

COMPLIANCE AUDIT

Lowhill Township Non-Uniformed Employees' Pension Plan Lehigh County, Pennsylvania For the Period January 1, 2017 to December 31, 2021

May 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
Lowhill Township
Lehigh County
New Tripoli, PA 18066

We have conducted a compliance audit of the Lowhill Township Non-Uniformed Employees' 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 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. 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 whether retirement benefits calculated for plan members who separated employment and received a lump-sum distribution 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 pension benefits due to the retired individuals and comparing these amounts to supporting documentation evidencing amounts determined and actually paid to the recipients.
- We determined whether the January 1, 2017, January 1, 2019, January 1, 2021, 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.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Lowhill Township Non-Uniformed Employees' 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 Lowhill Township Non-Uniformed Employees' 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 – Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

Finding No. 2 – Awarding Of Professional Services Contract Inconsistent With Provisions Of Act 205

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

The contents of this report were discussed with officials of Lowhill 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
May 2, 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 Lowhill Township Non-Uniformed Employees' 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.

The Lowhill Township Non-Uniformed Employees' Pension Plan is a single-employer defined contribution pension plan locally controlled by the provisions of Resolution No. 89-4, as amended. The plan was established April 20, 1989. Active members are not required to contribute to the plan. The municipality is required to contribute eight (8.0) percent of compensation. As of December 31, 2021, the plan had five active members and one terminated member eligible for vested benefits in the future.

LOWHILL TOWNSHIP NON-UNIFORMED EMPLOYEES' PENSION PLAN
STATUS OF PRIOR FINDINGS

Compliance With Prior Recommendation

Lowhill Township has complied with the prior recommendation concerning the following:

- Receipt Of State Aid In Excess Of Entitlement

During the current audit period, the township reimbursed \$185 to the Commonwealth for the overpayment of state aid in 2015.

Noncompliance With Prior Recommendation

Lowhill Township has not complied with the prior recommendation concerning the following:

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

Municipal officials failed to comply with the recommendation in the prior audit report to establish adequate internal control procedures to ensure compliance with the instructions that accompany Certification Form AG 385 to assist them in accurately reporting the required pension data, as further discussed in the Findings and Recommendations section of this report.

LOWHILL TOWNSHIP NON-UNIFORMED EMPLOYEES' PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Noncompliance 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 Findings section of this report, the township again failed to establish adequate internal control procedures to ensure compliance with the instructions that accompanied Certification Form AG 385. The township certified an ineligible non-uniformed employee and overstated payroll by \$13,797 on the Certification Form AG 385 filed in 2018. 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: Plan officials again failed to establish adequate internal control procedures, such as having another individual review the data certified, to ensure the accuracy of the data prior to submission and compliance with the prior audit recommendation.

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 the township's state aid allocation was based on pension costs, the incorrect certification of pension data affected the township's state aid allocation, as identified below:

<u>Normal Cost</u>	<u>Payroll Overstated</u>	<u>State Aid Overpayment</u>
8%	\$ 13,797	\$ 1,104

Recommendation: We recommend that the total excess state aid, in the amount of \$1,104, 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 again recommend that in the future, plan officials establish adequate internal control procedures, such as having at least 2 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.

LOWHILL TOWNSHIP NON-UNIFORMED EMPLOYEES' PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

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

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

Finding No. 2 – Awarding Of Professional Services Contract Inconsistent With Provisions Of Act 205

Condition: In 2020, the township changed investment service providers for the pension plan; however, there was no evidence provided to support that the contracting for these professional services was conducted and awarded in accordance with provisions of Act 205.

Criteria: Section 701-A of Act 205, defines a “Professional Services Contract”, as follows:

“Professional services contract.” A contract to which the municipal pension system is a party that is:

- (1) for the purchase or provision of professional services, including investment services, legal services, real estate services and other consulting services; and
- (2) not subject to a requirement that the lowest bid be accepted.

In addition, Section 702-A (a) of Act 205 states in part:

Each municipal pension system ... shall develop procedures to select the most qualified person to enter into a professional services contract. The procedures shall ensure that the availability of a professional services contract is advertised to potential participants in a timely and efficient manner. Procedures shall include applications and disclosure forms to be used to submit a proposal for review and to receive the award of a professional services contract.

Additionally, Section 702-A (c), (e), (f), and (h) state, in part:

Review. Procedures to select the most qualified person shall include a review of the person's qualifications, experience and expertise and the compensation to be charged.

Conflict of interest. The municipal pension system shall adopt policies relating to potential conflicts of interest in the review of a proposal or the negotiation of a contract.

LOWHILL TOWNSHIP NON-UNIFORMED EMPLOYEES' PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Public information. Following the award of a professional services contract, all applications and disclosure forms shall be public except for proprietary information or other information protected by law.

Notice and summary. The relevant factors that resulted in the award of the professional services contract must be summarized in a written statement to be included in or attached to the documents awarding the contract. Within ten days of the award of the professional services contract, the original application, a summary of the basis for the award and all required disclosure forms must be transmitted to all unsuccessful applications and posted on the municipal pension system's Internet website, if an Internet website is maintained, at least seven days prior to the execution of the professional services contract.

Section 703-A (c) states in part:

Upon the advertisement for a professional services contract by the municipal pension system, the contractor may not cause or agree to allow a third party to communicate with officials or employees of the municipal pension system except for requests for technical clarification.

Furthermore, Resolution No. 2013-3, enacted by the township on May 9, 2013, established procedures for the procurement of professional services for the municipal pension system in accordance with Act 205 provisions.

Cause: Plan officials failed to establish adequate procedures to follow and document adherence with each requirement prescribed under the provisions of Act 205 and its own procurement procedures in the awarding of the professional services contract for the investment services for the township's pension plan.

Effect: The township did not comply with the provisions stipulated in Act 205 and its own governing policies and procedures for the procuring of professional investment and advisory services for the township's pension plan. Also, by failing to maintain appropriate substantive supporting documentation evidencing adherence with each requirement prescribed under Act 205 and the township's own procedures in the awarding of the professional services contract, it denotes a general lack of overall transparency of the actions taken by plan officials relative to the awarding of the investment services contract for the township's pension plan.

LOWHILL TOWNSHIP NON-UNIFORMED EMPLOYEES' PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Recommendation: We recommend the township follow procedures developed and implemented by the township in Resolution No. 2013-3 for the procurement of professional services for the township's pension plan and ensure compliance with Act 205 provisions while maintaining appropriate and sufficient supporting documentation. This documentation should evidence every phase of the process in accordance with the township's policies and procedures in the awarding of future professional services contracts for the township's pension plans.

In addition, since the township did not comply with the provisions stipulated in Act 205 and its own governing policies and procedures relative to the procurement of the professional investment and advisory services for the township's pension plans awarded in 2020, we recommend that plan officials, along with current township officials, collectively review the process and familiarize themselves with the procedures enacted by the township while closely examining and identifying ways to improve the process as a whole, thus ensuring transparency for plan members as well as the citizens of Lowhill Township and the avoidance of any confusion pertaining to the proper administration of the township's pension plans.

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

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

LOWHILL TOWNSHIP NON-UNIFORMED EMPLOYEES' PENSION PLAN
SUMMARY OF DEPOSITED STATE AID AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid	Employer Contributions
2016	\$ 12,924	None
2017	14,055	None
2018	13,344	\$ 958
2019	14,187	4,647
2020	19,831	2,228
2021	21,793	None

LOWHILL TOWNSHIP NON-UNIFORMED EMPLOYEES' PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

Mr. Richard Hughes
Chairman, Board of Township Supervisors

Mr. Robb Werley
Chief Administrative Officer

Ms. Jill Seymour
Secretary

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.