

Office of Audit Services



CalPERS

Public Agency Review

City of Oakland

CalPERS ID: 4015143822
Job Number: P14-045

March 2016



California Public Employees' Retirement System
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March 30, 2016

CalPERS ID: 4015143822
Job Number: P14-045

Katano Kasaine, City Treasurer
City of Oakland
150 Frank H. Ogawa Plaza, Suite 5330
Oakland CA, 94612

Dear Ms. Kasaine:

Enclosed is our final report on the results of the public agency review completed for the City of Oakland (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Findings 1, 2, 3B, 6, 7 and 8C. We appreciate the additional information that you provided in your response, and after consideration of this information we have added clarifying language Findings 1, 3B, 8A, and 8C.

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 Members, City of Oakland
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 Oakland (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 three of this report.

- Pay schedule did not meet all of the of the Government Code and CCR requirements.
- Payrate and earnings were incorrectly reported.
- Fair Labor Standards Act pay was incorrectly reported.
- Special compensation was not reported in accordance with the Government Code and CCR.
- Retroactive pay adjustments were incorrectly reported.
- Normal contribution costs were incorrectly paid.
- A retired annuitant was unlawfully employed.
- Industrial disability retirement determinations were not made in accordance with various Government Codes.

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 September 1, 1970 to provide retirement benefits for local miscellaneous employees and elected officials who were not otherwise excluded by law or contract. The contract was later amended to include safety employees, firefighters, and police officers. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by 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 for Fiscal Year 2014-15, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. In addition, OAS reviewed the Agency's disability and industrial disability processes. The review was limited to the examination of sampled employees, records, and pay periods from July 1, 2012 through June 30, 2014, including one specific disability

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determination made in 2004. 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 reported a payrate that exceeded the maximum payrate listed in the Agency's pay schedule. Specifically, the Agency reported a monthly payrate for the City Mayor of \$16,916.66 in the pay period ended June 20, 2014. However, the Agency's pay schedule effective July 1, 2013 through June 30, 2014 listed a monthly payrate of \$15,282.92. OAS verified that on December 10, 2013, the City Council approved an increase to \$203,000.00 annually which converts to \$16,916.66 per month. Although the Agency provided an updated pay schedule that listed the increased monthly payrate, OAS found the pay schedule was not updated in a timely manner as it was not in effect until September 25, 2015. The definition of a payrate in Government Code Section 20636 requires that payrates reported to CalPERS are a pursuant to publicly available pay schedule. The Agency should not report amounts above that reflected on its publicly available pay schedule. Similarly, Section 570.5 of the CCR limits payrate to the amount listed on a pay schedule that meets all of the enumerated requirements.

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.

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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.

Recommendation:

The Agency should limit payrate to the amount listed on a pay schedule that meets all 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 incorrectly reported payrates and earnings.

Condition:

The Agency under reported earnings for an employee in the pay period ended June 20, 2014. Specifically, the Agency did not report an employee's earnings for 7.5 hours of paid time off. The employee was paid from hours accrued during furloughs; however, the earnings were not reported. Government Code Section 20630 states that payments for time during which a member is excused from work, such a compensatory time off or a leave of absence, should be reported as compensation. Payrate and earnings are important factors in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.

Recommendation:

The Agency should report earnings for all compensated hours up to the normally scheduled hours per week pursuant to Government Code Section 20630.

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

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3: The Agency incorrectly reported Fair Labor Standards Act (FLSA) pay.

Condition:

- A. The Agency incorrectly reported overtime earnings as FLSA premium pay to CalPERS. Agency records indicate that when fire suppression employees are scheduled to work a 56-hour workweek they are paid FLSA premium pay for hours worked in excess of 204 hours in a 27-day period. Government Code Section 20636(c)(6) requires that the premium paid for regular hours worked above 204, and up to 216 in a 27-day period, is reportable as special compensation. The Agency incorrectly reported FLSA premium pay of \$417.07 as special compensation for a Fire Battalion Chief in the pay period ended March 28, 2014. The amount was over reported by \$107.78 for hours worked above 216 hours. Therefore, only FLSA premium of \$363.29 should have been reported as special compensation. In addition, the Agency over reported FLSA premium pay of \$161.67 as special compensation for the same Fire Battalion Chief in the pay period ended April 11, 2014. The Fire Battalion Chief worked 144 regular hours, was paid sick time for 48 hours, and worked 96 hours of overtime. As a result, the Fire Battalion Chief did not work regular hours above 204 in a 27-day period. The \$161.67 was a premium paid on overtime hours and should not have been reported as special compensation. Government Code Section 20635 states that all compensation based on overtime is not reportable. Also, Government Code Section 20636(c)(6) defines FLSA premium pay as 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 established by the FLSA.
- B. The Fire Fighters written labor policy included the conditions for FLSA premium pay; however, the policy noted the conditions expired on June 28, 2012. FLSA is a statutory item of special compensation that must be reported per Government Code Section 20636 (c) (6). CCR Section 571(b) requires that the conditions for payment of FLSA premium pay be contained in a written labor policy or agreement. The Agency should report the appropriate amount of FLSA premium pay and ensure the conditions for payment of the special compensation are clearly identified in a written labor policy.

Recommendation:

The Agency should report FLSA premium pay correctly to CalPERS.

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The Agency should ensure its written labor policy for fire safety employees includes current conditions for the payment of FLSA premium pay to fire suppression employees.

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, § 20635, § 20636
CCR: § 571

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

Condition:

- A. The Agency incorrectly reported Longevity Pay as a lump sum amount instead of when earned. The Police Officer and Police Management written labor agreements state that employees with seven or more years of service will receive a lump sum payment the first Friday of July each year based on the number of years of service. These payments range between \$1,275.00 and \$1,875.00. The Agency reported the Longevity Pay as special compensation for seven employees in pay period ended June 20, 2014. The Agency did not correctly identify the period in which the Longevity Pay was earned. The Agency should identify the pay period(s) in which the compensation was earned regardless of when paid pursuant to Government Code Sections 20630(b) and 20636(c)(3).
- B. The Agency did not pay and report special compensation for a Police Captain in accordance with the written labor agreement in the pay period ended June 20, 2014. Specifically, the Police Management written labor agreement stated that employees' would be paid an incentive of five percent of base salary for a Police Officer's Standards Training Management Certificate, and another five percent incentive for a Bachelor's Degree. OAS verified the employee was eligible for the two incentives. However, the Agency paid the employee four and a half percent for each incentive, instead of five percent. As a result, special compensation was under reported. Under reporting of special compensation may reduce retirement benefits that an employee is eligible to receive.
- C. The Agency incorrectly reported special compensation for the Fire Chief in the pay period ended June 20, 2014. The Fire Chief received a five percent incentive for Special Assignment Pay. However, the Fire Chief did not perform any special assignments. As a result, the pay was not reportable as special compensation. Government Code Section 20636 states that special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours or other work conditions for services rendered during normal work hours. Special compensation that does not meet the definition included in Section 20636 and CCR Section 571 cannot be used to calculate retirement benefits.

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- D. The Agency under reported Uniform Allowance for the Fire Chief in the pay period ended June 20, 2014. The applicable written labor agreement stated that the Fire Chief would receive an annual Uniform Allowance of \$570.00 which converts to \$21.92 per pay period. However, the Uniform Allowance reported was \$14.29 per pay period. Under reporting of special compensation may reduce retirement benefits that an employee is eligible to receive.
- E. The Agency did not report the monetary value of uniforms provided to employees covered under the Service Employees International Union (SEIU), Local 1021 written labor agreement. The written labor agreement states the Agency will provide rented uniforms to employees working in certain job classifications required to wear uniforms. The Agency provided uniforms to employees in Fiscal Year 2013-14. However, the Agency did not report the value of the uniforms provided as special compensation. The value of uniforms provided for employees who are classic members and are normally required to wear uniforms is a statutory item that must be reported to CalPERS as special compensation pursuant to Government Code Section 20636(c)(6) and CCR Section 571.
- F. The Agency's SEIU, Local 1021 written labor agreement did not include the conditions for payment of the uniforms discussed above. Specifically, the written labor agreement did not identify an amount of the special compensation. CCR Section 571(b) requires that the conditions for all special compensation, including amounts, be included in a written labor policy or agreement. As such, the amount of the uniforms provided should be included in the written labor agreement to support uniform amounts reported 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 all items of special compensation are reported in the pay period earned.

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The Agency should ensure that special compensation is correctly paid and reported in accordance with the Government Code, CCR, and written labor agreements

The Agency should only report special compensation that is approved within a written labor agreement and meets the definition of special compensation under the Government Code and CCR.

The Agency should ensure the monetary value of uniforms is reported as special compensation for classic members.

The Agency should ensure the conditions for payment of the uniforms are contained in a written labor policy or agreement.

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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5: The Agency incorrectly reported retroactive pay adjustments.

Condition:

- A. The Agency incorrectly reported a retroactive pay adjustment for an employee on September 28, 2014. Specifically, the employee opted to use vacation time for the period from February 28 through August 1, 2014 while out on unpaid sick leave. OAS verified that the Agency correctly paid retroactive regular earnings of \$4,458.75 with an hourly payrate of \$55.73 for the pay period ended June 20, 2014. The Agency also paid the employee Special Assignment Pay of \$222.94 and Holiday Pay of \$268.64. However, the Agency reported incorrect regular earnings of \$3,726.17 and hourly payrate of \$56.35. The Agency also failed to report special compensation.
- B. The Agency reported an incorrect payrate and regular earnings for a retroactive pay adjustment. In October 2014, the Agency approved a retroactive pay increase for a Human Resource Manager effective June 1, 2014. The Agency reported an hourly payrate of \$79.44 and regular earnings of \$805.56 for the pay period ended June 20, 2014. However, the maximum payrate listed in the Agency's pay schedule for this period was \$12,780.62 per month or \$78.65 per hour.

Retroactive pay adjustments must be accurately reported as they contain several factors that can effect employees retirement calculations and benefits.

Recommendation:

The Agency should ensure retroactive adjustments are correctly reported.

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: § 20120, § 20121, § 20160, § 20630, § 20636

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6: The Agency did not pay its appropriate share of the normal contribution costs for PEPRA members.

Condition:

The Agency did not share the normal contribution costs with PEPRA members in the pay period ended June 20, 2014. Specifically, two PEPRA employees paid eight percent of the normal contribution costs instead of the required six and three-quarter percent. Government Code Section 7522.30 states that an Agency cannot increase the amount of the employee contribution rate in the absence of a written labor agreement that has been collectively bargained in accordance with applicable labor laws. OAS reviewed the applicable written labor agreement and found there was no agreement for PEPRA employees to pay a higher amount than the normal contribution costs. The Agency stated that the employees paid a higher rate of contributions due to an impairment of the written labor agreement which was sent to CalPERS and allowable under Government Code Section 7522.30 (f). OAS reviewed related information and found the Agency's determination was not valid due to the expiration of the written labor agreement on June 30, 2013. Government Code Section 7522.30(f) states a renewal of, amendment, or any other extension of that contract will be subject to the requirements of Government Code Section 7522.30.

Recommendation:

The Agency should deduct and remit to CalPERS the appropriate amount of normal contributions for PEPRA members.

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, § 7522.30

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7: The Agency unlawfully employed a retired annuitant.

Condition:

The Agency unlawfully employed a retired annuitant in Fiscal Year 2013-14. Specifically, the Agency employed an individual that retired under an Industrial Disability Retirement (IDR) on July 1, 1999 from a police safety position. The retiree returned to work at the Agency on September 23, 2013 in a miscellaneous position. However, CalPERS had not determined that the retiree was eligible to return to work in the miscellaneous position as required by Government Code Section 21228. The Agency was under the impression that the retiree could work temporarily under Government Code Section 21224 as long as hours did not exceed 960 hours each fiscal year. However, because the retirement was under an IDR, the retiree is governed by Government Code Section 21228. Government Code Section 21228 states that a person retired for disability who has not attained the mandatory age for retirement applicable to persons in the employment in which he or she will be employed, and whom the Board finds not disabled for that employment, may be employed by any employer without reinstatement from retirement in a position other than that from which he or she retired or a position in the same member classification. The Government Code also states the person employed under this section shall not be concurrently employed under Section 21224 through 21227 or 21221(h).

Government Code Section 21220 addresses the conditions and consequences of unlawful employment of a person who has been retired under this system. The Government Code states that any retired member employed in violation of this article shall reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law, pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

The Government Code also states that any public employer that employs a retired member in violation of this article shall pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

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Recommendation:

The Agency should not employ an individual who retired under a disability retirement prior to CalPERS determining whether or not the retiree is disabled for that employment.

The Agency should work with CalPERS Benefit Services Division (BNSD) 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, § 21220, § 21228

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8: The Agency did not make industrial disability determinations in accordance with the applicable Government Codes.

Condition:

- A. The Agency did not make industrial disability determinations within the prescribed six month period. Specifically, OAS noted that the Agency exceeded the prescribed time period to make the disability determinations for three local safety members. Government Code Section 21157 requires that the governing body of a contracting agency make its disability determination within six months of the date of the receipt by the contracting agency of the request by the Board pursuant to Section 21154 for a determination with respect to a local safety member. A local safety member may waive the requirements of this section. However, based upon OAS' review of the documents provided, two of the three employees did not waive this right.
- B. The Agency does not have a process or practice in place to periodically review or re-evaluate local safety members that were approved for disability retirement or industrial disability retirement under the age of 50. Further, the Agency confirmed to OAS that it does not adhere to all steps enumerated in the Agency's Administrative Instructions Number 563 (Administrative Instructions). Specifically, Section 10 of the Administrative Instructions, Periodic Review, states the PERS Safety Disability Committee will recommend to the City Manager on a case-by-case basis whether or not the disability retiree should appear before the committee for a periodic review.

Government Code Section 21192 provides in pertinent part that, after an individual is retired, the board or in the case of a local safety member, the governing body of the employer from whose employment the individual was retired, may require any recipient of a disability retirement allowance under the minimum age of retirement to undergo medical examination. Upon the basis of the examination, the board or the governing body shall determine whether the individual is still incapacitated, physically or mentally, for duty in the position previously held. With regard to re-evaluation of disability in the case of a request for reinstatement, the Agency indicated that no local safety member has applied for reinstatement in the previous two years.

- C. The Agency presented insufficient documentation to demonstrate a local safety individual met the statutory requirements necessary to qualify for industrial disability. Disability and industrial disability benefits can only be paid to individuals that are disabled. Pursuant to Government Code Section 20026, "disability" and "incapacity for performance of duty" as a basis for retirement, means disability of permanent or extended and uncertain

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duration, as determined by the Board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion. Government Code Section 21156 authorizes the board, or the governing body of the contracting agency in the case of local safety member, to determine if a medical examination and other available information show to the entity's satisfaction that the member is incapacitated physically or mentally from the performance of his or her duties and is eligible to immediately retire for disability. In determining whether a member is eligible to retire for disability, the board or the governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process. Based upon the information provided by the Agency, the Agency approved and certified an industrial disability retirement application without a clear expression that the individual was incapacitated physically or mentally for the performance of his or her duties for a permanent or extended and uncertain duration. In this case, OAS noted that the Agency contracted Physician, tasked with reviewing an industrial disability applicant's medical records, recommended approving industrial disability retirement. However, the underlying documents provided to OAS for review failed to support a permanent condition or a condition of extended and uncertain duration. The information provided to OAS lacked sufficient detail and a clear expression that the statutory requirements were met. Instead, the records suggested only that it appeared probable that the individual will be permanently disabled. The disability must exist presently and not be merely prospective or speculative. The documentation presented was not sufficient to support that the individual's condition(s) met the standards required under Sections 20026 and 21156 to demonstrate that the member had a disability of permanent or extended and uncertain duration and was incapacitated physically or mentally from the performance of his duties. Further, the Agency failed to monitor the grant of industrial disability and did not have the individual reexamined to verify a disability continued at points in time after it was granted.

Recommendation:

The Agency should ensure industrial disability determinations are made in a timely manner consistent with statutory requirements.

The Agency should implement a process to undertake regular periodic reviews of determinations for disability retirees under the normal retirement age to verify whether physical or mental incapacities have improved to the level that individuals are no longer disabled. The Agency should work with BNSD staff to confirm and document a review process has been implemented.

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The Agency should only approve and certify disability and industrial disability retirement applications that meet the statutory requirements under Section 20026 and 21156. The Agency should maintain adequate documentation to support all determinations of disability. The Agency should immediately undertake a review of this determination (and any others similarly situated) to assess whether the individual is presently and/or was permanently disabled at the time of the determination. The Agency should work with BNSD staff to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20026, § 21154, § 21156, § 21157, § 21173, § 21192

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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

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

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Julie Munekawa, CIA, Assistant Division Chief
Alan Feblowitz, CFE, Senior Manager
Huyen Le, CPA, Senior Manager
Jose Martinez, Lead Auditor
Navdip Kang, CIA, Lead Auditor

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APPENDIX A

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to determine whether the Agency complied with:

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

Effective January 1, 2013, new enrollments are checked against the PEPRA definition of "new member," regardless of whether the enrollment is for a first time CalPERS member or an existing member. All members that do not fit within the definition of a new member are referred to as "classic members."

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 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 including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for employees
 - Other various relevant documents
 - Documentation related to IDR determinations
- ✓ 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

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Agency's governing body in accordance with requirements of applicable public meetings laws.

- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when unlawful employment occurs.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.
- ✓ Reviewed the Agency's process for making IDR determinations.

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APPENDIX B

AGENCY'S WRITTEN RESPONSE

Note: The Agency provided attachments to the response that were intentionally omitted from this appendix.

FINANCE DEPARTMENT
TREASURY BUREAU


CITY OF OAKLAND
150 FRANK H. OGAWA PLAZA, SUITE 5330
OAKLAND, CALIFORNIA 94612
(510) 238-3204

February 11, 2016

CalPERS ID: 4015143822

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

Dear Ms. Chappuie:

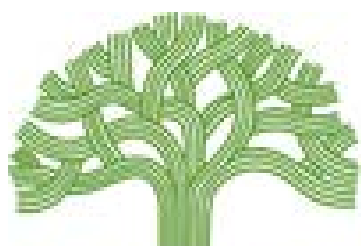
Enclosed is the draft response of the City of Oakland's California Public Employees' Retirement System audit.

Please review the attached audit response and if you have any questions, please contact me at (510) 238-2989 or Sharon Holman at (510) 238-6735.

Sincerely,

/s/

KATANO KASAINÉ
City Treasurer



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CalPERS Audit Response

CalPERS ID: 4015143822

City of Oakland
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City of Oakland

Katano Kasaine, City Treasurer

150 Frank H Ogawa Plaza Ste. 5330

Oakland, Ca. 94612

February 11, 2016

The objective of the CalPERS audit was to determine if the City of Oakland was in compliance with applicable sections of its CalPERS contract, PEPRA and the California Government Code for fiscal year ending June 30, 2014. The following is the City's responses, corrective action plan, and supplemental documentation to the listed findings expressed in the CalPERS Public Agency Review Auditor's Report:

- Pay schedule did not meet all of the Government Code and CCR requirements.
- Pay rate and earnings were incorrectly reported.
- Fair Labor Standards Act Pay was incorrectly reported.
- Special compensation was not reported in accordance with the Government Code and CCR.
- Retroactive pay adjustments were incorrectly reported.
- Normal contribution costs were incorrectly paid
- A retired annuitant was unlawfully employed.
- Industrial disability retirement determinations were not made in accordance with various Government Codes.

CalPERS Finding 1

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

Condition:

The Agency reported a pay rate that exceeded the maximum pay rate listed in the pay schedule.

Recommendation:

The Agency should limit pay rate to the amount listed on a pay schedule that meets all 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.

Response:

The City respectfully **disagrees** with this finding. Regarding this employee, the City's Resolution No. 84763 governs the individual's pay rate and holds precedence. As previously articulated to CalPERS, the pay schedule received by the agency was outdated. The City updated its working pay schedule internally upon approval of Resolution No. 84763, which the City makes available to the public. Although CalPERS received an outdated version of the pay schedule, the City has since provided CalPERS with an updated pay schedule and Resolution No. 84763 showing the employee was compensated correctly. Therefore, the City request that this finding be removed from the audit. Documentation referenced in *Appendix A*.

CalPERS Finding 2

The Agency incorrectly reported pay rates and earnings.

Condition:

The Agency did not report an employee's earnings for 7.5 hours of paid time off. The employee was paid from hours accrued during furloughs; however, the earnings were not reported. The Agency under reported regular earnings.

Recommendation:

The Agency should report earnings for all compensated hours up to the normally scheduled hours per week, pursuant to Government Code Section 20630.

Response:

The City **disagrees** with the finding. The City developed a "smoothing" system via a scheduled Floating Take Away (FFP) element, which allowed the deduction of scheduled furlough days from an employee's paycheck. When the smoothing system was utilized, the City reported the normally scheduled weekly hours to CalPERS. In exchange, the City gave each employee a bank of Furlough Day Off (FFD) credits that, when used, the earnings were not reported to CalPERS. FFP and FFD are Non-PERS elements that offset one another to prevent double reporting of hours to CalPERS. As a result, the City did not underreport regular earnings of its employee to CalPERS, as indicated in the finding. Therefore, the City request that this finding be removed from the audit. Documentation referenced in *Appendix B*.

CalPERS Finding 3

The Agency incorrectly reported Fair Labor Standards Act (FLSA) Pay

Condition 3A:

FLSA premium pay is for hours worked within the regular scheduled working hours that are in excess of the statutory maximum workweek or work period established by the FLSA. The Agency incorrectly reported fire suppression employees overtime earnings as FLSA pay to CalPERS.

Recommendation 3A:

The Agency should report FLSA premium pay correctly

Response 3A: The City **agrees** with the finding. The City will collaborate with CalPERS to update its system to report the FLSA premium pay per CalPERS recommendation.

Condition 3B:

The Fire Fighters written labor policy effective thru June 30, 2014 included conditions for Fair Labor Standards Act premium pay, additionally, stated that the FLSA conditions would expire on June 28, 2012. The Agency explained they continued to follow the expired provision to be in compliance with Federal law.

Recommendation 3B:

The Agency should ensure its written labor policy for fire safety employees includes current conditions for the payment of FLSA premium pay to fire suppression.

Response 3B:

The City **disagrees** with the finding. The City immediately came into compliance with federal law when the law went into effect. Typically, the City's Memorandum of Understanding (MOUs) are revised when they are up for negotiation, typically every 2-5 years. Thus, the City did not follow the provision in the MOU after the expiration date of June 28, 2012. Effective July 2014, the City updated its labor policy for fire safety employees, which now includes current conditions for the payment of FLSA Premium Pay. The City request this finding be removed from the audit.

CalPERS Finding 4

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

Condition 4A:

The Agency incorrectly reported Longevity Pay as a lump sum amount instead of when earned. The Agency should identify the pay period(s) in which the compensation was earned regardless of when paid pursuant to GCC Sections 20630(b) and 20636(c)(3).

Recommendation 4A:

The Agency should ensure that all items of special compensation are reported in the pay period earned.

Response 4A:

The City **agrees** with finding and will remedy the issue- prospectively.

Condition 4B:

The Agency did not pay and report special compensation in accordance with the written labor agreement. The Agency paid four and a half percent instead of five percent in incentive pay.

Condition 4C:

The Agency incorrectly reported an incentive Special Assignment Pay, however, employee did not perform any special assignment.

Condition 4D:

The Agency under reported Uniform Allowance.

Recommendation 4B-4D: The Agency should only report special compensation that is approved within a labor agreement and meets the definition of special compensation under the GCC and CCR.

Response 4B:

The City **agrees** with finding and will fix it prospectively.

Response 4C:

The City **agrees** with finding and will fix it prospectively.

Response 4D:

The City **agrees** with this finding and has corrected the underreporting of the Uniform Allowance as of May 2015.

Condition 4E:

The Agency did not report monetary value of uniforms provided to employees covered under the Service Employees International Union (SEIU), Local 1021 written labor agreement. The written labor agreement states the Agency will provide rented uniforms to employees working in certain job classifications required to wear uniforms, however, the Agency did not report the value of uniforms to CalPERS as special compensation.

Condition 4F:

The Agency's SEIU, Local 1021 written labor agreement did not include the conditions for payment nor identify an amount of special compensation of the uniforms discussed above.

Recommendation 4E-4F: The Agency should ensure the monetary value and conditions for payment of uniforms are reported and contained in a written labor policy or agreement.

Response 4E and 4F:

The City **agrees** with these findings and will immediately remedy the issues prospectively.

CalPERS Finding 5

The Agency incorrectly reported retroactive pay adjustments.

Condition 5A:

The Agency incorrectly reported regular earnings, hourly pay rate and failed to report special compensation.

Condition 5B:

The Agency reported an incorrect pay rate and regular earnings for a retroactive pay adjustment

Recommendation:

The Agency should ensure retroactive adjustments are correctly reported

Response 5A:

The City **agrees** with finding and will fix it prospectively.

Response 5B:

The City **agrees** with finding and has come into compliance with the CalPERS' recommendation as of October 2015.

CalPERS Finding 6

The Agency did not pay its appropriate share of the normal contribution costs for PEPRA members.

Condition:

Two PEPRA members paid eight percent of the normal contribution costs instead of the required six and three quarter percent. The Agency stated that the employees paid a higher rate of contributions due to an impairment of the written labor agreement which was sent to CalPERS and allowable under Government Code Section 7522.30(f).

Recommendation:

The Agency should deduct and remit to CalPERS the appropriate amount of normal contributions for PEPRA members.

Response:

The City respectfully **disagrees** with this finding. CalPERS provided the City with an Impairment letter supplying authority to take this action. Additionally, 1 of the 2 employee's base rate reflects as 8% in CalPERS' system. The City depends on the accuracy of CalPERS system, which did not reflect a PEPRA rate of 6.75% for the employee. Therefore, based on the Impairment letter and CalPERS' system, the City used the 8% rate. Nonetheless, CalPERS' finding on PEPRA rate has been fixed in the City's system and all PEPRA member contributions are and will continue to be reported correctly. Therefore, the City request that this finding be removed from the audit.

CalPERS Finding 7

The Agency unlawfully employed a retired annuitant

Condition:

The Agency employed an individual that retired under an Industrial Disability Retirement (IDR). The retiree returned to work at the Agency in a miscellaneous position, however, CalPERS had not determined that the retiree was eligible to return to work in the miscellaneous position as required by Government Code Section 21228. The Agency was under the impression that the retiree could work temporarily under Government Code Section 21224 as long as hours did not exceed 960 hours each fiscal year. However, because the retirement was under an IDR, the retiree is governed by Government Code Section 21228 and under this section shall not be concurrently employed under Section 21224 through 21227 or 21221(h).

Government Code Section 21220 addresses unlawful employment of a person who has been retired under this system shall reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of the law. Furthermore, the retiree and employer will pay an amount of money equal to the employee/employer contributions that would otherwise have been paid during the period or periods plus interest, and contribute toward reimbursement of this system administrative expenses incurred in responding to this situation. To the extent determined by the executive officer of this system to be at fault.

Recommendation:

The Agency should not employ an individual who retired under IDR prior to CalPERS determining whether or not the retiree is disabled for that employment.

Response:

The City respectfully **disagrees** with this finding. The City is informed and believes the subject employee had received CalPERS approval to return to the City to fulfill the job responsibility of conducting background checks on prospective employees. The City continues to search for documentary proof to substantiate its belief that CalPERS approved the subject employee to return to work in a limited, part-time position in accordance with the law governing the employment of annuitants. Notwithstanding the City will ensure that it continues to comply with the law regarding the employment of annuitants. Accordingly and based on the City's analysis and reasonable belief, there have been no impacted employees or violations of California's Government Code, and the City therefore requests that the finding be removed from audit.

CalPERS Finding 8

The Agency did not make industrial disability determinations in accordance with the applicable Government Codes.

Condition 8A:

The Agency did not make industrial disability determinations within the prescribed six month period.

Recommendation 8A:

The Agency should ensure industrial disability determinations are made in a timely manner consistent with statutory requirements.

Response 8A:

The City **agrees** with the finding that the employees went over the 180-day limit; however, a waiver was obtained from 1 of 3 employees. Additionally, the City did not receive one of the employee's application from BCN until April 2014 wherein it was approved in June 2014 after submission and retrieval from JT2, the City's workers' compensation third party administrator. The City has implemented internal controls to receive determinations within six months or the application will be rejected. Going forward the City will process in a timely manner.

Condition 8B:

The Agency does not have a process or practice in place to periodically review or re-evaluate safety members that were approved for disability retirement or industrial disability retirement under the age of 50. The Agency confirmed that it does not adhere to all steps enumerated in their Administrative Instructions.

Recommendation 8B:

The Agency should implement a process to periodically review determinations for disability retirees under the normal retirement age to verify whether physical or mental incapacities have improved to the level that individuals are no longer disabled.

Response 8B:

The City **agrees** with the finding. Although the City did not enforce this directive, the City is looking to revise its policy based on current practices. The policy does include periodical reviews and reevaluates employees under the age of 50. Documentation referenced in *Appendix C*.

Condition 8C:

The Agency presented insufficient documentation to demonstrate a local safety individual met the statutory requirements necessary to qualify for industrial disability. The Agency approved and certified an industrial disability retirement application without a clear expression that the individual was incapacitated physically or mentally for the performance of his or her duties for a permanent or uncertain duration. The Agency failed to monitor the grant of industrial disability and did not have the individual reexamined to verify a disability continued at points in time after it was granted.

Recommendation 8C:

The Agency should only approve and certify disability and industrial disability retirement applications that meet the statutory requirements under Section 20026 and 21156. The Agency should maintain adequate documentation to support all determinations of disability. The Agency should immediately undertake a review of this determination to assess whether the individual is presently and/or permanently disabled at the time of the determination.

Response 8C:

The City **disagrees** with this finding. Actions taken by the City were based upon the letter received from an accredited Doctor who was the employee's treating physician. The treating physician opined that this employee could not perform his normal job duties. Therefore, the City believes this documentation was sufficient for determining disability. The City requests this finding be removed. Documentation referenced in *Appendix C & D*.