

# COMPLIANCE AUDIT

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## Upper Darby Township Police Pension Plan Delaware County, Pennsylvania For the Period January 1, 2016 to December 31, 2019

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December 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 Township Council  
Upper Darby Township  
Delaware County  
Upper Darby, PA 19082

We have conducted a compliance audit of the Upper Darby Township Police 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior report; and
2. 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 objectives identified above. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior report, we inquired of plan officials and evaluated supporting documentation provided by officials evidencing that the suggested corrective action has been appropriately taken. 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.
- We determined whether annual employee contributions were calculated, deducted, and deposited into the pension plan in accordance with the plan's governing document and applicable laws and regulations by testing total members' contributions on an annual basis using the rates obtained from the plan's governing document in effect for all years within the period under audit and examining documents evidencing the deposit of these employee contributions into the pension plan.
- We determined whether retirement benefits calculated for plan members who retired and the plan member 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 recalculating the amount of the monthly pension benefits due to the retired individuals and comparing these amounts to supporting documentation evidencing amounts determined and actually paid or payable to the recipients.
- We determined whether the January 1, 2017 and January 1, 2019 actuarial valuation reports were prepared and submitted by March 31, 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.
- We determined whether all annual special ad hoc postretirement reimbursements received by the municipality were authorized and appropriately deposited in accordance with Act 147 by tracing information to supporting documentation maintained by plan officials.

Upper Darby Township contracted with an independent certified public accounting firm for annual audits of the Upper Darby Township Police Pension Plan's financial statements, which are available at the township's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Upper Darby Township Police 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 objectives.

The results of our procedures indicated that, in all significant respects, the Upper Darby Township Police 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 – Noncompliance With Prior Audit Recommendation – Provision Of Benefits In Excess Of Act 600


Finding No. 2 – Noncompliance With Prior Audit Recommendation – Failure To Adopt Benefit Provisions Mandated By Act 30

The findings contained in this audit report repeat conditions that were cited in our previous report that have not been corrected by township officials. We are concerned by the township's failure to correct those previously reported findings and strongly encourage timely implementation of the recommendations noted in this audit report.

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it.

The contents of this report were discussed with officials of Upper Darby Township and, where appropriate, their responses have been included in the report.

December 11, 2020

  
EUGENE A. DEPASQUALE  
Auditor General

## CONTENTS

	<u>Page</u>
Background.....	1
Status of Prior Findings .....	2
Findings and Recommendations:	
Finding No. 1 – Noncompliance With Prior Audit Recommendation – Provision Of Benefits In Excess Of Act 600.....	3
Finding No. 2 – Noncompliance With Prior Audit Recommendation – Failure To Adopt Benefit Provisions Mandated By Act 30 .....	6
Supplementary Information .....	9
Report Distribution List .....	13

## 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 Upper Darby Township Police 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 including, but not limited to, the following:

Act 147 - Special Ad Hoc Municipal Police and Firefighter Postretirement Adjustment Act, Act of December 14, 1988 (P.L. 1192, No. 147), as amended, 53 P.S. § 896.101 et seq.

Act 600 - Police Pension Fund Act, Act of May 29, 1956 (P.L. 1804, No. 600), as amended, 53 P.S. § 767 et seq.

The Upper Darby Township Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 2619, as amended, and a separately executed plan agreement, adopted pursuant to Act 600. The plan is also affected by the provisions of collective bargaining agreements between the township and its police officers. The plan was established January 1, 1958. Active members hired prior to January 1, 2001 are required to contribute 6.5 percent of compensation to the plan. Active members hired on or after January 1, 2001 are required to contribute 5 percent of compensation to the plan. As of December 31, 2019, the plan had 125 active members, 2 terminated members eligible for vested benefits in the future, and 147 retirees receiving pension benefits from the plan.

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
STATUS OF PRIOR FINDINGS

Noncompliance With Prior Recommendations

Upper Darby Township has not complied with the prior recommendations concerning the following as further discussed in the Findings and Recommendations section of this report:

- Provision Of Benefits In Excess Of Act 600
- Failure To Adopt Benefit Provisions Mandated By Act 600

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – Noncompliance With Prior Audit Recommendation – Provision Of Benefits  
In Excess Of Act 600**

Condition: As disclosed in the last 8 prior audit reports, Upper Darby Township adopted a home rule charter pursuant to the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901 et seq. (previously 53 P.S. § 1-101 et seq.) and has provided retirement benefits in the plan’s governing document and the collective bargaining agreement that are in excess of Act 600 provisions, as noted below:

<u>Provision</u>	<u>Plan Document Restated 1-1-89</u>	<u>Act 600, as amended</u>	<u>2012-2016 Collective Bargaining Agreement</u>
Survivor benefit - prior to eligibility for retirement, regardless of cause of death	\$1,200 per month for spouse and \$800 per month for each dependent child.	Not authorized	\$1,200 per month for spouse and \$800 per month for each dependent child.
Nonservice-related disability benefit	Before 3 years of service, not provided. After 3 years of service, 50% of the highest 12 months of earnings.	Not authorized	Before 3 years of service, not provided. After 3 years of service, 50% of the highest 12 months of earnings.

Upon the expiration of the collective bargaining agreement for the period January 1, 2012 through December 31, 2016, the township and the FOP Lodge 27 signed a Memorandum of Understanding, which, among other things, kept the same pension benefit provisions for the period January 1, 2017 through December 31, 2020.

In addition, during the current audit period, the township passed Ordinance No. 3061, which amended the definition of Superannuation Age to include the following language, in excess of Act 600 provisions:

...or (3) age seventy (70), provided that the member serves in the position of superintendent of Police and was hired to such position after January 1, 2001 and was over the age of 50 at the time of such hiring and further provided that the Member has vested in the Pension Plan.



UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Criteria: On January 24, 2001, the Commonwealth Court of Pennsylvania issued its opinion in *Municipality of Monroeville v. Monroeville Police Department Wage Policy Committee*. Therein, the court held that section 2962(c)(5) of the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2962(c)(5), “clearly precludes home rule municipalities from providing pension benefits different from those prescribed in general law including Act 600.” The court’s holding was in accord with the position taken by this Department since at least January 1995.

Regarding the age and service requirements for normal retirement, section 3 of Act 600 states the following:

Each ordinance or resolution establishing a police pension fund shall prescribe a minimum period of total service in the aggregate of twenty-five years in the same borough, town, township or regional police department and shall fix the age of the members of the force at fifty-five years, or, if an actuarial study of the cost shows that such reduction in age is feasible, may fix the age of the members of the force at fifty years, after which they may retire from active duty, and such members as are retired shall be subject to service, from time to time, as a police reserve, in cases of riot, tumult or preservation of the public peace until unfitted for such service, when they may be finally discharged by reason of age or disability.

Cause: Municipal officials were unable to amend the excess benefit provisions through the collective bargaining process. In addition, the township passed Ordinance No. 3061 to allow one plan member who was hired August 22, 2005 to begin receiving pension benefits earlier than allowed by Act 600.

Effect: The provision of unauthorized benefits increases the plan’s pension costs and reduces the amount of funds available for investment purposes or the payment of authorized benefits or administrative expenses. Since the township received state aid based on unit value during the current audit period, it did not receive allocations attributable to the excess pension benefits provided. However, in the future, the increased costs to the pension plan as a result of the excess pension benefits could increase the municipal contributions necessary to fund the plan in accordance with Act 205 funding standards and may result in the receipt of state aid in excess of the township’s entitlement. Additionally, during the prior audit period, one plan member, who was hired after January 24, 2001, was granted a nonservice-related disability pension benefit. Also, during the current audit period, one plan member, who was hired after January 24, 2001, was granted a pension benefit earlier than allowed by Act 600.

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Recommendation: We again recommend that the township comply with Act 600 at its earliest opportunity to do so. To the extent that the township is not in compliance with Act 600 and/or is contractually obligated to provide benefits in excess of those authorized by Act 600 for employees who began full-time employment on or after January 24, 2001 (the date Monroeville was issued), the excess benefits must be reflected in the Act 205 actuarial valuation reports for the plan and funded in accordance with Act 205 funding standards. Furthermore, the excess benefits will be deemed ineligible for funding with state pension aid. In such case, the plan's actuary may be required to determine the impact, if any, of the excess benefits on the township's future state aid allocations and submit this information to the department.

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

Auditor's Conclusion: This finding repeats a condition that was cited in our previous 8 audit reports that has not been corrected by township officials. A written response was requested regarding the township's intended action relative to this issue; however, no response was received. We are concerned by the township's failure to correct this previously reported audit finding and strongly encourage timely implementation of the recommendations noted in this audit report.

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – Noncompliance With Prior Audit Recommendation – Failure To Adopt Benefit Provisions Mandated By Act 30**

Condition: On April 17, 2002, Act 600 was amended by Act 30, which made significant changes to the statutorily prescribed benefit structure of the police pension plans subject to Act 600. As disclosed in the last seven prior audit reports, municipal officials have not amended the police pension plan’s benefit structure to adopt all of the changes mandated by Act 30. The specific inconsistencies are as follows:

<u>Provision</u>	<u>Plan Document Restated 1-1-89</u>	<u>Act 600, as amended</u>	<u>2012-2016 Collective Bargaining Agreement</u>
Survivor benefit – after normal retirement date or after member’s retirement	100%, 10-year certain; then reduced to 50% for life or until remarriage.	A lifetime survivor’s benefit must be provided to the surviving spouse (or if no spouse survives or if he or she subsequently dies, the child or children under 18 years of age or attaining the age of 23) of no less than 50% of the pension the member was receiving or would have been entitled to receive had he been retired at the time of death. (“Attending college” shall mean the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of 7 credit hours per semester).	100%, 10-year certain; then reduced to 50% for life or until remarriage.

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

<u>Provision</u>	<u>Plan Document Restated 1-1-89</u>	<u>Act 600, as amended</u>	<u>2012-2016 Collective Bargaining Agreement</u>
Service-related disability benefit	70% of average of highest 12 monthly earnings.	A service-related disability benefit in conformity with a uniform scale and fixed by the plan’s governing document, to be at least 50% of the member’s salary at the time of disability, provided that if the member receives Social Security disability benefits for the same injury his disability benefit is reduced by the amount of the Social Security benefit.	70% of average of highest 12 monthly earnings.

Upon the expiration of the collective bargaining agreement for the period January 1, 2012 through December 31, 2016, the township and the FOP Lodge 27 signed a Memorandum of Understanding, which, among other things, kept the same pension benefit provisions for the period January 1, 2017 through December 31, 2020.

Criteria: The police pension plan’s benefit structure should be in compliance with Act 600, as amended by Act 30.

Cause: Municipal officials were unable to implement all of the Act 30 provisions through the collective bargaining process.

Effect: Maintaining a benefit structure, which is not in compliance with Act 600, as amended by Act 30, could result in plan members or their beneficiaries receiving incorrect benefit amounts or being denied benefits to which they are statutorily entitled.

Recommendation: We again recommend that municipal officials, after consulting with their solicitor, take whatever action is necessary to bring the police pension plan’s benefit structure into compliance with Act 600, as amended by Act 30, at their earliest opportunity to do so.

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

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

Auditor's Conclusion: This finding repeats a condition that was cited in our previous seven audit reports that has not been corrected by township officials. A written response was requested regarding the township's intended action relative to this issue; however, no response was received. We are concerned by the township's failure to correct this previously reported audit finding and strongly encourage timely implementation of the recommendations noted in this audit report.

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan’s funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2015, is as follows:

	(1)	(2)	(3)	(4)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)
01-01-15	\$ 62,988,924	\$ 79,891,276	\$ 16,902,352	78.8%
01-01-17	73,796,694	95,587,822	21,791,128	77.2%
01-01-19	85,403,987	99,822,523	14,418,536	85.6%

Note: The market values of the plan’s assets at 01-01-15, 01-01-17, and 01-01-19 have been adjusted to reflect the smoothing of gains and/or losses subject to a corridor between 80 to 120 percent of the market value of assets. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
SUPPLEMENTARY INFORMATION  
(UNAUDITED)

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS

<u>Year Ended December 31</u>	<u>Actuarially Determined Contribution</u>	<u>Actual Contributions</u>	<u>Contribution Deficiency (Excess)</u>	<u>Covered- Employee Payroll</u>	<u>Contributions as a Percentage of Covered- Employee Payroll</u>
2010	\$ 3,746,842	\$ 3,746,842	\$ -	\$11,852,118	31.61%
2011	4,731,466	4,731,466	-	11,847,920	39.93%
2012	4,414,043	4,414,043	-	11,783,712	37.46%
2013	4,949,013	4,949,043	-	12,171,676	40.66%
2014	4,843,478	4,843,478	-	12,930,104	37.46%
2015	5,012,337	5,012,337	-	13,841,548	36.21%
2016	4,538,737	4,538,737	-	14,304,153	31.73%
2017	4,711,803	4,711,803	-	14,474,564	32.55%
2018	5,726,733	5,726,733	-	15,280,806	37.48%
2019	4,975,380	4,975,380	-	14,927,595	33.33%



UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 NOTES TO SUPPLEMENTARY SCHEDULES  
 (UNAUDITED)

The information presented in the supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date	January 1, 2019
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	11 years
Asset valuation method	Plan assets are valued using the method described in Section 210 of Act 205, as amended, subject to a corridor between 80-120% of the market value of assets.

Actuarial assumptions:

Investment rate of return	7.25%
Projected salary increases *	3.50%
Cost-of-living adjustments	Beginning January 1, 2001, the pension benefits of all officers hired on or after that date shall receive an increase to their normal retirement benefit equal to the percentage increase in the CPI from the year in which the member last worked, provided, however, that in no case shall the total pension benefit paid exceed 62% of the compensation for computing retirement benefits or 30% of such compensation in total cost of living increases, whichever is lesser.

\* Includes inflation at 2.5%

UPPER DARBY TOWNSHIP POLICE PENSION PLAN  
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