Office of Audit Services

Public Agency Review

Ebbetts Pass Fire Protection District

CalPERS ID: 2779006014
Job Number: P14-012

June 2015

California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701
TTY: (877) 249-7442
(916) 795-0802 phone, (916) 795-7836 fax
www.calpers.ca.gov

June 26, 2015

CalPERS ID: 2779006014
Job Number: P14-012

Mike Johnson, Fire Chief
Ebbetts Pass Fire Protection District
P.O. Box 66
Arnold, CA 95223

Dear Chief Johnson:

Enclosed is our final report on the results of the public agency review completed for the Ebbetts Pass Fire Protection District (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. 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 Directors, Ebbetts Pass Fire Protection District
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

EBBETTS PASS FIRE PROTECTION DISTRICT

TABLE OF CONTENTS

SUBJECT PAGE

Results in Brief 1

Scope 1

Office of Audit Services Review Results 2

1: Pay Schedule 2

2: Special Compensation 4

3: Payroll 5

4: Membership Enrollment 6

5: Retired Annuitant 7

Conclusion 9

Objectives ..... Appendix A

Agency's Written Response ..... Appendix B

EBBETTS PASS FIRE PROTECTION DISTRICT

RESULTS IN BRIEF

The primary objective of our review was to determine whether Ebbetts Pass Fire Protection District (Agency) complied with applicable sections of the California 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 one of the Government Code and CCR requirements.
- The Agency incorrectly reported special compensation.
- The Agency incorrectly reported payroll elements.
- The Agency did not enroll a part-time employee into membership timely.
- Agency unlawfully employed a retired annuitant.

OAS recommends the Agency comply with applicable sections of the California 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 December 1, 1979 to provide retirement benefits for local miscellaneous employees and local firefighters. 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 as these processes relate to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from July 1, 2011 through June 30, 2014. The review objectives and a summary of the procedures performed are listed in Appendix A.

EBBETTS PASS FIRE PROTECTION DISTRICT

OFFICE OF AUDIT SERVICES REVIEW RESULTS

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

Condition:

The Agency's pay schedule for the fiscal year 2013-14 did not meet one of the Government Code and CCR requirements. Specifically, the time base was not identified.

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). 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.

EBBETTS PASS FIRE PROTECTION DISTRICT

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 make any adjustments, if necessary, to active and retired members' accounts pursuant to Government Code 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 570.5

EBBETTS PASS FIRE PROTECTION DISTRICT

2: The Agency incorrectly reported special compensation.

Condition:

A. The Agency incorrectly reported a five percent Administrative Duty Officer Stipend for the Fire Chief in pay period ending May 31, 2014. The stipend is to compensate the Fire Chief for services rendered outside of normal work hours; however, special compensation is not reportable unless it is for work performed during normal working hours per Government Code 20636.

B. The Agency incorrectly reported Uniform Allowances. The Agency pays safety employees a yearly $400.00 uniform allowance in two semi-annual payments of $200.00 in January and July. The payments cover the previous six month periods. OAS reviewed the January 2014 payment and found it was reported in a lump sum. Special compensation should be reported for the period earned per Government Code 20636.

Recommendation:

The Agency should stop reporting special compensation paid to employees for time worked outside of normal working hours.

The Agency should report special compensation as earned.

The Agency should work with EAMD to make any adjustments, if necessary, to active and retired members' accounts pursuant to Government Code 20160.

Criteria:

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

EBBETTS PASS FIRE PROTECTION DISTRICT

3: Payroll elements were incorrectly reported.

Condition:

A. The Agency incorrectly reported the scheduled full time hours for the Fire Chief for the pay period ending May 31, 2014. The Fire Chief was scheduled to work 40 hours per week; however, the Agency reported 56.1 hours per week. Scheduled hours are an important factor in computing a member's retirement allowance and determining service credit.

B. The Agency incorrectly reported a monthly rate of pay as an hourly rate of pay for an employee in the pay periods ending August 15, 2013 and August 31, 2013. Specifically, the Agency reported the employee's monthly rate of pay, $4,143.64, as an hourly rate of pay.

Payrate and scheduled full-time hours are important factors in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.

Recommendation:

The Agency should ensure they report the correct scheduled hours for employees.

The Agency should ensure payrates are correctly reported.

The Agency should work with EAMD to make any adjustments, if necessary, to active and retired members' accounts pursuant to Government Code 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20636

EBBETTS PASS FIRE PROTECTION DISTRICT

4: The Agency did not enroll a part-time employee into membership timely.

Condition:

The Agency did not enroll a part-time employee who met the 1,000-hour membership criteria during fiscal year 2012-13. The employee completed 1,000 hours of service and met eligibility as of the week ending January 12, 2013; however, the employee was not enrolled into membership until April 16, 2013. Government Code Section 20305 requires employees who complete 1,000 hours within a fiscal year to be enrolled into membership effective not 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.

Recommendation:

The Agency should ensure they enroll and report temporary/part-time employees on a timely basis.

The Agency should work with EAMD to make any adjustments, if necessary, to active and retired members' accounts pursuant to Government Code 20160.

Criteria:

Government Codes: § 20160, § 20305

EBBETTS PASS FIRE PROTECTION DISTRICT

5: Agency unlawfully employed a retired annuitant.

Conditions:

The Agency misclassified the Assistant Fire Chief as an independent contractor. The employee retired from the position of Fire Chief in 2008 and was subsequently rehired by the Agency through an independent contractor agreement. However, using the common law control test, OAS found the retired annuitant was not an independent contractor and instead was an employee of the Agency. OAS determined that this individual was in an employee/employer relationship with the Agency based in part on the following factors:

- The retired annuitant was the Assistant Fire Chief, a position listed in the Agency's organizational chart.
- On occasion the retired annuitant was required to cover as Acting Deputy Chief with full authority.
- The retired annuitant's work was reviewed by the Fire Chief.
- The retired annuitant performed services at the Agency's premises or incident locations.
- The retired annuitant was provided with Agency office space, equipment, and a vehicle.

Pursuant to Government Code Section 21220, a person who has been retired under this System may not be employed in any capacity, thereafter, by a contracting agency, unless he has first been reinstated from retirement or unless the employment without reinstatement is authorized under Article 8, "Employment After Retirement." Any retired member in violation of this shall reimburse the System for any retirement allowance received during the period or periods of employment that are in violation of the law.

OAS reviewed the retired annuitant's 2013-14 payrate, which exceeded the amount listed within the Agency's public pay schedule for employees performing comparable duties. The retired annuitant performing duties of the Assistant Fire Chief was paid $46.90 per hour; however, the maximum payrate listed in a public pay schedule for the Assistant Fire Chief position was $44.48 per hour. Pursuant to Government Code Section 21224, a retired person's rate of pay shall not exceed that paid by the employer to other employees performing comparable duties.

EBBETTS PASS FIRE PROTECTION DISTRICT

Recommendation:

The Agency should ensure that retired annuitants who work under its direction and control are correctly classified and comply with the applicable Government Code sections and CCR.

The Agency should work with CalPERS Benefit Services Divisions (BNSD) to determine the appropriate course of action.

Criteria:

Government Codes: § 20028, § 20125, § 20160, § 21202, § 21220, § 21224(a)

EBBETTS PASS FIRE PROTECTION DISTRICT

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
Alan Feblowitz, CFE, Senior Manager
Dennis Szeto, Auditor

APPENDIX A

OBJECTIVES

EBBETTS PASS FIRE PROTECTION DISTRICT

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.), California Public Employees' Pension Reform Act of 2013 (PEPRA) 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:
- 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 hours worked records
- o Agency payroll information including Contribution Detail Transaction History reports
- o Other documents used to specify payrate, special compensation, and benefits for all employees
- o 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.

EBBETTS PASS FIRE PROTECTION DISTRICT

- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.

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

- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.

- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.

- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.

- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

APPENDIX B

AGENCY'S WRITTEN RESPONSE

Ebbetts Pass Fire District

June 12, 2015

California Public Employees' Retirement System
Office of Audit Services

CalPERS ID: 2779006014
Job Number: P14-012

RE: Ebbetts Pass Fire Protection District, Public Agency Review

Ms. Hamilton

In response to our agency review we are providing the following response. We are willing to work with Program Areas within CalPERS to address the items listed. Please contact our agency with any questions regarding the content or intent of this letter. Thank you.

Office of Audit Services Review Results:

1. The Agency pay schedule did not meet one of the Government Code and CCR requirements.

Response: *Pay Schedule has been changed per Government Code and CCR requirements*

2. The Agency incorrectly reported special compensation.

A.

Response: *Administrative Duty Officer Stipend for the Fire Chief is no longer used. Newly appointed Fire Chief as of September 2014 does not receive this.*

B.

Response: *Effect July 1, 2015, at the beginning of our fiscal year we will begin reporting Uniform Allowances each pay period.*

3. Payroll elements were incorrectly reported.

A.

Response: *New Fire Chief reported as a 40 hour employee*

1037 Blagen Road P.O. Box 66 Arnold, CA 95223| 209 795-1646 Fax 795-3460

Ebbetts Pass Fire District

B.
Response: *We are looking at the reported Pay Periods and making the corrective adjustments*

4. The Agency did not enroll a part-time employee into membership timely.
A.
Response: *We are reviewing enrolment procedures for part-time employees to ensure accuracy in the future*

5. Agency unlawfully employed a retired annuitant.

Response: *Will work with CalPERS Benefit Service Division (BNSD) to determine the appropriate course of action.*

Respectfully Submitted,

Mike Johnson
[redacted] Original signed by Mike Johnson
Fire Chief
Ebbetts Pass Fire District