

THE COUNTY OF MILWAUKEE
EIN/PN: 39-6005720 / 001
EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE

ATTACHMENT TO FORM 14568 - SECTION II
Applicant's Description of Failures

1. Description of Failures. The Pension Board of the Employees' Retirement System of the County of Milwaukee has authority over ERS. Retirement Plan Services ("RPS") is responsible for day-to-day administration of ERS. In addition to the violations reported in prior VCP filings, a comprehensive review of ERS has revealed additional operational errors, which are described in detail below.

A. Compliance with Domestic Relations Support Orders. Ordinance section 201.24(11.7) provides for the non-alienation of retirement benefits. ERS Rule 1017 provides a limited exception to this prohibition for a Domestic Relations Order ("DRO"). The Rule requires that in order to be treated as a DRO, the support order must contain certain elements. Periodically, ERS receives Income Withholding Support Orders sent by County support enforcement agencies requesting that RPS withhold support amounts from members' benefit checks for a child or former spouse. These support orders do not contain all of the information required under Rule 1017 to qualify as a DRO. However, RPS has generally complied with these orders and a basis exists to conclude that state law requires ERS to comply with these orders.

B. BackDROP Failures. Ordinance section 201.24(5.16) and ERS Rule 711 allow members remaining in County employment past their earliest retirement date to elect to receive a backDROP form of benefit upon actual retirement from County employment. This benefit form consists of a lump-sum DROP benefit comprised of the member's monthly annuity payments that would have been payable to the member had the member retired on his or her backDROP date through the member's actual retirement date. The member will prospectively receive a monthly annuity in the amount that the member would have received had the member retired on his or her backDROP date. ERS Rule 713 provides that the interest rate applicable to calculating the backDROP lump-sum benefit shall be the rate used by the ERS actuary as the assumed rate of return for funding purposes in the year of the member's actual retirement.

A number of failures were discovered in the administration of the backDROP.

i. *Lump-Sum BackDROP Payments Failed to Include Applicable Interest.* RPS discovered an error in the ERS computer system's calculation of interest on the backDROP payments. When calculating a backDROP benefit, ERS's computer system did not include interest on the member's final month of service to the County. For example, if the retiring member's last day on the payroll is the 20th of the month, 20 days of interest for that final month should have been included in the back DROP amount. This final partial month of service was not included in the final interest calculation.

ii. *BackDROP Election by Beneficiary*. Members' beneficiaries selected a backDROP form of benefit on the members' behalf after the members died. Pursuant to Rule 711, only members who are in active service may elect a back DROP. Beneficiaries are ineligible to elect a back DROP for a member.

C. Cost of Living Adjustments ("COLA"). Ordinance section 201.24(5.7) provides that each year after retirement a member's monthly pension benefit shall be increased by two percent of the amount paid to the member for the first full month of retirement. Beneficiaries receiving annuities after the death of the member are also entitled to these increases. RPS discovered two categories of errors relating to the COLA adjustments:

i. *Failure to Apply COLAs to Benefits*. ERS failed to apply COLAs to some members' benefits, resulting in underpayments to these individuals. This error occurred primarily as a result of the change to ERS's computer system at the time.

ii. *Paid Excess COLAs*. ERS also discovered members for whom excess COLAs had been paid, resulting in overpayments to these individuals.

D. Administration of 10-Year Certain Benefit. Ordinance section 201.24(7.1) provides that members may choose an optional form of benefit outside of the single life annuity. One of those forms is a 10-year certain annuity that provides a reduced monthly benefit payable to the member for his or her lifetime. If the member dies before receiving 120 monthly payments, then the monthly payments shall be payable to the member's beneficiary until the full 120 payments have been made. RPS discovered the following errors in the administration of this benefit.

i. *Exceeding Cut-Off Dates/Calculation Errors*. Overpayments to beneficiaries resulted from calculation errors and the failure to cut-off monthly benefit payments after the required 120 payments were made.

ii. *Premature Cut-Offs*. Underpayments to beneficiaries occurred as a result of premature cut-off dates. RPS failed to continue to make payments to the designated beneficiary if the member died prior to receiving 120 payments.

E. Incorrect Retirement Option. RPS discovered one member whose survivor benefits were calculated under the wrong retirement option. The member elected a 100% joint and survivor annuity, but the survivor benefit was calculated based on a 50% joint and survivor annuity. This resulted in an underpayment of approximately \$346,189.94.

F. Allowing Optional Employees to Remain in OBRA After Electing into ERS. The County administers two retirement systems for its employees: ERS and the OBRA 1990 Retirement System of the County of Milwaukee ("OBRA"). ERS is the primary retirement system for County employees. In general, most employees automatically become members of ERS but certain members were previously allowed to elect into ERS or OBRA. Rule 202 (now repealed) governed these elections and provided that the option to elect into ERS from OBRA may be exercised at any time but may not be thereafter revoked except by withdrawal from service and the retirement system. Up until 2014, seasonal employees were provided the option to elect into ERS. However, given the nature of their employment schedules with the County,

they often leave and return each season. While ERS treats seasonal employees as terminated at the end of each season and returning employees are reenrolled in ERS or OBRA each season, the majority do not withdraw from the retirement system each year. Therefore, violations occurred when a seasonal employee elected into ERS in a previous year and chose to remain in OBRA in a subsequent year without first withdrawing from ERS.

G. Annuity Paid to Multiple Beneficiaries. RPS discovered multiple errors arising out of the payment of an active member's death benefit. The member was not eligible to receive a death benefit in the form of an annuity because the member was in active service and had not completed the required paperwork to elect a Protective Survivorship Option under Ordinance section 201.24(7.1)(3). Accordingly, only the lump-sum death benefit provided for by Ordinance section 201.24(6.3) was payable at the time of the member's death. However, ERS paid a death benefit in the form of an annuity. Additionally, the annuity was paid to multiple beneficiaries, which is not allowed under the Ordinances and Rules unless the member has approval from the Pension Board under an Option 7 form of benefit (Option 7 is no longer available). The beneficiaries also received a backDROP and are included as part of the error explained in Section (B)(ii) above.

H. Use of Incorrect Service Credit to Calculate Pension Benefit. RPS discovered that an overpayment had been made to a member's spouse because the benefit was calculated using full-time instead of part-time service credit.

It was also subsequently discovered that the member's child was incorrectly paid. Under the Ordinances and Rules, a child of a deceased member who was in active service is eligible for a pension benefit until the child reaches age 18 or 22 if the child is unmarried and a full-time student. This amount is to be offset by any Social Security benefits payable to the child. RPS failed to pay the child of this member a survivor pension in accordance with the Ordinances and Rules.

I. Benefit Paid to Wrong Member. RPS discovered that the surviving spouse of an ERS member was incorrectly receiving her survivor benefits plus the pension benefit of another member. Neither the spouse nor the individual who should have been receiving the benefit notified ERS, so the error was not discovered until the surviving spouse died.

J. Definition of Employee. Prior to the adoption of a resolution amending Ordinance section 201.24(2.4), which includes the definition of "Employee", the definition of Employee included only individuals employed by the County or individuals employed by the State who received a portion of his or her wages from the County. State employees who received their entire wages from the State participated in ERS after their positions were transferred from County to State oversight. Accordingly, these individuals were not encompassed within the definition of Employee in Ordinance section 201.24(2.4).

K. IRS and Wisconsin Department of Revenue Levies. ERS periodically receives notices of levy/attachment for delinquent income taxes from the IRS and the Wisconsin Department of Revenue ("DOR") requesting that ERS send all or a portion of a member's pension benefit to the IRS or DOR for payment of unpaid taxes. ERS generally complies with these levies. However, Ordinance section 201.24(11.7) provides for the non-alienation of ERS

retirement benefits, which prohibits the payment of pension benefits to satisfy a debt, claim, damage or judgment. Accordingly, ERS's compliance with the levies violates the alienation of benefits prohibition in the Ordinances.

L. Payment of Deferred Vested Benefits to Non-Vested Members. Ordinance section 201.24(4.5) provides that members are eligible for deferred vested benefits, if among other requirements, they have sufficient service credit to vest in their benefits. Members become eligible for deferred vested benefits if there is a gap between the member's termination of service and retirement (*i.e.*, the member does not retire directly from active service). The required years of service necessary to vest in a benefit depends on the member's enrollment date. For enrollment dates between January 1, 1971 and January 1, 1982, a member must have 6 years of service credit. For enrollment dates on or after January 1, 1982, where the member did not earn service credit after January 1, 2001, the member must have 10 years of service. For members who have service on or after January 1, 2001, the member must have 5 years of service to vest in his or her deferred vested benefit from ERS. Despite the vesting requirements in Ordinance section 201.24(4.5), members with less than the required service credit necessary to vest have been paid benefits in violation of this Ordinance section.

M. Pension Protection Act of 2006 ("PPA") and Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART") Amendments. The legislative body with authority to amend ERS did not adopt the required amendments under PPA and HEART within the required time period. ERS has operationally complied with the requirements.

N. Use of Incorrect Mortality Tables. RPS discovered that some RPS staff members had not updated the benefit calculators they were using to reflect the correct mortality table. Accordingly, benefit computation errors occurred when an incorrect mortality table was used to calculate optional forms of benefit that were actuarially equivalent to ERS's normal form of benefit (a straight life annuity). This resulted in underpayments to members.

2. Years in which the Failures Occurred. ERS believes that:

A. This failure occurred in 2000 through 2013.

B.

i. This failure occurred in 2001-2013.

ii. This failure occurred in 2002, 2003 and 2004.

C.

i. This failure occurred in approximately 1985, 1993, 1996, 2001, 2004, 2008-2013.

ii. This failure occurred over a number of years. RPS is confirming the exact dates, and this filing will be updated once those dates are received.

D.

i. This failure occurred in 2003-2009.

- ii. This failure occurred in 2003-2009.
- E. This failure occurred from 2003-2017.
- F. This failure occurred over a number of years. RPS is confirming the exact dates, and this filing will be updated once those dates are received.
- G. This failure occurred in 2003 through 2014.
- H. This failure initially occurred in 1996 and 2009.
- I. This failure occurred in approximately 2008 through 2011.
- J. This failure occurred in 2009-2011.
- K. This failure occurred in 2000 through 2013.
- L. This failure occurred from approximately 2011 through 2013.
- M. This failure occurred in 2011.
- N. This failure occurred in 2009 through 2012.

3. Number of Participants Affected. ERS believes that:

- A. This failure affected 80 participants.
- B.
 - i. This failure affected 1,872 participants.
 - ii. This failure affected 5 beneficiaries.
- C.
 - i. This failure affected approximately 350 participants.
 - ii. RPS is confirming the number of participants affected, and this filing will be updated once those dates are received.
- D.
 - i. This failure affected 10 beneficiaries.
 - ii. This failure affected 6 beneficiaries.
- E. This failure affected 1 member's beneficiary.
- F. This failure affected all optional employees who previously elected into ERS and were subsequently allowed to remain in OBRA. RPS is confirming an estimate of the number of affected participants.
- G. This failure affected 4 beneficiaries.
- H. This failure affected 2 beneficiaries.
- I. This failure affected 1 participant and 1 beneficiary.
- J. This failure affected 40 participants.

K. This failure affected approximately 11 participants.

L. This failure affected approximately 11 participants.

M. This failure did not affect individual participants.

N. This failure affected approximately 360 participants.

THE COUNTY OF MILWAUKEE
EIN/PN: 39-6005720 / 001
EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE

ATTACHMENT TO FORM 14568 - SECTION III
Applicant's Description of Proposed Method of Correction

1. Relief Requested. On behalf of the Plan Sponsor and ERS, we respectfully request a favorable compliance letter for ERS in accordance with Revenue Procedure 2016-51. We respectfully request a conference with you or Review Staff in the event you contemplate issuing a determination that is unfavorable.

2. Methods of Correction.

A. Compliance with Domestic Relations Orders. ERS proposes to correct this failure by retroactively amending the Plan document to authorize acceptance of these support orders. The Pension Board has already adopted a Rule to authorize acceptance of these orders. ERS requests retroactive effect of this amendment to correct the failures created by the acceptance of these orders.

B. BackDROP Errors.

i. Lump-Sum BackDROP Payments Failed to Include Applicable Interest. ERS proposes to determine the difference between the amount of interest the member should have received with his or her backDROP and the amount of interest the member actually received with his or her back DROP. ERS proposes to calculate interest on that difference and pay the difference, plus 5% simple interest through the date of correction, to the member. ERS has already begun making these corrective payments.

ii. Back DROP Election by Beneficiary. ERS proposes to seek a refund of the backDROP lump-sum benefit paid to each ineligible beneficiary, including interest. To do so, RPS would recalculate the pension benefit that each beneficiary would have been entitled to receive had he or she not elected the backDROP benefit. The beneficiary's monthly benefit will be changed accordingly. RPS would offset the amount of the refund by the amount of the additional pension benefit to which each beneficiary would have been entitled had he or she not elected the backDROP. If, after the appropriate amount is offset against the refund, RPS determines that the beneficiary received an underpayment, such amount shall be paid in a lump sum to the individual, plus 8% compound interest through the date of correction. ERS will notify each affected individual that the corrective distribution is taxable and not eligible for tax-free rollover treatment.

If a beneficiary received an overpayment as determined by the process described above, ERS will seek a refund of such amount, plus 5% interest compounded annually. To make ERS whole for the overpayment amounts, to the extent the County does not voluntarily contribute the amounts to ERS, ERS will attempt to recover the overpayment amounts from the affected individuals by giving them a choice to return the overpayment (adjusted for interest) or

by having future annuity payments (if any) reduced to recover the overpayment. To the extent the overpayment amounts (adjusted for interest) are not recovered from the affected individual, the County, as Plan Sponsor, will contribute these overpayment amounts to ERS.

C. Cost of Living Adjustments. To correct the errors, ERS proposes to determine the correct COLA attributable to the members' benefits. ERS has already begun making these corrective payments.

i. *Failure to Apply COLAs to Benefits.* If a member did not receive COLAs when required, ERS will recalculate the member's benefit and begin paying the member the appropriate amount. ERS will also pay to the member a lump-sum payment for the COLA amounts not paid, plus 5% simple interest through the date of correction.

ii. *Paid Excess COLAs.* If a member received a COLA when it should not have been received, ERS proposes to recalculate the member's benefit to reflect the appropriate amount and request repayment of the overpaid amount, plus 5% simple interest. To make ERS whole for the overpayment amounts, to the extent the County does not voluntarily contribute the amounts to ERS, ERS will attempt to recover the overpayment amounts from the affected individuals by giving them a choice to return the overpayment (adjusted for interest) or by having future annuity payments (if any) reduced to recover the overpayment. To the extent the overpayment amounts (adjusted for interest) are not recovered from the affected individual, the County, as Plan Sponsor, will contribute these overpayment amounts to ERS.

D. Administration of the 10-Year Certain Benefit.

i. *Exceeding Cut-Off Dates/Calculation Errors.* ERS proposes to correct this failure by discontinuing the erroneous benefit payments and attempting to recover the overpayments, plus 5% interest compounded annually. To make ERS whole for the overpayment amounts, to the extent the County does not voluntarily contribute the amounts to ERS, ERS will attempt to recover the overpayment amounts from the affected individuals by giving them a choice to return the overpayment (adjusted for interest) or by having future annuity payments (if any) reduced to recover the overpayment. To the extent the overpayment amounts (adjusted for interest) are not recovered from the affected individual, the County, as Plan Sponsor, will contribute these overpayment amounts to ERS.

ii. *Premature Cut-Offs.* ERS proposes to determine the amount of the underpayment, calculate 8% interest compounded annually on the underpaid amount, and pay the total amount to the individual. ERS will notify each affected individual that the corrective distribution is taxable and not eligible for tax-free rollover treatment.

E. Incorrect Retirement Option. ERS proposes to recalculate the beneficiary's benefit under the correct retirement option, determine the amount of the underpayment and pay the underpayment, plus 8% interest compound annually through the date of correction to the individual. ERS will notify each affected individual that the corrective distribution is taxable and not eligible for tax-free rollover treatment.

F. Allowing Optional Employees to Remain in OBRA After Electing into ERS. ERS proposes to correct this failure by amending the Plan document to authorize optional

members to have the option to elect into ERS each season after termination of employment from the prior season. Prospectively, the Plan document has already been amended to specify that seasonal employees are no longer allowed to elect into ERS. Accordingly, ERS proposes no additional corrections are necessary.

G. Annuity Paid to Multiple Beneficiaries. ERS proposes to discontinue the benefit payments to the four beneficiaries and obtain repayment of the overpayment. To calculate the overpayment, RPS will combine the lump-sum backDROP amount and the total monthly payments paid to each beneficiary. This amount will be charged 5% interest compounded annually. This figure will be decreased by any death benefit that was payable under the Ordinances and Rules. To make ERS whole for the overpayment amounts, to the extent the County does not voluntarily contribute the amounts to ERS, ERS will attempt to recover the overpayment amounts from the affected individuals by giving them a choice to return the overpayment (adjusted for interest) or by having future annuity payments (if any) reduced to recover the overpayment. To the extent the overpayment amounts (adjusted for interest) are not recovered from the affected individual, the County, as Plan Sponsor, will contribute these overpayment amounts to ERS.

H. Use of Incorrect Service Credit to Calculate Pension Benefit. ERS proposes to recalculate the spouse's monthly benefit, determine the amount of the overpayment and obtain the repayment of the amount of the overpayment, plus 5% interest compounded annually. To make ERS whole for the overpayment amounts, to the extent the County does not voluntarily contribute the amounts to ERS, ERS will attempt to recover the overpayment amounts from the affected individuals by giving them a choice to return the overpayment (adjusted for interest) or by having future annuity payments (if any) reduced to recover the overpayment. To the extent the overpayment amounts (adjusted for interest) are not recovered from the affected individual, the County, as Plan Sponsor, will contribute these overpayment amounts to ERS.

To correct the error related to the failure to pay the member's child the correct benefit amount, ERS proposes to calculate the amount that should have been paid to the child and pay that amount to the child, plus 8% interest compounded annually from the date the benefit should have been paid to the date of correction.

I. Benefit Paid to Wrong Member. To correct this error, RPS proposes to determine the amount of the overpayment paid to the surviving spouse and the underpayment that should have been paid to the member.

RPS will commence the member's monthly benefit payments and make a lump-sum payment to the member consisting of the missed benefit payments. ERS has already made this corrective payment.

To make ERS whole for the overpayment amounts, plus 5% interest compounded annually, to the extent the County does not voluntarily contribute the amounts to ERS, ERS will attempt to recover the overpayment amounts from the affected individuals by giving them a choice to return the overpayment (adjusted for interest) or by having future annuity payments (if any) reduced to recover the overpayment. To the extent the overpayment amounts (adjusted for

interest) are not recovered from the affected individual, the County, as Plan Sponsor, will contribute these overpayment amounts to ERS.

J. Definition of Employee. Because ERS is a governmental pension plan, amendments to the Ordinances are made by a legislative body, the County Board of Supervisors. ERS has no authority to adopt amendments to the Ordinances. The amendment adopted by the County Board in December 2011, corrects the operational failures created by revising the definition of "employee" in Ordinance section 201.24(2.4) to permit state employees who receive all of their compensation from the state to be members of ERS. ERS requests retroactive effect of this amendment to correct the errors created by members participating in ERS who did not fit the definition of "employee" at the time of their participation.

K. IRS and Wisconsin Department of Revenue Levies. As noted above, because ERS is a governmental pension plan, amendments to the Ordinances are made by a legislative body, the County Board of Supervisors. ERS has no authority to adopt amendments to the Ordinances. ERS proposes to correct the error by adopting a retroactive Ordinance amendment allowing for compliance with federal and state tax levies and corrects the operational failures created by retroactively permitting ERS to comply with tax levies from the IRS and Wisconsin Department of Revenue. The County Board will be considering an Ordinance amendment to correct this error. A copy of the Ordinance amendment will be provided once the amendment is submitted to the County Board.

L. Payment of Deferred Vested Benefits to Non-Vested Members. ERS proposes to correct these operational errors by ceasing the members' monthly benefits, determining the amount of the overpayments and obtaining the return of the overpayments, plus 5% interest compounded annually. To make ERS whole for the overpayment amounts, to the extent the County does not voluntarily contribute the amounts to ERS, ERS will attempt to recover the overpayment amounts from the affected individuals by giving them a choice to return the overpayment (adjusted for interest) or by having future annuity payments (if any) reduced to recover the overpayment. To the extent the overpayment amounts (adjusted for interest) are not recovered from the affected individual, the County, as Plan Sponsor, will contribute these overpayment amounts to ERS.

M. PPA and HEART Amendments. The legislative body adopted amendments to comply with the required changes on May 22, 2014. Please note that the amendments also included amendments related to EGTRRA. The EGTRRA failure was submitted to the IRS on August 21, 2007 as part of the prior VCP filing.

N. Use of Incorrect Mortality Tables. ERS proposes to recalculate each affected member's benefit by using the correct mortality table. These recalculated benefits will be paid to the members going forward. ERS will also calculate each member's underpayment of benefits that should have been paid had ERS used the correct mortality table. ERS will distribute these amounts to members with the amounts increased due to the delayed payment using the applicable interest rate through the date of correction. If any members are deceased, the corrective distributions will be paid to their spouse, or if none, to the children in equal shares or if none, to

the member's estate. ERS will also notify each affected individual that the corrective distribution is taxable and not eligible for tax-free rollover treatment.

3. Expected Cost of Correction of Operational Errors. RPS is preparing an estimate of the cost of correcting all of the new operational errors outlined above. The estimate will be provided once finalized.

4. Calculations or Assumptions Used to Determine Amounts For Correction for Operational Errors. RPS will use ERS's normal plan assumptions to recalculate pension amounts for any individual who received an overpayment or underpayment as outlined above.

5. Methodology to Calculate Interest for Correction of Operational Errors. ERS previously corrected a few of the failures using 5% simple interest. Accordingly, those correction methods described above propose using that interest rate. To the extent a failure has not already been corrected, the proposed correction methods above reflect the interest rates accepted by the IRS as part of the 2007 VCP (5% compound interest for overpayments and 8% compound interest for underpayments (the Plan's rate for actuarial equivalence)). However, the County Board is being asked to consider Ordinance amendments that will direct ERS to use 5% simple interest for purposes of overpayments and underpayments. Assuming the County Board adopts this amendment, ERS proposes that this interest rate be the rate used for purposes of this VCP.

6. Sample Calculations of Operational Error Correction Method. RPS is preparing sample calculations. The sample calculations will be provided once finalized.

**THE COUNTY OF MILWAUKEE
EIN/PN: 39-6005720 / 001
EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE**

ATTACHMENT TO FORM 14568 - SECTION IV

Applicant's Proposed Procedures to Locate and Notify Former Employees or Beneficiaries

To the extent ERS is required, it will communicate with any affected former employee concerning the VCP correction by mailing a notice to the last known address of the former employee. To the extent ERS is unable to locate any former employee, it agrees to utilize, as applicable, commercial locator services, credit reporting locator services or Internet search tools to locate the former employees.

THE COUNTY OF MILWAUKEE
EIN/PN: 39-6005720 / 001
EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE

ATTACHMENT TO FORM 14568 - SECTION V
Applicant's Proposed Revision to Administrative Procedures

Explanation of How and Why Failures Occurred. The Pension Board has delegated authority to RPS to conduct the day-to-day administration of ERS. RPS is charged with administering a very large defined benefit retirement plan, and in light of the demands imposed on RPS in administering this plan, RPS could have been more fully staffed. Additionally, RPS has also experienced turnover within the Office and in the outside advisors retained to assist RPS with actuarial and other services. Furthermore, ERS changed computer systems and the installed system had errors in its initial programming. Those errors have been identified and have been fixed.

To the best information available at this time, ERS believes that the operational failures occurred because RPS did not have procedures in place (a) to identify and comply with the applicable rules of certain Ordinances and Rules; or (b) conduct necessary annual testing and to ensure that all provisions of ERS are properly administered.

Measures to be Implemented to Ensure Same Failures Do Not Continue to Occur. RPS's computer system and attendant control measures ensure that compliance with all ERS governing plan documents is monitored on a regular basis. Additionally, RPS has a new manager who routinely utilizes Corporation Counsel and outside counsel to answer questions regarding proper administrative procedures.