

# COMPLIANCE AUDIT

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## South Whitehall Township Non-Uniformed Employees' Defined Contribution Pension Plan Lehigh County, Pennsylvania For the Period January 1, 2017 to December 31, 2019

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March 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**

The Board of Township Commissioners  
South Whitehall Township  
Lehigh County  
Allentown, PA 18104

We have conducted a compliance audit of the South Whitehall Township Non-Uniformed Employees' Defined Contribution Pension Plan for the period January 1, 2017 to December 31, 2019. 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. State aid allocations that were deposited into the pension plan for the years ended December 31, 2015 to December 31, 2019, are presented on the Summary of Deposited State Aid and Employer Contributions.
- 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. Employer contributions that were deposited into the pension plan for the years ended December 31, 2015 to December 31, 2019, are presented on the Summary of Deposited State Aid and Employer Contributions.
- We determined that there were no employee contributions required by the plan's governing document and applicable laws and regulations for the years covered by our audit period.
- We determined that there were no benefit calculations prepared for the years covered by our audit period.
- 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.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the South Whitehall Township Non-Uniformed Employees' Defined Contribution 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.

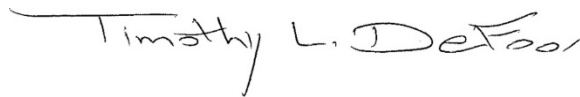
The results of our procedures indicated that, in all significant respects, the South Whitehall Township Non-Uniformed Employees' Defined Contribution Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further discussed later in this report:

Finding No. 1 – Noncompliance With Prior Recommendation - Failure To  
Timely Fund Members' Accounts

Finding No. 2 – Failure To Properly Allocate Forfeitures

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 recommendations noted in this audit report.

The contents of this report were discussed with officials of South 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 18, 2021

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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 South Whitehall Township Non-Uniformed Employees' Defined Contribution 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.

The South Whitehall Township Non-Uniformed Employees' Defined Contribution Pension Plan is a single-employer defined contribution pension plan locally controlled by the provisions of Ordinance No. 991, as amended, for the township's non-uniformed, non-union employees hired after January 1, 2015. The plan was established December 17, 2014. Active members are not required to contribute to the plan. The municipality is required to contribute 6 percent of compensation. As of December 31, 2019, the plan had 34 active members.

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STATUS OF PRIOR FINDINGS

Compliance With Prior Recommendation

South Whitehall Township has complied with the prior recommendation concerning the following:

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

During the current audit period, municipal officials complied with the instructions that accompany Certification Form AG 385 and accurately reported the required pension data.

Noncompliance With Prior Recommendation

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

- Failure To Timely Fund Members' Accounts

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FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – Noncompliance With Prior Recommendation – Failure To Timely Fund  
Members' Accounts**

Condition: As disclosed in the prior audit report, plan officials did not timely fund plan members' accounts during 2015 and 2016, as required by Act 205 and the plan's governing document. Although the minimum municipal obligations (MMOs) due to the non-uniformed employees' defined contribution pension plan for 2015 and 2016 were eventually deposited into the plan on June 15, 2016 and May 26, 2017, respectively; plan officials failed to include interest on the untimely deposits as prescribed in the act. A similar condition occurred during the current audit period. Plan officials again failed to timely fund members' accounts during the years 2017 through 2019. Although the MMO due for 2017 in the amount of \$39,819 was deposited February 26, 2018, the MMO due for 2018 in the amount of \$60,244 was deposited March 15, 2019, and the MMO due for 2019 in the amount of \$96,604 was deposited February 26 2020; plan officials again failed to include appropriate interest on the untimely obligations. Furthermore, officials had not yet determined or paid the required contributions due members of the pension plan for 2020 as of the completion of our testing.

It was also disclosed to municipal officials, via verbal observation during conduct of the prior engagement, that the plan's governing document Ordinance No. 991 (*as amended by Ordinance No. 1008*) contains a funding provision which appears contrary to Act 205 and the plan's governing document which may have contributed to the township's late payments.

Criteria: Section 102 of Act 205 contains the following definitions:

“Pension plan or system.” The various aspects of the relationship between a municipality and its employees with respect to the retirement coverage provided by a municipality to the employees.

Also, Section 303(e) of Act 205 states, in part:

Any amount of the minimum municipal obligation of the municipality which remains unpaid as of December 31 of the year in which the minimum obligation is due shall be added to the minimum obligation of the municipality for the following year, with interest from January 1 of the year in which the minimum obligation was first due until the date the payment is made....



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**Finding No. 1 – (Continued)**

Additionally, Section § 401 of the plan's adoption agreement (*enacted by Ordinance No. 991 adding a new Article 17A to Chapter 1 of the Township's Codified Ordinances*), states, in part:

...as of the last day of each plan year, the Employer Contribution Account of each Qualified Recipient...shall be credited with an amount equal to six percent (6.00%) of the qualified Recipient's Compensation attributable to service as a Qualified Employee...for the portion of the plan year during which he/she was an Active Participant.

Contradictorily, Ordinance No. 1008, which amended Section §404 of the plan's adoption agreement to clarify the timing for the payment of township contributions made to the plan, states, in part:

In General, employer contributions under this article for a given year are due to be paid to the trustees as soon as administratively possible following the end of the plan year, but in no event, later than December 31 of the following year. All amounts contributed before the end of the plan year shall be held unallocated in a separate early employer contributions account until the end of the plan year, when they shall be withdrawn and allocated as if they were contributed on the last day of the plan year.

However, it appears that these two sections of the plan document conflict in their desired intent to fund the defined contribution pension plan and individual member's accounts and ensure compliance with funding provisions of Act 205.

Cause: Plan officials failed to address the construction of the funding provision of Ordinance No. 1008 disclosed in the prior audit and continue the practice of funding the plan after December 31 according to such provision. Additionally, the township lacks adequate procedures to ensure that amounts due to the non-uniformed employees defined contribution pension plan were remitted timely or with interest, in accordance with Act 205 and compliance with the prior recommendation.

Effect: The failure to timely fund member's accounts in accordance with Act 205 could result in members being denied benefits to which entitled under the pension plan. In addition, due to the township's failure to timely fund the plan, the township must now pay interest on the untimely contributions.

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**Finding No. 1 – (Continued)**

Recommendation: We again recommend that the municipality pay the interest due on the untimely contributions to the non-uniformed employees' defined contribution pension plan for the years 2015 and 2016, as well as, including interest for the years 2017, 2018, and 2019 in accordance with Section 303(e) of Act 205. A copy of the interest calculation must be maintained by the township for examination during our next audit of the plan.

We also recommend that the plan immediately determine and pay the required municipal contribution due members of the pension plan for 2020, with interest, in accordance with Act 205 and the governing document.

Finally, we again recommend that the township, with assistance from its consultant and/or solicitor, ensure that provisions of the governing document adhere to the provisions of Act 205 at its earliest opportunity to do so.

Management's Response: Municipal officials agreed with the finding without exception. Subsequent to the exit conference held on February 3, 2021, the township provided documentation evidencing determination of the township's required contribution and proposed member allocation for the year 2020 which included appropriate liquidation of the plan's forfeiture balance of \$46,500, *noted in Finding No. 2*, along with additional contribution from the township's general fund.

Auditor's Conclusion: Based on the management response, it appears the township intends to comply with the finding recommendation. However, it was not clearly evident from the documentation subsequently provided by the township that the outstanding interest for 2015 through 2020 was addressed and included with the proposed contribution. Compliance will be evaluated during our next audit of the plan.

**Finding No. 2 – Failure To Properly Allocate Forfeitures**

Condition: The township has not properly applied plan forfeitures resulting from the non-vested portion of terminated employees' accounts in accordance with the provisions of the pension plan as adopted by Ordinance No. 991. The non-vested portions of terminated employee's accounts in the amounts of \$743 for 2017 and \$22,020 for 2019 were not timely forfeited and remained in the former employees' accounts as of the date of this report.

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**Finding No. 2 – (Continued)**

Criteria: Sections 802 and 803 of the separately executed plan document adopted pursuant to Ordinance No. 991 (*Chapter 58 of the Township Code*§58-65, (B)(1) and C), state, in part, the following:

In the case of any participant who is not 100% vested in all of his plan accounts, the nonvested portion of the participant's plan accounts shall be forfeited.

All funds forfeited shall be allocated to the forfeiture account. Amounts in the forfeiture account shall be applied on the last day of the plan year to provide allocations of other participants and reduce employer contributions to the plan for the given plan year.

Cause: Municipal officials did not timely consider the unallocated accounts which hold the previously forfeited amounts.

Effect: As a result of not properly applying forfeitures in accordance with the governing document, the township was required to contribute additional funds from the general fund which could have been used for other general municipal purposes. As of the date of this audit report, estimated funds amounting to \$46,044 were available for use in the unallocated forfeiture account.

Recommendation: We recommend that the township contact the plan administrator to arrange for the application of the unallocated forfeiture account balance against the township's future obligations of the plan in accordance with the plan document. We also recommend that the municipality review the forfeiture policy with the plan administrator and implement procedures to ensure that, in the future, all available unused plan forfeitures are properly utilized to meet plan obligations.

Management's Response: Municipal officials agreed with the finding without exception. Subsequent to the exit conference held on February 3, 2021, the township provided documentation evidencing determination of the township's required contribution and proposed member allocation for the year 2020 which included appropriate liquidation of the plan's forfeiture balance of \$46,500, along with additional contribution from the township's general fund.

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

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SUMMARY OF DEPOSITED STATE AID AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid	Employer Contributions
2015	None	\$ 13,493
2016	None	23,975
2017	None	29,282
2018	None	55,913
2019	None	96,604

Note: For 2017, the township met the plan's \$39,819 funding requirement through the deposit of \$29,282 in employer contributions and allocation of \$10,537 in terminated employee forfeitures. For 2018, the township met the plan's \$60,244 funding requirement through the deposit of \$55,913 in employer contributions and the allocation of \$4,331 in terminated employee forfeitures. *(It was noted that additional forfeitures were available, but not used for 2017 and 2019 as disclosed earlier in Finding No. 2 of this report.)*

The Department typically presents this data for the past six consecutive fiscal years. Since six years of data were not yet available, this will be done prospectively.

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REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

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

**Ms. Christina T. Morgan**  
President, Board of Township Commissioners

**Ms. Renee Bickel**  
Township 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).