

# **Office of Audit Services**



# **CalPERS**

## **Public Agency Review**

## **County of Modoc**

**CalPERS ID: 3728589676**  
**Job Number: P13-057**

**September 2014**



California Public Employees' Retirement System  
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September 19, 2014

Employer Code: 1037  
CalPERS ID: 3728589676  
Job Number: P13-057

County of Modoc  
Chester Robertson, Modoc County Administrative Officer  
204 South Court Street, Room 100  
Alturas, CA 96101

Dear Mr. Robertson:

Enclosed is our final report on the results of the public agency review completed for the County of Modoc (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Findings 6 and 7A. We appreciate the additional information regarding Findings 6 and 7A that you provided in your response; however, after consideration of this information, our recommendations remain as stated in the report.

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 and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Phyllis Miller  
PHYLLIS MILLER, Acting Chief  
Office of Audit Services

Enclosure

cc: Board of Supervisors, County of Modoc  
Risk and Audit Committee Members, CalPERS  
Matthew G. Jacobs, General Counsel, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS  
Renee Ostrander, Assistant Chief, CASD, CalPERS

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# COUNTY OF MODOC

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## TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
Scope.....	1
Office of Audit Services Review Results .....	3
1: Pay schedule.....	3
2: Payrate and Earnings.....	5
3: Special Compensation .....	7
4: Holiday Pay .....	9
5: Member Contributions .....	11
6: Membership .....	12
7: Part-time Membership .....	15
8: Elected Official Membership Enrollment.....	16
Conclusion .....	17
Objectives .....	Appendix A
Agency Response .....	Appendix B

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# COUNTY OF MODOC

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## RESULTS IN BRIEF

The primary objective of our review was to determine whether the County of Modoc (Agency) complied with applicable sections of the California Government Code, 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 requirements of the Government Code and CCR.
- The Agency did not report correct payrate and earnings.
- Special compensation was not reported as required by CCR Section 571.
- Holiday Pay was incorrectly calculated and reported.
- Member Contributions was incorrectly reported.
- Employees of an affiliated entity were incorrectly enrolled in CalPERS membership.
- Eligible part-time employees were not enrolled into CalPERS membership.
- The Agency did not provide enrollment to Elective Officers as required.

There were no issues identified related to employees in our sample subject to the Public Employees' Pension Reform Act of 2013 (PEPRA).

OAS recommends the Agency comply with applicable sections of the California Government Code, 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 January 1, 1957 to provide retirement benefits for local miscellaneous employees and county peace 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 Board approved plan for fiscal year 2013-14, the OAS reviewed the Agency's payroll reporting and member enrollment processes as these processes relate to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from

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## **COUNTY OF MODOC**

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January 1, 2010 through July 31, 2013. The on-site fieldwork for this review was conducted from October 7-11, and from November 4-8, 2013. The review objectives and a summary of the procedures performed are listed in Appendix A.

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# COUNTY OF MODOC

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

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

***Condition:***

The Agency provided a salary schedule that did not identify all position titles or time bases, and referenced another document in lieu of disclosing certain payrates. The positions of Eligibility Specialist II and Sheriff's Fiscal/Administrative Assistant/OES were not listed on a pay schedule. Additionally, the Agency's pay schedule for hourly employees, elected officials, and appointed positions referenced another document in lieu of disclosing the payrate. Although the Assistant Chief Administration Officer/Chief Financial Officer's salary was within the pay range identified on the Agency's pay schedule, the Agency did not update the pay on its pay schedule to reflect a salary increase.

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 the 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.
- Not reference another document in lieu of disclosing the payrate.

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# COUNTY OF MODOC

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***Recommendation:***

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

The Agency should ensure that payrates and earnings are correctly reported to CalPERS in accordance with approved pay schedules.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, § 20636 (a), § 20636 (b)(1), § 20636 (d)  
CCR: § 570.5

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## COUNTY OF MODOC

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2: The Agency did not report correct payrate and earnings.

**Condition:**

- A. The Agency did not report payrate and earnings for an employee in the May 2012 pay period. The employee was paid \$1,851.42, but the payrate and earnings were not reported to CalPERS.
- B. The Agency incorrectly reported full-time earnings for two employees who were furloughed for 16.25 hours in May 2012. This resulted in service credit being over stated. Under a furlough plan, employers should continue to report the full-time payrate and actual earnings as they have been reduced by a furlough.
- C. The Agency reported incorrect payrate and earnings for an employee who received a salary increase in the middle of the May 2013 pay period. The Agency reported the combined earnings as a single payroll entry. The Agency should have reported the increase in payrates and corresponding earnings as separate line entries to CalPERS.
- D. The Agency reported an incorrect payrate for an employee, Agricultural Commissioner, in two pay periods reviewed (May 2012 and July 2013). Specifically, the Agency reported a payrate of \$5,239.00 per month or \$62,868.00 annually. The Agency's personnel allocation list indicates a base annual salary for this employee as \$54,434.78. The list also indicates a total base salary and other wages equal to \$89,865.36. As a result, the personnel allocation list does not agree with the amount reported to CalPERS. The Agency was unable to support the approved payrate for this employee.
- E. The Agency under reported payrate and earnings for an employee in the May 2012 pay period. Specifically, the employee was paid the Board approved monthly payrate of \$3,111.00, but the Agency reported a monthly payrate of \$2,822.00. In addition, the Agency incorrectly reported monthly earnings of \$1,975.14, which resulted in regular earnings being under reported by \$97.86. As a result, the Agency under reported the employee's payrate and earnings.
- F. The Agency incorrectly reported full-time earnings on behalf of an employee who was not working for the Agency because the employee was out on workers compensation. Workers compensation payments do not qualify as compensation earnable for miscellaneous employees.



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## COUNTY OF MODOC

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Payrate is an important factor 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 work with CASD to ensure payrate and earnings are correctly reported in all months worked and in accordance with approved pay schedules.

The Agency should work with CASD to ensure compensation earnable is reported correctly.

The Agency should immediately begin reporting changes in payrates to CalPERS as separate line entries with the corresponding payrate and earnings for each position.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20120, § 20121, § 20160, § 20630, § 20636  
CCR: § 570.5

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## COUNTY OF MODOC

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**3:** The Agency did not correctly report special compensation as required.

***Condition:***

- A. The Agency incorrectly reported Management Incentive Pay as special compensation for two employees. The two employees were paid additional compensation for working in secondary positions. Although the CCR exclusively lists Management Incentive Pay as special compensation, the pay in question does not meet the definition pursuant to the CCR Section the 571 (a). Management Incentive Pay is defined as compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. This compensation did not meet the definition of Management Incentive Pay, nor did it meet any of the other items of special compensation listed within the CCR.
- B. The Agency incorrectly reported Hazardous Material Pay as special compensation. Specifically, the Agency reported Hazardous Material Pay for an employee in the May 2012 and July 2013 pay periods. Although Hazardous Material Pay is defined in the CCR Section 571, the Agency did not include it in its written labor policy or agreement as required by the CCR. As a result, Hazardous Material Pay is not reportable as special compensation.
- C. The Agency incorrectly reported special compensation of Cross Training Pay for an employee. Pursuant to the CCR, Section 571 (a), Cross Training Pay is not exclusively listed or defined as special compensation. In addition, the Agency incorrectly reported the additional compensation with base payrate and regular earnings. As a result, the Agency over reported payrate and earnings.
- D. The Agency did not report Temporary Upgrade Pay for an employee in the April 2013 pay period. The employee was working out of class in an upgraded position, but the additional compensation was not reported to CalPERS as special compensation. Temporary Upgrade Pay is exclusively listed and defined in the CCR as well as included in the Agency's written labor policy or agreement. Therefore, Temporary Upgrade Pay should be reported as special compensation to CalPERS.
- E. The Agency did not pay or report Uniform Allowance for an employee in the May 2012 pay period. Agency staff stated that this employee is required to wear a uniform and the Uniform Allowance should have been paid to the employee and reported to CalPERS. The Agency was unable to explain why the Uniform Allowance was not paid or reported. The monetary value of uniforms is a

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## COUNTY OF MODOC

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statutory item of special compensation that is required to be reported to CalPERS for members enrolled prior to January 1, 2013.

- F. The Agency incorrectly reported special compensation of Longevity Pay for employees in the Sherriff's Department. Longevity Pay did not qualify as special compensation because it was not contained in a written labor policy or agreement. In addition, the Agency incorrectly reported the additional compensation with base payrate and earnings. As a result, the Agency over reported payrate and earnings.

Reportable special compensation is exclusively listed and defined in CCR Section 571. Reportable special compensation is required to be contained in a written labor policy or agreement, available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, and not final settlement pay.

***Recommendation:***

The Agency should work with CASD to ensure all items reported as special compensation meet the definition of special compensation and are contained in a written labor policy or agreement.

The Agency must report all compensation to CalPERS that is contained in a written labor policy or agreement and is exclusively identified and defined in CCR Section 571.

The Agency should correctly report special compensation and discontinue reporting special compensation as base pay rate and regular earnings.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, 20630, § 20635, § 20636  
CCR: § 571

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# COUNTY OF MODOC

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**4:** The Agency did not correctly calculate and report Holiday Pay.

***Condition:***

- A. The Agency incorrectly calculated and over reported Holiday Pay for employees who were required to work on approved holidays. Specifically, the Agency added numerous reportable and non-reportable items of special compensation to base payrate. This base payrate was used to determine the hourly payrate for the calculation of Holiday Pay. As a result, Holiday Pay was over stated and incorrectly reported to CalPERS.
  
- B. The Agency did not report Holiday Pay for an employee who received a lump sum payment in the December 2012 pay period. Specifically, the Agency determined that employees were not entitled to Holiday Pay in the 2012 calendar year. The Sheriff's Department filed a grievance to have Holiday Pay reinstated. Because of the grievance, the Agency and the Modoc County Sheriff's Association agreed to pay all affected Association members retroactively for the Holiday Pay amount not received. In December 2012, the employee received a retroactive lump sum payment for the Holiday Pay, but the special compensation was not reported to CalPERS.

Holiday Pay is defined as additional compensation for employees who are normally required to work on an approved holiday because their positions require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly pay rate for approved holidays, the additional compensation is classified as Holiday Pay and reportable to CalPERS as special compensation. Additionally, Holiday Pay is considered overtime if employees work in positions that do not require scheduled staffing for holidays.

***Recommendation:***

The Agency should ensure it correctly calculates Holiday Pay.

The Agency should report Holiday Pay as special compensation for employees required to work on approved holidays.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

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# COUNTY OF MODOC

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***Criteria:***

Government Codes: § 20160, § 20636

CCR: § 571

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# COUNTY OF MODOC

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**5:** The Agency incorrectly paid and reported Member Contributions.

***Condition:***

- A. Although statutorily allowed, the Agency incorrectly paid member contributions on behalf of an employee. Specifically, the Agency only paid member contributions for the County Administrative Officer. In order for member contributions to be paid on behalf of an employee, it must be available to all members in a group or class.
- B. The Agency incorrectly reported member contributions as employer paid member contributions for all employees in the May 2012 pay period. In addition, the Agency incorrectly reported member contributions of the Road Department employees as employer paid member contributions in the July 2013 pay period.

***Recommendation:***

The Agency should discontinue paying member contributions for the County Administrative Officer. In addition, the Agency must conform to the group or class requirement when reporting member contributions.

The Agency should discontinue reporting normal member paid contributions as employer paid member contributions for its employees.

The Agency should work with CASD make the necessary adjustments to active and retired member accounts pursuant to Government Code Section § 20160.

***Criteria:***

Government Codes: § 20120, § 20121, § 20160, § 20691  
CCR: § 569

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## COUNTY OF MODOC

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**6:** Employees of an affiliated entity were incorrectly enrolled into CalPERS membership.

***Condition:***

The Agency incorrectly enrolled employees of an affiliated entity, Modoc County Transportation Commission (MCTC) into CalPERS membership. The Agency also reported the earnings of these individuals to CalPERS. The MCTC governing body is comprised of three representatives and one alternate appointed by the City of Alturas and three representatives and one alternate appointed by the Agency. Therefore, the Agency is not in direct control of the MCTC since representatives who oversee the MCTC are not all appointed by the Agency. The Agency has a Memorandum of Understanding (MOU) with MCTC to provide Agency staff to assist in the performance of specific tasks. The MOU states the following:

- MCTC shall have sole authority and responsibility to establish salary and benefits for those employees provided by the Agency.
- MCTC employees provided by the Agency shall not be subject to Agency personnel regulations or MOU's nor entitled to benefit provided therein that governs regularly established positions under the jurisdiction of the Modoc County Board of Supervisors.
- MCTC shall be solely responsible for the supervision of said employees.
- MCTC shall be solely responsible for establishing all MCTC employee working conditions and performance standards.
- MCTC shall be solely responsible for the resolution of employee grievances and disciplinary actions up to and including termination.
- MCTC employees provided by the Agency including but not limited to salaries and benefits as established by the MCTC shall be provided by the MCTC from its funds at no cost to the Agency.

In addition to the above factors, OAS finds that the services identified for these sampled individuals were as common law employees of the MCTC for the time periods specified, rather than common law employees of the Agency based in part on the following factors:

- Individuals were appointed by MCTC.
- MCTC board determined the hours of work.
- Individuals were provided an office space, office stationery and office equipment by MCTC to perform services for the MCTC.
- MCTC has the right to control how the individuals perform their services for the MCTC.
- Services performed were directed, supervised and reviewed by MCTC.

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## COUNTY OF MODOC

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The Public Employees' Retirement Law (PERL) Section 20125 provides that the CalPERS Board of Administration (Board) shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

For the purposes of the PERL and for programs administered by the Board, the standard used for determining whether an individual is the employee of another person or entity is the California common law employment test as set forth in the California Supreme Court case titled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court (Cargill)*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in two precedential decisions, *In the Matter of Lee Neidengard*, Precedential Decision No. 05-01, effective April 22, 2005 and *In re the Matter of Galt Services Authority*, Precedential Decision No. 08-01, effective October 22, 2008.

Applying the California common law employment test, the most important factor in determining whether an individual performs services for another as employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

Other factors to be taken into consideration under the common law employment test are as follows:

- (a) whether or not the one performing services is engaged in a distinct occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is a part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

OAS determined that the control over the sampled individuals is with MCTC and after considering the secondary factors, OAS concludes that the affiliated entity was the common law employer. OAS determined that an employer and employee relationship did not exist between the MCTC individuals and the Agency. Therefore, those MCTC employees were incorrectly enrolled and reported to CalPERS. Only



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## COUNTY OF MODOC

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the common law employees of a contracting agency should be enrolled and reported to CalPERS.

***Recommendation:***

The Agency should ensure that only common law employees of the Agency are enrolled and reported to CalPERS. The Agency should not report the common law employees of other entities.

The Agency should work with CASD to make any necessary adjustments to any active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20022, § 20028, § 20030, § 20056, § 20120, § 20122, § 20125, § 20160, § 20460

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## COUNTY OF MODOC

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7: The Agency did not enroll eligible part-time employees.

**Condition:**

- A. The Agency did not enroll a part-time employee into membership when employment continued longer than six months. The employee worked full-time from April 2012 through October 2012 and met the membership eligibility requirement in the pay period ending September 2012. Government Code Section 20305 requires membership enrollment no later than the first pay period of the seventh month of employment if the appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time employment continues for longer than six months. Furthermore, the employee separated from employment as a part-time employee on October 30, 2012 and resumed work in the same position as an independent contractor on November 1, 2012. OAS reviewed this employee as an independent contractor and found that that this employee was working for the Agency in an employee/employer relationship.
- B. The Agency did not enroll a part-time employee who met the 1,000 hour membership eligibility requirement during fiscal year 2011-12. Specifically, the part-time employee completed 1,055.25 hours in the pay period ending March 14, 2012. Government Code Section 20305 requires employees who complete 1,000 hours within a fiscal year to be enrolled into membership effective not later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed.

**Recommendation:**

The Agency should monitor the hours worked by part-time employees and ensure employees are enrolled when membership eligibility requirements are met.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

**Criteria:**

Government Codes: § 20044, § 20160, § 20305

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## COUNTY OF MODOC

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**8:** The Agency did not provide membership enrollment to Elective Officers as required.

***Condition:***

The Agency did not have an elective officer complete the Optional Membership Form, AESD-59, prior to enrollment in membership. In addition to enrolling the elective officer prior to the completion of the required form, the Agency also incorrectly enrolled the elective officer as a regular member. The Agency should have required the elective officer to complete the Optional Membership Form, submitted the form to CalPERS, and enrolled the individual in CalPERS as an optional member. An elective officer is excluded from membership unless the elective officer files with the Board an election in writing to become a member. An elective officer includes persons elected to a City Council or County Board of Supervisors.

***Recommendation:***

The Agency should work with CASD to ensure elective officers are advised of their CalPERS optional membership rights when first elected and file the appropriate election in writing with CalPERS for those who elect to be members.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, § 20322

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# COUNTY OF MODOC

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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix A. OAS limited the test of transactions to employee samples selected from the Agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code 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, California Code of Regulations.

Respectfully submitted,

Original signed by Phyllis Miller  
PHYLLIS MILLER, CPA, CIA  
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief  
Diana Thomas, CIA, CIDA, Manager  
Chris Wall, Manager  
Mike Obad, Auditor

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**COUNTY OF MODOC**

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# **APPENDIX A**

## **OBJECTIVES**

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# COUNTY OF MODOC

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## OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

## SUMMARY

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 hours worked records
  - Agency payroll information including Contribution Detail Transaction History reports
  - Other documents used to specify payrate, special compensation, and benefits for employees
  - Various other documents as necessary
- ✓ 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 meeting laws.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

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## COUNTY OF MODOC

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- ✓ 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 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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**COUNTY OF MODOC**

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# **APPENDIX B**

## **AGENCY RESPONSE**





# COUNTY OF MODOC

Administrative Services  
204 South Court St. Room 100  
ALTURAS, CALIFORNIA 96101

(530) 233-7660 Office  
cao@co.modoc.ca.us

CHESTER ROBERTSON  
*County Administrative Officer*

PAM RANDALL  
*Chief Fiscal Officer  
Assistant  
County Administrative Officer*

August 28, 2014

Phyllis Miller, Acting Chief  
Office of Audit Services  
CalPERS  
P.O. Box 942701  
Sacramento, CA 94229-2701

**Re: County of Modoc Response to CalPERS Draft Public Agency Review**  
**Employer Code: 1037**  
**CalPERS ID: 3728589676**  
**Job Number: P13-057**

The County of Modoc hereby files this response to the Draft CalPERS Public Agency Review #P13-057 ("Review") covering the review period of January 1, 2010 through July 31, 2013. The Review was conducted by on-site visit between October 7 through 11, 2013 and November 4 through 8, 2013 and culminated in a Draft Public Agency Review document. Names of affected individuals as listed in "Attachment 'B' Confidential List" are omitted in this response

### **Audit Services Review Results 1 – Pay Schedule Requirements:**

The Review concluded that Modoc County's salary schedule did not contain all of the required elements pursuant to C.C.R. § 570.5. CalPERS uses, and is limited to, the use of pay rates on publicly available pay schedules to determine compensation that can be earned under Government Code § 20636. Specifically, the salary schedule reviewed by CalPERS did not contain position titles for Eligibility Specialist II and Sheriff's Fiscal/Administrative Assistant/OES, or time bases. In addition, certain pay rates for hourly employees, elected officials, and appointed positions were not included in the schedule but instead referred to other documents containing those pay rates. The pay rate for the Assistant Chief Administrative Officer/Chief Financial Officer was out-of-date on the pay schedule.

### **Resolution:**

The County of Modoc has or will amend the public pay schedule for all employees to ensure compliance with C.C.R. § 570.5. The County will ensure that earnings and pay rates for enrolled member employees are correctly reported to CalPERS consistent with

the approved public pay schedule. The County of Modoc has or will coordinate making any necessary adjustments to active and retired member accounts consistent with Government Code § 20160.

### **Audit Services Review Results 2 – Reporting of Payrates and Actual Earnings:**

The Review concluded that Modoc County had:

- A) Failed to report \$1,851.42 in earnings for an employee in May of 2012;
- B) Incorrectly reported full-time earnings for two employees without deducting for furloughed time of 16.25 hours in May of 2012;
- C) Incorrectly reported combined earnings and the pay rate as a single entry for an employee who received a pay increase in May 2013;
- D) Reported an incorrect pay rate for the agricultural commissioner in May of 2012 and July of 2013 that did not correspond to the personnel allocation list;
- E) Under-reported the pay rate for an employee in May of 2012 as \$2,822.00 when the Board-approved pay rate was \$3,111.00 and under-reported the actual earnings in May 2012 by \$97.86;
- F) Incorrectly reported full-time earnings for an employee on worker compensation leave.

### **Resolution:**

The County of Modoc has or will begin to report pay rate changes to CalPERS as separate line entries and include corresponding pay rate(s) and earnings for each position. Modoc County will collaborate with CASD to ensure that correct pay rates, earnable compensation and actual earnings are correctly reported for all months worked and corresponding to Board-approved public pay schedules. The County of Modoc has or will coordinate making any necessary adjustments to active and retired member accounts consistent with Government Code § 20160 if and where impacted by findings in this section.

### **Audit Services Review Results 3 – Incorrect Reporting of Special Compensation:**

The Review concluded that certain special compensation was incorrectly reported/not reported as required as follows:

- A) Incorrectly reported additional compensation for two employees working in secondary positions as special compensation – Management Incentive Pay however the compensation did not meet the definition in C.C.R. § 571 (a);
- B) Reported Hazardous Material Pay for an employee in May 2012 and July 2013 without including such compensation in the County labor policy or agreement as required by C.C.R. §571;
- C) Reported “Cross-training pay” as special compensation and added cross-training pay to the reported pay rate and earnings. Cross-training pay is not reportable as special compensation.
- D) Did not report Temporary upgrade pay for an employee in April 2013, this was reportable as special compensation and was in the labor policy or agreement as well as listed in the C.C.R.;
- E) Did not report uniform allowance that should have been paid to an employee in May 2012 (or pay the uniform allowance);

F) Reported longevity pay as special compensation along with pay rate and earnings for employees in the Sheriff's Office such compensation was not in the labor policy or agreement and thus did not qualify as special compensation.

**Resolution:**

The County of Modoc will work with Customer Account Service Division ("CASD") to ensure that the listed items related to special compensation meet the definition in C.C.R. § 571 and are properly contained in a labor policy or agreement. The County will report all compensation contained in a written labor policy or agreement that meets the definition of special compensation under C.C.R. § 571 to CalPERS. Modoc County will report such compensation as special compensation and not as base pay and regular earnings. The County of Modoc has or will coordinate making any necessary adjustments to active and retired member accounts consistent with Government Code § 20160 if and where impacted by findings in this section.

**Audit Services Review Results 4 – Incorrect Reporting of Holiday Pay:**

The Review concluded that holiday pay for employees required to work on approved holidays was incorrectly reported, specifically that reportable and non-reportable items of special compensation were added to base pay rate then the adjusted base pay rate used to calculate the hourly pay rate for holiday pay. In addition the audit found that the County of Modoc did not report holiday pay for an employee in 2012 when received in a retroactive lump-sum payment in December of 2012.

**Resolution:**

The County of Modoc will correctly calculate and report holiday pay as special compensation for employees required to work on approved holidays. The County of Modoc has or will coordinate making any necessary adjustments to active and retired member accounts consistent with Government Code § 20160.

**Audit Services Review Results 5 – Incorrect Payment and Reporting of Employee Paid Member Contributions (EPMC):**

The Review concluded that EPMC was paid and reported incorrectly for one employee when not available to all members in a group or class, in addition, the Review concluded that tax deferred member contributions were incorrectly reported as EPMC in May 2012 for all employees, and in July 2013 for road department employees.

**Resolution:**

The County of Modoc has ceased payment and reporting of EPMC for the County Administrative Officer and will conform to the group or class requirement for reporting EPMC. The County of Modoc will not report tax-deferred member contributions as

EPMC. The County of Modoc has or will coordinate making any necessary adjustments to active and retired member accounts consistent with Government Code § 20160.

**Audit Services Review Results 6 – Incorrect Enrollment of Modoc County Transportation Commission Employees into CalPERS Membership:**

The Review concluded that Modoc County incorrectly enrolled employees of the Modoc County Transportation Commission (“MCTC”) into CalPERS, and thereafter reported the earnings of those individuals.

The County of Modoc vigorously disputes these findings and requests that they be amended, with a finding that the County employees provided to MCTC for Commission functions remain employees of the County.

Modoc County maintained and continues to maintain the classifications of all employees that work in service for the MCTC. In addition, employees are included in the County’s bargaining units through the Laborer’s International Union of North America / United Public Employees of California, Local 792 and have classifications equal to all other employees. These same classifications continued to remain as part of Modoc County Code Section 2.56.080, although by error the code table listings had not been updated along with classification listings. Further, the fact that the employees were, until the recent past, housed together in County office space and in working environments with instrumentalities provided by the County, demonstrates very clearly that the County did not relinquish control to the Transportation Commission in the manner concluded by the Review.

Crucial to the conclusion of whether an employer-employee relationship exists is whether the purported employer has the right to control the manner and means of performing the service in question. In this case, Modoc County designed and maintained the class specifications in the County job classification list, in County code and in every labor agreement. Those labor agreements detail the County’s direct involvement in exercising the authority it has to enter into agreements that govern the manner in which work is performed by those in MCTC classifications, and the wages, hours and working conditions of the employees occupying such classifications. It is eminently clear that all parties, both employees in MCTC classifications and the County, believe and did believe that they were in an employer-employee relationship.

**Resolution:**

The County requests that the conclusions of this section be amended and that the employees provided by the County to MCTC pursuant to the agreement be recognized as employees of the County by CalPERS, *as they have always been employees of the County provided for service to MCTC.*

In the alternative, and if CalPERS determines that prospectively, the employees assigned to MCTC appear to be evolving into an employee-employer relationship with MCTC, such that they may be more accurately characterized as common-law employees of MCTC and not the County, the County of Modoc respectfully requests the findings and recommendations reflect the evolution of that employment relationship. Specifically, Modoc County requests to continue such employees of the County uninterrupted with

CalPERS as County employees and provide a reasonable period of time for MCTC and the County to transition the affected employees from County employment to Transportation Commission employment, including allowing a sufficient opportunity for MCTC to contract with CalPERS, should choose to do so.

Modoc County will cooperate with CASD, MCTC, and recognized employee organizations to ensure necessary adjustments are made so as to avoid enrolling and reporting earnings for employees of other entities. Additionally, the County will assist in any transition for employee(s) moving from employment with the County to MCTC where the evolution of characteristics of the employment relationship tend to indicate employment is, or will become employment with MCTC and not the County.

**Audit Services Review Results 7 – Failure to Enroll a Part-Time Employee After Six Months Employment:**

The Review concluded that Modoc County failed to enroll a part-time employee in 2011/12 who worked 55.25 hours beyond the 1000-hour limit that otherwise excludes them from membership under Government Code § 20305. Additionally, the Review concluded that the County did not enroll a part-time employee into membership when they met the 1000-hour requirement and did enroll but separated and became an independent contractor to the County with some similar responsibilities on November 1, 2012.

**Resolution:**

The County of Modoc will track the hours of part-time employees and otherwise ensure they are enrolled when compulsory membership requirements are met.

The County does not agree with the finding that the independent contractor was working in an employee/employer relationship with the County after November 1, 2012. As a result, the County requests that CalPERS amend its findings as to the independent contractor referred to in this section and conclude that it was unnecessary to enroll the individual as they occupied a role as contractor to the County rather than employee.

**Audit Services Review Results 8 – Failure to Provide Optional Enrollment Form and Incorrect Enrollment of Elected Officials:**

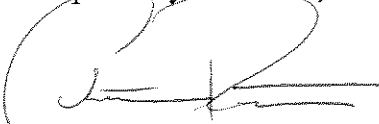
The Review concluded that Modoc County incorrectly enrolled an elected official as a regular member in CalPERS, when Government Code § 20322 (a) requires that elected official to first file an election form (AESD-59) to become a member.

**Resolution:**

The County of Modoc will ensure that “elective officers” as defined in Government Code § 20322 (b) are informed of their optional membership rights and the requirement that they complete and file form AESD-59 electing membership prior to enrolling them as optional members.

The County of Modoc has or will coordinate making any necessary adjustments to active and retired member accounts consistent with Government Code § 20160.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chester Robertson", written over a circular stamp or seal.

Chester Robertson,  
County Administrative Officer  
County of Modoc