial submission.

3. When ACERA staff has sufficient information, the CEO (or designee) may decide whether the pay code, or new use of an existing pay code, should be reported to ACERA as "compensation earnable" and "pensionable compensation" The CEO (or designee) will make those decisions only in cases when the law and Board precedent on similar pay codes are sufficiently clear that there is no reasonable question about how the Board would act if the pay code were before the Board. If an employer disagrees with a CEO (or designee) decision, the employer may request Board review of the decision.

4. If there is a reasonable question about how the Board will act on a pay code, the decision about whether a pay code should be reported as "compensation earnable" and "pensionable compensation" will be on the Board's next practicable open meeting agenda. The matter will normally appear on the Consent Calendar, but it may appear on the Regular Calendar.

5. ACERA staff will notify the employer when a pay code is considered by the Board at least 72 hours before the Board meeting. Such notice will include the materials that will be presented to the Board, including staff's recommendation.

B. <u>Changes To Existing Pay Codes</u>

1. A pay code ordinarily should not be used for a kind of pay that is for different services or is paid to different kinds of employees than the pay for which the pay code was initially created. Employers should create new pay codes for all new kinds of pay or pay that will be paid to different kinds of employees.

2. If an employer uses an existing pay code for a new kind of pay or for different kinds of employees, the employer must follow the procedures described above for new pay codes so that the new use of the existing pay code is approved.

C. ACERA staff will notify the employer of all decisions regarding pay codes. The employer must comply with those decisions.

D. ACERA will maintain, for each employer, a pay code list that states whether a pay code is reported to ACERA as "compensation earnable" and "pensionable compensation." The pay code lists will be posted on ACERA's website under the "Employers" heading.

IV. Board Determinations

A. "Compensation Earnable," which applies to Tiers 1, 2 and 3 members, is governed by Gov't Code § 31461. Pursuant to Section 31461, published precedent and the Board's historical interpretations of applicable law the Board finds as follows:

1. Subject to any exclusions listed below, remuneration paid in cash out of employer funds for services rendered during normal working hours must be reported to ACERA as "compensation earnable" for Tier 1, 2 and 3 members.

2. Overtime may not be reported to ACERA as "compensation earnable" except for premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 and following of Title 29 of the United States Code.

3. Used paid leave (e.g., regular pay while on vacation) is reported to ACERA as "compensation earnable."

4. Paid leave converted to cash (sell back or cash out) is reported to ACERA as "compensation earnable" only if the member is converting the paid leave to cash before termination or if the member is converting the cash at termination but could have converted that paid leave to cash before termination. If the member is able to convert paid leave to cash only because the member is terminating, then such payment should not be reported to ACERA as "compensation earnable." Any footnotes, premiums, incentives, differentials, or other pay associated with leave sell back or cash out shall be reported as "compensation earnable" only if (a) that associated pay is normally reported as "compensation earnable," and (b) the sell back or cash out to which it is attached is reported as "compensation earnable."

5. Payments for additional services rendered outside of normal working hours may not be reported to ACERA as "compensation earnable." Standby pay and similar pay items (for being ready to work if necessary) may be considered part of normal working hours and therefore reportable to ACERA as "compensation earnable" only if the standby or similar duty is mandatory and ordinarily worked in essentially the same amount by employees in the member's grade or class.

6. Bonuses are reported to ACERA as "compensation earnable" only when paid in the same amount to all similarly situated members in the member's grade or class.

7. Termination pay should not be reported to ACERA, except as provided in Section IV(A)(4) above.

8. Employer contributions to deferred compensation or defined contribution plans may not be reported as "compensation earnable."

9. Amounts deducted from a member's pay for participation in a deferred compensation plan are reported as "compensation earnable" if such amounts otherwise would have be reported as "compensation earnable" had they not been deducted.

10. ACERA staff will determine whether a payment has been made to enhance a member's retirement benefits and, if so, staff will exclude that amount from the member's "final compensation." Such determinations are subject to review pursuant to ACERA's Administrative Hearing Policy.

B. "Pensionable Compensation," which applies to Tier 4 members, is governed by Gov't Code § 7522.34. Pursuant to Section 7522.34, applicable published precedent and the Board's historical interpretations of applicable law the Board finds as follows:

1. Subject to the exclusions listed below, the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules must be reported to ACERA as "pensionable compensation" for Tier 4 members.

2. If a pay item is paid to only one employee, then it is not paid to any other similarly situated employees and therefore may not be reported to ACERA as "pensionable compensation."

3. The phrase "publicly available pay schedules" includes information regarding a pay item found in publicly available employer resolutions, MOUs and similar documents regardless of the format in which the information appears.

4. Compensation that had previously been provided in kind to the member by the employer or paid to a third party for the benefit of the member and which was

converted to and received by the member in the form of a cash payment may not be reported to ACERA as "pensionable compensation."

5. Bonuses, one-time payments and ad hoc payments may not be reported to ACERA as "pensionable compensation." The Board has determined that "ad hoc" refers to payments that are not expected to regularly recur. A payment that is made for a specific purpose may be included in "pensionable compensation" if it is expected to regularly recur and does not violate any other rules of "pensionable compensation." For example, shift differentials, amounts paid while training other employees and amounts paid for additional responsibilities are reported to ACERA as "pensionable compensation" if they are paid to more than one employee in the member's grade or class for services during normal working hours.

6. Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment may not be reported as "pensionable compensation" even if the payment is received by the member while employed

7. Used paid leave (e.g., salary received while on vacation) is reported to ACERA as "pensionable compensation."

8. Payments for unused paid leave (e.g., vacation sell back or cash out) may not be reported as "pensionable compensation" under any circumstances. Footnotes, premiums, incentives, differentials, or other pay associated with payments for unused paid leave also may not be reported as "pensionable compensation."

9. Payments for additional services rendered outside of normal working hours may not be reported to ACERA as "pensionable compensation." For example, standby pay and similar pay items (for being ready to work if necessary) may not reported as "pensionable compensation." To the extent such services arguably might be considered part of the member's normal working hours, the Board has exercised its discretion under Gov't Code § 7522.34(c)(11)(12) to exclude these payments.

10. Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms, may not be reported as "pensionable compensation."

11. Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code, may not be reported to ACERA as “pensionable compensation.”

12. Employer contributions to deferred compensation or defined contribution plans may not be reported as “pensionable compensation.”

13. Amounts deducted from a member’s pay for participation in a deferred compensation plan are reported as “pensionable compensation” if such amounts otherwise would have be reported as “pensionable compensation” had they not been deducted.

14. ACERA staff will determine whether a payment has been made to enhance a member’s retirement benefits and, if so, staff exclude that amount from the member’s “final compensation.” Such determinations are subject to review pursuant to ACERA’s Administrative Hearing Policy.

V. Policy Review

The Operations Committee will review this Policy at least every three years.

VI. Policy History

The Board adopted this policy on July 16, 2026.