

**STATE OF WEST VIRGINIA**

**AUDIT REPORT**

**OF**

***CONSOLIDATED PUBLIC RETIREMENT BOARD***

***WEST VIRGINIA PUBLIC EMPLOYEES***

***RETIREMENT SYSTEM***

**FOR THE PERIOD**

**JULY 1, 2002 - JUNE 30, 2004**



**OFFICE OF THE LEGISLATIVE AUDITOR**

**CAPITOL BUILDING**

**CHARLESTON, WEST VIRGINIA 25305-0610**

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**FOR THE PERIOD**  
**JULY 1, 2002 - JUNE 30, 2004**

**WEST VIRGINIA LEGISLATURE**  
*Joint Committee on Government and Finance*

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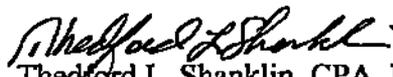
**CHARLESTON, WEST VIRGINIA 25305-0844**

To the Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we have examined the Public Employees Retirement System as administered by the Consolidated Public Retirement Board (CPRB).

Our examination covers the period July 1, 2002 through June 30, 2004. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

  
Theford L. Shanklin, CPA, Director  
Legislative Post Audit Division

TLS/ela

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
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**CONSOLIDATED PUBLIC RETIREMENT BOARD  
WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM  
EXIT CONFERENCE**

We held an exit conference on July 28, 2005 with the Acting Executive Director and other representatives of the Consolidated Public Retirement Board (CPRB) and all findings and recommendations were reviewed and discussed. The agency's responses are included in bold and italics in the Summary of Findings, Recommendations and Responses and after our findings in the General Remarks section of this report.

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**INTRODUCTION**

**Consolidated Public Retirement Board**

Effective July 1, 1991, Chapter 5, Article 10D of the West Virginia Code created the Consolidated Public Retirement Board (CPRB). The CPRB's duties are to administer all State Retirement Systems. It shall have all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System (PERS); the Teachers Retirement System (TRS); the Teachers' Defined Contribution Retirement System (TDCRS or TDC Plan); the Death, Disability and Retirement System (Plan A) of the Division of Public Safety; and the Judges' Retirement System (JRS). Subsequent to July 1, 1991, the CPRB also began administering (in addition to the aforementioned retirement systems) the West Virginia State Police Retirement System (Plan B) on March 12, 1994 and the Death, Disability and Retirement Fund for Deputy Sheriffs on July 1, 1998. Additionally, the CPRB is responsible for administering a 457 Deferred Compensation Plan, which members of the other State Retirement Systems can utilize to supplement their regular retirement.

The CPRB's board consists of 14 members as follows: the Governor; State Treasurer; State Auditor; Secretary of the Department of Administration; four residents of the State who are not members, retirees or beneficiaries of any of the retirement systems; a member, annuitant or retiree of the Public Employees Retirement System who is or was a State employee; a member, annuitant or retiree of the Public Employees Retirement System who is not or was not a State employee; a member, annuitant or retiree of the Teachers Retirement System; a member, annuitant or retiree of the Division of Public Safety Death, Disability and Retirement System; a member, annuitant or retiree of the Deputy Sheriff's Death, Disability and Retirement System; and, a member, annuitant or retiree of the Teachers' Defined Contribution Retirement System.

The board elects from its own number a chairman and vice chairman. The board is granted the authority under State law to appoint an executive director to be the chief administrative officer of all of the retirement systems. The executive director is responsible for employing, with the board's approval, such administrative, technical and clerical employees as are required in the proper operation of the retirement systems. Also, the board is authorized by State law to employ a state retirement actuary or actuarial firm and be represented by an attorney who is licensed to practice law in the state of West Virginia who is not a member of any of the retirement systems administered by the CPRB.

The board is required by law to meet at least once every three months, with seven voting members constituting a quorum. All board meetings must be public. Members serve without compensation for their services, provided that each member is reimbursed, upon board approval, for any necessary expenses incurred by them in carrying out their duties. No public employee member may suffer any loss of salary or wages on account of their service as a trustee.

#### **West Virginia Public Employees Retirement System**

The PERS was established on July 1, 1961 for the purpose of providing retirement benefits for employees of the State and other political subdivisions. Public Employees Retirement System has approximately 36,000 active members and approximately 18,900 retirees receiving annuity benefits. Public Employees Retirement System is funded by employee and employer contributions. An active member contributes 4.5% of his or her gross monthly salary to the plan. The employer contributes an additional 10.5% of the member's gross monthly salary for a total combined contribution equal to 15%. All employee contributions are tax deferred. In addition to retirement benefits, PERS makes provisions for total and permanent disability and provides certain survivor benefits.

In order to qualify for retirement benefits, a member of PERS must meet eligibility requirements. The minimum retirement ages, benefit amounts to be received, and requirements to be met are as follows:

### **Regular Retirement**

A member who is currently working for a participating employer may retire under the following conditions:

<b><u>Retirement Age</u></b>	<b><u>Amount of Benefits</u></b>	<b><u>Requirements</u></b>
55	Full	Age plus contributing service equals 80 or more.
60	Full	Must have 5 or more years of contributing service.
55	Reduced	Must have 10 or more years of credited service.

### **Deferred Retirement**

A member who is not currently working for a participating employer and has not withdrawn his or her contributions may retire under the following conditions:

<b><u>Retirement Age</u></b>	<b><u>Amount of Benefits</u></b>	<b><u>Requirements</u></b>
62	Full	Must have 5 or more years of credited service and was hired prior to July 1, 2002.
62	Full	Must have 5 or more years of contributory service and was hired on or after July 1, 2002.
55	Full	Age plus contributing service equals 80 or more.
55	Reduced	Must have between 20 and 25 years of service.
Less Than 55	Reduced	Must have 30 or more years of credited service.

Depending on the eligibility requirements met and the type of annuity option selected, a member will receive, upon retirement, either a full or reduced retirement benefit. A full retirement benefit, paid in equal monthly installments, is an amount equal to 2% multiplied by the member's years of credited service multiplied by the member's final average salary. Final average salary refers to the average annual salary from the highest 36 consecutive months within the last 10 years of employment. Normally, this figure will come from the last three years of employment. Lump sum payments, with the exception of annual increment pay, will not be used to increase any retirement benefit.

The different annuity options available to members are the Straight Life annuity, Option A - 100% Joint and Survivor annuity, and the Option B - 50% Joint and Survivor annuity. These different annuities are as follows:

**Straight Life**

A lifetime annuity payable monthly to the member determined under the full benefit formula without adjustment. There are no death benefits under this option.

**Option A - 100% Joint and Survivor**

A reduced annuity payable monthly to the member for his or her lifetime. Upon the death of the member, the named survivor will receive the same amount for his or her lifetime.

**Option B - 50% Joint and Survivor**

A reduced annuity payable monthly to the member for his or her lifetime. Upon the death of the member, the named survivor will receive one half of the monthly payment for his or her lifetime.

The named survivor in both Option A and Option B must have an insurable interest in the life of the retiree such as a spouse, child, parent, or other dependent. With all the above options, any unpaid employee contributions, plus 4% interest, remaining at the retiree's or survivor's death, will be refunded to the named beneficiary or estate.

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**CONSOLIDATED PUBLIC RETIREMENT BOARD MEMBERS AND STAFF**  
**AS OF JUNE 30, 2004**

Governor Bob Wise ..... Ex Officio

Tom Susman, Acting Secretary of Department  
of Administration ..... Ex Officio

Glen B. Gainer, III, State Auditor ..... Vice Chairman - Ex Officio

John Perdue, Treasurer ..... Ex Officio

William McGinley ..... State Resident

Janet Wilson ..... State Resident

David Wyant ..... Chairman - State Resident

Carl Guthrie ..... State Resident

Francis A. Hughes ..... State Employee Member  
Public Employees Retirement System

Jerry A. Weaver ..... Non-State Employee Member  
Public Employees Retirement System

E. Gene Davis ..... Teachers Retirement System Member

David Anderson ..... Teachers' Defined Contribution  
Retirement System Member

F. Douglas Beasley ..... Division of Public Safety's Death,  
Disability and Retirement Fund Member

Donald T. Murray ..... Deputy Sheriff's Death, Disability  
and Retirement Fund Member

**STAFF**

Joseph J. Jankowski, Jr. .... Executive Director

Terasa Miller ..... Deputy Director

Karen Copeland ..... Manager of Membership Section

Mary Jane Arvon ..... **Manager of Benefits Section**  
Jo Ann Edwards ..... **Administrative Service Manager**  
Harry Mandel ..... **Board Actuary**  
Lori Cottrill ..... **Accounting Manager**  
Cynthia Boyd ..... **Internal Auditor**

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**SUMMARY OF FINDINGS, RECOMMENDATIONS AND RESPONSES**

**System of Internal Control**

1. During the course of our audit, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the Consolidated Public Retirement Board did not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations. Chapter 5A, Article 8, Section 9 of the West Virginia Code requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

**Auditors' Recommendation**

We recommend the CPRB comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish a system of internal controls.

**Agency's Response**

*CPRB believes that it has a very effective system of internal controls in place to ensure compliance with applicable state laws, rules and regulations and so would disagree with your general statement that it does not have such a system. (See pages 19 - 22)*

**Inclusion of Lump Sum Payment for Unused Annual Leave  
in Calculation of Retiree's Final Average Salary**

2. During the course of our audit of the Public Employees Retirement System, we learned of two court cases which may have a significant financial impact on the annuities of certain members. One case has been settled while the West Virginia Supreme Court of Appeals has not yet decided whether to hear the other case. Specifically, these cases deal with the right of certain PERS retirees to utilize their lump sum payment for unused annual leave as part of their final average salary to be used in the calculation of their annual pension

benefit. Based on agency records, we estimate these court decisions could have a potential dollar impact of approximately \$126 on the monthly annuity of several members.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board consider the Supreme Court's statement that §5-5-3 was separate from the early retirement incentives statute and stands alone. We further recommend the Consolidated Public Retirement Board then seek a conclusive and definitive answer to the questions surrounding the usage of lump sum payments for unused annual leave for final average salary purposes to ensure that the retirement annuities of PERS members are being properly calculated in accordance with State law.

**Agency's Response**

*We believe it is highly unlikely the Courts would rule these people be allowed to include lump sum payments for annual leave in their final average salary. (See specific references of Court rulings in general remarks.) (See pages 22 - 30)*

**Non-State Employers Not Remitting Retirement Contributions to CPRB in Timely Manner**

3. We noted that out of a randomly selected sample of 50 participating non-state public employers, 23 did not remit retirement contributions totaling \$129,052.49 to the CPRB in a timely manner.

**Auditors' Recommendation**

We recommend both the Consolidated Public Retirement Board and all participating non-state public employers comply with Title 162, Series 5, Sections 9 and 10 of the Legislative Rule for the Public Employees Retirement System, as amended. We also recommend that the Consolidated Public Retirement Board continue to seek legislation which would allow the Consolidated Public Retirement Board the authority to impose surcharges on participating employers for delinquent remittances of employee and employer contributions.

**Agency's Response**

*In the summer of 2003, CPRB recognized this difficulty with the untimely remittance of retirement contributions and proposed new legislative rules allowing the imposition of surcharges on participating employers for delinquent remittances of contributions. The Board has approved submission for the 2006 Legislative Session proposed legislation that amends the statutes to permit surcharges. (See pages 30 - 33)*

**Disability Retirees Not Required to Undergo Medical Examinations Subsequent to Retirement**

4. For the time period of July 1, 2002 through June 30, 2004, the CPRB was not requiring disability retirees to undergo medical examinations subsequent to the members being awarded retirement benefits. Therefore, after the initial determination, no attempt is being made by the CPRB to reaffirm that a retiree continues to be incapacitated from gainful employment due to their disability. Agency records indicated that 2,015 disability retirees were receiving retirement benefits as of June 30, 2004. The total amount of pension benefits paid to these retirees from their date of retirement through June 30, 2004 amounted to approximately \$131,830,000.

**Auditors' Recommendation**

We recommend that the Consolidated Public Retirement Board utilize the Purchasing Division's contracting policies and procedures to determine the availability and cost of private physicians and physicians on the staffs of Marshall University and West Virginia University to perform medical examinations of disability retirees. If found to be practicable, we recommend the Consolidated Public Retirement Board utilize the authority already granted to the Board by Chapter 5, Article 10, Section 26(a) of the West Virginia Code, as amended, and develop procedures to require on an annual basis the random selection of disability retirees to undergo regular medical examinations by a board designated physician to determine whether these retirees remain permanently and totally incapacitated.

**Agency's Response**

*The Task Force to Review Disability Issue Committee will consider developing procedures for annual examinations for a random selection of disability retirees and these procedures would include the notifications recommended in the report.*

*As noted in the report, CPRB already implemented a procedure to notify disabled retirants about the medical recertification(s) provisions in the law. (See pages 33 - 37)*

**CPRB Not Verifying Eligibility Status of New Participating Employers**

5. There were 22 non-state agencies which joined PERS as participating employers during the audit period. Of the 16 employers classified as public corporations, we noted 12 employers had not submitted a copy of the ordinance or charter provision creating that corporation.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with the provisions of both Chapter 5, Article 10, Section 16 of the West Virginia Code and Chapter 5, Article 10, Section 2(4) of the West Virginia Code, as amended, by developing procedures to ensure only those non-state agencies meeting the requisite eligibility requirements are allowed to join PERS.

**Agency's Response**

*CPRB established internal procedures and developed a check-list to ensure future non-state agencies seeking membership in PERS meet the requisite eligibility requirements.*

*This became effective April 2005. (See pages 37 - 40)*

**Processing of Retirement Annuities**

6. Of the 50 retirement annuities included in our test sample, we noted the monthly retirement annuities of six annuitants (including both retirees and beneficiaries) were understated by a total of \$55.10. As the result of these errors, these six annuitants were underpaid a total of \$848.64 in pension benefits through June 30, 2004.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 22 of the West Virginia Code, as amended, by implementing internal controls ensuring the proper calculation of each retiree's retirement annuity. We also recommend the CPRB reimburse any annuitant who was underpaid any pension benefits.

**Agency's Response**

*CPRB has corrected these calculation errors and reimbursed all annuitants who were underpaid. (See pages 40 - 43)*

**Unfunded Liability of Public Employees Retirement System (Informational Only)**

7. As of June 30, 2004, the West Virginia Public Employees Retirement System had an unfunded accrued liability of \$774,541,000. (See pages 43 and 44)

**Act of Fraud Committed Against PERS by Active Member**

8. Upon reviewing an internal audit report prepared by the CPRB's internal auditor, we learned that a former employee of a non-state employer had committed fraud against PERS. This former employee had collected monthly retirement annuity checks from PERS totaling \$7,914.55 while continuing to be employed by the same participating employer.

**Auditor's Recommendation**

We recommend the Consolidated Public Retirement Board further revise the Form 17 employer verification to include a certification and explanation of consequences for providing false information in an effort to deter applicants from attempting to obtain pension benefits to which they are not entitled to receive.

**Agency's Response**

*CPRB agrees with the recommendation and has begun the process to revise the Form 17 Employer Verification. (See pages 44 - 47)*

**Non-State Agencies Not Timely Remitting Contributions Upon Joining PERS**

9. We noted six of the 22 non-state agencies which joined PERS during the period of July 1, 2002 to June 30, 2004 did not begin actively remitting contributions upon joining the system in accordance with Chapter 5, Article 10, Section 29 of the West Virginia Code, as amended.

**Auditor's Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 29 of the West Virginia Code, as amended, by developing procedures to ensure participating employers begin making contributions in accordance with requirements.

**Agency's Response**

*CPRB has established procedures effective April 2005 to ensure that non-state agencies remit contributions in a timely manner. (See pages 48 - 50)*

**Processing of Refunds**

10. Of the 50 refund transactions included in our test sample, we noted three refund recipients were overpaid by a total of \$1,459.39 as a result of clerical errors made by the CPRB personnel responsible for processing refunds transactions.

**Auditor's Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended. We further recommend the CPRB develop procedures which would require CPRB personnel to utilize a member's complete PERS file and contribution records when preparing a member's refund to ensure a member will only be issued those monies he or she is entitled to receive.

**Agency's Response**

*CPRB has established procedures effective April 2005 to ensure that CPRB refund personnel use a member's complete PERS file and contribution records when preparing the refund. (See pages 50 - 53)*

**Incorrect Death Benefits Issued to Beneficiaries of Deceased Retirees**

11. Of the ten death benefit transactions reviewed, we noted the beneficiaries of two deceased retirees were overpaid gross death benefits totaling \$4,413.14. Additionally, we noted that seven out of the ten death benefit payments tested were incorrectly issued due to an incorrect amount of Federal taxes being withheld from each gross death benefit amount. As a result, six recipients had a total of \$4,079.13 too much in Federal taxes withheld from their gross death benefits while one recipient had \$144.18 too little withheld in Federal taxes.

**Auditor's Recommendation**

We recommend that the Consolidated Public Retirement Board develop procedures to ensure that each beneficiary's gross death benefit is properly calculated in accordance with Chapter 5, Article 10, Section 23 of the West Virginia Code, as amended.

**Agency's Response**

*CPRB has corrected the spreadsheet used for calculating federal tax withholdings from death benefits paid to the beneficiaries of deceased retirees. CPRB will request reimbursement pursuant to its Error Correction Policy. (See pages 53 - 56)*

**Late Remittances of Insurance Premiums to PEIA**

12. We noted that the CPRB was not remitting insurance premiums withheld from the gross annuities of retirees to PEIA in a timely manner during the 2003 and 2004 fiscal years. PEIA's policy requires that the full premium payment for policyholders is due by the 25<sup>th</sup> day of the month for which coverage is in effect. Of the 18 documents tested, we noted 16 payments were remitted late, ranging from three days to 41 days late. The average days late for the 16 payments was 14 days.

**Auditor's Recommendation**

We recommend the Consolidated Public Retirement Board comply with the Public Employees Insurance Agency's premium payments policy as described in Section III of the

West Virginia Public Employees Insurance Agency Plan Document for Fiscal Year 2003 and Fiscal Year 2004 by developing internal controls to ensure that payment of retiree insurance premiums are remitted timely to the Public Employees Insurance Agency.

**Agency's Response**

*During the period audited, CPRB admits that it was not always timely with its remittances. CPRB believes that its remittances are now, and will continue to be, timely.*

(See pages 56 and 57)

**Incorrect Optional Life Insurance Premium Withheld from Retiree's Monthly Annuity**

13. Of the 50 retirement annuities tested, we noted an incorrect premium for optional life insurance was being withheld from the monthly annuity of one retiree resulting in an underpayment to the retiree totaling \$51.93.

**Auditor's Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 16, Section 5 of the West Virginia Code, as amended, by ensuring the proper premium amounts for optional life insurance are being withheld from the gross annuities of new retirees when adding these retirees to the monthly retirement payroll.

**Agency's Response**

*CPRB would agree with the draft reports conclusions that PEIA erred.* (See pages 57 and 58)

**Payments for Retroactive Service Deposited to Wrong Account**

- 14 We reviewed 25 retroactive service transactions which were processed by the CPRB during the audit period. Our review indicated employer contributions totaling \$22,690.59, which were remitted by two PERS members to purchase service credit occurring prior to January 1, 1989, were erroneously deposited by the CPRB to the PERS Member Deposit Account instead of to the PERS Employers Accumulation Account.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 31(a) of the West Virginia Code, as amended.

**Agency's Response**

*CPRB agrees that the payment was initially and inadvertently made to the wrong account and will comply with West Virginia Code §5-10-31. (See pages 58 and 59)*

**Non-State Retirement Contributions Not Deposited Timely**

15. Of the 50 non-state retirement contribution remittance transactions tested, we noted 15 instances totaling \$139,055.61 where the employee and employer contributions remitted to the CPRB by non-state employers were not deposited in a timely manner by the CPRB to its State accounts. For these 15 occurrences, the number of days these monies were deposited late ranged from one to 30 days.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 12, Article 2, Section 2(a) of the West Virginia Code, as amended, by ensuring that employee and employer contributions received from non-state employers are deposited in a timely manner.

**Agency's Response**

*CPRB will continue to ensure that contributions received from non-state employers are deposited in a timely manner. (See pages 60 and 61)*

**Monthly Retirement Reports Not Certified by Executive Director of Non-State Agency**

16. During our review of 50 monthly contribution remittances received from various non-state employers between July 1, 2002 and June 30, 2004, we noted four Monthly Retirement Reports were not signed by the respective non-state employer's executive officer. Additionally, we noted two Monthly Retirement Reports did not contain the initials of the CPRB employee who reviewed the report for accuracy.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with its own policies and procedures by strengthening its internal controls to ensure that the CPRB personnel responsible for reviewing Monthly Retirement Reports as they are received verify that each report has been signed by the employer's executive officer and that the CPRB employees initial the Monthly Retirement Reports once reviewed.

**Agency's Response**

*CPRB Staff have again been told that monthly retirement reports received from non-state employers must have the appropriate signatures and initials of CPRB personnel auditing the reports. (See pages 61 - 63)*

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**GENERAL REMARKS**

**INTRODUCTION**

We have completed a post audit of the Public Employees Retirement System (PERS) as administered by the Consolidated Public Retirement Board (CPRB). The audit covered the period July 1, 2002 through June 30, 2004.

**SPECIAL REVENUE ACCOUNTS**

During the audit period, the CPRB maintained several special revenue accounts to contain the retirement contributions received and to account for all expenditures related to the operation of the Public Employees Retirement System as required by law. Monies collected were deposited with the State Treasurer in the following special revenue accounts:

<b><u>Account Number</u></b>	<b><u>Description</u></b>
2501 .....	<b>PERS Income Account</b> Transfers from investment earnings to be transferred to retirement board expense account and to the Investment Management Board.
2505 .....	<b>PERS Retirement Reserve Account</b> Transfers from income account to pay annuity payments to State and non-state retirees.
2509 .....	<b>PERS Member Deposit Account</b> Member contributions and reinstatements from State and non-state employees. Member withdrawals from the retirement system are paid from this account.
2510 .....	<b>PERS Employers Accumulation Account</b> Employers contributions for State and non-state employees to be transferred to the Investment Management Board.

## **COMPLIANCE MATTERS**

Chapter 5, Article 10 of the West Virginia Code generally governs the administration of the Public Employees Retirement System. We tested applicable sections of the above plus other applicable chapters, articles, and sections of the West Virginia Code as they pertain to financial matters. Our findings are discussed below.

### **System of Internal Control**

During the course of our audit, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the Consolidated Public Retirement Board did not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations. Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, states in part:

“The head of each agency shall: . . . (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities. . . .”

This law requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

During our audit of the Public Employees Retirement System as administered by the Consolidated Public Retirement Board, we found the following noncompliance with State laws or other rules and regulations: (1) During the course of our audit of the Public Employees Retirement System, we learned of two court cases which may have a significant financial impact on the annuities of certain members. One case has been settled while the West Virginia Supreme Court of Appeals has not yet decided whether to hear the other case. Specifically, these cases deal with the right of certain PERS retirees to utilize their lump sum payment for unused annual leave as part of their final average salary to be used in the calculation of their annual pension benefit. Based on agency records,

we estimate these court decisions could have a potential dollar impact of approximately \$126 on the monthly annuity of several members. (2) We noted that out of a randomly selected sample of 50 participating non-state public employers, 23 did not remit retirement contributions totaling \$129,052.49 to the CPRB in a timely manner. (3) For the time period of July 1, 2002 through June 30, 2004, the CPRB was not requiring disability retirees to undergo medical examinations subsequent to the members being awarded retirement benefits. Therefore, after the initial determination, no attempt is being made by the CPRB to reaffirm that a retiree continues to be incapacitated from gainful employment due to their disability. (4) There were 22 non-state agencies which joined PERS as participating employers during the audit period. Of the 16 employers classified as public corporations, we noted 12 employers had not submitted a copy of the ordinance or charter provision creating that corporation. (5) Of the 50 retirement annuities included in our test sample, we noted the monthly retirement annuities of six annuitants (including both retirees and beneficiaries) were understated by a total of \$55.10. As the result of these errors, these six annuitants were underpaid a total of \$848.64 in pension benefits through June 30, 2004. (6) As of June 30, 2004, the West Virginia Public Employees Retirement System had an unfunded accrued liability of \$774,541,000. (7) Upon reviewing an internal audit report prepared by the CPRB's internal auditor, we learned that a former employee of a non-state employer had committed fraud against PERS. This former employee had collected monthly pension benefits totaling \$7,914.55 from PERS while continuing to be employed by the same participating employer. (8) We noted six of the 22 non-state agencies which joined PERS during the period of July 1, 2002 to June 30, 2004 did not begin actively remitting contributions upon joining the system. (9) Of the 50 refund transactions included in our test sample, we noted three refund recipients were overpaid by a total of \$1,459.39. (10) Of the ten death benefit transactions reviewed, we noted the beneficiaries of two deceased retirees were overpaid gross death benefits in the amount of \$4,413.14. Additionally, we noted that seven out of the ten death benefit payments tested had an incorrect amount of Federal taxes withheld from the gross death benefit amount. As a result, six recipients had a total of

\$4,079.13 too much in Federal taxes withheld from their gross death benefits while one recipient had \$144.18 less in Federal taxes withheld than what should have been. (11) We noted that the CPRB was not remitting insurance premiums withheld from the gross annuities of retirees to PEIA in a timely manner during the 2003 and 2004 fiscal years. (12) Of the 50 retirement annuities tested, we noted an incorrect premium for optional life insurance was being withheld from the monthly annuity of one retiree. Between September 2003 and June 2004, this retiree was underpaid a total of \$51.93 in pension benefits as the result of this error. (13) We reviewed 25 retroactive service transactions which were processed by the CPRB during the audit period. Our review indicated employer contributions totaling \$22,690.59, which were remitted by two PERS members to purchase service credit occurring prior to January 1, 1989, were erroneously deposited by the CPRB to the PERS Member Deposit Account instead of to the PERS Employers Accumulation Account. (14) Of the 50 non-state retirement contribution remittance transactions tested, we noted 15 instances totaling \$139,055.61 where the employee and employer contributions remitted to the CPRB by non-state employers were not deposited in a timely manner by the CPRB to its State accounts. For these 15 occurrences, the number of days these monies were deposited late ranged from one to 30 days. (15) During our review of 50 monthly contribution remittances received from various non-state employers between July 1, 2002 and June 30, 2004, we noted four Monthly Retirement Reports were not signed by the respective non-state employer's executive officer. Additionally, we noted two Monthly Retirement Reports did not contain the initials of the CPRB employee who reviewed the report for accuracy.

We recommend the CPRB comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish a system of internal controls.

**Agency's Response**

***CPRB believes that it has a very effective system of internal controls in place to ensure compliance with applicable state laws, rules and regulations and so would disagree with your general statement on page two (2) of your draft report that it does not have such a system.***

*However, all systems can be improved, and I appreciate your suggestions. Your report lists items that you consider CPRB in non-compliance with applicable state laws, rules and regulations, and for clarity, I have addressed each one individually.*

**Inclusion of Lump Sum Payment for Unused Annual Leave  
in Calculation of Retiree's Final Average Salary**

During the 1988 Legislative session, the Legislature amended Chapter 5, Article 5, Section 3 of the West Virginia Code to allow PERS members to utilize their lump sum payment for unused annual leave as part of their final average salary. This Code section, which became effective July 1, 1988, states in part:

**“Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum payment, at his or her option, for accrued and unused annual leave at the employee’s usual rate of pay at such time. The lump sum payment shall be made by the time of what would have been the employee’s next regular pay day had his employment continued. In determining the amount of annual leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued annual leave, since no period of service credit is granted in relation thereto; however, such lump sum payment is to be a part of final average salary computation...”  
(Emphasis added)**

This Code section was amended again by the Legislature during the 1989 Legislative session, effective July 6, 1989, removing the section of the statute which allowed the use of lump sum payments for annual leave for final average salary purposes. Since this Code section was amended in 1989, the CPRB has consistently denied retirees the usage of their lump sum payments for annual leave as part of their final average salary.

However, two exceptions to this practice came to our attention during the course of our audit. The first exception involved a PERS member whose request to utilize his lump sum payment for unused annual leave as part of his final average salary was denied by the CPRB. The PERS member contended that he had been eligible to retire under early retirement while the aforementioned Code section was in effect but decided against retirement at that time. However, he

fully expected to be able to utilize his lump sum payment as part of his final average salary whenever he decided to retire.

When he did retire, the CPRB denied his request to include the lump sum in his final average salary and he filed a civil suit against the CPRB in Kanawha County Circuit Court. However, the Court dismissed his case without hearing any evidence. Next, he appealed to the Supreme Court of Appeals and in the case of *Adams v. Ireland* (1999), the Court held that, under *Dadisman v. Moore* (1988), the statute which permitted State employees to include unused leave time in their computation of final average salary was a retirement statute in which employees had constitutionally vested contract property rights and that, under *Booth v. Sims* (1994), the employee's argument that he had relied to his detriment on this benefit was sufficient to state a claim for unconstitutional impairment of contract. Significantly, the *Adams* Court held that the length of time that a pension statute was in effect is not the controlling factor in determining whether a subsequent statutory amendment has unconstitutionally impaired a public employee's contract. Rather, it is whether the employee can be said to have substantially relied to their detriment on the statute. The Supreme Court reversed the circuit court's action and remanded the case to Kanawha County Circuit Court. Subsequently, the PERS member reached a settlement with the CPRB which was ratified by an Agreed Order of Dismissal issued by the Kanawha County Circuit Court. Based on the Agreed Order of Dismissal, the CPRB was to recalculate the member's retirement annuity utilizing the member's lump sum payment of unused annual leave as part of the member's final average salary. The member was to also receive any back pay retroactive to his date of retirement stemming from the recalculation of his retirement annuity.

Another court case which came to our attention was the Wood County Circuit Court case of *Warren Carter and Gerald Trembush v. CPRB*. Upon retiring, these two PERS members had requested the CPRB to allow them to utilize their lump sum payment for unused annual leave for final average salary purposes. Contrary to statute, the employer of one PERS member withheld retirement contributions from the member's lump sum payment. However, the CPRB denied these

members the usage of their lump sum payments of unused annual leave as part of their final average salary based on the §5-5-3 Code section as it currently exists. Once denied, these two PERS members filed a joint civil action against the CPRB in Wood County Circuit Court. Relying on an earlier decision of the Wood County Circuit Court involving the same issue but under the Teachers Retirement System (*Kiser v. CPRB*), the judge in the *Carter/Trembush* case ruled in favor of the two PERS members and against the CPRB. Subsequent to this decision, the CPRB got a stay from the Supreme Court of Appeals and as of the date of this report the Court has not made a decision as to whether or not it will hear the case.

Some of the current case law relating to the issues raised by the usage of lump sum payments of unused annual leave for final average salary purposes and considered by the courts in the aforementioned decisions include such Supreme Court decisions as *Dadisman v. Moore* (1988), *Booth v. Sims* (1994), and *Adams v. Ireland* (1999). In *Dadisman v. Moore* (1988), the Supreme Court held:

**“. . . We, therefore, now hold that retired and active PERS plan participants have contractually vested property rights created by the pension statute, and such property rights are enforceable and cannot be impaired or diminished by the State . . .**

**Members, retirants, and other beneficiaries are only entitled to participate in the retirement system as defined by the statutory contract. If the Legislature modifies the contract so as to result in new or additional benefits, whether out of gratitude, compassion, or any other motivation, it must provide additional funding to pay for those benefits. . . .” (Emphasis added)**

In *Booth v. Sims* (1994), the Supreme Court held:

**“When considering the constitutionality of legislative amendments to pension plans, an employee’s eligibility for a pension does not determine whether he or she has vested contract rights. The determination of an employee’s vested contract rights concerns whether the employee has sufficient years of service in the system that he or she can be considered to have relied substantially to his or her detriment on the existing pension benefits and contribution schedules . . .**

. . . substantial employee participation in the system *does* create an employee's reliance interest in pension benefits. An employee's membership in a pension system and his or her forbearance in seeking other employment prevents the legislature from impairing the obligations of the pension contract once the employee has performed a substantial part of his or her end of the bargain and relied to his or her detriment . . .

By promising pension benefits, the State entices employees to remain in the government's employ, and it is the enticement that is at the heart of employee's constitutionally protected contract right after substantial reliance not to have their own pension plan detrimentally altered . . .

. . . changes can be made with regard to employees with so few years of service that they cannot be said to have relied to their detriment. Line drawing in this matter must be made on a case-by-case basis, **but after ten years of state service detrimental reliance is presumed . . .**

. . . The pension rights of *all* current state pension plan members who have substantially relied to their detriment cannot be detrimentally altered at all, and any alterations to keep the trust fund solvent must be directed to the infusion of additional money. "Detrimentially alter" means the legislature cannot reduce the existing benefits (including such things as medical coverage) of the pension plan or raise the contribution level without giving the employee sufficient money to pay the higher contribution . . .

At some point, however, the worker has chosen to remain in public employment for such a substantial part of his or her life that the State can no longer purchase the employee's pension rights without the acquiescence of the employee . . ." (**Emphasis added**)

Finally, in *Adams v. Ireland* (1999), the Supreme Court held:

**"The length of time that a public employee pension statute was in effect is not the controlling factor in determining whether a subsequent statutory amendment has unconstitutionally impaired a public employee's contract . . .**

For purposes of determining whether amendment to pension statute has unconstitutionally impaired a public employee's contract, the determinative factor is whether the employee may be said to have substantially relied to their detriment on the statute. . . ." (**Emphasis added**)

Based on the aforementioned Supreme Court cases, it is possible that a court would rule that all PERS members who were State employees with at least ten years of service at the time §5-5-3 of the West Virginia Code was amended during the 1989 Legislative session may be

considered to have relied to their detriment on the expectation that they would be allowed to utilize their lump sum payment for unused annual leave as part of their final average salary upon retiring. Agency records indicate that approximately 3,000 State employees who are still actively contributing to the retirement system had at least ten years of service when this statute was amended in 1989. Based on the rulings in the aforementioned court cases, the courts could rule that any or all of these 3,000 State employees who request to have their lump sum payment included in their final average salary be allowed to do so as the result of their detrimental reliance.

Based on the average age and current salaries of these 3,000 State employees who had ten or more years of service in 1989, we estimate that if these PERS members are allowed to utilize their lump sum payment for annual leave as part of their final average salary that it could result in an average increase of approximately \$126 to their monthly pension benefit. As a result of this possible increase to the monthly pension benefit of these 3,000 State employees, we estimate the potential dollar impact on the retirement system would be approximately \$70,000,000 spread over the next 15 to 25 years. In addition, PERS members who had less than ten years of service when the law was changed may argue that they continued working in reliance on receiving that benefit in the future. Under *Booth v. Sims*, their claims would have to be litigated on a case by case basis. Consequently, the potential dollar impact on the retirement system that might result from this class of claims cannot be quantified.

We recommend the Consolidated Public Retirement Board consider the Supreme Court's statement that §5-5-3 was separate from the early retirement incentives statute and stands alone, and review §5-5-3 of the West Virginia Code as a separate statute that constitutes a contract which confers property rights upon the retirement system's members. We further recommend the Consolidated Public Retirement Board then seek a conclusive and definitive answer to the questions surrounding the usage of lump sum payments for unused annual leave for final average salary purposes to ensure that the retirement annuities of PERS members are being properly calculated in accordance with State law.

### Agency's Response

*The Legislative Auditors question the Board's longstanding practice of excluding lump sum payments for unused leave from PERS members' final average salary calculations, predicated their concerns upon isolated portions of text extracted from three cases previously decided by West Virginia's Supreme Court of Appeals: Dadisman v. Moore, 384 S.E.2d 816 (1988); Booth v. Sims, 456 S.E.2d 167 (1994); and Adams v. Ireland, 528 S.E.2d 197 (1999). Based upon a limited review of the underlying principles of the Supreme Court's holdings in the cited cases, the auditors' report opines that "it is possible a court would rule that all PERS members who were State employees with at least ten years of service at the time §5-5-3 of the West Virginia Code was amended during the 1989 Legislative session may be considered to have relied to their detriment on the expectation that they would be allowed to utilize their lump sum payment for unused leave as part of their final average salary upon retiring."*

*It is first significant to note that the Code section referenced in this portion of the auditor's report, W. Va. Code §5-5-3, did not permit the inclusion of lump sum payments within a retiring PERS member's final average salary calculation until the 1988 legislative session.<sup>1</sup> In 1988, the Legislature amended W. Va. Code §5-5-3 to provide that such lump sum payments could be used to enhance final average salary. In 1989, the Legislature again amended W. Va. Code §5-5-3, however, changing the statute to state that accrued annual leave could not be used in the calculation of a retiree's final average salary. It has so stated at all times since. Therefore, the version of W. Va. Code §5-5-3 which permitted PERS participants to include lump sum payments for unused leave as part of the member's "final average salary" was part of state statutory law for only a single year out of the entire period of the PERS plan's existence.*

*The Board is, of course, aware that certain cases decided by the Supreme Court of Appeals have held that pension plan statutes may not be amended as to current plan participants*

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<sup>1</sup> Prior to 1988, the statute in question stated that when a State employee ended his or her employment due to "resignation, death, retirement or otherwise," the employee could elect to "be paid in a lump sum amount . . . for accrued and unused annual leave at the employee's usual rate of pay at such time." No provision was contained within the statute permitting such lump sums to be included in the participant's final average salary calculation. See W. Va. Code §5-5-3 (1987); See also Adams, 528 S.E.2d. at 202.

who have “detrimentally relied” upon existing pension provisions and benefit schedules. In the seminal case on that issue, Booth v. Sims, West Virginia’s Supreme Court of Appeals held, *inter alia*, that:

*Changes may be made in pension systems with regard to new employees who have not yet joined the system and who have not yet relied to their detriment on government promises of future benefits. Furthermore, changes can be made with regard to employees with so few years of service that they cannot be said to have relied to their detriment. Line drawing in this latter regard must be made on a case-by-case basis, but after ten years of state service detrimental reliance is presumed.*

Booth, Syl. Pt. 15.

In a second relevant case decided by the Supreme Court of Appeals in 1999, Adams v. Ireland, a plan participant alleged that he had decided to forego an opportunity to take early retirement during an isolated window of opportunity ending in December, 1988, purportedly based upon his expectations of a higher final average salary through operation of the 1988 version of W. Va. Code §5-5-3. 528 S.E.2d 197. In analyzing the participant’s claim in that regard, the Supreme Court of Appeals held that the length of time that a public employee pension statute was in effect is not determinative of whether or not a subsequent statutory amendment has unconstitutionally impaired a public employee’s contract. Rather, the Adams Court held, the question is “whether the employee may be said to have substantially relied to their detriment on the statute.”

On the facts then before it, the Adams Court concluded that “without a record, we are unable to evaluate whether the appellant substantially participated in the public employee’s retirement system, or whether the appellant relied to his detriment on the 1988 version of W. Va. Code §5-5-3.” The case was thus remanded to the Circuit Court for further factual development, but was settled prior to issuance of any further judicial orders.

In light of the above-cited principles from the Booth and Adams decisions, the auditors’ report suggests that “it is possible that a court would rule that all PERS members who were State employees with at least ten years of service at the time §5-5-3 of the West Virginia Code

*was amended [in 1989] may be considered to have relied to their detriment on the expectation that they would be allowed to utilize their lump sum payment for unused annual leave as part of their final average salary upon retiring.<sup>2</sup> The Board believes that such a broad judicial ruling is highly unlikely at this juncture, particularly given the passage of time since amendment of the 1988 version of W. Va. Code §5-5-3, and the inherent factual nature of the issue of “detrimental reliance.” Moreover, and given the limited period of time that the 1988 version of W. Va. Code §5-5-3 was even part of state statutory law, we believe that such broad and blanket judicial relief would substantively distort the constitutional principles enunciated in Booth and its progeny.*

*The Board’s position, which it believes to be firmly grounded in the pension jurisprudence of this State, is that in order for a PERS plan participant to assert a cognizable claim of detrimental reliance upon the 1988 version of W. Va. Code §5-5-3, such participant would have to demonstrate either: 1) that the statute in question upon which they claim to have relied was either in effect for such duration of their tenure that they can be said to have detrimentally relied upon it; or 2) that the participant took some action to their detriment in reasonable reliance that the statute would remain in effect during the remainder of their state service. The first possibility is essentially foreclosed, the Board believes, given the extremely short period of time the 1988 version of §5-5-3 was part of state statutory law. The second possibility, the Board submits, would clearly not encompass all 3,000 active PERS members having 10 or more years of service prior to 1989, but rather would encompass only those participants who were, like the participant in Adams, eligible to retire under the 1988 early retirement incentive, but who did not elect that opportunity in reasonable reliance upon the 1988 version of the statute.*

*The legislative auditors have recommended that the Board consider the Supreme Court of Appeals holding in Adams v. Ireland and “review §5-5-3 of the West Virginia Code as a separate statute that constitutes a contract which confers property rights upon the retirement system members.” The Board believes that it has done so, but is willing to further explore the*

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<sup>2</sup> The Legislative Auditors have noted that there are 3,000 state employee who are still actively contributing to the PERS retirement system who had at least ten years of service when W. Va. Code §5-5-3 was amended in 1989.

*issues raised with legal counsel and to further respond to this issue if deemed necessary or appropriate in order to bring closure to the auditors' concerns.*

*The legislative auditors further recommend that the Board seek "a conclusive and definitive answer to the questions surrounding the usage of lump sum payments for unused annual leave for final average salary purposes to ensure that retirement annuities of PERS members are being properly calculated in accordance with State law." As the auditors are aware, a petition is currently pending before the Supreme Court of Appeals which deals with issues relating to two PERS participant's claimed rights to have lump sum payments for unused leave included as "salary" for final average salary purposes. Whether the Supreme Court will agree to hear that case, and whether or not any decision issuing as a result of that case will provide "conclusive and definitive" answers to all lump sum payment/benefit computation questions cannot, at this juncture, be accurately predicted.*

**Non-State Employers Not Remitting Retirement Contributions to CPRB in Timely Manner**

Non-state public employers which participate in PERS are required to remit to the CPRB both the employee and employer portions of retirement contributions within five days following the end of the calendar month for which these monies are due. However, we noted that out of a randomly selected sample of 50 participating non-state public employers, 23 did not remit retirement contributions totaling \$129,052.49 to the CPRB in a timely manner and the timeliness of nine remittances could not be determined because the documentation supporting each remittance could either not be located or was not date stamped.

Of the 50 contribution remittances tested, we were only able to determine whether 41 contribution remittances were remitted timely. Twenty-three of these 41 contribution remittances were not remitted timely to the CPRB, resulting in a noncompliance rate of 56%. The 23 remittances were remitted an average of 11 days late. Projecting the error rate of our audit sample to the population of contribution remittances received from non-state employers which were processed during the period July 1, 2002 through June 30, 2004, we estimated 6,837 remittances of 12,188

processed were not remitted timely to the CPRB. Based on an average annual rate of return, we further estimated the CPRB lost approximately \$86,500 in investment earnings during the audit period due to these contribution remittances not being remitted timely.

Title 162, Series 5, Section 10 of the Legislative Rule for the Public Employees Retirement System, as amended, states:

**“All participating public employers shall withhold four and five-tenths percent (4.5%) from the gross compensation of each member. The sums withheld each calendar month are due the Retirement System at the end of each calendar month and shall be paid not later than five (5) days following the end of each calendar month. Each remittance shall be made by check separate from the employer remittance and shall be made payable to the West Virginia Public Employees Retirement System. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each employee and the credited service each employee was entitled to for that month, on forms provided by the Retirement System for that purpose. The Board may accept reports from agencies based on the same format as the Public Employees Retirement System.” (Emphasis added)**

Additionally, Title 162, Series 5, Section 9 of the Legislative Rule for the Public Employees Retirement System, as amended, states:

**“Each participating public employer shall contribute nine and five-tenths percent (9.5%) of each compensation payment of all its employees who are members of the Public Employees Retirement System: Provided, That beginning on the first day of July, two thousand three, each participating public employer shall contribute ten and five-tenths percent (10.5%) of each compensation payment of all its employees who are members of the Public Employees Retirement System. The sums are due the Public Employees Retirement System at the end of each calendar month in arrears and shall be paid not later than five (5) days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member and the credited service each employee was entitled to for that month, on forms provided by the Public Employees Retirement System for that purpose.” (Emphasis added)**

According to the membership manager, the State law requiring the remittance of retirement contributions by participating employers does not impose a penalty on the employer for delinquent remittances, therefore, there is no incentive for the employers to remit contributions

timely. We noted that House Bill 3160 was proposed during the 2005 Regular Legislative Session to amend Chapter 5, Article 10D, Section 1 of the West Virginia Code. The amendment to this Code section was to allow the CPRB to recover from a participating employer that fails to pay contributions due the CPRB in a timely manner amounts not to exceed interest or other earnings lost as a result of the untimely payment or a reasonable minimum fee, whichever is greater, as provided by legislative rule. We noted that this bill did not pass. The membership manager told us that legislation would be proposed again in the upcoming Legislative session to amend this Code section.

In July 2004, the CPRB began offering non-state participating employers the option of reporting monthly retirement contribution information via Web Reporting, to help facilitate the monthly reporting process. In conjunction with Web Reporting, the CPRB also began offering non-State employers two new payment methods in which to remit payment to the CPRB: Automatic Clearing House (ACH) Debit and Lockbox.

We recommend both the Consolidated Public Retirement Board and all participating non-state public employers comply with Title 162, Series 5, Sections 9 and 10 of the Legislative Rule for the Public Employees Retirement System, as amended. We also recommend that the Consolidated Public Retirement Board continue to seek legislation which would allow the Consolidated Public Retirement Board the authority to impose surcharges on participating employers for delinquent remittances of employee and employer contributions. We further recommend the CPRB strengthen internal controls over the documenting of the receipt of contribution remittances from non-state employers to ensure compliance with the aforementioned governing instruments by maintaining a separate record to document the date on which each remittance is received.

**Agency's Response**

***I would note that the language of the rules referenced on page 21 of the draft report have been amended effective June 1, 2005, and the number of days has changed from five to fifteen days following the end of each calendar month.***

*In the summer of 2003, CPRB recognized this difficulty with the untimely remittance of retirement contributions and proposed new legislative rules allowing the imposition of surcharges on participating employers for delinquent remittances of contributions. The Board has approved submission for the 2006 Legislative Session proposed legislation that amends the statutes to permit surcharges as noted on page 22 of the draft report.*

*Staff is reviewing the internal controls to ensure appropriate records. All documentation is date stamped as to CPRB receipt. Pursuant to West Virginia Code §5-10-33, the Auditor is notified if a participating employer is sixty (60) days delinquent.*

**Disability Retirees Not Required to Undergo Medical Examinations Subsequent to Retirement**

The CPRB has the authority, as provided by State Code, to require disability retirees under the age of 60 to undergo a medical examination at least once each year during the first five years subsequent to the retirement of a member due to disability, and at least once in each three-year period thereafter. However, we noted that during the time period of July 1, 2002 through June 30, 2004, the CPRB was not requiring disability retirees to undergo medical examinations subsequent to the members being awarded retirement benefits. Therefore, no attempt is being made by the CPRB to reaffirm that a retiree continues to be incapacitated from gainful employment as a result of their disability.

Agency records indicated that 2,015 disability retirees were receiving retirement benefits as of June 30, 2004. The total amount of pension benefits paid to these retirees from their date of retirement through June 30, 2004 amounted to approximately \$131,830,000. The following table details the payment of pension benefits to these disability retirees.

<u>Number of Retirees Receiving Benefits</u>	<u>Number of Years Receiving Benefits</u>	<u>Average Annual Pension Benefit Paid per Retiree</u>	<u>Total Benefits Paid</u>
1,237	0 to 10 Years	\$10,674	\$ 54,719,500
501	10 to 20 Years	\$ 6,448	50,422,500
225	20 to 30 Years	\$ 4,933	23,541,000
<u>52</u>	Over 30 Years	\$ 3,236	<u>3,147,000</u>
<u>2,015</u>			<u>\$131,830,000</u>

During the audit period, Chapter 5, Article 10, Section 26(a) of the West Virginia

Code read as follows:

“At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five [§5-10-25] hereof, and at least once in each three-year period thereafter, the board of trustees may, and upon the retirant's application shall, require a disability retirant, who has not attained age sixty years, to undergo a medical examination to be made by or under the direction of a physician designated by the board. . . If upon such examination of a disability retirant, the said physician reports to the board that the retirant is physically able and capable of resuming employment with a participating public employer he shall be returned to the employ of the participating public employer from whose employment he retired and his disability annuity shall terminate: *Provided*, That the report of the said physician is concurred in by the board.”

An amendment to Chapter 5, Article 10, Section 26(a) of the West Virginia Code passed during the 2005 Legislative session, effective April 9, 2005, states in part:

“At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five of this article, and at least once in each three-year period thereafter, the Board may require a disability retirant, who has not attained age sixty years, to undergo a medical examination to be made by or under the direction of a physician designated by the board, **or to submit a statement signed by the disability retirant's physician certifying continued disability, or both, and a copy of the disability retirant's annual statement of earnings . . .** If, upon medical examination of a disability retirant, the physician reports to the board that the retirant is physically able and capable of resuming employment with a participating public employer, the retirant shall be returned to the employ of the participating public employer from whose employment he or she retired and his or her disability annuity shall terminate: *Provided*, That the Board concurs in the physician's report.” **(Emphasis added)**

Since the CPRB is not requiring retirees who receive disability retirement benefits to undergo regular medical examinations, the CPRB would not be aware of any retirees who, while initially determined to be disabled, may no longer meet the requirements to qualify for disability retirement benefits. Therefore, the possibility exists that the CPRB is permitting persons who no longer qualify to continue to receive disability retirement benefits.

According to the deputy director, it would be cost prohibitive to require all disability retirees to undergo medical examinations subsequent to the initial examination in an attempt to identify retirees who may no longer be disabled. Agency records indicate that the average cost of the initial medical exam to establish disability was \$567 per retiree during the 2003 fiscal year and \$575 per retiree during the 2004 fiscal year. As an alternative, in accordance with the passage of the recent amendment to §5-10-26 of the West Virginia Code, the CPRB is requiring that all disability retirees obtain an affidavit from their physicians once per year stating that the retiree continues to be disabled. As of July 15, 2005, the CPRB has implemented a procedure whereby notification is sent to disabled retirees informing them that they must be recertified by a medical examination annually for five years after retirement, and thereafter at such times as the retirement board may require. A "Recertification of Disability" form is also sent to the disabled retiree to be completed by the disability retiree's physician. However, upon reviewing the form, we found the certification to be ambiguous and confusing.

The deputy director also stated that under State law disability retirees who engage in substantial gainful activity are not eligible to receive retirement benefits but that the Code does not clearly quantify substantial gainful activity. She explained that the CPRB is attempting to codify the Social Security Administration's definition of "substantial gainful activity amount." Under this standard, if a disability retiree earns more than the substantial gainful activity amount as defined by the Social Security Administration, then the retiree would no longer qualify for disability retirement benefits. Without this addition to the definition of substantial gainful activity, she believes that it makes it more difficult for the CPRB to identify those disability retirees which may be engaged in some form of substantial gainful activity, and, thus preventing the CPRB from enforcing the provisions of §5-10-26 of the West Virginia Code.

We learned from CPRB personnel that the CPRB will start to require on an annual basis disability retirees to submit a copy of their Federal tax return and accompanying 1099's, W-2 form(s), etc. in an attempt to identify those disability retirees who may be engaged in some form of substantial gainful activity. As of July 15, 2005, this procedure has not been implemented.

The deputy director told us that contracts are not issued to physicians due to the difficulty in obtaining doctors to evaluate the disability applicants. She further stated that most physicians are unwilling to accept cases involving disability retirees because of liability issues and that requiring the physicians to sign contracts would increase the difficulty in recruiting the services of physicians. The deputy director further explained that the CPRB pays for the costs of the medical exams administered to disability applicants because PEIA will not cover the cost of an exam involving the voluntary review of a member's health for disability retirement purposes. However, the CPRB has not attempted to utilize the Division of Purchasing's contracting policies nor have they solicited proposals to ascertain the availability and cost of such services.

We recommend that the Consolidated Public Retirement Board utilize the Purchasing Division's contracting policies and procedures to determine the availability and cost of private physicians and physicians on the staffs of Marshall University and West Virginia University to perform medical examinations of disability retirees. If found to be practicable, we recommend the Consolidated Public Retirement Board utilize the authority already granted to the Board by Chapter 5, Article 10, Section 26(a) of the West Virginia Code, as amended, and develop procedures to require on an annual basis the random selection of disability retirees to undergo regular medical examinations by a board designated physician to determine whether these retirees remain permanently and totally incapacitated. In conjunction with this procedure, we further recommend that the Consolidated Public Retirement Board inform all recipients of disability retirement benefits under the age of 60 years that they are subject to be randomly selected for a medical examination to be conducted by a board designated physician. In addition, we recommend the CPRB send out a more simplified certification form.

**Agency's Response**

*I would note that on page 14 of the draft report, the effective date of the changes to the statute is misstated. The effective date was actually April 9, 2005, not July 1, 2005, as written.*

*The Post-Audit Report made four recommendations in this area and CPRB responds as follows:*

*The Task Force to Review Disability Issues Committee, a Board Committee of CPRB, is currently reviewing the CPRB physician availability, retention and rate structure situation. This Committee may explore with the Purchasing Division the practicality of contracting with physicians to perform medical examinations of disability retirants, as recommended by the draft report; the Committee has contacted the Osteopathic College of Medicine in Lewisburg, and will contact Marshall and WVU to assist in providing timely disability examinations.*

*The Task Force to Review Disability Issue Committee will consider developing procedures for annual examinations for a random selection of disability retirees and these procedures would include the notifications recommended in the report.*

*As noted in the draft report on page 15, CPRB already implemented a procedure to notify disabled retirants about the medical recertification(s) provisions in the law.*

*All CPRB forms, including the certification form reviewed by and found "ambiguous and confusing" by the auditors, are being reviewed by CPRB legal counsel, both for legal accuracy and for readability.*

#### **CPRB Not Verifying Eligibility Status of New Participating Employers**

During the period July 1, 2002 through June 30, 2004, 22 non-state agencies joined PERS as participating employers. Through examination of each agency's employer file and inquiry of management personnel, we learned 16 of these employers were classified as public corporations. Of these 16 employers classified as public corporations, we noted 12 employers had not submitted a copy of the ordinance or charter provision creating that corporation.

Of the 22 non-state agencies which joined PERS during the audit period, eight did not submit the required written certification of the determination of the governing bodies within ten days of the date of passage of the resolution as required. For these eight employers, the number of

days elapsed between the date of passage of the resolution by the employer's governing body and the date the written certification was actually received by the CPRB ranged from 12 to 170 days. Also, we were unable to determine whether the written certifications of two other non-state agencies were submitted timely since the written certifications had not been date stamped when received by the CPRB. Further, effective controls have not been implemented by the CPRB to ensure that public corporations submit a copy of the ordinance or charter provision creating the corporation upon joining PERS and that non-state agencies submit a written certification (or resolution form) timely as required by State statute.

Chapter 5, Article 10, Section 16 of the West Virginia Code states:

"The state of West Virginia shall become a participating public employer effective July one, one thousand nine hundred sixty-one. Any other political subdivision may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its employees in the membership of the retirement system. It shall be the duty of the clerk or secretary of each such political subdivision electing to become a participating public employer to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body or the canvass of votes upon such action."

Also, Chapter 5, Article 10, Section 2(4) of the West Virginia Code, as amended, defines a political subdivision as follows:

" 'Political subdivision' means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-seven: Provided, however, That the regional community policing institute which participated in the public employees retirement system before the first day of July, two thousand, is considered a political subdivision solely for the

purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the public employees retirement system after the first day of July, two thousand.”

Additionally, the CPRB’s policy requiring public corporations seeking membership as a participating public employer in PERS to send to the CPRB a certified copy of either the ordinance or charter provision creating the public corporation is documented on the resolution form which the CPRB requires each prospective employer to complete and submit to the CPRB. The “Resolution to Become Members of the West Virginia Public Employees Retirement System” form states in part:

“Public Corporations must send a certified copy of the ordinance or charter provision creating said Public Corporation.”

Since the CPRB does not have procedures in place to ensure non-state agencies seeking membership in PERS meet the requisite eligibility requirements as defined by State statute, the CPRB risks allowing a non-state agency which does not meet the eligibility requirements to become a participating employer in PERS. This situation may unnecessarily add to the unfunded liability of the retirement system since the State would be obligated to fund the future pension benefits which would be due any employees of such an organization.

The manager of the Membership Section stated if a copy of the ordinance or charter provision was not in the non-state agency’s employer file, then the CPRB never received one. She also told us the CPRB does not ensure that resolution forms are submitted to the CPRB within ten days of passage by the non-state agencies as required.

We recommend the Consolidated Public Retirement Board comply with the provisions of both Chapter 5, Article 10, Section 16 of the West Virginia Code and Chapter 5, Article 10, Section 2(4) of the West Virginia Code, as amended, by developing procedures to ensure only those non-state agencies meeting the requisite eligibility requirements are allowed to join PERS.

Agency's Response

*CPRB has obtained copies of the charters or ordinance for each of the twelve (12) new participating employers noted in the draft report. Staff has also initiated an audit of all remaining employer files to determine whether these contain the required documentation.*

*CPRB established internal procedures and developed a check-list to ensure future non-state agencies seeking membership in PERS meet the requisite eligibility requirements. This became effective April 2005.*

*The Resolution form discussed on page 19 of the draft report is in the process of review by CPRB legal counsel, both for legal accuracy and for readability.*

Processing of Retirement Annuities

Of the 50 retirement annuities included in our test sample, we noted the monthly retirement annuities of six annuitants (including both retirees and beneficiaries) were understated by a total of \$55.10. Between July 1, 2002 and June 30, 2004, there were 1,994 retirees and beneficiaries who began receiving a monthly annuity. We reviewed the retirement annuities of 50 of these retirees and beneficiaries. Our review indicated 12% of the annuities tested were understated. The following table reflects the results of our sample as projected over the entire population:

<u>Type of Annuitant</u>	<u>Sample Size</u>	<u>Number Understated In Sample</u>	<u>Sample Error Rate</u>	<u>Number of Annuitants In Population</u>	<u>Number of Annuitants In Population Whose Annuity Was Understated</u>
Regular Retirees	35	4	11%	1,506	172
Disability Retirees	5	1	20%	295	59
Beneficiaries	5	1	20%	75	15
Deferred Retirees	<u>5</u>	<u>-0-</u>	NA	<u>118</u>	<u>-0-</u>
Total	<u>50</u>	<u>6</u>		<u>1,994</u>	<u>239</u>

The following table depicts the dollar impact of these errors on the population of annuitants.

<u>Type of Annuitant</u>	<u>Average Monthly Gross Annuity Amount</u>	<u>Total Pension Benefits Paid During Audit Period</u>	<u>Projected Pension Benefits Underpaid</u>
Regular Retirees	\$1,349	\$24,849,000	\$23,000
Disability Retirees	1,016	3,756,000	300
Beneficiaries	868	695,000	2,275
Deferred Retirees	499	<u>637,000</u>	NA
Total		<u>\$29,937,000</u>	

For the 172 regular retirees whose monthly gross annuity we projected to be understated, we estimated their average monthly gross annuity amount of \$1,349 to be understated by approximately \$4.00 per month. Also, for the 59 disability retirees whose monthly gross annuity we projected to be understated, we estimated their average monthly gross annuity amount of \$1,016.00 to be understated by approximately \$0.50 per month. Finally, for the 15 beneficiaries whose monthly gross annuity we projected to be understated, we estimated their average monthly gross annuity amount of \$868.00 to be understated by approximately \$10.00 per month.

Chapter 5, Article 10, Section 22 of the West Virginia Code, as amended, establishes the formula by which a PERS member's retirement annuity is to be calculated. This Code section states in part:

“Upon a member's retirement...all members retired and all members retiring shall receive a straight life annuity equal to two percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service, exclusive of limited credited service in force at the time of his or her retirement. . . .”

Also, Chapter 5, Article 10, Section 2(16)(A) of the West Virginia Code, as amended, defines final average salary as follows:

“(16) ‘Final average salary’ means either:

(A) The average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-

one or thereafter) during any period of three consecutive years of his or her credited service contained within his or her ten years of credited service immediately preceding the date his or her employment with a participating public employer last terminated.”

In conjunction with the definition of final average salary, Chapter 5, Article 10, Section 2(13) of the West Virginia Code, as amended, defines credited service as follows:

“(13) ‘Credited service’ means the sum of a member’s prior service credit and contributing service credit standing to his or her credit as provided in this article.”

As the result of these errors, these six annuitants were underpaid a total of \$848.64 in pension benefits through June 30, 2004. Regarding the six annuitants whose monthly annuities were understated, we noted one annuitant’s monthly annuity was understated as a result of six months of prior service being omitted from the calculation of the retiree’s annuity. This was an oversight on the part of CPRB personnel.

The monthly gross annuities of the other five annuitants were understated because the wrong final average salary amount was utilized in the calculation of each annuitant’s retirement annuity. The final average salary used in one retiree’s retirement annuity calculation was incorrect as the result of utilizing an incorrect pro-rated annual increment amount to calculate the highest 36 consecutive months of salary. Also, the final average salary used in one disability retiree’s annuity calculation was miscalculated because the wrong 36-month period was used by the retirement advisor in preparing the retiree’s retirement annuity calculation.

Generally, CPRB personnel responsible for preparing retirement annuity calculations rely on the CPRB’s mainframe system to calculate a retiree’s final average salary. This calculation is documented by a computer generated report. However, the salary information utilized by the computer system to calculate a retiree’s final average salary may be one or two months behind as the result of timing differences between when member contribution data is received from participating employers and posted to the mainframe system and the point in time when a member’s retirement annuity is prepared. In this situation, CPRB personnel have to manually adjust the computer generated final average salary calculation to determine the proper final average salary amount. These

manual adjustments were not always done resulting in the annuities of two annuitants being understated.

Finally, the retirement annuity of one annuitant was understated since the CPRB did not properly apply the pro-rated increment to the last full month of service credit. This omission resulted in the annuitant's monthly annuity being understated. This annuitant was a beneficiary of a deceased active member. Based on salary information provided by the deceased member's employer, the pro-rated increment being added to the deceased member's final average salary increased the annuitant's monthly annuity by \$9.54.

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 22 of the West Virginia Code, as amended, by implementing internal controls ensuring the proper calculation of each retiree's retirement annuity. We also recommend the CPRB reimburse any annuitant who was underpaid any pension benefits. We further recommend the CPRB develop a formal policy regarding the proper utilization of pro-rated increment in the calculation of a retiree's final average salary to be consistently applied to all retirees.

#### **Agency's Response**

***CPRB has corrected these calculation errors and reimbursed all annuitants who were underpaid. As noted in the report, these errors were primarily pro-rated increment errors and CPRB has now fully defined how prorated increment is to be calculated in the benefit section procedural manual.***

#### **Unfunded Liability of Public Employees Retirement System (Informational Only)**

As of June 30, 2004, the West Virginia Public Employees Retirement System had an unfunded accrued liability of \$774,541,000. This amount is based on the most recent actuarial valuation report prepared by the outside actuarial firm of Mellon Human Resources and Investor Solutions in December 2004. The West Virginia Public Employees Retirement System is funded through employee contributions of 4.5% of payroll and employer contributions of 10.5% of payroll. This actuarial valuation indicates that the statutory employee and employer contributions are

adequate to cover accruing liabilities, referred to as the normal cost, and amortize the existing unfunded liability of \$774,541,000 within 31 years of the July 1, 2004 valuation date. The following table illustrates the funding progress of the unfunded accrued liability for the eight fiscal years prior to July 1, 2004:

<b>Actuarial Valuation Date</b>	<b>Actuarial Value of Assets (a)</b>	<b>Actuarial Accrued Liability (AL) - Entry Age (b)</b>	<b>Unfunded Accrued Liability (UAL) (b-a)</b>	<b>Funded Ratio (a/b)</b>	<b>Covered Payroll (c)</b>	<b>UAL as a Percentage of Covered Payroll (b-a)/(c)</b>
06/30/97	\$2,152,300,000	\$2,371,752,000	\$219,452,000	90.7%	\$809,315,000	27.1%
06/30/98	\$2,371,359,000	\$2,524,214,000	\$152,855,000	93.9%	\$836,541,000	18.3%
06/30/99	\$2,504,001,000	\$2,681,756,000	\$177,755,000	93.4%	\$854,883,000	20.8%
06/30/00	\$2,700,356,000	\$2,932,484,000	\$232,128,000	92.1%	\$930,331,000	25.0%
06/30/01	\$2,681,395,000	\$3,178,037,000	\$496,642,000	84.4%	\$972,711,000	51.1%
06/30/02	\$2,588,777,000	\$3,432,467,000	\$843,690,000	75.4%	\$1,040,269,000	81.1%
06/30/03	\$2,699,941,000	\$3,691,001,000	\$991,060,000	73.1%	\$1,109,272,000	89.3%
06/30/04	\$3,095,660,000	\$3,870,201,000	\$774,541,000	80.0%	\$1,134,111,000	68.3%

*Source: Actuarial Valuation Report as of July 1, 2004 prepared in December 2004 by actuarial firm of Mellon Human Resources and Investor Solutions.*

Based on this schedule, the funded ratio of plan assets to the actuarial accrued liability of the retirement system has decreased by 10.7% over the last eight fiscal years.

**Act of Fraud Committed Against PERS by Active Member**

Upon reviewing an internal audit report prepared by the CPRB’s internal auditor, we learned that a former employee of a non-state employer (Sun Valley Public Service District) had committed fraud by collecting monthly retirement annuity checks from PERS while continuing to be employed by the same participating employer. Employee and employer retirement contributions were not remitted to the CPRB during the time of the employee’s continued employment. Additionally, this employee submitted false and fraudulent documents regarding her cessation of employment and her accumulated leave.

The CPRB received a retirement application from an employee of the Sun Valley Public Service District on August 28, 2002. The application indicated that the employee would be retiring from PERS and that the last day of her employment would be August 30, 2002. The application was approved and the employee's retirement became effective September 1, 2002.

In order to perpetrate this fraud, this employee had to continue to deceive both her employer and the CPRB. This employee had advised Sun Valley Public Service District's board that it was her intention to retire at the end of September 2003. At the April 8, 2003 meeting of Sun Valley's board, she advised the board members she had "frozen" her retirement and that she understood that when she did retire she would lose almost all of her unused sick leave. On April 9, 2003, the chairman of Sun Valley's board contacted the CPRB to inquire about the assertions made by this employee at the board meeting held the previous day. Upon speaking with various CPRB staff members, the chairman learned of the employee's actual retirement on September 1, 2002. Based on this information along with other findings regarding her employment, Sun Valley's board members voted to terminate her employment effective April 9, 2003.

Based on information provided by Sun Valley's chairman, the acting executive director of the CPRB made an administrative ruling on April 16, 2003 to cancel the monthly pension benefit being paid to this employee. She instructed the appropriate CPRB staff to cancel the direct deposit of this employee's monthly retirement annuity.

Once the employee learned of the CPRB's decision to cancel her retirement annuity, she appealed the CPRB's decision to the CPRB's hearing officer. On November 10, 2003, an appeal hearing was conducted. The hearing was held to determine whether or not a member of the Public Employees Retirement System who submits false or fraudulent documents in order to receive benefits is subject to having their annuity cancelled.

The following are a list of informational items regarding the fraud that were discussed during the hearing.

- On September 6, 2002, the employee signed a name different from her own and as "payroll clerk" on both the CPRB's Form 17 detailing the employee's

termination of employment with the Sun Valley Public Service District and on the CPRB's AL Form certifying that the employee had 391 ½ days of accrued unpaid annual and/or sick leave which she wanted to convert to additional service credit. The position of payroll clerk does not exist; furthermore, no one by the alternate name the employee used ever worked for Sun Valley Public Service District.

- During the period of September 1, 2002 (the effective date of the employee's retirement) through March 2003 (when payments were terminated), the employee collected \$7,914.55, of which approximately \$100.00 per month was a result of the employee having converted accumulated leave as reported on the CPRB's AL Form which was falsified by the employee under the false alias.
- The employee did not in fact have 391½ days of accumulated leave as she indicated.

Based on the evidence presented at the hearing, the hearing officer recommended that a regular retirement annuity for the employee be commenced effective May 1, 2003. Additionally, all pension benefits paid to the employee between September 2002 and March 2003, as well as the employee's retirement contributions from August 30, 2002 through April 9, 2003 would be recouped by the CPRB. This also included recouping the employer share from the employer for the time the employee worked during the period the employee also collected an annuity. At a regular board meeting held on June 30, 2004, the Board voted to accept the hearing officer's recommendation. Thus, the retiree's retirement annuity was subsequently reinstated after all of the hearing officer's recommendations had been carried out.

In summary, the falsification of documents allowed the employee to receive \$7,914.55 (\$1,130.65 x 7 months) in retirement benefits while the employee simultaneously received \$10,001.48 in gross wages from Sun Valley. Also, employee and employer retirement contributions totaling \$1,400.21 were not remitted to the CPRB for the months of September 2002 through April 2003. In addition, false information the employee provided relating to unused accumulated leave increased the employee's monthly benefit by \$97.58 as illustrated in the table below.

	<u>As Calculated</u>	<u>As Corrected</u>	<u>Difference</u>
Final Average Salary	\$24,228.16	\$24,228.16	\$0.00
Contributory Service	24 years 9 months	25 years 1 months	4 Months
Sick Leave Service	3 years 3 months	6 months	2 years 9 months
Total Credited Service	28 years	25 years 7 months	2 years 5 months
Annual Annuity	\$13,567.80	\$12,396.84	\$1,170.96
Monthly Annuity	\$1,130.65	\$1,033.07	\$97.58

As a result of this fraud perpetrated against the retirement system, the CPRB began requiring the Form 17 which serves as the employer's verification of a member's removal from the payroll to be notarized. Although the employer's payroll clerk must sign the Form 17 indicating he or she was responsible for completing the form, the payroll clerk does not certify the information provided by them is both true and correct. Also, the employer verification form does not explain the illegality and consequences of providing false information in an attempt to secure pension benefits for applicants who are not entitled to such benefits.

We recommend the Consolidated Public Retirement Board further revise the Form 17 employer verification to include a certification and explanation of consequences for providing false information in an effort to deter applicants from attempting to obtain pension benefits to which they are not entitled to receive.

**Agency's Response**

*I would note that the unpaid contributions in the amount of \$1,400.21 for September 2002 through April 2003 referenced on page 30 of the draft report have been received by CPRB.*

*CPRB agrees with the recommendation and has begun the process to revise the Form 17 Employer Verification.*

### Non-State Agencies Not Timely Remitting Contributions Upon Joining PERS

To become a participating employer in the Public Employees Retirement System, non-state agencies are required to submit to the CPRB a “resolution form”. This resolution documents the requirements established by Chapter 5, Article 10, Section 16 of the West Virginia Code which states:

“The state of West Virginia shall become a participating public employer effective July one, one thousand nine hundred sixty-one. Any other political subdivision may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its employees in the membership of the retirement system. It shall be the duty of the clerk or secretary of each such political subdivision electing to become a participating public employer to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body or the canvass of votes upon such action.”

Upon effectively joining PERS, non-state agencies are required to commence remitting monthly contributions to the CPRB. However, we noted six of the 22 non-state agencies which joined PERS during the period of July 1, 2002 to June 30, 2004 did not begin actively remitting contributions upon joining the system. Of those six who were not actively contributing upon joining, two agencies remitted their first monthly contribution approximately one month after the effective date reflected on the resolution form, three agencies remitted their first monthly contribution approximately three months after the effective date reflected on the resolution form, and one agency made their first monthly contribution approximately six months after the effective date reflected on the resolution form.

Chapter 5, Article 10, Section 29 of the West Virginia Code, as amended, states in part:

“ . . . (c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided for in subsection (b) above, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, **from the date the member enters the retirement system to the date his membership terminates. . . .**” (Emphasis added)

Additionally, the Resolution to Become Members of the West Virginia Public Employees Retirement System form completed by prospective non-state agencies upon joining PERS states in part:

“ . . . The following resolution was duly made and passed by no less than three-fifths vote of the governing body of (Name of Agency) on the (day) of (month), (year).

**BE IT RESOLVED** that (Name of Agency), a political subdivision or public corporation, does hereby elect to be a participant in the Public Employees Retirement System pursuant to Chapter 5, Article 10, Section 16 of the Code, and thereby will include all its employees who are eligible for membership in the Public Employees Retirement System. **The entity hereby agrees to pay its employer contributions, and withhold applicable employee contributions monthly and remit the same to the Public Employees Retirement System.** We understand that according to the West Virginia Code that once we become members of the Public Employees Retirement System, we may never withdraw from the retirement system.

**This resolution will become effective on the (day) of (month), (year), and thereupon it shall be the duty of the Clerk or Secretary to certify the determination of the political subdivision or public corporation, in passing this resolution, to the Board of Trustees of the Consolidated Public Retirement Board within ten (10) days after the final passage of this resolution by sending to said Board a certified copy of this resolution. . . .” (Emphasis added)**

The CPRB has not established effective controls to ensure that non-state agencies commence remitting contributions in accordance with the effective joining date reflected on the resolution form. As a result, non-state agencies are not meeting their fiduciary responsibility by ensuring that both employee and employer contributions due are remitted timely. The membership manager stated that some agencies which join PERS may not be clearly aware of under which conditions they must submit contributions for their employees. In other instances, it may be that the agency did not have full-time employees at the time the agency effectively joined PERS, and therefore, did not start remitting contributions until the agency did acquire employees with full-time status. The membership manager also stated that better precautions would be taken in the future to ensure new employers were properly contributing to the system.

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 29 of the West Virginia Code, as amended, by developing procedures to ensure participating employers begin making contributions in accordance with the effective joining date reflected on the resolution form completed by these agencies upon joining PERS.

**Agency's Response**

*CPRB has established procedures effective April 2005 to ensure that non-state agencies remit contributions in a timely manner. It appears that some non-state employers may have misunderstood the Resolution form. The Resolution form discussed on page 31-33 of the draft report is in the process of review by CPRB legal counsel, both for legal accuracy and for readability, and is expected to be amended to clarify the date that the remittance will be effective.*

**Processing of Refunds**

Of the 50 refund transactions included in our test sample, we noted three refund recipients were overpaid by a total of \$1,459.39. These three overpayments are detailed in the following table.

<u>Refund Recipient</u>	<u>Type of Refund</u>	<u>Date Refund Was Paid</u>	<u>Actual Amount Refunded</u>	<u>Audited Refund Amount</u>	<u>Amount Overpaid</u>
1	Member	1/03/2003	\$472.70	\$139.84	\$ 332.86
2	Member	2/11/2003	\$667.80	\$166.47	501.33
3	Estate	4/14/2004	\$825.21	\$200.01	<u>625.20</u>
Total					<u>\$1,459.39</u>

Regarding the refund issued to the estate of one deceased member as reflected in the table above, we noted the refund application completed by the deceased member's beneficiary was neither signed nor dated.

Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended, states:

"In the event a member leaves the employ of a participating public employer prior to the date he becomes entitled to retire with an annuity payable by the retirement system he shall be paid, upon his

written application filed with the board of trustees, his accumulated contributions standing to his credit in the members deposit fund, if his separation from the employ of a participating public employer occurs subsequent to a period of two years from and after the date he last became a member of the system. If his said separation from the employ of a participating public employer occurs within a period of two years from and after the date he last became a member of the system, he shall be paid his accumulated contribution standing to his credit in the members deposit fund less the total interest credited to his individual account therein; and the said total interest credit shall be transferred to the income fund.”

Also, Chapter 5, Article 10, Section 2(17) of the West Virginia Code, as amended, defines a member’s accumulated contributions as follows:

“(17) ‘Accumulated contributions’ means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the member’s deposit fund, together with regular interest on the contributions.”

As the aforementioned Code sections indicate, in order for a member to be eligible to receive the interest portion of their accumulated contributions as part of their refund the member must have been employed for a period of more than two years by a participating employer. Otherwise, the member is only entitled to receive the contributions deducted from their gross compensations upon withdrawing from the system. Regarding the three refund recipients who were overpaid, two of these recipients received the interest portion of their accumulated contributions as part of the amount refunded even though their contribution records indicated less than two years had elapsed before each member separated from employment with a participating public employer.

Upon reviewing the member records relating to the refund issued to the estate of a deceased member, we noted the deceased member had worked for a State employer from April 1965 to August 1967. CPRB records indicate the deceased member had initially applied for a refund of his accumulated contributions on August 14, 1967 upon separating from employment. A check for \$200.01 (representing only the amounts deducted from his gross compensations) was mailed to the member’s address but was returned due to a change of address. The returned check was redeposited and subsequently classified as unclaimed property. In March 2004, a representative of the deceased member’s estate applied for a refund of the member’s accumulated contributions and was

subsequently issued a refund check amounting to \$825.21. This refund payment was comprised of the \$200.01 originally contributed by the deceased member along with \$625.20 of interest earnings. However, we do not believe the refund recipient was entitled to receive any interest earnings since the deceased member had formally withdrawn from the retirement system in August 1967.

Upon discussing this particular refund with the membership manager, she explained that the CPRB did not agree with our conclusion that the deceased member's beneficiary was not entitled to the accrued interest. She explained that since the deceased member never cashed his refund check, his contributions remained on deposit with the Public Employees Retirement System. Thus, he continued to be a member of the system and his beneficiary would be entitled to any accrued interest.

We believe these overpayments occurred as the result of clerical errors made by the CPRB personnel responsible for processing refund transactions. Specifically, we believe had the CPRB personnel who processed these refund transactions reviewed all of the contribution records for these members which were available, then these errors may not have occurred.

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended. We further recommend the CPRB develop procedures which would require CPRB personnel to utilize a member's complete PERS file and contribution records when preparing a member's refund to ensure a member will only be issued those monies he or she is entitled to receive.

**Agency's Response**

*This processing of refunds problem appears to stem from the conversion from punch cards prior to July 1, 1972, to the computer. These refunds were prompted by staff's attempt to clean up inactive files. These three involve pre-1972 money and collection efforts have been initiated as to number 1 and 2 recipients listed on page 34 of the draft report.*

*CPRB disagrees with the Post Audit report as to its conclusions as to recipient number 3 as noted in the draft report on pages 35-36 since the warrant was returned and redeposited with the CPRB.*

*CPRB has established procedures effective April 2005 to ensure that CPRB refund personnel use a member's complete PERS file and contribution records when preparing the refund.*

### **Incorrect Death Benefits Issued to Beneficiaries of Deceased Retirees**

Upon the death of a retiree, the retiree's beneficiary is entitled to receive any excess of the retiree's accumulated contributions (retirement contributions contributed while an active member plus accrued interest) over the total amount of pension benefits paid to the retiree from the retiree's date of retirement up until the date of death. The excess is paid as a "lump sum" which is generally subject to Federal taxes. Of the ten death benefit transactions reviewed, we noted the beneficiaries of two deceased retirees were overpaid gross death benefits totaling \$4,413.14. Additionally, we noted that seven out of the ten death benefit payments tested were incorrectly issued due to an incorrect amount of Federal taxes being withheld from each gross death benefit amount. As a result, six recipients had a total of \$4,079.13 too much in Federal taxes withheld from their gross death benefits while one recipient had \$144.18 too little withheld for Federal taxes.

From 1961 until June 2000, the death benefits paid to the beneficiaries of deceased retirees included interest earnings. An amendment to Chapter 5, Article 10, Section 23 of the West Virginia Code effective June 9, 2000 changed the definition of accumulated employee contributions to exclude the interest earnings from the amount paid to beneficiaries. CPRB management believed an error in the definition of accumulated contributions had been made when this statute was amended in June 2000 and sought to have the statute corrected through further amendment. After consideration, the CPRB's management chose to continue to include interest, as was historically done, as part of a deceased retiree's accumulated contributions when determining the amount of gross death benefits to be paid to the deceased retiree's beneficiary. An e-mail issued by the

executive director of the CPRB to all employees dated June 8, 2000 indicates the executive director's decision to continue to pay interest as follows:

“. . . I believe the better course of action will be to pay interest in all cases wherein a return of employee contributions occurs after the death of a member or beneficiary, **both pre- and post-retirement....**”  
**(Emphasis added)**

The aforementioned Code section was amended again during the 2005 Legislative session to once again include accrued interest as part of a retiree's accumulated contributions for gross death benefit calculation purposes. Chapter 5, Article 10, Section 23 of the West Virginia Code was amended as follows:

“(a) This section provides for the payment of the balance in a retired member's account in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of the rights to benefits would be on the occasion of either the death of the retired member drawing benefits under a straight life annuity, or the death of a survivor annuitant drawing benefits under any optional form of benefit selected by the retired member, whichever occurs later.

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member's account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member's estate.”

Upon requesting the balance of a deceased retiree's retirement contributions, the beneficiary or administrator of the deceased retiree's estate must fill out several forms. One of these forms is the “Notice of Withholding on Distributions or Withdrawals from Pension and Deferred Compensation Plans” form. This form states in part:

“The distribution or withdrawal you receive from the Consolidated Public Retirement Board will be subject to federal income tax withholding unless you elect not to have withholding apply. **Withholding will only apply to the portion of your distribution or withdrawal that is included in your income subject to federal income tax.** Thus, for example, there will be no withholding on the return of your own nondeductible contributions to the plan. . .

. . . Even if you elect not to have federal income tax withheld, **you are liable for payment of federal income tax on the taxable portion of your distribution or withdrawal.** You, also may be subject to tax penalties under the estimated tax payment rules if your payments of estimated tax and withholding, if any, are not adequate....” **(Emphasis added)**

According to the Manager of the Benefits Section, a computerized spreadsheet is used to calculate the refund issued to beneficiaries or administrators of a deceased retiree's estate. This spreadsheet was designed to automatically calculate the gross refund, Federal withholding amount, and net refund once specific fields of the spreadsheet were completed by a CPRB employee responsible for preparing the death benefit calculation. These under payments and over payments of Federal withholding taxes appear to be the result of CPRB personnel improperly utilizing the spreadsheet when preparing each beneficiary's death benefit.

Regarding the two overpayments to the beneficiaries of deceased retirees of the gross death benefit amount, these errors resulted from the utilization by CPRB personnel of the wrong total pension benefits paid amount for each retiree in the calculation of each gross death benefit amount.

We recommend that the Consolidated Public Retirement Board develop procedures to ensure that each beneficiary's gross death benefit is properly calculated in accordance with Chapter 5, Article 10, Section 23 of the West Virginia Code, as amended. We further recommend that the Consolidated Public Retirement Board ensure that Federal tax withholdings are properly calculated by correctly utilizing the template used in calculating the Federal tax withholdings from death benefits paid to the beneficiaries of deceased retirees.

**Agency's Response**

***I would note that the two deceased retirees referenced on page 36 of the draft report are actually one (1) deceased retiree who was overpaid gross death benefits.***

***I would also note that pursuant to Booth v. Sims, and until corrective legislation was passed by the Legislature, the Board approved paying interest payments entitlement. Corrective legislation occurred with the passage of House Bill 2984 effective April 9, 2005.***

*CPRB has corrected the spreadsheet used for calculating federal tax withholdings from death benefits paid to the beneficiaries of deceased retirees. CPRB will request reimbursement pursuant to its Error Correction Policy.*

**Late Remittances of Insurance Premiums to PEIA**

We noted that the CPRB was not remitting insurance premiums withheld from the gross annuities of retirees to PEIA in a timely manner during the 2003 and 2004 fiscal years. PEIA's policy requires that the full premium payment for policyholders is due by the 25<sup>th</sup> day of the month for which coverage is in effect. Of the 24 monthly payments remitted to PEIA by the CPRB for this time period, only 18 could be tested for the timeliness of premium remittances since five documents supporting the remittance were not provided to us by PEIA and one document provided did not indicate the date payment was received by PEIA. Of the remaining 18 documents tested, we noted 16 payments were remitted late, ranging from three days to 41 days late. The average days late for the 16 payments was 14 days.

We noted that PEIA's accounting records indicated that the CPRB's outstanding accounts receivable balance as of June 30, 2004 was \$1,205,093.85 (\$858,578.43 and \$346,515.42 for PEIA premium accounts 892003807 - retirees of State agencies and 892503808 - retirees of non-state agencies, respectively).

Section III of the West Virginia Public Employees Insurance Agency Plan Document for Fiscal Year 2003 and Fiscal Year 2004 states in part:

**“. . . All premiums shall be made payable to the Public Employees Insurance Agency and shall be sent to the PEIA's Premium Accounts Section. The full premium payment for policyholders is due by the 25<sup>th</sup> day of the month for which coverage is in effect (i.e. for coverage for February, payment must be made by February 25<sup>th</sup>)....” (Emphasis added)**

The CPRB was not processing these monthly billings in a timely manner. As a result, the monies representing retiree premiums were remitted late to PEIA.

According to the CPRB's Manager of Accounting, the monthly billings received from PEIA for retiree premiums are not recorded by the Accounting Department as a payable either on FIMS or on the CPRB's mainframe computer system. These type transactions are strictly treated as payroll deductions and are entirely handled by the Benefits Section. The only place where these retiree premiums appear are in FIMS as part of the total supplemental or monthly gross retirement payroll amount.

We recommend the Consolidated Public Retirement Board comply with the Public Employees Insurance Agency's premium payments policy as described in Section III of the West Virginia Public Employees Insurance Agency Plan Document for Fiscal Year 2003 and Fiscal Year 2004 by developing internal controls to ensure that payment of retiree insurance premiums are remitted timely to the Public Employees Insurance Agency.

**Agency's Response**

*During the period audited, CPRB admits that it was not always timely with its remittances. However, according to Joe Estep, Premium Account Supervisor with PEIA, and the PEIA 2005 Summary Plan Description, the premiums are now due by the fifth day of the month following the month for which the premium was invoiced. This date change has been effective since July 1, 2004. CPRB believes that its remittances are now, and will continue to be, timely.*

**Incorrect Optional Life Insurance Premium Withheld from Retiree's Monthly Annuity**

Of the 50 retirement annuities tested, we noted an incorrect premium for optional life insurance was being withheld from the monthly annuity of one retiree. We noted that the proper premium to be withheld for a tobacco user, age 54 as of September 1, 2003, wanting to participate in Plan IV with \$20,000 in coverage of the PEIA's program for optional life insurance was \$11.74. Since the retiree in question met this criteria, \$11.74 should have been withheld from the retiree's monthly annuity. However, \$10.84 was erroneously withheld for the month of September 2003 and \$17.61 was erroneously withheld for the months of October 2003 through June 2004. The result of these errors was an underpayment to the retiree totaling \$51.93.

Chapter 5, Article 16, Section 5 of the West Virginia Code, as amended, states in part:

“. . . (c) All financial plans required by this section shall establish:

- (1) Maximum levels of reimbursement which the public employees insurance agency makes to categories of health care providers;
- (2) Any necessary cost containment measures for implementation by the director;
- (3) The levels of premium costs to participating employers; and
- (4) The types and levels of cost to participating employees and retired employees. . . .” (Emphasis added)**

The improper coding of the optional life insurance premium for this retiree in the PEIA’s computer system by PEIA personnel resulted in an excess of \$51.93 being withheld from the monthly pension benefits paid to this retiree through June 2004 for optional life insurance. We noted CPRB personnel did not detect this error either.

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 16, Section 5 of the West Virginia Code, as amended, by ensuring the proper premium amounts for optional life insurance are being withheld from the gross annuities of new retirees when adding these retirees to the monthly retirement payroll.

*Agency’s Response*

*CPRB would agree with the draft reports conclusions that PEIA erred. The process is that PEIA provides a premium tape to CPRB and CPRB staff then applies it to the CPRB annuity payroll. CPRB does not prepare the premium tape.*

**Payments for Retroactive Service Deposited to Wrong Account**

When purchasing retroactive service, State law requires the member and not the member’s employer to pay the employer contributions on any service occurring prior to January 1, 1989. We reviewed 25 retroactive service transactions which were processed by the CPRB during the audit period. Our review indicated employer contributions totaling \$22,690.59 which were remitted by two PERS members to purchase service credit occurring prior to January 1, 1989 were

erroneously deposited by the CPRB to the PERS Member Deposit Account instead of to the PERS Employers Accumulation Account.

Chapter 5, Article 10, Section 31(a) of the West Virginia Code, as amended, states:

“The employers accumulation fund is hereby continued. It shall be the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.”

The depositing of employer contributions to the wrong account by the CPRB may result in the preparation of misleading financial statements. Generally, PERS members who are required to pay a portion of the employer contributions as part of the purchase cost for retroactive service will submit payment to the CPRB for these contributions along with the amount of employee contributions owed as part of this purchase cost. We believe when these two PERS members remitted their payments to the CPRB for the employee and employer contributions owed, CPRB personnel failed to properly allocate the amounts of employee and employer contributions between the PERS Member Deposit Account and the PERS Employers Accumulation Account as these monies were being processed for deposit.

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 10, Section 31(a) of the West Virginia Code, as amended.

**Agency's Response**

*I would note that our own internal procedures caught this accidental error and the CPRB staff member responsible for processing these transactions realized that she had inappropriately deposited these funds in the wrong account and corrected the transactions shortly after they were initially processed.*

*CPRB agrees that the payment was initially and inadvertently made to the wrong account and will comply with West Virginia Code §5-10-31.*

### Non-State Retirement Contributions Not Deposited Timely

Monies received by a State agency are required to be deposited within 24 hours of receipt with the State Treasurer in accordance with State law. Of the 50 non-state retirement contribution remittance transactions tested, we noted 15 instances totaling \$139,055.61 where the employee and employer contributions remitted to the CPRB by non-state employers were not deposited in a timely manner by the CPRB to its State accounts. For these 15 occurrences, the number of days these monies were deposited late ranged from one to 30 days.

Chapter 12, Article 2, Section 2(a) of the West Virginia Code, as amended, states in part:

**“(a) All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. . . .” (Emphasis added)**

According to the manager of the CPRB’s Membership Section, neither she nor the CPRB employees responsible for processing the contributions remitted by participating non-state public employers were aware of the State law requiring the deposit of monies within 24 hours of receipt by a State agency until approximately August 2003, a few months after the manager assumed her current position. Once informed of the requirement, procedures were enacted to ensure timely deposits. Our test results support this statement in that only one instance of a late deposit was noted subsequent to August 2003.

Additionally, the manager stated that occasionally, participating non-state public employers are unable to remit payment of retirement contributions when due. The CPRB will request that the non-state public employer at least submit the Monthly Retirement Report so that the employer’s information can be updated in the mainframe database. The monies are received at a later date and subsequently deposited by the CPRB. She stated that this could explain the time difference between the date received as indicated on the Monthly Retirement Report and the date the monies were deposited.

The CPRB not making timely deposits of contributions received from participating non-state public employers to the appropriate State accounts may result in the loss of interest earnings which would have accrued on the timely deposit of these monies.

We recommend the Consolidated Public Retirement Board comply with Chapter 12, Article 2, Section 2(a) of the West Virginia Code, as amended, by ensuring that employee and employer contributions received from non-state employers are deposited in a timely manner.

**Agency's Response**

*CPRB will continue to ensure that contributions received from non-state employers are deposited in a timely manner. The implementation of both the ACH Debit/Credit and the Lockbox payment systems for these contributions should further reduce the opportunities for untimely deposits.*

**Monthly Retirement Reports Not Certified by Executive Director of Non-State Agency**

Retirement contributions are remitted to the CPRB monthly by non-state agencies. Accompanying each remittance of contributions is a Monthly Retirement Report which summarizes the employee and employer contributions remitted by the employers. The format of the Monthly Retirement Report was established by the CPRB. The report requires the signature of the Executive Director of the non-state agency certifying that the reports are accurate documents produced from the non-state agency's payroll records. Once received, CPRB employees review the reports for accuracy and initial the report indicating that the report has been reviewed.

During our review of 50 monthly contribution remittances received from various non-state employers between July 1, 2002 and June 30, 2004, we noted four Monthly Retirement Reports were not signed by the respective non-state employer's executive officer. Additionally, we noted two Monthly Retirement Reports did not contain the initials of the CPRB employee who reviewed the report for accuracy.

Chapter 5A, Article 8, Section 9 of the West Virginia Code requires each State agency to implement a system of effective internal controls which are designed to ensure the agency is maintaining records containing adequate and proper documentation of the essential transactions of the agency. The Monthly Retirement Report contains the following certification statement to be signed by the non-state employer's executive officer of the payroll record:

**"I, (Name of Executive Officer), Executive Officer of the Payroll Record of (Name of Participating Employer) do hereby certify that the above report, together with all continuation sheets attached thereto, is a true, correct, and accurate record made from our payroll records. Given under my hand this day of (Month and Day), (Year).**

**Signed by: (Signature of Executive Officer) (Executive Officer) of (Name of Participating Employer)." (Emphasis added)**

The manager of the CPRB's Membership Section stated that she was not aware that Monthly Retirement Reports were being processed by CPRB employees which did not contain the signature of the executive officer of the submitting non-state employer. The manager stated that she believes it to be important that the report contain the signature of the executive officer and that she would inform the employees who process the reports to verify that the signature of the executive officer is present. The manager further stated that the employees must have simply forgotten to initial the reports during their review.

By not requiring the signature of the executive officer of a participating employer on a Monthly Retirement Report, responsibility for the accuracy of the amounts submitted by the participating non-state employer cannot be easily determined by the CPRB. Additionally, not ensuring a contribution remittance has been properly reviewed by a CPRB employee prior to deposit may result in erroneous amounts remitted by participating employers going undetected by CPRB personnel.

We recommend the Consolidated Public Retirement Board comply with its own policies and procedures by strengthening its internal controls to ensure that the CPRB personnel responsible for reviewing Monthly Retirement Reports as they are received verify that each report

has been signed by the employer's executive officer and that the CPRB employees initial the Monthly Retirement Reports once reviewed.

**Agency's Response**

***CPRB Staff have again been told that monthly retirement reports received from non-state employers must have the appropriate signatures and initials of CPRB personnel auditing the reports.***

***CPRB is developing additional procedures to address this issue for all web reporting transactions.***

## INDEPENDENT AUDITORS' OPINION

The Joint Committee on Government and Finance:

We have audited the statement of cash receipts, disbursements and changes in cash balances of the Public Employees Retirement System as administered by the West Virginia Consolidated Public Retirement Board for the years ended June 30, 2004 and June 30, 2003. The financial statement is the responsibility of the management of the West Virginia Consolidated Public Retirement Board. Our responsibility is to express an opinion on the financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note A, the financial statement was prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the revenues collected and expenses paid of the Public Employees Retirement System as administered by the Consolidated Public Retirement Board for the years ended June 30, 2004 and June 30, 2003, on the basis of accounting described in Note A.

Our audit was conducted for the purpose of forming an opinion on the basic financial statement taken as a whole. The supplemental information is presented for the purpose of additional analysis and is not a required part of the basic financial statement. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statement and, in our opinion, is fairly stated in all material respects in relation to the basic financial statement taken as a whole.

Respectfully submitted,

  
Theford L. Shanklin, CPA, Director  
Legislative Post Audit Division

July 15, 2005

Auditors: Michael A. House, CPA, Audit Manager  
Neil M. McEachron, Jr., CPA, Auditor-in-Charge  
Trenton W. Morton  
Thomas F. Ward, CPA  
Bonita P. Compton  
Michael P. Scyoc

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**  
**AND CHANGES IN CASH BALANCES**

	<u>Year Ended June 30,</u>	
	<u>2004</u>	<u>2003</u>
<b>Cash Receipts:</b>		
Member Contributions (State Employees)	\$ 35,013,749.88	\$ 34,415,709.71
Member Contributions (Non-State Employees)	15,091,793.32	14,643,595.88
Employer Contributions (State Employers)	81,323,275.25	72,298,490.67
Employer Contributions (Non-State Employers)	34,140,851.93	30,541,940.08
Reinstatements of Withdrawn Service (State Employees)	1,068,198.16	1,296,332.47
Reinstatements of Withdrawn Service (Non-State Employees)	444,480.64	351,879.80
Operating Funds Transfer	450,580.80	578,381.53
Investment Earnings	374,207,114.87	18,327,693.76
Miscellaneous	<u>17,668.47</u>	<u>32,692.15</u>
	<u>541,757,713.32</u>	<u>172,486,716.05</u>
<b>Disbursements:</b>		
Fund Transfers	2,358,758.41	2,311,259.86
Pension Benefits (State Employees)	128,652,570.37	119,792,873.54
Pension Benefits (Non-State Employees)	41,983,525.13	40,006,047.86
Withdrawals of Member Contributions (State Employees)	4,231,336.61	3,894,902.52
Withdrawals of Member Contributions (Non-State Employees)	<u>2,592,454.41</u>	<u>2,654,124.40</u>
	<u>179,818,644.93</u>	<u>168,659,208.18</u>
Cash Receipts Over Disbursements	361,939,068.39	3,827,507.87
Beginning Balance	437.20	1,683.09
Transfers to Investment Management Board	<u>(357,244,894.87)</u>	<u>(3,828,753.76)</u>
Ending Balance	<u>\$ 4,694,610.72</u>	<u>\$ 437.20</u>

*See Notes to Financial Statement*

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**NOTES TO FINANCIAL STATEMENT**

**Note A - Accounting Policy**

Accounting Method: The cash basis of accounting was followed for all accounts. Therefore, certain revenues and the related assets are recognized when received rather than when earned and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statement is not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

Combined Totals: The combined totals contain the totals of similar accounts. Since the cash receipts of certain accounts are restricted by various laws, rules and regulations, the totaling of the accounts is for memorandum purposes only and does not indicate that the combined totals are available in any manner other than that provided by such laws, rules and regulations.

**Note B - Unfunded Liability**

The Public Employees Retirement System had an unfunded accrued liability of \$774,541,000.00 and \$991,060,000.00 for the years ending June 30, 2004 and 2003, respectively. These amounts are based on the most recent actuarial valuation report prepared by the outside actuarial firm of Mellon Human Resources and Investor Solutions in December 2004. This actuarial valuation indicates that the statutory employee and employer contributions are adequate to cover accruing liabilities, referred to as the normal cost, and amortize the existing unfunded liability of \$774,541,000 within 31 years of the July 1, 2004 valuation date. The following table illustrates the funding progress of the unfunded accrued liability for the eight fiscal years prior to July 1, 2004:

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets (a)</u>	<u>Actuarial Accrued Liability (AL) - Entry Age (b)</u>	<u>Unfunded Accrued Liability (UAL) (b-a)</u>	<u>Funded Ratio (a/b)</u>	<u>Covered Payroll (c)</u>	<u>UAL as a Percentage of Covered Payroll (b-a)/(c)</u>
06/30/97	\$2,152,300,000	\$2,371,752,000	\$219,452,000	90.7%	\$809,315,000	27.1%
06/30/98	\$2,371,359,000	\$2,524,214,000	\$152,855,000	93.9%	\$836,541,000	18.3%
06/30/99	\$2,504,001,000	\$2,681,756,000	\$177,755,000	93.4%	\$854,883,000	20.8%
06/30/00	\$2,700,356,000	\$2,932,484,000	\$232,128,000	92.1%	\$930,331,000	25.0%
06/30/01	\$2,681,395,000	\$3,178,037,000	\$496,642,000	84.4%	\$972,711,000	51.1%
06/30/02	\$2,588,777,000	\$3,432,467,000	\$843,690,000	75.4%	\$1,040,269,000	81.1%
06/30/03	\$2,699,941,000	\$3,691,001,000	\$991,060,000	73.1%	\$1,109,272,000	89.3%
06/30/04	\$3,095,660,000	\$3,870,201,000	\$774,541,000	80.0%	\$1,134,111,000	68.3%

*Source: Actuarial Valuation Report as of July 1, 2004 prepared in December 2004 by actuarial firm of Mellon Human Resources and Investor Solutions.*

### Note C - Investments

The following table details the investment holdings of the Public Employees Retirement System held in trust for pension benefits by the West Virginia Investment Management Board as of June 30, 2004 and 2003:

<u>Investment Pool</u>	<u>Fair Market Value of Investments as of June 30, 2004</u>	<u>Fair Market Value of Investments as of June 30, 2003</u>
Large Cap Equity	\$ 735,349,122.56	\$ 647,067,118.36
Non-Large Cap Equity	521,447,331.82	507,390,519.70
International Equity	625,693,579.32	497,187,358.19
Fixed Income	1,184,466,641.35	1,021,761,917.38
Short-Term Fixed Income	<u>19,796,944.63</u>	<u>22,483,144.88</u>
Total	<u>\$3,086,753,619.68</u>	<u>\$2,695,890,058.51</u>

### Note D - Pending Litigation

During the audit period, two PERS members filed a joint civil action against the CPRB after the CPRB had denied the request of each member to utilize their lump sum payment for unused annual leave for final average salary purposes. This civil action was filed in Wood County Circuit Court. In the case of Warren Carter and Gerald Trembush v. CPRB, the Wood County Circuit Court ruled in favor of the two PERS members in October 2004 ordering the CPRB to recalculate each member's retirement annuity with the inclusion of their lump sum payments for unused annual leave as part of their final average salary. The Wood County Circuit Court also ruled that each member be paid any back pay retroactive to each member's date of retirement resulting from the recalculation of each member's retirement annuity. Subsequent to this decision by the Wood County Circuit Court, the CPRB got a stay from the Supreme Court of Appeals and as of the date of this report the Court has not made a decision as to whether or not it will hear the case. The management of the CPRB believes the Board's position is very strong and that the eventual resolution of the matter will produce a favorable outcome for the Board. However, if this matter results in an unfavorable outcome for the Board, then management estimates the potential financial impact on the retirement system to be in excess of \$100 million.

### Note E - Act of Fraud Committed Against PERS by Active Member

A former employee of a non-state employer (Sun Valley Public Service District) had committed fraud against PERS. This former employee collected monthly retirement annuity checks from PERS while continuing to be employed by the same participating employer. Employee and employer retirement contributions were not remitted to the CPRB during the time of the employee's continued employment. Additionally, this employee submitted false and fraudulent documents regarding her cessation of employment and her accumulated leave.

The falsification of documents allowed the employee to receive \$7,914.55 in retirement benefits while the employee simultaneously received \$10,001.48 in gross wages from Sun Valley Public Service District. Also, employee and employer retirement contributions totaling \$1,400.21 were not remitted to the CPRB for the months of September 2002 through April 2003. In addition, false information the employee provided relating to unused accumulated leave increased the employee's monthly pension benefit by \$97.58.

**Note F - Plan Membership**

The following is a summary of plan membership for the Public Employees Retirement System for fiscal years ending June 30, 2004 and June 30, 2003:

<u>Membership Type</u>	<u>Fiscal Year Ending June 30,</u>	
	<u>2004</u>	<u>2003</u>
Actives	35,868	35,503
Retirees & Beneficiaries	18,928	18,588
Terminated Vested	3,022	3,014
Terminated Non-vested	<u>7,576</u>	<u>7,475</u>
Total	<u>65,394</u>	<u>64,580</u>



**SUPPLEMENTAL INFORMATION**

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**  
**AND CHANGES IN CASH BALANCE**  
**SPECIAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>2004</u>	<u>2003</u>
<b><u>PERS Income Account - Account 2501-099/523/640</u></b>		
Cash Receipts:		
Investment Earnings	\$374,207,114.87	\$ 18,327,693.76
Disbursements:		
Fund Transfers	<u>172,160,370.00</u>	<u>161,459,340.00</u>
Cash Receipts Over/(Under) Disbursements	202,046,744.87	(143,131,646.24)
Beginning Balance	230.55	230.55
Transfers (to)/from Investment Management Board	<u>(202,046,964.87)</u>	<u>143,131,646.24</u>
Ending Balance	<u>\$ 10.55</u>	<u>\$ 230.55</u>

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**  
**SPECIAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>2004</u>	<u>2003</u>
<b><u>PERS Retirement Reserve Account -</u></b>		
<b><u>Account 2505-099/523/640</u></b>		
Cash Receipts:		
Statutory Transfers	\$170,400,000.00	\$159,250,000.00
Miscellaneous	<u>11,805.68</u>	<u>1,020.88</u>
	170,411,805.68	159,251,020.88
Disbursements:		
Pension Benefits (State Employees)	128,652,570.37	119,792,873.54
Pension Benefits (Non-State Employees)	<u>41,983,525.13</u>	<u>40,006,047.86</u>
	<u>170,636,095.50</u>	<u>159,798,921.40</u>
Cash Receipts (Under) Disbursements	(224,289.82)	(547,900.52)
Beginning Balance	65.42	865.94
Transfers from Investment Management Board	<u>224,230.00</u>	<u>547,100.00</u>
Ending Balance	<u>\$ 5.60</u>	<u>\$ 65.42</u>

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**  
**AND CHANGES IN CASH BALANCE**  
**SPECIAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>2004</u>	<u>2003</u>
<b><u>PERS Member Deposit Account -</u></b>		
<b><u>Account 2509-099/523/640</u></b>		
Cash Receipts:		
Member Contributions (State Employees)	\$35,013,749.88	\$34,415,709.71
Member Contributions (Non-State Employees)	15,091,793.32	14,643,595.88
Reinstatements of Withdrawn Service (State Employees)	1,068,198.16	1,296,332.47
Reinstatements of Withdrawn Service (Non-State Employees)	444,480.64	351,879.80
Operating Funds Transfer	450,580.80	578,381.53
Miscellaneous	<u>5,862.79</u>	<u>31,671.27</u>
	52,074,665.59	51,317,570.66
Disbursements:		
Fund Transfers	598,388.41	101,919.86
Withdrawals of Member Contributions (State Employees)	4,231,336.61	3,894,902.52
Withdrawals of Member Contributions (Non-State Employees)	<u>2,592,454.41</u>	<u>2,654,124.40</u>
	<u>7,422,179.43</u>	<u>6,650,946.78</u>
Cash Receipts Over Disbursements	44,652,486.16	44,666,623.88
Beginning Balance	60.27	236.39
Transfers to Investment Management Board	<u>(43,238,870.00)</u>	<u>(44,666,800.00)</u>
Ending Balance	<u>\$ 1,413,676.43</u>	<u>\$ 60.27</u>

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**  
**AND CHANGES IN CASH BALANCE**  
**SPECIAL REVENUE**

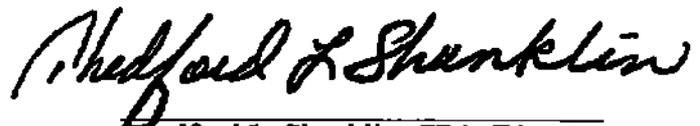
	<u>Year Ended June 30,</u>	
	<u>2004</u>	<u>2003</u>
<b><u>PERS Employers Accumulation Account -</u></b>		
<b><u>Account 2510-099/523/640</u></b>		
Cash Receipts:		
Employer Contributions (State Employers)	\$ 81,323,275.25	\$ 72,298,490.67
Employer Contributions (Non-State Employers)	<u>34,140,851.93</u>	<u>30,541,940.08</u>
	115,464,127.18	102,840,430.75
Disbursements:	<u>0.00</u>	<u>0.00</u>
Cash Receipts Over Disbursements	115,464,127.18	102,840,430.75
Beginning Balance	80.96	350.21
Transfers to Investment Management Board	<u>(112,183,290.00)</u>	<u>(102,840,700.00)</u>
Ending Balance	<u>\$ 3,280,918.14</u>	<u>\$ 80.96</u>

**STATE OF WEST VIRGINIA**

**OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:**

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 8<sup>th</sup> day of August 2005.



Thedford L. Shanklin, CPA, Director  
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Consolidated Public Retirement Board; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.