

Office of Audit Services



Public Agency Review

City of Lemoore

**Employer Code: 380
CalPERS ID: 1685062598
Job Number: P13-067**

June 2014



California Public Employees' Retirement System
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June 20, 2014

Employer Code: 380
CalPERS ID: 1685062598
Job Number: P13-067

City of Lemoore
Brooke Austin, Executive Secretary
119 Fox Street
Lemoore, CA 93245

Dear Ms. Austin:

Enclosed is our final report on the results of the public agency review completed for the City of Lemoore (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted 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 Margaret Junker
MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Council, City of Lemoore
Risk and Audit Committee Members, CalPERS
Gina M. Ratto, Interim General Counsel, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Lemoore (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 two of this report.

- Pay schedule did not meet all the requirements of CCR Section 570.5.
- Special compensation was not reported as required by CCR Section 571.
- Retired annuitant was unlawfully employed.
- Optional members were not offered membership.

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, 1958 to provide retirement benefits for local miscellaneous employees, police, and fire fighters. 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 2013/2014, 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 September 1, 2011 through August 29, 2013. The on-site fieldwork for this review was conducted from December 16, 2013 through December 19, 2013. The review objectives and a summary of the procedures performed 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 requirements of the CCR.

Condition:

The Agency's pay schedule did not identify position titles for every employee position and payrates for each identified position as required by the CCR. 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. According to the 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.

Recommendation:

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

The Agency should work with 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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2: The Agency did not report special compensation as required by the CCR.

Condition:

- A. The Agency did not report the compensation paid or monetary value and maintenance of uniforms, a statutory item of compensation, for employees within the General Association of Service Employees (GASE) and the Police Officer's Associations (POA) who were required to wear uniforms. In addition, the Memorandum of Understanding (MOU) for each group did not indicate the conditions for payment.

Furthermore, the Agency incorrectly reported a uniform allowance for two non-represented employees. The Police Chief/Interim City Manager and the Public Records Supervisor received a uniform allowance of \$900 and \$500, respectively; however, there was not a labor policy or agreement in place for non-represented employees.

- B. The Agency incorrectly included birthdays and a floating holiday, which are non-reportable compensation items, when it reported holiday cash-outs. The non-reportable compensation was combined and banked with the holiday credit. As a result, the Agency reported incorrect cash-out amounts that included the non-reportable compensation. Birthdays and floating holidays do not meet the definition of special compensation pursuant to CCR Section 571(a). In addition, the Agency did not report one employee's 40-hour cash out for holiday credit in November 2012.
- C. The Agency incorrectly reported Temporary Upgrade Pay for a Police Chief assigned to the position of Acting City Manager. The Temporary Upgrade Pay was not contained in a written labor policy or agreement. Furthermore, the Agency stated the Police Chief's Temporary Upgrade Pay for acting as City Manager was approved by the governing body in a closed session.
- D. The Agency incorrectly reported special compensation of Education Incentive with the base payrate for two sergeants. As a result, the reported payrates exceeded the amounts listed on the Agency's pay schedule. The Agency's MOU for police corporals and sergeants provides an Education Incentive for sergeants with college degrees. Pursuant to the Agency's MOU, sergeants will receive a five percent higher base payrate for holding an AA/AS degree and a ten percent higher base payrate for holding a BA/BS degree. Education Incentives must be reported separately as special compensation.

Reportable special compensation is exclusively listed and defined in CCR Section 571. Reportable special compensation is required to be contained in a written labor

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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 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 should report special compensation items separate from base payrate and regular earnings.

The Agency should work with CASD to determine the impact of this incorrect reporting and make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20049, § 20160, § 20636 (a), § 20636 (c)
CCR: § 571

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3: The Agency unlawfully employed a retired annuitant.

Condition:

The Agency hired a retired annuitant to perform the duties of the Interim Finance Director, effective January 23, 2012. The retired annuitant's payrate as the Interim Finance Director exceeded the maximum amount shown on the pay schedule for the Finance Director. Specifically, during fiscal year 2011/2012, the retired annuitant's payrate for Interim Finance Director was \$50 per hour or the monthly equivalent of \$8,666.65, which exceeded the maximum monthly payrate shown on the authorized pay schedule of \$8,074.00. Government Code specifies that the compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule, or its hourly equivalent.

Recommendation:

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.

The Agency should monitor the hours worked and payrate of retired annuitants in order to ensure the Agency complies with applicable Government Codes. OAS recommends the Agency work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action.

Criteria:

Government Codes: § 20160, § 21202, § 21220, § 21224

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4: The Agency did not advise City Council Members of their optional membership rights upon election.

Condition:

The Agency did not advise its Council Members of their optional CalPERS membership rights. Government Code Section 20322 states that an elective officer is excluded from membership in the CalPERS retirement system unless the officer files an election in writing with CalPERS to become a member. Optional members must be advised of their optional CalPERS membership rights when first eligible for membership. An elected officer includes persons elected to a City Council.

Recommendation:

The Agency should work with CASD to ensure elected officials 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 determine the impact of this erroneous reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20322 (a), § 20322 (b)

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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 Margaret Junker
MARGARET JUNKER, CPA, CIA, CIDA
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Diana Thomas, CIA, CIDA, Manager
Alan Feblowitz, CFE, Manager
Edward Fama, Auditor

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APPENDIX A

OBJECTIVES

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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.

This review covers the period of September 1, 2011 through August 29, 2013. This review did not include an assessment as to whether the Agency is a "public agency", and expresses no opinion or finding with respect to whether the Agency is a public agency or whether its employees are employed by a public agency.

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 all 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.

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- ✓ Reviewed CalPERS listing 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 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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APPENDIX B

AGENCY RESPONSE

Mayor
William Siegel
Mayor Pro Tem
Lois Wynne
Council Members
John Gordon
Eddie Neal
Willard Rodarmel



**Office of the
City Manager**

119 Fox Street
Lemoore ♦ CA 93245
Phone ♦ (559) 924-6700
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May 28, 2014

California Public Employee's Retirement System
Margaret Junker, Chief
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701

RE: Employer Code: 380
CalPERSID: 1685062598
Job Number: P13-067

Dear Ms. Junker,

In response to the draft report on the compliance review of the City of Lemoore's contract, we offer the following responses:

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

The Agency concurs with this finding and is currently in the process of updating the pay schedule to make sure all positions and pay rates are covered. The Agency is also reviewing all special compensation to make sure that it is not combined with the base pay rate, so that it does not appear that employees are being paid more than the applicable pay schedule (please see additional comments under 2D below).

2. The Agency did not report special compensation as required by the CCR.

The Agency concurs with this finding and each item is addressed below.

- A. The Agency is currently reviewing special compensation as it relates to uniforms, so that it can be properly reported. In the future, uniform allowances will not be paid to unrepresented employees without a written agreement in place.
- B. The reporting of holiday cash-outs has been adjusted so that birthdays and floating holidays are no longer included or reported as special compensation.
- C. No response.
- D. The Agency is working with our payroll software company to see if it can handle the separation of special compensation from the base pay. If our software is not capable of handling the changes recommended, we will contact CASD for another solution.

3. The Agency unlawfully employed a retired annuitant.

The Agency was unaware that a retired annuitant was unlawfully employed. The Agency will work with BNSD to determine the appropriate course of action. The Agency currently monitors the hours worked by retired annuitants.

4. The Agency did not advise City Council Members of their optional membership rights upon election.

The Agency is updating the procedures to ensure that elected officials are advised of their CalPERS optional membership rights when elected.

The Agency will work with the appropriate divisions of Cal PERS to correct any necessary matters once the final report is issued. If you need any additional information regarding these matters, please do not hesitate to contact me at (559)924-6702.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brooke Austin', written in a cursive style.

Brooke Austin
Executive Secretary