



OFFICE OF THE COUNTY EXECUTIVE
Milwaukee County
CHRIS ABELE • COUNTY EXECUTIVE

DATE: January 9, 2015
TO: Supervisor Marina Dimitrijevic, Chairwoman, Board of Supervisors
FROM: County Executive Chris Abele
SUBJECT: Pension Buy-In/Buy-Back Informational Update

SUMMARY

The following is an informational report outlining a proposed course of action to resolve the buy-in/buy-back (BIBB) issue. We ask the Board for its support on this resolution. Under our proposal, the following changes will be made:

- Setting all future pension benefits for current and future retirees to the level they should have been without the ineligible enhancements.
- Returning any funds paid in for BIBB to active employees or others who have not started receiving the enhanced benefits and, if there are any, returning excess BIBB payments to retirees whose benefits so far are less than what they paid.
- Allowing all past payments to retirees to stand without attempting recovery of overpayments.

DETAIL

As you are aware, the County discovered last year that about 200 former and current employees have been receiving or have been assumed eligible to receive incorrect pension benefits related to the BIBB program that was implemented in the early 1990s.

In 2007, it was initially discovered that some ERS members participating in the BIBB programs purchased past service credit in violation of applicable County Ordinances and IRS Rules. When this mistake was discovered, the County Board unanimously voted to end the excessive pension payments and collect all overpayments. For reasons that remain unclear, nothing was ever done to address the mistakes or collect overpayments, something ERS discovered in March and April 2014.

To ensure transparency and make sure the affected people heard about the problem from ERS, not the news media, all the affected retirees and active employees were notified of the situation with letters in April of 2014. ERS sent a follow up letter to these individuals in September telling them the issue was still being reviewed and they would receive an update.

When the issue was first discovered, County Executive Abele directed ERS and budget staff to examine the full fiscal impact and options to correct the overpayments. Additionally, the County

Executive engaged directly with the IRS agent working on Milwaukee County's Voluntary Correction Program (VCP) to better understand the County's status with the IRS.

Some Supervisors have recently stated an interest in adopting ordinance amendments that would continue excess pension payments for a small subset of current and former County employees, an action that would cost taxpayers millions of dollars over the next 30+ years.

The administration, with the collaboration of the Office of the Comptroller and the Office of the Corporation Counsel, is exploring an alternative to remedy the BIBB issue. In recent conversations, Paul Hogan, the IRS agent assigned to handle this situation, stated he is waiting for the County to submit a proposal for correcting the violations, preferably with key parties (County Board and County Executive) in agreement. If the County can reach consensus, he said, the IRS is more likely to be flexible with the County's needs and accept the County's proposal. One key consideration that the IRS agent expects is that the pension fund is "made whole", meaning the solution cannot increase the fund's liability.

In discussions with the IRS on this topic, the administration and the Comptroller have asserted that the County should already be "whole" because the County contributed funds to the ERS all along at or above what was required. This means that actuarial liabilities have met or exceeded the erroneous excess benefits that were paid out or anticipated. The IRS, in a teleconference with the above parties and Corporation Counsel, has tentatively accepted this argument, which would largely negate the "make whole" issue that has been discussed in relation to recovering excess payments. Under this approach, there would not be any need for a lump-sum payment even though no effort was made to recover past excess payments from retired employees in the group of 200 who received them.

Further, in 2009, the County placed additional assets into the ERS through the issuance of pension obligation bonds (POBs). So, while the BIBB created an artificially higher actuarial liability, the County has been making equal or greater contributions that could well offset this amount. Any shortfall in funding through the enhanced contributions before 2009 could be made up from these excess contributions (through POBs or otherwise).

The IRS has indicated that an appropriate course of action – as an alternative to costly ordinance amendments – for fixing this problem is to stop the excess payments and account for the past pension benefits at the level they should have been without the ineligible enhancements. A correction plan for IRS review, that would stop the benefits going forward, without seeking to collect past over-payments, is being developed. The parties are working with the County's pension actuary to determine final figures based on the following key points:

- Setting all future pension benefits for current and future retirees to the level they should have been without the ineligible enhancements.
- Returning any funds paid in for BIBB to active employees or others who have not started receiving the enhanced benefits and, if there are any, returning excess BIBB payments to retirees whose benefits so far are less than what they paid.
- Allowing all past payments to retirees to stand without attempting recovery of overpayments.

This path has the following benefits in comparison to the costly idea of amending ordinances to continue excess pension payments:

- The County's long-term unfunded actuarial accrued liability (UAAL) would be reduced by approximately \$10.3 million in future years. This would result in tax levy **savings** through reduced contributions to the ERS of approximately \$500,000 a year. This would also result in lower pension contributions for current employees. Exact fiscal impact is being calculated.
- Current retirees would not be required to return funds to the County.

The administration, Office of the Comptroller and Office of the Corporation Counsel are working with the County's actuary. ERS will submit this month a Voluntary Correction Plan (VCP) to the IRS based on this proposal. Given the Board's past support of action to address this issue, we believe that this approach is a reasonable resolution of this issue and we ask for your support.

Cc: Pension Board
County Board
Comptroller
Corporation Counsel