



GLENN A. CUNHA
INSPECTOR GENERAL

The Commonwealth of Massachusetts

Office of the Inspector General

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

May 24, 2021

By First Class Mail

Robert Marino, Chairperson
Board of Directors
MBTA Police Association Retirement Plan
P.O. Box 35
Grafton, MA 01519

Re: Review of Overpayments

Dear Chairperson Marino:

The Office of the Inspector General (OIG) examined allegations that the Massachusetts Bay Transportation Authority (MBTA) Police Association Retirement Plan (Retirement Plan) overpaid supplemental and disability retirement benefits to several retirees. During its investigation, the OIG found that the Retirement Plan had overpaid 24 retirees more than \$470,000 between 2005 and 2018. The plan overpaid retirees because it had poor internal controls and no system to terminate payments when retirees were no longer eligible for the benefits.

When the new executive director of the Retirement Plan discovered the overpayments, she put controls in place to ensure the plan pays the correct retirement benefits going forward. The Retirement Plan also entered into repayment plans with the retirees who received the overpayments.

The OIG recognizes and appreciates the Retirement Plan's attention to this matter and the corrective actions it took to recover these public funds. The OIG recommends the Retirement Plan continue its diligent internal oversight and take the following actions to ensure that public funds are not wasted:

- Attend a training on the fiduciary duties and responsibilities of public boards and commissions.
- Document all internal controls in writing.
- Conduct a more robust annual audit that examines the Retirement Plan's internal controls.

Background

Administration of the Plan

The Retirement Plan is one of two pension systems that serve MBTA employees. Most MBTA employees are members of the MBTA Retirement Fund. The Retirement Plan serves employees of the MBTA Transit Police Department who belong to the MBTA Police Association and who are not members of the MBTA Retirement Fund. Both the MBTA and the members of the Retirement Plan contribute to the plan at annual rates that are negotiated as part of the transit police officers' collective bargaining agreement. The term "rates" refers to the percentage of the employee's compensation that the MBTA and the member contribute to the plan.

Year	MBTA Contribution Rate	MBTA Contributions	Employee Contribution Rate	Employee Contributions
2014	12.67%	\$2,279,509	7.28%	\$1,315,625
2015	13.89%	\$2,512,494	8.51%	\$1,512,936
2016	13.89%	\$2,550,480	8.51%	\$1,570,042
2017	13.89%	\$2,491,869	8.51%	\$1,504,385
2018	14.18%	\$2,727,440	8.79%	\$1,702,068
2019	13.76% ¹	\$3,309,028	8.38%	\$2,013,059

Figure 1. Annual Contributions Made to the Retirement Plan

The Retirement Plan is governed by a board of directors, consisting of five members: two are appointed by the board of directors of the MBTA, two are appointed by the MBTA Police Association and one is an honorary member who does not have a vote, except to break a tie. The Retirement Plan has an executive director who is responsible for overseeing and administering the Retirement Plan, processing applications and payments, and conducting administrative duties for the board. The board hired the current executive director, Janet Rivard, in 2017.

Russell Investments advises the Retirement Plan and invests the contributions according to the board's instructions. The Retirement Plan contracts with State Street Corporation to issue checks to the retirees.

The Retirement Plan's financial statements are audited annually by an independent auditor. The focus of these audits is to determine whether the Retirement Plan's financial statements "are free from material misstatement."² The audits do not examine nor do they provide an opinion on the effectiveness of the Retirement Plan's internal controls.

¹ According to the MBTA Retirement Plan's 2019 audit report, the net position of the plan increased by 13% despite a slight reduction in the MBTA's and employees' contribution rates.

² Massachusetts Bay Transportation Authority Police Association Retirement Plan Financial Statements and Independent Auditors' Reports Prepared by Cerrone, Graham & Shepherd, P.C.

Retirement Benefits

The plan contains three retirement options based on the member's age at retirement and years of service with the MBTA Transit Police: a "normal retirement," an "early normal retirement," and a "reduced early retirement."

Normal retirement. Members who are at least 65 years old with at least 10 years of service are eligible for a normal retirement benefit.

Early normal retirement. Members hired before December 4, 2018 are eligible for an early normal retirement when they reach age 52 and have 23 years of service. Members hired on or after December 4, 2018 are eligible when they are 55 and have 25 years of service.

Reduced early retirement. Members hired before December 4, 2018 may receive a reduced early retirement benefit when they reach age 50 and complete 20 years of service. Members hired on or after December 4, 2018 are eligible at age 55 with 20 years of service.

Supplemental Retirement Benefits

Members who choose an early normal retirement are entitled to receive supplemental retirement benefits until they are 62 years old. To be eligible, the member must retire at or after the age of 52 and have at least 23 years of service. Members who are eligible for the supplemental retirement benefit receive \$500 a month until they turn 57, after which they receive \$700 per month until they turn 62. According to Ms. Rivard, the supplemental retirement benefit is designed to augment the member's income until they are eligible to receive Social Security benefits.³

Disability Retirement Benefits

Members who have not reached their normal retirement date and who are found to be incapacitated and unable to physically perform their work may be eligible to retire and receive a disability retirement benefit until the age of 52. Members who retire on a disability retirement prior to their early normal retirement date are qualified to receive a benefit equal to 55% of the member's current compensation. The member's disability retirement benefit cannot be more than 55% of their Social Security Disability benefit. In some instances, members' disability retirement benefits can be more than their normal or early retirement benefits.

³ Federal law requires all employees to participate in Social Security. However, Massachusetts state employees who are members of the public pension system are exempt from participating in Social Security. The Retirement Plan is a private pension fund. Therefore, federal law requires Retirement Plan members to participate in Social Security. Chapter 1012 of the Acts of 1971 gave MBTA Transit Police the option to join the state pension system upon acceptance of the act by the MBTA and after Social Security coverage for MBTA Transit Police officers is terminated. The MBTA never accepted the act and Social Security coverage for the officers was never terminated.

Payment Options

Members may choose to have their benefits paid on three different schedules. Two of the options require written spousal consent. The third option does not require spousal consent as long as the retirement benefit provides at least a 50% lifetime annuity to the member's spouse.

Findings

Finding 1: The Retirement Plan Overpaid Retirees More Than \$241,000 in Supplemental Retirement Benefits

Between 2005 and 2017, the Retirement Plan overpaid 20 retirees a total of \$241,776 in supplemental retirement benefits because it failed to stop the benefits when the retirees turned 62. According to Ms. Rivard, the former executive director told her about one retiree who had been overpaid. Ms. Rivard looked further and, upon learning that the plan did not have an adequate system to discontinue supplemental benefits at the appropriate time, Ms. Rivard reviewed all supplemental retirement payments between 1997 and 2017. Based upon her review, Ms. Rivard uncovered 19 additional overpayments. The overpayments to individual retirees ranged between \$700 and \$58,100.

The OIG conducted its own calculations of supplemental retirement benefit payments to retirees. The OIG agrees with Ms. Rivard's findings.

Retiree	Supplemental Benefit Overpayment	Retiree	Supplemental Benefit Overpayment
Retiree 1	\$58,100	Retiree 11	\$5,600
Retiree 2	\$39,200	Retiree 12	\$5,600
Retiree 3	\$31,576	Retiree 13	\$4,200
Retiree 4	\$16,800	Retiree 14	\$4,200
Retiree 5	\$16,100	Retiree 15	\$3,500
Retiree 6	\$14,000	Retiree 16	\$3,200
Retiree 7	\$12,600	Retiree 17	\$1,400
Retiree 8	\$11,000	Retiree 18	\$700
Retiree 9	\$6,300	Retiree 19	\$700
Retiree 10	\$6,300	Retiree 20	\$700
		Total:	\$241,776

**Figure 2. Overpayment of Supplemental Retirement Benefits
Between 2005 and 2017**

Finding 2: The Retirement Plan Overpaid Retirees More Than \$228,000 in Disability Retirement Benefits

After Ms. Rivard discovered the overpayment of supplemental retirement benefits, a board member suggested that she review the plan's payment of disability retirement benefits. As a result of that review, Ms. Rivard determined that the Retirement Plan had overpaid four retirees a total of \$228,441.04 in disability retirement benefits between 2005 and 2018.

The overpayments occurred for three different reasons. In two instances, the previous executive director had not factored in Social Security Disability benefits when he should have. The Retirement Plan failed to convert one retiree's disability retirement benefit to an early normal retirement. Finally, one retiree had not obtained spousal consent when selecting a payment option with reduced survivor benefits.

Retiree	Disability Benefit Overpayment
Retiree 21	\$77,620.66
Retiree 22	\$74,951.96
Retiree 23	\$61,217.28
Retiree 24	\$14,651.14
Total:	\$228,441.04

**Figure 3. Overpayment of Disability Retirement Benefits
Between 2005 and 2018**

Finding 3: The Retirement Plan Entered into Repayment Plans to Recover the Overpayments

When she discovered each overpayment, Ms. Rivard brought the information to the attention of the board. The board reached out to each retiree and established a plan to pay back the overpaid benefits. At this time, each retiree who the Retirement Plan overpaid has either fully repaid the Retirement Plan or is currently paying the money back through monthly reductions in their benefit payments.

Finding 4: The Retirement Plan Lacked Adequate Controls to Track and Discontinue Supplemental and Disability Retirement Benefits

The Retirement Plan overpaid the benefits discussed in Findings 1 and 2 because of poor management and a lack of controls. For example, the Retirement Plan had no system to track or stop supplemental benefits once retirees reached age 62. Additionally, State Street Corporation's system did not contain a separate pay code to differentiate between supplemental benefits and normal monthly retirement benefits. This made it extremely difficult to track supplemental benefit payments and stop them when appropriate. Furthermore, the plan did not have any system in place to track Social Security disability payments and to stop disability retirement benefits when retirees reached age 52. Finally, the Retirement Plan allowed one retiree to select a payment option without first obtaining the necessary spousal consent.

Finding 5: The Retirement Plan Has Enacted a New System to Better Track Supplemental Retirement Benefits and Disability Retirement Benefits

Ms. Rivard and the board have implemented stronger controls to track supplemental retirement benefits and disability retirement benefits. First, Ms. Rivard instructed State Street Corporation to implement a different pay code for supplemental benefit payments to separate them from normal retirement benefits. In addition, Ms. Rivard asked State Street Corporation for a monthly report detailing all supplemental benefit payments.

Ms. Rivard has also added conversion dates to the State Street system to automatically end supplemental benefits, as well as to automatically transfer retirees' benefits from disability to normal retirement, at the appropriate times. Finally, Ms. Rivard began checking annually with the Social Security Administration to determine the amount of Social Security disability benefits retirees are receiving to ensure that their disability retirement benefit does not exceed 55% of their Social Security disability benefit.

These changes put a new level of control in place to allow Ms. Rivard to track and stop supplemental and disability retirement benefits at the appropriate time.

Conclusion

Strong fiscal oversight is essential to protecting the Retirement Plan, its retirees and the public funds the plan receives. Until recently, however, the Retirement Plan had no system to accurately track and discontinue supplemental or disability retirement benefits. Upon learning of this problem, the Retirement Plan's current executive director enacted the necessary changes to adequately track and terminate supplemental and disability retirement benefits at the appropriate times. The executive director also worked with the board to establish payment plans for all overpaid retirees.

Recommendations

The OIG recommends that the Retirement Plan attend a training on the fiduciary duties and responsibilities of public boards and commissions. The OIG offers a free, online training for members of boards and commissions.

Further, the OIG recommends that the Retirement Plan document its internal controls in writing, including the new controls it implemented to better track the payment of supplemental and disability retirement benefits.

Finally, the OIG recommends that the Retirement Plan employ a more robust annual audit that does not just examine the plan's financial statements but that also reviews the plan's internal controls.

The OIG recognizes and appreciates the executive director's and the board's attention to this matter and their corrective actions. The OIG also appreciates the Retirement Plan's assistance and cooperation during this investigation. Please do not hesitate to contact the OIG if you have any questions or would like more information about the various trainings that the office offers.

Sincerely,



Glenn A. Cunha
Inspector General

cc: Gianni Maffeo, Board of Directors
Daniel Kazakis, Board of Directors
Derek Lopilato, Board of Directors
Robert Mackay, Board of Directors, Alternate Member
Matthew Donovan, Board of Directors, Alternate Member
Paula Beatty, Board of Directors, Alternate Member
Michael Lydon, Board of Directors, Alternate Member
Janet Rivard, Executive Director (via email mbtaparp@aol.com)
Randall E. Nash, Esq. (via email rnash@attorneyrandallnash.com)