



CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

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Lou Ann Texeira
Executive Officer

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August 14, 2019 (Agenda)

Contra Costa Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553

August 6, 2019
Agenda Item 10

**Contra Costa County Employees' Retirement Association (CCCERA)
2019 Employer Audit Report – Contra Costa LAFCO**

Dear Commissioners:

Between March and June 2019 an employer audit was performed on the Contra Costa LAFCO (Attachment 1). This was LAFCO's first CCCERA employer audit. The audit covered the following items:

- Accuracy of Payroll Information Provided to CCCERA
- Salaries in Accordance with Publicly Available Pay Schedules
- Enrollment of All Eligible Employees
- Pension Benefit Review
- Internal Revenue Code 415 Limits
- Retiree Return to Work Monitoring
- Forfeiture of Benefits Earned or Accrued from the Commission of a Felony

On July 24, 2019, the CCCERA Board received the Final Audit report for Contra Costa LAFCO. As noted in the CCCERA staff report and final close out letter (Attachment 2), there were no follow-up items.

Recommendation: Receive the report.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

Attachment 1 – 2019 CCCERA Employer Audit Report – Contra Costa LAFCO
Attachment 2 – LAFCO Employer Audit Close Out Letter

Employer Audit: Contra Costa County Local Area Formation Commission

*Employer Audit
Report dated
6/04/2019
prepared by:*



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Contra Costa County Local Area Formation Commission

Audit Transmittal Letter



June 4, 2019

Lou Ann Texeira
Executive Director
Contra Costa County Local Agency
Formation Commission
651 Pine St.
Sixth Floor
Martinez, CA 94553

Re: Employer Audit Report – Contra Cost County Local Agency Formation Commission Pensionable Compensation, Contribution and Reporting Audit

Dear Ms. Texeira,

Enclosed is the employer audit report of the Contra Costa County Local Area Formation Commission (LAFCO) pensionable compensation, contribution and reporting audit, conducted pursuant to Government Code Section 31543. I want to thank you and all LAFCO staff for their assistance in gathering all the records and documents and making them readily available during this audit. This cooperation was greatly appreciated and allowed for the audit to be completed in an efficient manner.

The *Employer Audit Report* is enclosed for your review. There were no “*Follow-Up Items*” noted for the Commission to address.

This report will be placed on the agenda and will be presented to the CCCERA Board of Retirement at its Wednesday June 26, 2019 meeting.



Contra Costa County Local Area Formation Commission

Should you wish to discuss or have any questions regarding the items reviewed and the observations contained within this report, please contact me at 925-521-3960.

Best regards,



Wrally Dutkiewicz
Compliance Officer

Cc: Kate Sibley, Executive Assistant, LAFCO

Contra Costa County Local Area Formation Commission

Background

The Contra Costa County Employees' Retirement Association (CCCERA) is a public employee retirement system that was established by Contra Costa County on July 1, 1945, and is administered by the Board of Retirement (Board) to provide service retirement, disability, death, and survivor benefits for Contra Costa County (County) employees and 16 other participating agencies under the California State Government Code, Section 31450, et. seq. (County Employees Retirement Law of 1937 or CERL) and the California Public Employees' Pension Reform Act of 2013 (PEPRA).

CCCERA administers the retirement benefits for the employees of Contra Costa County and participating District employers. Participating employers within the CCCERA retirement system transmit payroll information and contributions to fund the benefits for their employees. CCCERA sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits when needed.

Retirement allowances are computed in accordance with statute using three factors: years of service, age at retirement, and final compensation. For Legacy (pre-PEPRA) members, final compensation is defined as the highest average annual compensation earnable (as defined in G.C. Section 31461) by a member during the last one or three consecutive years of employment depending on the member's Tier, unless the member elects a different period with a higher average. For PEPRA members, final compensation is defined as the highest average annual pensionable compensation (as defined in G.C. Section 7522.34) earned by the member during a period of 36 consecutive months.

The employer's knowledge of the rules relating to membership and payroll reporting facilitates the employer in providing CCCERA with appropriate employee information. Correct enrollment of eligible employees and correct reporting of payroll information are necessary for the accurate computation of a member's retirement allowance.

In 1963, the California Legislature responded to the urban boundary wars, and the problem of public finance and service they created, by enacting the Local Agency Formation Commissions (LAFCOs). This law established a commission in each county responsible for overseeing most forms of local government boundary change, including incorporation, annexations, and special district formations. In the interest of more orderly development, LAFCOs were to act as judges of boundary disputes among governments and communities.¹

Contra Costa County Local Area Formation Commission (LAFCO) has had two staff members during the audit period, the appointed Executive Officer and the Executive Assistant.

Contra Costa County Local Area Formation Commission

For fiscal year 2016-2017 LAFCO had budgeted expenditures for salaries and benefits in the amount of \$406,000 and for fiscal year 2017-2018 it budgeted \$403,000. Per CCCERA records, LAFCO had two (2) employees in fiscal years 2016-2017 and 2017-2018 with active memberships in CCCERA and submitted approximately \$17,000 in employee pension contributions and \$97,000 in employer pension contributions per fiscal year. As of December 31, 2018, CCCERA had two (2) retirees and beneficiaries on record for LAFCO with a total paid benefit amount of approximately \$116,000 in 2018.

¹ <http://contracostalafco.org/>

Contra Costa County Local Area Formation Commission

Scope

The 2013 Pension Reform legislation granted CCCERA the authority under Government Code Section 31543 to conduct audits of employers to ensure that employee and payroll information used in the calculation of retiree pension benefits is correct and verifiable. The scope of these on-site reviews includes:

- Correctness of retirement benefits;
- Reportable compensation;
- Enrollment in, and reinstatement to the system (GC 31554);
- Pensionable compensation (GC 31461 and GC 7522.34);
- Determine if employees convicted of certain felonies have forfeited benefits earned or accrued from the commission of the felony (GC 7522.72(g) and GC 7522.74(g));
- Review MOUs with respect to compensation and salary regulations (i.e. Vacation Sales, etc.);
- Determine if compensation is paid to enhance a member's retirement benefit (GC 31461(b)(1) and GC 7522.34(c)(1));
- Evaluate employer's compliance with restrictions on retirees returning to work (GC 7522.56, I.R.S. bona fide separation and normal retirement age rules).

The on-site review of the Commission was conducted on March 5, 2019. The review period encompassed active employee records for 2016 through 2018 and no retired employee records as no employees retired within the audit period.

Contra Costa County Local Area Formation Commission

Observations and Findings

Accuracy of Payroll Information provided to CCCERA

1: Statement of Observation: No exceptions were observed in this section.

Payroll and Reporting Process and Receivables Review

Pursuant to Board of Retirement Regulations Section IV: Employer pensionable payroll and corresponding pension contributions are to be reported to the retirement system timely and accurately. (*Contributions And Reporting, 2. Due Dates, 4. Employer Certification*).

Due Dates

Each employer shall report to the Association in a manner and frequency as determined by the Board sufficient for the Board to credit contributions and service to each member's record.

Unless otherwise specified, reports shall be due no later than the tenth of each month for the previous month's payroll and shall be accompanied by member and employer contributions. If the tenth of the month falls on a weekend or holiday, the due date shall be the last working day before the tenth. Reports, which are unreadable or incorrect, shall not be accepted and shall be returned to the employer. (Emphasis added.)

Reports and contributions received after the due date shall be considered late and subject to a late reporting penalty equal to: the prime rate in effect on the due date computed on a daily, non-compounding basis and applied to the contributions due.

Observation 1: None

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Input File Review

Employer Certification

Each payroll and pension contribution report shall include or be accompanied by a certification, under penalty of perjury, as to its accuracy. The certification shall be made by a duly authorized representative of the employer. (Board of Retirement Regulations *Section IV, 4. Employer Certification.*)

Observation 2: None

Compensation Limits

Federal and state laws place annual limits on the compensation that can be used to determine contributions and benefits for CCCERA plan members.

Legacy Members:

- The Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans which are adjusted annually for cost-of-living increases.
- Members who commenced participation in CCCERA on or after January 1, 1996 are subject to the annual federal Internal Revenue Code Section 401(a)(17) compensation limit.
- For CERL benefit formulas (General Tiers 1, 3, Safety Tiers A & C), the 2018 calendar year compensation limit was increased by the I.R.S. to \$275,000 from \$270,000 for calendar year 2017.
- Members who commenced participation in CCCERA prior to January 1, 1996 are not subject to the Internal Revenue Code annual compensation limit.

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PEPRA Members:

- For new employees who commenced participation in CCCERA on or after January 1, 2013 under PEPRA benefit formulas (General Tiers 4,5, Safety Tiers D & E), the compensation which exceeds that annual pensionable compensation limit under California Government Code Section 7522.10(c) and (d) is not included in determining benefits or contributions.
- The 2018 calendar year PEPRA compensation limits are as follows:
 - For employees enrolled in Social Security – increased to \$121,388.
 - For employees not enrolled in Social Security – increased to \$145,666.
- The 2017 calendar year PEPRA compensation limits are as follows:
 - For employees enrolled in Social Security – increased to \$118,775.
 - For employees not enrolled in Social Security – increased to \$142,530.

Observation 3: None

Payroll Reporting – Pensionable Compensation and Contribution Review

Compensation Earnable Applicable Law for Legacy Members

"Compensation earnable" does not include, in any case, the following:

“Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.” (G.C. § 31461(b)(3).)

Pursuant to CCCERA’s “Compensation Earnable Policy”², Section III.D. “Compensation Earnable” excludes payments for additional services rendered outside of normal working hours.

Pay received for "overtime" is not included in "compensation earnable." To be included, the time for which compensation is received:

- (1) must be the normal working hours set forth in the applicable employment agreement;
- (2) must be required by the employer to be worked by the employee (as distinguished from voluntarily worked); and

² <https://www.cccera.org/governance-and-policies>

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- (3) must be ordinarily worked by all others in the same grade or classification at the same rate of pay during the FAS period.

Pay that will be reviewed under these conditions is often described as "standby" and "on-call." Employers must report to CCCERA as pensionable only that pay for work that is required of and ordinarily served by everyone in the same grade or classification, at the same rate of pay.

Pensionable Compensation Applicable Law for PEPRA members

PEPRA defines "pensionable compensation" as follows:

"Pensionable compensation" of a new member of any public retirement system 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 employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

Compensation that has been deferred shall be deemed pensionable compensation when earned rather than when paid. (Gov. Code Section 7522.34(a) and (b).)

PEPRA excludes from "pensionable compensation" the following:

- (1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.
- (2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.
- (3) Any one-time or ad hoc payments made to a member.
- (4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.
- (5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.
- (6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
- (7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.
- (8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code [FLSA].

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- (9) Employer contributions to deferred compensation or defined contribution plans.
- (10) Any bonus paid in addition to the compensation described in subdivision (a) [of G.C. § 7522.34].
- (11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a) [of G.C. § 7522.34].
- (12) Any other form of compensation a public retirement board determines should not be pensionable compensation. (Gov. Code Section 7522.34(a) and (b).)

Pursuant to CCCERA's "Pensionable Compensation Policy"³, Section III:

The CCCERA Board has determined that "Pensionable Compensation" includes "base pay." Pensionable compensation does not include any pay other than base pay, in accordance with Govt. Code Sections 7522.34(c)(11) and (12).

Pensionable compensation (GC 31461 and 7522.34) is to be reported to the retirement system and the corresponding contributions are to be reported to the retirement system.

Observation 4: None

Salaries in Accordance with Publicly Available Pay Schedule

2: Statement of Observation: No exceptions were observed in this section.

Pursuant to CCCERA's Policy On Determining "Pensionable Compensation"⁴ Under PEPRA For Purposes Of Calculating Retirement Benefits, a "publicly available pay schedule" must meet all of the following requirements:

1. *Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;*
2. *Identifies the position title for every employee position;*
3. *Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;*
4. *Indicates the time base, including, but not limited to, whether the time base is hourly daily, bi-weekly, monthly, bi-monthly, or annually;*

³ <https://www.cccera.org/governance-and-policies>

⁴ <https://www.cccera.org/governance-and-policies>

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5. *Is 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;*
6. *Indicates an effective date and date of any revisions;*
7. *Is retained by the employer and available for public inspection for not less than five years; and*
8. *Does not reference another document in lieu of disclosing the pay rate.*

Observation 5: At the time of the on-site visit, LAFCO was not able to provide a current salary schedule. During the Interim Audit Check-In meeting, LAFCO provided CCCERA with an updated salary schedule which updated the salary ranges for all positions effective April 19, 2019.

Enrollment of Eligible Employees

3: Statement of Observation: No exceptions were observed in this section.

1. Exclusion from Membership – By Type of Employment

- A. All officers and employees of the County or districts shall be members of the association as provided in Article 4 under Sections 31550-31567 of the County Employees' Retirement Law of 1937 (Gov. Code Secs. 31450, et seq. "CERL"), unless excluded from membership by this Section.
- B. The following employees shall be excluded from membership:
 - i. Temporary, seasonal or independent contract employees who are employed or re-employed for temporary service or at certain specified periods each year.
 - ii. Intermittent or permanent-intermittent employees who are appointed to serve less than 80% of the full number of working hours required of regular employees or who actually serve less than 80% of such full number of working hours in one year as certified by their appointing authority.

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- iii. Part-time employees whose service for the County or district is less than fifty (50) percent of the full number or working hours required of fulltime employees at that employer.
 - iv. Project employees, unless the appointing authority certifies that the project is expected to be of one year or more in duration on a greater than part-time basis.
 - v. Provisional employees, unless they otherwise meet the requirements for reciprocal benefits with other retirement systems under Article 15 of CERL.
- C. In making its determination regarding an employee's inclusion in or exclusion from membership, the Board will not rely solely upon the term given to the type of employment. Rather, the Board will rely upon such additional facts such as the nature of the employment, its expected or actual duration, and its relationship to what is considered full-time, permanent employment.

2. Exclusion from Membership – by Compensation

Except as otherwise herein provided, all employees of the County or district who receive compensation amounting to less than one-hundred (\$100) dollars per month, and in the case of employees paid on other than a monthly basis an average of one-hundred (\$100) dollars per month for the preceding year, including maintenance valued according to the schedule adopted by the governing body, are hereby excluded and exempted from membership in the Retirement Association. Any member of the Retirement Association whose salary is reduced to an amount less than one-hundred (\$100) dollars per month shall have the option of continuing or discontinuing his/her active membership in the Association.

2.1 Exclusion from Membership – by Waiver

Newly hired employees age 60 and older may waive membership as authorized by Gov. Code Section 31552. Any such waiver of membership shall be effective only if it is submitted to the CCCERA Retirement Chief Executive Officer within 90 days of the employee's date of hire; provided, however, that the Retirement Chief Executive Officer may, in his/her sole and reasonable discretion, waive the time limitation if the newly hired employee establishes good cause for such a waiver.

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3. Certifications

Every employee of the County or district within the county whose employees are members of the Association shall, upon entry into the Association, complete a sworn statement as provided for in Gov. Code Section 31526(b). A certified copy of the member's birth certificate or other evidence of birth may be required by the Board.

It shall be the employer's responsibility to assure compliance with this section. The Board shall assess the employer five hundred (\$500) dollars per employee for every month or fraction thereof that the required certification is not submitted. The Board shall notify the employer in writing of the imposition of assessment at least thirty days before the assessment.

Observation 6: None

Pension Benefit Review

4: Statement of Observation: No exceptions were observed in this section.

Review of Pension Benefit Calculations

- a. Compensation Policies
 - i. *Policy On Determining "Compensation Earnable Under Assembly Bill 197 For Purposes Of Calculating Retirement Benefits For "Legacy" (Pre-PEPRA) Members* – Adopted: 9/10/2014; GC 31461;
 - ii. *Policy On Determining "Pensionable Compensation" Under PEPRA For Purposes Of Calculating Retirement Benefits* - Adopted: 9/10/2014; GC 7522.34;
 - iii. *Policy Regarding Assessment and Determination Of Compensation Enhancements* – Adopted 11/1/2012, Amended: 3/8/2017; GC 31461(b)(1) and 7522.34(c)(1)

Observation 7: None

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Retiree Return to Work Monitoring

- b. Retiree Return to Work Monitoring
 - i. GC 7522.56 Retired Persons; Service and Employment Restrictions

Observation 8: None

Forfeiture of Benefits Earned or Accrued From the Commission of a Felony

- c. Felony Forfeiture Monitoring and Notification – GC 7522.72(g) and GC 7522.74(g)

Observation 9: None

Internal Revenue Code Section 415 Compliance

As adopted on December 8, 2010 and amended on January 9, 2013 and July 11, 2018.

Observation 10: None

Contra Costa County Local Area Formation Commission

Follow-Up Items

The following items were noted during the course of the review and require follow-up by the Commission and CCCERA:

The Commission has no follow-up items.



July 26, 2019

Lou Ann Texeira
Executive Director
Contra Costa Local Agency
Formation Commission
40 Muir Rd.,
1st Floor
Martinez, CA 94553

Re: CCCERA Employer Audit of Contra Costa Local Agency Formation Commission (LAFCO)

Dear Ms. Texeira,

The final audit report for Contra Costa Local Agency Formation Commission dated June 4, 2019 was presented to the CCCERA Board of Retirement at its meeting on July 24, 2019. The Board of Retirement had no further comment or request for clarification arising out of the scope items covered within the final audit report. The final audit report indicated that the Commission did not have any follow up items. Therefore, the 2019 employer audit of LAFCO has been finalized and closed out.

I want to wish all the best of success to you and the Commission staff. Thank you again for your assistance throughout the audit process and all the insights you shared about the important work that the Commission does.

Best regards,

A handwritten signature in blue ink, appearing to read 'Wrally Dutkiewicz', written over a horizontal line.

Wrally Dutkiewicz
Compliance Officer