

# COMPLIANCE AUDIT

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## Paupack Township Non-Uniformed Pension Plan Wayne County, Pennsylvania For the Period January 1, 2011 to December 31, 2013

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July 2015



Commonwealth of Pennsylvania  
Department of the Auditor General

Eugene A. DePasquale • Auditor General



Commonwealth of Pennsylvania  
Department of the Auditor General  
Harrisburg, PA 17120-0018  
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www.PaAuditor.gov

EUGENE A. DEPASQUALE  
AUDITOR GENERAL

Board of Township Supervisors  
Paupack Township  
Wayne County  
Lakeville, PA 18438

We have conducted a compliance audit of the Paupack Township Non-Uniformed Pension Plan for the period January 1, 2011 to December 31, 2013. We also evaluated compliance with some requirements subsequent to that period when possible. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform our 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 audit 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 audit 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 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 member who retired 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 benefit due to the retired individual and comparing this amount to supporting documentation evidencing the amounts determined and actually paid to the recipient.
- × We determined whether the January 1, 2011 and January 1, 2013 actuarial valuation reports were prepared and submitted to the Public Employee Retirement Commission (PERC) by March 31, 2012 and 2014, 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 the terms of the plan's unallocated insurance contracts, including ownership and any restrictions, were in compliance with plan provisions, investment policies, and state regulations by comparing the terms of the contracts with the plan's provisions, investment policies, and state regulations.

Paupack Township contracted with an independent certified public accounting firm for annual audits of its financial statements prepared in conformity with the accounting practices prescribed or permitted by the Department of Community and Economic Development of the Commonwealth of Pennsylvania, 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 Paupack Township Non-Uniformed Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the township's internal controls as they relate to the township's compliance

with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally and as previously described, we tested transactions, assessed official actions, performed analytical procedures, and interviewed selected officials 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 tests indicated that, in all significant respects, the Paupack 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 – Noncompliance With Prior Audit Recommendation –  
Incorrect Data On Certification Form AG 385 Resulting In  
An Overpayment Of State Aid

Finding No. 2 – Improper Withdrawal Of Plan Assets To Township General  
Fund

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 Paupack 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.



EUGENE A. DEPASQUALE  
Auditor General

May 8, 2015

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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. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system state aid and of every municipal pension plan and fund in which general municipal pension system state aid is deposited.

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 Paupack Township Non-Uniformed Pension Plan is also governed by implementing regulations adopted by the Public Employee Retirement Commission 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 69 - The Second Class Township Code, Act of May 1, 1933 (P.L. 103, No. 69), as reenacted and amended, 53 P.S. § 65101 et seq.
- Act 140 - Public Employee Pension Forfeiture Act, Act of July 8, 1978 (P.L. 752, No. 140), as amended, 43 P.S. § 1311 et seq.

The Paupack Township Non-Uniformed Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Resolution No. 1990-9, as amended. The plan was established January 1, 1990. Active members are not required to contribute to the plan. As of December 31, 2013, the plan had 4 active members, 1 terminated member eligible for vested benefits in the future, and 2 retirees receiving pension benefits from the plan.

## **BACKGROUND – (Continued)**

As of December 31, 2013, selected plan benefit provisions are as follows:

### Eligibility Requirements:

Normal Retirement	Age 62 and 10 years of service.
Early Retirement	None
Vesting	A member is 100% vested after 10 years of service.

### Retirement Benefit:

Benefit equals 1.0% of final 36 months average compensation times years of service.

### Survivor Benefit:

None

### Service Related Disability Benefit:

None

PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendation

Paupack Township has complied with the prior audit recommendation concerning the following:

- Failure To Properly Determine And Fully Pay The Minimum Municipal Obligation Of The Plan

The township paid the minimum municipal obligations due to the plan for the years 2009 and 2010 in accordance with Act 205 requirements.

Noncompliance With Prior Audit Recommendation

Paupack Township has not complied with the prior audit recommendation concerning the following as further discussed in the Finding and Recommendation section of this report:

- Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid

Municipal officials failed to comply with the recommendation in the prior audit report to establish adequate internal control procedures to ensure compliance with the instructions that accompany Certification Form AG 385 to assist them in accurately reporting the required pension data, as further discussed in the Findings and Recommendations section of this report.



PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – Noncompliance With Prior Audit Recommendation – Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid**

Condition: As disclosed in the prior audit report, the township failed to establish adequate internal control procedures to ensure compliance with the instructions that accompanied Certification Form AG 385, resulting in an underpayment of state aid in 2009 and 2010. During the current period, the township again failed to comply with the instructions that accompany Certification Form AG 385. The township certified 1 ineligible non-uniformed employee (1 unit) and overstated payroll by \$26,967, on the Certification Form AG 385 filed in 2014. The data contained on this certification form is based on prior calendar year information.

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

Cause: Plan officials failed to establish adequate internal control procedures to ensure the accuracy of the data certified and to ensure compliance with the prior audit recommendation.

Effect: The data submitted on this certification form is used, in part, to calculate the state aid due to the municipality for distribution to its pension plan.

The township's state aid allocation for 2014 was based on the plan's unit value (5 units) in the amount of \$19,363. Based on the corrected information, the township was entitled to an allocation based on the plan's pension costs in the amount of \$17,267. Therefore, the township received an overpayment of state aid in the amount of \$2,096 in 2014.

Recommendation: We recommend that the total excess state aid, in the amount of \$2,096, be returned to the Commonwealth from the township's general fund. 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 & Liquor Control Audits, 320 Finance Building, Harrisburg, PA 17120. A copy of the interest calculation must be submitted along with the check.

We also recommend that in the future, plan officials establish adequate internal control procedures, such as having at least 2 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.

PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

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

Auditor’s Conclusion: Compliance will be monitored subsequent to the release of the audit report and through our next audit of the pension plan.

**Finding No. 2 – Improper Withdrawal Of Plan Assets To Township General Fund**

Condition: In 2011, the township secretary was arrested for stealing money from the township, pled guilty, and was sentenced and ordered to make restitution. The township solicitor determined that her charges fell under the Pension Forfeiture Act (“the Act”). The former secretary was 100 percent vested in the township’s non-uniformed defined benefit pension plan. Despite being made almost completely whole by the municipality’s bonding company under a restitution order from the Wayne County Court of Common Pleas, the township solicitor instructed the plan administrator to calculate the employee’s total benefit, which included state-funded plan assets, and to remit that full amount (\$46,415.94) from the plan trust to the municipality. The township held the money in a special account until a determination was made as to what to do with these funds. In a letter to the township dated December 12, 2013, the township solicitor instructed the township to transfer the money from the special account to the township’s general fund, stating that the township may utilize the forfeited monies for the benefit of the township.

The Act is very clear that the only permissible use of plan assets credited to a convicted employee is for court-ordered restitution. As most, if not all of the restitution award ordered by the court was reimbursed to the municipality by its bonding company, the liquidation of the state-funded (and other non-employee contributions) benefits in the plan were not utilized for restitution. As such, the township improperly received a windfall by receiving restitution from the bonding company (and presumptively something from the former secretary) and then receiving an additional amount “by forfeiture” from the plan.

PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

Criteria: The Act provides that when a public employee is convicted of a crime or crimes enumerated in the Act, they shall not be entitled to receive any retirement benefit or payment beyond a return of contributions they made to the pension fund. The Act further states that when a court makes an order of restitution following a conviction, that "...all sums credited to the defendant's account or payable to the defendant including the contributions shall be available to satisfy such restitution order".

Cause: Township officials authorized the withdrawal of funds pursuant to the advice of the township solicitor.

Effect: Since the funds withdrawn from the plan were not utilized for restitution, the township improperly received a windfall by receiving restitution and then receiving an additional amount "by forfeiture" from the plan in the amount of \$46,415.94, plus any interest accrued on those funds.

Furthermore, the funds withdrawn by the township were not available to pay plan operating expenses or for investment.

In addition, the township's future state aid allocations may be withheld until the finding recommendation is complied with.

Recommendation: We recommend the township reimburse \$46,415.94, plus any interest accrued on those funds, to the pension plan, since these funds were not distributed as restitution pursuant to the Pension Forfeiture Act.

Management's Response: On behalf of Paupack Township of Wayne County, the solicitor provided the following written response to the Department:

Paupack Township disagrees with the recommendation that the Township reimburse \$46,415.94 plus any interest accrued on those funds to the Pension Plan. The Township further disagrees with the finding of the Auditor General that the Pension Forfeiture Act is "very clear" that the only permissible use of plan assets credited to a convicted employee is for court ordered restitution. In fact, the Act is silent on the use of these assets except for the specific provision of §1314, which merely provides that "...whenever the court shall order restitution or establish the amount of restitution due after petition, all sums then credited to the defendant's account or are payable to the defendant including the contributions shall be available to satisfy such restitution order." (*Emphasis added*)

PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

On September 15, 2011, the former Township secretary plead guilty to Theft by Failure to Make Required Disposition of Funds (18 Pa.C.S.A. §3927), graded as a first-degree misdemeanor, and Theft by Unlawful Taking – Movable Property (18 Pa.C.S.A. §3921), graded as a third degree felony. On November 17, 2011, the former secretary was sentenced on these charges. Her sentence included a requirement that she pay the Township restitution in the amount of \$78,352.03. This order directing restitution did not come as a result of any petition filed by Paupack Township as mentioned in §1314.

Paupack Township was fortunate to recover restitution from the former secretary without having to utilize the funds in the Pension Account. The purpose of the Pension Forfeiture Act is obvious, to prevent someone receiving such a pension who has committed an egregious crime to also benefit in receiving pension benefits. The former secretary did a great deal of harm to our Township, and the thought of her benefiting from monies that were placed into a Pension Account by the Township is appalling as this individual did not put one dime of her own money into this Pension Fund.

I have acted as solicitor for Paupack Township for many years and certainly during the period of time that this matter was being handled. I was instrumental in securing a confession from the former secretary and made sure that Paupack Township was made whole from her criminal actions.

During the course of my acting as solicitor for Paupack Township, I reached out to the State Association of Township Supervisors (PSATS) and the Office of the Auditor General. I received no follow-up information from PSATS on where the money was to go, but I did receive a letter from PSATS officials asking us to provide that office with written instructions as to how the Township officials wished to proceed. I am enclosing a copy of that letter dated April 10, 2013, herein for your examination.

My request for direction from the Office of the Auditor General went unanswered. Enclosed please find a copy of an email from our current Township Secretary to myself, which confirms my conversations with PSATS that I had not heard anything back from the Office of the Auditor General and everyone believed it was because the Office of the Auditor General had never run into this situation before.

If the situation was “so clear” that the only use for these funds would be for restitution, why did the Office of the Auditor General not get back to me and answer my enquires?

PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

Paupack Township is one of the best-run municipal subdivisions in the Commonwealth of Pennsylvania, and all of us in Paupack Township are proud of it. We pride ourselves in doing the right thing for residents and property owners in the Township and utilizing these forfeited pension monies for the benefit of the Township is clearly the right thing to do. Please understand that much of what Paupack Township had to pay as a result of going through this difficult time was not reduced to money terms and restitution. My legal fees and other costs were not reimbursed to the Township. We stand by our position that the forfeited pension monies of the former secretary belong to Paupack Township.

Auditor's Conclusion: It is the Department's opinion that the Act clearly provides that the only permissible use of plan assets credited to a convicted employee is for court-ordered restitution. As most, if not all of the restitution award ordered by the court was reimbursed to the municipality (as acknowledged in the Management Response above), the liquidation of the state-funded (and other non-employee contribution) benefits from the plan were not utilized for restitution, and therefore the township was not entitled to this distribution of funds. Consequently, the Township has thus converted assets of the plan to which they had no legal interest or right.

It would appear from the Management Response that the Township's retaining of the funds is based on a misreading of the Pension Forfeiture Act. The statement "...the thought of her benefiting from monies that were placed into a Pension Account by the Township is appalling..." shows a lack of understanding of the language of the Act as the forfeited funds remain with the Plan and are not payable to the former secretary, who loses her right to receive funds from the Plan under the Act.

Because the township improperly removed plan assets including state aid funds, the Township must return any amounts it received from the plan above the restitution amount it received from its bonding company or other sources, as the sum transferred from the plan cannot be considered as restitution under the Act.

It should also be noted regarding the township's purported attempts to obtain guidance or direction from the Department on the disposition of this matter, Article VIII, Section 10 of the Pennsylvania Constitution and Section 404 of the Fiscal Code as amended, 72 P.S. 404, prohibit the Auditor General from giving pre-audit advice of any transaction which he has the subsequent duty to audit; therefore, no such guidance or direction could have been given. It should be further noted that the Department has no record of receiving any written requests for guidance from this municipality or its solicitor, nor does it have any evidence that the solicitor spoke with any employee of the Department.

Therefore, based on the Criteria previously cited, the finding and recommendation remain as stated.

PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
POTENTIAL WITHHOLD OF STATE AID

A condition such as that reported by Finding No. 2 contained in this audit report may lead to a total withholding of state aid in the future unless that finding is corrected. However, such action will not be considered if sufficient written documentation is provided to verify compliance with this department's recommendation. Such documentation should be submitted to: Department of the Auditor General, Bureau of Municipal Pension & Liquor Control Audits, 314 Finance Building, Harrisburg, PA 17120.

PAUPACK TOWNSHIP NON-UNIFORMED 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, 2009, is as follows:

	(1)	(2)	(3)	(4)	(5)	(6)
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)	Covered Payroll (c)	Unfunded (Assets in Excess of) Actuarial Accrued Liability as a % of Payroll [(b-a)/(c)]
01-01-09	\$ 195,316	\$ 221,721	\$ 26,405	88.1%	\$ 139,852	18.9%
01-01-11	291,957	278,561	(13,396)	104.8%	161,324	(8.3%)
01-01-13	369,521	381,630	12,109	96.8%	196,185	6.2%

PAUPACK TOWNSHIP NON-UNIFORMED 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.

Trends in unfunded (assets in excess of) actuarial accrued liability and annual covered payroll are both affected by inflation. Expressing the unfunded (assets in excess of) actuarial accrued liability as a percentage of annual covered payroll (Column 6) approximately adjusts for the effects of inflation and aids analysis of the plan's progress made in accumulating sufficient assets to pay benefits when due. Generally, where there is an unfunded actuarial accrued liability, the smaller this percentage, the stronger the plan. When assets are in excess of the actuarial accrued liability, the higher the bracketed percentage, the stronger the plan.



PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
SUPPLEMENTARY INFORMATION  
(UNAUDITED)

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2008	\$ 26,157	100.0%
2009	25,987	100.0%
2010	24,951	100.0%
2011	27,267	100.0%
2012	15,680	100.0%
2013	16,410	100.0%

PAUPACK TOWNSHIP NON-UNIFORMED PENSION PLAN  
SUPPLEMENTARY INFORMATION  
NOTES TO SUPPLEMENTARY SCHEDULES  
(UNAUDITED)

The information presented in the required 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, 2013
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	5 years
Asset valuation method	Fair value
Actuarial assumptions:	
Investment rate of return	6.0%
Projected salary increases	3.5%

PAUPACK 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

Paupack Township Non-Uniformed Pension Plan  
Wayne County  
25 Daniels Road  
Lakeville, PA 18438

Mr. Bruce Chandler      Chairman, Board of Township Supervisors

Ms. Diana Stromberg      Secretary/Treasurer

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