

**STATE OF WEST VIRGINIA**

**AUDIT REPORT**

**OF**

**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE  
DEATH, DISABILITY AND RETIREMENT FUND**

**FOR THE PERIOD**

**JULY 1, 2003 - JUNE 30, 2005**



**OFFICE OF THE LEGISLATIVE AUDITOR**

**CAPITOL BUILDING**

**CHARLESTON, WEST VIRGINIA 25305-0610**

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**  
**FOR THE PERIOD**  
**JULY 1, 2003 - JUNE 30, 2005**

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

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**CHARLESTON, WEST VIRGINIA 25305-0610**

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 West Virginia State Police Death, Disability and Retirement Fund as administered by the Consolidated Public Retirement Board (CPRB).

Our examination covers the period July 1, 2003 through June 30, 2005. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

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

TLS/jda,gkc

**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

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**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

**EXIT CONFERENCE**

We held an exit conference on December 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 STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

#### **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 Board'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 Fund (Plan A) of the West Virginia State Police; and the Judges' Retirement System (JRS). Subsequent to July 1, 1991, the Board 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 Board 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 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 State Police Death, Disability and Retirement Fund; 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 Board.

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 State Police Death, Disability & Retirement Fund (Plan A)**

The West Virginia State Police was organized in July 1919. In 1925, a Death and Disability Fund was created by an Act of the Legislature to provide for the payment of benefits to members on account of death or disability. The Fund was financed solely by arrest fees, witness fees and awards collected by members of the State Police. However, the Act was amended again in 1935



to include retirement. Thus, the West Virginia State Police Death, Disability and Retirement Fund, commonly referred to as Plan A, was established for all state troopers on July 1, 1935.

During the 1994 Legislative Regular Session, the Legislature passed House Bill 4680 requiring new state troopers hired on March 12, 1994 or thereafter to become members of a new defined benefit plan. That plan was entitled the "West Virginia State Police Retirement System," now commonly referred to as Plan B. State troopers hired on or after March 12, 1994 are not eligible for membership in Plan A. Non-trooper employees of the West Virginia State Police are members of the Public Employees Retirement System.

Active members of Plan A contribute 9% of their total gross salary into the retirement plan, while the employer contributes an amount equal to 15% of each employee's gross salary. The State also contributes other monies to the system through arrest fees, accident report fees, criminal investigation report fees, and witness fees.

In order to qualify for full retirement benefits, a member must be 50 years of age with 20 years of contributory service (excluding military service), or any age with 25 years of credited service (including military service). A member who is less than 50 years of age with 20 years of credited service (excluding military service), qualifies for a deferred benefit at age 50.

The regular retirement benefit, paid in equal monthly installments, is equal to 5.5% of the member's aggregate salary during his or her whole period of service in the State Police. This benefit is payable during the lifetime of the retired member.

In addition to providing retirement benefits for regular retirees, Plan A makes provision for members who suffer one the following types of disability: total duty, partial duty, and non-duty. Also, Plan A provides certain survivor benefits to the beneficiaries of deceased active members and retirees.



Every member of the State Police who is 55 years of age or older and who is retired under normal retirement criteria will receive an annual retirement annuity adjustment of 3.75% payable on July 1<sup>st</sup> of each year. Every member of the State Police who is retired under disability retirement criteria and every surviving spouse or other beneficiary receiving a benefit under the provisions of this retirement system is eligible to receive the annual retirement annuity adjustment of 3.75% payable on July 1<sup>st</sup> of each year.

A member who terminates employment may receive a refund of all employee contributions he or she has contributed into the retirement system plus 4% interest after the funds have been on deposit for at least one year. A member who terminates employment after completing ten years of service with the State Police, but prior to eligibility for normal retirement, who leaves his or her contributions on deposit with the retirement system is eligible for deferred retirement benefits beginning at age 62. Any member choosing to receive a deferred annuity is not eligible to receive the annual annuity adjustment. There are no regular or deferred retirement benefits for a member with less than ten years of contributory service. If the member withdraws his or her contributions, they have no right to any future retirement or disability benefits under this retirement system.

Additionally, any person qualified as a surviving dependent child of a member who died in the performance of duty or of a member who dies after having been retired with a duty related disability shall be entitled to receive a scholarship to be applied to the career development education of that dependent at a West Virginia institution.



**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

**CONSOLIDATED PUBLIC RETIREMENT BOARD MEMBERS AND STAFF**

**AS OF JUNE 30, 2005**

Governor Joe Manchin III ..... Ex Officio

Robert W. Ferguson, Jr., 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

Paul Hardesty ..... State Employee Member  
Public Employees Retirement System

Drema B. Evans ..... 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 (July 1, 2003 to February 23, 2005)  
Terasa Miller ..... Acting Executive Director (February 23, 2005 to June 30, 2005)  
Karen Copeland ..... Manager of Membership Section  
Lisa Trump ..... Uniformed Services Retirement Advisor  
Ralph Holbrook ..... Uniformed Services Membership Coordinator  
Harry Mandel ..... Board Actuary  
Lori Cottrill ..... Accounting Manager  
Cynthia Boyd ..... Internal Auditor



## CONSOLIDATED PUBLIC RETIREMENT BOARD

### WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND

#### 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

*The West Virginia Consolidated Public Retirement Board ("CPRB" or "Board") 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 I would disagree with your general statement on page two (2) of each of your reports that it does not have such a system. (See pages 19-22)*

**Executive Director Paid His Regular Salary While on Suspension**

2. We noted the executive director was paid a total of \$78,109.60 in regular salary payments while on suspension. Additionally, the executive director continued to accrue annual leave each month while on suspension. Agency records indicate he accrued 10.19 days of annual leave for which he received \$4,438.05 as part of a lump sum payment for his unused annual leave paid to him on the November 30, 2005 payroll.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with both Chapter 12, Article 3, Section 13 of the West Virginia Code and Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended.

**Agency's Response**

*The CPRB has determined that the Executive Director received \$78,109.60 in regular pay for the period of February 24, 2005, through October 31, 2005. The CPRB minutes of the Board Meeting on February 23, 2005, reflect that Governor Manchin's designee, moved and the State Auditor seconded a motion that the Executive Director be suspended with pay, during the pendency of an investigation. The Board voted on this motion and the motion passed. Pursuant to this Board directive, the Executive Director received \$78,109.60 in regular pay for the period of February 24, 2005, and October 31, 2005. (See pages 22-28)*

### **Death Benefits Payable to Surviving Spouses**

3. Under State law, certain surviving spouses receiving a retirement annuity due to the death of an active member or retiree become ineligible to continue drawing an annuity once he or she remarries. However, we noted the CPRB has no procedure in place to monitor the marital status of surviving spouses to ensure whether these annuitants continue to be eligible to draw an annuity.

#### **Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board develop procedures to allow the agency to monitor on a continuing basis the marital status of surviving spouses to ensure these annuitants continue to be eligible to draw an annuity in accordance with the provisions of Chapter 15, Article 2, Sections 34 and 35 of the West Virginia Code, as amended.

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

*CPRB is in agreement with the Auditors' findings concerning this issue. (See pages 28-31)*

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

4. The CPRB currently is not requiring disability retirees to submit to regular physical and/or mental examinations by a Board designated physician or physicians subsequent to retirement as authorized by Chapter 15, Article 2, Section 31 of the West Virginia Code, as amended, to ensure such retirees remain eligible to draw a pension benefit as a result of their continued disability.

**Auditors' Recommendation**

If found to be practicable, we recommend the Consolidated Public Retirement Board utilize the authority already granted to the Board by Chapter 15, Article 2, Section 31 of the West Virginia Code, as amended, and develop procedures to require on an annual basis the random selection of disability retirees to undergo medical examinations.

**Agency's Response**

*Medical evaluations can be expensive and, in this retirement system, the State Police by statute is required to pay this cost. Staff is developing and has developed some screening tools that may lessen the cost including requiring an annual statement of earnings (as noted on page 13 of the report). (See pages 31-35)*

**PEIA Premiums Erroneously Withheld from Retirees' First Retirement Check**

5. PEIA premiums totaling \$3,357.34 were erroneously withheld from the first retirement check issued to eleven retirees. Also, we noted an incorrect premium amount for basic health insurance coverage was withheld from the first retirement check issued to the surviving spouse of a deceased retiree.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 16, Section 5 of the West Virginia Code, as amended, and the PEIA's Plan Document by strengthening internal controls to ensure only the proper PEIA insurance premium amounts are deducted from the monthly annuities of retirees and beneficiaries.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue. (See pages 35-37)*

**Miscalculations of Pension Benefits**

6. Of the 54 retirees and beneficiaries tested, we noted two retirees were overpaid pension benefits totaling \$900.52 and one retiree was underpaid pension benefits totaling \$3.92.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 27(c) of the West Virginia Code, as amended; Chapter 15, Article 2, Section 27a of the West Virginia Code, as amended; and Chapter 15, Article 2, Section 29 of the West Virginia Code, as amended.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue. (See pages 37-40)*

**Processing of Supplemental Payrolls**

7. The CPRB failed to issue a partial duty disability retiree his first retirement check in the amount of \$2,241.00.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 29 of the West Virginia Code, as amended, by reimbursing this disability retiree for the amount of the underpayment.

**Agency's Response**

*The disability retirant was reimbursed for the underpayment. (See pages 41-43)*

**Unfunded Liability of State Police Death, Disability  
& Retirement Fund (Informational Only)**

8. As of July 1, 2004, the State Police Death, Disability and Retirement Fund (Plan A) had an unfunded liability totaling \$344,039,000. However, during the 2005 2<sup>nd</sup> Extraordinary Session, the Legislature directed \$225,000,000 of the FY 2005 anticipated surplus toward the reduction of the unfunded liability of Plan A with the passage of Enrolled House Bill No.206, thereby increasing Plan A's funding ratio from 25% to 74%. This supplemental appropriation was transferred to the Public Safety - Death, Disability and Retirement Income Account on June 29, 2005.

**Agency's Response**

*CPRB is unable to find a conclusion or recommendation in the section labeled Unfunded Liability of State Police Death, Disability and Retirement System beginning on page twenty two (22) to which it should respond. (See pages 43-45)*

**Miscellaneous Receipt Collections**

9. During our review of miscellaneous receipt transactions, we noted the CPRB does not have a procedure in place to ensure all miscellaneous receipts resulting from the collection of accident report fees, criminal investigation report fees, and witness fees by the Division of Public Safety have been properly deposited to the Public Safety - Death, Disability and Retirement Income Account.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 26 of the West Virginia Code, as amended, by establishing a procedure which allows the CPRB to ensure all miscellaneous receipts received by the State Police

have been properly deposited to the Public Safety - Death, Disability and Retirement Income Account.

**Agency's Response**

***Currently CPRB does not have a specific procedure; however, CPRB agrees that the CPRB accountant can confirm that the statutory fees collected and deposited by the State Police are properly deposited in the correct account. (See pages 45-47)***

**Miscellaneous Receipt Transactions Not Properly Supported**

10. Of the 20 miscellaneous receipt transactions tested, the CPRB could not provide us with supporting documentation for 12 transactions totaling \$3,271.70.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 26(b) of the West Virginia Code, as amended, by strengthening internal controls over the maintaining of proper documentation for miscellaneous receipt transactions.

**Agency's Response**

***CPRB will review its internal control procedures concerning documentation for miscellaneous receipt transactions and collection depositions. (See pages 47-49)***

**Refund Recipient Underpaid Amount of Accumulated Contributions**

11. One former Plan A member was underpaid accrued interest in the amount of \$1,094.39 upon withdrawing from the retirement system. Furthermore, an additional \$89.30 in interest earnings accrued on this amount since the time of the member's withdrawal from the system resulting in a total underpayment of \$1,183.69.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, by paying this former member for the amount of additional interest owed.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue and has determined that this was a computer programming error. (See pages 49-51)*

**Improper Reimbursement to Deputy Sheriff Retirement System**

12. The CPRB improperly transferred to the WV Deputy Sheriff Retirement Account \$9,669.12 from the Public Safety - Death, Disability and Retirement Benefits Account as reimbursement for a State Police Retirement Fund (Plan B) trooper refund erroneously issued from the Deputy Sheriff Retirement System on August 1, 2002.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, by ensuring the State Police Death, Disability and Retirement Fund is reimbursed by the State Police Retirement System for the amount of the erroneous transfer.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue. (See pages 51 and 52)*

**Incorrect Amount of Federal Taxes Withheld from Retirees' First Retirement Check**

13. Of the 54 retirees and beneficiaries tested, we noted in 13 instances an incorrect amount was withheld for federal taxes. Specifically, there were seven instances totaling \$1,466.55

where retirees had too much in federal income taxes withheld from their first retirement checks and six instances totaling \$1,480.43 where retirees did not have enough in federal income taxes withheld from their first retirement checks.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with the withholding forms completed by retirees when determining the amounts of federal withholding taxes to withhold from a retiree's monthly annuity payment.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue. (See pages 52-54)*

**No Employer Verification Form in Member's Refund File**

14. There was no Employer Verification Form in one refund recipient's refund file verifying the member's termination of employment and removal from the payroll of the State Police.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, by ensuring that an Employer Verification Form has been received from a member's employer before processing a member's refund of accumulated contributions.

**Agency's Response**

*CPRB agrees that there was no verification form in the file. (See pages 54-56)*

**Employer Contribution for Retiree's Military  
Service Charged to Wrong Revenue Source Code**

15. During our review of retirement annuity transactions, we noted one instance where an employer contribution (for the usage of military service in the calculation of one member's retirement annuity) which amounted to \$8,850.50 was credited to the wrong revenue source code when the State Police transferred this contribution to the CPRB's Public Safety - Death, Disability and Retirement Income Account via IGT.

**Auditors' Recommendation**

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 28(c) of the West Virginia Code, as amended.

**Agency's Response**

*In this matter, the State Police simply deposited the amount into an incorrect source code. CPRB will review its internal control procedures concerning deposition of State Police funds. (See pages 56-58)*

**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

**GENERAL REMARKS**

**INTRODUCTION**

We have completed a post audit of the State Police Death, Disability and Retirement Fund (Plan A) as administered by the Consolidated Public Retirement Board (CPRB). The audit covered the period July 1, 2003 through June 30, 2005.

**SPECIAL REVENUE ACCOUNTS**

During the audit period, the CPRB maintained two special revenue accounts to contain the retirement contributions received and to account for all expenditures related to the operation of the State Police Death, Disability and Retirement Fund 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>
2160 .....	<b>Public Safety - Death, Disability &amp; Retirement Income Account</b> Contributions by members, interest on investments, State matching, and other miscellaneous revenues used for payments of death, disability and retirement benefits.
2161 .....	<b>Public Safety - Death, Disability &amp; Retirement Benefits Account</b> Transfers from the income account to be used for payments of awards.

## **COMPLIANCE MATTERS**

Chapter 15, Article 2 of the West Virginia Code generally governs the administration of the State Police Death, Disability and Retirement Fund. 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 State Police Death, Disability and Retirement Fund as administered by the Consolidated Public Retirement Board, we found the following noncompliance with State laws or other rules and regulations: (1) We noted the executive director was paid a total of \$78,109.60 in regular salary payments between February 24, 2005 and November 15, 2005 while on suspension. (2) Under State law, certain surviving spouses receiving a retirement annuity due to

the death of an active member or retiree become ineligible to continue drawing an annuity once he or she remarries. However, we noted the CPRB has no procedure in place to monitor the marital status of surviving spouses to ensure whether these annuitants continue to be eligible to draw an annuity. (3) The CPRB currently is not requiring disability retirees to submit to regular physical and/or mental examinations by a Board designated physician or physicians subsequent to retirement as authorized by Chapter 15, Article 2, Section 31 of the West Virginia Code, as amended, to ensure such retirees remain eligible to draw a pension benefit as a result of their continued disability. (4) PEIA premiums totaling \$3,357.34 were erroneously withheld from the first retirement check issued to eleven retirees. Also, we noted an incorrect premium amount for basic health insurance coverage was withheld from the first retirement check issued to the surviving spouse of a deceased retiree. (5) Of the 54 retirees and beneficiaries tested, we noted two retirees were overpaid pension benefits totaling \$900.52 and one retiree was underpaid pension benefits totaling \$3.92. (6) The CPRB failed to issue a partial duty disability retiree his first retirement check in the amount of \$2,241.00. (7) As of July 1, 2004, the State Police Death, Disability and Retirement Fund (Plan A) had an unfunded liability totaling \$344,039,000. However, during the 2005 2<sup>nd</sup> Extraordinary Session, the Legislature directed \$225,000,000 of the FY 2005 anticipated surplus toward the reduction of the unfunded liability of Plan A with the passage of Enrolled House Bill No. 206, thereby increasing Plan A's funding ratio from 25% to 74%. This supplemental appropriation was transferred to the Public Safety - Death, Disability and Retirement Income Account on June 29, 2005. (8) During our review of miscellaneous receipt transactions, we noted the CPRB does not have a procedure in place to ensure all miscellaneous receipts resulting from the collection of accident report fees, criminal investigation report fees, and witness fees by the Division of Public Safety have been properly

deposited to the Public Safety - Death, Disability and Retirement Income Account. (9) Of the 20 miscellaneous receipt transactions tested, the CPRB could not provide us with supporting documentation for 12 transactions totaling \$3,271.70. (10) One former Plan A member was underpaid accrued interest in the amount of \$1,094.39 upon withdrawing from the retirement system. Furthermore, an additional \$89.30 in interest earnings accrued on this amount since the time of the member's withdrawal from the system resulting in a total underpayment of \$1,183.69. (11) The CPRB improperly transferred to the WV Deputy Sheriff Retirement Account \$9,669.12 from the Public Safety - Death, Disability and Retirement Benefits Account as reimbursement for a State Police Retirement System (Plan B) trooper refund erroneously issued from the Deputy Sheriff Retirement System on August 1, 2002. (12) Of the 54 retirees and beneficiaries tested, we noted seven instances totaling \$1,466.55 where retirees had too much in federal income taxes withheld from their first retirement checks and six instances totaling \$1,480.43 where retirees did not have enough in federal income taxes withheld from their first retirement checks. (13) There was no Employer Verification Form in one refund recipient's refund file verifying the member's termination of employment and removal from the payroll of the State Police. (14) During our review of retirement annuity transactions, we noted one instance where an employer contribution (for the usage of military service in the calculation of one member's retirement annuity) which amounted to \$8,850.50 was credited to the wrong revenue source code when the State Police transferred this contribution to the CPRB's Public Safety - Death, Disability and Retirement Income Account via IGT.

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**

***The West Virginia Consolidated Public Retirement Board ("CPRB" or "Board") 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 I would disagree with your general statement on page two (2) of each of your reports that it does not have such a system. However, all systems can be improved, and I appreciate your recommendations. 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.***

**Executive Director Paid His Regular Salary While on Suspension**

During the course of our audits of the retirement systems administered by the Consolidated Public Retirement Board, we became aware that the CPRB's executive director was continuing to receive his regular salary while on suspension. According to the minutes we were provided, the board members voted to suspend the executive director with pay at a regular meeting of the CPRB held on February 23, 2005. At the time of his suspension, the executive director's annual salary was \$115,008.00.

Agency records indicate the executive director subsequently resigned from his position effective October 31, 2005. His last regular salary payment was made on the November 15, 2005 payroll. While on suspension between February 24, 2005 and November 15, 2005, the executive director received a total of \$78,109.60 in regular pay. Additionally, the executive director continued to accrue annual leave each month while on suspension. Agency records indicate he accrued 10.19 days of annual leave for which he received \$4,438.05 as part of a lump sum payment for his unused annual leave paid to him on the November 30, 2005 payroll.

Subsequent to resigning from the CPRB, the executive director applied for a refund of his accumulated contributions. We noted employee contributions totaling \$3,514.93 which were withheld from his regular salary payments while on suspension comprised part of his accumulated contributions along with interest earnings of \$50.25. Under State law, members who withdraw from the Public Employees Retirement System (PERS) are permitted to receive the accrued interest portion of their accumulated contributions only if the member works more than two years. The executive director's attainment of two years of credited service occurred while he was on suspension. However, we do not believe he should have been paid any interest earnings as part of his refund since he attained two years of credited service as the result of his suspension and did not work a full two years. Also, since we believe he was not entitled to continue being paid his regular salary while on suspension, he should not have been refunded the employee contributions withheld from these regular salary payments.

Chapter 12, Article 3, Section 13 of the West Virginia Code states:

**"No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered."**

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."**

In the Supreme Court decision of *Lippert v. Sims* (1958), the court held the following regarding §12-3-13:

“Although the primary purpose of that legislation may have been to prohibit the payment of salaries of State employees prior to the end of each month, it is certainly broad enough if any such legislation was needed to prohibit the payment to any person who had rendered no service to the State. The disbursement of funds appropriated for the administrative operation of the Department of Public Assistance is subject to the law of this State. In the absence of valid legislation to the contrary, the Director of that department has no authority to make requisition for the payment of any claim for personal services unless and until such services have been performed.”

This court decision reinforces the prohibition of paying State employees where no services have been rendered as established in §12-3-13.

Both the acting executive director and the CPRB's legal counsel told us that the decision to suspend the executive director was strictly a board action and that the staff had no input in the making of this decision and was merely carrying out the orders of the board. However, the acting executive director did not advise the board their decision conflicted with existing statute and as head of the agency is ultimately responsible for the accuracy of the payrolls being submitted.

Continuing to pay the executive director his regular salary while he was on suspension is in noncompliance with the aforementioned statutes. Since the executive director did not render any services on behalf of the State of West Virginia while on suspension, he should not have received any compensation whatsoever during this time.

This personnel matter involving the executive director was eventually referred to the Board of Risk and Insurance Management (BRIM) for resolution. On November 11, 2005, BRIM reached a signed settlement with the executive director where the executive director agreed (1) to

accept a sum of \$100,000.00 in settlement of all claims he may have against the Consolidated Public Retirement Board and the State of West Virginia; (2) to voluntarily resign from his position as executive director of the CPRB effective October 31, 2005; and (3) that he would be entitled to retain all benefits he accrued as an employee through October 31, 2005. The \$100,000.00 payout included as part of this settlement agreement is separate and apart from the regular salary which the CPRB continued to pay the executive director while on suspension.

We recommend the Consolidated Public Retirement Board comply with both Chapter 12, Article 3, Section 13 of the West Virginia Code and Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended, to avoid any unauthorized payments of salary or accrual of benefits.

#### Agency's Response

*CPRB disagrees with the \$82,901.60 amount the legislative auditor has reported the Executive Director earned during February 24, 2005, and November 15, 2005. The salary paid the Executive Director on February 28, 2005, was for the period of February 1, 2005, through February 14, 2005. Therefore, the CPRB has determined that the Executive Director received \$78,109.60 in regular pay for the period of February 24, 2005, through October 31, 2005. The CPRB minutes of the Board Meeting on February 23, 2005, reflect that Governor Manchin's designee, moved and the State Auditor seconded a motion that the Executive Director be suspended with pay, during the pendency of an investigation. The Board voted on this motion and the motion passed. Pursuant to this Board directive, the Executive Director received \$78,109.60 in regular pay for the period of February 24, 2005, and October 31, 2005<sup>2</sup>.*

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<sup>2</sup>The Executive Director is paid one pay period in arrears, as are many state employees. The paycheck the Executive Director received on November 15, 2005, actually reflected his employment from October 17, 2005, through October 31, 2005.

*The draft report on page 7 faults me, the Acting Executive Director, for my failure to “advise the board that their decision conflicted with the existing statute and as head of the agency is ultimately responsible for the accuracy of the payrolls being submitted.” As the Legislative Post Audit Division was informed in July 2005, payroll for CPRB is actually the responsibility of the Department of Administration and I, as the Acting Executive Director of CPRB, have no payroll approval responsibilities.*

*As to my alleged failure to advise the Board that their decision conflicted with the existing statute, I was obviously not in that position at the time the Board made its decision and also not in a position to advise the Board as to any employment matters. Subsequent to my appointment, I did discuss this issue with counsel.*

*CPRB is in agreement that West Virginia Code §12-3-13 states that an employee or officer’s salary can not be paid before the services have been rendered. CPRB is not in agreement that this statute applies to the Board’s decision to pay the Executive Director from February 24, 2005, to October 31, 2005, and to refund his employee retirement contributions withheld from his salary. The case cited in the draft report as interpreting this statute found that Margaret Lippert could not show a clear legal right to the mandamus remedy she had requested. Lippert v. Sims, 143 W. Va. 542, 103 SE 2d 533 (1958). The Post Audit report failed to note that this Lippert case, however, was followed by another, also brought by Mrs. Lippert, that awarded her these back wages as a moral obligation of the State. State ex rel. Lippert v. Gainer, 146 W. Va. 840, 122 SE 2d 618 (1961).*

*Since the 1958 and the 1961 Lippert cases, there have been at least two decisions by the West Virginia Supreme Court and one Attorney General’s opinion that involved payment*

*of salary or wages for a period when the public officer or employee was suspended. The Court found in Bell v. Dadisman, 155 W.Va. 298, 300, 184 SE 2d 141 (1971) that Mr. Bell, the Director of Purchases who had been suspended by the Commissioner of the Department of Finance and Administration because of an indictment returned against him by a Kanawha County Grand Jury, was “entitled to all of his pay during the entire period of his suspension”. The Court found in State ex rel. Godby v. Hager, 154 W. Va. 606, 177 SE 2d 556 (1970) that County Assessor Godby was entitled to payment for the salary of his office during the time he was removed from office even though another person occupied the office and was paid for his services as an acting or de facto officer during the period the Assessor was suspended. Attorney General Browning opined to State Auditor Gates in reference to the propriety of paying Banking Commissioner George Jordan for the time he was suspended by the Governor after being indicted by a Kanawha County Grand Jury, that based on the foregoing cases, it appeared to him that “the salary of a public officer is an incident to the office and the legal right to receive payment goes with the office” and that “Mr. Jordan as Banking Commissioner could properly requisition the State Auditor for his salary during such suspension and the State Auditor would be justified in the payment of the same...” Op. Att’y Gen. ( December 30, 1975) at 307.*

*In addition, CPRB is not in agreement that the refund of the Executive Director’s employee retirement contributions withheld from his salary is contrary to law. To the contrary, West Virginia Code §5-10-29 requires retirement contributions to be withheld from all compensation of members. The Executive Director received compensation for the period of February 24, 2005, through October 31, 2005. Therefore, and pursuant to statute, employee retirement contributions were withheld during that period. The report fails to cite a statute or*

*case that would permit employee retirement contributions not to be withheld for this period. In addition, there is no statutory provision or case that would permit CPRB to not pay the accumulated refund interest on the retirement contributions withheld from his compensation. To the contrary, West Virginia Code §5-10-30 requires the payment of the interest as his separation from employment occurred two (2) years after becoming a member of the Public Employee Retirement System.*

*The draft report's recommendation on page 7 to recover amounts unnecessarily paid to the Executive Director will be reported to the Board at its next regularly scheduled meeting on January 25, 2006.*

#### **Death Benefits Payable to Surviving Spouses**

Under State law, certain surviving spouses receiving a retirement annuity due to the death of an active member or retiree become ineligible to continue drawing an annuity once he or she remarries. The following types of surviving spouses are subject to this provision of State law: surviving spouse of an active member who dies from non-service connected causes; surviving spouse of a regular retiree; and surviving spouse of a deceased retiree who was awarded a non-duty disability. However, we noted the CPRB has no procedure in place to monitor the marital status of surviving spouses to ensure whether these annuitants continue to be eligible to draw an annuity. The CPRB relies solely on the surviving spouse beneficiary to notify the agency of a change in his or her marital status.

Agency records indicated that 64 such surviving spouses whose annuities are subject to the aforementioned provision of State law were receiving retirement benefits as of June 30, 2005. Since the CPRB began administering this retirement system, the total amount of retirement benefits

paid to these annuitants has amounted to approximately \$7,143,000. We also noted the average annual pension benefit being paid to these annuitants to be \$16,623.

Chapter 15, Article 2, Section 34 of the West Virginia Code, as amended, authorizes the payment of an annuity to the surviving spouse of an active member who dies from non-service connected causes. This Code section states in part:

**“In any case where a member while in active service of said department, before having completed twenty years of service as a member of said department, has died or shall die from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his part, there shall be paid annually in equal monthly installments from said death, disability and retirement fund to the surviving spouse of such member during his or her natural lifetime or until such time as said surviving spouse remarries a sum equal to two and three-quarters percent of the total salary which would have been earned by said member during twenty-five years of service in said department based on his or her average earnings while employed as a member of said department...”**  
**(Emphasis added)**

Also, Chapter 15, Article 2, Section 35 of the West Virginia Code, as amended, authorizes the payment of an annuity to the surviving spouse of a deceased retiree. This Code section states in part:

**“When any member of said department has heretofore completed or hereafter shall complete twenty years of service or longer as a member of said department and has died or shall die from any cause or causes other than those specified in this article before having been retired by the retirement board, and when a member in retirement status has died or shall die after having been retired by the retirement board under the provisions of this article, there shall be paid annually in equal monthly installments from said fund to the surviving spouse of said member, commencing on the date of the death of said member and continuing during the lifetime or until remarriage of said surviving spouse an amount equal to three-fourths the retirement benefits said deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect**

as if such member had been retired under the provisions of this article immediately prior to the time of his or her death and in no event less than five thousand dollars unless otherwise required under section forty [§15-2-40] of this article and in addition thereto said surviving spouse shall be entitled to receive and there shall be paid to such surviving spouse from said fund the sum of one hundred dollars monthly for each dependent child or children....”(Emphasis added)

According to the Membership Section Manager, the issue of monitoring the status of surviving spouse annuitants to determine whether these annuitants remain eligible to draw an annuity has not been addressed by the CPRB in recent years. As a result, the CPRB has not implemented a formal policy regarding this issue. The membership manager acknowledged the lack of a control procedure in this area represented a significant internal control weakness. Furthermore, she stated that her section would begin developing a form to be completed on an annual basis by all applicable surviving spouses certifying their current marital status.

As a result of the CPRB not having a procedure in place to monitor on a continuing basis the marital status of surviving spouse annuitants, the CPRB would not be aware of any surviving spouses who may have remarried subsequent to the death of an active member or retiree and may no longer be eligible to receive a surviving spouse annuity. Therefore, the possibility exists that the CPRB is paying retirement benefits to persons who no longer qualify to receive those benefits.

We recommend the Consolidated Public Retirement Board develop procedures to allow the agency to monitor on a continuing basis the marital status of surviving spouses to ensure these annuitants continue to be eligible to draw an annuity in accordance with the provisions of Chapter 15, Article 2, Sections 34 and 35 of the West Virginia Code, as amended.

### Agency's Response

*CPRB is in agreement with the Auditors' findings concerning this issue. Staff has initiated the development of a marital status verification form to be completed on an annual basis by all surviving spouses. This procedure is expected to be implemented January 1, 2006. The Board is looking at hiring additional staff to monitor this and other matters. On two occasions, trooper members have called staff to report on the remarriage of surviving spouses. CPRB appreciates those reporters but recognizes it needs a formal procedure to ensure that surviving spouses do not continue to receive retirement or death benefits after remarriage.*

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

Under State law, the CPRB has the authority to require disability retirees to submit to regular physical and/or mental examinations by a Board designated physician or physicians subsequent to retirement to ensure such retirees remain eligible to draw a pension benefit as a result of their continued disability. State law also requires the cost of such medical examinations to be paid for out of funds appropriated to defray the current expenses of the Division of Public Safety.

However, we noted that during the time period of July 1, 2003 through June 30, 2005, the CPRB was not requiring disability retirees to submit to medical examinations subsequent to the members being awarded disability retirement benefits even though such medical examinations are to be paid for by the Division of Public Safety. Therefore, no attempt is being made by the CPRB to confirm that a retiree remains eligible to draw a pension benefit as a result of their continued disability.

Agency records indicated that 92 disability retirees were receiving retirement benefits as of June 30, 2005. Since the CPRB began administering this retirement system, the total

amount of retirement benefits paid to these retirees has amounted to approximately \$27,325,000.

The following table illustrates the payment of retirement benefits to these disability retirees through June 30, 2005:

<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 Through 6/30/05</u>
41	0 to 10 Years	\$49,446	\$ 8,158,000.00
38	10 to 20 Years	\$40,157	16,414,000.00
7	20 to 30 Years	\$24,287	1,890,500.00
<u>6</u>	Over 30 Years	\$13,112	<u>862,500.00</u>
<u>92</u>			<u>\$27,325,000.00</u>

Chapter 15, Article 2, Section 31 of the West Virginia Code, as amended, states:

**“The Consolidated Public Retirement Board may require any member who has been retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or approved by the Board and cause all costs incident to the examination including hospital, laboratory, X ray, medical and physicians’ fees to be paid out of funds appropriated to defray the current expense of the Department, and a report of the findings of the physician or physicians shall be submitted in writing to the Consolidated Public Retirement Board for its consideration. If, from the report or from the report and hearing on the report, the Retirement Board is of opinion and finds that the disabled member has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the Board shall order that all payments from the Death, Disability and Retirement Fund be terminated. If, from the report or the report and hearing on the report, the Board is of the opinion and finds that the disabled member has recovered from his or her previously determined probable permanent disability to the extent that he or she is able to engage in gainful employment but remains unable to adequately perform the duties of a law-enforcement officer, the Board shall order the payment, in monthly installments of an amount equal to two thirds of the salary, in the case of a member retired under the provisions of section twenty-nine of this article, or equal to one half of the salary, in the case of a member retired under**

the provisions of section thirty of this article, excluding any compensation paid for overtime service, for the twelve-month employment period preceding the disability. *Provided*, That if the member had not been employed with the Department for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit." (Emphasis added)

According to the Membership Section Manager, the issue of requiring disability retirees to undergo regular medical examinations by a Board physician once awarded disability retirement benefits has not been addressed by the CPRB in recent years. As a result, the CPRB has not implemented a formal policy regarding this issue.

Additionally, the Membership Section Manager stated the CPRB has not addressed proposing legislation for Plan A, similar to that which was enacted for PERS during the 2005 Legislative Session, which would amend the State Code to allow the CPRB to require disability retirees to submit a statement signed by the disability retiree's physician attesting to their continued disability. However, she told us the CPRB has required in some instances disability retirees to submit to medical examinations subsequent to retirement if the Board physician who conducted their examination during the disability retirement application process recommended the retiree be examined again a year later to determine whether the retiree continues to be disabled. Of the nine disability retirees who were awarded a disability retirement during the audit period, we noted only one of these disability retirees was required to submit to such a followup examination. This retiree's followup medical examination occurred subsequent to the audit period.

She further stated that the Legislature amended the State Code to allow the CPRB to require disability retirees to submit on an annual basis a statement of earnings so the CPRB could more easily identify those disabled retirees who engage in substantial gainful activity. She told us this process was implemented during September 2005.

As a result of not requiring retirees who receive disability retirement benefits to undergo regular medical examinations by a Board physician, 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 paying disability retirement benefits to persons who no longer qualify to receive those benefits.

If found to be practicable, we recommend the Consolidated Public Retirement Board utilize the authority already granted to the Board by Chapter 15, Article 2, Section 31 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 incapacitated as a result of their disability. In conjunction with this procedure, we further recommend the Consolidated Public Retirement Board inform all recipients of disability retirement benefits that they are subject to be randomly selected for a medical examination to be conducted by a Board designated physician.

**Agency's Response**

***West Virginia Code §15-2-31 allows CPRB to cause disability retirees to undergo additional medical evaluations; it does not require CPRB to do so. Medical evaluations can be expensive and, in this retirement system, the State Police by statute is required to pay this cost. Staff is developing and has developed some screening tools that may lessen the cost including requiring an annual statement of earnings ( as noted on page 13 of the report). To permit the Board to institute an annual verification of disability, signed by the disability retiree's own physician, as is currently done in other retirement systems administered by CPRB and noted on page 12 of the report, would require a legislative change of the controlling statutes.***

*The draft report's recommendation on page 13 for random evaluations will be reported to the Board at its next regularly scheduled meeting on January 25, 2006.*

**PEIA Premiums Erroneously Withheld from Retirees' First Retirement Check**

Of the 54 retirees and beneficiaries tested, we noted PEIA premiums for basic health insurance, basic life insurance, dependent life insurance, and/or optional life insurance which totaled \$3,357.34 were erroneously withheld from the first retirement check issued to eleven retirees resulting in each retiree having paid twice for the same month of insurance coverage.

An active member's effective date of retirement is the day following their last day of employment. As a result, their first retirement check is usually pro-rated based on the number of days retired in their first month of retirement. For their month of retirement, PEIA premiums have already been deducted by their employer from their compensation as an active duty trooper. Thus, PEIA insurance coverage for these members is extended through the end of the month.

However, we noted for these eleven retirees, the CPRB withheld PEIA premiums from the retiree's pro-rated payment amount even though their employer had already deducted these premiums from their active duty compensation. In each instance, the PEIA insurance enrollment forms completed by each retiree upon retiring indicates that premiums were not authorized to be deducted until the month following the month of retirement.

Also, we noted an incorrect premium amount for basic health insurance coverage was withheld from the first retirement check issued to the surviving spouse of a deceased retiree. The CPRB should have withheld a premium amount of \$182.00 rather than the \$59.00 premium amount actually withheld. As a result of this error, the CPRB withheld a total of \$123.00 less than what should have been withheld.

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

“...(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)**

Additionally, page 35 of the PEIA Plan Document for the 2005 fiscal year states in

part:

“...For retirees participating in one of the Consolidated Public Retirement Board systems, their share of the premium may be deducted from their monthly retirement check and forwarded by the appropriate retirement system to the Agency. If the retiree’s pension is not sufficient to cover the cost of the monthly premium, a direct-pay account will be established, and the retiree will be required to remit the balance of the premium due on a monthly basis....”

A retiree’s first retirement check is issued through a supplemental payroll processed by the Benefits Section’s payroll function. It is the responsibility of the PEIA Insurance Coordinator assigned to the Benefits Section to communicate to the Benefits Section’s payroll function the appropriate PEIA premium amount(s) to be deducted from a retiree’s first retirement check. For these eleven retirees, PEIA premiums were erroneously withheld from their first retirement check as the result of a lack of effective communication between the insurance coordinator and the payroll function. However, upon bringing these erroneous deductions to the attention of the appropriate CPRB personnel, the CPRB has taken measures to refund the premiums to retirees as well as

implement a procedure to help prevent the overcharging of insurance premiums to retirees in the future.

Regarding the surviving spouse who was undercharged for one month of insurance coverage, the CPRB's insurance coordinator coded the wrong premium amount for basic health insurance coverage which was used by the payroll function in the preparation of the payment of this beneficiary's first annuity check. The CPRB began deducting the proper premium amount in the following month.

By overcharging retirees for PEIA premiums, retirees are being denied the use of their pension benefits which they are entitled to receive. Also, undercharging retirees and/or beneficiaries for insurance coverage results in the State subsidizing the insurance coverage for these annuitants.

We recommend the Consolidated Public Retirement Board comply with Chapter 5, Article 16, Section 5 of the West Virginia Code, as amended, and the PEIA's Plan Document by strengthening internal controls to ensure only the proper PEIA insurance premium amounts are deducted from the monthly annuities of retirees and beneficiaries. We further recommend the Consolidated Public Retirement Board request that PEIA refund the amounts of any PEIA premiums erroneously withheld to any affected retirees.

**Agency's Response**

***CPRB is in agreement with the Auditors' findings concerning this issue. CPRB staff is aware of the errors and will prevent duplication in the future. Refunds have been made to those affected.***

**Miscalculations of Pension Benefits**

Of the 54 retirees and beneficiaries tested, we noted two retirees were overpaid pension benefits totaling \$900.52 and one retiree was underpaid pension benefits totaling \$3.92.

Chapter 15, Article 2, Section 27(c) of the West Virginia Code, as amended, establishes the formula by which the retirement annuity of members who retire under normal retirement is to be calculated. This Code section states in part:

“(c) When the Retirement Board retires any member under any of the provisions of this section, the Board shall, by order in writing, make an award directing that the member is entitled to receive annually and that there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member while in status of retirement, one or the other of two amounts, whichever is greater:

- (1) An amount equal to five and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the Department; or
- (2) The sum of six thousand dollars....”

Also, Chapter 15, Article 2, Section 29 of the West Virginia Code, as amended, establishes the formula by which the retirement annuity of members who are awarded a partial duty disability retirement is to be calculated. This Code section states in part:

“Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department shall, if, in the opinion of the retirement board, he is by reason of such cause unable to perform adequately the duties required of him as a member of said department, be retired from active service by the retirement board and thereafter such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

- (1) An amount equal to five and one-half percent of the total salary which would have been earned during twenty-five years or actual service if more than twenty-five years in said department based on the average earnings of such member while employed as a member of said department; or
- (2) The sum of six thousand dollars....”

Additionally, Chapter 15, Article 2, Section 27a of the West Virginia Code, as amended, authorizes eligible Plan A retirees and beneficiaries to be paid an annual Cost-of-Living Adjustment (COLA). This Code section states in part:

“...(b) Any member or beneficiary who receives a benefit pursuant to the provisions of section twenty-nine, thirty, thirty-three or thirty-four of this article shall begin to receive the annual annuity adjustment one year after the commencement of the benefit on the next July first: *Provided*, That if the member has been retired for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment will be a pro rata share of the full year’s annuity adjustment.”

One retiree who was overpaid retired effective July 17, 2003 under normal retirement. His first retirement check represented payment for the period July 17<sup>th</sup> through July 31<sup>st</sup>. This retiree was overpaid by \$70.17 with the issuance of his first retirement check as the result of agency personnel responsible for preparing annuity calculations incorrectly pro-rating his annuity payment for July 2003.

Also, a partial duty disability retiree who was underpaid retired effective August 12, 2004. His first retirement check represented payment for the period August 12<sup>th</sup> through August 31<sup>st</sup> and the entire month of September. Again, this retiree was underpaid by \$3.92 with the issuance of his first retirement check as the result of agency personnel incorrectly pro-rating his annuity payment for August 2004.

Finally, a partial duty disability retiree who was overpaid, retired effective November 13, 2003. Agency records indicate that agency personnel mistakenly keyed in this retiree’s retirement date for his date of birth and his date of birth for his retirement date when adding this retiree to the monthly annuity payroll in the CPRB’s mainframe system. Documentation maintained

in the retiree's retirement file indicates this error was not caught and corrected until October 2004. If a disability retiree has been retired less than a year at July 1<sup>st</sup>, then the retiree is only eligible to receive a pro-rated COLA based on the number of days retired during the previous fiscal year. As a result of this data entry error, the CPRB's mainframe system did not recognize this retiree as being retired less than one year and, thus, calculated his COLA at July 1, 2004 as if he had been retired for the entire year. Through October 2005, we noted this retiree has been overpaid a cumulative total of \$830.35.

As a result of these errors, two retirees were paid more pension benefits than they were entitled to receive. Additionally, one retiree failed to be fully compensated by the CPRB for all of the retirement benefits which should have been paid to this retiree.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 27(c) of the West Virginia Code, as amended; Chapter 15, Article 2, Section 27a of the West Virginia Code, as amended; and Chapter 15, Article 2, Section 29 of the West Virginia Code, as amended.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue. An employee made a mistake, transposing a birthdate and a retirement date causing one of the overpayments, and it has been corrected. The other overpayment and the \$3.92 underpayment were caused by the manual calculations currently used when a member retires in the middle of a month. Staff is determining the feasibility of incorporating this into the computer calculation system thus automating the process. Both overpayments have been collected. The underpayment has been paid to the member.*

### Processing of Supplemental Payrolls

When a member retires, the CPRB will issue the member's first retirement check on a supplemental payroll. Once the retiree has been issued their first retirement check, the retiree is added to the regular monthly annuity payroll. Thus, a retiree's subsequent annuity payments are automatically issued to the retiree the 25<sup>th</sup> of every month when the regular annuity payroll is run.

Of the 54 retirement annuity transactions we reviewed, we noted the CPRB failed to issue a partial duty disability retiree his first retirement check in the amount of \$2,241.00. This disability retiree retired on November 13, 2003 and was eligible to receive a pro-rated annuity for November 2003 amounting to \$2,241.00 (18 days retired / 30 days in the month x his regular monthly annuity of \$3,734.76). However, we were unable to locate any documentary evidence from reviewing the supplemental annuity payrolls for this time period indicating where this retiree had been issued his first retirement check. For the 54 retirees and beneficiaries who began drawing an annuity during the audit period, we noted the CPRB paid out on supplemental payrolls a total of \$232,102.45 in annuity payments (representing the issuance of their first retirement checks) to these annuitants.

Chapter 15, Article 2, Section 29 of the West Virginia Code, as amended, states in part:

"Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department shall, if, in the opinion of the retirement board, he is by reason of such cause unable to perform adequately the duties required of him as a member of said department, be retired from active service by the

retirement board and thereafter such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) An amount equal to five and one-half percent of the total salary which would have been earned during twenty-five years or actual service if more than twenty-five years in said department based on the average earnings of such member while employed as a member of said department; or

(2) The sum of six thousand dollars....”

The Uniformed Services Payroll Clerk assigned to the Benefits Section is responsible for requisitioning the first retirement check of all Plan A retirees and beneficiaries through preparation of a supplemental payroll. Once the supplemental payroll has been processed through the State’s payment processing system, the State warrants generated from the supplemental payroll are forwarded by the State Treasurer’s Office through the CPRB’s Accounting Department and to the payroll clerk for mailing. The primary reason these checks are returned to the payroll clerk for mailing is so that she can enclose a letter addressed to the retiree/beneficiary with the check. The letter notifies the retiree/beneficiary of what their regular monthly annuity will be, the related payroll deductions, and any necessary tax information.

The Manager of the Membership Section told us this retiree was not issued his first retirement check for November 2003 as the result of an oversight by the aforementioned payroll clerck who did not requisition his first retirement check. Additionally, while documenting the CPRB’s business procedures relating to the administration of Plan A, we learned the CPRB does not have a procedure in place where an employee other than the Uniformed Services Payroll Clerk is responsible for reviewing the supplemental payrolls for accuracy to ensure each annuitant was only

issued a retirement check for an amount which he or she was eligible to receive. If the CPRB had such a procedure in place at the time this error occurred, we believe this oversight would have been caught and corrected in a timely manner.

The CPRB may risk annuitants being paid incorrect amounts on their first retirement check as the result of (1) the issuance of an annuitant's first retirement check essentially being the responsibility of the Uniformed Services Payroll Clerk and (2) the absence of a procedure relating to the review of these supplemental payrolls by another employee. As a result of these internal control weaknesses, the aforementioned disability retiree was denied the use of his monies which were due him.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 29 of the West Virginia Code, as amended, by reimbursing this disability retiree for the amount of the underpayment. We also recommend the Consolidated Public Retirement Board develop a procedure which requires an employee other than the Uniformed Services Payroll Clerk to be responsible for reviewing the supplemental payrolls for accuracy to ensure each annuitant was only issued a retirement check for an amount which he or she was eligible to receive.

**Agency's Response**

*Prior to the audit, a review process was established to ensure correct data entry by the payroll clerk. CPRB expects to continue this review process.*

*The disability retiree was reimbursed for the underpayment.*

**Unfunded Liability of State Police Death, Disability  
& Retirement Fund (Informational Only)**

As of July 1, 2004, the State Police Death, Disability and Retirement Fund had an unfunded accrued liability of \$344,039,000. This amount is based on the most recent actuarial

valuation report prepared by the outside firm of Mellon Human Resources and Investor Solutions in December 2004. The next available actuarial report on the State Police Death, Disability and Retirement Fund is due to be released in December 2005. The retirement system is funded through employee contributions of 9% of gross payroll and employer contributions of 15% of gross payroll. Additionally, the State contributes revenue from arrest fees and related services as well as a percentage of all troopers' pay so that the existing unfunded liability will be amortized as a level percentage of the total Department of Public Safety payroll by June 30, 2025. The following table illustrates the funding progress of the unfunded accrued liability for the seven fiscal years prior to July 1, 2004:

<b>Actuarial Valuation Date</b>	<b>Actuarial Value of Assets (a)</b>	<b>Actuarial 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>
06/30/98	\$67,418,000	\$297,832,000	\$230,414,000	22.6%	\$16,560,000	1391.4%
06/30/99	\$74,230,000	\$343,290,000	\$269,060,000	21.6%	\$16,478,000	1632.8%
06/30/00	\$84,922,000	\$361,026,000	\$276,104,000	23.5%	\$16,319,000	1691.9%
06/30/01	\$82,229,000	\$388,909,000	\$299,680,000	22.9%	\$15,611,000	1919.7%
06/30/02	\$91,095,000	\$416,938,000	\$325,843,000	21.9%	\$14,314,000	2276.4%
06/30/03	\$99,409,000	\$447,869,000	\$348,460,000	22.2%	\$13,496,000	2581.9%
06/30/04	\$118,080,000	\$462,119,000	\$344,039,000	25.6%	\$12,273,000	2803.2%

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

During the 2005 2<sup>nd</sup> Extraordinary Session, the Legislature directed \$225,000,000 of the FY 2005 anticipated surplus toward the reduction of the unfunded liability of Plan A with the passage of Enrolled House Bill No. 206, thereby increasing Plan A's funding ratio from 25% to 74%.

This supplemental appropriation was transferred to the Public Safety - Death, Disability and Retirement Income Account on June 29, 2005. As a result of this supplemental appropriation, the funded ratio of plan assets to the actuarial accrued liability of the retirement system has decreased by 49%.

**Agency's Response**

*CPRB is unable to find a conclusion or recommendation in the section labeled **Unfunded Liability of State Police Death, Disability and Retirement System** beginning on page twenty two (22) to which it should respond.*

**Miscellaneous Receipt Collections**

Under State law, the Division of Public Safety (DPS) is authorized to collect accident report fees, criminal investigation report fees, and witness fees which are to be deposited to the Public Safety - Death, Disability and Retirement Income Account to be utilized by the CPRB for purposes of funding pension awards paid to Plan A members and their beneficiaries. With the collection of each miscellaneous receipt, the DPS forwards a copy of the documentation supporting each receipt transaction to the CPRB to maintain as part of their records. During our review of these miscellaneous receipts, we noted the CPRB does not have a procedure in place to ensure all miscellaneous receipts resulting from the collection of these type fees by the Division of Public Safety have been properly deposited to the Public Safety - Death, Disability and Retirement Income Account. Agency records indicate the amounts of miscellaneous receipts deposited to this State account for the 2004 and 2005 fiscal years amounted to \$527,143.08 and \$579,111.45, respectively.

Chapter 15, Article 2, Section 26(b) of the West Virginia Code, as amended, states in part:

“(b) ...There shall also be paid into the Fund amounts that have previously been collected by the Superintendent of the Department on account of payments to members for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the Superintendent. All monies payable into the Fund shall be deposited in the State Treasury and the Treasurer and Auditor shall keep a separate account thereof on their respective books.”

Also, Chapter 15, Article 2, Section 26(d) of the West Virginia Code, as amended, states in part:

“(d) ...The Death, Disability and Retirement Fund shall be administered by the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.”

The Accounting Department Manager stated there are no itemized reports summarizing miscellaneous receipt collections that are provided to her department by the State Police which would allow her department to reconcile these reports against the State Auditor's records to ensure all miscellaneous receipt collections were properly deposited to the Public Safety - Death, Disability and Retirement Income Account. She further explained the collection and depositing of these monies is entirely the responsibility of the State Police and the CPRB has nothing to do with this process. However, in accordance with the aforementioned statutes, we believe the CPRB has a fiduciary responsibility for ensuring all miscellaneous receipts collected by the DPS have been properly deposited to this State account.

The CPRB has no way of knowing if all monies received by the DPS representing miscellaneous receipt collections were deposited into this State account to be utilized for the funding of pension awards for Plan A members and their beneficiaries. Consequently, funds could be used for purposes other than those required by the West Virginia Code.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 26 of the West Virginia Code, as amended, by establishing a procedure which allows the CPRB to ensure all miscellaneous receipts received by the State Police have been properly deposited to the Public Safety - Death, Disability and Retirement Income Account.

**Agency's Response**

*As noted on page 24 of the report, the collection and depositing are by statute the responsibility of the State Police; CPRB is limited in its ability to do any more than confirm that the State Police have properly deposited the miscellaneous receipts into the appropriate account.*

*Currently CPRB does not have a specific procedure; however, CPRB agrees that the CPRB accountant can confirm that the statutory fees collected and deposited by the State Police are properly deposited in the correct account.*

*CPRB disagrees with the conclusion that it has a fiduciary duty to reconcile the receipts with the State Police collection of fees. The State Police does not provide any itemized report that would permit CPRB to reconcile all receipts against collections, and because the collection and deposition are by statute the responsibility of the State Police, it is the fiduciary responsibility of the State Police, not CPRB, to ensure that all receipts are reconciled with the collections.*

*CPRB will review its internal control procedures concerning documentation for miscellaneous receipt transactions and collection depositions.*

**Miscellaneous Receipt Transactions Not Properly Supported**

Of the 20 miscellaneous receipt transactions tested, the CPRB could not provide us with supporting documentation for 12 transactions totaling \$3,271.70. Typically, the documentation

supporting a receipt transaction, which is received from the DPS by the CPRB, consists of a FIMS deposit cover sheet and a Daily Receipt Record itemizing the individual receipt amounts comprising the deposit transaction.

Chapter 15, Article 2, Section 26(b) of the West Virginia Code, as amended, states in part:

“(b) ...There shall also be paid into the Fund amounts that have previously been collected by the Superintendent of the Department on account of payments to members for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the Superintendent....”

We were provided supporting documentation for 11 of these transactions from the CPRB; however, the CPRB had to attain this documentation from the State Police since the agency could not provide this documentation from their own records. For the remaining transaction, the CPRB was only able to provide us with a copy of the FIMS deposit cover sheet to support the transaction. The CPRB generated this deposit cover sheet from FIMS at our request. The Accounting Department Manager told us the reason her office did not have this supporting documentation on file could have been the result of either the State Police did not fax her those documents after the transactions took place or the documentation was misfiled by CPRB personnel and could not be found at the CPRB’s off-site storage facility.

As a result of these instances of inadequate documentation, the CPRB may not be able to substantiate the revenue amount for miscellaneous receipt transactions as reported on the financial statements for the Public Safety - Death, Disability and Retirement Income Account. Consequently, funds could be used for purposes other than those required by the West Virginia Code.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 26(b) of the West Virginia Code, as amended, by strengthening internal controls over the maintaining of proper documentation for miscellaneous receipt transactions.

**Agency's Response**

*As noted on page 24 of the report, the collection and depositing are by statute the responsibility of the State Police; CPRB is limited in its ability to do any more than confirm that the State Police have properly deposited the miscellaneous receipts into the appropriate account.*

*Currently CPRB does not have a specific procedure; however, CPRB agrees that the CPRB accountant can confirm that the statutory fees collected and deposited by the State Police are properly deposited in the correct account.*

*CPRB disagrees with the conclusion that it has a fiduciary duty to reconcile the receipts with the State Police collection of fees. The State Police does not provide any itemized report that would permit CPRB to reconcile all receipts against collections, and because the collection and deposition are by statute the responsibility of the State Police, it is the fiduciary responsibility of the State Police, not CPRB, to ensure that all receipts are reconciled with the collections.*

*CPRB will review its internal control procedures concerning documentation for miscellaneous receipt transactions and collection depositions.*

**Refund Recipient Underpaid Amount of Accumulated Contributions**

Of the four refund transactions processed by the CPRB during the audit period, we noted one former member was underpaid accrued interest earnings in the amount \$1,183.69. This former member terminated his employment with the State Police during November 2002.

Subsequent to the termination of his employment with the State Police in September 2003, he applied to the CPRB for a refund of his accumulated contributions maintained on deposit with the retirement system. On October 16, 2003, this member was issued a refund in the amount of \$45,807.92. This refund amount was comprised of taxable contributions totaling \$37,522.88 and accrued interest totaling \$8,285.04. However, we noted the appropriate amount of accrued interest which should have been refunded to the member amounted to \$9,379.43, resulting in an initial underpayment of \$1,094.39. The remaining underpayment amount of \$89.30 (\$1,183.69-\$1,094.39) represents interest accrued on the \$1,094.39 as of December 31, 2004.

Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, states:

“(a) Any member who is discharged by order of the Superintendent or otherwise terminates employment with the Department, at the written request of the member to the Retirement Board, is entitled to receive from the Retirement Fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the Death, Disability, and Retirement Fund plus four percent interest compounded thereon calculated annually as provided and required by this article.”

The Membership Section Manager stated the omission of interest of \$1,094.39 from the member's refund amount was probably caused by a programming error that resulted in the mainframe system not including the member's accrued interest for calendar year 1998. A Programmer Analyst II with the CPRB's Information Technology (I.T.) Department confirmed this underpayment was due to a programming error; he told us this programming error was corrected during July 2005.

Incorrectly calculating interest accrued may deny the member use of funds that were rightfully due him or her. It also creates an additional liability for the CPRB to pay out additional interest on the amount of the underpayment.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, by paying this former member for the amount of additional interest owed.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue and has determined that this was a computer programming error. The underpayment has not been paid yet because the previous member has not yet responded to CPRB's request for his selection of distribution payment.*

**Improper Reimbursement to Deputy Sheriff Retirement System**

During our review of refund transactions processed during the period July 1, 2003 through June 30, 2005, we noted one instance where the CPRB improperly transferred to the WV Deputy Sheriff Retirement Account \$9,669.12 from the Public Safety - Death, Disability and Retirement Benefits Account as reimbursement for a State Police Retirement System (Plan B) trooper refund erroneously issued from the Deputy Sheriff Retirement System. Agency records indicate a member of the State Police Retirement System (Plan B) applied for a refund of his accumulated contributions during June 2002. Upon issuance of a refund to this member, the CPRB erroneously paid this refund amounting to \$9,669.12 from the State account for the Deputy Sheriff Retirement System rather than the State account for the State Police Retirement System (Plan B).

On September 8, 2003, the CPRB attempted to correct this error by reimbursing the WV Deputy Sheriff Retirement Account from the Public Safety - Death, Disability and Retirement Benefits Account through an IGT transfer. However, we noted this reimbursement was erroneously transferred from the State account for the Plan A retirement system rather than the State account for

the Plan B retirement system. As of June 30, 2005, this error had not been corrected. The Membership Section Manager stated the erroneous transfers and the initial error were due to simple bookkeeping errors.

Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, states:

“(a) Any member who is discharged by order of the Superintendent or otherwise terminates employment with the Department, at the written request of the member to the Retirement Board, is entitled to receive from the Retirement Fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the Death, Disability, and Retirement Fund plus four percent interest compounded thereon calculated annually as provided and required by this article.”

These errors resulted in incorrect balances for the affected accounts. Thus, the CPRB’s financial statements may be misstated as a result of this erroneous reimbursement.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, by ensuring the State Police Death, Disability and Retirement Fund is reimbursed by the State Police Retirement System for the amount of the erroneous transfer.

**Agency’s Response**

***CPRB is in agreement with the Auditors’ findings concerning this issue. CPRB found the error and attempted to correct it. However, the correction was incorrect. CPRB has now corrected the incorrect correction.***

**Incorrect Amount of Federal Taxes Withheld from Retirees’ First Retirement Check**

Of the 54 retirees and beneficiaries tested, we noted in 13 instances an incorrect amount was withheld for federal taxes. Specifically, there were seven instances totaling \$1,466.55 where retirees had too much in federal income taxes withheld from their first retirement checks and

six instances totaling \$1,480.43 where retirees did not have enough in federal income taxes withheld from their first retirement checks.

The instructions for completing the W-4P Withholding Certificate for Pension or Annuity Payments state in part:

**“Purpose.** This form is for U.S. citizens, resident aliens, or their estates who are recipients of pensions, annuities, including commercial annuities, and certain other deferred compensation. Use this form to tell payers the correct amount of Federal income tax to withhold from your payment(s). You also may use this form to choose (a) not to have any income tax withheld from the payment (except for eligible rollover distributions or payments to U.S. citizens delivered outside the United States or its possessions) or (b) to have an additional amount of tax withheld...”

Generally, an active member’s effective date of retirement is the day following their last day of employment. As a result, their first retirement check is pro-rated based on the number of days retired in their first month of retirement. The first retirement check issued to a retiree is paid on a supplemental payroll which is prepared by the Benefits Section’s payroll function. To determine the appropriate amount of federal income taxes to withhold from each retiree’s annuity, the payroll function must key in the withholding information from the W-4P form completed by the retiree to the mainframe system. Based on the information entered (such as annuity amount and withholding information), the mainframe system will calculate the amount of federal income taxes to withhold from the retiree’s annuity payment. However, for the aforementioned instances of the wrong amounts being withheld, we noted the payroll function used the retiree’s regular monthly annuity amount rather than the retiree’s pro-rated annuity amount to calculate the amount of federal income taxes to be withheld. These data entry errors resulted in either too much or not enough federal income taxes being withheld from each retiree’s first retirement check.

Withholding the incorrect amount of federal income taxes as requested by the retiree may result in hardship for the retiree by causing them to have a balance due at the end of the year if too little tax is withheld. On the other hand, the retiree may be denied the use of funds if too much tax is withheld.

We recommend the Consolidated Public Retirement Board comply with the withholding forms completed by retirees when determining the amounts of federal withholding taxes to withhold from a retiree's monthly annuity payment.

**Agency's Response**

*CPRB is in agreement with the Auditors' findings concerning this issue. In reviewing the files of the annuitants referenced by the Legislative Auditor, it appears that either no taxes were withheld on the pro-rated amount or taxes were withheld on a full month, not on the pro-rated amount. CPRB has instituted procedures to insure that the correct amount of pro-rated taxes are withheld from annuitants' first checks in the future.*

**No Employer Verification Form in Member's Refund File**

Of the four refund transactions processed by the CPRB during the audit period, we noted there was no Employer Verification Form in one refund recipient's refund file verifying the member's termination of employment and removal from the payroll of the State Police. This former member was refunded a total of \$4,219.08 on May 25, 2005. The member's refund was comprised of non-taxable contributions totaling \$1,122.86 and accrued interest totaling \$3,096.22.

Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, states:

“(a) Any member who is discharged by order of the Superintendent or otherwise terminates employment with the Department, at the written request of the member to the Retirement Board, is entitled to receive from the Retirement Fund a sum equal to the aggregate of the

principal amount of moneys deducted from his or her salary and paid into the Death, Disability, and Retirement Fund plus four percent interest compounded thereon calculated annually as provided and required by this article.”

Before processing a member’s refund of accumulated contributions, the CPRB must ensure that the member is no longer actively contributing to the retirement system by requiring the member’s employer to complete and sign an Employer Verification Form verifying the member’s termination of employment and removal from the payroll. The Uniformed Services Membership Coordinator stated the only document the CPRB had to serve in place of the Employer Verification Form was a monthly payroll deduction report relating to this member which was faxed from the State Police Headquarters. He further explained there was probably no other document available as a result of the member terminating his employment with the State Police in January 1973. Although this payroll document lists the former member’s monthly retirement deductions as well as the member’s termination date, there was no authorizing signature of an official State Police representative attesting to the accuracy of this document. The membership coordinator also told us the West Virginia State Treasurer determined the member was eligible to receive the refund by simply researching their own records and determining that no Plan A refund checks had been issued to the former member since 1973.

Not ensuring an employer completes an Employer Verification Form certifying a refunding member’s removal from the payroll is in noncompliance with the aforementioned statute. Without an Employer Verification Form on file to verify a member’s termination of employment and removal from their employer’s payroll, the CPRB may risk issuing refunds to refund recipients who are ineligible to receive a refund.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 37(a) of the West Virginia Code, as amended, by ensuring that an Employer Verification Form has been received from a member's employer before processing a member's refund of accumulated contributions.

**Agency's Response**

*CPRB agrees that there was no verification form in the file, but would point out the extenuating circumstances. This involved a member who terminated employment in 1973, many years prior to CPRB taking over the administration of Plan A. The individual inquired with CPRB to see if he was entitled to a refund. Neither the State Police, nor the State Auditor could find that the member had previously been refunded. The CPRB recreated the member's account from records provided by the State Police. Therefore, since the member had clearly terminated employment many years ago, the CPRB felt there was no necessity for the employer verification form.*

**Employer Contribution for Retiree's Military Service Charged to Wrong Revenue Source Code**

When preparing a member's retirement annuity calculation who has military service credit, the CPRB will convert the member's military service credit to equivalent military earnings to be used in the calculation of the member's retirement annuity. Under State law, the State Police are required to make an additional employer contribution amounting to 18% of the amount of the retiring member's equivalent military earnings.

During our review of retirement annuity transactions, we noted one instance where an employer contribution totaling \$8,850.50, corresponding to one retiring member's military service, was credited to the wrong revenue source code when the State Police transferred this

employer contribution to the CPRB's Public Safety - Death, Disability and Retirement Income Account via IGT. This employer contribution was credited to revenue source code 216 - Appropriations from Department of Public Safety rather than revenue source code 212 - Employer Contributions - Military.

Chapter 15, Article 2, Section 28(c) of the West Virginia Code, as amended, states in part:

“...The Superintendent shall transfer and pay into the Death, Disability and Retirement Fund from moneys appropriated for the Department, a sum equal to eighteen percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for the periods of active military duty...”

This retiree retired on October 1, 2003. Generally, the State Police will make a separate IGT transfer representing the additional employer contribution for a retiring member's military service. However, correspondence to the CPRB from a State Police official maintained in the member's retirement file indicated this transfer was not made at the time of the member's retirement due to an oversight.

Annually, the Legislature appropriates to the State Police a lump sum appropriation for the Trooper Retirement Fund. The State Police uses this appropriation to fund Plan A and Plan B employer contributions, Plan A employer contributions for military service, and the reduction of the Plan A unfunded liability. At the end of the fiscal year, the State Police will transfer the remainder of the appropriation to the CPRB to help reduce the Plan A unfunded liability after all payments for employer contributions have been made. The monies allocated for the reduction of the unfunded liability are usually transferred in two transfers.

This same documentation mentioned earlier indicated this additional employer contribution was contained within the remainder of the State Police Plan A appropriation amount (\$331,128.00) which was transferred to the Public Safety - Death, Disability and Retirement Income Account in July 2004 and completely credited to revenue source code 216. Thus, this additional employer contribution was charged to revenue source code 216 rather than revenue source code 212. As a result, the CPRB's financial statements may be misstated since these monies were credited to the wrong revenue source code when transferred.

We could not locate any documentation indicating where this employer contribution had been reclassified from revenue source code 216 to revenue source code 212 by CPRB Accounting Department personnel. The Accounting Department Manager told us the responsibility for transferring these monies is that of the State Police and not the CPRB.

We recommend the Consolidated Public Retirement Board comply with Chapter 15, Article 2, Section 28(c) of the West Virginia Code, as amended.

**Agency's Response**

***As noted above, by statute, the State Police is responsible for the deposition of any funds. In this matter, the State Police simply deposited the amount into an incorrect source code. Source codes are used for CPRB internal use for segregation of funds, and the funds were deposited into the correct account. CPRB will review its internal control procedures concerning deposition of State Police funds.***

## **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 State Police Death, Disability and Retirement Fund as administered by the West Virginia Consolidated Public Retirement Board (the "Board") for the years ended June 30, 2005 and June 30, 2004. 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.

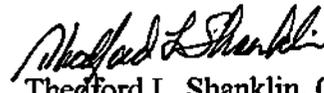
We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, 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 State Police Death, Disability and Retirement Fund as administered by the Consolidated Public Retirement Board for the years ended June 30, 2005 and June 30, 2004, 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,



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

November 10, 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  
John J. Signore

**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**

**AND CHANGES IN CASH BALANCES**

	<u>Year Ended June 30,</u>	
	<u>2005</u>	<u>2004</u>
<b>Cash Receipts:</b>		
Member Contributions	\$ 1,053,379.82	\$ 1,128,539.33
Employer Contributions	1,755,644.45	1,880,866.39
Employer Contributions (Military Service)	93,016.91	51,006.91
Miscellaneous Revenue from Accident Report Fees, Criminal investigation Report Fees and Witness Fees	579,111.45	527,143.08
Fund Transfers from Division of Public Safety to Reduce Unfunded Liability	25,331,128.00	24,010,164.36
Investment Earnings	11,874,684.79	13,494,055.10
Supplemental Appropriation to Reduce Unfunded Liability	225,000,000.00	0.00
Revenue from Unclaimed Property	0.00	28,320.26
	<u>265,686,965.42</u>	<u>41,120,095.43</u>
<b>Disbursements:</b>		
Transfer of Administrative Fees to CPRB Expense Account	30,345.00	30,695.00
Pension Benefits	22,276,663.30	21,413,725.50
Withdrawal from Retirement Funds	47,535.30	71,276.54
	<u>22,354,543.60</u>	<u>21,515,697.04</u>
Cash Receipts Over Disbursements	243,332,421.82	19,604,398.39
Beginning Balance	<u>134,145.87</u>	<u>4,192.58</u>
Transfers to Investment Management Board	<u>(243,466,566.79)</u>	<u>(19,474,445.10)</u>
Ending Balance	<u>\$ 0.90</u>	<u>\$ 134,145.87</u>

*See Notes to Financial Statement*

**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

**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**

As of July 1, 2004, the State Police Death, Disability and Retirement Fund had an unfunded accrued liability of \$344,039,000. This amount is based on the most recent actuarial valuation report prepared by the outside firm of Mellon Human Resources and Investor Solutions in December 2004. The next available actuarial report on the State Police Death, Disability and Retirement Fund is due to be released in December 2005. The retirement system is funded through employee contributions of 9% of gross payroll and employer contributions of 15% of gross payroll. Additionally, the State contributes revenue from arrest fees and related services as well as a percentage of all troopers' pay so that the existing unfunded liability will be amortized as a level percentage of the total Department of Public Safety payroll by June 30, 2025. The following table illustrates the funding progress of the unfunded accrued liability for the seven 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>
06/30/98	\$67,418,000	\$297,832,000	\$230,414,000	22.6%	\$16,560,000	1391.4%
06/30/99	\$74,230,000	\$343,290,000	\$269,060,000	21.6%	\$16,478,000	1632.8%
06/30/00	\$84,922,000	\$361,026,000	\$276,104,000	23.5%	\$16,319,000	1691.9%
06/30/01	\$82,229,000	\$388,909,000	\$299,680,000	22.9%	\$15,611,000	1919.7%

<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>
06/30/02	\$91,095,000	\$416,938,000	\$325,843,000	21.9%	\$14,314,000	2276.4%
06/30/03	\$99,409,000	\$447,869,000	\$348,460,000	22.2%	\$13,496,000	2581.9%
06/30/04	\$118,080,000	\$462,119,000	\$344,039,000	25.6%	\$12,273,000	2803.2%

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

During the 2005 2<sup>nd</sup> Extraordinary Session, the Legislature directed \$225,000,000 of the FY 2005 anticipated surplus toward the reduction of the unfunded liability of Plan A with the passage of Enrolled House Bill No. 206, thereby increasing Plan A's funding ratio from 25% to 74%. This supplemental appropriation was transferred to the Public Safety - Death, Disability and Retirement Income Account on June 29, 2005. As a result of this supplemental appropriation, the funded ratio of plan assets to the actuarial accrued liability of the retirement system has decreased by 49%.

#### **Note C - Investments**

The following table details the investment holdings of the State Police Death, Disability and Retirement Fund held in trust for pension benefits by the West Virginia Investment Management Board as of June 30, 2005 and 2004:

<b><u>Investment Pool</u></b>	<b><u>Fair Market Value of Investments as of June 30, 2005</u></b>	<b><u>Fair Market Value of Investments as of June 30, 2004</u></b>
Large Cap Equity	\$ 28,669,432.52	\$ 23,156,835.59
Non-Large Cap Equity	17,407,999.55	16,697,676.56
International Equity	22,791,221.67	20,198,276.56
Fixed Income	41,557,397.34	34,849,949.65
Short-Term Fixed Income	<u>250,782,451.27</u>	<u>23,046,995.19</u>
<b>Total</b>	<b><u>\$361,208,502.35</u></b>	<b><u>\$117,949,733.55</u></b>

**Note D - Plan Membership**

The following is a summary of plan membership for the State Police Death, Disability and Retirement Fund for fiscal years ending June 30, 2005 and June 30, 2004:

<u>Membership Type</u>	<u>Fiscal Year Ending 6/30/05*</u>	<u>Fiscal Year Ending 6/30/04**</u>
Actives	214	237
Retirees & Beneficiaries	638	622
Terminated Vested	6	5
Terminated Non-vested	<u>3</u>	<u>3</u>
Total	<u>861</u>	<u>867</u>

\*Source: The CPRB's Information Technology personnel. The numbers presented represent unreconciled amounts and, therefore, may differ from the amounts to be presented in the 2005 Actuarial Valuation Report to be released in December 2005.

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

**SUPPLEMENTAL INFORMATION**

**CONSOLIDATED PUBLIC RETIREMENT BOARD**

**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**

**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**

**AND CHANGES IN CASH BALANCE**

**SPECIAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>2005</u>	<u>2004</u>
<b><u>Public Safety - Death, Disability and Retirement</u></b>		
<b><u>Income Account - Account 2160-099/523/640</u></b>		
Cash Receipts:		
Member Contributions	\$ 1,053,379.82	\$ 1,128,539.33
Employer Contributions	1,755,644.45	1,880,866.39
Employer Contributions (Military Service)	93,016.91	51,006.91
Miscellaneous Revenue from Accident Report Fees, Criminal Investigation Report Fees and Witness Fees	579,111.45	527,143.08
Fund Transfers from Division of Public Safety To Reduce Unfunded Liability	25,331,128.00	24,010,164.36
Investment Earnings	11,874,684.79	13,494,055.10
Supplemental Appropriation to Reduce Unfunded Liability	<u>225,000,000.00</u>	<u>0.00</u>
	265,686,965.42	41,091,775.17
Disbursements:		
Transfer of Administrative Fees to CPRB Expense Account	30,345.00	30,695.00
Transfers to Death, Disability & Retirement Benefits Account	<u>22,430,000.00</u>	<u>21,150,000.00</u>
	<u>22,460,345.00</u>	<u>21,180,695.00</u>
Cash Receipts Over Disbursements	243,226,620.42	19,911,080.17
Beginning Balance	<u>134,145.60</u>	<u>4,110.53</u>
Transfers to Investment Management Board	<u>(243,360,765.79)</u>	<u>(19,781,045.10)</u>
Ending Balance	<u>\$ 0.23</u>	<u>\$ 134,145.60</u>

**CONSOLIDATED PUBLIC RETIREMENT BOARD**  
**WEST VIRGINIA STATE POLICE DEATH, DISABILITY AND RETIREMENT FUND**  
**STATEMENT OF CASH RECEIPTS, DISBURSEMENTS**  
**AND CHANGES IN CASH BALANCE**  
**SPECIAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>2005</u>	<u>2004</u>
<b><u>Public Safety - Death, Disability and Retirement</u></b>		
<b><u>Benefits Account - Account 2161-099/523/640</u></b>		
Cash Receipts:		
Transfers from Death, Disability and Retirement Income Account	\$22,430,000.00	\$21,150,000.00
Revenue from Unclaimed Property	<u>0.00</u>	<u>28,320.26</u>
	22,430,000.00	21,178,320.26
Disbursements:		
Pension Benefits	22,276,663.30	21,413,725.50
Withdrawal from Retirement Funds	<u>47,535.30</u>	<u>71,276.54</u>
	<u>22,324,198.60</u>	<u>21,485,002.04</u>
Cash Receipts Over/(Under) Disbursements	105,801.40	(306,681.78)
Beginning Balance	<u>0.27</u>	<u>82.05</u>
Transfers (to)/from Investment Management Board	<u>(105,801.00)</u>	<u>306,600.00</u>
Ending Balance	<u>\$ 0.67</u>	<u>\$ 0.27</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 9<sup>th</sup> day of January 2006.



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.