

# CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN

**LUZERNE COUNTY** 

**COMPLIANCE AUDIT REPORT** 

FOR THE PERIOD

JANUARY 1, 2011 TO DECEMBER 31, 2013

## **COMMONWEALTH OF PENNSYLVANIA**

**EUGENE A. DEPASQUALE - AUDITOR GENERAL** 

DEPARTMENT OF THE AUDITOR GENERAL





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#### EUGENE A. DEPASQUALE AUDITOR GENERAL

The Honorable Mayor and City Council City of Wilkes-Barre Luzerne County Wilkes-Barre, PA 18711

We have conducted a compliance audit of the City of Wilkes-Barre Firemen's Relief Pension Plan for the period January 1, 2011 to December 31, 2013. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform our 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 audit 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. Our methodology addressed determinations about the following:

- · Whether state aid was properly determined and deposited in accordance with Act 205 requirements.
- · Whether employer contributions are determined and deposited in accordance with the plan's governing document and applicable laws and regulations.
- Whether employee contributions are required and, if so, are determined, deducted and deposited into the pension plan and are in accordance with the plan provisions and applicable laws and regulations.

- · Whether benefit payments, if any, represent payments to all (and only) those entitled to receive them and are properly determined in accordance with applicable laws and regulations.
- Whether obligations for plan benefits are accurately determined in accordance with plan provisions and based on complete and accurate participant data; and whether actuarial valuation reports are prepared and submitted to the Public Employee Retirement Commission (PERC) in accordance with state law and 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.
- · Whether benefit payments have only been made to living recipients, based on the Social Security numbers found in the pension records for retirees and beneficiaries.
- · Whether the terms and methodologies of the issuance of bonds by the municipality, and any restrictions are in compliance with plan provisions and state regulations.

The City of Wilkes-Barre contracted with an independent certified public accounting firm for audits of the City of Wilkes-Barre Firemen's Relief Pension Plan's financial statements for the years ended December 31, 2011 and 2012, which are available at the city's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

City officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the City of Wilkes-Barre Firemen's Relief Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the city's internal controls as they relate to the city's compliance with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials 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 tests indicated that, in all significant respects, the City of Wilkes-Barre Firemen's Relief 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 Audit Recommendation - Plan Provisions Inconsistent With The Third Class City Code

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

Finding No. 1 contained in this audit report repeats a condition that was cited in our previous audit report that has not been corrected by city officials. We are concerned by the city's failure to correct this previously reported audit finding 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. We would like to point out that, although the funded status of the plan contained in the schedule of funding progress included in this report indicates a funded ratio of 90.9% as of January 1, 2013, when combined with the funded status of the city's other pension plans this places the city currently in Level II moderate distress status.

The contents of this report were discussed with officials of the City of Wilkes-Barre and, where appropriate, their responses have been included in the report. We would like to thank city officials for the cooperation extended to us during the conduct of the audit.

May 20, 2014

EUGENE A. DEPASQUALE

Eugent: O-Pager

Auditor General

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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. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system state aid and of every municipal pension plan and fund in which general municipal pension system state aid is deposited.

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 City of Wilkes-Barre Firemen's Relief Pension Plan is also governed by implementing regulations adopted by the Public Employee Retirement Commission 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 177 General Local Government Code, Act of December 19, 1996 (P.L. 1158, No. 177), as amended, 53 Pa.C.S. § 101 et seq.
- Act 317 The Third Class City Code, Act of June 23, 1931 (P.L. 932, No. 317), as amended, 53 P.S. § 35101 et seq.

The City of Wilkes-Barre Firemen's Relief Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of File of Council No. 25 of 1976, as amended. The plan covers firefighters who were hired after July 8, 1976. The plan is also affected by the provisions of collective bargaining agreements between the city and its firefighters. Active members are required to contribute 5 percent of compensation to the plan. As of December 31, 2013, the plan had 61 active members, no terminated members eligible for vested benefits in the future and 30 retirees receiving pension benefits from the plan.

#### **BACKGROUND** – (Continued)

As of December 31, 2013, selected plan benefit provisions are as follows:

### **Eligibility Requirements:**

Normal Retirement Hired before January 24, 2001 at attainment of age 50 and hired

after January 23, 2001 age 50 and 20 years of service.

Early Retirement At least 10 years of service and hired before January 24, 2001.

Vesting Not provided prior to early or normal retirement.

#### Retirement Benefit:

Member's final average salary with the percentage equal to 2.5% for each year of service up to 20 years plus a service increment percentage equal to 1.25% (2.25% if hired after January 23, 2001) for each year of service in excess of 20 years. If hired before January 24, 2001, the service increment percentage shall be limited to 25% effective January 1, 1997 and 20% effective June 29, 1999. If hired before December 31, 2001, the service increment shall not exceed \$100 per month.

### Survivor Benefit:

No age or service requirements if member's death is job-related; if death is not job-related, member must have been hired before January 24, 2001 and 10 years of service is required. A percentage of the member's final salary; if death is job-related the percentage is equal to 50%, plus a service increment calculated in same manner as for normal retirement. If death is not job-related the percentage is equal to 2.5% for each year of service up to 20 years. The service increment in the same manner as for normal retirement.

#### Service Related Disability Benefit:

Service Related – No age or service required. A percentage of the member's final average salary equal to 50%, plus a service increment calculated in the same manner as for normal retirement.

Non-Service Related – Member must have been hired before January 24, 2001 and 5 years (6 years for members hired after October 4, 1998) of service required. A percentage of the member's final average salary with a percentage equal to 2.5% for each year of service up to 20 years, plus a service increment percentage calculated in the same manner as for normal retirement. There is no reduction for commencement of benefits before normal retirement.

# CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN STATUS OF PRIOR FINDINGS

### Noncompliance With Prior Audit Recommendation

The City of Wilkes-Barre has not complied with the prior audit recommendation concerning the following as further discussed in the Findings and Recommendations section of this report:

· Plan Provisions Inconsistent With The Third Class City Code

# Finding No. 1 - Noncompliance With Prior Audit Recommendation - Plan Provisions Inconsistent With The Third Class City Code

<u>Condition</u>: As disclosed in the prior audit report, the city adopted a home rule charter pursuant to the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901 <u>et seq.</u> (previously 53 P.S. § 1-101 et seq.) and provided pension benefits to its firefighters inconsistent with the Third Class City Code. The city continues to provide pension benefits to its firefighters inconsistent with the Third Class City Code, as follows:

Benefits	Plan Governing Document	Third Class City Code		
Basis of pension	Average monthly compensation for the firefighter's final year average salary.	Monthly salary or the highest average annual salary which was received during any 5 years of service preceding retirement, whichever is the higher. (§4322)		
Definitions	Monthly compensation – basic monthly compensation plus longevity payments, acting officer's pay, EMT bonuses, overtime pay, night shift differential, educational incentive payments, holiday pay and annual buyback of sick leave.	Salary - the fixed amount of compensation paid at regular periodic intervals by the city to the member and from which pension contributions have been deducted; this is interpreted to exclude buybacks of leave earned outside of the pension computation period. (§4328)		
Service increment contribution	Not provided by ordinance, although members do make contributions to fund this benefit.	A sum not to exceed \$1 per month, payable only until the employee reaches age 65 (§4322(b)(2)).		
Nonservice- related disability benefit	If the member has served at least 5 years, the member receives an immediate monthly benefit based on the number of years of service.	Not authorized		

### Finding No. 1 - (Continued)

Benefits	Plan Governing Document	Third Class City Code		
Service increment	1.25% of final year average salary multiplied by the number of years of service in excess of 20 years, not to exceed the following: Effective January 1, 1997: 75%; Effective June 29, 1999: 70%.	1/40th (2.5%) of pension benefit multiplied by the number of whole years in excess of 20 years, not to exceed \$100 per month.  No credit for service after the employee is 65 years old. (§4322(b)(1))		
		After the effective date of this clause, the city may agree to make service increment payments in excess of the one hundred dollars (\$100) per month as long as such payments do not exceed five hundred dollars (\$500) per month, and in computing such service increment, no employment after age sixty-five years shall be included:  Provided, that any agreement to provide an increase in service increment payments shall include a proportionate increase in the amount each contributor shall pay into the retirement fund under clause (2), not to exceed five dollars (\$5) per month (\$4322(b)(6))		
Survivor's benefit for children of retirees	The guardian of any minor children of the retiree receives the pension benefit the retiree was receiving if the retiree's spouse is deceased or remarried.	Not authorized		

### Finding No. 1 - (Continued)

Benefits	Plan Governing Document	Third Class City Code	
Type of discharge required for nonintervening military service credit	Honorable or general discharge	No requirement	
Purchase of nonintervening military service credit	Does not require the member to pay interest on the equivalent of the city's contributions.	Requires the payment of the equivalent of the city's contributions, plus interest. (§4321)	
Years of service required for vested benefits	10 years	12 years (§4320.1(a))	
Commencement of vested benefits	At age 50	Date which would have been the member's retirement date had he continued full-time employment with the fire department. (§4320.1(b))	
Vested portion of base retirement benefits	A fraction, as follows: the number of full years of service completed divided by 20.	The percentage that the years of service actually rendered bears to the years of service which would have been rendered had the member continued to be employed by the department until the minimum retirement date. (§4320.1(b)(2))	
Members' contributions disposition for terminating nonvested, nonretiring members	Participant elects whether to leave contributions in the firemen's pension relief fund or to have them refunded.	Members' contributions must be refunded to the member. (§4327)	

### Finding No. 1 - (Continued)

Benefits	Plan Governing Document	Third Class City Code
Vesting conditions	None provided	The vesting member must file a written notice of intent to vest, at least 30 days prior to termination, which includes the member's intended termination date, and the member must be in good standing on the date of notice.  The board must indicate on the notice to vest the basis for calculating the vested benefit. (4320.1(a))
Basis for calculating the vested benefit	Average monthly compensation for the firefighter's final year average salary prior to retirement or termination of employment.	Rate of the monthly pay of the member as of the date of the notice to vest or the highest average annual salary which the member received during any 5 years of service preceding the date, whichever is the higher. (§4320.1(a)(5))
Interest on refunds of members' contributions	5 percent	Not authorized (§4327)
Time limit on buyback of prior service time	Buyback must be elected in writing within 6 months of rehire and must be completed within 24 months of the written election.	No time limit provided (§4327)
Credit for periods of termination	Upon rehire, employees may buy back the time between employment periods.	Not authorized

### **Finding No. 1 - (Continued)**

Benefits	Plan Governing Document	Third Class City Code	
Early Retirement	Participants with 20 years of service may retire before the age of 50 with a pension reduced by 4% for each year such participant's age is short of age 50.	Not authorized	
Composition of pension board	5 members, as follows: the mayor, the city controller, the director of human resources, and 2 pension plan participants elected by the plan members.	7 members, as follows: the mayor, the city controller, the director of accounts and finance, the chief of the bureau of fire, ex officio, the director of the department having charge of the fire department, or in cities where the mayor is also the director of the department having charge of the fire department, then the director of public safety, and 2 members of the fire department chosen by the fire department members. (§4320)	

<u>Criteria</u>: On January 24, 2001, the Commonwealth Court of Pennsylvania issued its opinion in *Municipality of Monroeville v. Monroeville Police Department Wage Policy Committee*. Therein, the court held that Section 2962(c)(5) of the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2962(c)(5), "clearly precludes home rule municipalities from providing pension benefits different from those prescribed in general law including Act 600." The court's holding was in accord with the position taken by this Department since at least January 1995.

Cause: City officials are unable to amend the plan's governing ordinances to comply with the Third Class City Code due to the fact that pension benefits are a mandatory subject of collective bargaining. The city attempted to amend these benefits through bargaining with the labor union; however, the city has been unsuccessful in doing so and has been ordered by the Pennsylvania Labor Relations Board to have the benefits continue as they are currently prescribed in the city's governing ordinances. The current collective bargaining agreement has been extended to December 31, 2016.

### Finding No. 1 – (Continued)

<u>Effect</u>: The provision of unauthorized benefits increases the plan's pension costs and reduces the amount of funds available for investment purposes or the payment of authorized benefits or administrative expenses. Since the city received its state aid allocations based on unit value during the audit period, it did not receive any excess state aid allocations attributable to unauthorized pension benefits provided. However, the provision of unauthorized pension benefits could result in the receipt of excess state aid in the future and could increase the municipal contributions necessary to fund the plan in accordance with Act 205 funding standards.

Recommendation: The department acknowledges that its position has changed over the years and that, until *Monroeville*, there was no definitive decision as to whether home rule municipalities were obliged to comply with applicable pension law. The department seeks, therefore, to implement the decision in as equitable a fashion as possible, while paying necessary deference to the court's ruling. Accordingly, the department will not penalize a home rule municipality for granting benefits not authorized by the Third Class City Code to existing retirees or to individuals who began full-time employment before January 24, 2001 (the date *Monroeville* was issued). However, the department expects the city to restrict pension benefits to those authorized by the Third Class City Code for all employees who began full-time employment on or after that date.

Management's Response: City officials agreed with the finding without exception. On August 22, 2012, a settlement agreement between the city and its firefighters amended the collective bargaining agreement to state that all firefighters hired after January 1, 2013 shall be entitled to pension benefits not in excess of the Third Class City Code. The city is working with City Council to make any and all necessary changes to ordinances regarding the firemen's relief pension plan.

<u>Auditor's Conclusion</u>: Based on the management response, the city has partially complied with the finding recommendation. Full compliance will be evaluated during our next audit of the plan.

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

<u>Condition</u>: The city certified 1 ineligible firefighter (2 units) on the Certification Form AG 385 filed in 2013. The data contained on this certification form is based on prior calendar year information.

<u>Criteria</u>: 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.

<u>Cause</u>: Plan officials failed to establish adequate internal control procedures to ensure the accuracy of the data certified.

<u>Effect</u>: 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 city's state aid allocation was based on unit value, the incorrect certification of pension data affected the city's state aid allocation, as identified below:

	Units	Unit		State Aid	
Year	Overstated	Value	O	verpayment	
2013	2	\$ 3,884	\$	7,768	

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

<u>Recommendation</u>: We recommend that the total excess state aid, in the amount of \$7,768, 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, 320 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 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.

### Finding No. 2 – (Continued)

In addition, if the reimbursement to the Commonwealth is made from firemen's relief 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.

<u>Auditor's Conclusion</u>: Compliance with the finding recommendation will be monitored subsequent to the release of the audit report and through our next audit of the pension plan.

### CITY OF WILKES-BARRE FIREMEN'S RELIEF 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, 2009, is as follows:

	(1)	(2)	(3)	(4)	(5)	(6)
						Unfunded
			Unfunded			(Assets in
		Actuarial	(Assets in			Excess of)
		Accrued	Excess of)			Actuarial
	Actuarial	Liability	Actuarial			Accrued
Actuarial	Value of	(AAL) -	Accrued	Funded	Covered	Liability as a %
Valuation	Assets	Entry Age	Liability	Ratio	Payroll	of Payroll
Date	(a)	(b)	(b) - (a)	(a)/(b)	(c)	[(b-a)/(c)]
01-01-09	\$ 16,405,936	\$ 16,625,406	\$ 219,470	98.7%	\$ 4,354,561	5.0%
01-01-11	18,503,485	19,776,849	1,273,364	93.6%	4,509,110	28.2%
01-01-13	21,295,726	23,418,640	2,122,914	90.9%	4,211,478	50.4%

Note: The market values of the plan's assets at 01-01-09, 01-01-11 and 01-01-13 have been adjusted to reflect the smoothing of gains and/or losses subject to a corridor between 70 to 130 percent of the market value of assets. 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.

### CITY OF WILKES-BARRE FIREMEN'S RELIEF 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.

Trends in unfunded (assets in excess of) actuarial accrued liability and annual covered payroll are both affected by inflation. Expressing the unfunded (assets in excess of) actuarial accrued liability as a percentage of annual covered payroll (Column 6) approximately adjusts for the effects of inflation and aids analysis of the plan's progress made in accumulating sufficient assets to pay benefits when due. Generally, where there is an unfunded actuarial accrued liability, the smaller this percentage, the stronger the plan. When assets are in excess of the actuarial accrued liability, the higher the bracketed percentage, the stronger the plan.

### CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN SUPPLEMENTARY INFORMATION (UNAUDITED)

# SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2008	\$ 69,212	100.0%
2009	119,125	100.0%
2010	158,622	100.0%
2011	515,301	100.0%
2012	389,043	100.0%
2013	456,414	100.0%

### CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN SUPPLEMENTARY INFORMATION NOTES TO SUPPLEMENTARY SCHEDULES (UNAUDITED)

The information presented in the required 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, 2013

Actuarial cost method Entry age normal

Amortization method Level dollar

Remaining amortization period 17 years

Asset valuation method Plan assets are valued using the

method described in Section 210 of Act 205, as amended, subject to a corridor between 70-130% of

the market value of assets.

Actuarial assumptions:

Investment rate of return 8.0% compounded annually

Projected salary increases 3.5% compounded annually

### CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett Governor Commonwealth of Pennsylvania

City of Wilkes-Barre Firemen's Relief Pension Plan Luzerne County 40 East Market Street Wilkes-Barre, PA 18711

The Honorable Thomas M. Leighton Mayor

Mr. William Barrett Council Chairperson

Mr. James Ryan City Clerk

Ms. Kathleen Kane City Controller

Ms. Laura Brace City Pension Coordinator

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