



Interpretive Memorandum No. 2015-1

DATE: **REVISED September 18, 2023** (*Originally issued August 17, 2015, amended August 2, 2022 and May 31, 2023*)

TOPIC: **EARNABLE COMPENSATION: “FULL BASE RATE OF COMPENSATION” AND “COMPENSATION OVER BASE”**

PURPOSE:

The purpose of this memorandum is to describe how NHRS interprets the terms, “full base rate of compensation as determined by the employer” (Base Compensation) and “compensation over base” (COB), as they are used in the definitions of Earnable Compensation and Average Final Compensation under RSA 100-A¹.

SUMMARY:

- A.** Earnable Compensation constitutes only the types of compensation listed in RSA 100-A:1, XVII. If a type of compensation is not determined by the employer to be part of Base Compensation (as described below) and is not a type of compensation otherwise listed as COB, it is not Earnable Compensation. NHRS will generally defer to an Employer’s determination of what is includable in Base Compensation. However, NHRS reserves the right to make the final administrative determination if it disagrees with the Employer’s determination, as further discussed below.
- B.** A Member should have a full week of Base Compensation for each work week, including paid time off such as vacation, sick, and pay for holidays.
- C.** Certain types of compensation are specifically listed as being COB and may not be reported as Base Compensation for Tier B and Tier C Members. Also, certain types of compensation are excluded from the definition of Earnable Compensation and are not reportable in any circumstance for Tier B and Tier C Members.
- D.** Certain stipends and bonuses not otherwise listed in the definition of Earnable Compensation may be designated by the Employer as part of Base Compensation if they are based on objective standards, but not if such compensation is based on a discretionary determination by the Employer, such as an annual evaluation or similar performance measure. As stated above, in such situations, NHRS reserves the right to make the final administrative determination if it disagrees with the Employer’s determination.

¹ Capitalized terms shall have the meanings as provided in the Interpretive Memoranda Glossary of Terms.

ANALYSIS:

A. Base Compensation as Determined by the Employer. The definition of Earnable Compensation for all Members provides that Earnable Compensation shall include “the full base rate of compensation paid, as determined by the employer, . . .”. It is the policy of NHRS to allow each Employer the initial discretion to determine what constitutes Base Compensation subject to the limitations expressed in this memorandum, and future legislative changes to RSA 100-A:1, XVII. In doing so, NHRS recognizes that this may result in similar types of compensation being included by one Employer and excluded by another Employer.

Notwithstanding such discretion, NHRS is the governmental entity granted the responsibility to interpret RSA 100-A. To the extent that an Employer’s characterization is deemed to be contrary to applicable law, NHRS reserves the right to make the administrative determination as to what constitutes Base Compensation in the absence of a New Hampshire Supreme Court decision clarifying the same.

Finally, the concept of Base Compensation for NHRS purposes might not coincide with the concept of base compensation for other purposes such as federal or state labor laws; an Employer’s personnel policy and accounting practices; or, the terms of a collective bargaining agreement. Although an Employer may be guided by these laws, rules, and policies in determining what to include in Base Compensation, any final determination of what constitutes Base Compensation is guided solely by the terms of RSA 100-A:1, XVII, as interpreted herein.

B. Compensation for the Normal Workweek or Normal Work Shifts. Most permanent, full-time Employees and Teachers work five days a week while other employees, such as police, firefighters and staff at the county nursing homes, may work a fixed number of shifts per week, or a rotating type of schedule. The compensation received for these regular workdays and work shifts should always be reported as Base Compensation, including compensation paid for a period of absence covered with vacation or sick pay, compensatory time, floating holiday pay, or combinations thereof. All such pay must be reported to NHRS as part of Base Compensation notwithstanding the fact that the Employer may code such pay in a different manner for accounting or payroll purposes.

C. Compensation Listed in RSA 100-A:1, XVII. The definition of Earnable Compensation also lists several types of compensation that should be reported in addition to the regular weekly Base Compensation.² For Tier A Members the listed types of compensation should be reported as part of Base Compensation because Tier A Members are not subject to the limitations on COB³. For Tier B and Tier C Members, the statute designates certain types of compensation that should always be reported as COB⁴. In addition, several types of listed compensation are specifically excluded from the definition of Earnable Compensation for Tier B and Tier C Members.

² See RSA 100-A:1, XVII(a).

³ As a matter of administrative convenience, the DRS reporting systems permits Employers to report COB types of compensation in the COB field for all Members and the NHRS pension processing system will automatically move such amounts to the base salary field for the Tier A and Tier A/C Members.

⁴ See RSA 100-A:1, XVII(b)(1), 2nd sentence.

Here are examples of the specific types of compensation listed in the statute and how they should be reported.

1. Overtime Pay. Overtime is reportable as Base Compensation for Tier a and Tier A/C Members and as COB for Tier B and Tier C Members. For NHRS purposes, overtime includes compensation paid for all hours worked in excess of what the Employer reports as the regular weekly base compensation for a full-time position, regardless of whether it is considered overtime under federal law or whether it is paid at a straight time pay rate or at an enhanced pay rate. For example, if a Member takes vacation or sick days on Monday and Tuesday and works a regular schedule on Wednesday through Friday, his or her regular weekly Base Compensation consists of those five days (i.e., two on vacation/sick and three actually worked). If that employee is called into work on Saturday, those additional hours actually worked are overtime for NHRS purposes even though they are not overtime under federal labor laws and the Member is paid at a straight time rate.

In cases where employers make “true-up” payments of overtime pursuant to federal labor law⁵, such payments are always reportable to NHRS as overtime, regardless of the fact that the underlying payments that caused the need for a true-up payment may not be Earnable Compensation (e.g., bonuses, stipends, longevity and other nonperiodic payments).

In addition, if a Member is granted compensatory time in lieu of overtime and later “cashes in” the compensatory time, the amount cashed in should also be reported as overtime. However, if a Member uses the compensatory time to take additional time off from work, the amount paid for the day off should be reported as Base Compensation because this is compensation for a normal workday or work shift, similar to a floating holiday or vacation day.

2. Holiday and Vacation Pay.⁶ If a Member does not work on a holiday or takes a vacation day, the amount paid for that day should be reported as Base Compensation because it is compensation for regularly scheduled workdays. However, if a Member is paid extra to work on a holiday that falls within a normal workweek or shift, his or her normal daily pay (or shift pay) should be reported as Base Compensation and the extra pay is “holiday pay” that should be reported as COB for Tier B and Tier C Members. Compensation paid in lieu of paid holidays may be included in Base Compensation in the discretion of the employer.⁷ If a Tier A or Tier A/C Member is paid for unused holiday or vacation time, this payment should be reported as Base Compensation. Compensation for unused holiday or vacation pay is not Earnable Compensation for Tier B or Tier C Members.

3. Sick Pay.⁸ If a Member does not work on a normal workday because of an illness or injury and is paid for that time from accrued sick pay, the compensation should be reported as Base Compensation. If a Tier A or Tier A/C Member is paid compensation for unused sick pay, it is reportable as Base Compensation. Compensation for unused sick pay is not reportable as Earnable Compensation for Tier B or Tier C Members.

4. Annual Attendance Stipend or Bonus. Effective September 10, 2019, the definition of Earnable Compensation was amended to include “annual attendance stipends and bonuses”. Such amounts, including perfect attendance bonuses, payments for non-use of

⁵ See Section 7(g) of the Fair Labor Standards Act and the regulations thereunder at 29 CFR 778, *et. seq.*

⁶ See Interpretive Memorandum 2015-3 for a detailed discussion of Holiday and Vacation Pay.

⁷ *Id.*, at Page 2, Section C

⁸ See Interpretive Memorandum 2015-4 for a detailed discussion of Sick Pay.

sick time, and the like, should be reported as Base Compensation for Tier A and Tier A/C Members and COB for Tier B and Tier C Members.

5. Longevity Pay. Both annual and end-of-career longevity pay is reportable as Base Compensation for Tier A and Tier A/C Members. For Tier B and Tier C Members, only annual longevity pay is Earnable Compensation, which should be reported as COB. End-of-career longevity pay is not Earnable Compensation for Tier B or Tier C Members.

6. Severance Pay. Severance pay is reportable as Base Compensation for Tier A and Tier A/C Members but is excluded from Earnable Compensation for Tier B and Tier C Members. Moreover, severance pay is Earnable Compensation for Tier A and Tier A/C Members only if it is legitimate back pay that is expressly attributable to specific past pay periods or is payable pursuant to a formal severance plan or contract. In some cases, compensation is labelled as severance pay or back wages but is in actuality a settlement of other claims against the Employer. Compensation that is paid in settlement of claims not relating to legitimate back pay, or pursuant to a severance plan or contract, is not Earnable Compensation for any Member. All settlement agreements should be forwarded to NHRS in advance for review prior to making any employer contributions on such compensation.

7. Cash Retirement Incentives. Cash incentives paid by an employer to encourage a Member to retire are reportable as Base Compensation for Tier A and Tier A/C Members and are not reportable for Tier B and Tier C Members.

8. Workers' Compensation Supplemental Pay.⁹ Supplemental pay paid by an Employer while a Member is receiving workers' compensation, and which is not accrued sick or vacation time or compensation for part-time work, is reportable as Base Compensation for Tier A and Tier A/C Members and as COB for Tier B and Tier C Members. If a Member uses accrued sick or vacation time to supplement his or her workers' compensation benefit, that would be reported as Base Compensation for all Members. Note that workers' compensation payments are not Earnable Compensation.

9. Extra and Special Duty Pay.¹⁰ Extra and Special Duty Pay (ESDP) is never Base Compensation. It is reportable in the ESDP field for Tier A Group II Members and as COB for Tier B Group II Members. ESDP is specific to Group II Members only and is not reportable for Group I Members. ESDP is not Earnable Compensation for Tier B and Tier A/C Group II Members.

10. Cost of Living Bonuses. A cost of living bonus is a one-time payment to a Member that is different from a cost of living adjustment, which becomes part of a Member's Base Compensation going forward. Cost of living bonuses should be reported as Base Compensation for Tier A and Tier A/C Members and as COB for Tier B and Tier C Members.

11. Additional Pay for Extracurricular and Instructional Activities.¹¹ Additional pay for extracurricular and instructional activities is Earnable Compensation for all Members who are Teachers, paraprofessionals, and other educational support staff of the public elementary and secondary schools. Effective September 10, 2019, "additional pay for

⁹ See Interpretive Memorandum 2019-1 for a detailed discussion of Workers' Compensation.

¹⁰ See Interpretive Memorandum 2013-3 for a detailed discussion of ESDP.

¹¹ See Interpretive Memorandum 2015-2 for a detailed discussion of additional pay for extracurricular and instructional activities and teacher development pay.

instructional activities” is also Earnable Compensation for full-time faculty of the community college systems. In either case, such compensation is reportable as Base Compensation for Tier A and Tier A/C Members and COB for Tier B and Tier C Members.

12. *Military Differential Pay.* Military Differential Pay is compensation paid by the Employer to supplement a Member’s military pay if the military pay is less than the Member’s regular pay. It is reportable as Base Compensation for Tier A and Tier A/C Members and COB for Tier B and Tier C Members.

13. *Non-cash Compensation.* Non-cash compensation for meals and living quarters is Earnable Compensation but only to the extent includible in the taxable income of the Member. If it is not taxable, it is not Earnable Compensation. It is reportable as Base Compensation for Tier A and Tier A/C Members and COB for Tier B and Tier C Members.

14. *Teacher Development Pay.*¹² Teacher development pay that is not part of the contracted annual salary is reportable as Base Compensation for Tier A and Tier A/C Members and COB for Tier B and Tier C Members.

D. Other Compensation Not Listed in Statute.

1. *Stipends.* Many Employers pay a wide variety of stipends to Members who perform extra duties. In general, Employers may designate a stipend as part of Base Compensation even though it is not expressly listed in the definition of Earnable Compensation. NHRS is more likely to agree with an Employer’s determination if (1) the stipend is paid to all similarly situated employees and is treated as Base Compensation for all Members that receive the stipend; and (2) the description and amount of the stipend is either (a) contained in a collective bargaining agreement, (b) the subject of a separate agreement or contract between the Member and the Employer, or (c) memorialized in a written policy of the Employer. The fact the stipend will be paid, and the amount of a stipend is known, at the beginning of the budget year, or at the time a new policy is implemented, is favorable. A stipend can be part of Base Compensation even if the identity of the Members who will actually be paid is not known in advance (e.g., stipend is paid to Members that volunteer to be on standby or call-in duty, as the need arises). NHRS is less likely to agree that a stipend is Base Compensation if (1) the fact that it will actually be paid and amount thereof is not known at the beginning of the budget year, except in cases of unforeseen circumstances (e.g., COVID) or if a new policy is implemented mid-year; or, (2) the amount of the stipend is discretionary and is more in the nature of a performance or incentive bonus, especially if it is not compensation for a specific task or activity (See 2. below).

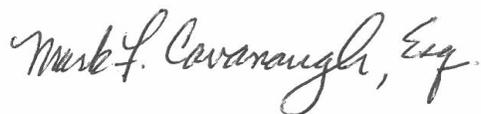
Employers are free to determine that stipends are not part of Base Compensation and NHRS is not likely to challenge any such determination. However, if an Employer determines that a particular type of compensation is not Base Compensation, that compensation will only be Earnable Compensation if it is a type of compensation that is expressly listed in RSA 100-A:1, XVII as described above. In this regard we note that most stipends paid by schools are considered to be “additional pay for extracurricular and instructional activities” and should not reported as part of Base Compensation.

Notwithstanding the foregoing, when additional compensation (in the form of a stipend or otherwise) is paid for duties relating to a separate part-time position, the duties should be

¹² Id.

added to the job description for the Member's full-time position, or otherwise memorialized in accordance with the Employer's personnel policies and procedures in order for the stipend to be considered part of Base Compensation if that is the employer's wish.¹³

2. Bonuses. Base Compensation never includes bonus compensation that is subjectively determined in the discretion of the Employer, based on an annual review or similar performance criteria that are not objectively defined. Employers are encouraged to contact NHRS in advance in such situations.



9-18-2023

**Approved by Mark F. Cavanaugh, Esq.
Associate Counsel and Compliance Officer**

Approval Date

¹³ See also, Interpretive Memorandums 2012-2 and 2013-4 for more detailed discussion of compensation for separate part-time positions and duties.