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LISA POTSWALD  
Chief Administrative Officer

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The City of Duluth has discovered an error in the payroll calculation for PERA contributions that has occurred over a period of recent years. During this time, salaries of City of Duluth employees were over-reported to PERA.

This error does not affect social security benefits – however, it does affect all PERA-eligible members' retirement benefits. The City is working with PERA to correct the problem. By law, both public employers and PERA are obligated to correct all errors and inaccuracies that are discovered.

The City of Duluth's Finance Department is working in conjunction with PERA's Finance Division to collect and update individual member data. While data collection and analysis takes place, the City has an obligation to inform its employees of the impact this could have on previously reported pension retirement benefits.

PERA will issue a refund to the City of all invalid employee deductions. The City will then pay the amounts of overpayment back to each employee as income and withhold the appropriate income taxes. We hope to complete this process by the end of the year.

Please be advised that the City of Duluth has implemented controls to prevent this error from recurring. Enclosed with this letter is a question and answer sheet prepared by the City of Duluth and PERA.

At this time, PERA is working diligently to update member records and has requested that members not contact the local Duluth PERA office. If you are contemplating retirement within the next three months, please contact the PERA main office at 1-800-652-9026. If you wish to contact the City of Duluth and live locally, you can call 730-5333. If you live out of the area, call 1-888-635-2537.

Sincerely,

Lisa Potswald  
Chief Administrative Officer, City of Duluth

EXHIBIT 4

## Frequently Asked Questions (FAQs)

### **What happened? How was the error discovered?**

The employer's contributions towards active employee deferred compensation, or family health premiums, was reported as eligible PERA salary. In addition, the monthly employer contribution provided to employees who obtained Plan 3 single health insurance was also reported as eligible PERA salary. According to Minnesota statute, these employer-paid fringe benefits are excluded from salary. The error was discovered by an internal audit of payroll records.

### **Exactly who is affected?**

All current city employees and any city employee who retired after January 1, 1997. Retirees who left city service prior to this date are unaffected.

### **Why does the City have to correct this error?**

PERA retirement benefits must be based on salary as defined in Minnesota Statutes Section 353.01, subd. 10. That section specifically excludes employer-paid amounts to flexible spending accounts, deferred compensation plans or amounts toward the cost of insurance coverage. In addition, Minnesota Statutes Section 353.27, subdivisions 7 and 7b require PERA to refund the erroneous employee deductions and adjust any retirement annuity or disability benefit that has been computed using the invalid salary.

### **Will PERA benefits need to be recalculated?**

If you are a PERA benefit recipient, please be aware that your monthly payment will be adjusted to reflect a lower "high five year average salary" upon which your benefit is based. With this adjustment in the salary on which your benefit is based, your original benefit has most likely been higher than it should have been, resulting in an overpayment.

### **What are mechanics of "paying back" the overpayments?**

- For active members: The City will receive from PERA a refund of the invalid employee deductions and we will, in turn, pay the amounts to each employee as income and withhold the appropriate income taxes.
- For inactive (deferred members): PERA will issue the refund payments directly to former City employees who have left their contributions with the retirement system to qualify for a deferred pension at retirement age. At the end of the calendar year in which the refund is paid, PERA will send a Form 1099 to the inactive member.
- For benefit recipients: PERA deductions that were taken in error, and that would otherwise be refunded to you, will be applied to any possible overpayment of benefits. The law requires that PERA recover all overpayments. Typically PERA withholds 25 percent of the monthly benefit until the overpayment has been recovered. If a 25 percent reduction will create a hardship for you, PERA has agreed to work with you to find a mutually agreeable repayment plan.

### **It wasn't my fault. Why am I being penalized for this? Why couldn't the City just "look the other way"?**

The law is clear on the definition of "salary", what constitutes a pension payment and how it is calculated. PERA cannot base pension payments on ineligible salary. Both the City of Duluth and PERA are legally obligated to comply with state rules and statutes.

### **How does this issue affect my existing Social Security benefits?**

This does not impact your social security benefits.

### **Will I have to amend any of my tax returns?**

If you are a PERA benefit recipient, PERA will not amend prior year 1099 forms. You will realize the tax benefit in the upcoming year when the benefit reduction takes place.

**Who do I call at PERA with questions on how this will affect my retirement benefits?**

PERA is aware of this problem and is working with the City of Duluth to make the necessary adjustments. It is not necessary to contact PERA, as they will contact you with benefit information as soon as it becomes available.

If you have received benefit estimates for an upcoming retirement date, you may wish to contact the PERA office for updated estimates. Please do not call the Duluth PERA Office; rather call the main PERA office at the toll free number 1-800-652-9026.

**How long will it take to get new benefit calculations?**

PERA has indicated that it will be early in 2009 before any adjustments will take place. However, PERA will provide the actual benefit amounts and amount of possible overpayments to you as quickly as possible, giving you an opportunity to appeal their decision before the actual adjustments are made.

PERA intends to use any overpaid contributions paid by employees while working to first offset the amount of overpaid benefits. This will lessen the potential further reduction in benefits to recover any overpayments. If the overpaid employee contributions, in any case, exceed the amount of overpaid benefits, a refund will be issued to the benefit recipient.

**Who do I contact with the City with questions?**

Locally, call 730-5333 or 1-888-635-2537 if you live out of the area. Additionally, you can check a special page set up on the city's website at [www.duluthmn.gov](http://www.duluthmn.gov). We will have a link set up where you can get information and also sign up for e-mail updates through the city's GovDelivery service.

**What controls are in place to prevent this from happening again?**

The controls include an internal audit of all employer paid salary and fringe benefits. The city is now in compliance with Minnesota PERA state rules and regulations.

**Is there a right of appeal for employees or benefit recipients (retirees, survivors and individuals receiving disability benefits)?**

Participants and benefit recipients have the right to petition the PERA Board of Trustees for review of benefit and eligibility decisions made by PERA. However, as fiduciaries, the PERA Board must follow the law. The PERA law is very clear regarding erroneous contributions and what constitutes "salary." If contributions have been reported on compensation that is not salary within the meaning of PERA's law, those contributions cannot be accepted by PERA and the compensation cannot be included in determining PERA benefits. The PERA law also requires PERA to recover any overpaid benefits at any time it is found that there was an error in calculating the benefit amount.

If a letter is sent to you by a member of PERA's staff other than the executive director, notifying you of a change in your PERA record, you may request that the executive director review that decision. The executive director will review the decision and send you a written determination. You then have 60 days within which to petition for review of that determination before the PERA Board of Trustees. Petitions before the PERA Board are governed by MN Statutes, section 356.96.

PERA will be reviewing all applicable payroll records and will individually notify affected employees and benefit recipients. PERA's review may result in the refund of contributions to participants, correction of reported salaries and the need to seek collection of overpaid benefits. Included in the individual notices will be details of how you may seek review of PERA's determination. If you seek review, your benefits will not be adjusted until the review process is completed. If PERA's initial decision is ultimately affirmed, benefits may have to be adjusted on a retroactive basis.