

COMPLIANCE AUDIT

Lower Yoder Township Non-Uniformed Pension Plan Cambria County, Pennsylvania For the Period January 1, 2018 to December 31, 2021

May 2023



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
Lower Yoder Township
Cambria County
Johnstown, PA 15906

We have conducted a compliance audit of the Lower Yoder 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 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 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, 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.

The Lower Yoder 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 Lower Yoder 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 Lower Yoder 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 – Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

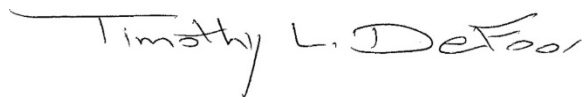
Finding No. 2 – Noncompliance With Prior Recommendation - Untimely Deposit Of State Aid

Finding No. 3 – Failure To Fully Pay The Minimum Municipal Obligation Of The Plan

Finding Nos. 1 and 2 contained in this audit report repeat conditions that were cited in our previous report that have not been corrected by township officials. We are concerned by the township's failure to correct those previously reported findings and strongly encourage timely implementation of the recommendations noted in this audit report.

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 Lower Yoder 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
April 12, 2023

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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 Lower Yoder 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 Lower Yoder Township Non-Uniformed Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 161, and a separately executed agreement with the plan custodian, effective January 1, 2020, adopted pursuant to Act 15. Prior to January 1, 2020, the plan was locally controlled by the provisions of Ordinance No. 152, and an agreement adopted pursuant to Act 15. The plan is also affected by the provisions of collective bargaining agreements between the township and its non-uniformed employees. The plan was established December 1, 1972. Active members are not required to contribute to the plan. As of December 31, 2021, the plan had seven active members, two terminated members eligible for vested benefits in the future, and five retirees receiving pension benefits.

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN STATUS OF PRIOR FINDINGS

Compliance With Prior Recommendations

Lower Yoder Township has complied with the prior recommendations concerning the following:

- Pension Plan Benefit Changes For Supervisor-Employee Implemented Without Approval Of Township Auditors

The township, in conjunction with their solicitor, filed a civil lawsuit seeking to have the court determine that Ordinance No. 152 was illegal and invalid. As of the date of this report, that lawsuit is still pending. The Department will continue to monitor the impact of the outcome of this lawsuit during future audits of the township's non-uniformed pension plan;

- Failure To Comply With Act 15 Mandatory Membership Provisions

The township appropriately enrolled all eligible municipal employees in accordance with the plan's governing document and Act 15; and

- Failure To Maintain An Adequate Record-Keeping System

During the current audit period, the township maintained adequate records to effectively monitor the plan's financial operations.

Partial Compliance With Prior Recommendation

Lower Yoder Township has partially complied with the prior recommendation concerning the following:

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

During the current audit period, the township reimbursed \$30,505 to the Commonwealth for the overpayment of state aid received for the years 2015, 2016, 2017 and 2018; however, plan officials again failed to comply with the instructions that accompany Certification Form AG 385 in accurately reporting the required pension data as further discussed in the Findings and Recommendations section of this report.

Noncompliance With Prior Recommendation

Lower Yoder Township has not complied with the prior recommendation concerning the following as further discussed in the Findings and Recommendations section of this report:

- Untimely Deposit Of State Aid

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

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

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 total overpayments of state aid received during the years 2015, 2016, 2017 and 2018. However, a similar condition occurred during the current audit period. The township certified two ineligible non-uniformed employees and overstated payroll by \$54,465 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 Act 205, at Section 402(e)(2), in order to be eligible for certification, an employee must have been employed on a full-time basis for at least six consecutive months and must have been participating in a pension plan during the certification year.

Cause: As previously disclosed in the prior audit report, the township failed to adequately enroll eligible plan employees into the pension plan resulting in certification problems for state aid purposes. Two employees remained on part-time employment status until becoming full-time employees effective January 1, 2019, and were therefore not eligible for inclusion on the AG 385 filed during 2019; however, township procedures were not adequate to timely identify the inclusion of these ineligible individuals prior to submission.

Effect: The data submitted on this certification form is used, in part, to calculate the state aid due to the municipality for distribution to its pension plan. Because Lower Yoder participates in a regional police pension plan, the township's state aid allocation for its non-uniformed pension plan was determined using an alternate method, taking into account the municipality's pension costs and unit value as well as the municipality's percentage of the regional police pension plan's pension costs and unit value. The township's state aid allocation for 2019 was \$30,723, which was based on the plans' unit value. Based on the corrected information, the township was entitled to an allocation amounting to \$20,473. Therefore, the township received an overpayment of state aid in the amount of \$10,250 during 2019.

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

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

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Recommendation: We recommend that the total excess state aid, in the amount of \$10,250, plus interest, 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 the check.

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

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

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

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

Finding No. 2 – Noncompliance With Prior Recommendation – Untimely Deposit Of State Aid

Condition: As disclosed in the prior audit report, the municipality failed to deposit its 2016 and 2017 state aid allocations into an eligible pension plan within the 30-day grace period allowed by Act 205. Although the township eventually deposited the state aid into the plan, the township failed to include interest on the late deposit as previously recommended. A similar condition occurred during the current audit period. During 2019, the township received its state aid allocation on September 18, 2019, but did not deposit it into the pension plan until December 18, 2019, and again, failed to include interest on the untimely deposit.

Criteria: Section 402(g) of Act 205 states, in part:

. . . the total amount of the general municipal pension system State aid received by the municipality shall, within 30 days of receipt by the treasurer of the municipality, be deposited in the pension fund or the alternate funding mechanism applicable to the respective pension plan.

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Cause: As previously disclosed, state aid was not deposited timely into the municipality's pension plan because internal control procedures were not fully implemented to ensure the timely deposit of state aid. However, as noted in the Management Response disclosed in *Finding No. 3* of this report, the township continues to develop and strengthen its internal controls.

Effect: Although the state aid was eventually deposited into the plan, the interest earned beyond the 30-day grace period was not deposited into the plan. When state aid is not deposited into a pension plan account in a timely manner, the funds are not available to fund benefits, pay operating expenses or for investment and the risk of misapplication is increased.

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

Recommendation: We again recommend that the municipality pay the non-uniformed pension plan the interest earned during the period beyond the 30-day grace period allowed by Act 205, compounded annually. A copy of the interest calculation must be maintained by the township for examination during our next audit of the plan.

We also recommend that plan officials continue to develop and implement adequate internal control procedures to ensure that future state aid allocations are deposited timely in accordance with Act 205 requirements.

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

Auditor's Conclusion: Due to the potential withhold of state aid, the township's compliance with the finding recommendation will be monitored subsequent to the release of the audit report and through our next audit of the plan.

Finding No. 3 – Failure To Fully Pay The Minimum Municipal Obligation Of The Plan

Condition: The township did not fully pay the minimum municipal obligations (MMOs) of the non-uniformed pension plan for the years 2020, 2021 and 2022, as required by Act 205. Based on calculations prepared by the township, there remains outstanding MMO balances amounting to \$76,135, \$113,669 and \$103,900 for the years 2020, 2021 and 2022, respectively. In addition, although the township ultimately deposited its outstanding 2019 MMO balance of \$70,171 (*due December 31, 2019*) on February 3, 2021, the township failed to include interest as required by Act 205.

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – (Continued)

Criteria: With regard to the MMO, Section 302(c) of Act 205 states, in part:

Annually, the chief administrative officer of the pension plan shall determine the minimum obligation of the municipality with respect to the pension plan for the following plan year.

Section 302(d) of Act 205 states, in part:

The minimum obligation of the municipality shall be payable to the pension plan from the revenue of the municipality.

Furthermore, Section 302(e) of Act 205 states:

Any amount of the minimum obligation of the municipality which remains unpaid as of December 31 of the year in which the minimum obligation is due shall be added to the minimum obligation of the municipality for the following year, with interest from January 1 of the year in which the minimum obligation was first due until the date the payment is paid at a rate equal to the interest assumption used for the actuarial valuation report or the discount rate applicable to treasury bills issued by the Department of Treasury of the United States with a six-month maturity as of the last business day in December of the plan year in which the obligation was due, whichever is greater, expressed as a monthly rate and compounded monthly.

Cause: The township did not comply with the Act 205 requirements because of an ongoing lawsuit regarding the legality and validity of Ordinance 152 which increased pension benefits without the approval of the township auditors and therefore, increased the plan's annual MMO for the aforementioned funding years and changed the overfunded status of the plan to underfunded as of the January 1, 2019, actuarial valuation used in determining the MMOs for the impacted years.

Effect: The failure to fully pay the MMO could result in the plan not having adequate resources to meet current and future benefit obligations to its members.

Due to the municipality's failure to fully pay the 2020, 2021 and 2022 MMOs by the December 31, deadlines, the municipality must add the balances to the current year's MMO and include interest, as required by Act 205.

Recommendation: We recommend that the municipality pay the outstanding MMO balances due to the non-uniformed pension plan for the years 2020, 2021 and 2022, with interest, in accordance with Section 302(e) of Act 205. Additionally, the township should include the interest due on the late deposit of the plan's 2019 MMO. A copy of the interest calculations must be maintained by the township for examination during the next audit of the plan.

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – (Continued)

Management's Response: Municipal officials disagreed with the finding and provided the following response:

It is believed that the basis for such finding was a result of an amendment to the Township's Pension Plan on February 17, 2016, by way of Township Ordinance No. 152 (hereinafter "Ordinance 152"). Ordinance 152 amended the terms of the Plan to increase the pension benefits for members. The amendment by way of Ordinance No 152 was undertaken without auditor approval and therefore, resulted in an unauthorized increase in pension benefits. In particular, based on an estimate prepared by the pension plan administrator the increased benefits resulted in an unfunded liability amounting to approximately Three Hundred and Fifty-Three Thousand Five Hundred and Ninety-Six Dollars (\$353,596.00) or an overall cost increase to the Township of 1,484%. Accordingly, the Township's Pension Plan went from over funded (*sic*) in an amount of 114% to underfunded in the amount of 63%.

When Township Officials learned of the unauthorized increase through Ordinance No. 152, they obtained a forensic audit to identify the cause and effect of the unauthorized increase. Based on that forensic audit, a lawsuit was filed naming the individuals responsible for enactment of the unauthorized ordinance as well as the Pennsylvania Municipal Retirement System seeking, among other things, a determination that Ordinance No. 152 was unauthorized and, therefore, invalid and that the Township's Pension Plan benefit amounts should revert to pre-Ordinance No. 152 figures. It is expected that the lawsuit will be concluded in the near term pursuant to a consent order which will establish, as a matter of law, that Ordinance No. 152 is invalid and that the benefit figures must therefore revert to the pre-Ordinance No. 152 amounts.

Upon the resolution of the lawsuit as outlined above, it is expected that the Township's Pension Plan will once again be overfunded. We are happy to provide you with any information necessary to support or establish the position outlined above or explain the basis for this exception in more detail.

Auditor's Conclusion: The department acknowledges the township's position; however, since the outcome of the lawsuit remains pending and declaratory judgement evidencing that the ordinance was illegal and invalid to this point has not been issued, based on the criteria cited above, the finding remains as stated and compliance will be subject to evaluation during the next audit of the plan.

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
POTENTIAL WITHHOLD OF STATE AID

Conditions such as those reported by Finding Nos. 1 and 2 contained in this audit report may lead to a total withholding of state aid in the future unless those finding are corrected. However, such action will not be considered if sufficient documentation is provided to verify compliance with this department's recommendation. Such documentation should be submitted to: Department of the Auditor General, Bureau of Municipal Pension & Liquor Control Audits, 314 Finance Building, Harrisburg, PA 17120.

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

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

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2017, 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)
01-01-17	\$ 1,005,204	\$ 1,244,380	\$ 239,176	80.8%
01-01-19	1,092,043	1,465,893	373,850	74.5%
01-01-21	1,263,156	1,322,063	58,907	95.5%

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

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

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

LOWER YODER 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	\$ 9,552	\$ 19,674	\$ (10,122)	\$ 204,158	9.64%
2015	-	23,525	(23,525)	165,130	14.25%
2016	-	26,248	(26,248)	168,223	15.60%
2017	-	-	-	142,517	
2018	-	41,819	(41,819)	158,626	26.36%
2019	100,894	100,894	-	216,895	46.52%
2020	115,527	115,527	-	219,770	52.57%
2021	142,453	142,453	-	223,702	63.68%

* 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 SRC 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. It was noted that for 2020 and 2021, the township did not deposit the plan's annual required contribution (\$76,135 for 2020 and \$113,669 for 2021) refer to Finding No. 3 of this report.

LOWER YODER TOWNSHIP NON-UNIFORMED 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, 2021
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	1 year
Asset valuation method	Not available
Actuarial assumptions:	
Investment rate of return *	5.25%, compounded annually, net of investment and administration expenses
Projected salary increases *	4.1%
* Includes inflation at	2.2%
Cost-of-living adjustments	2.2% per year, subject to plan limitations

The information reported above was extracted from the Pennsylvania Municipal Retirement System Experience Study Results Report dated September 2020, which is the basis for the 01-01-2021 actuarial valuation. The report did not specify the actuarial or market value methodologies often contained in the Notes to Supplementary Schedules and will be added going forward when readily available.

LOWER YODER TOWNSHIP NON-UNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Joshua D. Shapiro
Governor
Commonwealth of Pennsylvania

Mr. William Heim
Chairman, Board of Township Supervisors

Ms. Natalie Urban
Secretary

Ms. Barbara Godish
Treasurer

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

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