Office of Audit Services

Public Agency Review

City of Chino

CalPERS ID: 6931700878
Job Number: P14-055

October 2015

California Public Employees' Retirement System
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October 15, 2015

CalPERS ID: 6931700878
Job Number: P14-055

Anthony Arroyo, Director of Human Resources/Risk Management
City of Chino
13220 Central Avenue
Chino, CA 91710

Dear Mr. Arroyo:

Enclosed is our final report on the results of the public agency review completed for the City of Chino (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report.

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

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief
Office of Audit Services

Enclosure

cc: City Council, City of Chino
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

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RESULTS IN BRIEF

The objective of our review was to determine whether the City of Chino (Agency) complied with applicable sections of the California Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), California Code of Regulations (CCR), and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Pay schedule did not meet all of the of the Government Code and CCR requirements.
- Special compensation was not reported as required.
- Contributions were incorrectly reported.
- A part-time employee was incorrectly classified and not enrolled upon meeting eligibility requirements.
- Unused sick leave was incorrectly reported.

OAS recommends the Agency comply with applicable sections of the Government Code, PEPRA, 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 March 16, 1964 to provide retirement benefits for local miscellaneous and safety employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and 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 CalPERS Board of Administration (Board) approved plan for Fiscal Year 2014-15, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from July 1, 2011 through December 31, 2014. The review objectives and methodology are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

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

Condition:

The Agency's pay schedule did not meet all of the requirements of the Government Code and CCR. Specifically, the pay schedule did not list the position titles and payrates for members of the City Council.

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 payrate definition and 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). When an employer does not meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

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Recommendation:

The Agency should ensure its pay schedule meets all 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

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

Condition:

A. The Agency did not report Training Officer Pay as special compensation in the pay period ended December 7, 2014. Because Training Officer Pay meets the definition listed in CCR Section 571(a) and conforms with the requirements listed in CCR Section 571(b), the Agency should have reported Training Officer Pay as special compensation.

B. The Agency incorrectly reported Holiday Pay as a lump sum amount. Specifically, the Agency reported Holiday Pay in the pay period ended July 6, 2014 as a lump sum amount instead of in the pay periods in which the holiday hours were earned. The Agency's written labor policy provides police officers and police management employees with 100 hours of Holiday Pay annually for designated holidays. Employees have the option of converting the holiday hours to accumulated time off or cash. Any remaining balances are automatically cashed out at the end of each fiscal year. Government Code Section 20636 requires the Agency to identify the pay period(s) in which special compensation was earned. Additionally, CCR Section 571 requires cash out of holiday credit to be done at least annually and reported in the pay period earned.

C. The Agency incorrectly reported Holiday Pay as special compensation for an employee. Specifically, the Agency incorrectly reported cash-out for holiday hours in 2013 and 2014 as special compensation when the position held by this employee did not require scheduled staffing without regard to holidays. CCR Section 571 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.

D. The Agency incorrectly reported Uniform Allowance as a lump sum amount instead of when earned. Specifically, the Agency reported Uniform Allowance as a lump sum amount for classic employees of the Chino Police Officer Association, Chino Police Management Group, and the Chief of Police. Government Code Section 20636 requires the Agency to identify the pay period(s) in which special compensation was earned.

E. The Agency incorrectly reported Uniform Allowance for employees in the Police Management Association. Specifically, the Agency reported compensation paid in the amount of $960.00 for Sergeants who work in non-uniform assignments. The Agency also reported compensation paid in the amount of $1,200.00 for Lieutenants who are required to maintain both uniform and non-uniform clothing.

CCR Section 571 defines Uniform Allowance as compensation paid or the monetary value for the purchase, rental, and/or maintenance of required clothing which is a ready substitute for personal attire the employee would otherwise have to purchase. Therefore, Uniform Allowance for non-required clothing is not reportable as special compensation.

F. The Police Management Association's written labor agreement did not clearly identify the amount provided for required clothing. Specifically, the written labor agreement indicates the Agency will provide Uniform Allowance of $1,200.00 for Lieutenants who are required to maintain both uniform and non-uniform clothing. Because non-uniform clothing does not meet the definition of special compensation, it should not be included with reportable special compensation. CCR Section 571 requires all items of special compensation be contained in a written labor policy or agreement and indicate the conditions for payment, including, but not limited to, eligibility for, and amount of, the special compensation.

G. The written labor agreements for the Agency's eligible part-time employees and full-time services employees did not include the conditions for payment of uniforms including, but not limited to, eligibility for, and amount of, the special compensation as required by CCR Section 571.

Recommendation:

The Agency should report Training Officer Pay as special compensation.

The Agency should ensure special compensation is reported as earned.

The Agency should discontinue reporting Holiday Pay for employees who are not required to work on holidays.

The Agency should only report Uniform Allowance that qualifies as special compensation.

The Agency should clearly identify in its written labor agreements the Uniform Allowance amount provided for uniform assignments.
The Agency should ensure the conditions for payment of Uniform Allowance are contained in the part-time and full-time service employees written labor agreements.

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.

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Criteria:

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

3: The Agency incorrectly paid and reported contributions.

Condition:

A. The Agency correctly remitted the appropriate amount of contributions to CalPERS; however, employees who are classic members underpaid their portion of the contribution and the Agency overpaid its portion of the contributions. Specifically, the Agency agreed to split the member contributions on all compensation earnable with its unrepresented and Police Officers Association employees hired before July 1, 2011 as stipulated in its resolution and written labor agreement. However, the Agency paid the full amount of contributions on special compensation, specifically on the value of employer paid member contributions. Contributions must be calculated and paid on both regular earnings and all special compensation items. In addition, the Agency did not update its resolution, obtain approval from its governing body, and submit the resolution to CalPERS.

B. The Agency incorrectly paid and reported member contributions on behalf of an employee. The Agency paid the full eight percent of the member's normal contribution for the City Attorney position. However, the Agency did not pay the eight percent of normal contributions for employees in the closest related group or class. Government Code Section 20691 requires that if an individual is not part of a group or class, the payment shall be limited to the amount paid to similarly situated members in the closest related group or class. OAS determined the closest group is the Executive Management group for which the Agency pays four percent of members' normal contributions.

Recommendation:

The Agency should ensure contributions are paid and reported to CalPERS in accordance with its resolution, written labor agreement, and the criteria listed below.

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, § 20691
CCR: § 569, § 571

4: The Agency did not enroll an eligible employee who was incorrectly classified as an independent contractor.

Condition:

The Agency incorrectly classified an employee as an independent contractor and failed to enroll the individual into membership when eligibility requirements were met. Specifically, OAS determined the individual worked in an employer/employee relationship performing services as a Consultant/Housing Program Coordinator. The Agency did not enroll the individual upon completion of 1,000 hours during the pay period ended February 27, 2014. Government Code Section 20305 requires employees who complete 1,000 hours within a fiscal year to be enrolled into membership effective no later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed.

The Agency initially contracted with the individual effective February 1, 2013 through June 30, 2013 to perform services as a Consultant/Housing Program Coordinator. The Agency extended the employee's contract effective July 1, 2013 through June 14, 2014 and again from July 1, 2014 through June 30, 2015. The individual was under the supervision of the Agency's Principal Planner. OAS identified the following duties which support a finding of control and indicate the individual was a common-law employee of the Agency.

- Administering and implementing housing and rehabilitation programs in accordance with funding source rules and federal/state regulations.
- Ensuring compliance with program eligibility and occupancy standards.
- Developing forms to implement programs and updating program brochures.
- Reviewing initial applications for potential participation in the Agency's housing programs.
- Determining applicant eligibility based on financial and other program parameters.
- Preparing required liens and re-conveyances.
- Conferring with other Agency departments on matters regarding housing rehabilitation and other related programs.
- Informing citizens of program opportunities by composing and disseminating a variety of informational materials.
- Assisting in the preparation of grant funding applications to secure future program funding.

Management and control of CalPERS is vested in the Board as provided in Government Code Section 20120. Each member and each person retired is subject to this part and the rules adopted by the Board pursuant to Government Code Section

20122. Government Code Section 20125 provides that the Board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system. For the purposes of the PERL and for programs administered by the Board, the standard used for determining whether an individual is the employee of another person is the California common-law employment test as set forth in the California Supreme Court case titled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court (Cargill)*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in two precedential decisions, *In the Matter of Lee Neidengard*, Precedential Decision No. 05-01, effective April 22, 2005, and *In the Matter of Galt Services Authority*, Precedential Decision No. 08-01, effective October 22, 2008.

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

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

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

OAS identified the following common facts which support that the Agency controlled the manner and means in which the individual performed the services provided. OAS noted that the individual's work was directed, supervised, and reviewed by the Agency and all aspects of the job duties are closely monitored and supervised by the Agency.

- The Agency provided a cubicle for the individual to work in, as well as, office equipment, stationery, e-mail account, and business cards.
- The individual represented and performed services for the Agency.
- The individual worked exclusively for the Agency.
- The individual works a schedule set by the Agency.
- The individual's compensation is based on a maximum 36 hours per week and is approved by the Agency's Principal Planner.
- The individual is paid on an hourly basis
- The individual's function was formerly performed by an employee of the Agency.
- The Agency provides specific instructions related to work product and desired results.
- The individual is required to personally perform all services outlined in the Scope of Work that was prepared by the Agency.

Based on our review of these facts, OAS determined that the control over the individual is with the Agency and that the employee was a common-law employee of the Agency. As a result, the Agency should have enrolled the individual upon completion of 1,000 hours.

Recommendation:

The Agency should ensure that common-law employees that meet membership eligibility requirements are enrolled and reported to CalPERS.

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: § 20028, § 20056, § 20120, § 20122, § 20125, § 20160, § 20221.5, § 20283, § 20305

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5: The Agency reported incorrect unused sick leave balance for an employee.

Condition:

The Agency did not certify the correct number of sick leave days for one retiring member. Specifically, the Agency certified that the retiring member had 419.28 hours of unused sick leave at the time of retirement. According to the Agency records, the retiring member cashed out sick leave which resulted in a zero balance. As a result, the Agency overstated the retiring member's unused sick leave.

Recommendation:

The Agency should ensure the correct amount of unused sick leave for retiring members is reported to CalPERS.

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

Criteria:

Government Codes: § 20160, § 20965

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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. The procedures performed provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract 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 Beliz Chappuie

BELIZ CHAPPUIE, CPA, MBA
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Diana Thomas, CIA, CIDA, Senior Manager
Alan Feblowitz, CFE, Senior Manager
Sean Gerardo, Auditor

APPENDIX A

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to determine whether the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.

Effective January 1, 2013, new enrollments are checked against the PEPRA definition of "new member," regardless of whether the enrollment is for a first time CalPERS member or an existing member. All members that do not fit within the definition of a new member are referred to as "classic members."

METHODOLOGY

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:
- o Provisions of the contract and contract amendments between the Agency and CalPERS
- o Correspondence files maintained at CalPERS
- o Agency Board minutes and Agency Board resolutions
- o Agency written labor policies and agreements
- o Agency salary, wage and benefit agreements including applicable resolutions
- o Agency personnel records and employee time records
- o Agency payroll information including Contribution Detail Transaction History reports
- o Documents related to employee payrate, special compensation, and benefits
- o Various other relevant documents

✓ 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 entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

APPENDIX B

AGENCY'S WRITTEN RESPONSE

Note: The City provided an enclosure to the response that was intentionally omitted from this appendix.

DENNIS R. YATES
Mayor

EUNICE M. ULLOA
Mayor Pro Tem

CITY of CHINO

GLENN DUNCAN
EARL C. ELROD
TOM HAUGHEY
Council Members

MATTHEW C. BALLANTYNE
City Manager

September 22, 2015

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

RE: Compliance Review (CalPERS ID: 6931700878; Job Number P14-055)

Dear Ms. Chappuie:

Thank you for the time in preparing the compliance review document. This letter is in response to the draft report that was received by the City of Chino on September 11, 2015. Below is the City's response to the review findings:

Finding 1: Agree

Corrections are underway to include the position titles and pay rates for all members of the City Council on the City's pay schedule. The salary schedule will be available to the public and posted on the City's website.

Finding 2: Agree

A. Correction has been made and Payroll staff is now reporting Training Officer Pay as special compensation. The reporting of this special compensation began shortly after the audit was completed.

B. Payroll staff will be working with the CalPERS Employer Account Management Division (EAMD) to ensure that special compensation with regard to Holiday Pay be identified and reported as earned. Modifications will be made to the Police Safety written labor agreements as needed.

C. Correction has been made to discontinue the reporting of Holiday Pay for employees who are not required to work on holidays. This correction was made shortly after the audit was completed.

D. Correction has been made and Payroll staff is no longer reporting Uniform Allowance as a lump sum. The allowance is being reported on a bi-weekly basis.

E. Correction has been made. Payroll staff is only reporting the Uniform Allowance of $770 for Police Safety members as specified within their written labor agreement. Payroll staff has discontinued the reporting of any additional compensation received for "non-required" clothing.

F. Corrections are currently underway to clearly identify the amount provided for required clothing, specifically with regard to uniformed and non-uniformed clothing in the written labor agreement for the Police Management Association.

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G. Corrections are being made to ensure that the conditions and amounts for payment of Uniform Allowance are contained within the written labor agreements.

Finding 3: Agree

A. Correction has been made. Payroll staff has made the necessary adjustments to split the contributions on special compensation, specifically with regard to the value of EPMC.

B. The City is currently in the process of making corrections to the City Attorney's member contributions to match contributions being made by members of the Executive Management Team.

Finding 4: Agree

The City has taken appropriate measures to ensure that common-law employees who meet membership eligibility requirements are enrolled and reported to CalPERS. The employee in question terminated her services on August 11, 2015.

Finding 5: Agree

The City learned that a former staff member had certified the incorrect number of unused sick leave hours for a retiring Police Safety member without relaying the information to Payroll staff, who then cashed out the retiring member's entire sick leave bank. However, a PERS Retirement Program Specialist II recently informed us that the adjustment and removal of the incorrect sick leave did not change the retired member's benefit amount since he was already capped at 30 years (90%). In any case, Human Resources staff will ensure that the correct amount of unused sick leave for retiring members is accurately reported to CalPERS.

The City of Chino is in agreement with all five findings. In some cases, corrections have already been made or are in the process of being made pending the final outcome of the report. We appreciate Mr. Sean Gerardo's professionalism and the time spent with City staff to get the audit completed. We look forward to receiving the final report.

Sincerely,

Original signed by Anthony Arroyo

Anthony Arroyo
Director of Human Resources/Risk Management

Original signed by Jacqueline Lozano

Jacqueline Lozano
Human Resources Analyst

CC: City of Chino Payroll

Enclosure: Email from PERS Retirement Program Specialist II