

May 30, 2017

LGS Employees and Former LGS Employees

SUBJECT: Follow up to CalPERS Audit of Local Government Services

This is a follow-up to my May 10, 2017 letter informing you of the adverse audit report by CalPERS and a response to questions posed by some impacted individuals.

First of all, I want to reiterate that we are continuing to press CalPERS to negotiate a positive outcome to preserve all accumulated service credit for current and former LGS employees.

However, as I indicated before, CalPERS has been unwilling to discuss with LGS any steps that can be taken that will result in positive outcomes for all affected LGS individuals by either grandfathering in all accrued service credit or transferring the service credit to another CalPERS employer for any individual who has or is working for a CalPERS member. LGS will continue its efforts in this regard.

We understand that CalPERS has communicated with certain LGS current or former employees regarding transferring their service credit to other member agencies. However, CalPERS has not confirmed this information with LGS; therefore, we need to rely on each of you to inform us as to whether your individual pension status has been protected. LGS has consistently taken the position that all accrued, as well as prospective service credit, must be protected. You can assist us by letting us know if your status changes in any form or manner.

Secondly, the LGS Joint Powers Board of Directors has decided to file an administrative appeal challenging CalPERS adverse determinations. This is the right of any CalPERS employer or individual member where CalPERS has taken a detrimental action. The administrative hearing will be held by an administrative law judge (ALJ) under the rules set forth in the California Administrative Procedure Act. As I explained in my May 10th letter, LGS is prepared to seek a temporary restraining order if CalPERS should take any adverse action prior to a final administrative adjudication of LGS' challenge to CalPERS actions. In the meantime, here is the likely process for the LGS appeal, and a tentative timeline.

It is probable that CalPERS will notify each of you, and LGS, that it is "reversing" your accrued service credit. This "determination" letter will then trigger a right to appeal, by both you and by LGS. *It is critical that you immediately forward to LGS any correspondence received from CalPERS, to ensure an appeal is filed timely as there is a short timeline in which this action must be taken.*

Upon timely forwarding of CalPERS correspondence from you to LGS, we will file an appeal on your behalf with the appeal being handled by LGS' attorneys specializing in retirement issues. As the service credit denial is based on common law control legal theories that cut across all LGS employment relationships, we anticipate asking the administrative law judge to consolidate all of the cases into a single hearing.

The hearing will be held by a neutral administrative law judge who is a state employee. He or she will then issue a "proposed" decision which will be adopted, rejected, or modified by the CalPERS Board of Administration. Even if LGS prevails before the ALJ, CalPERS Board may still reject the decision. LGS must then decide at that point whether to challenge the final decision by seeking a writ of mandate in superior court.

The date of the administrative hearing is triggered by CalPERS serving what is called a "Statement of Issues" as required by the California Administrative Procedure Act. As this action is solely within CalPERS power, I cannot tell you when the hearing will take place. It is not uncommon for the hearings to be held 9-12 months after the appeal is filed. The ALJ proposed decision, and the CalPERS review of it, should occur within four months after the hearing concludes making phase (appeal filed, serving the statement of issues, hearing, hearing decision, and CalPERS review of ALJ decision) a 12- to 18-month process.

If CalPERS should ultimately prevail, all accumulated employer and employee contributions will be returned. We will also seek interest on those monies. At that point LGS will evaluate its options with respect to each of you, including any impact on Social Security payments which may be outstanding.

I, and the other LGS administrative staff and Board members, understand what a shock these developments are to each of you, as it is to us, particularly after many years of depositing contributions and receiving no adverse comments from CalPERS as to LGS' employment model. As you can see from the above, unless we can get CalPERS to negotiate a reasonable outcome, the appeal process will take time over which LGS has no control. At most we can seek court intervention to protect your CalPERS service credit and pension payments during the appeal process.

The CalPERS Final Audit is now posted on the LGS website under NEWS. If you have further questions, please do not hesitate to forward them to me and we will endeavor to respond with any information we know.

Sincerely,



Richard H. Averett, Executive Director