

Office of Audit Services



Public Agency Review

Loomis Fire Protection District

**Employer Code: 2000
CalPERS ID: 1187598551
Job Number: P12-015**

November 2013



California Public Employees' Retirement System
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November 18, 2013

Employer Code: 2000
CalPERS ID: 1187598551
Job Number: P12-015

Loomis Fire Protection District
Barbara E. Leak, District Secretary
PO BOX 606
Loomis, CA 95650

Dear Ms. Leak:

Enclosed is our final report on the results of the public agency review completed for the Loomis Fire Protection District (District). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 1. Based on the information contained in your agency's response pertaining to Finding 1, our recommendation remains 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 District 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: Honorable Board of Directors, Loomis Fire Protection District
Will M. Yamada, Partner, Novey, Tribuiano & Yamada, LLP
Risk and Audit Committee Members, CalPERS
Gina M. Ratto, Interim General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS

LOOMIS FIRE PROTECTION DISTRICT

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LOOMIS FIRE PROTECTION DISTRICT

RESULTS IN BRIEF

The California Public Employees' Retirement System (CalPERS) Office of Audit Services (OAS) reviewed the Loomis Fire Protection District's (District) enrolled individuals, member compensation, retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Retired annuitant was unlawfully employed.
- Retroactive salary adjustment was incorrectly reported.
- Incorrect payrate was reported.
- Regular earnings were over reported.
- FLSA premium pay, holiday pay and uniform allowance were not reported as earned.
- Member contributions were incorrectly reported as EPMC.
- Compensation was not reported for an employee with prior membership.

DISTRICT BACKGROUND

The Loomis Fire Protection District provides fire protection to the residents and business community of Loomis, and is governed by a five-member Board of Directors. Memoranda of Understanding (MOU) and District resolutions outline District employees' salaries and benefits and state the terms of employment agreed upon between the District and its employees. The District contracted with CalPERS effective September 11, 2010 to provide retirement benefits for safety and miscellaneous employees.

All contracting public agencies, including the District, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.

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- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

SCOPE

As part of the Board approved plan for fiscal year 2012/2013, the OAS reviewed the District's payroll reporting and member enrollment processes as these processes relate to the District's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from September 11, 2010 through December 31, 2012. The on-site fieldwork for this review was conducted from March 26, 2013 through March 27, 2013. The review objectives and a summary of the procedures performed are listed in Appendix B.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The District unlawfully employed a retired annuitant.

Recommendation:

Government Code section 21220 addresses the conditions and consequences of unlawful employment of a person who has been retired under this system. Subdivision (a) of this section provides in pertinent part that a person who has been retired under this system, for service or for disability, may not be employed in any capacity thereafter by the state, the university, a school employer, or a contracting agency, unless he or she has first been reinstated from retirement pursuant to this chapter, or unless the employment is authorized by this article. Subdivision (b) of section 21220 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.

Subdivision (c) of section 21220 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.

Government Code section 7522.56, effective January 1, 2013, also addresses the restrictions associated with working after retirement. Subdivision (a) provides that it applies to any person who is receiving a pension benefit from a public retirement system and shall supersede any other provision in conflict with the section. Subdivision (b) states that a retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives a benefit without reinstatement from retirement, except as permitted by this section. Section 7522.56 (c) authorizes a person who retires from a public employer to serve without reinstatement from retirement or loss or interruption of benefits provided by a retirement system upon appointment by the appointing power of a public employer either during an

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emergency to prevent stoppage of public business or because the retired person has the skills needed to perform work of limited duration.

OAS recommends the District work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action.

Condition:

A retired annuitant was unlawfully employed due to the annuitant's permanent employment without reinstatement from retirement. The annuitant's initial employment agreement effective September 1, 2007, which was prior to the District's contract with CalPERS, employed the retired annuitant as the Fire Chief and specified a term of three years at a minimum of 20 hours per week. BNSD notified the retired annuitant (and copied the District) on December 22, 2010 that his employment at the District on a permanent basis required he either reinstate from retirement or stop working at the District. The correspondence confirmed that if no response was received by January 31, 2011, CalPERS would stop the Fire Chief's retirement benefit. By way of letter dated January 17, 2011, the Fire Chief replied and indicated that he did not wish to reinstate. Further, it was represented that he had been retained as a temporary employee as described in Government Code section 21224 for a period not to exceed 1 year. Despite this representation, however, the retired annuitant continued to work at the District without reinstating from retirement. At the time of OAS on-site fieldwork, the retired annuitant had been the District's Fire Chief for over five years.

Although the employment agreements provided by the District indicated a temporary assignment not to exceed one year, the retired annuitant's assignment had continued on a recurring basis with no break in employment for over five years. Government Code Section 21224 requires that the appointment of a retired person be made either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration. OAS determined that the retired annuitant's appointment as the District Fire Chief was a permanent appointment rather than an appointment to perform work of a limited duration in accordance with Government Code section 21221(h), or Government Code section 7522.56 (c), and therefore the retired annuitant should have reinstated from retirement or left the position if he wanted to continue to receive his retirement allowance.

During the pendency of this review, the District contended that the Public Employees' Retirement Law (PERL) provisions related to working after retirement did not apply in this case because the District believed that the position of Fire Chief had been excluded from its contract with CalPERS. The contract with the District did not include an exclusion for the position of Fire Chief. The PERL does not permit an employer to provide retirement benefits to some but not all members of a

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membership classification. Specifically, section 20479 provides in relevant part: “Notwithstanding any other provision of law, . . . no contract or contract amendment shall be made to provide retirement benefits for some, but not all members of the following membership classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, local sheriffs, local safety officers, or school safety officers. No contract or contract amendment shall provide different retirement benefits for a subgroup, including but not limited to, bargaining units or unrepresented groups, within those membership classifications. This section does not preclude changing membership classification from one membership classification to another membership classification or exclusion of groups of members by contract.”

The PERL defines “local firefighter” as any officer or employee of a fire department of a contracting agency, except one whose principle duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned. Because the position of Fire Chief meets the definition of local firefighter, that position was not and could not have been excluded from the contract.

Criteria:

Government Code: § 7522.56, § 20433, § 20479 § 21220, § 21221(a), § 21221(h), § 21224(a)

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Finding 2: Retroactive salary adjustment was incorrectly reported.

Recommendation:

The District should ensure that retroactive salary adjustments are reported correctly for all members.

The District should work with CalPERS Customer Account Services Division (CASD) to assess the impact of the incorrect reporting and determine what adjustments are needed to members' account pursuant to Government Code section 20160.

Condition:

The District incorrectly reported a retroactive salary adjustment to CalPERS. Specifically, a sampled employee received a salary increase from \$33.51 per hour to \$35.18 per hour effective January 28, 2012. The District incorrectly reported the retroactive salary increase as part of regular earnings during the 03/10/12 – 03/23/12 earned period by using the "Earned Period Reporting" transaction type, the previous hourly payrate of \$33.51, and total earnings of \$1,608.48. The District should have reported the retroactive salary increase separately using the "Retroactive Salary Adjustment" transaction type, the new hourly payrate of \$35.18, retroactive earnings of \$201.06, and the earned period of 01/28/12 – 03/09/12.

Criteria:

Government Code: § 20160, § 20630(b), § 20636(b)(1)

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Finding 3: Incorrect payrate was reported.

Recommendation:

The District should ensure that payrates are reported correctly to CalPERS.

The District should work with CASD to determine the impact of this incorrect payrate reporting and determine the necessary adjustments to the sampled member's account pursuant to Government Code section 20160.

Condition:

In conjunction with Finding 2, OAS found the District under reported the payrate for the same employee. OAS noted the employee received a salary increase from \$33.51 to \$35.18 effective January 28, 2012. However, the District incorrectly reported a payrate of \$33.51 from May 19, 2012 through December 31, 2012. The District should have reported a payrate of \$35.18.

Criteria:

Government Code: § 20160, § 20636(b)(1)

LOOMIS FIRE PROTECTION DISTRICT

Finding 4: Regular earnings were over reported.

Recommendation:

The District should report regular earnings that are earned during normal working hours.

The District should work with CASD to assess the impact of the incorrect reporting and determine what adjustments, if any, are needed to the sampled member's account pursuant to Government Code section 20160.

Condition:

The District over reported regular earnings for one sampled employee during the 11/17/12 – 11/30/12 earned period. After reviewing the District's payroll information for the sampled employee, OAS found that the employee took 48 hours of unpaid leave; 24 hours on November 27, 2012 and 24 hours on November 28, 2012. The unpaid leave equated to a reduction in regular earnings of \$480.00. The District inadvertently reduced the employee's earnings by \$48.00 instead of \$480.00.

Criteria:

Government Code: § 20160, § 20630(b), § 20636(b)(1)

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Finding 5: FLSA premium pay, holiday pay and uniform allowance were not reported as earned.

Recommendation:

The District should report the FLSA premium pay, uniform allowance and holiday pay in the period in which the compensation was earned.

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

Condition:

The District incorrectly reported FLSA premium pay, holiday pay and uniform allowance as lump sums instead of reporting or identifying the pay periods in which the compensation was earned.

FLSA premium pay

District firefighters were paid FLSA premium pay twice a year. OAS reviewed the 11/17/12 - 11/30/12 earned period and found the District correctly paid 78 hours of FLSA premium pay to sampled firefighters. However, the District did not report the FLSA premium pay as earned.

Holiday pay

Firefighters are paid 48 hours of holiday pay twice a year, a total of 96 hours annually. OAS reviewed the 11/17/12 - 11/30/12 earned period and found the District correctly paid 48 hours of holiday pay to sampled firefighters. However, the District did not report the holiday pay as earned.

Uniform allowance

The Firefighters Association MOU stipulates that the District will pay an annual \$700 clothing allowance to purchase required uniforms on the first pay day after July 1. To ensure the District correctly paid and reported the uniform allowance, OAS reviewed the District's July 2012 payroll summary and the CalPERS contribution detail report for earned period 6/16/12 - 6/29/12 for one sampled employee. OAS determined the District correctly paid the uniform allowance but did not report the uniform allowance as earned.

Criteria:

Government Code: § 20160, § 20636(a), § 20636(c)(3)

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Finding 6: Member contributions were incorrectly reported as EPMC.

Recommendation:

The District should immediately discontinue reporting member contributions as EPMC. The District should report member contributions as Tax Deferred Member Paid Contributions (TDMC).

The District should work with CASD to assess the impact of the incorrect reporting and determine what adjustments are needed for the member accounts pursuant to Government Code section 20160.

Condition:

The District incorrectly reported member contributions for seven sampled employees as EPMC rather than as TDMC. The District employees paid their own member contributions. The District had a 414(h)(2) resolution, adopted November 10, 2010 to report member contributions as tax deferred. The District should report all member contributions as tax-deferred member contributions for all employees.

Criteria:

Government Code: § 20160

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Finding 7: Compensation was not reported for an employee with prior membership.

Recommendation:

The District should report compensation to CalPERS for all eligible employees.

The District should work with CASD to assess the impact of this non-reporting and determine what adjustments are needed for the sampled member's account pursuant to Government Code section 20160.

Condition:

The District did not report compensation for one sampled employee that was a member of CalPERS. Specifically, one employee established CalPERS membership as a Reserve Firefighter on June 2, 2012 and remained employed with the District at the time of OAS on-site fieldwork. Compensation was paid for 24 hours during fiscal year 2011/2012 and 445.5 hours from July 1, 2012 through December 28, 2012. The employee was hired as an Apprentice Firefighter with the District and subsequently enrolled into CalPERS membership after December 28, 2012. The District did not report compensation for the employee in the period of June 2, 2012 through December 28, 2012.

Criteria:

Government Code: § 20160, § 20305(a) § 20636

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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 B. OAS limited the test of transactions to employee samples selected from the District'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 District 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

Date: November 2013

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LOOMIS FIRE PROTECTION DISTRICT

APPENDIX A

BACKGROUND

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BACKGROUND

California Public Employees' Retirement System

CalPERS provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CASD manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. BNSD sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

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APPENDIX B

OBJECTIVES

LOOMIS FIRE PROTECTION DISTRICT

OBJECTIVES

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

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

This review covers the period of September 11, 2010 through December 31, 2012.

SUMMARY

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

- ✓ Reviewed:
 - Provisions of the Contract and contract amendments between the District and CalPERS
 - Correspondence files maintained at CalPERS
 - District Board minutes and District Board resolutions
 - District written labor policies and agreements
 - District salary, wage and benefit agreements including applicable resolutions
 - District personnel records and employee hours worked records
 - District payroll information including Contribution Details reports
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Various other documents as necessary
- ✓ Reviewed District payroll records and compared the records to data reported to CalPERS to determine whether the District correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to District 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 District's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed CalPERS Contribution Details reports to determine whether the payroll reporting elements were reported correctly.

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- ✓ Reviewed the District's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the District's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the District's affiliated entities to determine if the District shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the District or by the affiliated entity.
- ✓ Reviewed the District's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

LOOMIS FIRE PROTECTION DISTRICT

APPENDIX C

DISTRICT'S WRITTEN RESPONSE



NOVEY | TRIBUIANO | YAMADA, LLP
ATTORNEYS AT LAW

Sent Via E-Mail: diana_thomas@calpers.ca.gov

NOVEMBER 4, 2013

Diana Thomas
CalPERS Office of Audit Services

**Re: Loomis Fire District
Case No. P12-015**

Dear Ms. Thomas,

In response to CalPERS' Public Agency Review, the District disagrees with and opposes Finding and Recommendation number one (1). With respect to the remaining findings, numbers two (2) through seven (7), the District does not oppose these findings. Please let me know if you have any questions. Thank you.

Sincerely,

NOVEY, TRIBUIANO & YAMADA

A handwritten signature in black ink, appearing to read 'W. Yamada'.

WILL M. YAMADA
Partner