

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN

LUZERNE COUNTY

COMPLIANCE AUDIT REPORT

FOR THE PERIOD

JANUARY 1, 2007, TO DECEMBER 31, 2009



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ABBREVIATION

ERISA - Employee Retirement Income Security Act

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.

Pension plan aid is provided from a 2 percent foreign casualty insurance premium tax, a portion of the foreign 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 Foster Township Nonuniformed Pension Plan is also governed by implementing regulations adopted by the Public Employee Retirement Commission published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes.

As further described in the Letter from the Auditor General included in this report, the township's nonuniformed union employees participate in the Central Pennsylvania Teamsters Pension Fund. The plan is also affected by the provisions of collective bargaining agreements between the township and its nonuniformed union employees. Active members are not required to contribute to the plan. The municipality was required to contribute \$180 per month per employee from November 1, 2006, to October 31, 2007, \$190 per month per employee from November 1, 2007, to October 31, 2008, \$195 per month per employee from November 1, 2008, to October 31, 2009, and \$200 per month per employee from November 1, 2009, to October 31, 2010.



Board of Township Supervisors
Foster Township
Luzerne County
Freeland, PA 18224

We have conducted a compliance audit of the Foster Township Nonuniformed Pension Plan for the period January 1, 2007, to December 31, 2009. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with *Government Auditing Standards* applicable to performance audits 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. The township's nonuniformed union employees participate in the Central Pennsylvania Teamsters Pension Fund, a Taft-Hartley Act collectively bargained, jointly trustee, multi-employer pension plan, which is governed primarily by the Federal Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides for substantial federal government oversight of the operating and reporting practices of employee benefit plans subject to its provisions. Accordingly, the scope of our audit was restricted to the activities of the Foster Township Nonuniformed Pension Plan and did not extend to the activities of the multi-employer pension plan.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Foster Township Nonuniformed 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 objectives, and assessed whether those significant controls were properly designed and implemented. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to the extent necessary to satisfy the audit objectives.

The results of our tests indicated that, in all significant respects, the Foster Township Nonuniformed 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 – Partial Compliance With Prior Audit Recommendation –
Receipt Of State Aid In Excess Of Entitlement
- Finding No. 2 – Incorrect Data On Certification Form AG 385 Resulting In
An Underpayment Of State Aid
- Finding No. 3 – Participation Agreement Not Adopted By Ordinance Or
Resolution

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information and, accordingly, express no form of assurance on it.

The contents of this report were discussed with officials of Foster Township and, where appropriate, their responses have been included in the report.

August 25, 2010

JACK WAGNER
Auditor General

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendation

Foster Township has complied with the prior audit recommendation concerning the following:

- Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

The township reimbursed \$2,132 to the Commonwealth for the overpayment of state aid.

Partial Compliance With Prior Audit Recommendation

- Receipt Of State Aid In Excess Of Entitlement

The township reimbursed \$2,173 to the Commonwealth for the excess state aid received in the year 2006; however, plan officials failed to reconcile the amount of state aid allocated to the nonuniformed pension plan with the plan's defined contribution pension costs in the years 2007 and 2008 as disclosed in the Findings and Recommendations section of this report.

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Partial Compliance With Prior Audit Recommendation – Receipt Of State Aid
In Excess Of Entitlement

Condition: As disclosed in the prior audit report, the township received state aid in excess of the nonuniformed pension plan’s defined contribution pension costs in the year 2006. The township reimbursed \$2,173 to the Commonwealth for the excess state aid received in the year 2006; however, plan officials failed to reconcile the amount of state aid allocated to the nonuniformed pension plan with the plan’s defined contribution pension costs in the years 2007 and 2008.

The township received state aid in excess of the nonuniformed pension plan’s defined contribution pension costs in the years 2007 and 2008, as illustrated below:

	<u>2007</u>	<u>2008</u>
State aid allocation	\$ 7,503	\$ 9,559
Actual municipal pension costs	(6,540)	(6,680)
Excess state aid	\$ 963	\$ 2,879

Criteria: Section 402(f)(2) of Act 205 states:

No municipality shall be entitled to receive an allocation of general municipal pension system State aid in an amount which exceeds the aggregate actual financial requirements of any municipal pension plans for police officers, paid firefighters or employees other than police officers or paid firefighters maintained by the municipality, less the amount of any aggregate annual member or employee contributions during the next succeeding plan year, as reported in the most recent complete actuarial report filed with the commission.

Cause: Plan officials failed to establish adequate internal control procedures to ensure full compliance with the prior audit recommendation.

Effect: It is this department’s opinion that because the entire proceeds of the insurance premium tax on foreign casualty insurance companies are distributed annually to each eligible recipient municipality, it is inappropriate to use state aid in one year to offset pension costs in other years. Consequently, the overpayments of state aid in the years 2007 and 2008, in the total amount of \$3,842, must be returned to the Commonwealth for redistribution.

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Recommendation: We recommend that the municipality return the \$3,842 of excess state aid received in the years 2007 and 2008 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 plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 11 Stanwix Street, Suite 1450, Pittsburgh, PA 15222. A copy of the interest calculation must be submitted along with evidence of payment.

Furthermore, we again recommend that, in the future, plan officials reconcile the amount of state aid allocated to the nonuniformed pension plan with the plan's defined contribution pension costs.

Management's Response: Municipal officials agreed with the finding without exception.

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

Condition: The township failed to certify 3 eligible nonuniformed employees (3 units) with total payroll of \$80,466 in 2009 on Certification Form AG 385. Although the township filed their 2009 Certification Form AG 385, the form indicated the plan had no active members; consequently, the township did not receive a state aid allocation in 2009.

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.

In addition, pursuant to the instructions that accompany Certification Form AG 385, the total payroll eligible to be certified should be Internal Revenue Service Form W-2 earnings pertaining to full-time positions.

Cause: Plan officials failed to establish adequate internal control procedures to ensure the accuracy of the data certified.

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Effect: The data submitted on this certification form is used, in part, to calculate the state aid due to the municipality for distribution to its pension plan. Because the township failed to certify the eligible plan members on the 2009 Certification Form AG 385, the township would have received a \$9,384 allocation of state aid in 2009 as identified below:

<u>Units</u> <u>Understated</u>	<u>Unit</u> <u>Value</u>	<u>State Aid</u> <u>Allocation</u>
3	\$ 3,128	\$ 9,384

Although the township will be reimbursed \$7,050, which is the amount of the plan’s actual pension costs in 2009, the township had to use municipal funds to satisfy the 2009 minimum municipal obligation due to the plan instead of their state aid allocation.

Recommendation: We recommend that, in the future, plan officials establish adequate internal control procedures to ensure compliance with the instructions that accompany Certification Form AG 385 to assist them in accurately reporting the required pension data.

Management’s Response: Municipal officials agreed with the finding without exception.

Finding No. 3 – Participation Agreement Not Adopted By Ordinance Or Resolution

Condition: The terms, provisions and conditions of the pension plan were adopted in a separately executed plan agreement with the Central Pennsylvania Teamsters Pension Fund dated August 1, 1990. However, the plan agreement has not been formally adopted by an ordinance or resolution that would properly adopt the plan’s benefit structure.

Criteria: Proper internal control procedures dictate that the provisions of the pension plan be formally adopted by a municipal ordinance or resolution.

Cause: Plan officials were unaware that the township should formally adopt the provisions of the plan agreement through a properly executed ordinance or resolution.

Effect: The municipality has not established a formal acknowledgement of the plan agreement with the union through a properly adopted ordinance or resolution.

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – (Continued)

Recommendation: We recommend that municipal officials take appropriate action to formally adopt the plan document through a properly executed ordinance or resolution.

Management's Response: Municipal officials agreed with the finding without exception.

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
POTENTIAL WITHHOLD OF STATE AID

Finding No. 1 contained in this audit report cites an overpayment of state aid to the township in the amount of \$3,842. A condition of this nature may lead to a total withholding of state aid in the future unless that finding is corrected. A check in this amount with interest, 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, 11 Stanwix Street, Suite 1450, Pittsburgh, PA 15222.

FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF STATE AID
 AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid Deposited	Employer Contributions
2004	\$ 7,465	\$ 330
2005	6,838	1,362
2006	7,555	None
2007	6,540	None
2008	6,680	None
2009	None	7,050



FOSTER TOWNSHIP NONUNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania

Foster Township Nonuniformed Pension Plan
Luzerne County
1000 Wyoming Avenue
P.O. Box 465
Freeland, PA 18224

Mr. Gerald Brogan Chairman, Board of Township Supervisors
Ms. Brittany Kemper Chief Administrative Officer

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, Room 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.