

**State of New Jersey
Office of the State Comptroller**



***INVESTIGATIVE REPORT:
EMERGENCY SERVICES VOLUNTEER
LENGTH OF SERVICE AWARD
PROGRAM***

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I. Introduction

A significant number of the municipalities in New Jersey provide fire and first aid assistance to their citizens through volunteer organizations. The volunteers that make up these organizations sacrifice their personal time and often put their lives in danger while providing this invaluable service. Length of Service Award Programs (LOSAPs) were created to recognize this sacrifice and to support the recruitment and retention of these essential volunteers. To that end, municipalities with LOSAPs are permitted to deposit public funds into tax-deferred investment accounts for the benefit of the volunteers who actively respond to emergencies. At the beginning of 2014 there was nearly \$200 million on deposit in LOSAP accounts throughout the State.

The Office of the State Comptroller (OSC) received information identifying concerns with the oversight of certain LOSAPs. In response, OSC reviewed LOSAPs in four organizations across the State: Leonardo First Aid and Rescue Squad, Lebanon Township Volunteer Fire Department, South Egg Harbor Volunteer Fire Company and Wall Township First Aid and Rescue Squad. OSC's review revealed that there is little to no oversight of these LOSAPs. OSC additionally found that many LOSAP contributions are not being made in compliance with applicable rules and regulations.

In all, OSC identified more than \$700,000 that has inappropriately been contributed on behalf of volunteers or maintained in the accounts of volunteers contrary to the provisions of the LOSAP statute. Specifically, OSC identified more than \$90,000 in contributions made to volunteers who did not meet the minimum LOSAP eligibility standards and more than \$100,000 remaining on deposit for the benefit of former volunteers who are no longer eligible to receive LOSAP benefits. Additionally, OSC discovered that many municipalities across the State have

collectively made more than \$500,000 in LOSAP contributions above the amounts permitted by the statute.

OSC's investigation focused on only four volunteer organizations out of more than 400 organizations which administer millions of dollars of publicly funded LOSAP contributions. Therefore the potential for further waste is significant. Accordingly, at the conclusion of this report, OSC makes recommendations to all entities charged with administering and monitoring LOSAPs throughout the State. These recommendations are designed to help prevent further waste and to ensure that this valuable and worthwhile benefit is only provided to the men and women who qualify for it. OSC also makes referrals to other agencies for additional review.

II. Background

The "Emergency Services Volunteer Length of Service Award Program," commonly referred to as LOSAP, was signed into law on January 18, 1998. This program was designed to benefit, generally, active volunteer firefighters and first aid responders. Pursuant to the program, the municipality where the volunteer organization is located (sponsoring municipality) may make deposits into tax-deferred investment accounts to benefit its active volunteers.¹ These accounts must be established with a financial institution approved by the New Jersey Department of Community Affairs, Division of Local Government Services (LGS).

As of December 31, 2013, OSC identified 409 LOSAPs statewide with accounts managed by financial institutions approved by LGS. As of that date, there were nearly \$200 million of public funds on deposit in LOSAP accounts. Additionally, more than \$45 million already has been withdrawn or otherwise returned from these accounts.

¹ LOSAPS may also be administered by fire districts, but such entities are not addressed in this report.

A LOSAP is established by a municipal ordinance after it is presented as a public question and ratified by the voters. To be eligible for LOSAP contributions under the LOSAP law, volunteers must meet two requirements: 1) the volunteer must be an “active” member as defined by the leadership of the volunteer organization and as generally set forth in the organization’s bylaws; and 2) the volunteer must attain a minimum number of points by performing certain activities as set forth in the LOSAP ordinance itself. Thus, a volunteer must meet both the active member and points requirements each year to be eligible for an annual LOSAP contribution.

Volunteer organizations participating in a LOSAP must annually certify to the sponsoring municipality a list of all volunteers who are eligible for a LOSAP contribution. The municipality must review the list within 30 days of receipt, and if necessary, request backup documentation to substantiate the list of eligible volunteers. If the list is deemed accurate, the sponsoring agency approves it by resolution of the governing body. If no appeals are filed within 30 days thereafter, the sponsoring municipality may make the payment to the financial institution for deposit into volunteers’ accounts.

A volunteer is considered vested after receiving five annual LOSAP contributions. Those funds then may be withdrawn in a number of situations outlined in the federal tax code including, for instance, as a result of a volunteer’s retirement or death or based upon certain financial hardships. If a volunteer terminates association with the organization prior to vesting, the funds placed in that volunteer’s account (hereinafter referred to as a “dormant account”) revert back to the municipality.

The certification and approval of eligible LOSAP volunteers can have a fiscal impact on the sponsoring municipalities that deposit funds on behalf of these volunteers, as well as provide

a significant benefit to individuals who receive these funds. For example, in the four municipalities that we reviewed, there were 41 volunteers with a vested account whose participation in the program appeared questionable, but who nonetheless would be permitted to withdraw funds from their accounts subject to applicable tax code conditions. The total value of those individual accounts as of the end of our review period was over \$400,000. These values may grow based on the length of time these funds are invested. Notably, seven of these volunteers already partially withdrew, and eight of them completely withdrew, nearly an additional \$200,000 from their collective accounts.

Volunteers may also be members in more than one volunteer organization in a municipality and be eligible for LOSAP contributions if they meet the requirements in each entity. However, the member should have only one LOSAP account for each municipality. Further, the maximum contribution an eligible volunteer can receive annually from any one sponsoring municipality is \$1,150, despite the number of volunteer organizations, whether they are first aid or fire, to which the volunteer belongs.²

The statute sets forth penalties for anyone who knowingly violates the LOSAP statute. It specifically states that any person who knowingly misrepresents the credit earned by a volunteer or knowingly includes an individual on an annual certification list who is not a qualified member of an emergency service organization “shall be subject to a fine of no less than \$100 and no more than \$1,150 for each individual whose credit or status was misrepresented.” It additionally subjects anyone who knowingly violates the statute to the forfeiture of benefits and a prohibition from serving in an emergency services organization.

² The statutory maximum amount may be increased pursuant to the governing ordinance or subsequent resolution provided the increase is consistent with the “Consumer Price Index” (CPI) as annually calculated by LGS. In 2013, for example, the statutory maximum amount for municipalities that have appropriately provided for an increase is up to \$1,589.

III. Methodology

OSC's review focused on the LOSAPs for the Leonardo First Aid and Rescue Squad, Lebanon Township Volunteer Fire Department, South Egg Harbor Volunteer Fire Company and Wall Township First Aid and Rescue Squad, but expanded to other organizations across the State for certain issues as discussed further below. These four LOSAPs were chosen based upon a complaint received by this office, information from LGS, and other publicly available information. The four volunteer organizations, along with their sponsoring municipality, are listed below.

Volunteer Organization	Sponsoring Municipality
Leonardo First Aid and Rescue Squad	Middletown Township
Lebanon Township Volunteer Fire Department	Lebanon Township
South Egg Harbor Volunteer Fire Company	Galloway Township
Wall Township First Aid and Rescue Squad	Township of Wall

OSC obtained and reviewed information pertaining to the administration of the above listed volunteer organizations' LOSAPs for the period 2010 through 2012. OSC reviewed each organization's bylaws, annual LOSAP point calculations, and backup documents to support the LOSAP contributions awarded to each volunteer. OSC further reviewed applicable municipal ordinances, meeting minutes, information submitted to the financial institutions managing the LOSAP contributions and other documentation related to the administration of LOSAP. OSC also analyzed documentation from the financial institutions regarding the LOSAP funds on deposit and considered certain financial documentation outside of the 2010 to 2012 period when necessary. OSC interviewed local elected and appointed officials, members of the volunteer emergency organizations, staff at the various financial institutions and LGS officials.

We sent a draft of this report to the relevant volunteer organizations and sponsoring municipalities to provide them with an opportunity to comment on the issues identified in this

report. The responses we received were considered in preparing this final report and in certain instances are discussed further below.

IV. Summary of Findings

We found that both the sponsoring municipalities and leadership of the volunteer organizations that we reviewed failed to administer and monitor their LOSAPs in a manner consistent with applicable governing ordinances, bylaws or statutes. As a result, many LOSAP contributions were inappropriately made by the aforementioned four municipalities on behalf of more than 100 volunteers. We additionally found that more than 50 former volunteers in those municipalities are no longer eligible to receive the contributions that had been deposited on their behalf. We further identified over 100 other volunteers who have received multiple contributions, which in total exceeded the annual statutory maximum. Highlights of our findings include the following:

- Poor administration and oversight led to an almost 65 percent error rate in LOSAP contributions, resulting in more than \$90,000 out of nearly \$150,000 in LOSAP contributions being incorrectly contributed.
- LOSAP contributions above the annual statutory maximum amount were made by municipalities to many volunteers. OSC initially identified more than \$60,000 in such contributions made on behalf of volunteers in the Leonardo First Aid and Rescue Squad. Based upon that finding, our review was expanded in this regard and we found that other LOSAP programs within Middletown Township as well as programs in 30 other municipalities similarly made more than \$430,000 of deposits in excess of the annual statutory maximum amount.
- Municipalities are not consistently recovering funds from non-vested LOSAP member accounts leaving more than \$100,000 in former volunteers' dormant accounts that should be returned to municipalities.
- We found that a few elected officials, who were also volunteers, voted to make LOSAP contributions to themselves, implicating the Local Government Ethics Law.
- Both of the fire departments we reviewed provided incorrect information to the New Jersey State Firemen's Association, affecting certain fire department volunteers' eligibility for a death benefits program administered by that association.

OSC's specific findings for each LOSAP are set forth below and are organized by volunteer organization and sponsoring municipality. At the conclusion of this report we offer recommendations addressing the deficiencies that we have identified.

V. Investigative Findings

A. Leonardo First Aid and Rescue Squad

For the period under review, the Leonardo First Aid and Rescue Squad (Leonardo First Aid) responded to over 1,000 emergency calls and certified an average of 25 volunteers each year as eligible for inclusion in its LOSAP. Leonardo First Aid's LOSAP account, which is administered by Middletown Township, was opened in 2001 and, as of December 31, 2013, more than \$320,000 was on deposit with the financial institution managing that account.

OSC found that Leonardo First Aid did not administer its LOSAP in compliance with the governing ordinance and the organization's bylaws, but, as stated by Leonardo First Aid officials, used them merely as a guide. This resulted in many inappropriate LOSAP contributions. OSC also found that Leonardo First Aid's sponsoring municipality, Middletown Township (Middletown), made LOSAP contributions to individuals who are both members of a volunteer fire company and a first aid squad in excess of the annual statutory maximum amount. We additionally found that eight dormant LOSAP accounts contained a small amount of contributions that should have been returned to Middletown.

1. Inappropriate LOSAP Contributions

Middletown's ordinance states that "[e]ach active volunteer member shall accrue and be credited with points" and that 50 points must be accrued to be eligible for an annual LOSAP contribution. Pursuant to the ordinance, 25 points are awarded for responding to a specific percentage of emergency calls the organization responds to annually. The ordinance also allows

for the award of points for training, drills, attendance at meetings, miscellaneous activities and for certain elected or appointed officers. Leonardo First Aid's bylaws state that an "active" member must have current EMT and CPR certifications, have attended six of the last twelve squad meetings and responded to 15% of emergency calls.

Leonardo First Aid officials told us that it has developed and utilized its own rules and point system for LOSAP and used the governing ordinance and bylaws only as a guide. For example, in the three years we reviewed, OSC identified 26 instances where volunteers were not EMT certified. Nevertheless, Leonardo First Aid certified that these volunteers were LOSAP eligible in violation of the township ordinance and Leonardo First Aid's bylaws.

In another example, although the ordinance limited the award of 25 points to specifically listed elected or appointed officers such as president, vice president or recording secretary, Leonardo First Aid inappropriately awarded points to volunteers serving in *ad hoc* positions not specified in the ordinance or bylaws. For instance, the chairpersons of the squad's "soda" and "picnic" committees were automatically awarded half of the required points necessary for an annual LOSAP contribution.

Leonardo First Aid also did not properly calculate the award of LOSAP points for responding to emergency calls. Pursuant to the ordinance, to be eligible for 25 LOSAP points a volunteer must respond to at least 10% of all Leonardo First Aid calls if there are 0 - 500 calls, 7.5% of all Leonardo First Aid calls if there are 500 - 1000 calls, or 5% of all Leonardo First Aid calls if there are 1,000 - 1,500 calls annually. Leonardo First Aid officials explained during interviews that, instead of simply using Leonardo First Aid calls, they used the total number of emergency calls in Middletown Township when determining which percentage to use for calculating LOSAP points. Leonardo First Aid officials told us that because all available

emergency organizations within Middletown Township, including Leonardo First Aid, may respond to any call during the daytime, they believed it was reasonable to include all potential calls in its tally.

Even assuming this position is consistent with the township ordinance, a review of the process revealed that LOSAP points were still awarded incorrectly. For example, we obtained and reviewed records from Leonardo First Aid that demonstrated that in 2010 there were 1,001 Middletown-Township-wide emergency calls, which included 333 Leonardo First Aid emergency calls. According to Leonardo First Aid's interpretation of the rules, its volunteers were subject to the lesser 5% eligibility standard, meaning that volunteers would need to respond to 50 calls (5% of 1,001 calls) to qualify for the full 25 points. However, Leonardo First Aid inexplicably applied the lesser 5% standard to only its squad's 333 emergency calls, and thus required volunteers to respond to only 17 emergency calls (5% of 333 calls) instead of the expected 50 emergency calls.

OSC found that only approximately 22% of the volunteers that received a LOSAP contribution actually satisfied the "active" member criteria and point requirements set forth in the ordinance and bylaws. Accordingly, Leonardo First Aid inappropriately obtained LOSAP contributions for many volunteers during the three-year period of review. In all, more than \$35,000 was contributed by Middletown on behalf of volunteers that did not meet the LOSAP requirements during our review period.

Such inappropriate contributions also allowed otherwise ineligible volunteers to meet vesting requirements. Six Leonardo First Aid volunteers satisfied the five-year vesting requirement after inappropriately receiving LOSAP contributions during OSC's review period.

These volunteers now have, subject to applicable tax rules, access to approximately \$30,000 in their combined LOSAP accounts.

2. LOSAP Contributions Made in Excess of Annual Statutory Maximum Amount

As noted, volunteers can earn LOSAP contributions for participation in multiple volunteer emergency organizations (typically a fire department and first aid squad) in the same municipality if they meet the requirements in each, but a single account should be maintained for each individual. Further, the combined LOSAP contributions cannot exceed the annual statutory maximum amount of \$1,150 per year.³

Several volunteers of Leonardo First Aid are also volunteers in other organizations in Middletown, and have received a LOSAP contribution based on their participation in more than one entity. However, Middletown made deposits into two investment accounts for these individuals, as opposed to a single account, and we found 76 instances where these volunteers received contributions above the annual statutory maximum amount over a period of ten years. Leonardo First Aid has 13 volunteers who each have two separate investment accounts and have collectively received multiple annual LOSAP contributions in excess of the annual statutory maximum totaling over \$62,000.

A further review of all remaining fire companies and first aid squads within Middletown since the inception of its LOSAP revealed an additional 18 volunteers who also had two separate investment accounts. Middletown made multiple annual contributions to these volunteers totaling over \$66,000, in violation of the statute.

³ Middletown's ordinance did not approve any CPI-based increases to its statutory maximum amount.

3. LOSAP Funds in Dormant Accounts Should Be Returned to Middletown

As noted, if a volunteer leaves an organization prior to vesting, the LOSAP funds deposited into that volunteer's account should be returned to the municipality. In administering LOSAP, Middletown has generally done a good job of recouping funds from non-vested member accounts. As of December 2013, however, \$4,015 in dormant funds remained on deposit and Middletown should take steps to have the funds returned.

4. Middletown's Response to OSC's Findings

In response to the draft report, Middletown officials asked us to consider that Middletown is served by 16 separate volunteer emergency organizations, including Leonardo First Aid, which provide substantial savings to the taxpayers. Middletown officials also asked us to note that these volunteers are responsible for the administration of the LOSAP program and often rotate responsibilities just as they learn the program rules. Middletown officials asked OSC to consider these factors not as an excuse, but to highlight that paying professionals to perform these tasks would be more costly for the taxpayers of Middletown.

Township officials further stated that the LOSAP statute allowed each of Middletown's 16 volunteer organizations to define many of the rules associated with a LOSAP award and that the township did not have enough resources to individually audit the scoring for each volunteer organization. However, as Middletown became aware of the issues that OSC identified during the course of this investigation, township officials stated that they have taken proactive and remedial action to address these concerns, including establishing uniform rules and greater oversight of its 16 volunteer organizations, as well as including a provision in the new ordinance addressing the statutory maximum amount issue identified by OSC.

5. Leonardo First Aid's Response to OSC's Findings

Leonardo First Aid objected to our findings and questioned our investigative process. Leonardo First Aid raised a concern that OSC only interviewed the LOSAP coordinator, as opposed to other executive staff, and failed to provide adequate notice of the interview. Leonardo First Aid further stated that the LOSAP coordinator was unprepared for the interview and did not have the benefit of records to refresh her recollection or the benefit of counsel. According to Leonardo First Aid, "much of the alleged facts in the report from [the LOSAP Coordinator] were either incomplete or wrong."

Leonardo First Aid's process claims are misplaced. OSC notes that its first interview with the LOSAP coordinator, to discuss the program and to obtain records supporting the award of LOSAP benefits, was also attended by Leonardo First Aid's former LOSAP coordinator and its then President. OSC conducted a follow-up interview with the LOSAP coordinator with ample notice, scheduled through Middletown's attorney, to discuss the records that were provided to OSC by Leonardo First Aid.

Leonardo First Aid also asserted that our calculation of the number of calls and associated credits are wrong. At the request of Leonardo First Aid's counsel, we provided him with the records that were previously provided to us and which support the conclusions in this report. Leonardo First Aid indicated that it would provide documented proof of its claim that our calculations were wrong, but to date has not provided any such documentation.

B. Lebanon Township Volunteer Fire Department

For the years 2010 and 2011, the Lebanon Township Volunteer Fire Department (Lebanon FD) responded to over 1,000 emergency calls and certified an average of 17 volunteers each year as eligible for inclusion in its LOSAP. Lebanon FD's LOSAP account was opened in

2001 and, as of December 31, 2013, more than \$150,000 was on deposit with the financial institution managing that account.

OSC became aware that, prior to the commencement of our investigation, controversy arose over Lebanon FD's administration of its LOSAP and its interpretation of the "active" status requirement. In fact, three volunteers certified by Lebanon FD as "active" and qualified requested to be removed from the 2011 LOSAP list. Since that time, Lebanon Township has suspended Lebanon FD's LOSAP, not made any deposits based upon the 2011 certified list, and placed the program under review.

Our investigation determined that Lebanon FD incorrectly certified a majority of its volunteers as being eligible for its LOSAP, which led to inappropriate LOSAP contributions. We also found that two Lebanon Township Councilmen, one who was a member of the fire department, the other from the first aid squad, voted to approve LOSAP contributions to themselves which is a potential conflict of interest. Additionally, OSC found tens of thousands of LOSAP dollars on deposit in 22 non-vested volunteers' LOSAP accounts which should have been returned to Lebanon. Finally, OSC is referring its findings to the State Firemen's Association, as Lebanon FD improperly calculated volunteers' participation totals, affecting those volunteers' eligibility for death benefits coverage administered by that association.

1. Inappropriate LOSAP Contributions

Lebanon Township's (Lebanon) ordinance permits annual LOSAP contributions to be made on behalf of each "active emergency service volunteer" who accumulates 50 points. Pursuant to Lebanon's ordinance, "active" volunteers earn LOSAP points by responding to fire calls, participating in training and drills, being available for calls (sleep-in and stand by), miscellaneous activities, attending meetings and serving as a delegate to a squad convention.

Volunteers can also earn points if they hold the elected and appointed positions of line officer, company officer, president, vice president, treasurer or secretary of Lebanon FD.

Active volunteers are defined in the Lebanon FD bylaws as members who participate in 35% of fire department activities, including participation in fire calls, meetings, practice drills and fundraising drives. The bylaws specifically state that “active volunteers will be eligible to participate in the LOSAP program.”

Our review revealed that Lebanon made LOSAP contributions on behalf of volunteers without ensuring that they met the definition of “active” as set forth in Lebanon FD’s bylaws. During an interview, Lebanon FD’s former LOSAP coordinator told us that, despite the plain language of the bylaws, the term “active” related to being a participating member of Lebanon FD and did not concern LOSAP eligibility. He contended that the 35% requirement related only to a volunteer’s voting rights within the organization. As a result of this interpretation of the bylaws, two-thirds of the volunteers received LOSAP contributions for the year 2010, but did not meet the 35% “active” requirement. The former coordinator noted in response to our draft report that he volunteered his time to administer the LOSAP program, received no formal training for this service and vetted the process with officials at the municipal level.

We found that other volunteers received LOSAP contributions although they did not earn the 50 point minimum. For instance, Lebanon FD reported to Lebanon Township that one volunteer had acquired 55 points in 2010 when our review determined that this individual had only earned 35 points. In another example, Lebanon FD reported that one volunteer had earned 52 points when our review determined that this individual had only earned nine points. In this example, almost half of the 52 points were inappropriately awarded based upon the volunteer’s

leadership position with a separate organization (president of the State Fire Association), which is not a position that qualifies for points pursuant to Lebanon's ordinance.

OSC also identified certain new Lebanon FD volunteers who did not receive a LOSAP contribution, but should have. We found that Lebanon FD imposed a "qualifying year" on its volunteers, requiring new volunteers to forgo earning a LOSAP benefit in the first year they met eligibility requirements. This "qualifying year" requirement is not set forth in the governing ordinance or any other document and it appears that the requirement is inconsistent with the LOSAP statute. (*See N.J.S.A. 40A:14-188 (a)*). OSC notes that five volunteers that met the definition of "active" and earned at least 50 LOSAP points were not listed on Lebanon FD's 2010 certified eligible list due to this "qualifying year" requirement. In fact, \$3,500 in contributions were withheld from otherwise qualified volunteers because of the unauthorized "qualifying year" policy imposed by Lebanon FD on new volunteers.

In sum, for the years 2010 and 2011, OSC found that approximately 70% of the volunteers who were initially certified by Lebanon FD as being eligible for LOSAP contributions did not satisfy the definition of "active" or did not accumulate the required 50 points. Nearly \$17,000 in LOSAP contributions were initially allocated for or made on behalf of volunteers that did not meet the Lebanon FD's own written requirements. OSC notes, however, that Lebanon did not make LOSAP contributions in 2011.

2. Potential Conflicts of Interest

In the course of our review, we discovered a potential conflict of interest connected to Lebanon's approval of LOSAP contributions. We found that a Lebanon Councilman voted to approve LOSAP contributions while he was a volunteer receiving the benefit of such contributions. This potentially implicates the Local Government Ethics Law which provides that

“[n]o local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family . . . has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.” *N.J.S.A. 40A:9-22.5d.*

The Councilman voted to make LOSAP contributions to not only himself, but also to his brother. The Councilman, who was also the LOSAP coordinator for the fire department through 2010, incorrectly submitted documentation stating that he and his brother met LOSAP requirements in 2010 when neither had satisfied the 35% “active” requirement. He told us that he did not specifically recall voting in favor of these contributions. The Councilman emphasized in response to the draft report that such approval was merely a perfunctory vote as it was one of many issues included in a package that he was asked to approve all at once, without reviewing individual matters.

We also discovered that a second Councilman voted to approve a LOSAP contribution for himself as a member of Lebanon FD’s rescue squad. In response to our draft report, this Councilman indicated that by the time he voted for this LOSAP contribution he had resigned from the rescue squad. This Councilman further stated that he was under the impression that because he resigned and had not vested in the LOSAP, he would not be entitled to any LOSAP benefits. Thus, based on advice from his counsel, he believed that he could vote on the LOSAP contributions.

3. LOSAP Funds in Dormant Accounts Should Be Returned to Lebanon

As noted previously, funds remaining in the LOSAP accounts of departing, non-vested volunteers should be returned to municipalities. OSC’s investigation revealed that Lebanon did

not recoup funds from such dormant accounts. As of December 2013, OSC identified more than \$45,000 in dormant funds. Lebanon should seek the return of these funds.

4. Inaccurate Reporting to State Firemen’s Association

The State Firemen’s Association (SFA) provides death and disability benefits to volunteer firefighters who maintain a 50% participation rate in fire calls and drills for seven years. A volunteer’s participation rate is tallied and provided to the SFA by the volunteer’s fire department. OSC’s review revealed that the volunteers’ percentages submitted by Lebanon FD to SFA for the years under review were grossly inconsistent with its own records. The below chart shows the disparity between the reported participation rate and Lebanon FD’s own records, which showed rates well below the required 50% participation rate.

Year	Example	Reported Participation Percentage	Actual Participation Percentage
2010	Volunteer 1*	59%	1%
2010	Volunteer 2	56%	29%
2010	Volunteer 3	59%	33%
2010	Volunteer 4	59%	32%
2011	Volunteer 1*	51%	0.4%
2011	Volunteer 2	51%	14%
2011	Volunteer 3	50%	16%
2011	Volunteer 4	65%	32%

**Volunteer 1 was at the time Lebanon FD’s Vice President.*

In total, Lebanon FD did not accurately report call response information for six volunteers in its submissions to SFA during our review period. This information is being referred to the SFA for further review.

C. South Egg Harbor Volunteer Fire Company

For the period under review, the South Egg Harbor Volunteer Fire Company (South Egg Harbor FC), whose LOSAP is administered by the Township of Galloway, responded to

approximately 180 emergency calls and certified an average of 15 volunteers each year as eligible for inclusion in its LOSAP. South Egg Harbor FC's LOSAP account was opened in 2002 and, as of December 31, 2013, more than \$250,000 was on deposit with the financial institution managing that account.

OSC found that the South Egg Harbor FC certified volunteers as eligible for LOSAP even though they did not satisfy the organization's ordinance and bylaws requiring that a volunteer be "active" and attain a certain number of activity points. This resulted in South Egg Harbor FC inappropriately certifying LOSAP contributions for many volunteers. We also found that there are two dormant South Egg Harbor FC LOSAP accounts that should be closed and the funds returned to the Township of Galloway. Additionally, for reasons similar to those addressed earlier in this report, we are referring information concerning incorrect volunteer participation rates to the SFA for their review.

1. Inappropriate LOSAP Contributions

The Township of Galloway's (Galloway) ordinance states that volunteers must earn 100 points and be "Active & In Good Standing" each year to be eligible for its LOSAP. Pursuant to the ordinance, volunteers earn points by participating in fire calls, attending drills that are a minimum of two hours, attending training, company meetings, special fire activities and other company-sanctioned activities and by being an elected or appointed company officer or the elected township chief. South Egg Harbor FC's bylaws define an "active" volunteer in good standing as attending 60% of all activities, which include fires, fire alarms, drills, meetings, work calls, special events and 16 "clean ups."

OSC found that many volunteers of South Egg Harbor FC received credit for calls even though there is no evidence that they actually responded to those calls. For example, the Fire

Chief of the South Egg Harbor FC advised that all volunteers were given LOSAP credits for certain calls, that he referred to as “all credit calls,” whether the volunteer responded or not. South Egg Harbor FC officials stated that this was done in such instances, for example, where volunteers may not have actually responded to the calls because communication may have been faulty or calls were terminated prior to the volunteers’ arrival at the station. During the period under review, 26% of South Egg Harbor FC’s calls were identified by OSC to be “all credit calls.”

We also found evidence that individuals were given credit for attending two fire calls that were happening simultaneously. During an interview, South Egg Harbor FC officials told us that these volunteers were given this double credit because, essentially, they did not want to penalize a volunteer who could not be in two places at once.

We found additional evidence contradicting the South Egg Harbor FC records indicating that volunteers had reported to certain fire emergencies. For example, a comparison of public employee time and attendance records with South Egg Harbor FC records showed that certain volunteers, who were also public employees, were listed as responding to fire calls when records reflected they were working at their public jobs.

It was also difficult to determine whether volunteers satisfied the “Active and In Good Standing” requirements because of the limited records provided by the South Egg Harbor FC. Even when we accepted South Egg Harbor FC’s unverifiable credits as being correct, more than three quarters of the volunteers that we reviewed still did not meet the “Active and In Good Standing” requirement. This allowed many to improperly benefit. In total, more than \$24,000 was contributed on behalf of volunteers who did not meet South Egg Harbor FC’s basic LOSAP requirements.

These deficiencies also allowed some volunteers to vest when they would not have otherwise had the required five years of service. Four South Egg Harbor FC volunteers vested as a result of inappropriately receiving LOSAP contributions during our review period. These four volunteers now have, subject to applicable tax rules, access to more than \$32,000 in their combined LOSAP accounts.

2. LOSAP Funds in Dormant Accounts Should Be Returned to Galloway

Similar to the other municipalities previously mentioned, Galloway also had, as of December 2013, over \$10,000 on deposit in dormant LOSAP accounts for the benefit of volunteers who left the department prior to completing their five-year vesting requirement. Galloway should seek the return of these funds.

3. Inaccurate Reporting to State Firemen’s Association

OSC’s investigation revealed that South Egg Harbor FC also did not accurately report call response information to SFA for all three years under review. Our review revealed that the volunteers’ percentages submitted by South Egg Harbor FC to SFA for the years under review were inconsistent with its own records. The below chart shows the disparity between the reported participation rate and South Egg Harbor FCs own records, which showed rates well below the required 50% participation rate.

Year	Example	Reported Participation Percentage	Actual Participation Percentage
2010	Volunteer 1	72%	15%
2010	Volunteer 2	100%	36%
2011	Volunteer 1	81%	21%
2011	Volunteer 2	74%	41%
2011	Volunteer 3	100%	28%
2011	Volunteer 4	81%	42%
2012	Volunteer 1	73%	6%
2012	Volunteer 2	77%	11%

In total, South Egg Harbor FC did not accurately report call response information for four volunteers in its submissions to SFA during our review period. This information is being referred to the SFA for further review.

4. Galloway's Response to OSC's Findings

In response to the draft report, Galloway officials stated that the Township recognized the need for greater oversight and has taken proactive steps to address and remediate the issues noted by its own internal review as well as OSC's subsequent investigation. Galloway officials further noted that they believed that the LOSAP statute and their own ordinance were not specific enough and told OSC that the Township is working with its five volunteer organizations, including the South Egg Harbor FC, to correct this issue. In addition, Galloway officials stated that they are working to codify a point system for all five organizations and require a minimum number of responses to actual fires in order to qualify for its LOSAP.

5. South Egg Harbor FC's Response to OSC's Findings

South Egg Harbor FC contended that all of their members met the eligibility requirements.⁴ The fire company further stated that without more specific information it could not further analyze OSC's findings and specifically respond to the draft report. OSC investigators provided many details regarding its findings during two interviews with fire company officials. No requests for further information were made after these interviews. We will continue to provide any details that South Egg Harbor FC officials request upon the release of this final report so that they can conduct a further analysis consistent with our findings.

⁴ South Egg Harbor FC's response was provided to OSC as part of Galloway's response.

D. Wall Township First Aid and Rescue Squad

For the period under review the Wall Township First Aid and Rescue Squad (Wall First Aid & Rescue) responded to over 3,300 emergency calls and certified an average of 12 volunteers each year as eligible for inclusion in its LOSAP. Wall First Aid & Rescue's LOSAP account was opened in 2004 and, as of December 31, 2013, more than \$160,000 was on deposit with the financial institution managing that account.

OSC's review revealed that Wall First Aid & Rescue does not follow Wall Township's (Wall) LOSAP ordinance and it has incorrectly deemed several volunteers as "active" in contradiction to the definition set forth in its bylaws. OSC's review further revealed that a former Wall councilman, who was the captain of Wall First Aid & Rescue, voted on Wall's authorization of LOSAP contributions to himself for two of the years under review. We also determined that there are LOSAP funds remaining in 25 dormant, non-vested volunteer accounts which should have been returned to Wall.

1. Inappropriate LOSAP Contributions

Wall's ordinance states that LOSAP "contributions shall be made in accordance with a plan that shall be established by the Township Committee" and requires that an "active" volunteer member accrue 500 points in a calendar year (*emphasis added*). The ordinance authorizes the award of points for responding to calls, remaining with the ambulance at scheduled events, drills, training, holding certain offices, washing and maintenance of equipment, and other points awarded at the captain's discretion.

OSC was advised during interviews that the Wall First Aid & Rescue membership committee determines who is eligible for annual LOSAP contributions. OSC was also specifically told:

Wall Township First Aid does not track total LOSAP points per member. The membership committee agreed at the inception of LOSAP that if a member meets the requirements of “Active” as defined in our by-laws, they meet the requirements in the Ordinance for LOSAP credit.

Wall First Aid & Rescue’s bylaws state that to be “active” a member must have, at minimum, a current EMT certification, attend eight drills and eight business meetings, and respond to a minimum of 10% of the calls. Wall First Aid & Rescue representatives explained that if a volunteer was deemed “active” and responded to 10% of the calls, such an “active” volunteer would have earned well over the 500 points required by the ordinance.

Even assuming that this rationale applied equally in every situation and was always consistent with the requirements set forth in the ordinance, OSC’s review revealed that volunteers received LOSAP contributions even though they did not meet Wall First Aid & Rescue’s definition of “active.”⁵ This condition must be satisfied in addition to the ordinance’s 500 point requirement to qualify for Wall First Aid & Rescue’s LOSAP. Our review revealed that three volunteers who received LOSAP contributions were not EMT certified. We also found instances when volunteers did not meet the required number of emergency calls, meetings or drills.

Conversely, we found that there was at least one volunteer who met the requirements of “active,” but did not receive a LOSAP contribution. However, because Wall First Aid & Rescue did not review and record LOSAP points awarded to this or any other volunteer as set forth in the ordinance, we could not determine whether this, or any volunteer, also satisfied the 500 point requirement. OSC could only analyze Wall First Aid & Rescue’s LOSAP contributions based

⁵ Wall First Aid & Rescue’s bylaws also include a definition for “Senior Active.” Even assuming this category is permissible, the requirements are not consistent with Wall’s LOSAP ordinance and OSC’s review determined that volunteers in this category also did not meet the definition.

upon its definition of “active” status. Our review of the three-year period revealed that only 52% of the volunteers deemed to have satisfied the “active” definition actually met those requirements. In total, approximately \$24,000 in LOSAP contributions were made on behalf of volunteers who did not meet the “active” status definition.

2. Potential Conflicts of Interest

Similar to the situation previously mentioned, OSC determined that a former Wall Councilman, who was also the captain of Wall First Aid & Rescue, voted to approve LOSAP contributions while he was a volunteer receiving the benefit of such contributions. When questioned about this potential conflict of interest, the Councilman stated that he did not always review all the vouchers for payment that he would be voting upon and did not realize that he voted for the LOSAP contributions.

As discussed earlier in this report, local elected officials are prohibited from voting on matters in which they have a personal financial interest. (*N.J.S.A. 40A:9-22.5d*). The Councilman received a LOSAP contribution in 2010 and 2011, implicating the Local Government Ethics Law.

3. LOSAP Funds in Dormant Accounts Should Be Returned to Wall

As noted, funds remaining in the LOSAP accounts of departing, non-vested volunteers should be returned to municipalities. OSC’s investigation revealed that Wall has not sought to recoup funds from non-vested member accounts. As of December 2013, more than \$48,000 in dormant funds remained on deposit and Wall should take steps to have the funds returned.

E. Other Volunteer Organizations Identified with Multiple Accounts

As noted earlier in this report, throughout Middletown we found multiple inappropriate LOSAP investment accounts with contributions to volunteers in excess of the annual statutory

maximum amount. Based on that finding, we conducted a further review of additional municipal volunteer agencies statewide. Since the inception of these programs, OSC found that 30 additional municipalities also had multiple volunteers with two separate LOSAP investment accounts with contributions in excess of the annual statutory maximum amount. Specifically, our review revealed that these contributions (including the Middletown programs other than Leonardo First Aid) totaled more than \$430,000. The breakdown of municipalities with such LOSAP accounts is set forth in Appendix 1.

In response to the draft findings in this regard, some municipalities stated that they believed such payments were permissible because the volunteer was both a firefighter and first aid member. They reasoned that because the members had qualified for benefits in both volunteer organizations they should be entitled to a LOSAP payment for each.

As noted in the Background section of this report, the LOSAP statute indicates that the maximum contribution an eligible volunteer can receive annually from any one sponsoring municipality is \$1,150, despite the number of volunteer organizations to which the volunteer belongs. Some municipalities were unaware of this prohibition while others indicated they believed the practice is appropriate. Other municipalities suggested that the Legislature should revisit this limitation to allow for LOSAP contributions for each volunteer organization in which a volunteer independently satisfies the posted requirements. Municipalities stressed that the purpose of the LOSAP law is to assist with the recruitment and retention of these invaluable volunteers.

While, as noted previously, it is commendable to serve the public in multiple volunteer organizations, OSC notes that LGS provides specific guidance on this subject in the frequently asked questions section of its website:

34. If a person is both a volunteer firefighter and an emergency medical service volunteer under the same sponsoring agency, is the individual eligible to receive two separate LOSAP awards?

Yes, as long as the individual is active and qualifies for credit under two separate point systems. The volunteer, however, must respond to each emergency call as **either** a volunteer firefighter **or** an emergency medical service volunteer . . . Regardless of where the award comes from, the money for the volunteer is deposited into a single account . . . Pursuant to N.J.S.A. 40A:14-189(a), **a volunteer in this situation cannot receive more than the statutory LOSAP award amount of \$1,150 from a single sponsoring agency.**

(emphasis added). As noted earlier and in the recommendations at the conclusion of this report, the issuance of penalties may be appropriate for non-compliance with the current LOSAP rules.

Other municipalities indicated that they believed that the payments were justified because neighboring municipalities paid for any excess contribution pursuant to an agreement to allow the volunteer organization to serve both municipalities. This practice is also prohibited according to the Emergency Services Volunteer Length of Services Award Program Rules, which also can be found on the LGS website:

N.J.A.C. 5:30-14.15 Special circumstances governing multiple sponsors

In instances where there is more than one sponsoring agency of an emergency service organization:

(a) No individual shall receive more than the maximum annual benefit amount established in N.J.S.A. 40A:14-189(b), regardless of the number of sponsoring agencies served, except that the amount may be adjusted annually pursuant to N.J.S.A. 40A:14-185(f) and N.J.A.C. 5:30-14.9.

(b) Each agency shall adopt an enabling LOSAP ordinance or resolution, as appropriate, and the point system that each agency establishes shall be identical . . . The amount of benefit that a volunteer receives from each sponsoring agency may differ, and it may be prorated among the agencies served, but it shall not be greater than the maximum annual benefit established pursuant to N.J.S.A. 40A:14-189(b) and N.J.A.C. 5:30-14.9.

VI. Recommendations and Referrals

OSC's review revealed that LOSAP contributions in four municipalities were not being made in compliance with applicable ordinances, bylaws or State statute. Other contributions were made in excess of the annual statutory maximum amount or inappropriately remained in dormant accounts of non-vested, former volunteers. Additionally, the actions of a few elected officials in two municipalities implicated the Local Government Ethics law regarding conflicts of interest. Finally, incorrect information was being supplied by two fire departments to the SFA, which provides death benefit coverage to volunteer firefighters. To address these deficiencies and to provide guidance to the hundreds of entities that administer and monitor LOSAPs throughout the State, including municipalities, volunteer organizations and fire districts, OSC offers the following recommendations:

- 1) LOSAP contributions should be made only to those volunteers who satisfy the authorized requirements in the governing municipal ordinance, volunteer organizations' bylaws and State statute.
- 2) The four municipalities in our review should consider seeking from the appropriate financial institution the return of, or reducing any new contributions by, the inappropriate amount of LOSAP contributions identified in this report or as a result of this report. Administrators for any LOSAP not specifically referenced in the report should also consider conducting a similar analysis and recovery.
- 3) The four municipalities in our review should seek the return of all LOSAP funds in any non-vested, volunteers' dormant account. Administrators for LOSAPs not specifically mentioned in this report should perform a similar accounting and seek the return of all such dormant funds. All administrators should ensure that there is a documented procedure in place to prevent this from occurring in the future.
- 4) Middletown and the other municipalities noted in Appendix 1 should consider seeking the recovery of LOSAP contributions made in excess of the annual statutory maximum amount. Going forward, all administrators should maintain only one LOSAP account for volunteers and any funds in excess of the statutory maximum amount should be returned to the municipality.
- 5) The Department of Community Affairs should consider providing statewide guidance and training to ensure the consistent administration and operation of LOSAPs

throughout the State, including to municipalities, volunteer organizations, fire districts and any approved financial institution managing LOSAP funds.

- 6) As noted, penalties may be levied for non-compliance with LOSAP rules. Accordingly, compliance with the requirements should be well documented and the approval process should be reviewed to ensure that decisions are made in a reasonable and ethical manner. LGS should consider the imposition of penalties, forfeiture of benefits or the prohibition of service in an emergency service organization when appropriate.

OSC is also referring the potential conflicts of interest identified in this report to the LGS for further review. Finally, OSC is referring relevant information to the SFA for its consideration and review.

APPENDIX 1
LOSAP - Double Account Payments
Statewide Review

Sponsoring Municipality	Volunteers with Two Accounts	Contributions in Excess of Statutory Maximum
Borough of Atlantic Highlands	2	\$ 17,250.00
Borough of Barnegat Light	4	\$ 16,664.12
Borough of Beach Haven	6	\$ 10,927.00
Borough of Carlstadt	2	\$ 17,250.00
Chester Township	3	\$ 20,226.36
Borough of Closter	9	\$ 15,150.00
Cranbury Township*	7	\$ 63,160.56
Borough of Demarest	1	\$ 11,691.73
Borough of Eatontown	8	\$ 35,650.00
Borough of Garwood	1	\$ 1,150.00
Borough of Hillsdale	2	\$ 10,549.75
Borough of Hopatcong	7	\$ 11,902.50
Borough of Island Heights	1	\$ 1,150.00
Lacey Township	8	\$ 24,150.00
Borough of Lavallette	2	\$ 13,600.00
Borough of Lincoln Park	2	\$ 1,801.04
Borough of Little Ferry	2	\$ 9,475.54
Mantua Township	2	\$ 2,943.28
Mendham Township	5	\$ 24,579.49
Borough of Midland Park	4	\$ 18,400.00
Borough of North Arlington	1	\$ 10,350.00
Borough of Northvale	3	\$ 3,700.00
Township of Ocean	1	\$ 1,079.96
Township of River Vale	1	\$ 3,229.20
Sea Isle City	1	\$ 1,150.00
City of South Amboy	4	\$ 1,684.03
Borough of South Plainfield	1	\$ 5,972.00
Borough of Spring Lake	3	\$ 7,750.00
Borough of Union Beach	2	\$ 4,500.00
Borough of Upper Saddle River	4	\$ 5,195.10
Total	99	\$ 372,281.66

Note: *2013 LOSAP Deposits had not yet been made by Cranbury Township.