

COMPLIANCE AUDIT

Foster Township Non-Uniformed Pension Plan Luzerne County, Pennsylvania For the Period January 1, 2017 to December 31, 2021

June 2022



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



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**TIMOTHY L. DEFOOR
AUDITOR GENERAL**

Board of Township Supervisors
Foster Township
Luzerne County
Freeland, PA 18224

We have conducted a compliance audit of the Foster Township Non-Uniformed Pension Plan for the period January 1, 2017 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. State aid allocations that were deposited into the pension plan for the years ended December 31, 2016 to December 31, 2021, are presented on the Summary of Deposited State Aid and Employer Contributions.
- 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. Employer contributions that were deposited into the pension plan for the years ended December 31, 2016 to December 31, 2021, are presented on the Summary of Deposited State Aid and Employer Contributions.
- 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 that there were no benefit calculations prepared for the years covered by our audit period.
- We determined whether the January 1, 2017, January 1, 2019, and January 1, 2021 actuarial valuation reports were prepared and submitted by March 31, 2018, 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.

The township's non-uniformed union employees participate in the Central Pennsylvania Teamsters Pension Fund, a Taft-Hartley Act collectively bargained, jointly trustee, multi-employer pension plan, which is governed primarily by the Federal Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides for substantial federal government oversight of the operating and reporting practices of employee benefit plans subject to its provisions. Accordingly, the scope of our audit was restricted to the activities of the Foster Township Non-Uniformed Pension Plan and did not extend to the activities of the multi-employer pension plan.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Foster 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 Foster 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 – Participation Agreement Not Adopted By Ordinance Or Resolution

Finding No. 2 – Incorrect Data Certified On Actuarial Valuation Report Resulting In An Overpayment Of State Aid

The contents of this report were discussed with officials of Foster 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.

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
April 20, 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 Foster 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.

As further described in the Letter from the Auditor General included in this report, the township's non-uniformed union employees participate in the Central Pennsylvania Teamsters Pension Fund. The plan is also affected by the provisions of collective bargaining agreements between the township and its non-uniformed employees. The plan was established August 1, 1990. Active members are not required to contribute to the plan. The municipality was required to contribute \$235 per month per employee from January 1, 2017 to October 31, 2020, \$240 per month per employee from November 1, 2020 to October 31, 2021, and \$245 per month per employee from November 1, 2021 to December 31, 2021. As of December 31, 2021, the plan had four active members.

FOSTER TOWNSHIP NON-UNIFORMED PENSION PLAN
STATUS OF PRIOR FINDING

Partial Compliance With Prior Recommendation

Foster Township has partially complied with the prior recommendation concerning the following:

- Participation Agreement Not Adopted By Ordinance Or Resolution

During the current audit period, municipal officials adopted Resolution No. 9 of 2017 approving the memorandum of understanding and collective bargaining agreement dated October 15, 2017 through October 14, 2020; however, municipal officials failed to formally adopt the memorandum of understanding and collective bargaining agreement dated October 15, 2020 through October 14, 2023 by an ordinance or resolution as further discussed in the Findings and Recommendations section of this report.

FOSTER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – Partial Compliance With Prior Recommendation – Participation Agreement
Not Adopted By Ordinance Or Resolution**

Condition: As disclosed in the three prior reports, the terms, provisions and conditions of the pension plan were adopted in a separately executed plan agreement with the Central Pennsylvania Teamsters Pension Fund dated August 1, 1990; however, the plan agreement had not been formally adopted by a municipal ordinance or resolution. During the current audit period, municipal officials adopted Resolution No. 9 of 2017 approving the memorandum of understanding and collective bargaining agreement dated October 15, 2017 through October 14, 2020; however, municipal officials failed to formally adopt the memorandum of understanding and collective bargaining agreement dated October 15, 2020 through October 14, 2023 by an ordinance or resolution.

Criteria: Proper internal control procedures dictate that the provisions of the pension plan be formally adopted by a municipal ordinance or resolution.

Cause: The township's failure to adopt the current participation agreement by ordinance or resolution was attributed to an oversight.

Effect: The municipality has not established a formal acknowledgement of the current plan agreement with the union through a properly adopted ordinance or resolution.

Recommendation: We again recommend that municipal officials take appropriate action to formally adopt the current plan document through a properly executed ordinance or resolution.

Management's Response: Municipal officials stated the current union agreement expires October 2023 and at that time the new union agreement and all future union agreements will be done by resolution.

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

FOSTER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – Incorrect Data Certified On Actuarial Valuation Report Resulting In An Overpayment Of State Aid

Condition: Actuarial valuation report forms 203A, for the non-uniformed pension plan, with valuation dates of January 1, 2017 and January 1, 2019, submitted to the Municipal Pension Reporting Program (MPRP), contained incorrect information. The township incorrectly reported municipal contributions of \$14,100 in 2017 and \$20,413 in 2019 when the actual amounts of municipal contributions were \$8,310 in 2017 and \$11,045 in 2019.

Criteria: Section 201(d) of Act 205 states:

Responsibility for preparation and filing of reports and investigations. The actuarial valuation report or experience investigation required pursuant to subsection (a) shall be prepared under the supervision and at the discretion of the chief administrative officer of the municipality, who shall be responsible for the filing of the document. The actuarial valuation report or experience investigation shall be signed by the chief administrative officer, indicating that to the extent of the understanding and knowledge of the officer, the report or investigation represents a true and accurate portrayal of the actuarial, financial and demographic condition of the pension plan of the municipality.

Cause: Township officials were uncertain as to the cause of the discrepancies in the data reported to the MPRP on the actuarial valuation reports for 2017 and 2019.

Effect: Because the municipality's state aid allocations are determined, in part, by the information contained in the actuarial valuation report, the submission of incorrect data on the January 1, 2017 report resulted in the municipality receiving state aid allocations for the years 2018 and 2019 incorrectly based on a normal cost percentage of 13.59%, instead of 8.01%. The township's original 2018 state aid allocation was \$9,369; however, based on the corrected information, the township was entitled to an allocation in the amount of \$6,474. Therefore, the township received an overpayment of state aid in the amount of \$2,895 in the year 2018. While the township also initially received an overpayment of state aid in 2019, the township subsequently returned 2019 state aid to the Commonwealth after performing a calculation to determine the amount of state aid that exceeded the plan's actual pension costs for that year, and no additional refund is necessary for 2019.

FOSTER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

The submission of incorrect data on the January 1, 2019 report resulted in the municipality receiving state aid allocations for the years 2020 and 2021 incorrectly based on a normal cost percentage of 13.92%, instead of 7.53%. While the township initially received an overpayment of state aid in 2020, the township subsequently returned 2020 state aid to the Commonwealth after performing a calculation to determine the amount of state aid that exceeded the plan's actual pension costs for that year, and no additional refund is necessary for 2020. The township's original 2021 state aid allocation was \$16,871; however, based on the corrected information, the township was entitled to an allocation in the amount of \$9,129. Therefore, the township received an overpayment of state aid in the amount of \$7,742 in the year 2018; however, the township subsequently returned 2021 state aid to the Commonwealth in the amount of \$5,351 after performing a calculation to determine the amount of state aid that exceeded the plan's actual pension costs for that year, and the remaining \$2,391 needs to be returned to the Commonwealth.

In addition, the township used the overpayments of state aid to pay the minimum municipal obligations (MMOs) to the non-uniformed pension plan; therefore, if the reimbursement to the Commonwealth is made from the pension plan, the plan's MMO(s) will not be fully paid.

Recommendation: We recommend that the excess state aid for the years 2018 and 2021, in the total amount of \$5,286, be returned to the Commonwealth. A check in this amount, with interest compounded annually from date of receipt to date of repayment, at a rate earned by the pension plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 321 Finance Building, Harrisburg, PA 17120. A copy of the interest calculation must be submitted along with evidence of payment.

In addition, if the reimbursement to the Commonwealth is made from non-uniformed pension plan funds, we recommend that any resulting MMO deficiencies be paid to the pension plan with interest, at a rate earned by the pension plan.

We also recommend that, in the future, plan officials review and verify all information submitted to the Municipal Pension Reporting Program so that future actuarial valuation reports properly reflect the status of the pension plan.

Management's Response: Municipal officials agreed with the finding without exception. The township returned \$6,870 to the Commonwealth in March 2022.

Auditor's Conclusion: The township returned more state aid than required, and the excess will be returned to the township.

FOSTER TOWNSHIP NON-UNIFORMED PENSION PLAN
SUMMARY OF DEPOSITED STATE AID AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid	Employer Contributions
2016	\$ 8,100	\$ 210
2017	6,580	705
2018	9,369	1,676
2019	11,280	None
2020	11,280	40
2021	11,520	40

FOSTER 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. Wilson Malloy
Chairman, Board of Township Supervisors

Ms. Brittany Majewski
Municipal Secretary/Director of Finance

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.