

Office of Audit Services



CalPERS

Public Agency Review

Merced County Housing Authority

**CalPERS ID: 2673031300
Job Number: P14-023**

May 2015



California Public Employees' Retirement System
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May 29, 2015

CalPERS ID: 2673031300
Job Number: P14-023

Rennise Ferrario, Executive Director
Merced County Housing Authority
405 U Street
Merced, California 95341

Dear Ms. Ferrario:

Enclosed is our final report on the results of the public agency review completed for the Merced County Housing Authority (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 2 and Finding 3. We appreciate the additional information regarding Finding 2 and Finding 3 that you provided in your response. After consideration of this information, our recommendations remain as stated in the report. However, we have modified the report to clarify the issues.

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

Sincerely,

Original signed by Young Hamilton

YOUNG HAMILTON, Acting Chief
Office of Audit Services

Enclosure

cc: Board of Commissioner, Merced County Housing Authority
John Daughtery, Finance Officer, Merced County Housing Authority
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Carene Carolan, Chief, MAMD, CalPERS

MERCED COUNTY HOUSING AUTHORITY

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the Merced County Housing Authority (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 schedules did not meet all of the Government Code and CCR requirements.
- Non-reportable compensation was included in base payrates and earnings.
- Special compensation was not reported as required by the Government Code and CCR.

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, 1962 to provide retirement benefits for local miscellaneous employees. 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 2014-15, the OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from July 1, 2011 through June 30, 2014. One of the employees selected was subject to the Public Employees' Pension Reform Act of 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 schedules did not meet all of the Government Code and CCR requirements.

Condition:

The Agency's pay schedules were not duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws. Also, there were no effective date and date of any revisions. Additionally, the Agency did not maintain one pay schedule that identified the position title and payrate for every employee position as required by the CCR. Multiple pay schedules were needed to locate sampled position titles.

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

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

Pay amounts reported for positions that do not comply with the pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). There are no exceptions included in Government Code Section 20636(b)(1).

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Recommendation:

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

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

Criteria:

Government Codes: § 20160, § 20636

CCR: § 570.5

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2: The Agency incorrectly reported non-reportable compensation with base payrate and regular earnings.

Condition:

The Agency incorrectly reported non-reportable compensation as part of base payrate and regular earnings in the pay period ending June 29, 2014. The Agency compensated an employee with a five percent pay increase for performing additional duties. OAS found the additional compensation was not reportable because it does not meet the definition of Temporary Upgrade Pay as described in CCR Section 571. The definition states that Temporary Upgrade Pay is compensation paid to employees who are required to work in an upgraded position/classification of limited duration. Because the employee was only assigned temporary additional duties and did not work in an upgraded position, the compensation did not meet the definition of compensation earnable under Government Code Section 20636 and special compensation as provided for in CCR Section 571.

Recommendation:

The Agency should not report additional compensation unless it meets one of the definitions of special compensation listed in CCR Section 571.

The Agency should ensure the payrate and earnings are correctly reported.

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

Criteria:

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

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

Condition:

- A. The Agency did not report the monetary value of uniforms for classic employees required to wear uniforms. Specifically, the Agency provides Maintenance and Migrant Department employees with uniforms, but did not report the monetary value of the uniforms provided as required by the Government Code and CCR. The monetary value for the purchase, rental, and/or maintenance of required clothing is a statutory item of compensation which must be reported to CalPERS as special compensation.
- B. The Agency did not include the conditions for payment of the uniforms, including, but not limited to, eligibility for, and amount of, the special compensation in a written labor policy or agreement as required by CCR Section 571.

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 indicating the eligibility for and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification. In addition, special compensation must not be paid exclusively in the final compensation period and not be final settlement pay.

Recommendation:

The Agency should ensure the monetary value of uniforms and uniform maintenance are reported as special compensation for classic employees.

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

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

Criteria:

Government Codes: § 7522.34(c)(7), § 20160, § 20636
CCR: § 571

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. 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, of California Code of Regulations.

Respectfully submitted,

Original signed by Young Hamilton

YOUNG HAMILTON, CPA, CIA, CISA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Chris Wall, Senior Manager
Nuntawan Camyre, Auditor
Noah Schreier, 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 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 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 meetings laws.

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- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when unlawful employment occurs.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's 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

Housing Authority of the County of Merced

405 U Street, Merced, CA 95341

Phone (209) 722-3501 Fax (209) 722-6452

Visit our website at: www.merced-pha.com



May 18, 2015

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

Re: Response by the Housing Authority County of Merced to the April 29, 2015 Draft Audit Report, CALPERS ID: 2673031300 JOB NUMBER: P14-023

Dear Acting Chief Hamilton:

The Housing Authority of the County of Merced (Authority) is in receipt of the Office of Audit Service's (OAS) April 29, 2015 Draft Audit Report (Report) relating to the Authority's contract with the California Public Employee's Retirement System (CalPERS). The Authority appreciates OAS's efforts in conducting its compliance review and the opportunity to comment on the Report. The Authority is in agreement with portions of the Report but, unfortunately, there appear to be some factual errors contained in the Report which materially affect the outcome.¹ This response should clarify those areas of disagreement. However, the Authority agrees that there are issues needing correction, and the Authority looks forward to working with OAS to remedy any deficiencies in the Authority's compliance with its CalPERS contract.²

FINDINGS, RECOMMENDATIONS AND THE AUTHORITY'S RESPONSE

A Finding 1: The Agency's pay schedules did not meet all of the Government Code and CCR Requirements.

OAS opines that the maintenance of separate salary schedules for represented and unrepresented employees is a violation of CCR 570.5.

¹ The Authority believes it premature to file a formal appeal since there is no final decision. However, should the Report trigger any timeline to file a formal appeal, CalPERS may consider this response the Authority's formal appeal of the decisions in the Report and as a request for an administrative appeal pursuant to Title 2, California Code of Regulations, Section 555.1.

² The original response date of May 13, 2015 was extended to May 27, 2015 by communication from Nuntawan Camyre of OAS.

B Recommendation 1: The Agency should ensure its pay schedule meets all of the Government Code and CCR requirements.

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

Authority's Response to Recommendation 1:

OAS has alleged a failure to comply with all Government Code and CCR requirements for the maintenance of salary schedules. The Authority has reviewed the requirements of Government Code sections 20160, 20636 and CCR section 570.5, 571 (b). After reviewing the Report and these requirements, the Authority will fully comply with Government Code and CCR's as related to salary schedules. The Authority's Board of Commissioners (Board) will consider a properly agendized item during the regular meeting of May 19, 2015 and combine the two separate lists which currently exist so that only one list exists. The Board will further order pursuant to resolution that the salary schedule be maintained and posted or immediately accessible and available for public review, pursuant to all requirements of CCR 570.5.³

Further, the Authority will work closely with the EAMD to resolve any account issues which may exist as a result of non-compliance as discussed herein. The Authority will request, pursuant to CCR 570.5(b), that CalPERS use the existing documentation and Board records to resolve any account issues.

C Finding 2: The Agency incorrectly reported non-reportable compensation with base payrate and regular earnings.⁴

OAS alleges in Finding 2 that an individual's additional compensation for additional duties was incorrectly included as reportable income. OAS argues that because the individual was a full time employee, any additional duties must have been completed in overtime. Overtime is not reportable. OAS also states that the individual is not eligible for special compensation in that the duties assigned to the employee were temporary and not associated with to an upgraded or reclassified position, citing Government Code section 20636 and CCR 571(b).

D Recommendation 2: The Agency should ensure the payrate and earnings are correctly reported.

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

³ The lists maintained by the Authority were based upon labor relations issues. However, each list was maintained as a public document and each list was approved by the legislative authority at a regularly scheduled public meeting as envisioned by the applicable CCR sections.

⁴ Reference is made to confidential information contained in Appendix B of the draft report.

Authority's Response to Recommendation 2:

The Authority respectfully asserts that the information relied on, or reportedly relied on, the draft report is factually incorrect. The individual subject of this discussion did not work overtime but, instead, included the additional duties within the regular work day. Such fact is supported by the individual's payroll records. Moreover, while the work was classified as out of class, it was assigned to the individual with the intent to reclassify those job duties so as to be permanently assigned to the employee. The Authority argues that the compensation reported to CalPERS as a result of the assignment was and is special compensation. Government Code Section 20636(c) (1) defines special compensation as payments received for a work assignment, as long as performed during normal working hours. (Government Code § 20636 (c) (3).)

Here, the employee was given a work assignment which included extra duties and those duties were performed during normal working hours. Moreover, the employee was receiving upgraded pay associated with working out of class as defined by a duly approved labor agreement. (See Agreement between HACM and AFCSME p. 28 section 7.) Pursuant to CCR 571(a) (3) this compensation is allowable as upgraded premium pay for extra duties.

Notwithstanding the foregoing, the Authority will work closely with EAMD to resolve any discrepancies in the payrate reported and which continue to exist.

E Finding 3: The Agency did not report special compensation as required.

OAS alleges in Finding 3 that the monetary value of uniforms and maintenance of the uniforms required to be worn by employees of the Maintenance and Migrant Department were not reported a special income pursuant to CCR section 571. OAS further alleges that the conditions for payment for the uniforms, including eligibility and amount of compensation was not specified in the applicable labor policy or agreement.

F Recommendation 3: The Agency should ensure the monetary value of uniforms and uniform maintenance are reported as special compensation for classic employees.

The Agency should further ensure that the conditions for payment of the uniforms are contained in a written labor policy or agreement as required by the CCR.

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

Authority's Response to Recommendation 3:

While the Authority is in full agreement with OAS in its interpretation of special compensation, such interpretation is not applicable here. The premise of the OAS recommendations are that the employees receive a value in uniforms and that value should be included as special compensation. However, as a factual matter, the uniforms provided to employees with the Maintenance and Migrant Department are provided for the benefit of the Authority, not the employee. The employees regularly work around the residences of Authority

clients. It is necessary that they be assured these workers are authorized to be on the grounds. Moreover, the uniforms are owned by the Authority without any remuneration to the employees.

Uniforms are provided pursuant to a labor agreement and are clearly designated as property of the Housing Authority. Uniforms are maintained by the employee and the Housing Authority may discontinue the provision of uniforms at its discretion. (See, Agreement HACM and AFCSME p. 29 section 8.) While Government Code section 20636 (c) (6) defines uniform allowances or the monetary value of employer provide uniforms as special compensation, the Authority does neither. The uniforms are used by the employees at the Authority's discretion, are not owned by the employee and they receive no allowance for uniforms. The Authority asserts that the uniforms provided to employees cannot be classified as special compensation. CCR 571(a) (5) does allow as special compensation the monetary value of the purchase, rental and maintenance of uniforms. However there is not conferred monetary value as the uniforms are owned by the authority.

Notwithstanding the foregoing, the Authority will work with the EAMD to identify and make adjustments to employee records as necessary.

Conclusion

The Authority desires to resolve all outstanding issues regarding the accounts of it's employees and will work closely with EAMD to do so. Any further documentation or clarification of factual issues will be provided to OAS.

Sincerely

A black rectangular redaction box covering the signature of Rennise Ferrario.

Original signed by Rennise Ferrario

Rennise Ferrario
Executive Director
Housing Authority County of Merced