COMPLIANCE AUDIT

Duryea Borough Non-Uniformed Pension Plan

Luzerne County, Pennsylvania

For the Period

January 1, 2016 to December 31, 2019

September 2020

Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General

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EUGENE A. DEPASQUALE
AUDITOR GENERAL

The Honorable Mayor and Borough Council
Duryea Borough
Luzerne County
Duryea, PA 18642

We have conducted a compliance audit of the Duryea Borough Non-Uniformed Pension Plan for the period January 1, 2016 to December 31, 2019. We also evaluated compliance with some requirements subsequent to that period when possible. The audit was conducted pursuant to authority derived from the Municipal Pension Plan Funding Standard and Recovery Act (Act 205 of 1984, as amended, 53 P.S. § 895.402(j)), which requires the Auditor General, as deemed necessary, to audit every municipality which receives general municipal pension system state aid and every municipal pension plan and fund in which general municipal pension system state aid is deposited. The audit was not conducted, nor was it required to be, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. We planned and performed the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The objective of the audit was to determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objective identified above. To determine whether the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, our methodology included the following:

- We determined whether state aid was properly determined and deposited in accordance with Act 205 requirements by verifying the annual deposit date of state aid and determining whether deposits were made within 30 days of receipt for all years within the period under audit. State aid allocations that were deposited into the pension plan for the years ended December 31, 2014 to December 31, 2019, are presented on the Summary of Deposited State Aid and Employer Contributions.

- We determined whether annual employer contributions were calculated and deposited in accordance with the plan's governing document and applicable laws and regulations by examining the municipality's calculation of the plan's annual financial requirements and minimum municipal obligation (MMO) and comparing these calculated amounts to amounts actually budgeted and deposited into the pension plan as evidenced by supporting documentation. Employer contributions that were deposited into the pension plan for the years ended December 31, 2014 to December 31, 2019, are presented on the Summary of Deposited State Aid and Employer Contributions.

- We determined that there were no employee contributions required by the plan's governing document and applicable laws and regulations for the years covered by our audit period.

- We determined whether retirement benefits calculated for plan members who separated employment and received a lump-sum distribution during the current audit period represent payments to all (and only) those entitled to receive them and were properly determined and disbursed in accordance with the plan's governing document, applicable laws, and regulations by recalculating the amount of the pension benefits due to the retired individuals and comparing these amounts to supporting documentation evidencing amounts determined and actually paid to the recipients.

- We determined whether the January 1, 2015, January 1, 2017, and January 1, 2019 actuarial valuation reports were prepared and submitted by March 31, 2016, 2018, and 2020, respectively, in accordance with Act 205 and whether selected information provided on these reports is accurate, complete, and in accordance with plan provisions to ensure compliance for participation in the state aid program by comparing selected information to supporting source documentation.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Duryea Borough Non-Uniformed Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. As previously described, we tested transactions, interviewed selected officials, and performed procedures to the extent necessary to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objective.

The results of our procedures indicated that, in all significant respects, the Duryea Borough Non-Uniformed Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further discussed later in this report:

Finding No. 1 – Failure To Fund Members' Accounts

Finding No. 2 – Failure To Make Proper Distribution To Terminated Vested Member

The contents of this report were discussed with officials of Duryea Borough and, where appropriate, their responses have been included in the report. We would like to thank borough officials for the cooperation extended to us during the conduct of the audit.

September 22, 2020

EUGENE A. DEPASQUALE
Auditor General

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BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The Act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans.

Annual state aid allocations are provided from a 2 percent foreign (out-of-state) casualty insurance premium tax, a portion of the foreign (out-of-state) fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the Duryea Borough Non-Uniformed Pension Plan is also governed by implementing regulations published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes.

The Duryea Borough Non-Uniformed Pension Plan is a single-employer defined contribution pension plan locally controlled by the provisions of Ordinance No. 94-6, as amended. The plan is also affected by the provisions of collective bargaining agreements between the borough and its non-uniformed employees. The plan was established January 1, 1985. Active members are not required to contribute to the plan. The municipality is required to contribute $1,000 per participant annually. As of December 31, 2019, the plan had 6 active members.

DURYEA BOROUGH NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Failure To Fund Members' Accounts

Condition: In 2016 and 2018, the borough did not fund the accounts of two plan members who terminated employment on July 18, 2016 and October 9, 2018, respectively.

For the employee who terminated in 2016, the borough deposited the $1,000 contribution into a suspense account where it remains as of the date of our audit fieldwork completion.

Criteria: Section No. 3 A of the plan's governing document, as amended by Ordinance No. 2001-03, states:

> The annual contribution of Duryea Borough (employer) shall be an amount equal to one thousand $1,000.00 dollars per participant.

A prior ordinance, Ordinance No. 98-9, originally set the annual contribution rate at $1,000 per participant, provided that the participant is employed a minimum of six months during the calendar year. Although the current provision does not stipulate the six month employment requirement, the borough has been consistently following this practice with the exception of the employees cited in this finding.

Cause: Borough officials were uncertain of their obligation to make a contribution for an employee who terminates prior to the allocation of the employer contribution in a given year.

Effect: The failure to properly fund the plan resulted in plan members being denied benefits to which they are entitled in accordance with the plan's governing document and the borough's practice.

Due to borough's failure to properly fund the referenced members' accounts, the borough must now pay interest on the delinquent contributions.

Recommendation: Since the terminated employees have already received a lump-sum distribution of their pension accounts, we recommend that the borough distribute the contribution due to each of the former employees with interest from the date of deposit of the municipal contributions which were made for other plan members in that year, to the date of distribution of the amount in arrears, taking into account that one of the employees was not 100 percent vested and therefore is not due the full contribution. (See also Finding No. 2.) Documentation of the distributions and interest calculations must be maintained by the borough for examination during our next audit of the plan.

We also recommend that, in the future, borough officials properly fund the accounts of all eligible plan members.

Finding No. 1 – (Continued)

Management's Response: Municipal officials agreed with the finding without exception.

Auditor's Conclusion: Compliance will be evaluated during our next audit of the pension plan.

Finding No. 2 – Failure To Make Proper Distribution To Terminated Vested Member

Condition: An employee terminated employment in 2016 with 2 years of credited service and was 40 percent vested in his pension account; however, only 20 percent of the employee's account was distributed to the employee with the remaining 80 percent treated as a forfeiture and allocated to the remaining plan participants. This is the same employee disclosed in Finding No. 1 of this report whose account was not funded in 2016, the year of his separation from employment; therefore, the distribution to the employee also did not include his vested portion of the 2016 contribution.

Criteria: Section 7 of the plan's governing document, Ordinance No. 94-6, states:

> When the employment of any non uniformed employee is terminated other than by death or retirement, the vesting provision would apply. Vesting is provided at 20% per year. An employee would have full vesting after a period of five (5) full years of employment.

Pursuant to the above provision, the terminated employee was entitled to a distribution in the amount of 40 percent of his pension account.

In addition, Section 7 A of Ordinance No. 2001-3, which amended Ordinance No. 94-6, states:

> If upon termination from the plan a participant is not one hundred (100%) per cent vested in the Employer contributions, the "forfeited" amount shall be allocated to the remaining participants. The basis of the allocation shall be the percentage that the remaining participants' January first (1^{st}) account balance bears to the total fund value on January first (1^{st}), of the year in which the forfeiture occurs.

Cause: The uncertainty regarding this plan member's eligibility for the annual contribution in the year of his separation from employment contributed to the incorrect vested percentage being utilized in determining his distribution.

Finding No. 2 – (Continued)

Effect: The terminated employee did not receive the correct lump-sum distribution to which he was entitled and, as a result, an incorrect forfeiture amount was allocated to the remaining participants.

Recommendation: We recommend that the borough take appropriate action to ensure the terminated plan member receives the correct vested benefit to which he is entitled, with applicable interest, to include the vested portion of the 2016 contribution due as reported in Finding No. 1. In addition, we recommend that the remaining plan members' accounts be adjusted to reflect the correct allocation of the revised forfeiture amount. Documentation of distributions, adjustments, and interest calculations must be maintained by the borough for examination during our next audit of the plan.

Management's Response: Municipal officials agreed with the finding without exception.

Auditor's Conclusion: Compliance will be evaluated during our next audit of the plan.

DURYEA BOROUGH NON-UNIFORMED PENSION PLAN
SUMMARY OF DEPOSITED STATE AID AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid	Employer Contributions
2014	$ 7,000	None
2015	7,000	None
2016	7,445	None
2017	6,610	$ 1,000
2018	6,000	None
2019	7,000	None

DURYEA BOROUGH NON-UNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

The Honorable Keith Moss
Mayor

Mr. Jeffrey Bauman
Council President

Ms. Carolyn Santee
Borough Manager

This report is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: news@PaAuditor.gov.