



Frequently Asked Questions #2: Regarding Proposition B's Effects On Reciprocity

This second set of FAQs on Proposition B relates to questions SDCERS has received from Members about Proposition B's effect on reciprocity.

1. Will Proposition B have any effect on existing reciprocity agreements? Particularly with respect to using a different final salary than would have been used under the agreement as originally entered into.

The initiative provides for changes to the calculation of a City employee's Base Compensation for purposes of determining Final Average Salary ("FAS") used to calculate a retirement benefit. Prop B also seeks to exclude certain pay items such as bi-lingual pay from pensionable base compensation, subject to legal constraints, and if fully implemented would result in these pay items being excluded from the FAS calculation.

These provisions apply prospectively only, which SDCERS understands as meaning to limit its applicability to periods of service earned by City employees after the initiative's effective date. Therefore, provided you do not return to City service prior to retirement, your Base Compensation in effect at the time you became a Deferred Member would be the compensation used by SDCERS for purposes of calculating your Final Average Salary (final compensation) from SDCERS. SDCERS will then use the highest of the Deferred Member's FAS from SDCERS or his/her final compensation with the reciprocal system when calculating the retirement allowance.

SDCERS does not interpret Prop B to provide that the "freeze" on Base Compensation results in a corresponding "freeze" to a Deferred Member's compensation earnable at a reciprocal system. However, the provision of Prop B prospectively eliminating pay elements from Base Compensation, coupled with recent case law, could impact SDCERS's calculation of a Deferred Member's final compensation with the reciprocal system.

Under the reciprocal agreement between SDCERS and CalPERS, SDCERS must consider the average monthly salary during a Deferred Member's service as a member of a reciprocal system for purposes of computing final compensation in the reciprocal system providing the Deferred Member retires concurrently from both systems. [San Diego Municipal Code ("SDMC") section 24.1005(b).]

In a recent case involving the Fresno County Employees Retirement Association, the Fifth District Court of Appeals held that when calculating final compensation each system applies its own definition of final compensation to the compensation earnable under a reciprocal system and may exclude from that compensation calculation any pay elements which are not included in that system's definition of compensation earnable, stating that "Noncompensation does not become compensation just because it is paid by a reciprocal employer." *Stillman v. Retirement of Fresno County*, 198 Cal.App.4th 1355 (2011). If for purposes of calculating the retirement allowance the City of San Diego prospectively deletes from its definition of Base Compensation pay elements which are included in your compensation with your reciprocal employer, then *Stillman* requires that SDCERS also delete those pay items from the calculation of your final compensation with the reciprocal employer. This deletion of pay items would apply only for periods of service with the reciprocal employer after the City has made that exclusion. The adjusted reciprocal FAS

would then be used when determining your highest FAS with either system to apply to your SDCERS service credit. Note that the new City exclusion rules would apply only to the calculation of your FAS with the reciprocal employer that SDCERS would use for the reciprocity comparison. Your FAS based upon your pay from the City that would be used in the reciprocity comparison would be still determined using the City inclusion and exclusion rules in effect at the time you left City employment.

2. Who has the authority and responsibility for making this determination? Will that person be a City employee or a CERS employee?

SDCERS staff, under the authority granted to the SDCERS Board, will make this determination. The San Diego City Charter provides that the SDCERS Board of Administration (“Board”) is the “sole authority and judge under such general ordinances as may be adopted by the Council as to the conditions under which persons may be admitted to benefits of any sort under the retirement system. . . .” [City Charter section 144.] The Board is the “sole judge of the conditions under which persons may receive [a] benefit from the system.” [SDMC section 24.0901.] The Board is the only entity that has the authority and responsibility for making this determination but must do so subject to the ordinances adopted by the City Council. If challenged, the Board’s decision is subject to review by the Court.

3. If it is determined that reciprocity agreements are to be impaired, will notice be made to inactive CERS members that have existing reciprocity agreements?

SDCERS will periodically post general information on its web site pertaining to the impact of Prop B on Member benefits. Due to the uncertainties surrounding future legislation and the potential for litigation, SDCERS cannot predict nor determine the specific impact of Prop B on individual, SDCERS Deferred Members. Therefore, SDCERS does not, at present, intend to give individual notice to each and every Deferred Vested Member. Please check the SDCERS website for FAQs and future informational disclosures regarding Prop B.