COMPLIANCE AUDIT

Colwyn Borough Police Pension Plan

Delaware County, Pennsylvania For the Period January 1, 2013 to December 31, 2016

April 2018



Commonwealth of Pennsylvania Department of the Auditor General

Eugene A. DePasquale • Auditor General





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EUGENE A. DEPASQUALE AUDITOR GENERAL

The Honorable Mayor and Borough Council Colwyn Borough Delaware County Colwyn, PA 19023

We have conducted a compliance audit of the Colwyn Borough Police Pension Plan for the period January 1, 2013 to December 31, 2016. We also evaluated compliance with some requirements subsequent to that period when possible. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of the audit were:

- 1. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior audit report; and
- 2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior audit report, we inquired of plan officials and evaluated supporting documentation provided by officials evidencing that the suggested corrective action has been appropriately taken. 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.

- 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.
- We determined whether annual employee contributions were calculated, deducted, and deposited into the pension plan in accordance with the plan's governing document and applicable laws and regulations by testing total members' contributions on an annual basis using the rates obtained from the plan's governing document in effect for all years within the period under audit and examining documents evidencing the deposit of these employee contributions into the pension plan.
- · We determined that there were no benefit calculations prepared for the years covered by our audit period.
- We determined whether the January 1, 2011, January 1, 2013, January 1, 2015, and January 1, 2017 actuarial valuation reports were prepared and submitted by March 31, 2012, 2014, 2016, and 2018, 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.
- We determined whether all annual special ad hoc postretirement reimbursements received by the municipality were authorized and appropriately deposited in accordance with Act 147 by tracing information to supporting documentation maintained by plan officials.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Colwyn Borough Police Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the borough's internal controls as they relate to the borough's compliance with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally and as previously described, we tested transactions, assessed official actions, performed analytical procedures, and interviewed selected officials to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objectives.

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

Finding No. 1	 Noncompliance With Prior Audit Recommendation – Failure To Update Plan's Governing Document
Finding No. 2	 Noncompliance With Prior Audit Recommendation – Unauthorized Provision For A Killed In Service Benefit
Finding No. 3	 Incorrect Data On Certification Form AG 64 Resulting In An Excess Reimbursement For Special 2002 Ad Hoc Postretirement Adjustment

Finding Nos. 1 and 2 contained in this audit report repeat conditions that were cited in our previous audit report that have not been corrected by borough officials. We are concerned by the borough's failure to correct those previously reported audit findings and strongly encourage timely implementation of the recommendations noted in this audit report.

As previously noted, one of the objectives of our audit of the Colwyn Borough Police Pension Plan was to determine compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. Act 205 was amended on September 18, 2009, through the adoption of Act 44 of 2009. Among several provisions relating to municipal pension plans, the act provides for the implementation of a distress recovery program. Three levels of distress have been established:

<u>Level</u>	<u>Indication</u>	Funding Criteria
I	Minimal distress	70-89%
II	Moderate distress	50-69%
III	Severe distress	Less than 50%

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it. However, we are extremely concerned about the funded status of the plan contained in the schedule of funding progress included in this report which indicates the plan's funded ratio is 60.0% as of January 1, 2017. Based on this information, the borough is currently in Level II moderate distress status. We encourage borough officials to monitor the funding of the police pension plan to ensure its long-term financial stability.

The contents of this report were discussed with officials of Colwyn 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.

March 26, 2018

EUGENE A. DEPASQUALE

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Auditor General

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BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The Act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system state aid and of every municipal pension plan and fund in which general municipal pension system state aid is deposited.

Annual state aid allocations are provided from a 2 percent foreign (out-of-state) casualty insurance premium tax, a portion of the foreign (out-of-state) fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the Colwyn Borough Police Pension Plan is also governed by implementing regulations adopted by the former Public Employee Retirement Commission published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

- Act 147 Special Ad Hoc Municipal Police and Firefighter Postretirement Adjustment Act, Act of December 14, 1988 (P.L. 1192, No. 147), as amended, 53 P.S. § 896.101 et seq.
- Act 600 Police Pension Fund Act, Act of May 29, 1956 (P.L. 1804, No. 600), as amended, 53 P.S. § 767 et seq.

The Colwyn Borough Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 426, as amended, and a plan agreement, effective January 1, 2003, adopting Act 600 provisions. The plan is also affected by the provisions of collective bargaining agreements between the borough and its police officers. The plan was established May 12, 1978. Active members are required to contribute 5 percent of compensation to the plan. As of December 31, 2016, the plan had 1 active member, no terminated members eligible for vested benefits in the future, and 4 retirees receiving pension benefits from the plan.

BACKGROUND – (Continued)

As of December 31, 2016, selected plan benefit provisions are as follows:

Eligibility Requirements:

Normal Retirement Age 55 and 25 years of service

Early Retirement 20 years of service

Vesting 100% after 12 years of service

Retirement Benefit:

50% of final 36 months average salary, plus a service increment of \$100 per month after 26 years.

Survivor Benefit:

Before Retirement Eligibility Refund of member contributions plus interest.

After Retirement Eligibility A monthly benefit equal to 50% of the pension the

member was receiving or was entitled to receive on the

day of the member's death.

Service Related Disability Benefit:

Greater of 50% of final 36 months average compensation or 50% of the member's salary at the time the disability was incurred, offset by Social Security disability benefits received for the same injury.

COLWYN BOROUGH POLICE PENSION PLAN STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendations

Colwyn Borough has complied with the prior audit recommendations concerning the following:

· Failure To Pay The Minimum Municipal Obligation Of The Plan

Borough officials paid the minimum municipal obligations due to the plan for the years 2012 and 2013, with interest.

Failure To Deposit State Aid Into An Eligible Pension Plan

Borough officials deposited the 2012 and 2013 state aid allocations plus applicable interest into the pension plan.

Noncompliance With Prior Audit Recommendations

Colwyn Borough has not complied with the prior audit recommendations concerning the following as further discussed in the Findings and Recommendations section of this report:

- · Failure To Update Plan's Governing Document
- · Unauthorized Provision For A Killed In Service Benefit

<u>Finding No. 1 – Noncompliance With Prior Audit Recommendation – Failure To Update Plan's Governing Document</u>

Condition: As disclosed in the prior two audit reports, municipal officials have not updated the plan's governing document through a properly executed ordinance to reflect the current benefit provisions of the plan. The plan agreement with Principal Financial Group was restated January 1, 2003 to adopt Act 600 provisions; however, this agreement was not adopted by ordinance. In addition, this plan agreement does not reflect several modifications to the provisions of the police pension plan made throughout the years through the collective bargaining process, which are codified in an appendix to the collective bargaining agreement between the borough and its police officers for the period January 1, 2007 through December 31, 2009. As of the date of this report, there is not a more recent collective bargaining agreement.

Criteria: Section 1(a)(1) of Act 600 states, in part:

Each borough, town and township. . . maintaining a police force of three or more full-time members shall . . . establish, by ordinance or resolution, a police pension fund. . . .

Furthermore, in <u>Wynne v. Lower Merion Township</u>, 181 Pa. Superior Ct., 524, the Pennsylvania Superior Court held that an ordinance may be amended only by another ordinance and not by a resolution.

<u>Cause</u>: Municipal officials failed to establish adequate internal control procedures to ensure compliance with the prior audit recommendation.

<u>Effect</u>: The plan's current benefit provisions have not been adopted through a properly executed ordinance. This could result in inconsistent benefit calculations for plan members and/or eligible beneficiaries.

<u>Recommendation</u>: We again recommend that municipal officials, with the assistance of their solicitor, establish the police pension plan's current benefit provisions through a properly executed ordinance at their earliest opportunity to do so.

<u>Management Response</u>: Management is working with the police on the collective bargaining agreement and both parties are resolving issues which would impact the governing document. Therefore, the borough is waiting to restate the governing document, in its entirety, to include such changes so that all plan documents will be consistent.

<u>Auditor Conclusion</u>: We are concerned that the municipality has not complied with the prior audit recommendation and encourage compliance at the earliest opportunity to do so.

<u>Finding No. 2 – Noncompliance With Prior Audit Recommendation – Unauthorized</u> <u>Provision For A Killed In Service Benefit</u>

<u>Condition</u>: Colwyn Borough maintains a police pension plan governed by the provisions of Act 600, as amended. Prior to the adoption of Act 51 of 2009, Act 600 contained a mandatory killed in service benefit provision; however, Act 51 specifically repealed the section of Act 600 that referenced the mandatory killed in service benefit. As disclosed in the prior audit report, the pension plan document continues to provide for a killed in service benefit that is no longer authorized by Act 600.

Section 5.01(a) of the plan document states, in part:

If the Participant dies in the line of duty, ... the survivor annuity shall be equal to 100% of the Participant's Salary as of the date of his death.

Criteria: Section 1(a) of Act 51 of 2009 states, in part:

In the event a law enforcement officer, ambulance service or rescue squad member, firefighter, certified hazardous material response team member or National Guard member dies as a result of the performance of his duties, such political subdivision, Commonwealth agency or, in the case of National Guard members, the Adjutant General, or, in the case of a member of a Commonwealth law enforcement agency, the authorized survivor or the agency head, within 90 days from the date of death, shall submit certification of such death to the Commonwealth.

In addition, Section 1(d) of Act 51 of 2009 states, in part:

. . . the Commonwealth shall, from moneys payable out of the General Fund, pay to the surviving spouse or, if there is no surviving spouse, to the minor children of the paid firefighter, ambulance service or rescue squad member or law enforcement officer who died as a result of the performance of his duty the sum of \$100,000, adjusted in accordance with subsection (f) of this section, and an amount equal to the monthly salary, adjusted in accordance with subsection (f) of this section, of the deceased paid firefighter, ambulance service or rescue squad member or law enforcement officer, less any workers' compensation or pension or retirement benefits paid to such survivors, and shall continue such monthly payments until there is no eligible beneficiary to receive them. For the purpose of this subsection, the term "eligible beneficiary" means the surviving spouse or the child or children under the age of eighteen years or, if attending college, under the age of twenty-

Finding No. 2 – (Continued)

three years, of the firefighter, ambulance service or rescue squad member or law enforcement officer who died as a result of the performance of his duty. When no spouse or minor children survive, a single sum of \$100,000, adjusted in accordance with subsection (f) of this section, shall be paid to the parent or parents of such firefighter, ambulance service member, rescue squad member or law enforcement officer. [Emphasis added]

Furthermore, Section 2 of Act 51 of 2009 states:

Repeals are as follows:

- (1) The General Assembly declares that the repeals under paragraph (2) are necessary to effectuate the amendment of section 1 of the act.
- (2) The following parts of acts are repealed:
 - (i) Section 5(e)(2) of the act of May 29, 1956 (1955 P.L.1804, No. 600), referred to as the Municipal Police Pension Law.
 - (ii) Section 202(b)(3)(vi) and (4)(vi) of the act of December 18, 1984 (P.L.1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act.

Therefore, since Act 51 specifically repealed the killed in service provision of Act 600 and the funding provisions for the killed in service benefit that were contained in Act 205, the provision of a killed in service benefit is no longer authorized.

<u>Cause</u>: Plan officials are currently negotiating the collective bargaining agreement and the killed in service provision is being discussed as part of the negotiations.

<u>Effect</u>: Since Section 1 of Act 51 provides that the Commonwealth is obligated to pay the killed in service benefit less any pension or retirement benefits paid to eligible survivors, the continued provision of a killed in service benefit could result in the pension plan being obligated to pay a benefit that is no longer authorized by Act 600, and would have been paid entirely by the Commonwealth absent such provision.

<u>Recommendation</u>: We again recommend that the municipality review the plan's killed in service benefit with its solicitor in conjunction with Act 51 of 2009, and eliminate this unauthorized benefit provision at its earliest opportunity to do so.

Finding No. 2 – (Continued)

<u>Management's Response</u>: The borough is in the process of negotiating the police collective bargaining agreement.

<u>Auditor's Conclusion</u>: We are concerned that the municipality has not complied with the prior audit recommendation and encourage compliance at the earliest opportunity to do so.

Finding No. 3 – Incorrect Data On Certification Form AG 64 Resulting In An Excess Reimbursement For Special 2002 Ad Hoc Postretirement Adjustment

<u>Condition</u>: The borough overstated the total non-employee contributions made to all pension plans on the Certification Form AG 64 filed in 2014.

<u>Criteria</u>: Section 502.1(a)(2) of Act 147 states, in part:

The determination of the reimbursable amount of the amortization contribution requirement attributable to the special ad hoc postretirement adjustment under Chapter 4 in any year shall be calculated as the amortization contribution requirement attributable to the special ad hoc postretirement adjustments under Chapter 4 and reflected in the determination of the financial requirements of the pension plan under Chapter 3 of the Municipal Pension Plan Funding Standard and Recovery Act for the immediate prior year less the product of that amortization contribution requirement multiplied by the ratio of the amount of general municipal pension system State aid allocated to the retirement system in the immediate prior year to the total amount of municipal contributions made to the retirement system from all sources other than employee contributions in the immediate prior year.

In addition, the instructions that accompany Certification Form AG 64 indicate that Item B - Total Non-Employee Contributions Made To All Plans on the certification form must include all non-employee contributions (municipal contributions <u>and</u> state aid) made in the previous year to all plans (Police, Paid Firefighter and Non-Uniformed). Any municipal contributions or state aid used to fund the pension plan debt service payments on bonds or notes, or both, issued to fund an unfunded actuarial accrued liability should also be included.

Therefore, only the total amount of municipal contributions made to the retirement system from all sources other than employee contributions in the previous calendar year may be included on the certification form.

Finding No. 3 – (Continued)

<u>Cause</u>: On the certification form filed in 2014, the borough certified total 2013 non-employee contributions of \$62,054, which included borough contributions of \$50,401 which were not deposited until 2016.

<u>Effect</u>: The data submitted on this certification form is used to calculate the reimbursement due the borough for ad hoc postretirement adjustments granted pursuant to Chapter 4 of Act 147. The effect of the incorrect certification of pension data on the borough's reimbursement is identified below:

	Reim	bursement	Reimbu	ırsement	: I	Excess
Year	C	laimed	Γ	ue	Reim	bursement
2014	\$	1,251	\$	0	\$	1,251

<u>Recommendation</u>: We recommend that the total excess reimbursement, in the amount of \$1,251, be returned to the Commonwealth. A check in this amount, with interest compounded annually from date of receipt to date of repayment, at a rate earned by the pension plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 321 Finance Building, Harrisburg, PA 17120. A copy of the interest calculation must be submitted along with the check.

<u>Management's Response</u>: In March 2018, the borough reimbursed \$1,296 to the Commonwealth for the overpayment received in 2014, with interest.

The supplementary information contained on Pages 9 and 10 reflects the implementation of GASB Statement No. 67, *Financial Reporting for Pension Plans*. The objective of this statement is to improve financial reporting by state and local governmental pension plans.

SCHEDULE OF CHANGES IN THE NET PENSION LIABILITY AND RELATED RATIOS FOR THE YEARS ENDED DECEMBER 31, 2014, 2015, AND 2016

	<u>2014</u>	<u>2015</u>	<u>2016</u>
Total Pension Liability			
Service cost	\$ 11,863	\$ 13,055	\$ 13,708
Interest	89,552	93,459	95,078
Difference between expected and actual experience	-	10,583	-
Changes of assumptions	-	29,864	-
Benefit payments, including refunds of member			
contributions	(89,870)	(88,447)	(81,218)
Net Change in Total Pension Liability	11,545	58,514	27,568
Total Pension Liability - Beginning	1,268,269	1,279,814	1,338,328
Total Pension Liability - Ending (a)	\$ 1,279,814	\$ 1,338,328	\$ 1,365,896
Plan Fiduciary Net Position			
Contributions - employer	\$ 96,492	\$ 109,010	\$ 93,926
Contributions - state aid	11,271	-	13,124
Contributions - member	3,130	2,907	3,019
Net investment income	39,104	20,295	32,178
Benefit payments, including refunds of member			
contributions	(89,870)	(88,447)	(81,218)
Administrative expense	(4,100)	(4,100)	(4,900)
Net Change in Plan Fiduciary Net Position	56,027	39,665	56,129
Plan Fiduciary Net Position - Beginning	493,392	549,419	589,084
Plan Fiduciary Net Position - Ending (b)	\$ 549,419	\$ 589,084	\$ 645,213
Net Pension Liability - Ending (a-b)	\$ 730,395	\$ 749,244	\$ 720,683
Plan Fiduciary Net Position as a Percentage of the Total			
Pension Liability	42.9%	44.0%	47.2%
Estimated Covered Employee Payroll	\$ 58,000	\$ 66,640	\$ 64,688
Net Pension Liability as a Percentage of Covered			
Employee Payroll	1259.3%	1124.3%	1114.1%

Sensitivity of the Net Pension Liability to Changes in the Discount Rate

The following presents the net pension liability of the borough as of December 31, 2014, 2015, and 2016, calculated using the discount rate of 7.25%, as well as what the borough's net pension liability would be if it were calculated using a discount rate that is 1 percentage-point lower or 1 percentage-point higher than the current rate:

	 Decrease (6.25%)	D	Current iscount Rate (7.25%)	1	% Increase (8.25%)
Net Pension Liability – 12/31/14	\$ 865,844	\$	730,395	\$	615,506
Net Pension Liability – 12/31/15	\$ 892,289	\$	749,244	\$	627,982
Net Pension Liability – 12/31/16	\$ 863,280	\$	720,683	\$	599,548

SCHEDULE OF INVESTMENT RETURNS

Annual Money-Weighted Rate of Return, Net of Investment Expense:

2016	6.71%
2015	(0.91%)
2014	6.27%

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan's funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2013, is as follows:

	(1)	(2)	(3)	(4)
			Unfunded	
		Actuarial	(Assets in	
		Accrued	Excess of)	
	Actuarial	Liability	Actuarial	
Actuarial	Value of	(AAL) -	Accrued	Funded
Valuation	Assets	Entry Age	Liability	Ratio
Date	(a)	(b)	(b) - (a)	(a)/(b)
01-01-13	\$ 569,956	\$ 1,257,865	\$ 687,909	45.3%
01-01-15	612,302	1,320,261	707,959	46.4%
01-01-17	737,155	1,228,947	491,792	60.0%

Note: The market values of the plan's assets at 01-01-13, 01-01-15, and 01-01-17 have been adjusted to reflect the smoothing of gains and/or losses subject to a ceiling of 120 percent of market value. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2011	\$ 41,150	100.0%
2012	49,532	100.0%
2013	48,476	100.0%
2014	107,763	100.0%
2015	109,010	100.0%
2016	107,050	100.0%

COLWYN BOROUGH POLICE PENSION PLAN SUPPLEMENTARY INFORMATION NOTES TO SUPPLEMENTARY SCHEDULES (UNAUDITED)

The information presented in the supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date January 1, 2017

Actuarial cost method Entry age normal

Amortization method Level dollar

Remaining amortization period 10 years

Asset valuation method Plan assets are valued using the

method described in Section 210 of Act 205, as amended, subject to a ceiling of 120% of the market value

of assets.

Actuarial assumptions:

Investment rate of return 7.25%

Projected salary increases 5.0%

Cost-of-living adjustments 3.0% per annum

COLWYN BOROUGH POLICE PENSION PLAN REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

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