

# COMPLIANCE AUDIT

---

## Heidelberg Township Police Pension Plan Lebanon County, Pennsylvania For the Period January 1, 2017 to August 24, 2021

---

December 2021



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**

Board of Township Supervisors  
Heidelberg Township  
Lebanon County  
Schaefferstown, PA 17088

We have conducted a compliance audit of the former Heidelberg Township Police Pension Plan for the period January 1, 2017 to August 24, 2021. 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 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 municipal officials took appropriate corrective action to address the finding contained in our prior report.

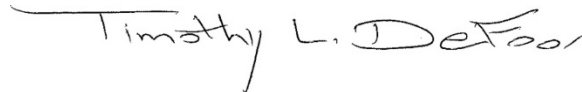
Our audit was limited to the areas related to the objective identified above. To determine if municipal officials took appropriate corrective action to address the finding contained in our prior report, we inquired of plan officials and evaluated supporting documentation provided by officials evidencing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

The results of our procedures indicated that municipal officials did not take appropriate corrective action to fully address the finding contained in our prior report as described in the following finding further discussed later in this report:

**Finding – Noncompliance with Prior Recommendation – Improper Dissolution  
Of Pension Plan And Distribution Of Plan Assets**

The finding 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 report.

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

A handwritten signature in black ink that reads "Timothy L. DeFoor". The signature is written in a cursive style with a long horizontal line extending to the left of the first letter.

September 27, 2021

Timothy L. DeFoor  
Auditor General

## CONTENTS

	<u>Page</u>
Background.....	1
Finding and Recommendation:	
Finding – Noncompliance With Prior Recommendation – Improper Dissolution Of Pension Plan And Distribution Of Plan Assets .....	3
Potential Withhold of State Aid.....	12
Report Distribution List .....	13

## 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 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 Heidelberg Township Police Pension Plan was 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 Heidelberg Township Police Pension Plan was a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 116-2010, as amended, and a separately executed plan agreement with the plan's custodian, adopted pursuant to Act 600. The plan was established December 11, 1970. On August 24, 2021, the township adopted Ordinance No. 166 to terminate the plan effective October 25, 2016.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
STATUS OF PRIOR FINDING

Noncompliance With Prior Recommendation

Heidelberg Township has not complied with the prior recommendation concerning the following as further discussed in the Finding and Recommendation section of this report:

- Improper Dissolution Of Pension Plan And Distribution Of Plan Assets

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – Noncompliance With Prior Recommendation – Improper Dissolution Of Pension Plan And Distribution Of Plan Assets**

Condition: As disclosed in the prior report, on October 25, 2016, Heidelberg Township enacted Resolution No. 834, effectively terminating the police pension plan and approving the subsequent transfer of all of the remaining assets of the former police pension plan in the amount of \$927,426 to the township. The dissolution of the pension plan and subsequent distribution of plan assets resulted in the following deficiencies:

- Township officials failed to properly maintain a pension reserve fund or purchase an annuity to provide a monthly pension benefit for the surviving spouse of a police officer who died on February 14, 2015 and was entitled to receive a deferred monthly pension benefit according to the plan's governing document. According to records provided by the township, the former officer made an election to vest his retirement benefit on March 8, 2012 upon termination of employment with the township after accumulating 13 years of service. The monthly benefit was calculated in the amount of \$1,280 per month and due to commence on March 1, 2024. As such, the surviving spouse of the deceased police officer is due a deferred monthly pension benefit from the pension plan in the amount of \$640 beginning March 1, 2024.
- The township failed to properly identify any remaining outstanding obligations and/or liabilities of the police pension plan prior to dissolution of the plan and subsequent transfer of the remaining plan assets to the township's general fund. After accounting for any outstanding obligations and/or liabilities of the pension plan such as the deferred monthly vested pension benefit described above, the township failed to determine the portion of the remaining plan assets required to be returned to the Commonwealth in accordance with Act 120 and Act 205. Heidelberg Township has not employed a full time police officer since March 8, 2012 and as of the date of transfer, November 8, 2016, police pension plan assets totaled \$927,476. However, the township failed to return any unused funds issued pursuant to Act 120 and Act 205 to the Commonwealth, accordingly.
- The pension plan's governing document, Ordinance No. 116-2010, was not properly amended by Ordinance; instead, the former ordinance was effectively replaced in its entirety by Resolution No. 834, adopted October 25, 2016.

The issues disclosed remain unresolved as of the date of this report.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

Criteria: Act 600 at Section 1(a)(4), states:

The surviving spouse of a member of the police force or a member who retires on pension who dies or if no spouse survives or if he or she survives and subsequently dies, then the child or children under the age of eighteen years or, if attending college, under or attaining the age of twenty-three years, of a member of the police force or a member who retires on pension who dies shall during her lifetime in the case of a surviving spouse or until reaching the age of eighteen years or if attending college, under or attaining the age of twenty-three years, in the case of a child or children, be entitled to receive a pension calculated at no less than fifty per centum of the pension the member was receiving or would have been receiving had he been retired at the time of his death. (Emphasis added.)

Furthermore, Section 5(h)(ii) of Act 600, states, in part:

...should a police officer, before completing superannuation retirement age and service requirements but after having completed twelve years of total service, for any reason cease to be employed as a full-time police officer by the municipality or regional police department in whose pension fund he has been a member, he shall be entitled to vest his retirement benefits...

In addition, Act 600 at Section 1(a)(5), states, in part:

The surviving spouse of a member of the police force who dies before his pension has vested. . .shall be entitled to receive repayment of all money which the member invested in the pension fund plus interest or other increases in value of the member's investment in the pension fund, unless the member has designated another beneficiary for this purpose.

Consequently, Act 600 pension benefits for a surviving spouse are derivative of the plan member's eligibility to receive such a benefit. The former Heidelberg Township police officer was eligible to receive a future pension benefit because he was vested in the plan at the time of his death. Therefore, his surviving spouse is entitled to receive no less than one-half of the prorated pension benefit he was to receive under the plan with this benefit payable upon the date he would have reached superannuation age.



HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

Regarding the township’s dissolution of the police pension plan and subsequent transfer of assets to the township’s general fund, municipalities that have received state aid allocations pursuant to Act 120, and which do not employ at least one full-time paid police officer, must return unused funds to the Commonwealth pursuant to the provisions of Act 120, at 72 P.S. 2263.3, which states, in part:

All monies distributed under the terms hereof, that are not used for the purposes set forth herein within two years after receipt thereof by the treasurers of several cities, boroughs, towns and townships, shall be returned to the General Fund for distribution...

In addition, Act 205, at Section 402(g), directs that:

Any general municipal pension system State aid received by a municipality shall only be used to defray the cost of the pension plan or pension plans maintained by the municipality.

Furthermore, Section 402(j) authorizes the Auditor General to administer the General Municipal Pension State Aid Program. This administrative power necessarily extends to ensuring that state aid is both allocated and used in accordance with the act.

Finally, relative to amending an ordinance with a resolution, in Wynne v. Lower Merion Township, 181 Pa. Super., 524 (1956), the Pennsylvania Superior Court held that an ordinance may be amended only by another ordinance and not by a resolution.

Cause: As disclosed in the prior report, plan officials and the township’s solicitor were not convinced that either the plan’s governing document or Act 600 requires a vested benefit for a surviving spouse of a member who dies and fails to reach his superannuation date. In addition, plan officials maintain that all the funds accumulated in the police pension plan belonged to the township and that all of the outstanding pension obligations were already satisfied. Moreover, officials cited Section 9.4(c) of the separately executed plan agreement adopted previously pursuant to Ordinance No. 116-2010 as the basis of their decision to liquidate funds as follows:

Remaining Fund Balance - Notwithstanding any provision in this plan to the contrary, upon the termination of the plan, but only after all liabilities to the participants and their respective beneficiaries have been satisfied, the employer shall be entitled to any balance of the net assets of the fund that shall remain by reason of erroneous actuarial computations or overpayments during the life of the plan.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

Municipal officials did indicate that the Township would adhere with the Department’s prior recommendation and proceed with adoption of an ordinance in accordance with the Second Class Township Code, pending a final resolution of the audit and determination of the disposition of the Plan assets.

Effect: As a result of the township’s failure to maintain a pension fund or purchase an annuity to pay the deferred pension benefit due the surviving spouse of a former police officer who died and was eligible to receive a vested benefit and formally elected to receive such deferred benefit at his superannuation date, the township will now be required to fund this obligation from its general fund. Also, due to the township’s failure to properly identify the remaining pension plan obligations and the township’s liquidation of the remaining accumulated pension plan assets and subsequent transfer to the township’s general fund, funds distributed under Act 120 and Act 205 were not used for their intended statutory purpose or returned to the Commonwealth for redistribution to defray other eligible municipalities’ pension plan costs. Moreover, by failing to properly amend the plan’s governing ordinance by another properly executed ordinance, there was no public notification of the township’s intentions to formally dissolve the former police pension plan and distribute the remaining accumulated plan assets to the township’s general fund, thereby denoting a general lack of overall transparency of the actions taken by municipal officials relative to the former police pension plan.

Furthermore, the township’s future state aid allocations may be withheld until the finding recommendation is complied with.

Recommendation: We again recommend that the township determine the obligation necessary to fund the monthly vested pension benefit due the surviving spouse of the deceased police officer and pay the deferred monthly pension benefit beginning on what would have been the deceased officer’s superannuation date, March 1, 2024, in accordance with the plan document in existence at the time the deferred vested benefit was elected by the deceased police officer. We also recommend that after accounting for any other outstanding obligations and/or liabilities due from the former plan, the township perform a historical accounting of state aid received since plan inception along with any general fund contributions paid into the plan, in order to determine the township’s pro-rata share of the remaining fund assets between the Commonwealth and township at the time the liquidation of the former pension plan occurred and return the portion of any unused funds originally derived from state aid and not used to pay pension costs, to the Commonwealth. A check, along with any applicable calculations used in determining the amount reimbursed, should be made payable to the Commonwealth of Pennsylvania and submitted to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 321 Finance Building, Harrisburg, PA 17120.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

Management’s Response: The following response was provided by officials during the prior engagement and is included in its entirety:

In the January 26, 2018 exit conference memo, auditors of the Auditor General’s Office asserted that the dissolution of the Heidelberg Township Police Pension Plan (the “Plan”) was improper because:

1. The Township failed to make provision for a monthly pension benefit for the surviving spouse of a police officer who died February 14, 2015;
2. The Township did not identify any remaining outstanding obligations and/or liabilities prior to dissolution of the Plan; and
3. The Township’s Resolution No. 834 was ineffective to amend the Ordinance governing the plan, No. 116-2010.

The Township disagrees with asserted deficiencies 1. and 2. and generally acquiesces to the Auditor’s determination with respect to deficiency 3. for the following reasons:

*1. Provision for surviving spouse benefit*

The Township disagrees with the asserted deficiency because the officer who died February 14, 2015, never attained normal retirement age under the Plan.

In 2008, the Governor signed into law Act 92 of 2008, which amended the provisions of Act 600 pertaining to the provision of a survivor benefit for the surviving spouse and qualifying children. Specifically, the amendment added language that requires a member of the police force “dies subsequent to retirement” in order for a survivor benefit to be payable. Oct. 8, 2008, P.L. 1095, No. 92 § 1(a)(4). The provision applied to retirements prior to April 18, 2002 and retirements after April 16, 2002. Read with the existing text, a survivor benefit must be paid if the member retires on pension and dies after retirement.

The officer in question was neither receiving a pension nor was he eligible to commence a pension until his normal retirement date. *See* Plan section 5.2(a). At the time of his death on February 14, 2015, he had not attained his normal retirement date, nor had he attained his required beginning date. In support, please refer to the excerpt from the January 1, 2015 Participant Listing prepared by the Township’s enrolled actuary attached hereto as Exhibit A. *[Exhibits not presented in this report due to length.]*

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

The plain language of Act 600, as amended by Act 92, can reasonably be read to require that an officer who separates from service prior to death must both attain the normal retirement date and be receiving a pension in order for a survivor benefit to be payable to his or her spouse or children. Payment prior to the normal retirement date would be a preretirement survivor benefit that Act 600 neither requires nor does the Plan provide. The officer in question was neither receiving a benefit nor eligible to commence a benefit at the time of his death. Therefore, no survivor benefit is required under either Act 600 or the terms of the Plan.

*2. Identification of Outstanding Obligations and Liabilities*

The township disagrees with the asserted deficiency because there were no outstanding obligations or liabilities at the time the Township determined to dissolve the police pension fund.

The Heidelberg Township Police Pension Plan valuation dated January 1, 2015 (attached hereto as Exhibit B) clearly shows that the only two liabilities of the Plan were with respect [to] one retired member and one vested former member. Subsequent to the valuation, the vested former member died prior to becoming eligible for a survivor benefit as set forth above. The Township also purchased an annuity sufficient to pay the retirement benefits owed to the single retired member. No new officers entered the plan after the valuation date. Accordingly, there were no outstanding liabilities or obligations to members at the time the Township determined to dissolve the police pension fund.

The Township also never received any state aid under Act 205 of 1984 or Act 120 of 1943 for which it would be liable to refund the state its expenditures. The Township maintained for its records a ledger of contributions, whether employee contribution, municipal contribution or state aid under Act 205, from 1985 through 2005 that indicates that no state aid was received under Act 205 (attached hereto as Exhibit C). An Auditor General's report from January 1, 1988 through December 31, 1991 corroborates the ledger (attached hereto as Exhibit D). The report notes on page 9 that no state aid was received due to the Plan's overfunded status. Section 402(f)(2) of Act 205 provides that no municipality may receive state aid in excess of its actual financial requirements with respect to the police fund. As the Plan has been overfunded as far back as the enactment of Act 205, the Township neither received nor could not receive state aid under Act 205.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

The Township has no evidence of aid received under Act 120 of 1943, and therefore asserts none was received. Additionally, as the Township maintained a pension fund until its dissolution in 2016, it would not have been eligible to even apply for aid under the terms of the 72 P.S. § 2263.2. While the Township believes it has never received any aid, and makes no admission to the receipt of such aid, no aid would have been required to be returned to the state under the terms of Act 120, as currently in effect, or as effective prior to enactment of Act 205. Act 120 only requires repayment if the state aid is not used for the purpose of funding the police pension plan within two years of its receipt. The time for repayment of any aid a municipality may have received prior to enactment of Act 205 has long since passed. *See* Section 403 of Act 205.

For the foregoing reasons, the Township believes it has properly accounted for all outstanding obligations and liabilities of the Plan prior to its dissolution.

*3. Dissolution by Resolution*

After reviewing the law regarding amendment of an ordinance, the Township acquiesces to the Auditor's determination that amendment by ordinance was necessary to terminate the Plan. The Township will maintain funds in its general fund at least equal to the funds received from the dissolution of the Plan until this audit is resolved and the Plan is terminated by ordinance. The Township will proceed with adoption of an ordinance in accordance with the Second Class Township Code, pending a final resolution of this audit and a determination of the disposition of the Plan assets.

In response to the repeat finding in the current audit, municipal officials provided the following additional response:

Heidelberg Township has addressed the prior Audit Finding that the pension plan's governing document, Ordinance 116-2010, was not properly amended by Ordinance. Heidelberg Township adopted Ordinance 166 on August 24, 2021, confirming the prior action taken through Resolution 834 (adopted October 25, 2016) and ratifying the termination of the Heidelberg Township Police Pension Plan.

With regard to the Audit Findings related to the Improper Dissolution of Pension Plan and Distribution of Plan Assets, Heidelberg Township provided detailed responses to these findings following the prior audit, as detailed in the April 2018 Limited Procedures Engagement (LPE). The Township's position regarding those findings remains unchanged and continues to be set forth therein.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

Auditor’s Conclusion: We agree that the township’s recent adoption of Ordinance No. 166 on August 24, 2021, confirming the prior action taken by the township through Resolution No. 834 (adopted October 25, 2016) effectively terminating its police pension plan in accordance with the termination provisions of the plan’s pension plan document, adheres to the recommendation disclosed in the prior report and item #3 in the above Condition and no further action is required regarding this issue.

However, as similarly noted in the prior report, the department maintains its previous position in regards to assertion #1 above, and we respectfully disagree with the township’s position as follows:

The Pennsylvania legislature passed Act 30 of 2002 on April 17, 2002, which amended Act 600 in several respects. Among the changes was a provision specifying that the “surviving spouse of a member of the police force who dies before his pension has vested . . . shall be entitled to receive repayment of all money which the member invested in the pension fund plus interest. . . .” (Emphasis added.) The Department of the Auditor General has concluded that Act 600 pension benefits for a surviving spouse are derivative of the plan member’s eligibility to receive such a benefit and therefore, the surviving spouse of a police officer who dies after his pension has vested is entitled to receive benefits determined in accordance with the sections of Act 600 cited above. (Emphasis added.) These benefits are payable beginning on what would have been the deceased officer’s superannuation retirement date, which, as noted in the Condition above, were to commence on March 1, 2024.

Regarding the township’s rationale regarding assertion #2 in the Management Response above relative to the identification of outstanding obligations and liabilities, based on our discussion relative to assertion #1, there remains an outstanding liability to the aforementioned vested survivor to pay the benefit in accordance with Act 600. Since the township dissolved the former police pension plan, we recommend that the township consider purchasing an annuity to pay the required benefit, accordingly, from the proceeds of the previously liquidated pension plan.

Additionally, as it relates to the remaining assets representing municipal funds and not state aid, although department records confirm the township’s assertion that the township did not receive funding from 1985 through 2005, department records also indicate that the township received Commonwealth funding allocations prior to 1985. Prior released audit reports covering the years 1980 through 1984 indicated that the township received state aid totaling \$77,137 during the same period, and disclosed a plan beginning balance of \$79,798 as of January 1, 1980; however, the source of the beginning balance cannot readily be determined from these records. Given the information available, state aid funding, at a minimum, represented 49.2% of the available plan

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

balance as of 1980 and along with subsequent investment earnings accumulated to a total plan balance of \$927,476 at the date of termination/liquidation of the former police pension plan on November 8, 2016. Since the former police pension plan was at least partially funded with state aid received from the Commonwealth, and as previously stated, since general municipal pension system state aid received by a municipality shall only be used to defray the cost of the pension plan or pension plans maintained by the municipality for the purpose of providing benefits to plan members at retirement, we therefore recommend that the township, after subtracting amounts to purchase an annuity to provide the aforementioned vested benefit for the survivor disclosed above from the Commonwealth's share of the accumulated fund balance of \$456,318 (*represents 49.2% of the total \$927.476*), return the remaining proportionate share of funds to the Commonwealth.

Due to the potential withhold of state aid, the township's compliance with the finding recommendation will be monitored subsequent to the release of the audit report.

HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
POTENTIAL WITHHOLD OF STATE AID

A condition such as that reported by the finding contained in this audit report may lead to a total withholding of state aid in the future unless that finding is corrected. However, such action will not be considered if sufficient written documentation is provided to verify compliance with this department's recommendation. Such documentation should be submitted to: Department of the Auditor General, Bureau of Municipal Pension & Liquor Control Audits, 314 Finance Building, Harrisburg, PA 17120.



HEIDELBERG TOWNSHIP POLICE PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

**The Honorable Tom W. Wolf**  
Governor  
Commonwealth of Pennsylvania

**Mr. Paul Fetter**  
Chairman, Board of Township Supervisors

**Mr. Ted Cromleigh**  
Chief Administrative Officer

**Ms. Jennifer Snyder**  
Office Manager

This report is a matter of public record and is available online at [www.PaAuditor.gov](http://www.PaAuditor.gov). Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: [news@PaAuditor.gov](mailto:news@PaAuditor.gov).