

COMPLIANCE AUDIT

Whitehall Township Police Pension Plan Lehigh County, Pennsylvania For the Period January 1, 2019 to December 31, 2022

April 2024



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen
www.PaAuditor.gov**

**TIMOTHY L. DEFOOR
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, 2019 to December 31, 2022. We also evaluated compliance with some requirements subsequent to that period when possible. The audit was conducted pursuant to authority derived from the Municipal Pension Plan Funding Standard and Recovery Act (Act 205 of 1984, as amended, 53 P.S. § 895.402(j)), which requires the Auditor General, as deemed necessary, to audit every municipality which receives general municipal pension system state aid and every municipal pension plan and fund in which general municipal pension system state aid is deposited. The audit was not conducted, nor was it required to be, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. We planned and performed the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit 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 finding contained in our prior 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 finding contained in our prior 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 whether retirement benefits calculated for plan members who retired during the current audit period, and through the completion of our fieldwork procedures, 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 benefits due to the retired individuals and comparing these amounts to supporting documentation evidencing amounts determined and actually paid to the recipients.
- We determined whether the January 1, 2019 and January 1, 2021 actuarial valuation reports were prepared and submitted by March 31, 2020 and 2022, 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. As previously described, we tested transactions, interviewed selected

officials, and performed procedures to the extent necessary to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objectives.

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 findings further discussed later in this report:

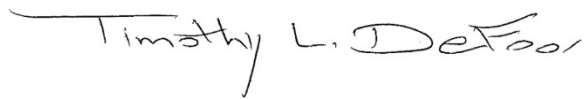
Finding No. 1 – Noncompliance With Prior Recommendation – Pension Benefits Not Authorized By Act 600 And The Plan’s Governing Document

Finding No. 2 – Incorrect Data On Certification Form AG 385 Resulting In A Net Underpayment Of State Aid

Finding No. 1 contained in this audit report repeats a condition that was cited in our previous report that has not been corrected by township officials. We are concerned by the township’s failure to correct this previously reported finding and strongly encourage timely implementation of the recommendation noted in this audit report.

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.



Timothy L. DeFoor
Auditor General
February 20, 2024

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BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The Act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans.

Annual state aid allocations are provided from a two 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 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, and a separately executed plan agreement, 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 five percent of compensation to the plan. As of December 31, 2022, the plan had 46 active members, 1 terminated member eligible for vested benefits in the future, and 48 retirees receiving pension benefits.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
STATUS OF PRIOR FINDING

Noncompliance With Prior Recommendation

Whitehall Township has not complied with the prior recommendation concerning the following as further discussed in the Findings and Recommendations section of this report:

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

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Noncompliance With Prior Recommendation – Pension Benefits Not Authorized By Act 600 And The Plan’s Governing Document

Condition: As disclosed in the prior audit report, the township provided pension benefits in excess of those authorized by the plan’s governing document and Act 600 by including 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, 5 of the 11 pension benefits were also in excess of Act 600 provisions*). It was recommended that the pension benefits of those retirees be adjusted prospectively in accordance with the provisions of the plan’s governing document and Act 600. As of the date of this report, the benefits for these retirees remained unchanged.

During the current audit period, the township entered into a collective bargaining agreement (CBA) with its police officers which covered the period January 1, 2020 through December 31, 2022 and provided the following pension provision relative to the inclusion of lump sum payouts of accumulated time in pension benefit calculations in Article XI (D), as follows:

For the purpose of determine [*sic*] pension benefits, the Township agrees to include lump sum payouts of accumulated time (maximum 480 hours) in pension benefit calculations. The term of this language shall commence January 1, 2020 and extend until December 31, 2025. Thereafter, said terms shall expire, and for the purpose of determining pension benefits, payment of earned but unused accumulated time shall be restricted to those hours earned in the thirty-six month [*sic*] used to determine final average salary.

Although the provision incorporates the inclusion of accumulated time in pension calculations, the provision did not limit such inclusion to only accumulated time earned during the pension computation period in accordance with Act 600 and remained inconsistent with the plan’s governing document which specifically excludes lump-sum payments. The township again included lump-sum payments for accumulated unused compensatory time in the determination of final average salary used to calculate monthly pension benefits for 10 police officers who retired (*1 disability and 9 superannuation*) during the current audit period, and through completion of fieldwork procedures which were in excess of the plan document and Act 600.

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.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

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.

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.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Cause: Plan officials previously conveyed that they believed that the inclusion of compensatory time represented 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. In an effort to comply with the prior recommendation, the township and the union representing the police officers collaborated and compromised on a resolution (*refer to CBA language in the above Condition*), to discontinue the township’s current practice for determining pension benefits effective December 31, 2025.

Effect: The plan is paying pension benefits to 21 retirees in excess of those authorized by the plan’s governing document (*15 of the retirees are receiving benefits in excess of those authorized by Act 600*). As of the date of this report, the retirees are receiving total excess benefits of \$3,673 per month, which totaled approximately \$156,105 (*\$2,961 of the monthly excess and \$107,752 of the total were not authorized under Act 600*) from the dates of the members’ respective retirements through the date of this audit report.

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 again recommend that the pension benefits of any retirees whose benefits were not determined in accordance with the provisions of the plan’s governing document, in effect at the time of their respective retirements, 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 and the township would be required to reimburse the overpayment to the Commonwealth.

We further recommend that future pension benefits be calculated 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 and Act 600.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Management’s Response: The township provided the following response dated January 25, 2024, which states, in part:

Whitehall Township and the Whitehall Police Bargaining Unit have negotiated the termination of this disputed Comp Time practice. The Township’s current practice of Comp Time payout shall cease effective December 31, 2025. All future Comp Time payouts, thereafter, shall be in accordance with the Auditor’s finding, and be restricted to the “last thirty-six (36) months 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.

Auditor’s Conclusion: The department acknowledges the township’s position regarding this matter. However, since the plan document specifically prohibited the inclusion of “any lump sum payment made upon termination of employment”, the department maintains its position that the original 11 retirees were not receiving benefits authorized by the plan document in effect at the time of their respective retirements and Act 600. As noted in the *Recommendation* above, to the extent that the township is contractually obligated to pay benefits to existing retirees in excess of those authorized by Act 600, such benefits will be deemed ineligible for funding with state pension aid and the Department will continue to monitor the impact of the excess benefits being provided to existing and future retirees on the township’s future state aid allocations during subsequent audits of the plan.

Finding No. 2 – Incorrect Data On Certification Form AG 385 Resulting In A Net Underpayment Of State Aid

Condition: The township failed to certify two eligible police officers, certified an ineligible non-uniformed employee, and understated total eligible payroll by \$37,847 on the Certification Form AG 385 filed in 2020. In addition, the township certified an ineligible non-uniformed employee and overstated payroll by \$14,072 on the Certification Form AG 385 filed in 2021. Furthermore, the township failed to certify an eligible police officer and understated payroll by \$52,577 on the Certification Form AG 385 filed in 2022. The data contained on these certification forms is based on prior calendar year information.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Criteria: Pursuant to Act 205, at Section 402(e)(2), an employee who has been employed on a full-time basis for at least six consecutive months and has been participating in a pension plan during the certification year is eligible for certification. The applicable number of units attributable to each eligible recipient city, borough, incorporated town and township are police officer - two units, firefighter - two units and employee other than police officer or firefighter - one unit.

Cause: The township’s omission of eligible employees and inclusion of ineligible employees was attributable to clerical oversight. Additionally, the township lacked adequate internal control procedures, such as having another individual review the data certified to ensure compliance with Act 205 and the instructions that accompanied Certification Form AG 385 prior to submission.

Effect: The data submitted on these certification forms is used, in part, to calculate the state aid due to the municipality for distribution to its pension plans. Because the township’s state aid allocations were based on unit value, the township received a total net underpayment of state aid as identified below:

<u>Year</u>	<u>Type Of Plan</u>	<u>Units Overstated (Understated)</u>	<u>Unit Value</u>	<u>State Aid Overpayment (Underpayment)</u>
2020	Police	(4)	\$ 4,924	\$ (19,696)
	Non-Uniformed	1	4,924	<u>4,924</u>
			Subtotal 2020	<u>(14,772)</u>
2021	Non-Uniformed	1	4,797	4,797
2022	Police	(2)	5,180	<u>(10,360)</u>
			Net Underpayment of State Aid	<u>\$ (20,335)</u>

Although the township will be reimbursed for the underpayment of state aid due to the township’s certification errors, the full amount of the 2020, 2021 and 2022 state aid allocations were not available to be deposited timely and therefore were not available to fund benefits, pay operating expenses or for investment.

Recommendation: We recommend that in the future, plan officials establish adequate internal control procedures, such as having at least two individuals review the data certified, to ensure compliance with the instructions that accompany Certification Form AG 385 to assist them in accurately reporting the required pension data.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Management's Response: The township's response dated January 25, 2024, states, in part:

Whitehall Township concurs with the Finding. The under reporting of three Police Officers and over reporting of two Non-Uniformed employees was, admittedly, an error on the AG-385 Forms annually submitted by the Township. The Township shall endeavor to ensure that future reporting complies with AG-385 guidelines. To our benefit, this Finding produces a financial benefit to the Township, but the action is recognized as violative of the reporting requirements.

Auditor's Conclusion: Based on the management response, it appears municipal officials intend to comply with the finding recommendation. Compliance will be evaluated during our next audit of the plan.

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, 2017, 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)
01-01-17	\$ 26,650,762	\$ 30,747,009	\$ 4,096,247	86.7%
01-01-19	28,057,552	34,654,874	6,597,322	81.0%
01-01-21	37,840,288	38,535,770	695,482	98.2%

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
(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
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%
2019	1,319,057	1,319,057	-	5,156,312	25.6%
2020	1,347,694	1,347,694	-	5,306,927	25.4%
2021	1,772,377	1,772,377	-	5,374,350	33.0%
2022	1,264,359	1,264,359	-	5,662,900	22.3%

* This schedule is presented pursuant to the implementation of GASB Statement No. 67, *Financial Reporting for Pension Plans* by reporting entities responsible for administering the pension plan to improve financial reporting by state and local governmental pension plans. Due to the statement 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
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, 2021
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	2 years
Asset valuation method	Market value
Actuarial assumptions:	
Investment rate of return	8.0%
Projected salary increases	5.0%
Cost-of-living adjustments	3.0% per year postretirement with a maximum total increase of 30%. Maximum pension benefit is 75% of salary used to compute retirement benefits.

WHITEHALL TOWNSHIP POLICE PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Joshua D. Shapiro
Governor
Commonwealth of Pennsylvania

The Honorable Joseph J. Marx, Jr.
Mayor

Mr. Thomas Slonaker
President, Board of Township Commissioners

Mr. John D. Meyers
Deputy Mayor

Mr. Gavin Meyers
Finance Officer

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