

COMPLIANCE AUDIT

Colwyn Borough Police Pension Plan Delaware County, Pennsylvania For the Period January 1, 2017 to December 31, 2020

July 2021



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 Borough Council
Colwyn Borough
Delaware County
Colwyn, PA 19023

We have conducted a compliance audit of the Colwyn Borough Police Pension Plan for the period January 1, 2017 to December 31, 2020. We also evaluated compliance with some requirements subsequent to that period when possible. The audit was conducted pursuant to authority derived from the Municipal Pension Plan Funding Standard and Recovery Act (Act 205 of 1984, as amended, 53 P.S. § 895.402(j)), which requires the Auditor General, as deemed necessary, to audit every municipality which receives general municipal pension system state aid and every municipal pension plan and fund in which general municipal pension system state aid is deposited. The audit was not conducted, nor was it required to be, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. We planned and performed the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior report; and
2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior report, we inquired of plan officials and evaluated supporting documentation provided by officials evidencing that the suggested corrective action has been appropriately taken. To determine whether the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, our methodology included the following:

- We determined whether state aid was properly determined and deposited in accordance with Act 205 requirements by verifying the annual deposit date of state aid and determining whether deposits were made within 30 days of receipt for all years within the period under audit.
- We determined whether annual employer contributions were calculated and deposited in accordance with the plan's governing document and applicable laws and regulations by examining the municipality's calculation of the plan's annual financial requirements and minimum municipal obligation (MMO) and comparing these calculated amounts to amounts actually budgeted and deposited into the pension plan as evidenced by supporting documentation.
- We determined whether annual employee contributions were calculated, deducted, and deposited into the pension plan in accordance with the plan's governing document and applicable laws and regulations by testing total members' contributions on an annual basis using the rates obtained from the plan's governing document in effect for all years within the period under audit and examining documents evidencing the deposit of these employee contributions into the pension plan.
- We determined whether retirement benefits calculated for 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 benefits due to the retired individual and comparing these amounts to supporting documentation evidencing amounts determined and actually paid to the recipient.
- We determined whether the January 1, 2017 and January 1, 2019 actuarial valuation reports were prepared and submitted by 2018 and 2020, respectively, in accordance with Act 205 and whether selected information provided on these reports is accurate, complete, and in accordance with plan provisions to ensure compliance for participation in the state aid program by comparing selected information to supporting source documentation.

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

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

Finding No. 1 – Noncompliance With Prior Recommendation – Failure To Update Plan’s Governing Document

Finding No. 2 – Noncompliance With Prior Recommendation – Unauthorized Provision For A Killed In Service Benefit

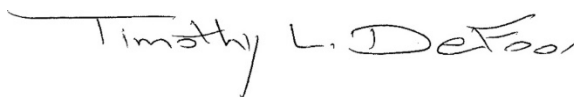
The findings contained in this audit report repeat conditions that were cited in our previous report that have not been corrected by borough officials. We are concerned by the borough’s failure to correct those previously reported findings and strongly encourage timely implementation of the recommendations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

As previously noted, one of the objectives of our audit of the Colwyn Borough Police Pension Plan 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, which was amended on September 18, 2009, through the adoption of Act 44 of 2009, provides for the implementation of a distress recovery program. 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. However, we are extremely concerned about the funded status of the plan contained in the schedule of funding progress included in this report which indicates **the plan’s funded ratio is 68.4% as of January 1, 2019. Based on this information, the borough is currently in Level I minimal distress status.** We encourage borough officials to monitor the funding of the police pension plan to ensure its long-term financial stability.

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



Timothy L. DeFoor
Auditor General

July 15, 2021

CONTENTS

	<u>Page</u>
Background.....	1
Status of Prior Findings	2
Findings and Recommendations:	
Finding No. 1 – Noncompliance With Prior Recommendation – Failure To Update Plan’s Governing Document	3
Finding No. 2 – Noncompliance With Prior Recommendation – Unauthorized Provision For A Killed In Service Benefit.....	4
Supplementary Information	7
Report Distribution List	11

BACKGROUND

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

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

In addition to Act 205, the Colwyn Borough Police Pension Plan is also governed by implementing regulations published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

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

The Colwyn Borough Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 426, as amended, and a plan agreement, effective January 1, 2003, adopting Act 600 provisions. The plan is also affected by the provisions of collective bargaining agreements between the borough and its police officers. The plan was established May 12, 1978. Active members are required to contribute 5 percent of compensation to the plan. As of December 31, 2020, the plan had no active members, 1 terminated member eligible for vested benefits in the future, and 4 retirees receiving pension benefits.

COLWYN BOROUGH POLICE PENSION PLAN
STATUS OF PRIOR FINDINGS

Compliance With Prior Recommendation

Colwyn Borough has complied with the prior recommendations concerning the following:

- Incorrect Data On Certification Form AG 64 Resulting In An Excess Reimbursement For Special 2002 Ad Hoc Postretirement Adjustment

The borough returned the total excess reimbursement of \$1,251, plus interest, to the Commonwealth.

Noncompliance With Prior Recommendations

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

- Failure To Update Plan's Governing Document; and
- Unauthorized Provision For A Killed In Service Benefit.

COLWYN BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Noncompliance With Prior Recommendation – Failure To Update Plan’s Governing Document

Condition: As disclosed in the three most recent audit reports, municipal officials have not updated the plan’s governing document through a properly executed ordinance to reflect the current benefit provisions of the plan. The plan agreement with the plan’s custodian was restated January 1, 2003 to adopt Act 600 provisions; however, the revised plan agreement was not properly adopted by ordinance. In addition, this plan agreement does not reflect several modifications to the provisions of the police pension plan made throughout the years through the collective bargaining process, which are codified in an appendix to the collective bargaining agreement between the borough and its police officers for the period January 1, 2007 through December 31, 2009 which remained in effect as of the end of the prior audit period. It should be noted that during the current audit period, a new settlement agreement was reached between the union representing the police officers and the Borough concerning the terms and conditions of employment, including pensions, for the police officers of Colwyn borough for the calendar years commencing January 1, 2014 through December 31, 2023 and limits benefits to those authorized by applicable law. However, the plan’s governing ordinance still refers to the prior plan agreement of 1993 and not the revised agreement in effect since 2003.

Criteria: Section 1(a)(1) of Act 600 states, in part:

Each borough, town and township. . . maintaining a police force of three or more full-time members shall . . . establish, by ordinance or resolution, a police pension fund. . . .

Furthermore, in Wynne v. Lower Merion Township, 181 Pa. Superior Ct., 524, the Pennsylvania Superior Court held that an ordinance may be amended only by another ordinance and not by a resolution.

Cause: Municipal officials again failed to establish adequate internal control procedures to ensure compliance with the prior audit recommendation.

Effect: The plan’s current benefit provisions have not been adopted through a properly executed ordinance. This could result in inconsistent benefit calculations for plan members and/or eligible beneficiaries.

Recommendation: We again recommend that municipal officials, with the assistance of their solicitor, adopt the police pension plan’s current benefit provisions through a properly executed ordinance at their earliest opportunity to do so.

COLWYN BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Management’s Response: Municipal officials agreed with the finding without exception. Municipal officials were notified during the audit as well as the exit conference held on June 17, 2021 that a written response was required. Municipal officials indicated that they would consult with their solicitor to provide a response; however, as of July 16, 2021, no such response has been provided.

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

Finding No. 2 – Noncompliance With Prior Recommendation – Unauthorized Provision For A Killed In Service Benefit

Condition: As disclosed in the two most recent audit reports, the borough maintains a police pension plan governed by the provisions of Act 600, as amended. Prior to the adoption of Act 51 of 2009, Act 600 contained a mandatory killed in service benefit provision; however, Act 51 specifically repealed the section of Act 600 that referenced the mandatory killed in service benefit. As disclosed in the prior audit report, the pension plan document continues to provide for a killed in service benefit that is no longer authorized by Act 600. The provision no longer appears in the new settlement agreement reached between the police officers and the Borough noted earlier in this report.

Section 5.01(a) of the plan document states, in part:

If the Participant dies in the line of duty, the survivor annuity shall be equal to 100% of the Participant’s Salary as of the date of his death.

Criteria: Section 1(a) of Act 51 of 2009 states, in part:

In the event a law enforcement officer, ambulance service or rescue squad member, firefighter, certified hazardous material response team member or National Guard member dies as a result of the performance of his duties, such political subdivision, Commonwealth agency or, in the case of National Guard members, the Adjutant General, or, in the case of a member of a Commonwealth law enforcement agency, the authorized survivor or the agency head, within 90 days from the date of death, shall submit certification of such death to the Commonwealth.

COLWYN BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

In addition, Section 1(d) of Act 51 of 2009 states, in part:

. . . the Commonwealth shall, from moneys payable out of the General Fund, pay to the surviving spouse or, if there is no surviving spouse, to the minor children of the paid firefighter, ambulance service or rescue squad member or law enforcement officer who died as a result of the performance of his duty the sum of \$100,000, adjusted in accordance with subsection (f) of this section, and an amount equal to the monthly salary, adjusted in accordance with subsection (f) of this section, of the deceased paid firefighter, ambulance service or rescue squad member or law enforcement officer, less any workers' compensation or pension or retirement benefits paid to such survivors, and shall continue such monthly payments until there is no eligible beneficiary to receive them. For the purpose of this subsection, the term "eligible beneficiary" means the surviving spouse or the child or children under the age of eighteen years or, if attending college, under the age of twenty - three years, of the firefighter, ambulance service or rescue squad member or law enforcement officer who died as a result of the performance of his duty. When no spouse or minor children survive, a single sum of \$100,000, adjusted in accordance with subsection (f) of this section, shall be paid to the parent or parents of such firefighter, ambulance service member, rescue squad member or law enforcement officer. [Emphasis added]

Furthermore, Section 2 of Act 51 of 2009 states:

Repeals are as follows:

- (1) The General Assembly declares that the repeals under paragraph (2) are necessary to effectuate the amendment of section 1 of the act.
- (2) The following parts of acts are repealed:
 - (i) Section 5(e)(2) of the act of May 29, 1956 (1955 P.L.1804, No. 600), referred to as the Municipal Police Pension Law.
 - (ii) Section 202(b)(3)(vi) and (4)(vi) of the act of December 18, 1984 (P.L.1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act.

Therefore, since Act 51 specifically repealed the killed in service provision of Act 600 and the funding provisions for the killed in service benefit that were contained in Act 205, the provision of a killed in service benefit is no longer authorized.

Cause: Municipal officials again failed to establish adequate internal control procedures to ensure compliance with the prior audit recommendation.

COLWYN BOROUGH POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Effect: Since Section 1 of Act 51 provides that the Commonwealth is obligated to pay the killed in service benefit less any pension or retirement benefits paid to eligible survivors, the continued provision of a killed in service benefit could result in the pension plan being obligated to pay a benefit that is no longer authorized by Act 600, and would have been paid entirely by the Commonwealth absent such provision.

Recommendation: We again recommend that the municipality review the plan's killed in service benefit with its solicitor in conjunction with Act 51 of 2009, and eliminate this unauthorized benefit provision at its earliest opportunity to do so.

Management's Response: Municipal officials agreed with the finding without exception. Municipal officials were notified during the audit as well as the exit conference held on June 17, 2021 that a written response was required. Municipal officials indicated that they would consult with their solicitor to provide a response; however, as of July 16, 2021, no such response has been provided.

Auditor's Conclusion: We are concerned by the borough's failure to correct this previously reported audit finding and strongly encourage timely implementation of the recommendation noted in this audit report. Although a written response was requested regarding the borough's intended action relative to this issue, no response was received as of the date of this report. Upon receipt of a response from the borough, we will subsequently monitor compliance with any proposed corrective action in the subsequent audit of this plan.

COLWYN BOROUGH POLICE PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

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

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

	(1)	(2)	(3)	(4)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)
01-01-15	\$ 612,302	\$ 1,320,261	\$ 707,959	46.4%
01-01-17	737,155	1,228,947	491,792	60.0%
01-01-19	826,641	1,208,020	381,379	68.4%

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

COLWYN BOROUGH POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

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

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

COLWYN BOROUGH POLICE PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS

<u>Year Ended December 31</u>	<u>Actuarially Determined Contribution</u>	<u>Actual Contributions</u>	<u>Contribution Deficiency (Excess)</u>	<u>Covered- Employee Payroll</u>	<u>Contributions as a Percentage of Covered- Employee Payroll</u>
2014	\$ 107,763	\$ 107,763	\$ -	\$ 58,000	185.80%
2015	109,010	109,010	-	66,640	163.58%
2016	107,050	107,050	-	64,688	165.49%
2017	79,264	79,264	-	64,688	122.53%
2018	87,500	87,500	-	68,000	128.68%
2019	87,799	87,799	-	70,000	125.43%
2020	89,293	89,458	(165)	80,000	111.82%

COLWYN BOROUGH POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
NOTES TO SUPPLEMENTARY SCHEDULES
(UNAUDITED)

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

Actuarial valuation date	January 1, 2019
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	7 years
Asset valuation method	Plan assets are valued using the method described in Section 210 of Act 205, as amended, subject to a ceiling of 120% of the market value of assets.
Actuarial assumptions:	
Investment rate of return	7.25%
Projected salary increases	5.0%
Cost-of-living adjustments	3.0% per annum

COLWYN BOROUGH POLICE PENSION PLAN
REPORT DISTRIBUTION LIST

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