

# COMPLIANCE AUDIT

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## City of Wilkes-Barre Aggregated Pension Trust Fund

Luzerne County, Pennsylvania  
For the Period  
January 1, 2020 to December 31, 2022

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November 2023



Commonwealth of Pennsylvania  
Department of the Auditor General

Timothy L. DeFoor • Auditor General



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**TIMOTHY L. DEFOOR  
AUDITOR GENERAL**

The Honorable Mayor and City Council  
City of Wilkes-Barre  
Luzerne County  
Wilkes-Barre, PA 18702

We have conducted a compliance audit of the City of Wilkes-Barre Aggregated Pension Trust Fund for the period January 1, 2020 to December 31, 2022, with certain requirements evaluated beyond the audit period. The audit was conducted pursuant to authority derived from Section 403 of The Fiscal Code and Section 402(j) of the Municipal Pension Plan Funding Standard and Recovery Act (“Act 205”) 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. *See* 72 P.S. § 403 and 53 P.S. § 895.402(j) (Act 205 of 1984, as amended). 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 trust fund 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 calculated 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 plans' governing documents and applicable laws and regulations by examining the municipality's calculation of the plans' annual financial requirements and minimum municipal obligations (MMOs) and comparing these calculated amounts to amounts actually budgeted and deposited into the pension plans as evidenced by supporting documentation.
- We determined whether annual employee contributions were calculated, deducted, and deposited into the pension plans in accordance with the plans' governing documents and applicable laws and regulations by testing total members' contributions on an annual basis using the rates obtained from the plans' governing documents in effect for all years under audit and examining documents evidencing the deposit of these employee contributions into the pension plans.
- We determined whether retirement benefits calculated for non-uniformed employees, policemen's relief plan members, and firemen's relief plan members who retired or elected to vest during the current audit period, and through the completion of our fieldwork procedures, represent payments to all (and only) those entitled to receive them and were properly calculated and disbursed in accordance with the plans' governing documents, 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 to the recipients.
- We determined whether the January 1, 2019 and January 1, 2021 actuarial valuation reports were prepared and submitted by March 31, 2020 and 2022, 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.
- We determined whether the terms and methodologies of the issuance of pension obligation bonds by the municipality, and any restrictions, were in compliance with plan provisions and Act 205 through inquiry of plan officials and examination of supporting documentation for pension obligation bonds issued during the current audit period and through the completion of our fieldwork procedures.

The City of Wilkes-Barre contracted with an independent certified public accounting firm for annual audits of the City of Wilkes-Barre Aggregated Pension Trust Fund's financial statements for the years ended December 31, 2020 and 2021, which are available at the city's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

City officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the City of Wilkes-Barre Aggregated Pension Trust Fund 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 City of Wilkes-Barre Aggregated Pension Trust Fund 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:

Firemen's Relief Pension Plan:

Finding No. 1 – Noncompliance With Prior Audit Recommendation – Plan Provisions Inconsistent With The Third Class City Code

Policemen's Relief Pension Plan:

Finding No. 2 – Plan Provisions Inconsistent With The Third Class City Code

Non-Uniformed Pension Plan:

Finding No. 3 – Plan Provisions Inconsistent With The Third Class City Code

Finding No. 1 contained in this audit report repeats a condition that was cited in our previous audit reports that have not been corrected by city officials. We are concerned by the city's failure to correct this previously reported audit finding and strongly encourage timely implementation of the recommendations noted in this report.

As previously noted, one of the objectives of our audit of the City of Wilkes-Barre Aggregated Pension Trust Fund was to determine compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. Among several provisions relating to municipal pension plans, Act 205 provides for the implementation of a distress recovery program.<sup>1</sup> Three levels of distress have been established:

<u>Level</u>	<u>Indication</u>	<u>Funding Criteria</u>
I	Minimal distress	70-89%
II	Moderate distress	50-69%
III	Severe distress	Less than 50%

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 January 1, 2017, January 1, 2019, and January 1, 2021, actuarial valuation reports filed with the Municipal Pension Reporting Program (MPRP) for the city’s police, policemen’s relief, non-uniformed, firemen’s, and firemen’s relief pension plans contained the following aggregated funding data:

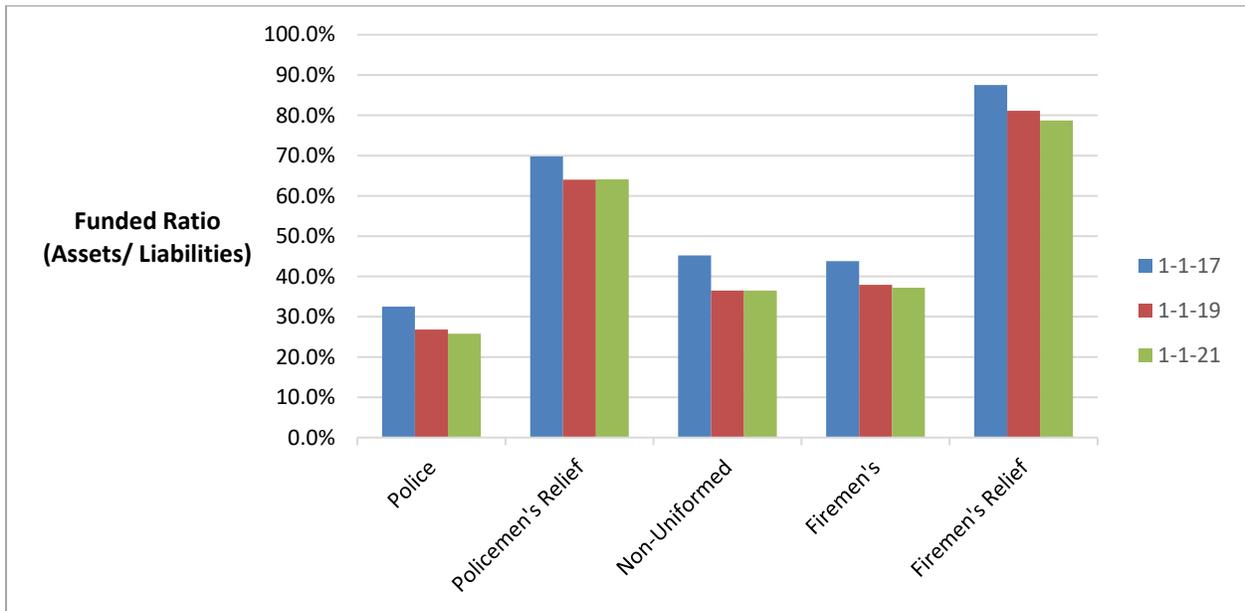
<u>Valuation Date</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability</u>	<u>Funding Ratio</u>
01-01-17	\$ 79,826,865	\$ 136,276,461	58.6%
01-01-19	\$ 78,172,818	\$ 146,137,544	53.5%
01-01-21	\$ 80,340,870	\$ 148,997,788	53.9%

Based on this information, the City of Wilkes-Barre is currently in Level II moderate distress status.

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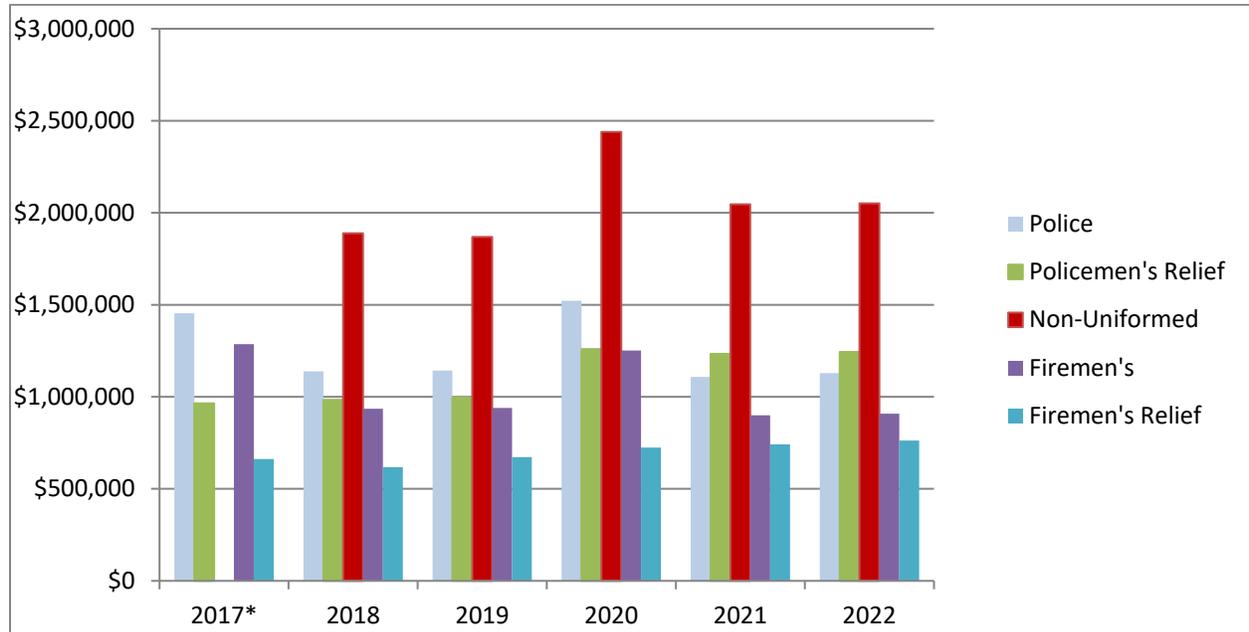
<sup>1</sup> Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. § 895.101 *et seq.* (“Act 205”).

A graphic illustration of the changes in the plans' funding status since 2017 is presented below:



We are extremely concerned about the historical trend information contained in the respective schedules of funding progress included in this report which indicate a continued decline of assets available to satisfy the long-term liabilities of the plans. *(It should be noted that only the policemen's relief and firemen's relief pension plans showed slight upticks in plan assets; however, these plans also reported even greater overall increases in corresponding accrued liabilities over the same period).* This condition has required increased overall contributions by the city to its aggregated trust fund in accordance with Act 205 funding standards.

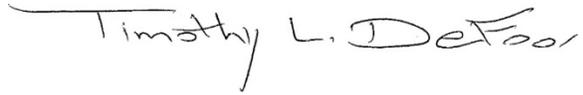
A graphic illustration of the increase in the city's annual required contributions towards its pension plans since 2017 is presented below. The city's total employer contributions for the years 2013 through 2022 are included on Page 32 of this report.



\* The amortization contribution component from the January 1, 2015 actuarial valuation report used in the determination of the city's required contribution for the non-uniformed pension plan for 2017 resulted in no required contributions per Act 205. However, based on the funding status of the plan, this report data was only utilized for 2017. For 2018, the city's required municipal obligation for the non-uniformed pension plan increased to \$1.9 million.

In 2021, the city entered into a \$22,365,000 Limited Obligation Promissory Note, Series A of 2021 to finance a portion of the city's unfunded actuarial accrued liability, which totaled \$68,656,918 as of January 1, 2021. The net debt proceeds of \$21,353,133 received by the city were deposited into the pension trust fund in 2021. We acknowledge the actions taken by the city to address its pension funding challenges and continue to encourage the city to implement its long-term strategic plan and make fiscally responsible decisions as fund fiduciaries that will benefit the City of Wilkes-Barre and its taxpayers to ensure that the City's pension plans have adequate resources to meet current and future benefit obligations to the City's hard working police officers, firefighters, and non-uniformed employees that will ensure the funds' long-term financial stability.

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

A handwritten signature in black ink that reads "Timothy L. DeFoor". The signature is written in a cursive style with a long horizontal line extending to the left of the first letter.

Timothy L. DeFoor  
Auditor General  
September 13, 2023

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## BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act.<sup>2</sup>(“Act 205”). 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 two 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 City of Wilkes-Barre Aggregated Pension Trust Fund is also governed by implementation 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 67 - The Third Class City Code, Act of November 24, 2015 (P.L. 242, No. 67), as amended, 11 Pa.C.S. § 10101 *et seq.*
- 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 177 - General Local Government Code, Act of December 19, 1996 (P.L. 1158, No. 177), as amended, 53 Pa.C.S. § 101 *et seq.*

The City of Wilkes-Barre Aggregated Pension Trust Fund serves as a common investment and administrative agent for the city’s two police, non-uniformed, and two firemen’s pension plans. The fund is comprised of the City’s single-employer defined benefit pension plans, locally controlled by the provisions of the City’s Ordinance No. 57 of 1998. These plans are also affected by the provisions of collective bargaining agreements between the city and its police officers, non-uniformed employees, and firefighters.

### Police Pension Plan

The police pension plan was established July 8, 1976, for police officers hired prior to such date. Active members are required to contribute five (5) percent of compensation to the plan. As of December 31, 2022, the plan had no active members, no terminated members eligible for vested benefits in the future, and 67 retirees receiving pension benefits from the plan.

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<sup>2</sup> Act 205 of 1984, as amended (53 P.S. § 895.101 *et seq.*). Please note that this audit is also authorized by Section 403 of The Fiscal Code, 72 P.S. § 403.

## **BACKGROUND**

### Policemen's Relief Pension Plan

The policemen's relief pension plan was established for police officers hired after July 8, 1976. Active members are required to contribute five (5) percent of compensation to the plan. As of December 31, 2022, the plan had 74 active members, 2 terminated members eligible for vested benefits in the future, and 68 retirees receiving pension benefits from the plan.

### Non-Uniformed Pension Plan

The non-uniformed pension plan was established July 19, 1927. Active members are required to contribute five (5) percent of compensation to the plan. As of December 31, 2022, the plan had 126 active members, 4 terminated members eligible for vested benefits in the future, and 160 retirees receiving pension benefits from the plan.

### Firemen's Pension Plan

The firemen's pension plan covers firefighters who were hired prior to July 8, 1976. The plan was established January 2, 1969. Active members are required to contribute five (5) percent of compensation to the plan. As of December 31, 2022, the plan had no active members, no terminated members eligible for vested benefits in the future, and 54 retirees receiving pension benefits from the plan.

### Firemen's Relief Pension Plan

The firemen's relief pension plan covers firefighters who were hired after July 8, 1976. Active members are required to contribute five (5) percent of compensation to the plan. As of December 31, 2022, the plan had 66 active members, no terminated members eligible for vested benefits in the future, and 57 retirees receiving pension benefits from the plan.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
STATUS OF PRIOR FINDINGS

Status of Prior Audit Recommendation

Policemen's Relief Pension Plan

· Unauthorized Service Buyback Provision

The city adopted File of Council (FOC) No. 6 of 2021 on February 25, 2021, effective 10 days thereafter, which repealed FOC No. 11 of 2001 which had granted the unauthorized service buyback provision. Subsequently, a police officer with 20 years of service as a police officer with the city elected to retire on December 18, 2021, and was allowed to purchase an additional two years and five months of prior city service time as a non-uniformed employee for use in the determination of his final monthly pension benefit. The member is receiving a monthly benefit of \$5,088 of which \$402 represents benefits in excess of those authorized by the Third Class City Code. To the extent that the city has already obligated itself to pay benefits to this retiree and previous retirees in excess of those authorized by the Third Class City Code, 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, such benefits will be deemed ineligible for funding with state pension aid. Since the city received state aid based on unit value during the audit period, it did not receive state aid attributable to the excess benefits provided. The department will continue to monitor the impact of the excess benefits being paid to the existing retirees on the plan's future state aid allocations (*\*see further impact of the repeal of FOC No. 11 as indicated below*).

Compliance With Prior Audit Recommendations

The City of Wilkes-Barre has complied with the prior audit recommendations concerning the following:

Policemen's Relief Pension Plan

· Plan Provision Inconsistent With The Third Class City Code

\*The city adopted FOC No. 6 of 2021, which repealed FOC No. 11 of 2001 which had granted the incorrect provision for the basis of pension. However, by repealing FOC No. 11 of 2001, the city inadvertently eliminated all Third Class City Code benefit provisions for members of the policemen's relief pension plan hired on or after January 24, 2001 which were previously provided by FOC No. 11 of 2001, as further discussed in Finding No. 2 in the Findings and Recommendations section of this report.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendations – (Continued)

Policemen’s Relief Pension Plan

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

During the current audit period, plan officials complied with the instructions that accompany Certification Form AG 385 and accurately reported the required pension data.

Non-Uniformed Pension Plan

- Unauthorized Service Buyback Provision

The city adopted FOC No. 7 of 2021, which repealed FOC No. 13 of 2001 which had granted the unauthorized service buyback provision. However, it was noted that by repealing FOC No. 13 of 2001, the city inadvertently eliminated all Third Class City Code benefit provisions for members of the non-uniformed pension plan hired on or after January 24, 2001 previously provided by FOC No. 13 of 2001, as further discussed in Finding No. 3 in the Findings and Recommendations section of this report.

Noncompliance With Prior Audit Recommendation

The City of Wilkes-Barre has not complied with the prior audit recommendation concerning the following as further discussed in Finding No. 1 in the Findings and Recommendations section of this report:

Firemen’s Relief Pension Plan

- Plan Provisions Inconsistent With The Third Class City Code

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Firemen’s Relief Pension Plan**

**Finding No. 1 – Noncompliance With Prior Audit Recommendation – Plan Provisions Inconsistent With The Third Class City Code**

Condition: As previously disclosed in prior audit reports, the city adopted a home rule charter pursuant to the Home Rule Charter and Optional Plans Law,<sup>3</sup> and provided benefits to its firefighters participating in the firemen’s relief pension plan inconsistent with the Third Class City Code, as follows:

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Basis of pension	Average monthly compensation for the firefighter’s final year average salary.	Monthly salary or the highest average annual salary which was received during any 5 years of service preceding retirement, whichever is higher. (11 Pa.C.S. § 14322(a)(2))
Definitions	Monthly compensation – basic monthly compensation plus longevity payments, acting officer’s pay, EMT bonuses, overtime pay, night shift differential, educational incentive payments, holiday pay and annual buyback of sick leave.	Salary - the fixed amount of compensation paid at regular, periodic intervals by the city to the member and from which pension contributions have been deducted; this is interpreted to exclude buybacks of leave earned outside of the pension computation period. (11 Pa.C.S. § 14319)
Service increment contribution	Not provided by ordinance, although members do make contributions to fund this benefit.	A sum not to exceed \$1 per month, payable only until the employee reaches age 65. (11 Pa.C.S. § 14322(b)(2)).

<sup>3</sup> 53 Pa. C.S. § 2901 *et seq.* (previously 53 P.S. § 1-101 *et seq.*).

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Service increment	1.25% of final year average salary multiplied by the number of years of service in excess of 20 years, not to exceed the following: Effective January 1, 1997: 75%; Effective June 29, 1999: 70%.	<p>The number of whole years in excess of 20 years, multiplied by 0.025% of the member's pension benefit, not to exceed \$100 per month.</p> <p>No credit for service after the employee is 65 years old. (11 Pa.C.S. § 14322(b)(1))</p> <p>After June 19, 2002, a city may agree to make service increment payments in excess of \$100 per month as long as the payments do not exceed \$500 per month, and, in computing the service increments, no employment after the contributor has reached 65 years of age shall be included, provided that any agreement to provide an increase in service increment payments shall include a proportionate increase in the amount each contributor shall pay into the retirement fund under paragraph (2), not to exceed \$5 per month. (11 Pa.C.S. §14322(b)(6))</p>
Survivor's benefit for children of retirees	The guardian of any minor children of the retiree receives the pension benefit the retiree was receiving if the retiree's spouse is deceased or remarried.	Not authorized
Type of discharge required for non-intervening military service credit	Honorable or general discharge	No requirement

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Purchase of non-intervening military service credit	Does not require the member to pay interest on the equivalent of the city's contributions.	Requires the payment of the equivalent of the city's contributions, plus interest. (11 Pa.C.S. § 14321(c)(2))
Years of service required for vested benefits	10 years	12 years (11 Pa.C.S. § 14320.1(b))
Commencement of vested benefits	At age 50. If however such participant elects to receive such benefit upon termination of employment, the monthly benefit to which he or she is entitled shall be further reduced by 4 percent times each year short of age 50.	Date which would have been the member's retirement date had he continued full-time employment with the fire department. (11 Pa.C.S. § 14320.1(c))
Vested portion of base retirement benefits	A fraction, as follows: the number of full years of service completed divided by 20, pension commences at age 50. If however such participant elects to receive such benefit upon termination of employment, the monthly benefit to which he or she is entitled shall be further reduced by 4 percent times each year short of age 50.	The percentage that the years of service actually rendered bears to the years of service which would have been rendered had the member continued to be employed by the department until the minimum retirement date. (No provision for early payment.) (11 Pa.C.S. § 14320.1(d)(2))
Members' contributions disposition for terminating non-vested, non-retiring members	Participant elects whether to leave contributions in the firemen's pension relief fund or to have them refunded.	Members' contributions must be refunded to the member. (11 Pa.C.S. § 14327(a))

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Vesting conditions	None provided	The vesting member must file a written notice of intent to vest, at least 30 days prior to termination, which includes the member's intended termination date, and the member must be in good standing on the date of notice. The board must indicate on the notice to vest the basis for calculating the vested benefit. (11 Pa.C.S. § 14320.1(b))
Basis for calculating the vested benefit	Average monthly compensation for the firefighter's final year average salary prior to retirement or termination of employment	Rate of the monthly pay of the member as of the date of the notice to vest or the highest average annual salary which the member received during any 5 years of service preceding the date, whichever is higher. (11 Pa.C.S. § 14320.1(b)(5))
Interest on refunds of members' contributions	5 percent	Not authorized (11 Pa.C.S. § 14327(a))

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Credit for prior service time upon reemployment	If employment is terminated by reason of layoff and participant has withdrawn contributions, upon rehire the participant may repay monies withdrawn from the fund and given credit for the time period of employment for which pension funds were withheld. If participant elects to repay pension fund monies, he or she must elect to do so within 6 months from date of rehire and repay monies to the pension fund with 24 months of the date of written notice.	No time limit provided. If the fund returns to the member the amount contributed and afterward the individual again becomes a member of the fire department, the member shall not be entitled to the pension designated until 20 years after the member’s reemployment unless the member returns to the pension fund the amount withdrawn, in which event the period of 20 years shall be computed from the time the member first became a member of the fire department, excluding any period of time during which the member was not employed by the fire department. <i>Not limited to employee terminated by reason of layoff, and no time frame stipulated for repayment.</i> (11 Pa.C.S. § 14327(b))
Credit for periods of termination	Upon rehire, employees may buy back the time between employment periods. If employment is terminated by reason of layoff and participant had opted not to withdraw contributions, upon rehire the participant has the option to receive full credit for the time period which the participant was laid off by making payment to the pension fund the contributions which would have been paid on the actual wages which the participant would have received had he or she not been laid off.	Not authorized

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Early Retirement	Participants with 20 years of service may retire before the age of 50 with a pension reduced by 4% for each year such participant’s age is short of age 50.	Not authorized
Composition of Pension Board	5 members, as follows: the mayor, the city controller, the director of human resources, and 2 pension plan participants elected by the plan members.	7 members, as follows: 1) the mayor, 2) the director of the department of accounts and finance, 3) the director of the department having charge of the fire department, or in cities where the mayor is also the director of the department having charge of the fire department, then the director of the department of public safety, 4) the city controller, 5) the chief of the bureau of fire, and 2 members of the fire department chosen by the fire department members. (11 Pa.C.S. § 14320(d))

It was noted that a settlement agreement between the city and its firefighters’ local union, executed August 22, 2012, extended the then-most current collective bargaining agreement (CBA) two additional years covering the period January 1, 2015 through December 31, 2016, and effectively added new language to Section 6(F) and (G) of Article 21 of the continuing CBA as follows:

All fire fighters hired after January 1, 2013 shall be entitled to pension benefits not in excess of the Third Class City Code.

Fire Fighters participating in the Fireman’s Relief Pension Fund and hired on or after January 1, 2013 shall be entitled to a service increment not to exceed five hundred (\$500) dollars per month and each member shall be required to make an additional monthly contribution to the pension plan of five (\$5.00) dollars.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Moreover, according to an arbitration award between the city and its firefighters' local union, awarded November 28, 2017, it effectively extended the current terms of the CBA an additional two years covering the period January 1, 2017 through December 31, 2018, relative to pensions. Item 7 of the award cited the following:

Pensions for all employees hired after the date of this Award will be in full compliance with the Third Class City Code. Specifically, pensions shall be based upon base salary and longevity only, and employee contributions to the pension shall be based upon base salary and longevity only. This provision is not intended to have any impact on any ongoing legal proceedings over Section 7(f) of the parties' August 2012 Settlement Agreement with respect to employees hired prior to the issuance of this Award.

Furthermore, an arbitration award between the city and its firefighters' local union, awarded August 30, 2019, effectively extended the current terms of the CBA an additional four years covering the period January 1, 2019 through December 31, 2022, relative to pensions.

Although it appears that the city has taken some measures to limit benefits not authorized by the Third Class City Code through collective bargaining, the city failed to update the plan's governing document accordingly and, therefore, benefits provisions remain inconsistent with the Third Class City Code.

Criteria: As disclosed previously, 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 the Home Rule Charter and Optional Plans Law, and specifically 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.

Cause: Municipal officials have been unable to amend the plan's governing ordinances to comply with the Third Class City Code due to the fact that pension benefits are a mandatory subject of collective bargaining. Although the city has attempted to amend these benefits to comply with the Third Class City Code through the collective bargaining process, the city has been unsuccessful in doing so completely and has been subject to ongoing arbitration in efforts to amend benefits as they are currently prescribed in the city's governing ordinances.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Effect: The provision of unauthorized benefits increases the plan's pension costs and reduces the amount of funds available for investment purposes or for the payment of authorized benefits or administrative expenses. Since the city received its state aid allocations based on unit value during the audit period, it did not receive any excess state aid allocations attributable to unauthorized pension benefits provided. However, the provision of unauthorized pension benefits could result in the receipt of excess state aid in the future or could increase required contributions to the plan.

Recommendation: The department acknowledges that its position has changed over the years and that, until *Monroeville*, there was no definitive decision as to whether home rule municipalities were obliged to comply with applicable pension law. The department seeks, therefore, to implement the decision in as equitable a fashion as possible, while paying necessary deference to the court's ruling. Accordingly, the department will not penalize a home rule municipality for granting benefits not authorized by the Third Class City Code to existing retirees or to individuals who began full-time employment before January 24, 2001 (the effective date of the *Monroeville* decision). However, the department recommends the city incorporate the changes to its pension plan benefit structure agreed to during collective bargaining and the arbitration process which limits pension benefits to those authorized by the Third Class City Code for employees who began full-time employment on or after the aforementioned dates to ensure consistency in the administration of plan benefits among the varying plan documents.

To the extent that the city is not in compliance with the Third Class City Code and/or is contractually obligated to provide benefits in excess of those authorized by the Third Class City Code to employees who began employment on or after January 24, 2001, 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, such 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 unauthorized benefits on the city's future state aid allocations and submit this information to the department. If it is determined the unauthorized benefits had an impact on the city's future state aid allocations after the submission of this information, the plan's actuary would then be required to contact the department to verify the overpayment of state aid received and the city would be required to reimburse the overpayment to the Commonwealth.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Management's Response: The solicitor to the Aggregate Pension Fund Board provided the following response:

It has long been my firm legal opinion that the City of Wilkes-Barre is strictly bound by the Police, Fire and Non-Uniformed Pension Provisions of the Third-Class City Code for the following reasons:

1. The enabling legislation of the City of Wilkes-Barre as a Home Rule Charter City is set forth in the Home Rule Charter and Optional Plans Law. 53 Pa.C.S.A. §2901, *et seq.* Under the Home Rule Law a Home Rule Municipality is prohibited from enacting any ordinance which does not adhere to the provisions of the Third-Class City Code with regard to pensions.
2. The Commonwealth Court of Pennsylvania decision in the case of *Monroeville v. Monroeville, P.D.*, 767 A.2d 596 (Pa. Cmmw. Ct. 2001), January 24, 2001.
3. The Department of the Auditor General Municipal Pension Bulletin No. 2001-01 dated July 1, 2001, (Effective January 24, 2001).
4. The existing Ordinances of the City of Wilkes-Barre creating the Police, Fire and Non-Uniformed Pension Funds.

In addition, by an e-mail to [the auditor] of the Pennsylvania Auditor General's Office dated June 27, 2023, I opined that the City of Wilkes-Barre is bound by the Third-Class City Code Pension Provisions for the five Pension Funds of the City of Wilkes-Barre.

The Auditor General's Office has requested, in effect, that the City of Wilkes-Barre adopt Ordinances for the Police, Fire and Non-Uniformed Pension Funds, whereby the City of Wilkes-Barre adopts the exact language contained in the Third-Class City Code for each Fund.

I have no objection to their request.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Additionally, in the referenced e-mail, the solicitor stated the following:

In 2021, the City of Wilkes-Barre repealed Pension Ordinances which were adopted in 2001. This was done in order to comply with the language of the Third-Class City Code Pension Provisions. It is my legal opinion that the five Pension Funds of the City of Wilkes-Barre are bound by the Pension Provisions set forth in the Third-Class City Code for all employees hired after January 24th, 2001.

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

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Policemen’s Relief Pension Plan**

**Finding No. 2 – Plan Provisions Inconsistent With The Third Class City Code**

Condition: The city adopted a home rule charter pursuant to the Home Rule Charter and Optional Plans Law.<sup>4</sup> As disclosed in the Status of Prior Findings section of this report, in action taken to comply with prior disclosures regarding two pension benefit provisions that were inconsistent with the Third Class City Code, the city adopted FOC No. 6 of 2021 effectively repealing FOC No. 11 of 2001, which had authorized the inconsistent provisions. However, FOC No. 11 of 2001 had prescribed all plan provisions for members of the policemen’s relief pension plan hired on or after January 24, 2001, including those that were consistent with the Third Class City Code, and its repeal has resulted in the plan documents that preceded it, which were still in effect for members hired prior to January 24, 2001, now being in effect for all members. Those plan documents, as codified prior to the adoption of FOC No. 11 of 2001, contain benefit provisions inconsistent with the Third Class City Code and were the subject of disclosures cited in audit reports issued prior to the adoption of FOC No. 11 of 2001. The inconsistencies are as follows:

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Basis of pension	50% of average monthly compensation for the last 5 years prior to retirement.	The basis of the apportionment of the pension shall be determined by the rate of the monthly pay of the member at the date of injury, death, honorable discharge, vesting under section 14302.1 or retirement, or the highest average annual salary that the member received during any 5 years of service preceding injury, death, honorable discharge, vesting under section 14302.1 or retirement, whichever is higher, and, except as to service increments provided for in subsection (d), may not exceed in any year one-half the annual pay of the member computed at the monthly or average annual rate, whichever is higher. (11 Pa.C.S. § 14303(b))

<sup>4</sup> 53 Pa. C.S. § 2901 *et seq.* (previously 53 P.S. § 1-101 *et seq.*).

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Definitions	Monthly compensation – basic monthly compensation plus longevity payments, acting officer’s pay, bonuses, other special forms of compensation and annual sick leave buyback.	Salary - the fixed amount of compensation paid at regular, periodic intervals by the city to the member and from which pension contributions have been deducted; this is interpreted to exclude buybacks of leave earned outside of the pension computation period. (11 Pa.C.S. § 14300)
Service increment contribution	Not provided by ordinance, although members do make contributions to fund this benefit.	5% of salary, not to exceed \$1 per month; provided only until the employee reaches age 65. (11 Pa.C.S. § 14303(d)(2))
Service increment	1.25% of final year average salary multiplied by the number of years of service in excess of 20 years, not to exceed 70%.	The number of whole years in excess of 20 years, multiplied by 0.025% of the member’s pension benefit, not to exceed \$100 per month. No credit for service after the member is 65 years old. (11 Pa.C.S. § 14303(d)(1))
Requirement for spousal survivor’s benefit	Retired participant and spouse must have been married 5 years prior to the death of the retired participant.	No length of marriage requirement. (11 Pa.C.S. § 14303(e))
Nonservice-related disability benefit	If the member has served at least 5 years, the member receives an immediate monthly benefit based on the number of years of service.	A member with less than 10 years of service who becomes totally disabled due to injuries or mental incapacity not in the line of duty may be entitled to a pension of 25% of the officer’s annual compensation. For injuries received after 10 years of service the compensation may be 50% of annual compensation. (11 Pa.C.S. § 14303(f))

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Basis for calculating the vested benefit	Average monthly compensation for the last 5 years prior to termination of employment.	Rate of the monthly pay of the member as of the date of the notice to vest or the highest average annual salary which the member received during any 5 years of service preceding that date, whichever is higher. (11 Pa.C.S. § 14302.1(b)(5))
Years of service required for vested benefits	10 years.	12 years. (11 Pa.C.S. § 14302.1(b))
Vested portion of base retirement benefits	A fraction, as follows: the number of full years of service completed divided by 20.	The percentage that the years of service actually rendered bears to the years of service which would have been rendered had the member continued to be employed by the department until the minimum retirement date. (11 Pa.C.S. § 14302.1(d)(2))
Vesting conditions	None provided.	The vesting member must file a written notice of intent to vest, at least 30 days prior to termination, which includes the member's intended termination date, and the member must be in good standing on the date of notice. The board must indicate on the notice to vest the basis for calculating the vested benefit. (11 Pa.C.S. § 14302.1(b))

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Members' contributions disposition for terminating nonvested, non-retiring members	Participants elect whether to leave contributions in the pension fund or to have them refunded.	Members' contributions must be refunded to the member. (11 Pa.C.S. § 14308(a))
Interest on refunds of members' contributions	5 percent.	Not authorized. (11 Pa.C.S. § 14308(a))
Credit for prior service time upon reemployment	If employment is terminated by reason of layoff and participant has withdrawn contributions, upon rehire the participant may repay monies withdrawn from the fund and given credit for the time period of employment for which pension funds were withheld. If participant elects to repay pension fund monies, he or she must elect to do so within 6 months from date of rehire and repay monies to the pension fund with 24 months of the date of written notice.	If the fund has returned to the member the amount contributed and afterward the individual again becomes a member of the police force, the member shall not be entitled to the pension designated until 20 years after the member's reemployment, unless the member returns to the police pension fund the amount withdrawn. If a member returns to the pension fund the amount withdrawn, the period of 20 years shall be computed from the time the member first became a member of the police force, excluding the period of time during which the member was not employed by the police force. <i>Not limited to employee terminated by reason of layoff, and no time frame stipulated for repayment.</i> (11 Pa.C.S. § 14308(b))

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Credit for periods of termination	If employment is terminated by reason of layoff and participant had opted not to withdraw contributions, upon rehire the participant has the option to receive full credit for the time period which the participant was laid off by making payment to the pension fund the contributions which would have been paid on the actual wages which the participant would have received had he or she not been laid off.	Not authorized
Early Retirement	Participants with 20 years of service may retire before the age of 50 with a pension reduced by 4% for each year such participant’s age is short of age 50.	Not authorized

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 the Home Rule Charter and Optional Plans Law, specifically 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. Accordingly, the pension plan’s benefit structure should be in compliance with the provisions of the Third Class City Code for employees hired on or after January 24, 2001. Furthermore, a governing document which contains clearly defined and updated benefit provisions is a prerequisite for the consistent, sound administration of retirement benefits. By repealing FOC No. 11 in its entirety, and not specifically restating the individual plan provisions in FOC No. 6, the benefit structure reverts to the plan benefit structure in effect prior to adoption of FOC No. 11, accordingly.

Cause: The city contends that it is bound by the pension provisions set forth in the Third Class City Code for all employees hired after January 24, 2001 despite the repeal of FOC No. 11 of 2001 by FOC No. 6 of 2021.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

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 city received its state aid allocations based on unit value during the audit period, it did not receive any excess state aid allocations attributable to unauthorized pension benefits provided. However, the provision of unauthorized pension benefits could result in the receipt of excess state aid in the future or could increase required contributions to the plan.

Recommendation: The department recommends the city reestablish the authorized pension benefit provisions of FOC No. 11 of 2001, inadvertently repealed by the city’s enactment of FOC No. 6 of 2021, for employees hired on or after January 24, 2001 pursuant to the Third Class City Code.

Otherwise, to the extent that the city is not in compliance with the Third Class City Code and/or is contractually obligated to provide benefits in excess of those authorized by the Third Class City Code to employees who began employment on or after January 24, 2001, 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, such 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 unauthorized benefits on the city’s future state aid allocations and the city would be required to reimburse any overpayment to the Commonwealth.

Management’s Response: The solicitor to the Aggregate Pension Fund Board provided the following response:

It has long been my firm legal opinion that the City of Wilkes-Barre is strictly bound by the Police, Fire and Non-Uniformed Pension Provisions of the Third-Class City Code for the following reasons:

1. The enabling legislation of the City of Wilkes-Barre as a Home Rule Charter City is set forth in the Home Rule Charter and Optional Plans Law. 53 Pa.C.S.A. §2901, et seq. Under the Home Rule Law a Home Rule Municipality is prohibited from enacting any ordinance which does not adhere to the provisions of the Third-Class City Code with regard to pensions.
2. The Commonwealth Court of Pennsylvania decision in the case of *Monroeville v. Monroeville*, P.D., 767 A.2d 596 (Pa. Cmmw. Ct. 2001), January 24, 2001.
3. The Department of the Auditor General Municipal Pension Bulletin No. 2001-01 dated July 1, 2001, (Effective January 24, 2001).

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

4. The existing Ordinances of the City of Wilkes-Barre creating the Police, Fire and Non-Uniformed Pension Funds.

In addition, by an e-mail to [the auditor] of the Pennsylvania Auditor General's Office dated June 27, 2023, I opined that the City of Wilkes-Barre is bound by the Third-Class City Code Pension Provisions for the five Pension Funds of the City of Wilkes-Barre.

The Auditor General's Office has requested, in effect, that the City of Wilkes-Barre adopt Ordinances for the Police, Fire and Non-Uniformed Pension Funds, whereby the City of Wilkes-Barre adopts the exact language contained in the Third-Class City Code for each Fund.

I have no objection to their request.

Additionally, in the referenced e-mail, the solicitor stated the following:

In 2021, the City of Wilkes-Barre repealed Pension Ordinances which were adopted in 2001. This was done in order to comply with the language of the Third Class City Code Pension Provisions. It is my legal opinion that the five Pension Funds of the City of Wilkes-Barre are bound by the Pension Provisions set forth in the Third Class City Code for all employees hired after January 24th, 2001.

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

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Non-Uniformed Pension Plan**

**Finding No. 3 – Plan Provisions Inconsistent With The Third Class City Code**

Condition: The city 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.). As disclosed in the Status of Prior Findings section of this report, in action taken to comply with a prior disclosure regarding a pension benefit provision that was inconsistent with the Third Class City Code, the city adopted FOC No. 7 of 2021 effectively repealing FOC No. 13 of 2001, which had authorized the inconsistent provision. However, FOC No. 13 of 2001 had prescribed all plan provisions for members of the non-uniformed pension plan hired on or after January 24, 2001, including those that were consistent with the Third Class City Code, and its repeal has resulted in the plan documents that preceded it, which were still in effect for members hired prior to January 24, 2001, now being in effect for all members. Those plan documents, as codified prior to the adoption of FOC No. 13 of 2001, contain benefit provisions inconsistent with the Third Class City Code and were the subject of disclosures cited in audit reports issued prior to the adoption of FOC No. 13 of 2001. The inconsistencies are as follows:

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Basis of pension	Highest 2-year average.	Higher of the average annual salary or wages received during the last or any 5 years of employment. (11 Pa.C.S. § 14343(a)(1))
Service increments	1.25% of average annual salary for each year of service over 20 years, subject to certain maximums.	Not provided
Pension payment frequency	Monthly	Semi-monthly. (11 Pa.C.S. § 14343(a)(1))
Retirement age and service requirements	For those hired after July, 1, 1998 – age 55 with 25 years of service; For those hired after July 1, 2008 – age 60 with 25 years of service.	Age 60 years with 20 years of service. (11 Pa.C.S. § 14342)

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 3 – (Continued)**

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Employee contributions	Effective August 1, 2022, all employees defined in Sec. 2-148 herein shall pay into the board of pensions monthly an amount equal to (7) percent of their monthly salaries or wages.	2% of monthly salaries or wages, and if deemed necessary by council, an additional amount not to exceed 1% to provide for spousal survivors' benefits. (11 Pa.C.S. § 14344)
Actuarially equivalent benefits	Employees elect either a standard pension or one of the following actuarially-reduced optional forms; a ten-year certain life annuity or a survivor annuity.	Not provided
Purchase of military service time	Members may purchase credit for up to 5 years of military service time.	Not provided
Interest on refunds of members contributions	5 percent per year.	Not provided

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 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. Accordingly, the pension plan’s benefit structure should be in compliance with the provisions of the Third Class City Code for employees hired on or after January 24, 2001. Furthermore, a governing document which contains clearly defined and updated benefit provisions is a prerequisite for the consistent, sound administration of retirement benefits. By repealing FOC No. 13 in its entirety, and not specifically restating the individual plan provisions in FOC No. 7, the benefit structure reverts to the plan benefit structure in effect prior to adoption of FOC No. 13, accordingly.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 3 – (Continued)**

Cause: The city contends that it is bound by the pension provisions set forth in the Third Class City Code for all employees hired after January 24, 2001 despite the repeal of FOC No. 13 of 2001 by FOC No. 7 of 2021.

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 city received its state aid allocations based on unit value during the audit period, it did not receive any excess state aid allocations attributable to unauthorized pension benefits provided. However, the provision of unauthorized pension benefits could result in the receipt of excess state aid in the future or could increase required contributions to the plan.

Recommendation: The department recommends the city reestablish the authorized pension benefit provisions of FOC No. 13 of 2001, inadvertently repealed by the city’s enactment of FOC No. 7 of 2021, for employees hired on or after January 24, 2001 pursuant to the Third Class City Code.

Otherwise, to the extent that the city is not in compliance with the Third Class City Code and/or is contractually obligated to provide benefits in excess of those authorized by the Third Class City Code to employees who began employment on or after January 24, 2001, 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, such 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 unauthorized benefits on the city’s future state aid allocations and the city would be required to reimburse any overpayment to the Commonwealth.

Management’s Response: The solicitor to the Aggregate Pension Fund Board provided the following response:

It has long been my firm legal opinion that the City of Wilkes-Barre is strictly bound by the Police, Fire and Non-Uniformed Pension Provisions of the Third-Class City Code for the following reasons:

1. The enabling legislation of the City of Wilkes-Barre as a Home Rule Charter City is set forth in the Home Rule Charter and Optional Plans Law. 53 Pa.C.S.A. §2901, *et seq.* Under the Home Rule Law a Home Rule Municipality is prohibited from enacting any ordinance which does not adhere to the provisions of the Third-Class City Code with regard to pensions.
2. The Commonwealth Court of Pennsylvania decision in the case of *Monroeville v. Monroeville, P.D.*, 767 A.2d 596 (Pa. Cmmw. Ct. 2001), January 24, 2001.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
FINDINGS AND RECOMMENDATIONS

**Finding No. 3 – (Continued)**

3. The Department of the Auditor General Municipal Pension Bulletin No. 2001-01 dated July 1, 2001, (Effective January 24, 2001).
4. The existing Ordinances of the City of Wilkes-Barre creating the Police, Fire and Non-Uniformed Pension Funds.

In addition, by an e-mail to [the auditor] of the Pennsylvania Auditor General's Office dated June 27, 2023, I opined that the City of Wilkes-Barre is bound by the Third-Class City Code Pension Provisions for the five Pension Funds of the City of Wilkes-Barre.

The Auditor General's Office has requested, in effect, that the City of Wilkes-Barre adopt Ordinances for the Police, Fire and Non-Uniformed Pension Funds, whereby the City of Wilkes-Barre adopts the exact language contained in the Third-Class City Code for each Fund.

I have no objection to their request.

Additionally, in the referenced e-mail, the solicitor stated the following:

In 2021, the City of Wilkes-Barre repealed Pension Ordinances which were adopted in 2001. This was done in order to comply with the language of the Third Class City Code Pension Provisions. It is my legal opinion that the five Pension Funds of the City of Wilkes-Barre are bound by the Pension Provisions set forth in the Third Class City Code for all employees hired after January 24th, 2001.

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

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 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, 2017, is as follows:

**Police Pension Plan**

	(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)
01-01-17	\$ 5,304,983	\$ 16,304,328	\$ 10,999,345	32.5%
01-01-19	4,110,522	15,320,713	11,210,191	26.8%
01-01-21	3,529,722	13,656,018	10,126,296	25.8%

Note: The market values of the plan’s assets at 01-01-17, 01-01-19, and 01-01-21 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. These methods 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.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 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, 2017, is as follows:

**Policemen’s Relief Pension Plan**

	(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)
01-01-17	\$ 22,670,691	\$ 32,491,000	\$ 9,820,309	69.8%
01-01-19	24,271,734	37,935,520	13,663,786	64.0%
01-01-21	26,350,466	41,077,770	14,727,304	64.1%

Note: The market values of the plan’s assets at 01-01-17, 01-01-19, and 01-01-21 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. These methods 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.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 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, 2017, is as follows:

**Non-Uniformed Pension Plan**

	(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)
01-01-17	\$ 18,909,782	\$ 41,790,553	\$ 22,880,771	45.2%
01-01-19	15,756,172	43,131,463	27,375,291	36.5%
01-01-21	15,946,900	43,725,142	27,778,242	36.5%

Note: The market values of the plan’s assets at 01-01-17, 01-01-19, and 01-01-21 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. These methods 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.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 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, 2017, is as follows:

**Firemen’s Pension Plan**

	(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)
01-01-17	\$ 7,031,118	\$ 16,069,702	\$ 9,038,584	43.8%
01-01-19	5,551,598	14,644,795	9,093,197	37.9%
01-01-21	4,704,240	12,652,146	7,947,906	37.2%

Note: The market values of the plan’s assets at 01-01-17, 01-01-19, and 01-01-21 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. These methods 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.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 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, 2017, is as follows:

**Firemen’s Relief Pension Plan**

	(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)
01-01-17	\$ 25,910,291	\$ 29,620,878	\$ 3,710,587	87.5%
01-01-19	28,482,792	35,105,053	6,622,261	81.1%
01-01-21	29,809,542	37,886,712	8,077,170	78.7%

Note: The market values of the plan’s assets at 01-01-17, 01-01-19, and 01-01-21 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. These methods 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.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
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(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.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS – AGGREGATE

Year Ended December 31	Actuarially Determined Contribution	Actual Contributions	Contribution Deficiency (Excess)*	Covered- Employee Payroll	Contributions as a Percentage of Covered- Employee Payroll
2013	\$ 3,142,155	\$ 3,142,155	\$ -	**	**
2014	3,207,426	3,207,426	-	\$15,307,645	20.95%
2015	4,575,102	4,575,102	-	16,145,591	28.34%
2016	4,645,186	4,645,186	-	16,710,687	27.80%
2017	4,367,511	4,367,511	-	17,145,597	25.47%
2018	5,563,955	5,563,955	-	17,745,693	31.35%
2019	5,619,979	5,619,979	-	16,912,530	33.23%
2020	7,196,476	7,196,476	-	17,504,469	41.11%
2021	6,029,863	27,382,995	(21,353,132)	18,089,206	151.38%
2022	6,094,671	6,094,671	-	**	**

\* As noted earlier in this report, during 2021, the city entered into a Limited Obligation Promissory Note, Series A of 2021 to finance a portion of the city’s unfunded actuarial accrued liability. The net debt proceeds of \$21,353,133 received by the city were deposited into the pension trust fund in 2021.

\*\* This schedule is presented pursuant to the implementation of GASB Statement No. 67, *Financial Reporting for Pension Plans* by reporting entities responsible for administering the pension plan to improve financial reporting by state and local governmental pension plans. Due to the statement being implemented only recently, the amount of Covered-Employee Payroll was not provided for years prior to 2014. In addition, due to the timing of this audit, covered-employee payroll for 2022 was not provided in this schedule.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

**Police Pension Plan**

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2017	\$ 1,454,242	100.0%
2018	1,138,352	100.0%
2019	1,142,352	100.0%
2020	1,521,803	100.0%
2021	1,107,948	390.4%*
2022	1,128,948	100.0%

\* In 2021, in addition to funding the annual required contribution, the city deposited net debt proceeds from the issuance of a promissory note amounting to \$3,217,220 into the police pension plan.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

**Policemen’s Relief Pension Plan**

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2017	\$ 965,042	100.0%
2018	983,682	100.0%
2019	996,875	100.0%
2020	1,259,657	100.0%
2021	1,233,822	463.5%*
2022	1,243,659	100.0%

\* In 2021, in addition to funding the annual required contribution, the city deposited net debt proceeds from the issuance of a promissory note amounting to \$4,484,498 into the policemen’s relief pension plan.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

**Non-Uniformed Pension Plan**

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2017	None	Not applicable
2018	\$ 1,888,821	100.0%
2019	1,869,146	100.0%
2020	2,439,123	100.0%
2021	2,046,384	528.6%*
2021	2,051,453	100.0%

\* In 2021, in addition to funding the annual required contribution, the city deposited net debt proceeds from the issuance of a promissory note amounting to \$8,771,310 into the non-uniformed pension plan.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

**Firemen’s Pension Plan**

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2017	\$ 1,285,903	100.0%
2018	935,428	100.0%
2019	939,428	100.0%
2020	1,251,237	100.0%
2021	899,708	390.0%*
2022	908,708	100.0%

\* In 2021, in addition to funding the annual required contribution, the city deposited net debt proceeds from the issuance of a promissory note amounting to \$2,609,061 into the firemen’s pension plan.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

**Firemen’s Relief Pension Plan**

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2017	\$ 662,324	100.0%
2018	617,672	100.0%
2019	672,178	100.0%
2020	724,656	100.0%
2021	742,001	406.1%*
2022	761,903	100.0%

\* In 2021, in addition to funding the annual required contribution, the city deposited net debt proceeds from the issuance of a promissory note amounting to \$2,271,044 into the firemen’s relief pension plan.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
SUPPLEMENTARY INFORMATION  
NOTES TO SUPPLEMENTARY SCHEDULES  
(UNAUDITED)

**Police Pension Plan**

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, 2021
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	1 year
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	8.0% compounded annually
Projected salary increases	3.5% compounded annually
Cost-of-living adjustments	None assumed

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
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(UNAUDITED)

**Policemen's Relief Pension Plan**

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, 2021
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	17 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	8.0% compounded annually
Projected salary increases	3.5% compounded annually
Cost-of-living adjustments	None assumed

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
SUPPLEMENTARY INFORMATION  
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(UNAUDITED)

**Non-Uniformed Pension Plan**

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, 2021
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	17 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	8.0% compounded annually
Projected salary increases	3.5% compounded annually
Cost-of-living adjustments	None assumed

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
SUPPLEMENTARY INFORMATION  
NOTES TO SUPPLEMENTARY SCHEDULES  
(UNAUDITED)

**Firemen's Pension Plan**

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, 2021
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	1 year
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	8.0% compounded annually
Projected salary increases	3.5% compounded annually
Cost-of-living adjustments	None assumed

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
SUPPLEMENTARY INFORMATION  
NOTES TO SUPPLEMENTARY SCHEDULES  
(UNAUDITED)

**Firemen's Relief Pension Plan**

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, 2021
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	14 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	8.0% compounded annually
Projected salary increases	3.5% compounded annually
Cost-of-living adjustments	None assumed

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
COMMENT

As previously noted in this report, the City of Wilkes-Barre Policemen’s Relief Pension Plan is governed by local ordinances adopted pursuant to Act 177 and Act 67 (formerly Act 317), the Third Class City Code. With regard to the determination of pension benefits for police officers, Section 14303 of the Third Class City Code states:

**Allowance and service increments.**

**(a) Allowance.**--A payment for an allowance shall only be a charge on the police pension fund and may not be a charge on another fund under the control of or in the city treasury.

**(b) Apportionment of the pension.**--The basis of the apportionment of the pension:

(1) Shall be determined by the rate of the monthly pay of the member at the date of injury, death, honorable discharge, vesting under section 14302.1 (relating to limited vested benefit) or retirement, or the highest average annual salary that the member received during any five years of service preceding injury, death, honorable discharge, vesting under section 14302.1 or retirement, whichever is higher.

(2) Except as to service increments provided for in subsection (d), may not exceed in a year one-half the annual pay of the member computed at the monthly or average annual rate, whichever is higher.<sup>5</sup>

Although the Third Class City Code does not contain a definition for the term “pay”, the Code defines the term salary at Section 14300(b) as follows:

“Salary.” The fixed amount of compensation paid at regular, periodic intervals by the city to the member and from which pension contributions have been deducted.<sup>6</sup>

The city’s practice has been to calculate the police officers’ pension benefits based on the amount of the individual’s final 12 months of pay. This includes regular monthly pay plus all overtime that a police officer accumulates in their final 12 months of employment.

During the current audit period, there were 8 police officers who retired with non-disability, normal retirement pensions and had an average of over 1,216 overtime hours earned during their last 12 months’ employment, included in their pension determinations. The city’s practice of including overtime hours had a significant impact on not only the individual pension calculations for these 8 individuals but ultimately the aggregated trust fund as a whole, and the resources needed to fund it. The pension determinations (*inclusive of the overtime hours*) for the retired officers increased the amounts needed to fund the aggregated trust fund by approximately \$25,492 per month or \$305,904 annually, at the time of this audit.

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<sup>5</sup> 11 Pa.C.S. § 14303(a), (b).

<sup>6</sup> 11 Pa.C.S. § 14300(b).

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
COMMENT

Through the inclusion of overtime amounts in the police officers' final 12 months of earnings, the 8 aforementioned retirees are receiving pension benefits that approximate, on average, 90.9 percent of their total base salary (*For two employees, monthly benefit payments exceed 100% of their base salary.*) earned during their final year of employment with the city.

Given the funded status of the policemen's relief pension plan and the ever-increasing financial burden of prior, current, and future contributions that will be necessary to adequately fund the plan, we encourage city officials to review the methodology used to calculate pension benefits for its police officers. The city's practice of allowing police officers the opportunity to accumulate unlimited overtime amounts during their last 12 months of employment and including that overtime in the calculation of pension benefits has resulted in significantly increased pension benefit payments to the retirees, as well as significantly increased municipal contributions to the pension trust fund, incorrect actuarial projections, and creates a risk to the fiscal soundness of the city's policemen's relief pension plan. Determining benefits based on this method also creates a situation where it is difficult, if not impossible, to make accurate actuarial calculations for the plan's future liabilities.

The city's practice of including all overtime accumulated in the final 12 months of employment is not, per se, in excess of the provisions stipulated in the city's governing document, however, it is important to consider the funding standard for municipal pension plans. The overarching principle of Act 205 is undermined when a plan is funded based on an established plan benefit structure and an important piece of the overall underlying accrued liability (*i.e., the final monthly earnings containing extensive overtime hours worked in the final year of employment which cannot be reasonably estimated until separation from employment*) is unknown and, therefore, cannot be funded over time in accordance with Act 205. This methodology has adverse ramifications on the funded status of the plan and also results in increased annual contributions required which, when the city's annual state aid allocation is not sufficient to cover the annual minimum municipal obligation, shall be borne by the taxpayer in the form of increased resources needed from the city's general purpose funds.

The city has conveyed that they have taken significant strides to address the concerns raised by the department in recent negotiations with the city's police officers. We acknowledge the actions taken by city officials and will continue to monitor the city's continued efforts to address its pension funding challenges and encourage the city to make fiscally responsible decisions as fund fiduciaries to ensure that the city's pension plans have adequate resources to meet current and future benefit obligations.

CITY OF WILKES-BARRE AGGREGATED PENSION TRUST FUND  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

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City Controller

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**Ms. Tracey Rash**

Acting Finance Director

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