

COMPLIANCE AUDIT

Black Creek Township Non-Uniformed Pension Plan Luzerne County, Pennsylvania For the Period January 1, 2011 to December 31, 2013

February 2015



Commonwealth of Pennsylvania
Department of the Auditor General
Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE
AUDITOR GENERAL

Board of Township Supervisors
Black Creek Township
Luzerne County
Rock Glen, PA 18246

We have conducted a compliance audit of the Black Creek Township Non-Uniformed 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 finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding 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 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. State aid allocations that were deposited into the pension plan for the years ended December 31, 2008 to December 31, 2013, are presented on the Summary of Deposited State Aid and Employer Contributions.
- Whether employer contributions are determined and deposited in accordance with the plan's governing document and applicable laws and regulations. Employer contributions that were deposited into the pension plan for the years ended December 31, 2008 to December 31, 2013, are presented on the Summary of Deposited State Aid and Employer Contributions.

- 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 the terms of the contractual agreement with the Pennsylvania Municipal Retirement System are in accordance with the plan's governing document, if separately stated, and applicable laws and regulations.

The Black Creek Township Non-Uniformed Pension Plan participates in the Pennsylvania Municipal Retirement System (PMRS), which is an agent multiple-employer public employee retirement system that acts as a common investment and administrative agent for participating municipal pension plans. PMRS issues a separate Comprehensive Annual 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 Black Creek Township Non-Uniformed 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 township's internal controls as they relate to the township'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 Black Creek Township Non-Uniformed Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following finding further discussed later in this report:

Finding – Partial Compliance With Prior Audit Recommendation –
Receipt Of State Aid In Excess Of Entitlement

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



EUGENE A. DEPASQUALE
Auditor General

January 15, 2015

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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 Black Creek Township Non-Uniformed 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 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 Black Creek Township Non-Uniformed Pension Plan is a single-employer cash balance pension plan locally controlled by the provisions of Ordinance No. 5 of 2012, adopted pursuant to Act 15. The plan was established January 10, 1986. Active members are not required to contribute to the plan, but may optionally contribute up to, but no more than 20 percent of compensation to the plan. For members hired prior to October 1, 2012, the municipality is required to contribute 15 percent of each member's compensation. For members hired on or after October 1, 2012, the municipality is required to contribute 5 percent of each member's compensation. As of December 31, 2013, the plan had 3 active members, 5 terminated members eligible for vested benefits in the future, and 1 retiree receiving pension benefits.

BLACK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendations

Black Creek Township has complied with the prior audit recommendations concerning the following:

- Improper Allocation Of State Aid

The township reimbursed its current reserve account with PMRS in an amount equal to the original forfeited member's account balance of \$10,867, and used this available forfeiture to offset the 2011 municipal obligation for full-time members of the pension plan as disclosed in the Summary of Deposited State Aid and Employer Contribution section of this report.

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

The township returned \$14,864 to the Commonwealth for the excess state aid received in 2011.

- Failure To Appoint A Chief Administrative Officer

Township officials appointed a chief administrative officer of the pension plan by a motion recorded in the minutes of the board of township supervisors meeting.

Partial Compliance With Prior Audit Recommendation

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

- Receipt Of State Aid In Excess Of Entitlement

During the current audit period, the township reimbursed \$7,254 to the Commonwealth for the excess state aid received in the years 2009 and 2010; however, plan officials failed to reconcile the amount of state aid allocated to the pension plan, after the application of available forfeitures, to the pension plan's pension costs attributable to full-time members in the years 2012 and 2013 as further discussed in the Finding and Recommendation section of this report.

BLACK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDING AND RECOMMENDATION

Finding – Partial Compliance With Prior Audit Recommendation – Receipt Of State Aid In Excess Of Entitlement

Condition: As disclosed in the prior audit report, the township received state aid in excess of the plan’s annual pension costs for full-time members in the years 2009 and 2010. During the current audit period, the township returned \$7,254 to the Commonwealth for the excess state aid received in those years; however, the township received state aid in excess of the non-uniformed pension plan’s annual pension costs for full-time plan members in the years 2012 and 2013, as illustrated below:

	<u>2012</u>	<u>2013</u>
Municipal pension costs for full-time members	\$ 12,712	\$ 5,029
Forfeitures available	<u>(8,873)</u>	<u>-</u>
Adjusted municipal pension costs for full-time members	<u>\$ 3,839</u>	<u>\$ 5,029</u>
State aid allocation	\$ 14,304	\$ 13,776
Adjusted municipal pension costs for full-time members	<u>(3,839)</u>	<u>(5,029)</u>
Excess state aid	<u>\$ 10,465</u>	<u>\$ 8,747</u>

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

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

BLACK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

In addition, Section 402(d) of Act 205 states, in part:

Eligible recipients of general municipal pension system State aid. Any county of the second class which, prior to the effective date of this chapter, received allocations for its police pension fund pursuant to the act of May 12, 1943 (P.L. 259, No. 120), or any city, borough, incorporated town or township or any home rule municipality formerly classified as a city, borough, incorporated town or township which employs one or more full-time municipal employees. . . .

Furthermore, Section 402(e)(2) of Act 205 states, in part:

The applicable number of units shall be attributable to each active employee who was employed on a full-time basis for a minimum of six consecutive months. . . .

Therefore, Act 205 state aid funding may only be used to fund the pension costs attributable to full-time employees.

Cause: Plan officials failed to reconcile the township's allocations of state aid to the plan's annual pension costs attributable to full-time plan members.

Effect: It is this department's opinion that because the entire proceeds of the insurance premium tax on foreign casualty insurance companies are distributed annually to each eligible recipient municipality, it is inappropriate to use state aid received in one year to offset pension costs in other years. Consequently, the overpayments of state aid received in the years 2012 and 2013, in the total amount of \$19,212, must be returned to the Commonwealth for redistribution.

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

BLACK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

Recommendation: We recommend that the municipality return the \$19,212 of excess state aid received in the years 2012 and 2013 to the Commonwealth from the municipality's general fund. A check in this amount, with interest compounded annually from date of receipt to date of repayment, at a rate earned by the 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 also be submitted along with evidence of payment.

Furthermore, we again recommend that in the future, plan officials reconcile the amount of state aid allocated to the township with the plan's annual pension costs attributable to full-time members and reimburse any excess state aid received to the Commonwealth.

Management's Response: Municipal officials intend to formally respond to the finding once the audit is issued after meeting with their solicitor.

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

BLACK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
POTENTIAL WITHHOLD OF STATE AID

The finding contained in this audit report cites an overpayment of state aid to the township in the amount of \$19,212. A condition of this nature may lead to a total withholding of state aid in the future unless the finding is corrected. A check in this amount with interest, 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.

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

Year Ended December 31	State Aid	Employer Contributions
2008	\$ 6,373	\$ 2,937
2009	None	None
2010	None	None
2011	3,289	2,405
2012	3,839	None
2013	5,029	None

In 2009, the township met the plan's \$3,506 funding requirement through the deposit of \$3,506 in terminated employee forfeitures.

In 2010, the township met the plan's \$3,290 funding requirement through the deposit of \$3,290 in terminated employee forfeitures.

In 2011, the township met the plan's \$16,561 funding requirement through the deposit of \$3,289 in state aid and \$10,867 in terminated employee forfeitures and \$2,405 in employer contributions.

In 2012, the township met the plan's \$12,712 funding requirement through the deposit of \$3,839 in state aid and \$8,873 in terminated employee forfeitures.

BLACK CREEK TOWNSHIP NON-UNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

Black Creek Township Non-Uniformed Pension Plan
Luzerne County
P.O. Box 3
Rock Glen, PA 18246

Ms. Bonnie H. Adams	Chairperson, Board of Township Supervisors
Mr. Dennis D. Feerrar	Secretary/Treasurer
Ms. Kristine M. Cline	Pennsylvania Municipal Retirement System

This report is a matter of public record and is available online at www.auditorgen.state.pa.us. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to: news@auditorgen.state.pa.us.