

COMPLIANCE AUDIT

Elk Creek Township Non-Uniformed Pension Plan Erie County, Pennsylvania For the Period January 1, 2018 to December 31, 2021

November 2022



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen
www.PaAuditor.gov**

**TIMOTHY L. DEFOOR
AUDITOR GENERAL**

Board of Township Supervisors
Elk Creek Township
Erie County
Albion, PA 16401

We have conducted a compliance audit of the Elk Creek Township Non-Uniformed Pension Plan for the period January 1, 2018 to December 31, 2021. 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 finding 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 finding 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 that there were no employee contributions required by the plan's governing document and applicable laws and regulations for the years covered by our audit period.
- We determined whether retirement benefits calculated for the plan member who retired and the plan member who elected to vest during the current audit period represent payments to all (and only) those entitled to receive them and were properly determined and disbursed in accordance with the plan's governing document, applicable laws, and regulations by recalculating the amount of the monthly pension benefits due to the retired individuals and comparing these amounts to supporting documentation evidencing amounts determined and actually paid or payable to the recipients.
- We determined whether the January 1, 2017 and January 1, 2019 actuarial valuation reports were prepared and submitted by March 31, 2018 and 2020, respectively, in accordance with Act 205 and whether selected information provided on these reports is accurate, complete, and in accordance with plan provisions to ensure compliance for participation in the state aid program by comparing selected information to supporting source documentation.

The Elk Creek Township Non-Uniformed Pension Plan participates in the Pennsylvania Municipal Retirement System (PMRS), which is an agent multiple-employer public employee retirement system that acts as a common investment and administrative agent for participating municipal pension plans. PMRS issues a separate Annual Comprehensive Financial Report, copies of which are available from the PMRS accounting office. PMRS's financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

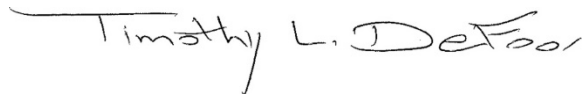
Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Elk Creek Township Non-Uniformed Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local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

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

- Finding No. 1 – Partial Compliance With Prior Recommendation – Receipt Of State Aid In Excess Of Entitlement
- Finding No. 2 – Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid
- Finding No. 3 – Pension Plan Benefit Changes For Supervisor-Employee Implemented Without Approval Of Township Auditors
- Finding No. 4 – Ordinance Improperly Amended By Resolution
- Finding No. 5 – Inadequate Accounting/Reporting Over Activity Of The Pension Plan

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

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



Timothy L. DeFoor
Auditor General
October 28, 2022

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BACKGROUND

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

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 Elk Creek Township Non-Uniformed Pension Plan is also governed by implementing regulations published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

- Act 15 - Pennsylvania Municipal Retirement Law, Act of February 1, 1974 (P.L. 34, No. 15), as amended, 53 P.S. § 881.101 et seq.
- Act 69 - The Second Class Township Code, Act of May 1, 1933 (P.L. 103, No. 69), as reenacted and amended, 53 P.S. § 65101 et seq.

The Elk Creek Township Non-Uniformed Pension Plan is a single-employer cash balance pension plan locally controlled by the provisions of Resolution No. 12720-1, and a separately executed plan agreement with the plan's custodian, effective November 1, 2020, adopted pursuant to Act 15. Prior to November 1, 2020, the plan was locally controlled by the provisions of Ordinance No. 2-2008, and a separately executed plan agreement with the plan's custodian, effective January 1, 2008, adopted pursuant to Act 15. The plan was established October 1, 1993. Active members are not required to contribute to the plan; however, voluntary contributions are permitted up to ten percent of compensation. For the year 2018, the municipality was required to contribute \$1,500 per employee, per year. Effective 2019, the municipality is required to contribute \$2,000 per employee, per year. As of December 31, 2021, the plan had three active members, one terminated member eligible for vested benefits in the future, and five retirees receiving pension benefits.

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
STATUS OF PRIOR FINDING

Partial Compliance With Prior Recommendation

Elk Creek Township has partially complied with the prior recommendation concerning the following:

· Receipt Of State Aid In Excess Of Entitlement

During the current audit period, the township reimbursed \$1,369 to the Commonwealth for the excess state aid received in the years 2011, 2013 and 2015; however, plan officials failed to reconcile the township's annual state aid allocation with the plan's annual pension costs in the year 2021, as further discussed in the Findings and Recommendations section of this report.

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Partial Compliance With Prior Recommendation – Receipt Of State Aid In Excess Of Entitlement

Condition: As disclosed in the Status of Prior Finding section of this report, the township partially complied with the prior recommendation by reimbursing the Commonwealth for the excess state aid received in 2011, 2013, and 2015; however, plan officials again failed to reconcile the township’s annual state aid allocation with the plan’s annual pension costs for the year 2021, as illustrated below:

State aid allocation	\$ 8,307
Actual municipal pension costs	<u>(7,220)</u>
Excess state aid	<u>\$ 1,087</u>

In addition, as of the date of our audit fieldwork completion, the excess state aid remains in the township’s general fund and has not been deposited into the pension plan according to municipal records or returned to the Commonwealth.

Criteria: Section 402(f)(2) of Act 205 states:

No municipality shall be entitled to receive an allocation of general municipal pension system State aid in an amount which exceeds the aggregate actual financial requirements of any municipal pension plans for police officers, paid firefighters or employees other than police officers or paid firefighters maintained by the municipality, less the amount of any aggregate annual member or employee contributions during the next succeeding plan year, as reported in the most recent complete actuarial report filed with the commission.

Cause: Plan officials failed to implement adequate internal control procedures to annually reconcile the township’s state aid allocation with the plan’s actual pension costs and reimburse any excess state aid received to the Commonwealth, as recommended in the prior report.

Effect: It is this department’s opinion that because the entire proceeds of the insurance premium tax on foreign casualty insurance companies are distributed annually to each eligible recipient municipality, it is inappropriate to use state aid in one year to offset pension costs in other years. Consequently, overpayments of state aid typically must be returned to the Commonwealth for redistribution. It should be noted however, that since the township received an underpayment of state aid (\$1,376) due to a certification error made in 2019 (*refer to Finding No. 2 of this report*), in an amount exceeding the overpayment, the township will not be required to return the excess state aid to the Commonwealth.

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Recommendation: We again recommend that, in the future, plan officials reconcile the township’s annual state aid allocation with the plan’s annual pension costs and reimburse any excess state aid received to the Commonwealth.

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

Auditor’s Conclusion: We are concerned that the municipality has not fully complied with the prior recommendation and encourage compliance at the earliest opportunity to do so.

Finding No. 2 – Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid

Condition: The township certified incorrect wages for two non-uniformed employees and understated payroll by \$30,100 on the Certification Form AG 385 filed in 2019. The data contained on this certification form is based on prior calendar year information.

Criteria: Pursuant to the instructions that accompany Certification Form AG 385, the total payroll eligible to be certified should be Internal Revenue Service Form W-2 earnings pertaining to full-time positions.

Cause: The township lacked adequate internal control procedures, such as having another individual review the accuracy of the data certified, to identify the clerical errors in the wages reported for the two employees.

Effect: The data submitted on this certification form is used, in part, to calculate the state aid due to the municipality for distribution to its pension plans. Because the township’s state aid allocation was based on pension costs, the township received an underpayment of state aid of \$1,376 as identified below:

Year	Normal Cost	Payroll Understated	State Aid Underpayment
2019	4.57%	\$ 30,100	\$ 1,376

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Although the additional state aid will be allocated to the township (*state aid underpayment (\$1,376) will be reduced by the state aid overpayment disclosed in Finding No. 1 (\$1,087) resulting in a net underpayment due the township in the amount of \$289*), the full amount of the 2019 state aid allocation was not available to be deposited timely and therefore resulted in the township having to make additional municipal contributions in order to meet the plan's funding obligation.

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

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

Auditor's Conclusion: Compliance will be evaluated during the next audit of the plan.

Finding No. 3 – Pension Plan Benefit Changes For Supervisor-Employee Implemented Without Approval Of Township Auditors

Condition: The Elk Creek Township Non-Uniformed Pension Plan was amended without the approval of the township auditors. In 2019, the township increased its employer contribution rate from \$1,500 per employee to \$2,000 per employee.

Criteria: Section 606(b)(3) of Act 69 states:

No change in the nature or rate of the contributions of a defined contribution plan and no change in the benefit formula of a defined benefit plan shall be initiated by the board of supervisors with respect to a supervisor-employee without auditor approval.

Cause: Plan officials were unaware of the applicable Act 69 provisions regarding the amendment of pension plan contribution provisions with respect to supervisor-employees.

Effect: The amendment of plan contribution provisions without auditor approval could result in unauthorized pension benefits being paid from plan assets.

Recommendation: We recommend that the express approval of the board of auditors be obtained for all amendments to the plan's contribution provisions.

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – (Continued)

Furthermore, we recommend that, in the future, plan benefit changes receive prior auditor approval in accordance with Act 69.

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

Auditor's Conclusion: Compliance will be evaluated during the next audit of the plan.

Finding No. 4 – Ordinance Improperly Amended By Resolution

Condition: The pension plan's governing document, Ordinance No. 2-2008, which adopted a separately executed plan agreement with the plan's custodian, effective January 1, 2008, was restated in its entirety by Resolution No. 12720-1, which adopted a restated plan agreement effective November 1, 2020.

Criteria: 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 were not aware that a resolution cannot amend an ordinance.

Effect: The failure to properly adopt the restated plan document could result in inconsistent or improper benefit calculations and incorrect benefit payments from the pension plan.

Recommendation: We recommend that the township amend the plan's governing document with a properly executed ordinance.

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

Auditor's Conclusion: Compliance will be evaluated during the next audit of the plan.

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 5 – Inadequate Accounting/Reporting Over Activity Of The Pension Plan

Condition: The municipality’s accounting/reporting system did not provide effective control over the transactional activity of the pension plan during the year 2021. Municipal officials were unable to furnish annual financial statements or custodial account statements summarizing the financial activity of its pension plan.

Criteria: An adequate system of accounting and record keeping is a prerequisite for sound administration of pension plans. In addition, assets held in a custodial account for the purpose of plan management are to be governed by the terms and provisions of the account contract, provided that the terms and provisions of the contract are within the parameters of all prevailing pension legislation. Although the municipality may contract with a trustee to administer the financial management of the plan, the fiduciary responsibility for the plan remains with the municipality.

Cause: Municipal officials did not maintain a separate detailed accounting of pension plan transactions which, among other things, helps assure the production of proper financial statements to effectively monitor the annual activity of the pension plan. Additionally, municipal officials indicated that the plan’s custodian failed to provide copies of the custodial account transaction statements summarizing activity of the pension plan account for the year 2021.

Effect: Although we were able to obtain alternate documentation from the municipality to evidence the propriety of individual transactions tested during performance of the audit, the failure to maintain annual financial and/or account transaction statements prohibits municipal officials from effectively monitoring the plan’s financial operations and could lead to undetected errors or improprieties in account transactions.

Recommendation: We recommend that municipal officials establish and maintain a financial accounting and reporting system that allows the municipality to effectively monitor the plan’s financial operations, even in the absence of statements from the plan custodian. Municipal officials should refer to the Auditor General’s Bulletin No. 2-88 entitled “Preparation, Maintenance and Auditability of Financial Records,” for further guidance in establishing adequate accounting and record-keeping procedures. In addition, we recommend that municipal officials contact the plan custodian and obtain annual financial statements of the custodial account for its pension plan for the year 2021 to ensure the accuracy and propriety of the transaction activity.

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

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 5 – (Continued)

Auditor's Conclusion: It was noted that the plan custodian recently went through a substantial upgrade to the plan administration software and implemented a new accounting system. The modernization process, along with the COVID-19 pandemic, resulted in unforeseen delays in the year-end reporting process for financial statements and GASB 68 reports. In addition, the custodian has taken active measures to resolve these issues and expects 2021 financial reports to be distributed before the end of 2022. Compliance with the finding recommendation will be evaluated during our next audit of the plan.

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS

Year Ended December 31	Statutorily Required Contribution (SRC)*	Contributions in Relation to the SRC*	Contribution Deficiency (Excess)**	Covered- Employee Payroll***	Contributions as a Percentage of Covered- Employee Payroll
2014	\$ 4,076	\$ 4,086	\$ (10)	\$ 96,735	4.2%
2015	4,660	191	4,469	100,111	0.2%
2016	4,261	8,838	(4,577)	86,533	10.2%
2017	4,660	5,625	(965)	95,705	5.9%
2018	4,680	3,555	1,125	97,737	3.6%
2019	7,365	7,525	(160)	130,418	5.8%
2020	8,220	8,220	-	143,530	5.7%
2021	7,220	7,220	-		

* The Statutorily Required Contribution (SRC) is a contribution amount based upon the payroll and the contribution rate as outlined under the terms of the cash balance pension plan.

** The Statutorily Required Contribution and the actual Contribution were provided by PMRS. Deviation between these amounts may be due to contributions to or transfers from the municipal reserve account.

*** Due to the timing of this audit, covered-employee payroll for 2021 was not provided in this schedule.

ELK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

Mr. Robert M. Soltis
Chairman, Board of Township Supervisors

Ms. Shirley Bilek
Secretary

Mr. Richard Cardamone, CPA, CGMA
Pennsylvania Municipal Retirement System

This report is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: news@PaAuditor.gov.