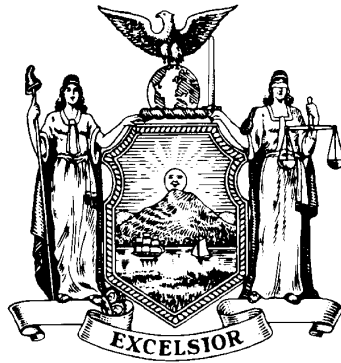


State of New York  
Offices of the Inspector General



Investigation of the  
New York State  
Hudson River-Black River Regulating District

April 2021

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Inspector General

## EXECUTIVE SUMMARY

On May 6, 2020, Hudson River-Black River Regulating District (HRBRRD) Executive Director John Callaghan reported to the Offices of the New York State Inspector General that HRBRRD had discovered that Richard Ferrara, its former chief fiscal officer (CFO), received improper retirement benefits when he separated from HRBRRD in October 2019.<sup>1</sup> Specifically, Callaghan advised that Ferrara received a lump sum payout of \$51,082.58 for the value of his sick leave accruals and had not been contributing 10 percent toward health insurance premiums following his retirement, contrary to HRBRRD policy. At the time, Callaghan was unaware of how this improper retirement benefit had been paid since the form approving such payout was not in the appropriate filing cabinet and he had no recollection of approving it.

The Inspector General confirmed that Ferrara was paid \$51,082.58 for the value of 100 days (750 hours) of sick leave accruals, benefits to which he was not entitled. Additionally, Ferrara was not paying 10 percent toward his health care insurance premiums following his retirement, contrary to HRBRRD's policy.

The investigation further found that the miscalculation of Ferrara's payout and health care insurance premiums contribution was due to simple administrative error, which was compounded by inaccurate personnel records, poor internal controls, the recent hiring of staff who were unfamiliar with Ferrara's prior work history, and the relocation of HRBRRD's main office and records.

The investigation determined Ferrara's payout and health care insurance premium contribution was calculated in error by an HRBRRD senior administrative assistant based on her mistaken belief regarding the date when Ferrara started as an HRBRRD employee and the benefits he was eligible to receive based on his start date. According to this senior administrative assistant and pertinent documents, Ferrara's miscalculated benefits were then reviewed and approved by both Callaghan and HRBRRD's newly-appointed CFO<sup>2</sup>, and prior to its next meeting, the Board was provided with records reflecting the payout. None identified the miscalculation despite Ferrara's long history of petitioning the Board and several HRBRRD

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<sup>1</sup> Callaghan and the new HRBRRD CFO discovered the erroneous payout to Ferrara in May 2020, while reviewing health care insurance premiums paid by and for retirees.

<sup>2</sup> The CFO was hired by HRBRRD in September 2019, shortly before Ferrara's retirement.

executive directors for policy revisions that would allow for such a payout and the Board's repeated rejection of his requests.

Notably, although Ferrara was aware or should have been aware that his lucrative payout far exceeded that which was properly due to him, he took no action to notify HRBRRD of its error or return the improper payout. Moreover, when requested by the Inspector General to cooperate with its investigation, Ferrara declined. The Inspector General finds the actions of Ferrara—the CFO of HRBRRD for more than 14 years—troubling.

These findings expose weaknesses in HRBRRD's maintenance of employee personnel records and the thoroughness of the reviews conducted by Callaghan, the CFO, and the senior administrative assistant. Additionally, the Board's lack of attention to the matter was problematic given Ferrara's numerous unsuccessful petitions to the board for this same payout.

The Inspector General therefore recommends that HRBRRD take appropriate action to recoup funds that were improperly paid to Ferrara and ensure his retirement pension payment and health care insurance premiums are accurately calculated.

HRBRRD should also review and improve relevant internal controls, verify the accuracy of its retirement records and personnel databases, and ensure that pertinent information is shared with appropriate staff in a timely manner. In addition, HRBRRD should implement controls to ensure that all payments made by HRBRRD that require the review and approval of the Office of the New York State Comptroller (OSC) have, in fact, been reviewed and approved by OSC.

In consultation with the New York State Authorities Budget Office, HRBRRD should consider expanding the scope of its annual reporting to the Governor to include a description of this matter, how it was addressed, and policies and procedures implemented to ensure such improper retirement benefits are not provided to future HRBRRD retirees. Lastly, the HRBRRD Board, and administrative and finance staff should attend Authorities Budget Office training on their respective duties and responsibilities.

The findings of this investigation have been provided to OSC to review Ferrara's payout and determine if any adjustments or reductions are appropriate to his ultimate pension calculation.

HRBRRD advised the Inspector General that it has accepted the findings of this investigation and will implement the Inspector General's recommendations. HRBRRD further advised that it has reviewed payouts to its retirees for accrued leave time and health care insurance premium contributions paid on behalf of retirees and found no additional improper payments.

## BACKGROUND

### **The Hudson River-Black River Regulating District**

HRBRRD, a New York State public benefit corporation formed in 1959, is responsible for regulating the flow of waters in two watersheds in the Adirondack Region: the Upper Hudson River and Black River.<sup>3</sup> It accomplishes this by constructing, maintaining, and operating reservoirs in these watersheds when required by the public welfare, including public health and safety.

HRBRRD, which has approximately 23 employees, is headed by an executive director and overseen by a seven-member board. Board members, who are unpaid, serve five-year terms.<sup>4</sup> At least three Board members must reside in the Hudson River area and at least three in the Black River area. There are two vacant seats on the current Board.

Richard Ferrara held the title of CFO at HRBRRD from April 2005 until his retirement in October 2019.<sup>5</sup> His annual salary at the time of his retirement was \$132,812.

### **HRBRRD Management/Exempt Employees - Employment Rules and Benefit Guidelines**

As relevant to this investigation, the HRBRRD Management/Exempt Employees - Employment Rules and Benefit Guidelines state that employees hired prior to July 2005 are entitled to a payout of up to 100 days of unused sick leave upon retirement and do not have to contribute toward their health care insurance premiums during retirement. Employees hired after July 2005 are not entitled to a payout for unused sick leave and are required to contribute 10

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<sup>3</sup> The HRBRRD was established pursuant to New York State Environmental Conservation Law Article 15, Title 21; and §§ 15-2137 – 15-2141.

<sup>4</sup> Board members are reimbursed for expenses incurred in the performance of their duties.

<sup>5</sup> Between April 2005 and October 2005, Ferrara was an employee of CFO for Hire, LLC. In October 2005, Ferrara was hired as an employee of HRBRRD.

percent toward their health care insurance premiums during retirement. This policy was in effect for the duration of Ferrara's employment at HRBRRD.<sup>6</sup>

FORMER HRBRRD CFO RICHARD FERRARA WAS IMPROPERLY PAID THE VALUE OF SICK LEAVE ACCRUALS TOTALING \$51,082.58 FOLLOWING HIS RETIREMENT

The Inspector General's investigation confirmed that Ferrara became an employee of HRBRRD in October 2005 and therefore, pursuant to HRBRRD's Employment Rules and Benefit Guidelines, was ineligible to receive a payout for the value of any sick leave accruals upon retirement and was required to pay 10 percent toward his health care insurance premiums during retirement.

Between April and October 2005, HRBRRD contracted with CFO For Hire, LLC to provide a temporary CFO, namely Ferrara.<sup>7</sup> During the period of this consultant contract, HRBRRD paid CFO for Hire for the services provided by Ferrara. Subsequently, the contract with CFO For Hire ceased and Ferrara was hired as an HRBRRD employee. As an HRBRRD employee, Ferrara served as the CFO from October 20, 2005 to October 31, 2019.<sup>8</sup>

The investigation further found that on several occasions during his employment at HRBRRD, Ferrara unsuccessfully petitioned the HRBRRD Board and several executive directors to have the Employment Rules and Benefit Guidelines revised to allow for him to receive the value of 100 hours of sick leave accruals and make no payments toward health care insurance premiums following his retirement. His most recent petitions were in June and October 2018, when Ferrara wrote the Board seeking the revision. However, the Board did not put forth a resolution to adopt the proposed revision that would have benefitted Ferrara.

Callaghan, a recent hire of HRBRRD (April 2019), advised the Inspector General that soon after he began work, Ferrara asked him if he would approach the Board about revising the Employment Rules and Benefit Guidelines to allow Ferrara to receive the value of 100 hours of

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<sup>6</sup> Although this section of the handbook was not approved until January 2006, after Ferrara's hiring, it applies to employees hired after July 2005, and it remains as the current rule.

<sup>7</sup> The agreement with CFO for Hire, LLC is memorialized in Board Resolution 05-10-04 and approved in April 2005.

<sup>8</sup> The terms of Ferrara's hiring as an employee of HRBRRD are reflected in Board Resolution 05-44-10, which was approved in October 2005. This resolution states, "Richard J. Ferrara's employment is subject to the terms and conditions of the Hudson River-Black River Regulating District's Rules and Benefit Guidelines for Management/Exempt Employees dated September 8, 2003; and . . . Richard J. Ferrara's employment shall be subject to the terms and conditions of any revised or amended version of said Employee Rules and Benefit Guidelines when it is adopted by the Board . . ."

sick leave accruals and make no payments toward health care insurance premiums following his retirement. Callaghan subsequently mentioned this to the Board chair, who advised that the Board would not revisit the issue.

Nonetheless, payroll records reveal that upon his October 2019 retirement, Ferrara was paid \$51,082.58 by HRBRRD for the value of 100 days of sick leave accruals and was not required to contribute toward his health care insurance premiums.

Based upon multiple interviews and a review of numerous records, the Inspector General found this payout was calculated in error by an HRBRRD senior administrative assistant under her mistaken belief that Ferrara had an earlier start date of April 2005.<sup>9</sup> Subsequently, Ferrara's miscalculated benefits appear to have been reviewed and approved by both HRBRRD Executive Director Callaghan and the incoming CFO, and the Board reviewed HRBRRD's expenditures, which included Ferrara's payout, on or about November 13, 2019. No staff, executives, or Board members identified the miscalculated payout at this time.

According to the senior administrative assistant, her benefits calculation was based on HRBRRD records. In fact, HRBRRD's electronic employee database lists Ferrara's hiring date as April 6, 2005, and Board Resolution 19-43-10, which was approved at the October 8, 2019 Board Meeting, recognizes Ferrara's service as "Chief Fiscal Officer and Treasurer since April 2005." Indeed, the senior administrative assistant testified that Ferrara often referred to himself as having worked for HRBRRD since April 2005, and at the time of processing his retirement payout, she was unaware that Ferrara did not become an HRBRRD employee until October 2005.

HRBRRD's new CFO, hired in September 2019, just seven weeks before Ferrara's departure, testified to the Inspector General that he relied on these same HRBRRD records when reviewing Ferrara's payout. All indicated that Ferrara had commenced employment with HRBRRD in April 2005. Additionally, the new CFO testified that Ferrara represented to him that his start date at HRBRRD dated back to April 2005.

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<sup>9</sup> HRBRRD does not employ a full-time benefits administrator and processing retirement paperwork occurs infrequently.

To the contrary, HRBRRD’s employee personnel record and documents contained in Ferrara’s confidential personnel history file correctly reflect Ferrara’s hiring date as an HRBRRD employee as October 20, 2005. However, Ferrara’s confidential personnel history file, which contained information about his CFO for Hire employment status, was not made available to either the senior administrative assistant or the new CFO until after the payment error was discovered.

Although Ferrara’s payout required the written approval of both Callaghan and the new CFO, neither recalled questioning its appropriateness or identifying it as erroneous during the review and approval process. Both advised the Inspector General that while a photocopy of the Ferrara payout register authorizing the payout appears to bear their signatures, they had no independent recollection of approving the payout.<sup>10</sup>

Similarly, there is no indication that the Board or senior staff questioned the large payout even though it appeared on the General Operating Fund Report that was provided to them by the new CFO on or about November 13, 2019, in preparation for the upcoming Board meeting that month. This lack of diligence by the Board in questioning Ferrara’s payout is concerning given that Ferrara had repeatedly petitioned the Board—most recently in June and October 2018—seeking this revision and was repeatedly denied the payout of the value of his sick leave accruals and health care insurance coverage at no cost. Albeit Ferrara’s payout had been poorly identified on the General Operating Fund Report, where it was listed as the second of two consecutive disbursement entries entitled “Oct 30th Payroll.” Compounding this lack of scrutiny by the Board was that HRBRRD staff members failed to specifically advise the Board of such payout.<sup>11</sup>

Of note, although Ferrara’s lump sum payout required the review and approval of the Office of the New York State Comptroller, the Inspector General found this too did not occur.

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<sup>10</sup> The senior administrative assistant handling the payout testified that she mailed the original document to the Office of the New York State Comptroller and maintained a photocopy for her records, but never received the original or a stamped copy back from OSC. Despite multiple requests by the Inspector General, OSC was unable to locate any record of this particular transaction or the original document.

<sup>11</sup> See, New York State Public Authorities Law, Article 9, Title 2, Boards of Public Authorities (§§ 2824 - 2828). This investigation illustrated that the Board could have applied more scrutiny to Ferrara’s payout, however, this omission did not rise to the level of a breach of fiduciary duty under the statute given Ferrara’s overt actions and the vague description of his payout.

The senior administrative assistant responsible for this transaction testified that she regularly mails HRBRRD's biweekly payroll register and other records and checks reflecting certain other expenditures to OSC for review and approval. In this instance, on or around October 17, 2019, she sent both the biweekly payroll register and the payroll register reflecting Ferrara's payout to OSC and maintained a copy for HRBRRD. Per her regular practice, she then processed both registers for payment having received the approval (signatures) of Callaghan and the new CFO.

Subsequently, OSC approved the regular biweekly payroll register; however, OSC did not notify the senior administrative assistant of Ferrara's payout approval. According to the senior administrative assistant, she did not follow up with OSC about Ferrara's payout approval as, on prior occasions, OSC had not responded to other similar requests. Additionally, the senior administrative assistant noted that Ferrara's retirement coincided with the relocation of HRBRRD's primary office, and in the ensuing transfer of office records and files, her regular business practices were disrupted. As part of this investigation, OSC advised the Inspector General it had no record of having received, reviewed, or approved Ferrara's payout register.

Ferrara, despite being previously informed by the HRBRRD Board that HRBRRD's Employment Rules and Benefit Guidelines would not be revised to allow him to receive a payout for the value of his sick leave accruals and no-cost health care insurance, did not contact HRBRRD when he received the payout via direct deposit on October 30, 2019 or thereafter.

Ferrara did not cooperate with the Inspector General's investigation and declined to be interviewed. In addition, although he is or should be aware that he was not eligible to receive this lucrative payout, he has taken no steps to remedy the situation.

#### FINDINGS AND RECOMMENDATIONS

The Inspector General found that HRBRRD paid Ferrara \$51,082.58 for the value of 100 days (750 hours) of sick leave accruals, benefits to which he was not entitled. Additionally, HRBRRD erred when it allowed Ferrara to receive health care insurance without requiring him to pay any portion of his premiums. The Inspector General also found that Ferrara failed to notify HRBRRD of its error or return the improper payout despite having actual or constructive knowledge that he was not due such a sizable payout.

Further, the Inspector General found that staff relied on inaccurate personnel records when calculating Ferrara's payout, and subsequent reviews and approvals by HRBRRD's



executive director and newly-hired CFO did not identify the miscalculation. Lastly, the Inspector General found that the Board, which Ferrara had unsuccessfully petitioned on several occasions to revise HRBRRD policy to allow him to receive the value of 100 days of sick leave accruals and cost-free health care insurance, failed to diligently scrutinize Ferrara's retirement payout.

The Inspector General recommends that HRBRRD take appropriate action to recoup funds that were improperly paid to Ferrara and ensure his retirement pension payment and health care insurance premiums are accurately calculated.

The Inspector General further recommends that the Board thoroughly review HRBRRD's expenditures, particularly those involving accrued leave payouts to employees upon retirement, health insurance premium payments made on behalf of HRBRRD retirees, and expenditures pursuant to matters reviewed and considered at prior Board meetings.

HRBRRD should also review and improve relevant internal controls, verify the accuracy of its retirement records and personnel databases, and ensure that appropriate staff have access to pertinent employment information. Additionally, HRBRRD should implement controls to ensure that all payments made by HRBRRD that require the review and approval of OSC have, in fact, been reviewed and approved by OSC. These controls should include processes that differentiate retirement payout registers from regular payroll registers when these records are submitted for review and/or approval to HRBRRD's management, its Board, and OSC.

Additionally, the Inspector General has provided a copy of this report to OSC and recommends that OSC review Ferrara's payout to determine if any adjustments or reductions are appropriate to his ultimate pension calculation.

In consultation with the New York State Authorities Budget Office, HRBRRD should consider expanding the scope of its annual reporting to the Governor to include a description of this matter, how it was addressed, and policies and procedures implemented to ensure such improper retirement benefits are not provided to future HRBRRD retirees.<sup>12</sup> Lastly, the

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<sup>12</sup> Pursuant to New York State Public Authorities Law section 2800, New York State public authorities are required to submit a report to the governor and other officials each year detailing their status and activities. Public Authorities Law section 2800(1)(9) mandates that these reports include an "assessment of the effectiveness of its internal control structure and procedures." HRBRRD is also required to submit an annual report to the New York

HRBRRD Board, and administrative and finance staff should attend Authorities Budget Office training on their respective duties and responsibilities.

THE RESPONSE OF HRBRRD TO THE INSPECTOR GENERAL'S FINDINGS AND RECOMMENDATIONS

The HRBRRD advised the Inspector General that it has accepted the findings of this investigation and agrees to implement the Inspector General's recommendations. Additionally, HRBRRD advised it has reviewed payouts received by HRBRRD retirees for accrued leave, and health care insurance premiums paid on behalf of retirees, and found no other improper payments to or on behalf of retirees.