

# **Office of Audit Services**



# **CalPERS**

## **Public Agency Review**

### **City of Fontana**

**CalPERS ID: 1650909259**  
**Job Number: BI14-003**

**July 2016**



California Public Employees' Retirement System  
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July 29, 2016

CalPERS ID: 1650909259  
Job Number: BI14-003

Annette Henckel, Director of Human Resources  
City of Fontana  
8353 Sierra Avenue  
Fontana, CA 92335

Dear Ms. Henckel:

Enclosed is our final report on the results of the public agency review completed for the City of Fontana (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 2A and 2C. We appreciate the additional information provided in your response. After consideration of this information, our recommendations remain; however, we added clarifying language.

In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief  
Office of Audit Services

Enclosure

cc: City Council, City of Fontana  
Risk and Audit Committee Members, CalPERS  
Matthew G. Jacobs, General Counsel, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS  
Renee Ostrander, Chief, EAMD, CalPERS  
Carene Carolan, Chief, MAMD, CalPERS

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## RESULTS IN BRIEF

The objective of our review was to determine whether the City of Fontana (Agency) complied with applicable sections of the California Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Pay schedule did not meet all of the Government Code and CCR requirements.
- Special compensation was not reported in accordance with the Government Code and CCR.

OAS recommends the Agency comply with applicable sections of the Government Code, PEPRA, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

## SCOPE

The Agency contracted with CalPERS effective February 1, 1954 to provide retirement benefits for local miscellaneous and safety (police) employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the CalPERS Board of Administration (Board) approved plan, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from January 1, 2012 through December 31, 2014. OAS did not review the Agency's compliance with membership enrollment and employment after retirement. The review objectives and methodology are listed in Appendix A.

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all of the Government Code and CCR requirements.

***Condition:***

The Agency did not have a pay schedule that met all the requirements of the Government Code and CCR. Specifically, the pay schedule provided by the Agency did not indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually.

Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule. Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identify the position title for every employee position;
- Show the payrate as a single amount or multiple amounts within a range for each identified position;
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicate an effective date and date of any revisions;
- Be retained by the employer and available for public inspection for not less than five years; and
- Not reference another document in lieu of disclosing the payrate.

Pay amounts reported for positions that do not comply with the payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). When an employer does not meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

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***Recommendation:***

The Agency should ensure its pay schedule meets all of the Government Code and CCR requirements.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, § 20636

CCR: § 570.5

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**2:** The Agency did not report special compensation in accordance with the Government Code and CCR.

***Condition:***

- A. The Agency incorrectly reported Longevity Pay as lump sum amounts for the Police Management Association and Police Officer's Association employees. The written labor agreements for Police Managers and Officers indicate members will receive Longevity Pay as an annual lump sum payment. Government Code Section 20630(b) requires the Agency to identify the pay period in which the compensation was earned regardless of when reported or paid. In addition, Government Code Section 20636(c)(3) requires the Agency to identify the pay period(s) in which special compensation was earned. Therefore, the Agency should have reported the Longevity Pay in the pay periods earned.
- B. The Agency's written employment agreements for the City Manager and Chief of Police provided Longevity Pay based upon the date of hire into a full-time position. However, the written employment agreements did not contain the amount of pay. Instead, the agreements required review of other documents to determine the amount of payment. Specifically, the agreements specify the employees will receive Longevity Pay in accordance with the payment provisions contained in the labor agreements for the Management/Confidential and Police Management employees. CCR Section 571(b) requires that the written labor policy or agreement contain the conditions for payment, including, but not limited to, eligibility for, and amount of, the special compensation. Also, the written labor agreement or policy must not reference another document in lieu of disclosing the item of special compensation.
- C. The Agency incorrectly reported a supplemental longevity bonus as special compensation for a Corporal and a Police Officer. Specifically, the Agency classified the supplemental bonus as Longevity Pay and reported it as special compensation for a Corporal in the pay period ended August 13, 2013, and a Police Officer in the pay period ended December 13, 2013. The written labor agreement for the Police Officer Association employees provided a supplemental longevity bonus when an Advanced Peace Officer Standard Training (POST) certificate was earned. However, the pay did not meet any of the definitions listed in CCR Section 571. The CCR defines Longevity Pay as special compensation paid as additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years. The definition does not require an employee to earn a POST certificate to be eligible for the Longevity Pay. In

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addition, the pay does not meet the definition of Bonus Pay. The CCR defines Bonus Pay as special compensation paid to employees for superior performance such as annual performance bonus and merit pay. Therefore, the supplemental longevity bonus is not reportable as special compensation.

Reportable special compensation is defined in CCR Section 571(a) and must be reported if it conforms with all of the requirements listed in CCR Section 571(b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

***Recommendation:***

The Agency should ensure that special compensation is reported in the pay periods earned.

The Agency should ensure its written labor agreements include the amount of special compensation and does not refer to other documents.

The Agency should ensure it reports special compensation that meets the requirements of Government Code and CCR.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, § 20630, § 20636

CCR: § 571



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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. The procedures performed provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, of California Code of Regulations.

Respectfully submitted,

Original signed by Beliz Chappuie

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BELIZ CHAPPUIE, CPA, MBA  
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief  
Alan Feblowitz, CFE, Senior Manager  
Diana Thomas, CIA, CIDA, Senior Manager  
Alicia Watts, Lead Auditor  
Edward Fama, Auditor  
Emma Shaw, Auditor

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# **APPENDIX A**

## **OBJECTIVES**

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## OBJECTIVES

The objectives of this review were to determine whether member compensation was accurately reported and the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting procedure prescribed in the Agency's retirement contract with CalPERS.

## METHODOLOGY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
  - Provisions of the contract and contract amendments between the Agency and CalPERS
  - Correspondence files maintained at CalPERS
  - Agency Board minutes and Agency Board resolutions
  - Agency written labor policies and agreements
  - Agency salary, wage, and benefit agreements including applicable resolutions
  - Agency personnel records and employee time records
  - Agency payroll information
  - CalPERS payroll reports including Contribution Detail Transaction History reports
  - Documents related to employee payrate, special compensation, and benefits
  - Various other relevant documents
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meetings laws.

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- ✓ Reviewed special compensation reported to CalPERS and reconciled the amounts to Agency public salary records and pursuant to the Agency's written labor agreements or policies to determine whether special compensation was accurate and reportable.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

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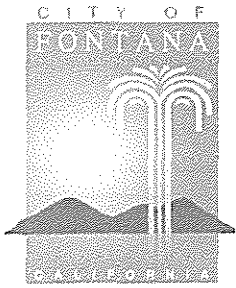
**CITY OF FONTANA**

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# **APPENDIX B**

## **AGENCY'S WRITTEN RESPONSE**

NOTE: An attachment to the Agency's response was intentionally omitted from this appendix.



# City of Fontana

C A L I F O R N I A

July 21, 2016

Beliz Chappuie, Chief  
California Public Employees' Retirement System  
Office of Audit Services  
P.O. Box 942701  
Sacramento, CA 94229-2701

Dear Ms. Chappuie,

We have reviewed the draft report from the review conducted by the Office of Audit Services (OAS) to determine whether the City of Fontana complied with applicable sections of the California Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (PERS).

The OAS noted the following findings during the review:

1. Pay schedule did not meet all of the Government Code and CCR requirements.

**Response to finding #1:**

After reviewing, the City of Fontana has revised our procedures to ensure compliance with CCR Section 570.5, specifically, updated pay schedules to identify the time base for salaries shown (sample attached) and ensuring all pay schedules are approved and adopted by our City Council.

2. Special compensation was not reported in accordance with the Government Code and CCR.
  - A. Agency incorrectly reported Longevity pay as lump sum amounts for the Police Management Association and Police Officer's Association employees. Government Code Section 20636 requires the Agency to identify the Pay period(s) in which special compensation was earned.
  - B. The Agency's written employment agreements for the City Manager and Chief of Police provided Longevity Pay based upon the date of hire into a full-time position. However, the written employment agreements did not contain the amount of pay. Instead, the agreements required review of other documents to determine the amount of payment. Specifically, the agreements specify the employees will receive Longevity Pay in accordance with the payment provisions contained in the labor agreements for the

Management/Confidential and Police Management employees. CCR Section 571(b) requires that the written labor policy or agreement contain the conditions for payment, including, but not limited to, eligibility for, and amount of, the special compensation. Also, the written labor agreement or policy must not reference another document in lieu of disclosing the item of special compensation.

- C. The Agency incorrectly reported a supplemental longevity bonus as special compensation for a Corporal and a Police Officer. Specifically, the Agency classified the supplemental bonus as Longevity Pay and reported it as special compensation for a Corporal in the pay period ended August 13, 2013 and a Police Officer in the pay period ended December 13, 2013. The written labor agreement for the Police Officers' Association employees provided a supplemental longevity bonus when an Advanced Peace Officer Standard Training (POST) certificate was earned. However, the pay reports as Longevity Pay did not meet the definition as listed in CCR Section 571. The CCR defines Longevity Pay as special compensation paid as additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years. The definition does not require an employee to earn a POST certificate to be eligible for the Longevity Pay. Therefore, the supplemental bonus is not reportable a special compensation.

**Response to finding #2:**

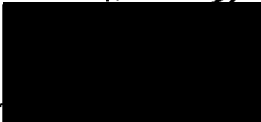
*Condition A.* The City of Fontana requested guidance on this issue and was advised on Tuesday, March 12, 2013 by Antone K. Paul, Retirement Program Specialist II from the CASD – Compensation Review Unit of the CalPERS – State of California in response to questions regarding three(3) of our Special Compensation categories (attached). His response was that it is acceptable to report Longevity Pay annually as outline in our MOU.

*Condition B.* The City of Fontana will modify current Executive Employment Agreements to ensure future agreements contain the conditions for payment, including, but not limited to, eligibility for, and amount of, any special compensation thereby eliminating the reference to other labor agreements.

*Condition C.* After reviewing this finding, the City of Fontana will revise our reporting procedures to ensure this supplemental bonus will not be reported to CalPERS as Longevity beginning December, 2016. However, the City feels said bonus continues to be allowable as special compensation, as is the Longevity Pay, as it meets the definition under CCR 571(a), (1) Incentive Pay as a Bonus. The City requests further review as to this finding.

We appreciate any guidance and assistance your staff can provide. If you have any questions regarding this response, please contact Nora Haynes at (909) 3506736 or via e-mail at [Nhaynes@fontana.org](mailto:Nhaynes@fontana.org)

Sincerely,



Original signed by Annette Henckel

Director of Human Resources.