

COMPLIANCE AUDIT

Whitehall Township Police Pension Plan Lehigh County, Pennsylvania For the Period January 1, 2015 to December 31, 2018

March 2020



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 Board of Township Commissioners
Whitehall Township
Lehigh County
Whitehall, PA 18052

We have conducted a compliance audit of the Whitehall Township Police Pension Plan for the period January 1, 2015 to December 31, 2018. 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 the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

The objective of the audit was to determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objective identified above. To determine whether the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, our methodology included the following:

- We determined whether state aid was properly determined and deposited in accordance with Act 205 requirements by verifying the annual deposit date of state aid and determining whether deposits were made within 30 days of receipt for all years within the period under audit.
- 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 whether retirement benefits calculated for 11 of the 12 of plan members¹ who retired during the current audit period represent payments to all (and only) those entitled to receive them and were properly determined and disbursed in accordance with the plan's governing document, applicable laws and regulations by recalculating the amount of the monthly pension benefit due to retired individuals and comparing these amounts to supporting documentation evidencing amounts determined and actually paid to recipients.
- We determined whether the January 1, 2015 and January 1, 2017 actuarial valuation reports were prepared and submitted by March 31, 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.

Whitehall Township contracted with an independent certified public accounting firm for annual audits of its basic financial statements, which are available at the township's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Whitehall Township 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 township's internal controls as they relate to the township's compliance with those requirements and that we considered to be significant within the context of our audit objective, 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 objective.

¹ We selected plan members randomly from the population of plan members who retired during the current audit period in order to obtain a representative selection for the purpose of our testing to achieve the audit objective. While representative selection is a required factor of audit sampling methodologies, audit-sampling methodology was not applied to achieve this test objective; accordingly, the results of this audit procedure are not, and should not be, projected to the population.

The results of our procedures indicated that, in all significant respects, the Whitehall Township 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 finding further discussed later in this report:

Finding – Pension Benefits Not Authorized By Act 600 And The Plan's
Governing Document

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.

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

February 25, 2020



EUGENE A. DEPASQUALE
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 Whitehall Township 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 600 - Police Pension Fund Act, Act of May 29, 1956 (P.L. 1804, No. 600), as amended, 53 P.S. § 767 et seq.

The Whitehall Township Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 2760, as amended, adopted pursuant to Act 600. The plan is also affected by the provisions of collective bargaining agreements between the township and its police officers. The plan was established December 9, 1957. Active members are required to contribute 5 percent of compensation to the plan. As of December 31, 2018, the plan had 45 active members, 2 terminated members eligible for vested benefits in the future, and 44 retirees receiving pension benefits from the plan.

BACKGROUND – (Continued)

As of December 31, 2018, selected plan benefit provisions are as follows:

Eligibility Requirements:

Normal Retirement Age 50 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 for each year of service in excess of 25 years, up to a maximum of \$500 per month.

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:

50% of the member's salary at the time the disability was incurred.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – Pension Benefits Not Authorized By Act 600 And The Plan’s Governing Document

Condition: Plan officials provided pension benefits in excess of those authorized by the plan’s governing document and Act 600. Plan officials included lump-sum payments for accumulated unused compensatory time in the determination of final average salary used to calculate monthly pension benefits for 11 police officers who retired (3 disability and 8 superannuation) during the audit period, which was not authorized by the plan’s governing document. Of those 11 pension benefit determinations, 5 were also in excess of Act 600 provisions.

Criteria: Section 3.2(c) of the Whitehall Township Police Pension Fund plan document, as amended and restated effective January 1, 2008, indicates a monthly benefit as follows:

Pension Benefit Formula – Each eligible participant shall receive a monthly benefit payable at his normal retirement date equal to 50% of average monthly compensation.

Compensation is further defined in Section 1.3(a) of the plan document as follows:

Compensation means any earnings reportable as W-2 wages for federal income tax withholding purposes, plus elective contributions, for the applicable period.

Exclusions from compensation – Notwithstanding the provisions of Section 1.3(a)(1), the following types of remuneration shall be excluded from the participant’s compensation:

- Unused vacation, personal day, and sick pay paid on account of termination of employment;
- Any lump sum payment made upon termination of employment.

Section 5(c) of Act 600 states, in part:

Monthly pension or retirement benefits other than length of service increments shall be computed at one-half the monthly average salary of such member during not more than the last sixty nor less than the last thirty-six months of employment.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

In addition, relative to disability benefit determinations, Section 3.6 of the plan document states, in part:

Effective for an active participant becoming disabled on or after April 17, 2002, such disabled participant shall be entitled to a monthly disability benefit equal to 50% of the participant's monthly salary at the time the disability was incurred.

Section 5(e)(1) of Act 600 states:

In the case of the payment of pensions for permanent injuries incurred in service, the amount and commencement of the payments shall be fixed by regulations of the governing body of the borough, town, township or regional police department and shall be calculated at a rate no less than fifty per centum of the member's salary at the time the disability was incurred, provided that any member who receives benefits for the same injuries under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et. seq.) shall have his disability benefits offset or reduced by the amount of such benefits.

Although Act 600 does not define "salary," the department has concluded, based on a line of court opinions, that the term does not encompass lump-sum payments for unused leave or compensatory time that was not earned during the pension computation period. Moreover, since the plan document is more stringent and specifically excludes unused leave payouts and lump sum payments from pension benefit calculations, pension benefits should be determined in accordance with the plan document.

Cause: Plan officials believed that the inclusion of compensatory time represents payment for "hours worked" and not a lump sum payout, and as such, that the township's methodology for calculating pension and disability benefits was authorized by Act 600.

Effect: The plan is paying pension benefits to 11 retirees in excess of those authorized by the plan's governing document. As of the date of this report, the retirees are receiving total excess benefits of \$1,260 per month, which totaled approximately \$49,340 from the dates of the members' respective retirements through the date of this audit report. Included in these totals is \$712 per month of benefits in excess of Act 600 being paid to 5 retirees, which totaled approximately \$29,858 from the dates of the members' respective retirements through the date of this audit report.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

Providing unauthorized pension benefits increases the plan’s pension costs and reduces the amount of funds available for investment purposes or for the payment of authorized benefits or administrative expenses. Since the township received state aid based on unit value during the current audit period, it did not receive allocations attributable to the excess pension benefits provided. However, the increased costs to the pension plan as a result of the excess pension benefits could result in the receipt of excess state aid in the future and increase the municipal contributions necessary to fund the plan in accordance with Act 205 funding standards.

Recommendation: We recommend that the pension benefits of any retirees whose benefits were not determined in accordance with the provisions of the plan’s governing document be adjusted prospectively. To the extent that the township is not in compliance with Act 600 and/or is contractually obligated to pay benefits to existing retirees in excess of those authorized by Act 600, the excess benefits must be reflected in the Act 205 actuarial valuation reports for the plan and funded in accordance with Act 205 funding standards. Furthermore, such benefits will be deemed ineligible for funding with state pension aid. In such case, the plan’s actuary may be required to determine the impact, if any, of the excess benefits on the township’s future state aid allocations and submit this information to the Department. If it is determined the excess benefits had an impact on the township’s future state aid allocations after the submission of this information, the plan’s actuary would then be required to contact the Department to verify the overpayment of state aid received. Plan officials would then be required to reimburse the overpayment to the Commonwealth.

We further recommend that future pension benefits be determined and paid in accordance with the applicable provisions contained in the plan’s governing document in effect at the time of a plan member’s retirement.

Management’s Response: The township’s response, dated December 30, 2019, was provided in response to the draft finding which initially took exception only to those pension calculations which were in excess of Act 600 provisions, and is included in its entirety as follows:

Whitehall’s position regarding the payment of Accumulated Time (hereafter “Comp Time”) is that the police officer accepts Comp Time in lieu of payment of hours worked through overtime. As these are hours worked, Whitehall has operated under the assumption that the officer has the ability to exercise his/her use of Comp Time in the future as he/she sees fit, and staffing allows. In many cases, the use of and accumulation of Comp Time presents few problems, and at a point when the officer retires, that leave be paid out with pension deductions taken and used to

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

determine his/her pension benefit. If such a position conflicts with the Auditor General's Office determination, we would respectfully request such a position in writing. We can then provide the Police Union with such a ruling.

In the occasion of disability retirement the matter is much more complicated. The officer, receiving Worker's Compensation and Heart and Lung benefits has no ability to draw on their accumulated Comp Time. In all cases of a disability retirement, the past practice of said officers was to utilize Comp Time as they accrue these hours. Whitehall Township believes that not allowing these hours to be calculated in their final average salary serves as a penalty for an accident, which was not of their choosing.

Adding to this, is the fact that disability retirements involve legal representatives from not only the Township and the Police Union, but the Workers Compensation insurer. All three have differing interpretations in arriving at a settlement agreement, which must be in force and effect, prior to the agreement of separation of employment.

We would respectfully request that you consider the Township's position in this matter. We would further request that your Office's position not work to the financial detriment of the Township or the officer. Of course, the Township would respect and adhere to the position of the Auditor General's Office in addressing future retirements and the calculation of benefits commensurate with your Office's ruling.

When presented with the final version of the finding along with a copy of Department of the Auditor General Municipal Pension Bulletin No. 2001-01 as discussed below in the Auditor's Conclusion, the township provided the following additional response on February 25, 2020:

Whitehall Township and the Whitehall Police Bargaining Committee have filed for Act 111 arbitration. This is scheduled for April 29, 2020. The Township will be submitting the finding and supporting documentation, with the expectation that the arbitration panel will see fit to issue an award consistent with the Auditor General's office recommendations.

Auditor's Conclusion: The Department of the Auditor General Municipal Pension Bulletin No. 2001-01 sets forth the Department's position regarding excess benefits. A copy of this bulletin was issued to all municipalities in 2001 and a copy has been provided to the township for reference.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

Article VI of the collective bargaining agreement (CBA) between the township and its police officers for the period January 1, 2017 through December 31, 2019, provides for police officers to be paid out upon separation of employment for up to 375 hours of accumulated compensatory time for overtime work (the CBA for the period January 1, 2014 through December 31, 2016 provides for up to 360 hours). We do not take exception that provision; however, we point out that inclusion of this lump sum payout in the total compensation utilized in the computation of monthly pension benefits is contrary to the plan's governing document, as stated, and the inclusion of lump sum payouts for accumulated, unused compensatory time earned outside the pension computation period is unauthorized according to Act 600.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

The supplementary information contained on Pages 8 through 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, 2015, 2016, 2017, AND 2018

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Total Pension Liability				
Service cost	\$ 564,362	\$ 592,580	\$ 588,828	\$ 618,269
Interest	2,119,366	2,242,784	2,446,280	2,567,779
Difference between expected and actual experience	(352,033)	-	188,858	-
Changes of assumptions	(324,022)	-	947,323	-
Benefit payments, including refunds of member contributions	<u>(1,004,933)</u>	<u>(1,333,515)</u>	<u>(1,514,677)</u>	<u>(1,576,942)</u>
Net Change in Total Pension Liability	1,002,740	1,501,849	2,656,612	1,609,106
Total Pension Liability - Beginning	<u>27,106,239</u>	<u>28,108,979</u>	<u>29,610,828</u>	<u>32,267,440</u>
Total Pension Liability - Ending (a)	<u>\$ 28,108,979</u>	<u>\$ 29,610,828</u>	<u>\$ 32,267,440</u>	<u>\$ 33,876,546</u>
Plan Fiduciary Net Position				
Contributions - employer	\$ 1,092,439	\$ 753,888	\$ 763,966	\$ 766,310
Contributions - member	216,509	224,900	219,028	233,934
Net investment income	(783,252)	1,842,426	4,392,674	(1,863,403)
Benefit payments, including refunds of member contributions	(1,004,933)	(1,333,515)	(1,514,677)	(1,576,942)
Administrative expense	<u>(8,300)</u>	<u>(8,500)</u>	<u>(7,900)</u>	<u>(6,200)</u>
Net Change in Plan Fiduciary Net Position	(487,537)	1,479,199	3,853,091	(2,446,301)
Plan Fiduciary Net Position - Beginning	<u>25,659,100</u>	<u>25,171,563</u>	<u>26,650,762</u>	<u>30,503,853</u>
Plan Fiduciary Net Position - Ending (b)	<u>\$ 25,171,563</u>	<u>\$ 26,650,762</u>	<u>\$ 30,503,853</u>	<u>\$ 28,057,552</u>
Net Pension Liability - Ending (a-b)	<u>\$ 2,937,416</u>	<u>\$ 2,960,066</u>	<u>\$ 1,763,587</u>	<u>\$ 5,818,994</u>
Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	89.5%	90.0%	94.5%	82.8%
Estimated Covered Employee Payroll	\$ 4,214,084	\$ 3,940,604	\$ 4,312,153	\$ 4,724,702
Net Pension Liability as a Percentage of Covered Employee Payroll	69.7%	75.1%	40.9%	123.2%

WHITEHALL TOWNSHIP POLICE PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

Sensitivity Of The Net Pension Liability To Changes In The Discount Rate

The following presents the net pension liability of the township as of December 31, 2015, 2016, 2017, and 2018, calculated using the discount rate of 8.0%, as well as what the township'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:

	1% Decrease (7.0%)	Current Discount Rate (8.0%)	1% Increase (9.0%)
Net Pension Liability - 12/31/15	\$ 6,268,501	\$ 2,937,416	\$ 127,400
Net Pension Liability - 12/31/16	\$ 6,413,247	\$ 2,960,066	\$ 44,448
Net Pension Liability - 12/31/17	\$ 5,606,674	\$ 1,763,587	\$ (1,468,509)
Net Pension Liability - 12/31/18	\$ 9,790,540	\$ 5,818,994	\$ 2,475,996

WHITEHALL TOWNSHIP POLICE PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS

Year Ended December 31	Actuarially Determined Contribution	Actual Contributions	Contribution Deficiency (Excess)	Covered- Employee Payroll*	Contributions as a Percentage of Covered- Employee Payroll
2009	\$ 410,887	\$ 466,302	\$ (55,415)		
2010	448,020	451,435	(3,415)		
2011	894,656	901,332	(6,676)		
2012	884,170	884,170	-		
2013	979,580	979,590	(10)		
2014	966,663	966,663	-	4,309,341	22.4%
2015	1,092,439	1,092,439	-	4,214,084	25.9%
2016	753,888	753,888	-	3,940,604	19.1%
2017	763,966	763,966	-	4,312,153	17.7%
2018	766,310	766,310	-	4,724,702	16.2%

* Due to GASB Statement No. 67, *Financial Reporting for Pension Plans*, being implemented only recently, the amount of Covered-Employee Payroll was not provided for years prior to 2014.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

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)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)
01-01-13	\$ 19,654,198	\$ 23,889,429	\$ 4,235,231	82.3%
01-01-15	25,659,100	26,430,184	771,084	97.1%
01-01-17	26,650,762	30,747,009	4,096,247	86.7%

The Actuarial Accrued Liability as of 01-01-17 increased due to changes in the actuarial mortality assumption since the prior valuation.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

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.

WHITEHALL TOWNSHIP 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	8 years
Asset valuation method	Fair value
Actuarial assumptions:	
Investment rate of return	8.0%
Projected salary increases	5.0%

WHITEHALL TOWNSHIP POLICE PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

The Honorable Michael P. Harakal, Jr.
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Mr. Dennis Hower
President, Board of Township Commissioners

Mr. Philip Ginder
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