



Rombout Fire District Board Oversight of Financial Activities

Report of Examination

Period Covered:

January 1, 2015 – September 8, 2016

2017M-88



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

July 2017

Dear Fire District Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board of Fire Commissioner governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Rombout Fire District, entitled Board Oversight of Financial Activities. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Rombout Fire District (District) is a district corporation of the State, distinct and separate from the Town of Fishkill, in Dutchess County. The Board of Fire Commissioners (Board) is composed of five elected members and is responsible for the District's overall financial management and safeguarding its resources. The Board appoints a Treasurer and a Secretary. The Treasurer acts as the District's chief fiscal officer and is responsible for the receipt and custody of District funds, disbursing and accounting for those funds, preparing monthly and annual financial reports and meeting any other reporting requirements. The Secretary is responsible for maintaining the District's records and official papers. The District's general fund appropriations for 2016 totaled \$1,063,855 and for 2017 totaled \$1,107,961. Appropriations are funded primarily by real property taxes. The District has a Length of Service Awards Program (LOSAP) and contributed \$125,000 to it in 2015 and \$80,000 in 2016.

Objective

The objective of our audit was to examine the District's internal controls over financial operations. Our audit addressed the following related question:

- Did the Board provide adequate oversight of District financial activities and LOSAP?

Scope and Methodology

We examined the District's internal controls over selected financial operations and reviewed its records and reports for the period January 1, 2015 through September 8, 2016. We extended our review back to 1990 to review LOSAP documents.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Comments of District Officials and Corrective Action

The results of our audit and recommendations have been discussed with District officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as indicated in Appendix A, District officials generally agreed with our recommendations and indicated they plan to initiate corrective

action. Appendix B includes our comments on certain issues District officials raised in their response.

The Board has the responsibility to initiate corrective action. Pursuant to Section 181-b of New York State Town Law, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and forwarded to our office within 90 days. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Board should make the CAP available for public review in the Secretary's office.

Board Oversight

The Board has a fiduciary responsibility to oversee the District's fiscal activities and safeguard its resources. This responsibility includes establishing internal controls and related policies and procedures that provide reasonable assurance that cash and other resources are properly safeguarded.

The Board needs to improve its oversight of District operations. The Board did not provide adequate oversight of the District's Length of Service Award Program (LOSAP). Specifically, it engaged professional service providers for managing various facets of LOSAP without first soliciting competition or entering into written contracts with them. Further, neither the District nor its LOSAP administrator could provide documentation to show how much the District paid for these services. The Board also did not maintain essential financial documentation to detail how LOSAP funds were invested and disbursed. The Board designated a financial advisor to act as custodian of the District's funds, instead of a bank or trust company as required by General Municipal Law (GML). The Board also borrowed \$100,000 each year from District reserve funds to fund operating expenses, which is not in compliance with the law. Finally, the Board has not adopted an online banking policy that defines the process for authorizing, processing and monitoring transactions. As a result of the Board's inadequate oversight, District funds are at increased risk of loss.

Length of Service Awards Program

The Board adopted and District residents voted to approve a LOSAP in 1990. The District sponsors and funds a defined-benefit LOSAP, which is intended to facilitate the recruitment and retention of active volunteer firefighters by providing them with a pension-like benefit based upon their years of firefighting service to the District. Generally, upon reaching entitlement age of 62, participants in the District's LOSAP will receive a life annuity without survivor benefits. For example, upon reaching entitlement age, program participants will receive a benefit of \$20 per month for each qualified year of service, up to a maximum of 40 years. Therefore, a volunteer who has completed 40 years of qualified service could receive a benefit of \$800 per month. The District's annual contribution for 2014 and 2015 was \$125,000, including administrative fees and benefits paid.

GML sets forth guidelines for the District to follow to implement its LOSAP program. These include:

- Developing a program document (plan document) to guide the fiduciaries including the Sponsor (Commissioners) in their obligations for the program, and the rights of the volunteers.

- Engaging the services of professional service providers including administrators, an actuary and any fiduciary organizations to invest and take custody of program assets. All service agreements or contracts must be in writing, shall not exceed five years in duration, and impose no penalties or surrender charges for the transfer of the assets or responsibilities on termination of the contract or agreement.
- Holding all program assets in trust for the exclusive purpose of providing benefits to participants and their beneficiaries or for the purpose of defraying the reasonable expenses of the operation and administration of the program.
- Awarding contracts to an administrative service agency, a fiduciary organization and an actuary only after receiving competitive proposals. The proposals should address the preparation or amendment of the plan document, recordkeeping, reporting, payment of service awards and having custody of program money and assets.
- Reporting and disclosure by sponsor or administrator to the participants by providing a copy of the program, a summary of the program, and documents related to the funding or investments of the program's assets and of any contracts of agreements with service providers to participants annually. A copy shall be made available for inspection or copying by a program participant or beneficiary at the District's main office.
- Obtaining an annual audit of its records by an independent certified public accountant. Such an audit shall examine the program's financial conditions, actuarial assumptions, fiduciary investment and control, and assets allocations, including whether current assets are adequate to fund future liabilities.
- Accounting for the program costs should be detailed in the standards and procedures and consistent with the rules and regulations governing the State-Administer Program.¹ The administrator shall cause a statement of contributions to be provided to sponsors a least once annually.

¹ GML 216-c provides guidance for the State administration of service awards programs, including State-Administer Programs. State-administered service award programs may be centrally administered by the State Comptroller, or the Comptroller may enter into one or more contracts with an administrative service agency, to service as administrator, to invest program money, with an actuary for the performance of all actuarial calculations.

The Board needs to improve its oversight of the District's LOSAP. District officials could not provide the required program documents and agreements for administering the LOSAP. There were no guidelines provided to help the Board for funding, administering, monitoring and reporting for the LOSAP. In addition, the Board has not developed a LOSAP policy for selecting providers, funding the program, amending the program, accounting for expenditures and recordkeeping to track the awarding of points and service credits, and the monitoring of activities by the Board. As a result, the Board did not have guidance for its duties and responsibilities to ensure the program works as intended.

Plan Document — GML requires that the District maintain the plan document in the District's office. The plan document should detail the type of program, participants' rights, sponsor's (governing board's) duties and responsibilities, benefits (how earned and when the participants can begin to receive them), and fiduciary investment and control. The District should also have contracts with the third-party administrators, actuary and other service providers detailing their duties and responsibilities.

District officials did not have a signed and dated program document available for our review as required by GML. District officials provided us with several different proposal drafts of a combined plan and trust document. However, none of these plan documents referred to the "Rombout Fire District" or included the age of entitlement for benefits to start. All documents were unsigned. Consequently, we could not determine whether any of the documents were actually for the District's program.

Standards and Procedures — The Board did not establish any policy or procedures setting standards for the administering and processing of the program. Procedures should include standards for the selection of service providers, the method and timing of the payments required to be made by the sponsor, reporting requirements, preparation of the plan document and other matters. Without the program document, written policy and procedures, the Board has no guidance on how to administer and monitor the program, or what its duties and responsibilities are for the program. The Board cannot ensure that the approved program is effectively administered, benefits are paid as intended, and that funds will be available when the participants reach the age of entitlement.

Professional Service Agreements — The District should contract with its professional service providers to ensure it receives the services that it pays for. The District did not contract with the administrator, the actuary, the investment agent and company that is providing clerical services to the District.

The District does not have a valid administrative service agreement. The initial agreement was dated December 26, 1990 and covered a two-year period. The original administrator's business dissolved in October 1991, and he rolled his business into a partnership without entering into a new agreement with the District. The partnership existed between 1991 through 2001. In November 2000, the agents formed a new corporation, and again did not enter into a new agreement with the District. This corporation is still acting as administrator without an administrative service agreement. The administrator stated that the firm does not contract with sponsors to avoid breach of contract issues.

Two affiliated businesses of the administrator also provide services to the District without contracts. One provides insurance and annuity products and investment advice. The other provides clerical services, including billing and receiving the annual contribution payment. Neither the District nor the administrator could provide us the amount that the District paid for administrative, annuities and investments, and clerical services during the audit period.

Additionally, the District did not engage an actuary to calculate the annual contribution. Instead, the administrator engaged the actuary. District officials did not provide us with a contract for the actuary's services. Further, the District did not pay the actuary directly and did not receive a bill for these services. Instead, all fees and charges, including those for actuary services, were included in the \$125,000 contribution payment. Without these contracts, District officials and service providers have no clear guidelines regarding what services each should provide and compensation for the services.

Program Assets — District officials do not maintain an accounting of the LOSAP costs. They accepted the \$125,000 contribution to the program as the cost and did not obtain documentation to verify how it was disbursed. Because the actuarial valuation report does not detail all costs, District officials do not know what the fee for the actuary was, the commissions for insurance, and the surrender charges paid when surrendering the annuities and other policies. District officials do not reconcile the contribution with the assets funding the program and total costs of the program. Additionally, the administrator does not provide its contribution spreadsheet to the District with its voucher and provides it only if District officials request it. Without reconciling the contributions, costs and assets, the Board cannot determine whether it is investing prudently.

Reporting and Disclosure — The District did not provide a copy of the program and documents related to the program's funding or investments of its assets and of any contracts of agreements with

service providers to participants annually. The District does not have a copy of the program in the Board files. The Board provided the Participant Statement for each of the participants annually but did not maintain copies. Without maintaining and providing the program documents and related service agreement, participants cannot be assured that they are receiving benefits they are entitled to.

Annual Audit — The Board engaged a certified public accountant (CPA) to audit the District including its LOSAP report. However, the audit was not adequate because the report contained numerous inaccuracies and did not provide a true picture of the LOSAP. For example:

- The actuary recommended the 2015 annual contribution to be in the range of \$79,851 - \$97,792, not \$125,000 as reported in the audit report.
- The benefit amount payable each month equals \$20 multiplied by the total number of years of service credit earned by the volunteer, up to a maximum of \$800 per month. However, the CPA stated the maximum was \$3,000 per month. The CPA refers to the program document, trust document and agreement with the administrator. However, the District does not have a copy of these documents because it did not finalize program or trust documents and did not enter into agreements with any of the administrative firms.
- The CPA stated that the Board has retained an insurer to provide investment management and custodial services. There is no evidence that the Board engaged an investment manager.
- The CPA did not complete the OSC Financial Disclosure for LOSAP - Model Notes for Defined Benefits Plan,² detail the administrative fees separately and separate the fees from the benefits paid to participants as required.
- The CPA derived the financial information from the actuarial valuation report. There is no statement that he audited the information.
- The table listed by the CPA was not the table used by the actuary to calculate the post-entitlement benefits.

Without accurate financial reports, the Board does not have assurance that the program is functioning as it should be.

Contribution Reports — The administrator should prepare a contribution report showing all obligations and include all

² In 2008, OSC issued improved financial disclosure for LOSAPs and new LOSAP audit requirements. These requirements include filling out OSC's Model Notes.

commissions it expects so that the Board can determine the total costs to the District. The administrator did not prepare and submit a contribution report for the Board.

The District's annual contributions included all obligations and were paid once a year. These contributions were used to pay all associated fees, such as the benefits, the actuary and all other administrative fees, including any surrender charges for insurance and annuities. The District funded the assets with the remaining moneys. The commissions received by the administrator for the life insurance and annuities were paid directly by the insurer. The Board is unaware of any additional compensation paid to the administrator because the administrator has not provided the Board with a contribution report. Without total costs, the Board cannot determine whether the program and services are competitive.

The Board did not understand its duties and responsibilities required to protect LOSAP assets. With the lack of internal controls over the LOSAP, the participants, District and residents have no assurance that the District is implementing the program as originally approved by residents.

Custodial Agreement

GML requires the District to have a custodial agreement with a bank or trust company to secure bank balances in excess of the Federal Deposit Insurance Corporation (FDIC) \$250,000 threshold. The Board adopted an investment policy in 1988 that requires a commercial bank chartered by New York State to be designated to act as custodial bank for the District's investments. It also requires a written agreement with the custodial bank. The Board did not comply with its own policy and GML. The Board entered into a custodial agreement with its depository and a related financial advisor designating the financial advisor to act as custodian of the District's funds. The financial advisor is not a bank or a trust company. The District had an average of \$1.77 million in excess of the FDIC threshold. Because the Board did not comply with its policy and GML, it does not have assurance that its intentions for investing District funds are met or that investments are safeguarded and made in accordance with applicable laws.

Reserve Funds

Reserve funds are established to provide resources for an intended future use with a clear purpose or intent that aligns with the statute authorizing the fund. An expenditure from a capital reserve fund may be made only upon authorization by the Board and for a specific capital improvement or a specific item or items of equipment. A fire district is authorized to invest moneys from a capital reserve fund in bonds or notes, including tax anticipation notes, issued by the fire district. However, absent such an investment, there is no authority for a fire district to make a temporary loan or advance of capital reserve

fund moneys for operating expenses, pending receipt of real property tax revenue.

Each January, the District borrows money from one of the capital reserve funds to pay operating expenses until it receives its real property taxes revenue. The District borrowed \$100,000 from the building and grounds reserve fund in January 2015 to pay operating expenses in the beginning of the fiscal year until it received its real property taxes revenue. It repaid the reserve fund in March 2015 with an additional \$100 for interest. In 2016, the District borrowed \$100,000 from the apparatus reserve fund for the same reason.

District officials were not aware that borrowing from reserve funds to cover operating expenses is not in compliance with the law.

Online Banking

Online banking provides direct access to moneys held in the District's accounts. It is an immediate way to review current account balances and recent transactions, and to transfer moneys between bank accounts and to external accounts. The Board must adopt an online banking policy, establish necessary internal controls and enter into an agreement with the bank for security precautions.

The Board has not adopted an online banking policy and does not have an agreement with the bank that secures District funds. We reviewed the bank's online banking enrollment agreement and found that it did not:

- Include the manner in which electronic or wire transfers will be made;
- Identify by names and number those accounts from which electronic or wire transfers may be made;
- Identify which officer is authorized to order an electronic or wire transfer of funds;
- Implement a security procedure as defined by Uniform Commercial Code, section 4-A-201. This requirement includes a procedure established by agreement with the bank to verify that a payment order is the local government's and detect a payment order's transmission errors; and
- Require the banking institution processing the transfer to provide to the officer ordering the transfer a written confirmation of each transaction no later than the next business day.

The Treasurer stated that she did not know that the District needed an online banking policy to conduct online banking. We reviewed all

the transfers between District bank accounts and transfers to other entities to determine whether the online transactions were authorized, supported and for a valid District purpose. The Treasurer made 72 online banking transactions totaling \$2,720,349 during the audit period, of which 63 were transfers between the nine bank accounts totaling \$2,542,412. The remaining nine online transactions totaling \$111,331 were wire transfers to a bank for the payment of debt principal and interest. All transactions were adequately supported and for a valid District purpose. Although our audit found no evidence of inappropriate transactions, without comprehensive policies and procedures and a comprehensive bank agreement, there is an increased risk that fraudulent or questionable online banking activity could occur and not be detected in a timely manner.

Recommendations

The Board should strengthen the District's internal controls by:

1. Developing, adopting and implementing written policies and procedures to control and monitor District operations. The policies and procedures should include:
 - A comprehensive LOSAP policy detailing the selection process for professional service providers, requirement for contracting with service providers, and the accounting and reporting records that should be prepared and maintained.
 - Detailed requirements for the selection of professional service providers including how and when to obtain competition.
 - Detailed investment requirements, including how to secure bank accounts and investments with a proper custodial agreement for accounts that exceed FDIC coverage.
 - Requirement to obtain an online banking policy with its depository detailing the security required by GML and UCC.
2. Consulting the District's attorney to evaluate the present LOSAP program and related documents. The Board also should adopt a plan and trust document, engage an actuary and enter into contracts with each service provider for the LOSAP.
3. Maintaining complete accounting records for the LOSAP with detailed costs, the date and amount of benefits paid, and investment funding.

4. Entering into a new custodial agreement to include only bank and trust companies.
5. Ceasing the practice of borrowing from the capital reserve accounts for operating expenses.
6. Developing and adopting an online banking policy and entering into a comprehensive online banking agreement with the depository.

APPENDIX A

RESPONSE FROM DISTRICT OFFICIALS

The District officials' response to this audit can be found on the following pages.



ROMBOUT FIRE DISTRICT

ROUTE 52

BOX 401

FISHKILL, N.Y.

12524

July 12, 2017

Office of NYS Comptroller
Division of Local Government and School Accountability
33 Airport Center Drive, Suite 103
New Windsor, NY 12553

We have received and reviewed the draft audit report dated June 2017. We find that the audit report provided to us allows for a combined response. This letter serves as both the Audit Response and Corrective Action Plan.

We are pleased that the audit confirmed that there are no deficiencies in our normal operations relating to our finances and internal controls. We are also pleased that, while the audit uncovered deficiencies in our documentation relating to our Length of Service Awards Program (LOSAP), none of these deficiencies had resulted in an award of a benefit to a non-deserving fire fighter nor the non-award to a deserving fire fighter. We acknowledge that the documentation for our LOSAP program needs to be improved so that these deficiencies do not continue, as there could be an unfair impact to a future fire fighter.

We would like to note that when we were first informed of the audit we were told that the audit would cover the period January 1, 2015 through September 8, 2016. Instead the audit review was extended back to 1990 to review LOSAP documents. None of the presiding Board of 1990 is still active nor were there any guidelines for administering a LOSAP program. The Rombout Fire District does have (and provided) a LOSAP plan document, while unsigned, it is the basis of Rombout Fire District's program and is used to administer and execute the LOSAP program. This plan document includes the details of the program and board responsibilities. Rombout Fire District's LOSAP program is currently funded at 80.4%.

See
Note 1
Page 17

Rombout Fire District receives an annual report summarizing all costs for the LOSAP program. This includes a roster of all members, their status, actuary information, and an accounting of all costs. In 2016 the Rombout Fire District, in consultation with the Plan Administrator, came to a decision to increase the suggested annual contribution in anticipation of a possible change in the law from \$20 to \$30 a month benefit per fire fighter. Each eligible member receives a report monthly showing their status in the program. Currently there is no single mandatory LOSAP guideline document. To ensure all programs are run correctly NYS should develop and distribute a complete single LOSAP guideline document.

See
Note 2
Page 17

See
Note 3
Page 17

Rombout Fire District believed that all account balances must be at zero on December 31st of each year. In order to pay monthly operating expenses, in 2015 and 2016 Rombout borrowed funds from the building and grounds reserve fund. This was repaid with interest in March once the real property tax revenue was received. Pertaining to on-line banking, Rombout Fire District had a signed agreement with our bank to allow transfers within our accounts only. No transfers outside of our accounts were done. This agreement has been terminated.

Corrective Action Plan:

Audit Recommendation:

1. Strengthen internal controls by developing, adopting and implementing written policies and procedures to control and monitor District operations. The policies and procedures should include:
 - a) A comprehensive LOSAP policy detailing the selection process for professional service providers, requirement for contracting with service providers, and the accounting and reporting records that should be prepared and maintained.
 - b) Detailed requirements for the selection of professional service providers including how and when to obtain competition.
 - c) Detailed investment requirements, including how to secure bank accounts and investments with a proper custodial agreement for accounts that exceed FDIC coverage.
 - d) Requirement to obtain an online banking policy with its depository detailing the security required by GML and UCC.

Implementation Plan and Date:

The Board is drafting a comprehensive LOSAP plan and policy that will include recommendations a, b, and c. With regards to recommendation d, our online banking was restricted to only transfers within our accounts (per our signed agreement with the bank). This agreement has been terminated. The anticipated completion date for a, b, and c is December 2017.

Audit Recommendation:

2. Consulting the District's attorney to evaluate the present LOSAP program and related documents. The Board also should adopt a plan and trust document, engage an actuary and enter into contracts with each service provider for the LOSAP.

Implementation Plan and Date:

The Board will continue to work with the District's attorney on all LOSAP processes and documents. Other items mentioned in this recommendation are covered in the first recommendation and implementation plan. The anticipated completion date is December 2017.

Audit Recommendations 3, 4 and 5 have already been implemented.

3. Maintaining complete accounting records for the LOSAP with detailed costs, the date and amount of benefits paid, and investment funding.
4. Entering into a new custodial agreement to include only bank and trust companies.
5. Ceasing the practice of borrowing from the capital reserve accounts for operating expenses.

Audit Recommendation:

6. Developing and adopting an online banking policy and entering into a comprehensive online banking agreement with the depository. As stated in the implementation plan for recommendation 1, our online banking was restricted to only transfers within our accounts (per our signed agreement with the bank). This agreement has been terminated.

Sincerely Yours,

William F. Muller
Chairman, Rombout Fire District

APPENDIX B

OSC COMMENTS ON THE DISTRICT'S RESPONSE

Note 1

District officials provided an unsigned LOSAP Plan subsequent to the end of audit fieldwork. However, as discussed in the report, they did not follow all sections of this plan.

Note 2

The annual reports provided during our audit period did not detail all plan costs, including fees incurred when surrendering an annuity to roll into another insurer's annuity or deposit into a bank account.

Note 3

General Municipal Law provides LOSAP guidance.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed District officials to gain an understanding of the internal controls related to financial operations.
- We tested the reliability of the accounting records against source documents.
- We reviewed Board minutes and resolutions to determine whether the reserves and LOSAP program were properly established.
- We reviewed LOSAP documents that were available to determine whether the program was amended after established. We tried to ascertain what type of program, what the benefits were, and the Board's responsibilities.
- We tried to determine the parties related to the LOSAP program, their responsibilities and their costs to the program.
- We compared the CPA's note 5 to the financial statements to the LOSAP documents and interviewed District officials to determine whether the report was accurate.
- We reviewed Board policies to determine whether they were adequate.
- We calculated the monthly bank balances to determine whether the balances exceeded the FDIC threshold of \$250,000 and then reviewed the custodial agreement to determine whether the District had adequate coverage securing the excess in the bank.
- We reviewed the reserve resolutions and bank statements to determine whether the transfers were approved and that the funding was consistent with the establishing reserve.
- We reviewed the bank statements and transfer confirmations to determine what electronic bank transfers occurred, and then reviewed the minutes to ascertain whether the transfers had prior approval.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform 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.

APPENDIX D

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