

# COMPLIANCE AUDIT

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## Darby Township Police Pension Plan Delaware County, Pennsylvania For the Period January 1, 2017 to December 31, 2020

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June 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 Commissioners  
Darby Township  
Delaware County  
Glenolden, PA 19036

We have conducted a compliance audit of the Darby Township Police Pension Plan for the period January 1, 2017 to December 31, 2020. 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 findings 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 findings 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 and a plan member who elected to vest 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 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, 2017 and January 1, 2019 actuarial valuation reports were prepared and submitted by March 31, 2018 and 2020, respectively, in accordance with Act 205 and whether selected information provided on these reports is accurate, complete, and in accordance with plan provisions to ensure compliance for participation in the state aid program by comparing selected information to supporting source documentation.
- We determined whether provisions of the Deferred Retirement Option Plan (DROP) were in accordance with the provisions of Act 205 by examining provisions stated in the plan's governing documents.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Darby 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 Darby 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 – Plan’s Collective Bargaining Agreement Contains An Unauthorized Nonservice-Related Disability Pension Provision
- Finding No. 2 – Noncompliance With Prior Recommendation – Pension Benefit Not Authorized By Act 600 And Inconsistent With Recent Changes To Plan’s Governing Document And Collective Bargaining Agreement

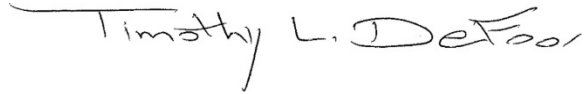
The findings contained in this audit report repeat conditions that were cited in our previous report that have not been corrected by township officials. We are concerned by the township’s failure to correct those previously reported findings and strongly encourage timely implementation of the recommendations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

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

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

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it. However, we are extremely concerned about the funded status of the plan contained in the schedule of funding progress included in this report which indicates **the plan’s funded ratio is 64.8% as of January 1, 2019, which is the most recent data available. Based on this information, the township is currently in Level II moderate distress status.** We encourage township officials to monitor the funding of the police pension plan to ensure its long-term financial stability.

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

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.

May 19, 2021

Timothy L. DeFoor  
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.

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 Darby 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 Darby Township Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 721, adopted pursuant to Act 600. The plan is also affected by the provisions of collective bargaining agreements (CBA) between the township and its police officers. The plan was established January 1, 1958. Active members are required to contribute 4 percent of compensation to the plan. As of December 31, 2020, the plan had 14 active members, 1 terminated member eligible for vested benefits in the future, and 21 retirees receiving pension benefits from the plan.

DARBY TOWNSHIP POLICE PENSION PLAN  
STATUS OF PRIOR FINDINGS

Status Of Prior Recommendation

· Pension Benefits Inconsistent And Not Authorized By Act 600

As disclosed in the prior audit report, pension benefits in excess of Act 600 provisions were being provided to 7 officers who retired during prior audit periods. Pension benefits in excess of Act 600 provisions were granted to an additional officer who retired and another officer who elected to vest his benefit during the current audit period. Severance payments and/or lump sum payments for leave that was not earned during the pension computation period were included in the determination of the final average monthly compensation used to recalculate their monthly pension benefits. To the extent that the township is not in compliance with Act 600 and/or is contractually obligated to pay benefits to existing or future 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. Since the township received state aid based on unit value during the current audit period, it did not receive state aid attributable to the excess benefits provided. The Department will continue to monitor the impact of the excess benefits being paid to current and future retirees on the township's state aid allocations during future audits of the plan, which may require the township to reimburse any excess state aid received attributable to the excess pension benefits to the Commonwealth.

There were additional issues related to pension benefits noted during performance of the current audit not previously disclosed to the township as referenced in Finding Nos. 1 and 2 contained in this report.

Noncompliance With Prior Recommendations

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

- Plan's Collective Bargaining Agreement Contains An Unauthorized Nonservice-Related Disability Pension Provision; and
- Pension Benefit Not Authorized By Act 600 And Inconsistent With Recent Changes To Plan's Governing Document And Collective Bargaining Agreement.



DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – Noncompliance With Prior Recommendation – Plan’s Collective Bargaining Agreement Contains An Unauthorized Nonservice-Related Disability Pension Provision**

Condition: As previously disclosed in the prior audit report, the pension plan’s collective bargaining agreement (CBA) covering the period January 1, 2015 to December 31, 2019 contains a provision for the payment of a nonservice-related disability benefit that is not authorized by Act 600 or the plan governing document, as follows:

If said disability is non-service connected, and he has less than ten (10) years of service, he shall receive one hundred dollars (\$100.00) per year of service per month, and if he has ten (10) years or more of service, he shall receive seventy percent (70%) of his average salary for the last sixty (60) months of employment. This shall continue until his death.

During the prior audit period, an officer who worked past his superannuation retirement date based on his obtained age and years of service and was eligible for a normal monthly retirement benefit, subsequently retired during 2016 and was granted a non-service related disability monthly pension benefit which also included a lump sum severance payment which is also contrary to Act 600 and not prescribed by the plan’s governing document.

Criteria: Regarding disability benefits, 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.

Furthermore, the Supreme Court of Pennsylvania in *Chirico v. Board of Supervisors for Newtown Township*, 518 Pa. 572, 544A.2d 1313 (1988) held that Act 600 does not provide for the payment of pension benefits for non-service related injuries.

Additionally, although Act 600 does not define “salary,” the department has concluded, based on a line of court opinions, that the term does not encompass severance payments or lump-sum payments for leave that was not earned during the pension computation period.

DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Cause: Plan officials failed to negotiate the nonservice-related disability provision out of the CBA for the period January 1, 2020 to December 31, 2023.

Effect: The plan is paying pension benefits to the retiree in excess of those authorized by Act 600. As of the date of this report, the retiree is receiving benefits of \$7,863 per month (calculated with the inclusion of a severance payment and also includes a monthly service increment of \$600 per month). However, since this retiree reached superannuation, his normal monthly pension benefit allowable in accordance with Act 600, without the inclusion of the severance payment in the monthly pension benefit determination and including the authorized monthly service increment (Act 600 allows \$500 per month) would amount to \$5,800 per month. The retiree is receiving excess benefits of \$2,063 per month, which totaled approximately \$109,339 from retirement through the date of this 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 recommend that the township comply with Act 600 upon the renewal, extension, or renegotiation of the collective bargaining agreement. To the extent that the township is not in compliance with Act 600 and/or is contractually obligated to pay nonservice-related disability benefits to current retirees, the 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, municipal officials should consult with the plan's actuary to determine if Supplemental Actuarial Information Form AG-MP-1 should be prepared. If it is determined the unauthorized benefits had an impact on the township's state aid allocations received during and subsequent to the audit period, the form should be submitted to the Department. Furthermore, after the submission of the form, the plan's actuary should contact the Department to verify the overpayment of state aid received and plan officials should then reimburse the overpayment to the Commonwealth.

Management's Response: Municipal officials agreed with the finding without exception and will attempt to negotiate out the non-service disability provision in the next contract renewal.

Auditor's Conclusion: Compliance will be evaluated during our next audit of the plan.

DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – Noncompliance With Prior Recommendation – Pension Benefit Not Authorized By Act 600 And Inconsistent With Recent Changes To Plan’s Governing Document And Collective Bargaining Agreement**

Condition: As disclosed in the two most recent audit reports, the township amended the plan’s governing document to exclude severance payments and lump sum payments for leave not earned during the pension computation period from the calculation of pension benefits for officers hired on or after January 1, 2015. In addition, the collective bargaining agreement covering the period January 1, 2015 to December 31, 2019 was also revised to exclude these amounts from benefit calculations for officers hired on or after January 1, 2015. However, the township failed to amend the plan’s governing document to exclude severance payments and lump-sum payments for accumulated unused leave not earned during the computation period from the calculation of pension benefits for officers who retire from a service-connected disability. Section 4.04 of Article IV of the plan’s governing document, Ordinance No. 721, states in part:

Disability Benefit. If a MEMBER retires because of a TOTAL AND PERMANENT DISABILITY, he shall be entitled to receive a pension benefit equal to seventy-five percent (75%) of his SALARY at the time the disability was incurred, offset by any social security disability benefit received by the MEMBER for the same injury.

Section 1.15 of Article I of Ordinance No. 721 defines salary as follows:

“Salary” shall be based on W-2 earnings in which all forms of earnings are derived from the terms and conditions of the employee’s employment.

In addition, Section 4(i) of the CBA covering the period January 1, 2015 through December 31, 2019, states, in part:

Disability: If an officer is totally and permanently disabled from performing police work for the Township of Darby as a result of a service-connected disability, he shall receive seventy-five percent (75%) of his wages (which shall include all monies received in the twelve (12) month period preceding retirement), offset by social security disability received by the officer for the same injury or illness that results in the service-connected disability....

Plan officials included severance payments in the calculation of the monthly pension benefits for two police officers — one who was hired on July 17, 2015 and retired during 2017 and another who was hired July 8, 2015 and subsequently retired at the end of 2020, both as a result of a service-connected disability.

DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

Criteria: 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 severance payments or lump-sum payments for leave that was not earned during the pension computation period.

Furthermore, the township recently revised Section 1.03 of the pension plan's governing document, Ordinance No. 721, to state, in part:

For officers hired on or after January 1, 2015, the severance payment and any other lump-sum payment made at the time of separation to "buy back" unused paid time off shall not be included in the Average Applicable Compensation for pension computation.

Moreover, the collective bargaining agreement for the years 2015 through 2019 was also revised and states:

As to officers hired on or after January 1, 2015, the severance payment and any other lump-sum payment made at the time of separation to "buy back" unused paid time off shall not be included in the salary for pension computation.

Cause: As noted in the prior audit report, the township amended the plan's governing document to exclude severance payments and lump-sum payments for accumulated unused leave from the calculation of pension benefits for officers hired on or after January 1, 2015, and the collective bargaining agreement (CBA) between the police officers and the township for the period 2015 through 2019 also provides for this revision. However, plan officials failed to exclude severance payments and lump-sum payments for accumulated unused leave from the calculation of pension benefits for service-related disability pension benefits which seems inconsistent given these recent changes.

DARBY TOWNSHIP POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – (Continued)**

Effect: The plan is paying pension benefits to two retirees in excess of those authorized by Act 600. As of the date of this report, the retirees are receiving total excess benefits of \$1,313 and \$1,042 per month, respectively, which totaled approximately \$60,389 and \$5,209, respectively, from the date of retirement through the date of this 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 township comply with Act 600 upon the renewal, extension, or renegotiation of the collective bargaining agreement. To the extent that the township is not in compliance with Act 600 and/or is contractually obligated to pay excess benefits to current retirees, the 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, municipal officials should consult with the plan's actuary to determine whether a Supplemental Actuarial Information Form AG-MP-1 should be prepared. If it is determined the unauthorized benefits had an impact on the township's state aid allocations received during and subsequent to the audit period, the form should be submitted to the Department. Furthermore, after the submission of the form, the plan's actuary should contact the Department to verify the overpayment of state aid received and plan officials should then reimburse the overpayment to the Commonwealth.

Management's Response: Municipal officials agree with the finding in part and will attempt to negotiate changes to the service disability provisions in the next contract renewal. Please note that the elimination of lump sums in the 2015-2019 and 2019-2023 contracts only related to normal retirement benefit provisions and did not apply to service disabilities that are still based on all monies received in the 12-month period preceding retirement that include lump sums as part of all monies received. Municipal officials were bound to include severance payments in the service disability calculations as required by the collective bargaining agreement service disability language.

Auditor's Conclusion: Compliance will be evaluated during our next audit of the plan.

DARBY 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, 2015, 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)
01-01-15	\$ 6,157,842	\$ 9,226,414	\$ 3,068,572	66.7%
01-01-17	6,825,428	11,179,760	4,354,332	61.1%
01-01-19	7,875,160	12,148,997	4,273,837	64.8%

Note: The market value of the plan’s assets at 01-01-19 has been adjusted to reflect the smoothing of gains and/or losses over a 5-year averaging period. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

DARBY 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.

DARBY TOWNSHIP POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS

<u>Year Ended December 31</u>	<u>Actuarially Determined Contribution</u>	<u>Actual Contributions</u>	<u>Contribution Deficiency (Excess)</u>	<u>Covered- Employee Payroll</u>	<u>Contributions as a Percentage of Covered- Employee Payroll</u>
2014	\$ 669,615	\$ 669,615	\$ -	\$ 1,239,872	54.01%
2015	675,527	676,661	(1,134)	1,313,950	51.41%
2016	651,095	651,486	(391)	1,289,678	50.52%
2017	652,036	652,176	(140)	1,302,200	50.08%
2018	785,551	785,551	-	1,464,282	53.65%
2019	759,829	759,829	-	1,270,000	59.83%
2020	770,261	812,819	(42,558)	1,320,000	61.58%



DARBY 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, 2019
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	10 years
Asset valuation method	Fair value – 5-year smoothing
Actuarial assumptions:	
Investment rate of return	8.0%
Projected salary increases	5.0%
Cost-of-living adjustments	3.0% per annum

DARBY TOWNSHIP POLICE PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

**The Honorable Tom W. Wolf**  
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