

COMPLIANCE AUDIT

Borough of Bath Non-Uniformed Pension Plan and Trust Northampton County, Pennsylvania For the Period January 1, 2017 to December 31, 2020

August 2021



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



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**TIMOTHY L. DEFOOR
AUDITOR GENERAL**

The Honorable Mayor and Borough Council
Bath Borough
Northampton County
Bath, PA 18014

We have conducted a compliance audit of the Borough of Bath Non-Uniformed Pension Plan and Trust for the period January 1, 2017 to December 31, 2020. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The objective of the audit was 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 objective identified above. 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, 2015 to December 31, 2020, 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, 2015 to December 31, 2020, 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 lump-sum distributions 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, and January 1, 2019 actuarial valuation reports were prepared and submitted by March 31, 2018, and 2020, 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.

Bath Borough contracted with an independent certified public accounting firm for annual audits of its financial statements prepared in conformity with the accounting practices prescribed or permitted by the Department of Community and Economic Development of the Commonwealth of Pennsylvania, which are available at the borough's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Borough of Bath Non-Uniformed Pension Plan and Trust 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 objective.

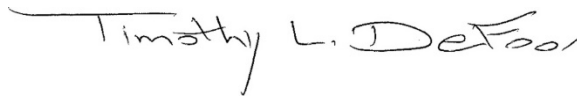
The results of our procedures indicated that, in all significant respects, the Borough of Bath Non-Uniformed Pension Plan and Trust was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further discussed later in this report:

Finding No. 1 – Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid

Finding No. 2 Receipt Of State Aid In Excess Of Entitlement

Finding No. 3 – Untimely Deposit Of State Aid

The contents of this report were discussed with officials of Bath Borough and, where appropriate, their responses have been included in the report. We would like to thank borough 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 from the start of the name.

Timothy L. DeFoor
Auditor General

July 27, 2021

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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 Borough of Bath Non-Uniformed Pension Plan and Trust 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 Borough of Bath Non-Uniformed Pension Plan and Trust is a single-employer defined contribution pension plan locally controlled by the provisions of Ordinance No. 1998-517, as amended. The plan was established March 2, 1998. Active members are not required to contribute to the plan. The municipality is required to contribute 7 percent of compensation. As of December 31, 2020, the plan had 4 active members. Subsequent to the current period, the plan was amended and restated in its entirety by Ordinance No. 2021-706 on June 7, 2021.

BOROUGH OF BATH NON-UNIFORMED PENSION PLAN AND TRUST
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid

Condition: The borough failed to certify 2 eligible non-uniformed employees (2 units) and understated payroll by \$48,222 on the Certification Form AG 385 filed in 2018. Two employees left employment with the borough during 2017, but not until after satisfying the requirements for inclusion on the AG 385 according to Act 205. In addition, the borough also understated payroll by \$15,696 on the Certification Form AG 385 filed in 2020. The data contained on these certification forms is based on prior calendar year information.

Criteria: Pursuant to Act 205, at Section 402(e)(2), an employee who has been employed on a full-time basis for at least six consecutive months and has been participating in a pension plan during the certification year is eligible for certification.

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.

Cause: Plan officials believed that the two employees could not be certified on the AG 385 form since they were not plan members at the end of the plan year, even though both employees worked greater than 6 consecutive months full-time during 2017. In addition, incorrect payroll figures were certified in error for employees on the 2020 form and the borough's internal control procedures, such as having another individual review the accuracy of the data certified, were not adequate to timely identify the error 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 Bath Borough participated in a regional police pension plan during 2018, the borough's 2018 state aid allocation for its non-uniformed pension plan was separately calculated 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 borough's original state aid allocation for 2018 was \$11,721. However, based on the corrected information and the borough's actual pension costs of \$13,536 for 2018, the underpayment of state aid due to the borough is \$1,815.

BOROUGH OF BATH NON-UNIFORMED PENSION PLAN AND TRUST
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

In addition, because the borough no longer participated in a regional police agreement during 2020, the borough's 2020 state aid allocation was based on the plan's pension costs. Based on the corrected information, the borough was entitled to an allocation of \$11,500, therefore, the borough received a \$1,099 underpayment of state aid. The total underpayment of state aid to the borough is summarized below:

<u>Year</u>	<u>State Aid Underpayment</u>
2018	\$ 1,815
2020	<u>1,099</u>
Total	<u>\$ 2,914</u>

Although the borough will be reimbursed for the total underpayment of state aid due to the borough's certification errors, the full amount of the 2018 and 2020 state aid allocations were not available to be deposited timely and therefore resulted in the borough having to make additional municipal contributions in order to meet the plan's funding obligation.

Recommendation: We 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.

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.

BOROUGH OF BATH NON-UNIFORMED PENSION PLAN AND TRUST
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – Receipt Of State Aid In Excess Of Entitlement

Condition: The borough received state aid in excess of the plan’s annual pension costs for the year 2019, as illustrated below:

Actual municipal pension costs	\$ 12,608
Forfeitures available	<u>(1,447)</u>
Adjusted actual municipal pension costs	11,161
State aid allocation	<u>12,608</u>
Excess state aid	<u><u>\$ 1,447</u></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.

Cause: Although the borough completed paperwork requesting the plan custodian distribute a terminated member’s vested account during 2019 to the individual at separation (*member was 40 percent vested on date of separation*), the plan custodian inadvertently distributed 100 percent of the account balance to the individual in error, thereby misapplying the non-vested portion of the terminated member’s account. The error was not identified by plan officials until April 2021, accordingly.

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 in one year to offset pension costs in other years. Consequently, the overpayment of state aid in the year 2019, in the total amount of \$1,447, must be returned to the Commonwealth for redistribution.

BOROUGH OF BATH NON-UNIFORMED PENSION PLAN AND TRUST
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Recommendation: We recommend that the municipality return the \$1,447 of excess state aid received in the year 2019 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 plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 321 Finance Building, Harrisburg, PA 17120. A copy of the interest calculation must be submitted along with evidence of payment.

Furthermore, we recommend that, in the future, plan officials timely monitor distributions from the pension plan and reconcile the borough's annual state aid allocation along with any available plan forfeitures with the plan's annual pension costs and reimburse any excess state aid received to the Commonwealth.

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 plan.

Finding No. 3 – Untimely Deposit Of State Aid

Condition: The municipality did not deposit its 2019 state aid allocation into the pension plan within the 30 day grace period allowed by Act 205. The municipality received its 2019 state aid allocation in the amount of \$14,224 on September 18, 2019, but did not deposit the funds into its non-uniformed pension plan until January 14, 2020.

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 pension plan.

Cause: The borough lacked adequate oversight procedures to ensure timely deposit of the municipality's 2019 state aid allocation into its pension plan.

Effect: Although the state aid was subsequently 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 pay operating expenses or for investment and the risk of misapplication is increased.

BOROUGH OF BATH NON-UNIFORMED PENSION PLAN AND TRUST
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – (Continued)

Recommendation: We 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. A copy of the interest calculation must be maintained by the borough for examination during our next audit of the plan.

We also recommend that plan officials 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: Compliance will be evaluated during our next audit of the plan.

**BOROUGH OF BATH NON-UNIFORMED PENSION PLAN AND TRUST
SUMMARY OF DEPOSITED STATE AID AND EMPLOYER CONTRIBUTIONS**

Year Ended December 31	State Aid	Employer Contributions
2015	\$ 9,313	None
2016	2,931	None
2017	11,711	None
2018	11,721	\$ 1,815
2019	12,608	None
2020	10,401	\$ 5,297

Note: In 2016, the borough met the plan's \$8,022 funding requirement through the deposit of \$2,931 in state aid and the allocation of \$5,091 in terminated employee forfeitures.

Note: In 2019, the borough met the plan's \$12,608 funding requirement through the deposit of \$12,608 in state aid. However, the borough did not correctly utilize \$1,447 in terminated employee forfeitures which resulted in excess state aid as disclosed in Finding No. 2 of this report.

BOROUGH OF BATH NON-UNIFORMED PENSION PLAN AND TRUST
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

The Honorable Fiorella Reginelli-Mirabito
Mayor

Mr. Mark Saginario
Council President

Mr. Bradford T. Flynn
Borough Manager

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.