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January 6, 2012

Employer Code: 0330  
Job Number: P10-028

City of Richmond  
Robert Larson, Finance Director  
450 Civic Center Plaza  
Richmond, CA 94804

Dear Mr. Larson:

Enclosed is our final report on the results of the public agency review completed for the City of Richmond. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report with the exception of finding 1(a): the City incorrectly reported earnable compensation to CalPERS. We reviewed your agency's response and the information provided pertaining to finding 1(a). Based on the information provided, we found that compensation noted in finding 1(a) was properly reported to CalPERS; therefore, finding 1(a) has been omitted from the final 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: Finance Committee Members, CalPERS  
Peter Mixon, General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Mary Lynn Fisher, Chief, BNSD, CalPERS  
Honorable City Council, City of Richmond

# **Office of Audit Services**



## **Public Agency Review**

### **City of Richmond**

**Employer Code: 0330**  
**Job Number: P10-028**

**January 2012**

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# CITY OF RICHMOND

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# CITY OF RICHMOND

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Richmond's (City) enrolled individuals, member compensation, required health and retirement documentation and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page 3 of this report. Specifically, the following findings were noted during the review:

- Earnable compensation was incorrectly reported.
- Non-reportable compensation pay was erroneously reported.
- The value of uniforms and uniform maintenance was not reported.
- The work schedule code and service period code were incorrectly reported.
- Temporary/part-time employees who qualified for membership were not enrolled.
- An unused sick leave balance was over-stated.
- Eligibility verification documentation was not provided for dependents enrolled in Health Benefits Program.
- Health enrollment was not terminated for a separated employee.

The pertinent sections of the Government Code and California Code of Regulations for each finding are described in greater detail in Appendix C.

A confidential list identifying the individuals mentioned in this report has been sent to the City and CalPERS' Customer Account Services Division (CASD) and Benefit Services Division (BNSD) as an appendix to the draft report.

## CITY BACKGROUND

The City was incorporated in 1905 under the laws of the State of California and adopted its charter in 1909. The City operates under a Council-Manager form of government and provides the following services to its citizens as authorized by its charter: police and fire protection, planning and community development, streets and roads, parks and recreation, sewage treatment, drainage and capital projects. In addition, the City has a port, marina, municipal and storm sewer enterprises, a housing authority, a redevelopment agency, a joint power financing authority, and a parking authority which is inactive.

The City contracted with CalPERS effective January 1, 1954, to provide retirement benefits for all miscellaneous employees and amended its contract on October 16, 1964, to include local policemen and firemen. The City's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups. The City contracted with CalPERS effective February 1, 1988, to provide health benefits to all eligible employees.

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## SCOPE

As part of the Board approved plan for fiscal year 2010/2011, the OAS reviewed the City's payroll reporting and member enrollment processes as these processes relate to the City's retirement and health contracts with CalPERS.

The review period was limited to the examination of sampled records and processes from January 1, 2008, through December 31, 2010. The on-site fieldwork for this review was conducted on January 10, 2011, through January 14, 2011, and January 26, 2011, through January 27, 2011. The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings in listed under Appendix B.

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

***Finding 1:*** The City incorrectly reported shift differential pay that did not meet the criteria for special compensation.

### **Recommendations:**

The City should ensure the conditions for payment of the special compensation, amount and eligibility requirements are included in a written labor agreement for shift differential pay.

The City should work with CalPERS CASD to assess the impact of and to determine what adjustments, if any, are needed.

### **Conditions:**

The City erroneously reported shift differential in the amount of \$408.36 on behalf of a sampled Police Lieutenant. Specifically, the sampled Police Lieutenant worked 75 graveyard hours in service period 6/10-2 and the City report the graveyard earnings to CalPERS.

The Police Lieutenants' description of shift differential in the Richmond Police Management MOU did not meet all the requirements of the California Code of Regulations (CCR) section 571. Section 6.1 of the MOU described rates of pay as, "Regular pay rates, premium, and overtime are based upon the rate of pay applicable to the shift to which the employee is regularly assigned. Regular pay rates as used throughout this Section, include supplemental pay for education/training, attainment of degrees and certificates, shift differentials, and longevity pay which may apply to the specific officer." However, shift differential was not defined further in the MOU.

### **Criteria:**

Government Code § 20636 (b)(1), § 20636 (c)(6)  
California Code of Regulations § 571 (a) and (b)(1)(B)

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***Finding 2:*** The City erroneously reported non-reportable compensation to CalPERS.

**Recommendation:**

The City should discontinue reporting floating holiday pay to CalPERS.

The City should work with CalPERS CASD to assess the impact of this erroneous reporting of compensation and determine what adjustments are needed.

**Condition:**

The City over reported holiday pay for its safety employees. Specifically, the City provided 12 approved holidays for Police and Fire personnel and two additional floating holidays in its MOU. OAS determined the City paid and reported 14 holidays for the sampled police and fire employees. The two additional days representing floating holiday pay is not considered reportable compensation.

**Criteria:**

Government Code § 20636 (c)(6)  
California Code of Regulations § 571 (a)(5)

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***Finding 3:*** The City did not report the value of uniforms and uniform maintenance.

**Recommendation:**

The City should report the monetary value of uniforms and uniform maintenance provided to all employees required to wear uniforms.

The City should work with CalPERS CASD to assess the impact of this non-reporting issue and determine what adjustments, if any, are needed.

**Condition:**

The City did not report the value of uniforms and uniform maintenance provided to employees in the Public Works Department who were required to wear uniforms. The General Employees' MOU stated, "Employees assigned field duties in the Parks Division of the Public Works Department shall be provided coveralls or pants, shirts and jackets based on a one-time selection in accordance with the uniform policy as stated in the above paragraph. All other employees in Public Works shall wear pants, shirts and jackets." The City provided an invoice verifying the cleaning and maintaining of uniforms and coveralls for employees in the Public Works department. Although coveralls are safety items and not reportable, the shirts, pants and jackets provided by the City were required when coveralls were not worn. Therefore, the value of uniforms and uniform maintenance should be reported as special compensation to CalPERS.

**Criteria:**

Government Code § 20636 (c)(6),  
California Code of Regulations § 571 (a)(5)



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**Finding 4:** The City incorrectly reported the following payroll reporting elements to CalPERS: (a) Work schedule code, (b) Service period code.

## **Recommendation:**

- a) The City should ensure the correct work schedule code is reported. Work schedule code 173 should be reported for employees whose normal work schedule is 40 hours per week, and work schedule code 243 should be reported for employees whose normal work schedule is 56 hours per week.
- b) The City should ensure the correct service period code is reported. The service period code describes the reporting frequency of compensation. Type "0" is for monthly reporting frequency and "2" is semi-monthly.

The City should work with CalPERS CASD to assess the impact of these incorrect payroll reporting elements and determine what adjustments, if any, are needed.

## **Condition:**

- a) The City incorrectly reported the work schedule code for a sampled employee. Specifically, the City reported a work schedule code of 173 for a Battalion Chief, whose normal work schedule was 56 hours per week. The correct work schedule code to report for this employee was 243.
- b) The City incorrectly reported the service period type for two sampled employees. Specifically, council members were paid and reported on a monthly basis. Therefore, the City should have reported a service period type of "0" (monthly), rather than "2" (semi-monthly).

## **Criteria:**

- a) CalPERS Procedures Manual Page 30
- b) CalPERS Procedures Manual Page 129

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***Finding 5:*** The City did not enroll temporary/part-time employees who met membership eligibility requirements into CalPERS membership.

**Recommendation:**

The City should monitor the hours worked for temporary/part-time employees and ensure that employees are enrolled timely when membership eligibility requirements are met.

The City should work with CalPERS CASD to assess the impact and correct these membership enrollment and reporting issues.

**Condition:**

The City did not properly enroll two sampled part-time employees who met membership eligibility by exceeding 1,000 hours worked in a fiscal year. Specifically, one employee exceeded 1,000 hours worked in the May 16, 2009 pay period and was not enrolled into membership. A second employee exceeded 1,000 hours worked in the June 16, 2009 pay period and was not enrolled into membership.

**Criteria:**

Government Code § 20305(b), § 20044

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***Finding 6:*** The City over-reported unused sick leave balances for retired members.

**Recommendation:**

The City should review the unused sick leave balances reported to CalPERS for members who retired during the review period to ensure sick leave balances were accurately reported to CalPERS.

The City should work with CalPERS BNSD to determine the impact of this incorrect reporting and determine what adjustments, if any, are needed.

**Condition:**

The City over-reported the unused sick leave credit for two sampled retired members. Both members normally worked 37.5 hour weeks. At retirement, one member accumulated 1,325.36 hours of unused sick leave and the other member accumulated 2,006.04 hours of unused sick leave. To determine the accumulated hours to report to CalPERS, the City must convert the hours to days using a divisor of 8 regardless of the member's work schedule. However, the City used a divisor of 7.5 to determine the number of days to report to CalPERS, thus, the unused sick leave balances for the sampled retired annuitants were over- reported.

**Criteria:**

Government Code § 20965,  
CalPERS Procedures Manual, page 189

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***Finding 7:*** The City did not maintain Health Benefit Plan Enrollment Forms (HBD-12) or supporting documentation for dependents enrolled in CalPERS' Health Benefits Program.

**Recommendation:**

The City must ensure that the proper member and dependent enrollment documentation is on file at the City within 60 days from the date of the final report.

The City should work with CalPERS HAS to assess the impact and ensure required health enrollment documentation is maintained. The CalPERS HAS may be contacted at 1-888-CalPERS (1-888-227-7377).

**Condition:**

OAS found the City did not properly maintain the HBD-12 for one sampled employee who declined health benefits and was unable to ascertain the verification of a sampled employee's dependent enrolled in health benefits. The City was unable to provide birth certificates verifying the eligibility of three natural children enrolled under the member's health benefits and a required Affidavit of Eligibility for an economically dependent step-child.

**Criteria:**

Government Code § 22775, § 22797  
California Code of Regulations § 599.502, § 599.500(h), § 599.500(f)  
CalPERS EMHS, Public Agency Health Benefits Procedures Manual, page 03-03

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# CITY OF RICHMOND

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***Finding 8:*** The City did not disenroll an employee from CalPERS health benefits program upon separation from employment.

**Recommendation:**

The City should ensure employees who separate from employment are properly disenrolled from CalPERS health benefits program.

The City should work with CalPERS HAS to assure that appropriate documentation for disenrollment is completed. The CalPERS HAS may be contacted at 1-888-CalPERS (1-888-227-7377).

**Condition:**

On April 21, 2008, one sampled employee was informed that the City Manager received a recommendation to terminate his employment. The City informed the employee on June 10, 2008, that his employment with the City will be terminated effective June 11, 2008. However, the terminated employee was not disenrolled from CalPERS health benefits.

**Criteria:**

California Code of Regulations § 599.506 (a)(1)(a)

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# CITY OF RICHMOND

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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 City's payroll and health 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.

Respectfully submitted,

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

Date: January 2012  
Staff: Michael Dutil, CIA, Senior Manager  
Diana Thomas, CIDA, Manager  
Edward Fama  
Karen Harlan  
Nancy Sayers

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**CITY OF RICHMOND**

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# **APPENDIX A**

## **BACKGROUND**

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# CITY OF RICHMOND

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## BACKGROUND

### California Public Employees' Retirement System

The 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.

CalPERS Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides services for eligible members who apply for service or disability retirement. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits. The Health Account Services (HAS) section, as part of the 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.

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 employers' 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**

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## OBJECTIVES

The objectives of this review were limited to determination of:

- Whether the City 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 City's retirement and health benefits contracts with CalPERS were followed.

This review covers the period of period January 1, 2008, through December 31, 2010. OAS completed a prior review in December 1996, which covered the review period of January 1, 1991, through December 31, 1993. By January 30, 1997, all findings were resolved and the City was placed in compliance. No other similar findings were noted.

## SUMMARY

### **Procedures, Sample Sizes, Sample Periods, and Findings**

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the City's personnel and payroll procedures, reviewed documents, and performed the following procedures. Related sample sizes, sample periods and findings are listed.

- ✓ Reviewed:
  - Provisions of the Contract and contract amendments between the City and CalPERS
  - Correspondence files maintained at CalPERS
  - City Council minutes and City Council resolutions
  - City written labor policies and agreements
  - City salary, wage and benefit agreements including applicable resolutions
  - City personnel records and employee hours worked records
  - City payroll information including Summary Reports and PERS listings
  - Other documents used to specify payrate, special compensation and benefits for all employees
  - Health Benefits Program enrollment records and supporting documentation
  - City ordinances as necessary
  - Various other documents as necessary

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- ✓ Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City reported non-reportable compensation.

Sample Size and Period: Reviewed 20 employees covering two sampled service periods, the second service periods in June 2010 (06/10-2) and December 2010 (12/10-2). In addition, five of the sampled employees were tested in the first service period of December 2010 (12/10-1) for holiday pay.

**Finding 1:** Earnable compensation in the form of special compensation was incorrectly reported.

The City reported special compensation, shift differential pay that was not contained in a written labor agreement.

**Finding 2:** Non-reportable compensation in the form of floating holiday pay was erroneously reported to CalPERS.

**Finding 3:** The value of uniforms provided and uniform maintenance was not reported.

- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to the City's 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 City's governing body in accordance with requirements of applicable public meeting laws.

Sample Size and Period: Reviewed 20 sampled employees in the second service period in December 2010 (12/10-2).

## **No Finding**

- ✓ Reviewed PERS listing reports to determine whether the following payroll reporting elements were reported correctly: contribution code, pay code, work schedule code, service period, and member contributions.

Sample Size and Period: Reviewed 20 sampled employees in the second service period in June 2010 (6/10-2) and December (12/10-2).

**Finding 4:** The City incorrectly reported the following payroll elements to CalPERS:

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- a) Work schedule code.
- b) Service period code.

- ✓ Reviewed the City's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.

Sample Size and Period: Reviewed six temporary/part-time employees in fiscal years 2008/2009 and 2009/2010.

**Finding 5:** The City did not enroll temporary/part-time employees who met membership eligibility requirements into CalPERS membership.

- ✓ Reviewed the City's enrollment practices for retired annuitants to determine if retirees were reinstated when 960 hours were worked in a fiscal year.

Sample Size and Period: Reviewed four retired annuitants in fiscal years 2008/2009 and 2009/2010.

## **No Finding**

- ✓ Reviewed independent contractors to ensure they were properly classified.

Sample Size and Period: Reviewed seven independent contractors in fiscal years 2008/2009 and 2009/2010.

## **No Finding**

- ✓ Reviewed employees related to affiliated parties.

Sample size and period: Reviewed six temporary/part-time employees in fiscal years 2008/2009 and 2009/2010.

## **No Finding**

- ✓ Reviewed the City's calculation and reporting of unused sick leave balances.

Sample size and period: Reviewed seven employees that retired during the review period.

**Finding 6:** The City over-reported unused sick leave for two of seven sampled

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retired annuitants.

- ✓ Reviewed health records to determine whether the City properly enrolled eligible individuals into CalPERS Health Benefits Program.

Sample Size and Period: Reviewed 13 employees and their dependents in the review period

**Finding 7:** The City did not maintain Health Benefit Plan Enrollment Forms (HBD-12) or eligibility verifications for dependents enrolled in CalPERS Health Benefits Program.

- a) Health Enrollment Documents (HBD-12) were not properly maintained.
- b) The City did not provide eligibility verifications for dependents enrolled in CalPERS Health Benefits Program.

- ✓ Reviewed health records to determine whether the City properly enrolled eligible individuals into CalPERS retirement program.

Sample size and period: Reviewed 13 employees and their dependents in the review period.

**Finding 8:** The City did not disenroll an employee from CalPERS health benefits program upon separation from employment.

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# **APPENDIX C**

## **CRITERIA**

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## CRITERIA

Government Code § 20044, defines a fiscal year as:

Any year commencing July 1<sup>st</sup> and ending June 30<sup>th</sup> next following.

Government Code § 20085, states, in part:

(a) It is unlawful for a person to do any of the following:

(1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system....

(b) For purposes of this section, 'statement' includes, but is not limited to, any oral or written application for benefits, report of family relationship..., or continued eligibility for a benefit or the amount of a benefit administered by this system.

(c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine.

(d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to this system... for the amount of the benefit unlawfully obtained.

Government Code § 20221, states:

Each state agency, school employer, and the chief administrative officer of a contracting agency or any other person who its governing body may designate shall furnish all of the following:

(a) Immediate notice to the board, in the manner prescribed by the system, of the change in status of any member resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death.

(b) Any additional information concerning any member that the board may require in the administration of this system.

(c) The services of its officer and departments that the board may request in connection with claims by members against this system.

Government Code § 20222.5, states:

(a) The board may, during the course of an audit, require each state agency, school employer, including each school district represented by a school employer, and contracting agency, to provide information or make available for examination or copying at a specified time and place, or both, books, papers, any data, or records, including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine the

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correctness of retirement benefits, reportable compensation, enrollment in, and reinstatement to this system.

(b) The information obtained from an employer under this section shall remain confidential pursuant to Section 20230.

Government Code § 20305, subdivision (b), states:

This section shall supersede any contract provision excluding persons in any temporary or seasonal employment basis and shall apply only to persons entering employment on and after January 1, 1975. Except as provided in Section 20502, no contract or contract amendment entered into after January 1, 1985, shall contain any provision excluding persons on an irregular employment basis.

Government Code § 20572, states, in part:

(a) If a contracting agency...fails for three months after demand by the board therefore to file any information required in the administration of this system with respect to that agency's employees, or if the board determines that the agency is no longer in existence, the board may terminate that contract by resolution adopted by a majority vote of its members effective 60 days after notice of its adoption has been mailed by registered mail to the governing body of the contracting agency....

Government Code § 20630, subdivision (b), states:

Compensation shall be reported in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636.

Government Code § 20635, states:

When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service. For the purposes of this part, overtime is the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.

Government Code § 20636, subdivision (a), defines compensation earnable by a member as the payrate and special compensation of the member.

Government Code § 20636, subdivision (b)(1), defines payrate, in part, as follows:

"Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of



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employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

Government Code § 20636, subdivision (c)(1), states:

Special compensation shall be limited to that which is received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

Government Code § 20636, subdivision (c)(6), states:

The board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation" as used in this section.

Government Code § 20636, subdivision (d), states:

Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

Government Code § 20965, states:

A local miscellaneous member and local safety member of a contracting agency who has contracted for this provision, whose effective date of retirement is within four months of separation from employment, to be credited at the time of retirement with 0.004 years of service credit for each unused day of sick leave certified to the board by his employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of his or her employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit. Reports of unused days of sick leave shall be subject to audit and retirement benefits may be adjusted where improper reporting is found.

Government Code § 22775, defines family member as:

"Family member" means an employee's or annuitant's spouse or domestic partner and any unmarried child, including an adopted child, a stepchild, or recognized natural child. The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

Government Code § 22797, states:

The board or an authorized representative may perform audits of each employer and may, at a specified time and place, require the employer to provide information or make available for examination and copying books, papers, data, and records, including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine compliance with

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the provisions of this part. The information obtained from an employer shall remain confidential.

California Code of Regulations § 570 states:

“Final settlement pay” means any pay or cash conversions of employee benefits in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. Final settlement pay is excluded from payroll reporting to PERS, in either pay rate or compensation earnable.

For example, final settlement pay may consist of severance pay or so-called “golden parachutes.” It may be based on accruals over a period of prior service. It is generally, but not always, paid during the period of final compensation. It may be paid in either lump-sum, or periodic payments.

Final settlement pay may take the form of any item of special compensation not listed in Section 571. It may also take the form of a bonus, retroactive adjustment to payrate, conversion of special compensation to payrate, or any other method of payroll reported to PERS.

California Code of Regulations § 571, subdivision (a), states:

The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement.

California Code of Regulations § 571, subdivision (a)(5), defines holiday pay as, Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to CalPERS.

California Code of Regulations § 571, subdivision (b)(1) states:

The Board has determined that all items of special compensation listed in subsection (a) are: Contain in a written labor policy or agreement...

California Code of Regulations § 571, subdivision (b)(1)(B) states:

Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation.

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California Code of Regulations § 599.500, contains definitions that apply to the Public Employees' Medical and Hospital Care Act, including the following pertinent provisions:

(f) Enroll means to file with the employing office a properly completed Health Benefits Plan Enrollment Form electing to be enrolled in a health benefits plan....

(h) Register not to enroll means to file with the employing office a properly completed Health Benefits Plan Enrollment Form electing not to be enrolled in a health benefits plan.

(k) Eligible means eligible under the law and this subchapter to be enrolled....

(n) A child attains the status of "family member" at birth.... "Family member" includes any unmarried child who is economically dependent upon the employee or annuitant, when there exists a parent-child relationship with the employee or annuitant....

California Code of Regulations § 599.502 states, in part:

The employing office will afford each eligible employee and annuitant an opportunity to enroll or to register not to enroll during such times as his enrollment is authorized under these rules by supplying the necessary information relating to available plans and by assisting in the completion of a health benefits plan enrollment form. The employing office will forward all such forms properly completed to the Board's Health Benefits Division.

California Code of Regulations § 599.506, subdivision (a), states:

An employee's enrollment ceases at midnight of the earliest of the following dates:

(1) The last day of the month following the month in which:

(A) Employment is terminated either by resignation or by his or her agency for reasons other than for cause.

## **CalPERS Health Benefits Procedures Manual**

CalPERS Public Agency Health Benefits Procedures Manual, page 03-03, states, in part, "CalPERS, as well as the contracting agency, have the right to request any documentation needed to support dependent eligibility at the time of enrollment, or any time thereafter."

The Declaration of Health Coverage form (HB-12A) is to ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA). Effective January 1, 1998, each employee must sign the HB-12A when they are first eligible to enroll or when they make any change to their health coverage. This includes

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# CITY OF RICHMOND

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open enrollment changes, changing health plans when moving, adding or deleting a dependent, or when canceling health benefits. The employer must provide the HB-12A at the time the employee requests enrollment or with the HBD-12 form. The employer must also provide the employee a copy of the signed form and keep the original in the employee's file.

## **CalPERS Procedures Manual Employer Services Division**

Page 99, describes “work schedule code” as a 3-digit numeric code that is a very important entry as it is used to calculate employer rate and member retirement. It identifies what the employer considers to be full-time employment for employees in the same work group, such as by department or duties, but not by individual employee. Approved work schedule codes range from 34 to 60 hours per week. The work schedule code typically will not vary from report to report. The following formula is used to determine the work schedule code for a full-time monthly paid employee:

Number of hours per week X 52 weeks per year / 12 months per year

56 hours/week X 52 weeks/year divided by 12 months/year = 243 Work Schedule Code

Page 189 explains Conversion of Sick Leave Credits. It states, "All employees, regardless of their work schedule (6.6 hours, 4/10/40, 9/8/80, 52 hour, etc.) will have any accumulated unused hours of sick leave service credit divided by eight to determine the number of days to report to CalPERS for the purposes of enhancing the retirement benefit. No exceptions."

Page 129 explains full-time service credit for elected/appointed officials. It states, "Elected/appointed officials who elect to be covered by CalPERS must receive full-time service credit during their term of office. Compensation, not reimbursement of expenses, is required to be reported. Samples of the various reporting periods and how to report them follow this section. If the official receives a monthly amount of compensation but the reporting frequency is other than monthly, use the following guidelines to report the individual on your payroll."

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**CITY OF RICHMOND**

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# **APPENDIX D**

## **STATUS OF PRIOR REVIEW**

**FOLLOW UP ON PRIOR REVIEW FINDINGS  
CITY OF RICHMOND  
DECEMBER 1996**

<i>Prior Review Finding</i>	<i>Prior Review Recommendation</i>	<i>Status of Prior Recommendation</i>
1. The City reported final settlement pay for three employees.	The City should stop including final settlement pay in compensation reported to CalPERS.	Implemented. No similar observations were noted.
2. The City did not reinstate a retired annuitant.	The City should establish a centralized method to monitor whether employees hired are retired annuitants and ensure that those individuals are reported to CalPERS when they work in excess of the 960-hour limit.	Implemented. No similar observations were noted.
3. The City reported employer paid member contributions as compensation.	The City should ensure that any policy it negotiates with employee groups complies with all requirement of PERL that are in place at the time the agreements are approved.	Implemented. No similar observations were noted.
<p><b><u>Conclusion:</u></b> The City implemented all of the recommendations of our prior review dated December 1996.</p>		

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**CITY OF RICHMOND**

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# **APPENDIX E**

**CITY RESPONSE**

October 31, 2011

**VIA FACSIMILE  
(916) 795-4023  
AND EXPRESS MAIL**

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

Re: *Response of City of Richmond to September 2011 Draft Audit Report*  
*Client-Matter: RI424/001*

Dear Ms. Junker:

The City of Richmond ("City") is in receipt of the September 2011 draft audit report prepared by the California Public Employees' Retirement System ("CalPERS"). The City disputes CalPERS' proposed Finding No. 1(a), as outlined below.<sup>1</sup> The City is not disputing the other findings in the draft audit report, and to the extent those other findings are contained in CalPERS' final report, the City intends to work with CalPERS' staff to correct any outstanding issues with the City's practices related to CalPERS. The City was graciously given an extension by Karen Harlen of CalPERS until November 1, 2011 to provide this response.

**I. FINDING NO. 1(a)**

In its draft report, CalPERS made the following proposed finding and corresponding recommendation:

**Finding 1:** The City incorrectly reported earnable compensation to CalPERS.

- a) The value of longevity pay, incentive pay and special assignment pay for sampled employees was over-reported.

\* \* \*

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<sup>1</sup> The City believes that it is premature to file a formal appeal at this time as no final decision has been made. However, in the event that CalPERS is of the belief that its draft audit report triggers any timeline to file a formal appeal, PERS may consider this response the City's formal appeal of its decision and request for an administrative appeal pursuant to Title 2, California Code of Regulations, section 555.1.



**Recommendation:**

- a) The City should ensure special compensation items are calculated only on base payrate.

CalPERS stated the following as the basis for its finding and recommendation:

**Conditions:**

- (a) OAS found that the City incorrectly calculated special compensation by combining the special compensation items with base payrate. Special compensation should be calculated on base payrate only, as stated in the MOU. Specifically, longevity pay for two sampled Police Officers Association (POA) employees, two sampled POA management members and three firefighters were over-reported. Additionally, bilingual pay, hazardous material pay and differential pay were over reported for sampled firefighters.

**II. LEGAL ANALYSIS**

**A. Basis For City's Response**

CalPERS' sole objection is that the specialty pays at issue are not calculated solely on base payrate as required by the City's MOUs and therefore, any part in excess of that calculated on base payrate only is not reportable to CalPERS as special compensation. CalPERS has not taken the position that calculating special compensation as the City has done is, in and of itself, a violation of statute or CalPERS' regulations. As will be shown below, CalPERS' position is incorrect as both a matter of fact and of law. The MOUs do not require that specialty pays be calculated on base payrate only. Moreover, even if they did and the City nonetheless calculated the specialty pays on base payrate plus other compensation, CalPERS has a fiduciary duty to its members to allow the entirety of the specialty pays to be reported as special compensation and included in compensation earnable.

**B. The MOUs Do Not Require Special Compensation To Be Calculated On Base Payrate Only**

CalPERS asserts that longevity pay is not calculated as required by the City's MOUs with the Richmond Police Management Association ("RPMA"), Police Officers Association ("RPOA") or Fire Association. The 2008-2012 RPMA MOU with the City provides at section 26 that longevity shall be "additional pay," as follows:

**26. LONGEVITY**

Effective July 2, 2004, Police Lieutenants and Police Captains who have completed their tenth (10th) year of sworn service with the Richmond Police Department shall receive four percent (4%) additional pay.

Police Lieutenants and Police Captains who have completed their fifteenth (15th) year of sworn service with the Richmond Police Department shall receive three percent (3%) additional pay for a total of seven percent (7%) additional pay.

Police Lieutenants and Police Captains who have completed their twenty-fifth (25th) year of sworn service with the Richmond Police Department shall receive two percent (2%) additional pay for a total of nine percent (9%) additional pay.

Nowhere in the RPMA MOU is longevity pay required to be calculated only on base payrate. Copies of the first page and section 26 of the RPMA MOU are attached for your convenience.

The 2008-2012 RPOA MOU provides for longevity pay at section 33. It states,

33. LONGEVITY: Effective January 1, 1998, Police Officers and Police Sergeants who have completed their fifth year of sworn service with the Richmond Police Department shall receive 2% additional pay. Police Officers and Police Sergeants who have completed their tenth year of sworn service with the Richmond Police Department shall receive 2% additional pay for a total of 4%. Police Officers and Police Sergeants who have completed their fifteenth year of sworn service with the Richmond Police Department shall receive 3% additional pay for a total of 7%. Police Officers and Police Sergeants who have completed their twenty-fifth year of sworn service with the Richmond Police Department shall receive 2% additional pay for a total of 9%.

As with the RPMA MOU, there is no requirement that longevity pay be calculated on base payrate only. Copies of the first page and section 33 is attached for your convenience.

CalPERS also asserted that the following specialty pays for Fire Department employees are over-reported to CalPERS for the same reason as above: bilingual pay, longevity, hazardous materials pay and differential pay. Those pays are set forth in sections 8, 9(C)(2), 9(C)(3) of the 2006-2009 MOU between the City and IAFF Local 188 ("Fire"),<sup>2</sup> and the relevant portions are as follows:

#### Bilingual Pay

A. The City recognizes the diversity of the community. To this extent, the purpose of the bilingual pay is to ensure that Fire Department personnel are able to communicate effectively so that language barriers will not serve as an impediment to carrying out the mission of the Fire Department.

B. The Fire Department will pay 2% bi-lingual pay to those specified members who meet the following qualifications:

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<sup>2</sup> It is not clear what CalPERS is referring to when it mentions differential pay, as there is no section or subsection in the Fire MOU identified as that type of pay.

\* \* \*

2. LONGEVITY. Effective January 1, 1998, An employee with 5 years of service with the Richmond Fire Department shall receive an additional 2% above regular salary. Employees with 10 years of service shall receive an additional 2.5% above regular salary for a total of 4.5%. Employees with 25 years of service with the Richmond Fire Department shall receive an additional 4.5% above regular salary for a total of 9%.

3. HAZARDOUS MATERIALS RESPONSE TEAM: The purpose of this incentive is to compensate team members for the additional special and arduous duties of this team assignment. An employee who is assigned to the Richmond Hazardous Materials Response Team shall receive an additional 5% above regular salary for time actually worked as a member of the team, and for any job related disability time incurred during the remainder of the specific period of such team assignment in either regular or alternative status in which the disability occurs. Six bargaining unit members per shift shall receive the HAZMAT differential.

Copies of these sections and the first page of the Fire MOU are attached for your convenience.

None of these specialty pays require that they be calculated on base payrate only. For some reason, CalPERS has interpreted these sections to require the specialty pays to be calculated on base payrate only. Since none do, CalPERS should revise Finding 1(a) of the draft audit report.

C. **CalPERS Owes Its Primary Fiduciary Duty To Its Members And Pursuant To That Duty, Must Include All Of The Specialty Pays Reported As Compensation Earnable**

CalPERS' Finding 1(a) is not only unjustified on the facts as described above, but even if the plain language of the MOUs could somehow be interpreted as requiring the specialty pays to be calculated on base payrate only, the Finding should be reversed. Not reversing Finding 1(a) violates CalPERS' constitutional duties to its members. Proposition 162 was approved by the voters in 1992. Among other things, it amended the California Constitution, Article 16, Section 17(b) by adding the highlighted portion to this section, as follows:

“The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto and defraying reasonable expenses of administering the system. **A retirement**

**board's duty to its participants and their beneficiaries shall take precedence over any other duty.” (Emphasis added).**

The amendment made it clear that of all the duties of a public pension retirement board, those owed to its members are paramount. In *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 115 Cal.Rptr.2d 151, the Court of Appeal addressed whether the proposition would be applied even if doing so would result in unexpected liabilities to public employers. The court determined that the Constitution's priority of fiduciary duties would be applied even in those situations where it would result in extra expenses to employers. The court relied on statements in the ballot pamphlet sent to voters regarding Proposition 162. The court stated:

“The Ballot Pamphlet accompanying Proposition 162 warned ‘The requirement that pension system boards give highest priority to providing benefits to members and their beneficiaries could result in higher costs to employers.’ (See Ballot Pamp., Gen. Elect. (Nov. 3, 1992). Analysis of Leg. Analyst, p. 37). This weakens the City's claim that retroactive reclassification unfairly harms local agencies by causing unexpected liabilities. **Instead it reflects a policy in favor of paying employees what they earn. That is not inherently unfair.**” Id. at 54, emphasis added).

CalPERS' dispute is as to the way the City calculated the specialty pays in question in comparison to CalPERS' interpretation of those pay provisions in the City's MOUs. The dispute is not that the specialty pays were omitted from the MOUs or even that calculating them on base payrate plus specialty pays is inherently wrong or would impose costs on the City or the PERS system. There is no dispute that those affected earned all the components of their reported compensation earnable, and that employer and employee contributions were paid on the full amounts reported. Given all the above, CalPERS is in violation of its fiduciary duties to its members by keeping Finding 1(a) in the Final Audit Report. The proposed finding will result in an unjust penalty given the nature of the error CalPERS is trying to correct. The matter could be resolved much easier and in accord with CalPERS' fiduciary duty by allowing the City and its employee organizations to negotiate revisions to the MOU language satisfactory to CalPERS.

### **III. CONCLUSION**

Based on the foregoing, the City objects to Finding 1(a) of CalPERS' draft audit report. None of the MOUs in question require the specialty pays to be calculated on base payrate only. Even if they could somehow be construed to require calculation on base payrate only, CalPERS' fiduciary duty to its members requires that the finding be removed from the final report under these circumstances. At a minimum, CalPERS should allow the City and its employee organizations to revise the MOU language in question to language acceptable to CalPERS to allow the entirety of the specialty pays in question to be included in compensation earnable.

Margaret Junker, Chief  
October 31, 2011  
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Please contact the undersigned if you have any questions.

Very truly yours,

LIEBERT CASSIDY WHITMORE



Steven M. Berliner

SMB/tp  
Enclosures  
cc: Rob Larson