

COMPLIANCE AUDIT

Lower Southampton Township Non-Uniformed Pension Plan Bucks 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 Board of Township Supervisors
Lower Southampton Township
Bucks County
Feasterville, PA 19053

We have conducted a compliance audit of the Lower Southampton Township 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.

- 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 the plan members who retired and who elected to vest 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 comparing the distributed 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.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Lower Southampton Township 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 Lower Southampton Township 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 – Incorrect Data On Certification Form AG 385 Resulting In A Net Overpayment Of State Aid
- Finding No. 2 – Failure To Properly Adopt Mandatory Provisions Of Act 205

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

August 20, 2020

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

EUGENE A. DEPASQUALE
Auditor General

CONTENTS

	<u>Page</u>
Background.....	1
Findings And Recommendations:	
Finding No. 1 – Incorrect Data On Certification Form AG 385 Resulting In A Net Overpayment Of State Aid.....	2
Finding No. 2 – Failure To Properly Adopt Mandatory Provisions Of Act 205.....	5
Summary Of Deposited State Aid And Employer Contributions.....	8
Report Distribution List	9

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 Lower Southampton Township 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 Lower Southampton Township Non-Uniformed Employees Pension Plan is a single-employer defined contribution pension plan locally controlled by the provisions of Ordinance No. 442, as amended. The plan was established January 1, 1986. Active members are not required to contribute to the plan. The municipality is required to contribute 5 percent of each participant's annual compensation, plus 5.7 percent of each participant's annual compensation in excess of \$20,000. The plan is also affected by the provisions of collective bargaining agreements between the township and its non-uniformed employees. As of December 31, 2019, the plan had 40 active members and 5 terminated members eligible for vested benefits in the future.

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Incorrect Data On Certification Form AG 385 Resulting In A Net Overpayment Of State Aid

Condition: The township certified an ineligible non-uniformed employee (1 unit) and overstated payroll by \$60,486 on the Certification Form AG 385 filed in 2017. In addition, the township failed to certify an eligible non-uniformed employee (1 unit) but certified an ineligible police officer (2 units) and overstated total payroll by \$91,013 on the Certification Form AG 385 filed in 2019. Furthermore, the township certified an ineligible police officer (2 units) and overstated payroll by \$131,975 on the Certification Form AG 385 filed in 2020. The police officer effectively retired May 1, 2018, and entered the township’s Deferred Retirement Option Program (DROP) and was therefore not eligible for inclusion on the AG 385s according to Act 205. The data contained on these certification forms is based on prior calendar year information.

Criteria: Pursuant to Act 205, at Section 402(e)(2), an employee who has been employed on a full-time basis for at least six consecutive months and has been participating in a pension plan during the certification year is eligible for certification.

Furthermore, Act 205 at Section 402(e)(2) states, in part:

For the purpose of computing and reporting the applicable number of units, a DROP participant shall not be reported to the Auditor General as an active employee.

Cause: The township lacked adequate internal control procedures, such as having another individual review the data certified to ensure compliance with the instructions that accompanied Certification Form AG 385 prior to submission. In addition, regarding the DROP participant, the township believed that this member was considered active for certification purposes since there was a level of legal dispute regarding payment of DROP benefits in accordance with a qualified domestic relations order (QDRO).

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Effect: The data submitted on these certification forms is used, in part, to calculate the state aid due to the municipality for distribution to its pension plans. Because the township’s state aid allocations were based on unit value, the township received a total overpayment of state aid as identified below:

<u>Year</u>	<u>Type Of Plan</u>	<u>Units Overstated (Understated)</u>	<u>Unit Value</u>	<u>State Aid Overpayment (Underpayment)</u>
2017	Non-Uniformed	1	\$ 4,588	\$ 4,588
2019	Police	2	5,121	10,242
	Non-Uniformed	(1)	5,121	<u>\$ (5,121)</u>
			Subtotal	<u>\$ 5,121</u>
2020	Police	2	*	<u>*</u>
			Net Overpayment of State Aid	<u>\$ 9,709</u>

** The impact on state aid was indeterminable as of the date of this report; however, the amount of overpayment will be determined when 2020 state aid is released.*

In addition, the township used the overpayments of state aid to pay the minimum municipal obligations (MMOs) due to the police pension plan; therefore, if the reimbursement to the Commonwealth is made from the police pension plan, the plan’s MMOs will not be fully paid.

It was also noted that since the township considered the police officer participating in the DROP as an active participant, member contributions amounting to \$6,506 and \$6,599 were deducted from this employee during 2018 and 2019, respectively.

Recommendation: We recommend that the total excess state aid, in the amount of \$9,709, be returned to the Commonwealth. A check in this amount, with interest compounded annually from date of receipt to date of repayment, at a rate earned by the pension plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 321 Finance Building, Harrisburg, PA 17120. A copy of the interest calculation must be submitted along with the check.

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

In addition, since the 2020 certification error will result in an additional overpayment of state aid once state aid is released later in September 2020, we further recommend that municipal officials contact the Department upon receipt of its 2020 state aid allocation to assist the township in determining the additional amount of overpayment to be returned.

Furthermore, we recommend that in the future, plan officials establish adequate internal control procedures, such as having at least two people review the data certified, to ensure compliance with the instructions that accompany Certification Form AG 385 to assist them in accurately reporting the required pension data.

Finally, municipal officials should consult with their solicitor, plan custodian, and ensure that member contributions, in the total amount of \$13,105 made to the plan on behalf of the employee while participating in the DROP during 2018 and 2019, are appropriately returned to the employee, along with applicable interest.

Management's Response: Municipal officials provided the following response:

The Township takes exception to the commentary listed in the finding pertaining to the DROP participant and subsidy. There is a large fact pattern at play with regard to this exception. The participant in question actively worked for the township (2018 and 2019) and contributed to the pension plan as any normal officer would do so (while a DROP participant ceases making pension contributions). There were legal and plan hurdles since there was a QRDO document involved in the matter. The Township's position was that it highly doubted the potential DROP participant being allowed to enter the plan due to the QRDO circumstances. Basically, from the time period of mid-2018 to mid-2020, it took almost two years for the complex issues at hand to evolve. Thus, the finding is through no fault of the Township and it acted in a conservative (innocent) manner with regard to its reporting.

Auditor's Conclusion: The department understands the township's dilemma regarding the impact of the QDRO in relation to the member's participation in the DROP program. However, based on the fact that the member applied for and was approved for participation in the DROP program with the municipality's retroactive payment of \$165,000 in 2020, representing 25 months of DROP benefits and covering the member's participation in DROP from May 2018 to May 2020, the inclusion of the member on the corresponding AG 385 forms is therefore, considered unauthorized in accordance with Act 205. Therefore, the finding remains as stated and compliance with the recommendation will be monitored subsequent to the release of the audit report and through the next audit of the pension plan.

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – Failure To Properly Adopt Mandatory Provisions Of Act 205

Condition: During the prior audit, a verbal observation was issued notifying plan officials of the passage of Act 44 of 2009, effectively amending Act 205 for the procurement of professional services contracts, and recommending that the township adopt the mandatory provisions, accordingly. However, to date, the municipality has not formally adopted such comprehensive written procedures as expressly specified in Section 700 of Act 205 as amended by Act 44. Although, it was noted during conduct of the audit that the township maintained evidence that certain provisions relative to procuring professional investment services for its pension plans under Act 205 were followed relative to a recent Request for Proposal Procedures (RFP) sought during 2015, procedures appeared specific to the 2015 RFP and were not outlined and adopted in a formal written document such as a local ordinance, resolution or equivalent.

Criteria: Section 701-A of Act 205, as amended by Act 44, defines a “Professional Services Contract”, as follows:

“Professional services contract.” A contract to which the municipal pension system is a party that is:

- (1) for the purchase or provision of professional services, including investment services, legal services, real estate services and other consulting services; and
- (2) not subject to a requirement that the lowest bid be accepted.

In addition, Section 702-A (a) of Act 205 states in part:

Each municipal pension system ... shall develop procedures to select the most qualified person to enter into a professional services contract. The procedures shall ensure that the availability of a professional services contract is advertised to potential participants in a timely and efficient manner. Procedures shall include applications and disclosure forms to be used to submit a proposal for review and to receive the award of a professional services contract.

Additionally, Section 702-A (c), (e), (f) and (h) state, in part:

Review. Procedures to select the most qualified person shall include a review of the person’s qualifications, experience and expertise and the compensation to be charged.

Conflict of interest. The municipal pension system shall adopt policies relating to potential conflicts of interest in the review of a proposal or the negotiation of a contract.

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Public information. Following the award of a professional services contract, all applications and disclosure forms shall be public except for proprietary information or other information protected by law.

Notice and summary. The relevant factors that resulted in the award of the professional services contract must be summarized in a written statement to be included in or attached to the documents awarding the contract. Within ten days of the award of the professional services contract, the original application, a summary of the basis for the award and all required disclosure forms must be transmitted to all unsuccessful applications and posted on the municipal pension system's Internet website, if an Internet website is maintained, at least seven days prior to the execution of the professional services contract.

Section 703-A (c) states in part:

Upon advertisement for a professional services contract by the municipal pension system, the contractor may not cause or agree to allow a third party to communicate with officials or employees of the municipal pension system except for requests for technical clarification.

Cause: Plan officials believed that the township's procurement procedures were fully in compliance with provisions of Act 205 as previously recommended.

Effect: The township's failure to formally adopt, in writing, all of the provisions stipulated in Act 205 regarding the procurement of professional investment and advisory services for the township's pension plan could result in a lack of overall transparency of the actions taken by plan officials relative to the contracting for custodial and investment services for the township's pension plan.

Recommendation: We recommend that municipal officials implement formal written procedures to ensure compliance with Act 205 provisions, which should include the maintaining of appropriate and sufficient supporting documentation evidencing every phase of the process to ensure transparency of actions taken by plan officials relative to the awarding of any future professional services contracts for its pension plan.

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Management's Response: Plan officials provided the following response:

The Township takes exception to the commentary listed in the finding. During the audit, cycle there was an RFP for the Pension Services and in the body of the document was the compliance portion of Act 44. Act 44 was indeed listed for all potential participants to comply with. In this case, "action" outweighs mere statements. At no time during this last audit cycle was it referenced that Act 44 was to be codified in a Resolution/Ordinance for the township to be compliant.

Auditor's Conclusion: We acknowledge the township's exception; however, based on the importance of the extensive criteria above, the finding remains as stated above. Compliance will be evaluated during our next audit of the plan.

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
SUMMARY OF DEPOSITED STATE AID AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid	Employer Contributions
2014	\$ None	\$ 189,596
2015	None	194,737
2016	None	197,245
2017	None	217,528
2018	None	208,370
2019	None	200,965

LOWER SOUTHAMPTON TOWNSHIP NON-UNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

Mr. Ray Weldie
Chairman, Board of Township Supervisors

Mr. Joseph Galdo
Township Manager

Mr. Peter Kim
Assistant Finance Director

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.