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INDEPENDENT STATE AUDITOR'S REPORT ON CERTAIN ACTIVITIES OF THE DEPARTMENT OF FISH AND GAME

OFFICIAL AUDIT REPORT
JANUARY 7, 2008

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Chapter 21A, Section 8, of the Massachusetts General Laws established the Department of Fish and Game (DFG) within the Executive Office of Environmental Affairs (EOEA). The DFG is charged with stewardship responsibility over the Commonwealth's marine and freshwater fisheries, wildlife species, and plants and natural communities. The DFG conserves and restores the state's rivers, streams, lakes, ponds, wild lands, and coastal waters through programs of research, restoration, and land protection. In addition, the DFG issues licenses and registrations for hunting, trapping, and inland and marine fishing. The DFG promotes recreational use of the state's lands and waters consistent with its mission.

Our audit was initiated as a result of a Chapter 647 report filed with the Office of the State Auditor (OSA) by the EOEA regarding earnings overpayments to a DFG employee. The EOEA Chapter 647 report disclosed that state pension laws were not adhered to, which resulted in earnings overpayments made to an employee during calendar years 2004 and 2005 in excess of earning limits allowed by pension laws for state retirees. When the DFG was notified by the EOEA of the earnings overpayments, it took administrative action by dismissing the employee on September 17, 2005 and initiating proceedings to recoup the overpaid funds. Our audit included a follow-up review of administrative and accounting controls at the DFG's Division of Marine Fisheries (DMF) regarding revenue control deficiencies identified during our fiscal year 2005 review for compliance with the Office of the State Comptroller's (OSC) year-end closing instructions for cash and revenue management.

In accordance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, agencies are required to report unaccounted-for variances, losses, shortages, or thefts of funds or property to the OSA. Chapter 647 requires the OSA to determine the internal control weaknesses contributing to or causing unaccounted-for variances, losses, shortages, or thefts of funds or property; make recommendations to correct the condition found; determine the amount of funds involved; identify the internal control policies and procedures that need modification; and report the matter to appropriate management and law-enforcement officials.

The purpose of our audit was to (1) determine whether the DFG has adequate administrative and accounting internal controls over payroll, including payroll oversight, authorizations, and segregation of duties; (2) determine whether the DMF has adequate internal controls to ensure that its revenue is properly safeguarded, deposited in a timely manner, recorded and accurately reported in the Massachusetts Management Accounting and Reporting System (MMARS), and in compliance with applicable laws, rules, and regulations; and (3) review the conditions and determine appropriate corrective action regarding the earnings overpayments reported in the EOEA Chapter 647 report filed with the OSA.

Our audit determined that the DFG needs to improve internal controls over payroll to ensure its accuracy and compliance with the General Laws governing pensions and Massachusetts State Board of Retirement (SBR) regulations. Specifically, our audit disclosed that the DFG is not in compliance with the provisions imposed under Chapter 32, Section 91(b), of the General Laws and regulations published by the SBR and the DFG during calendar years 2004 and 2005. Furthermore, the DFG paid its Chief Fiscal Officer (CFO) $79,870.61 in excess of retiree annual limits set forth on post-retirement earnings that the department needs to recoup and return to the Commonwealth. In addition, our review disclosed that the DFG did not ensure that its CFO had signed an annual earnings certification as required by Chapter 32, Section 91(c), of the General Laws and that necessary controls were in place that precluded the CFO from earning, accumulating, and using compensatory leave time as set forth in the Commonwealth's Human Resources Division (HRD) regulations. During calendar years 2004 and 2005, the CFO accumulated 93.5 hours of compensatory time and received compensation for 70 hours totaling $2,908.85. However, the CFO should not have been granted or compensated for this time in his management position. These issues resulted from the DFG not ensuring that appropriate oversight, monitoring, and enforcement controls were in place, as well as clear communication of employee responsibilities to ensure that retiree annual post-employment restrictions and HRD regulations were being followed.

In addition, although the DFG has initiated proceedings to recoup the overpaid funds, our review found that because DFG and the CFO had both a verbal and an informal (not signed and dated) repayment agreement in place, the DFG cannot prove the actual terms negotiated and executed by both parties. Without a signed and dated repayment agreement, the recovery of funds due the Commonwealth may be jeopardized. Moreover, under either agreement, the DFG, in view of the minimum 20-year payback period, will execute the equivalent of a long-term interest-free loan of Commonwealth funds. To that end, we question whether either agreement is in the best interest of the Commonwealth and demonstrates management's fiscal responsibility and obligation to recapture improperly paid funds in a timely and equitable manner. On September 17, 2005, the DFG took administrative action by terminating the CFO's employment. In response to the audit report, the DFG indicated that it concurred with our audit finding and outlined ways in which it was attempting to recover the overpayment, including seeking assistance and guidance from the Attorney General's Office, the Office of the State Comptroller, and the State Board of Retirement to determine how best to protect the Commonwealth's interest in recovering these funds.

Our review disclosed that the DMF has implemented improved control procedures over its revenues following our fiscal year 2005 year-end review of agency compliance with the Office of the State Comptroller's (OSC) closing instructions for cash and revenue management. However, improvements are still needed to ensure that (a) cash receipts are deposited on a daily basis, (b) required cash receipts (CR) documents are prepared and entered in a timely manner into MMARS, and (c) reconciliations of cash receipts to bank statements are performed monthly. These added controls would ensure compliance with applicable OSC policies and procedures and General Laws, and that all revenue collected and due the Commonwealth is properly deposited, accounted for, and reported in MMARS. DMF personnel explained that its lack of staffing, the part-time status of its revenue coordinator, and the shifting of responsibilities due to the present CFO position vacancy have hindered its adherence to OSC requirements. Additionally, our review determined that the DMF internal control plan was not complete and needed improvement (see Audit Results No. 3). In response to the audit report, the DMF indicated that, to the extent possible, controls have been implemented to address the issues identified in our report.

Our audit found that, contrary to Chapter 647 of the Acts of 1989 and OSC regulations, the DFG did not complete a department-wide risk assessment as part of the development of its internal control plan. The absence of a department-wide risk assessment could hinder or prevent the department from fulfilling its responsibilities, achieving goals and objectives, and ensuring the integrity and effectiveness of its internal control system. Our review further determined that the DFG plan was not up to date and contained references to old MMARS forms and reports, as well as the defunct Personnel/Payroll Management Information System (PMIS). Moreover, although DFG personnel stated that the department was partially de-centralized and that each division had its own internal control plan, our review determined that only its Divisions of Fisheries and Wildlife (DFW) and Marine Fisheries (DMF) had established an internal control plan. Our review of the two division plans noted that, similar to the DFG plan, these plans focused exclusively on financial operations, and did not discuss goals and objectives of its various programs of research, conservation, protection, and restoration. Additionally, our review noted that none of the three plans included specific references to the department's commitment to integrity, the ethical values expected of management and staff, risks associated in attaining goals and objectives, and controls implemented to mitigate identified risks. In response to our audit report, the DFG indicated that it has revised its internal control plan to address compliance by DFG employees with the Commonwealth's *Post-Retirement Employment Guidelines*, to more clearly define the department's control environment, and to affirm DFG's plans to conduct a department-wide risk assessment. In addition, DFG has hired a new CFO and Budget/Revenue Control Officer, designated its Chief of Staff to serve as DFG's Internal Control Officer, instituted monthly meetings between administrative and fiscal staff to facilitate communication and consistency between divisions at DFG, and is in the process of implementing additional administrative changes to its fiscal operations.

INTRODUCTION

Background

The Department of Fish and Game (DFG), as renamed by Chapter 26, Section 104, of the Acts of 2003, was established within the Executive Office of Environmental Affairs (EOEA) in 1974 by the enactment of Chapter 21A, Section 8 of the Massachusetts General Laws (MGL). The DFG is charged with stewardship responsibility over the Commonwealth's marine and freshwater fisheries, wildlife species, plants, and natural communities. The DFG conserves and restores the state's rivers, streams, lakes, ponds, wild lands, and coastal waters through programs of research, restoration, and land protection. In addition, the DFG issues licenses and registrations for hunting, trapping, and inland and marine fishing. The DFG promotes recreational use of the state's lands and waters consistent with its mission[1]. Currently, the DFG is composed of the Commissioner's Office and the following four divisions: 1) the Division of Fisheries and Wildlife (DFW), 2) the Division of Marine Fisheries (DMF), 3) the Office of Fishing and Boating Access, and 4) the Riverways Program. The DFG's administrative offices are located at 251 Causeway Street in Boston, Massachusetts.

Our audit was initiated as a result of a Chapter 647 report filed with the OSA by the EOEA regarding earnings overpayments by the DFG to its Chief Fiscal Officer (CFO), who retired under the Commonwealth's 2003 Early Retirement Incentive Program (ERIP) and returned to the DFG—in the same position—under a 120-day appointment. In addition, our audit included a follow-up review of administrative and accounting controls at the DMF regarding revenue control deficiencies identified during our fiscal 2005 year-end review for compliance with the Office of the State Comptroller's year-end closing instructions for cash and revenue management[2]. The EOEA Chapter 647 report disclosed that state pension laws were not adhered to, which resulted in post-retirement earnings paid by the DFG to its CFO during calendar years 2004 and 2005, in excess of annual earning limits set forth in state pension laws for state retirees. Although management from the DFG and EOEA explained that the CFO claimed to have waived his monthly retirement allowance; all-encompassing oversight, monitoring, and enforcement controls were not established and implemented to ensure compliance with state pension law employment limitations. When the DFG was notified by the EOEA of its earnings overpayments, it took administrative action by

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[1] Department of Fish and Game, Guide To Internal Controls: Statement of Department Mission.

[2] Report No. 2005-5002-16S, Independent State Auditor's Report On Agency Compliance with the Office of the State Comptroller's Year-End Closing Instructions for Cash and Revenue Management, Fiscal Year 2005.

terminating the employment of the CFO on September 17, 2005, and proceedings were initiated to recoup funds through its general counsel.

In accordance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, agencies are required to report unaccounted-for variances, losses, shortages, or thefts of funds or property to the OSA. Chapter 647 requires that the OSA determine the internal control weaknesses contributing to or causing unaccounted-for variances, losses, shortages, or thefts of funds or property; make recommendations to correct the condition found; determine the amount of funds involved; identify the internal control policies and procedures that need modification; and report the matter to appropriate management and law-enforcement officials.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws and Chapter 647 of the Acts of 1989, we conducted an audit of the DFG. Our audit was conducted in accordance with applicable generally accepted government auditing standards and included a review of the EOEA-reported payroll overpayments made by the DFG and payroll administration functions and processes, as well as a follow-up review of administrative and accounting controls over revenue at the DMF. Our examination included a review of such pertinent records as Human Resources Compensation Management System (HR/CMS) payrolls, weekly timesheets, SBR annual retirement allowance information, the Early Retirement Incentive Plan (ERIP) policies and procedures, revenue receipts and deposits, and other supporting documentation that we considered necessary to our review. Our audit covered payroll expenditures during the period January 1, 2003 to December 31, 2005 and revenue activity during the period January 1, 2004 to December 31, 2005.

The objectives of our audit were to (1) determine whether the DFG has adequate administrative and accounting internal controls over payroll, including payroll oversight, authorizations, and segregation of duties; (2) determine whether the DMF has adequate revenue controls to ensure that its revenue is properly safeguarded, deposited in a timely manner, and recorded and accurately reported in the Massachusetts Management Accounting and Reporting System (MMARS) and in compliance with applicable laws, rules, and regulations; and (3) review the conditions and determine appropriate corrective action regarding earnings overpayments reported in the EOEA Chapter 647 report filed with the OSA.

To accomplish our objectives, we conducted on-site interviews; reviewed the DFG's internal control plans and evaluated its internal control structure; reviewed and analyzed controls over personnel, payroll administration, and revenue operations, including processes and policies; examined and performed detailed analyses of payroll and selected revenue transactions; and reviewed revenue receipts and deposit records, HR/CMS and MMARS reports, SBR retirement allowance information, and OSC and Human Resource Division (HRD) policies and procedures for the 2002 and 2003 ERIP legislation. In addition, we conducted interviews with SBR and HRD personnel.

As noted in the Audit Results section of this report, the DFG did not establish and implement necessary personnel and payroll administration controls, needs to improve its internal control plan and organization-wide risk assessment, and needs to ensure that revenue controls at its Division of Marine Fisheries comply with OSC policies and procedures and applicable Massachusetts General Laws.

AUDIT RESULTS

1. DEPARTMENT OF FISH AND GAME NEEDS TO IMPROVE INTERNAL CONTROLS OVER PAYROLL

In accordance with Chapter 647 of the Acts of 1989, the Executive Office of Environmental Affairs (EOEA) reported to the Office of the State Auditor (OSA) earnings overpayments made by the Department of Fish and Game (DFG) to its Chief Fiscal Officer (CFO). Our audit disclosed that, contrary to earning restriction provisions imposed under Chapter 32, Section 91(b), of the General Laws and regulations published by the Massachusetts State Board of Retirement, the DFG, during calendar years 2004 and 2005, paid its CFO $79,870.61 in excess of retiree annual earning limits set forth on post-retirement earnings that need to be reimbursed to the Commonwealth. In addition, our examination determined that the DFG did not ensure that its CFO had signed an annual earnings certification as required by Chapter 32, Section 91(c), of the General Laws, and that necessary controls were in place to preclude the CFO from earning, accumulating, and using compensatory leave time as set forth in the Commonwealth's Human Resources Division (HRD) regulations. These deficiencies resulted from the DFG not ensuring that necessary oversight, monitoring, and enforcement compliance controls were in place, as well as clear communication of employee responsibilities to ensure that retiree annual post-employment restrictions and HRD regulations were being followed. On September 17, 2005, the DFG took administrative action by terminating the CFO's employment and has initiated proceedings to recoup overpaid funds.

a. Excess Post-Retirement Earnings

The DFG's former CFO, whose responsibilities included overseeing payroll processing, certifying bi-weekly payroll expenditures, and acting as the department's Internal Control Officer[3], opted into the October 2003 Early Retirement Incentive Package (ERIP)[4] for state employees and returned to his same position under a 120-day appointment[5]. In accordance with

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[3] The Internal Control Officer's job description included evaluating the effectiveness of the department's internal controls at least annually, evaluating results of audits and recommendations to improve internal controls, implementing corrective action in response to an audit, addressing all actions necessary to correct or resolve internal control matters in the department's budgetary request, and immediately reporting all variances, losses, shortages, or thefts of funds or property to the Office of the State Auditor.

[4] On July 10, 2003, the General Court signed into law Section 616 of Chapter 26 of the Acts of the 2003, an Early Retirement Incentive Program (ERIP), and the General Appropriation Act for fiscal year 2004 for eligible state employees.

[5] In accordance with Chapter 32, Section 91, of the General Laws, 120-day appointments are considered Intermittent Employees. These appointments are the re-hiring of employees who have retired from state service and are receiving a

Chapter 32, Section 91, of the General Laws, an employee for this type of appointment is subject to certain limitations. Chapter 32, Section 91(b), of the General Laws states, in part:

> *In addition to and notwithstanding the foregoing provisions of this section or similar provisions of any special law,* ***Any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of this chapter or any other general or special law, from the commonwealth, county, city, town, district or authority, or any person whose employment, in the service of the commonwealth****, county, city, town, district or authority, has been terminated, under the provisions of this chapter or any other general or special law, by reason of having attained an age specified in said general or special law or by the rules and regulations of any department or agency of the commonwealth, county, city, town, district or authority without being entitled to any pension or retirement allowance,* ***may, subject to all laws, rules and regulations, governing the employment of persons in the commonwealth, county, city, town, district or authority, be employed in the service of the commonwealth, county, city, town, district or authority for not more than nine hundred and sixty hours in the aggregate, in any calendar year; provided that the earnings therefrom when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated.*** *[Emphasis added.]*

Our examination determined that, contrary to the aforementioned employment restrictions, the former CFO's post-retirement earnings, when added to his annual pension allowance, exceeded his annualized salary during calendar years 2004 and 2005 by $79,870.61, as follows:

A Calendar Year	B Position Salary	C Retirement Allowance	D (B-C) Difference	E Total Annual Earnings	F (E-D) Excess Earnings
2004	$78,853.84	$46,832.78	$32,021.06	$82,891.61	$50,870.55
2005	$81,416.59	$46,890.84	34,525.75	63,525.81	29,000.06
Total			$66,546.81	$146,417.42	$79,870.61

Additionally, the SBR's benefit guide, the Limitation on Employment in a Governmental Job, states:

> *There are limitations that apply to retirees in positions in local as well as state government. Limitations include:*
>
> - *employment may not exceed 960 hours per calendar year, and/or*
> - *total earnings per calendar year cannot exceed the difference between the retirement allowance and the current salary of the position from which you retired.*

pension; they are re-hired back into the position vacated, to a different position in the same agency, or to a position in a different agency.

> *As a retiree, you must cease employment whenever either one of the above two conditions are met. If you wish to continue working, then you must waive your retirement allowance.*

Our review noted that the former CFO exceeded the mandated 960-hour employment limit during calendar years 2004 and 2005 (1,119 hours and 526 hours, respectively). Further, our review also determined that during this same period and prior to reaching the 960-hour threshold, the CFO exceeded his total earnings limitation. Under the circumstances and in accordance with the aforementioned rules, the CFO should have either ceased employment or renounced and requested a retirement allowance waiver[6] when either limitation was met. A representative from the SBR explained that a retirement allowance waiver would only be granted for special long-term projects. Moreover, SBR would not grant a retirement allowance waiver for an individual who reached his annual earnings limit and intended to reinstate his retirement allowance at the beginning of the next calendar year.

Our examination also disclosed that, while the intent of the 2003 ERIP was to reduce the state's workforce and related salary and benefit costs in subsequent years, during the first year of the 2003 ERIP (effective October 2003) the CFO's earnings (pre-retirement, post-retirement, and retirement allowance payments) cost the DFG and the Commonwealth $6,655.53[7] more than if the CFO had remained full-time and not opted to retire and return as a 120-day appointment.

Specifically, as mentioned earlier, Chapter 32, Section 91(b), of the General Laws imposes annual limits on the earnings and/or hours a retiree may work (post-retirement) in the public sector within the Commonwealth. The SBR has historically interpreted this section as imposing calendar year limits on the post-retirement earnings and/or the hours of post-retirement employment compiled by a retiree. Further, under the previous ERIP[8], a memorandum issued from the Office of the Chief Secretary entitled "*Procedures for 960 Hour Appointments of ERIP Employees for Both Employees and Contract Employee Positions*," specific instructions were provided to all cabinet secretaries, department heads and division directors for calculating earnings during the first year of the ERIP. These instructions stated, in part:

[6] Chapter 32, Section 90B, of the General Laws: Waiver of pension or retirement allowance.
[7] 2003 Pre-retirement earnings $57,378.33 + post-retirement earnings $16,700.84 + retirement allowance payments $11,430.20 – 2003 position salary $78,853.84 = $6,655.53.
[8] On December 31, 2001, Governor Swift signed into law Chapter 219 of the Acts of 2001, which provided for an ERIP for employees in the Commonwealth's executive branch.

> *Please note that the sum of the 2002 YTD salary received by the employee prior to retirement, the pension amount received in calendar year 2002 and the salary earned in the 960-hour appointment cannot exceed the annualized 2002 salary the employee would have received had they not retired. For example, an employee occupies a position earning $52,000 annually prior to retirement. He retires through ERIP on March 15, 2002, having earned $11,000 to date. The total of the employee's pension and 960-hour appointment salary earned in 2002 cannot exceed $41,000.*

The Chief Secretary's memorandum also included an authorization form for 960-hour appointments and a certification, to be authorized by the Agency Head and Cabinet Secretary, that the sum of the 2002 YTD salary received by the employee at the time of separation, the pension amount received in calendar year 2002, and the salary earned during the 960-hour appointment would not exceed the annualized 2002 salary at the time of separation. However, unlike the above instructions and memorandum disseminated during the 2002 ERIP, first-year earning restrictions and certification controls were not in place during the 2003 ERIP. As a result, the former CFO's salary earnings in calendar year 2003 exceeded his annualized salary by $6,655.53. The provisions of Chapter 32, Section 91(b) and HRD memoranda only address post-retirement earnings and employment limitations. As such, a retiree in a calendar year may (1) earn the difference between his or her retirement allowance and the salary for the position from which he or she retired, or (2) work up to a total of 960 hours. Although the $6,655.53 is not included in the total $79,870.61 in excess earnings to be recovered, the DFG should consult with the HRD and Office of the Chief Secretary to determine whether a first-year earnings limitation policy was in place during the 2003 ERIP and whether the department should seek repayment from the CFO for earnings received in excess of the position's annualized 2003 salary.

b. Annual Certifications

Our review disclosed that the DFG, contrary to Chapter 32, Section 91(c), of the General Laws, did not establish and implement necessary internal controls to ensure that annual certifications from its CFO for the number of days or hours worked during each calendar year and the amount earned were actually executed. Specifically, Chapter 32, Section 91(c), of the General Laws states:

> *Each person referred to in paragraph (b) shall certify to his employer and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom, and if the number of hours exceeds nine hundred and sixty, in the aggregate, he shall not be employed, or if the earnings therefrom exceed the amount allowable under paragraph (b), he shall*

> *return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of said allowable amount. The amount of any excess not so returned may be recovered in an action of contract by the appropriate treasurer or other person responsible for the payment of the compensation of any such person.*

Further, the 2003 ERIP administrative requirements as set forth in Section 616 of Chapter 26 state that:

> *(e) The state board of retirement shall provide retirement counseling to employees who choose to consider retiring or who choose to retire under the retirement incentive program. Such counseling shall include, but not be limited to, the following…(iv) the restrictions on employment after retirement…*

Subsection (e) of Section 616 further requires that:

> *Each such employee shall sign a statement that he has received the counseling or that he does not want to receive the counseling prior to the approval by the state board of retirement of such employee's application for superannuation benefits and the additional benefit provided by this act.*

Our review of the SBR records noted that the former CFO had signed the appropriate form[9] and checked off the statement that retirement counseling was received. Moreover, the SBR executive director confirmed that the Board had conducted counseling to employees leaving state service under the 2003 ERIP program specific to employment restrictions after retirement and annual certification requirements. Nevertheless, notwithstanding the SBR counseling and provisions set forth in state retirement laws, the former CFO did not follow through with his annual certification requirements. Furthermore, we determined that the DFG, as the employer, did not establish necessary oversight, monitoring, and enforcement compliance controls and clearly communicate retiree responsibilities to ensure compliance with retirement regulations. Although DFG and EOEA management acknowledged that the former CFO had verbally declared waiving his retirement allowance, thereby eliminating restrictions on employment after retirement, neither required supporting documentation for record retention and/or corroborated the waiver request with the SBR. Ultimately, management's ineffective communication of retiree responsibilities and lack of oversight, monitoring, and enforcement compliance controls allowed the CFO's annual earnings overpayments to go unrecognized for nearly two calendar years. Additionally, these weaknesses highlight a department need for stronger controls the next time an early retirement package is offered to state employees.

[9] 2003 Early Retirement Incentive Program Payment in Lieu of Sick and Vacation Time & Counseling Consent Form.

On September 17, 2005, the DFG took administrative action and the CFO was dismissed. In addition, the DFG, through its general counsel, has initiated payroll proceedings to recoup overpaid funds that include an initial restitution payment of $3,000, the relinquishment of the CFO's fourth and final vacation and sick leave buy-out payment totaling $9,148.73, and a verbal installment agreement with restitution payments totaling $200 per month. As of March 31, 2006, the DFG had received six checks totaling $4,000 in payroll recoveries.

Additionally, in an October 2005 letter, the DFG general counsel notified the CFO of his monetary obligations pursuant to Chapter 32, Section 91(c), of the General Laws and proposed the option to return the residual amount due in total or make arrangements to return the balance due over a five-year period. The notification also disclosed that excess earnings, if not returned in a timely fashion, "may result in a civil action seeking the return of these monies, or the withholding of your pension allowance or portions thereof until such time as these monies are fully accounted for." However, although a written installment agreement was devised, as of March 31, 2006, the agreement was not dated or signed by either party, and was therefore unenforceable. The informal installment agreement called for equal payments divided into 240 consecutive monthly installments (20-year payback) for the $66,721.88[10] balance due. As a result of the inconsistencies between the two installment agreements and their informal nature, the DFG cannot demonstrate the actual terms negotiated and executed by both parties. Also, without a signed and dated written repayment agreement with conditions of performance that are clear, complete, detailed, and provide specific parameters to determine whether a breach or default has occurred, it is difficult for the DFG to argue that a breach or default of the performance standards and deadlines negotiated and set has occurred, which may unnecessarily jeopardize the recovery of funds due the Commonwealth. In addition, under the verbal agreement, the Commonwealth will recover $2,400 annually for nearly 28 years (27 years 8 months), while under the informal written agreement, $3,336 will be recovered annually over a 20-year period. In effect, under either agreement, the DFG will execute the equivalent of a long-term interest-free loan of Commonwealth funds, while at the same time the Commonwealth will continue to lose monthly interest accruals on the unpaid balance and use of these funds for future appropriation. To that end, we question whether the agreements are in the best interest

[10] Balance due calculated as follows: $79,870.61 (total monies in excess of authorized limit) less $3,000 (initial restitution payment) less $9,148.73 (final vacation and sick leave buy-out payment) less $1,000 (monies paid under verbal installment agreement) = $66,721.88.

of the Commonwealth and demonstrate management's fiscal responsibility and obligation to recapture improperly paid funds in a timely and equitable manner.

c. Compensatory Time

Our examination of payroll records disclosed that, contrary to HRD regulations, the former CFO, during calendar years 2004 and 2005, accumulated and used compensatory time that he was not entitled to as a manager. Specifically, our analysis showed that during calendar years 2004 and 2005, the CFO accumulated 93.5 hours of compensatory time and received compensation for 70 hours, totaling $2,908.85[11]. However, HRD regulations entitled "*Rules Governing Paid Leave and Other Benefits for Managers and Confidential Employees*"[12] Section 10.04 states, in part:

> *Compensatory time in lieu of overtime will not be allowed for managers.*

During our on-site interviews, DFG personnel acknowledged that the CFO, whose responsibilities include overseeing department payroll processing and certification of bi-weekly payroll expenditures, was not authorized to receive compensatory time as a manager. Discussions with HRD personnel also corroborated that the CFO should not have been granted compensatory time in his management position.

Our review found that the DFG management did not anticipate or consider the risk in delegating its payroll processing oversight and bi-weekly certifications of payroll expenditures responsibilities to its CFO. Accordingly, management did not design and implement the necessary segregation of duties, which allowed the CFO to process his own compensatory time earned and used without proper authorization and approval and contrary to HRD published regulations. Administrative controls that incorporated proper segregation of duties, an appropriate oversight process with a periodic independent review of the department's approval, and use of compensatory time and supporting documentation likely would have prevented, deterred, or detected the improper allowance of compensatory leave time for the CFO management position.

[11] Compensatory time totaling $2,908.85 is included in the total $79,870.61 of post-retirement excess earnings as set forth under Chapter 32, 91(b) of the General Laws and obligated to be returned in accordance with Chapter 32, 91(c), of the General Laws.

[12] These rules, issued by the Personnel Administrator as authorized by Massachusetts General Laws, Chapter 7, Section 28, were effective November 1, 2002.

Recommendation

The DFG's management should reassess administrative controls and risks over payroll processing and establish and implement the necessary control procedures to ensure its payrolls are properly approved, processed, and supported in accordance with applicable state laws and regulations. At a minimum, management should ensure that appropriate attention is given to proper segregation of duties. To that end, management should consider implementing an independent secondary review over its payroll to ensure that no one individual approves all department payroll expenditures. Furthermore, necessary oversight, monitoring, enforcement, and communication controls should be established and implemented to ensure that state pension laws, regulations, and retiree annual certifications and limits set forth on post-retirement earnings are adhered to, and that compensatory time in lieu of overtime is not allowed for managers. Moreover, the DFG should immediately obtain a signed and dated written repayment agreement with its former CFO, and ensure that conditions of performance are clear, complete, and detailed. Furthermore, these conditions should provide specific parameters to determine a breach or default and its consequences; e.g., civil action seeking the return of these funds and/or the withholding of pension allowance or portion thereof. Finally, these conditions should detail a timely repayment plan to compensate for payroll overpayments totaling $79,870.61 due the Commonwealth. To that end, we strongly encourage a repayment arrangement similar to the five-year payback option originally proposed by the DFG general counsel. In addition, the DFG should consult with the HRD and determine whether a first-year salary restriction was in place for the 2003 ERIP and, if necessary, seek repayment of those earnings ($6,655.53) paid in excess of the former CFO's annualized 2003 salary.

Auditee's Response

The new DFG Commissioner, who was appointed in May 2007, provided the following comments:

> *In preparing this…response, DFG initiated an additional review of the entire record of payments made by the former CFO to date, and provided that source documentation to the State Auditor for its independent review. DFG's records show that as of September 28, 2007…a total of $16,148.73 ($9,148.73 in withheld buyouts, plus a total of $7,000 in direct payments) has been recovered by DFG, leaving a balance of $63,721.88. In addition, DFG's records show that the DFG did not receive $200 payments from the former CFO for the months of December 2006, July 2007 and (as of the date of this letter) September 2007.*

The [Office of the] State Auditor stated in its draft audit report that the total amount of the overpayment was $79,870.61. DFG does not dispute the State Auditor's determination of the total amount of the overpayment. As the former General Counsel at DFG confirmed at the September 18, 2007 exit conference, DFG inadvertently identified the overpayment amount as $75,785.81…. DFG notes that a year earlier, in a letter sent to the former CFO on March 31, 2006, the former General Counsel notified him that the audit recently completed by the State Auditor determined the overpayment amount to be $79,870.61.

As discussed below, DFG proposes to further evaluate the options for obtaining a more timely recovery of the overpayment amount, including reengaging the SBR on this question. This action is warranted in light of the former CFO's unwillingness to enter into a written agreement with DFG providing for a more timely repayment schedule and the [Office of the] State Auditor's finding that the existing verbal repayment agreement between DFG and the former CFO is not sufficiently protective of the Commonwealth's interests.

At the September 18, 2007 exit conference, the [Office of the] State Auditor asked whether DFG had also consulted with the Office of Attorney General (the "AG"). As the former General Counsel at DFG indicated at our meeting, he consulted with the AG within days of the discovery of the overpayment seeking advice and assistance in the recovery of the overpayment. In a telephone conversation on September 26, 2005, an Assistant AG indicated to the former General Counsel that it was DFG's responsibility to make arrangements with the retired employee to recover any overpayment and that the AG would be unlikely to assign one of their AAG's to handle the matter.

In short, based on the initial consultations made by DFG in 2005, the options of having the SBR withhold retirement payments (DFG's preferred approach) or having the AG file a civil suit to recover the monies did not appear to be viable.

The [Office of the] State Auditor also inquired at our exit conference whether DFG informed its own employees of the overpayment to the former CFO and of steps taken by DFG to address this matter. Based on the recollection of senior staff at DFG when the overpayment was first discovered in September, 2005, the former Commissioner of DFG held a staff meeting of all staff who work at DFG headquarters in Boston, including the Commissioner's Office, Riverways Program, the Division of Fisheries and Wildlife ("DFW"), and the Division of Marine Fisheries ("DMF"). The former Commissioner notified them of the termination of the former CFO's employment and the circumstances surrounding that action. While there does not appear to be a written record of that meeting, it occurred within one week of the discovery of the overpayment. The current Chief of Staff at DFG also recalls the former Commissioner stating that DFG intended to fully cooperate with EOEA and additionally welcomed an independent audit to ensure the credibility of DFG's operations.

DFG affirmed at the September 18, 2007 exit conference that, consistent with the finding in the draft audit report, the existing (verbal) repayment agreement with the former CFO is not DFG's preference or an outcome that is the most protective of the Commonwealth's fiscal interests. The current situation reflects the practical reality that having the SBR or the AG take the lead in recovering the monies did not appear to be viable options in 2005 and the former CFO had refused to sign a written repayment agreement with DFG.

In the absence of such a written repayment agreement and in response to the draft audit report's finding, DFG is committed to further exploring the options for taking more effective action to timely recover the remainder of the overpayment. DFG intends to reopen its discussions with the SBR on the option of having the SBR withhold all or a portion of the former CFO's retirement payments. Subject to the SBR's agreement, DFG continues to believe that this option, in particular, may be the most effective, efficient means of recovering the monies in a timely manner. From DFG's perspective, the SBR has the authority (as distinct from the responsibility) to withhold, as well as an effective mechanism (deducting amounts from retirement payments due the former CFO) to assist DFG and the Commonwealth as a whole in the timely recovery of these public funds. In addition, DFG will discuss with the Office of State Comptroller the option of recovering the remainder of the overpayment through the debt collection process in 815 CMR 9.00. Finally, DFG will consult with the AG to further evaluate the likelihood and timing of their participation, if any, in recovering the overpayment.

DFG would welcome the participation and assistance of the [Office of the] State Auditor in these upcoming discussions.

In terms of preventing excess post-retirement earnings in the future, DFG has revised its Internal Control Plan (the "ICP") to expressly require that any DFG retiree seeking to return to employment at the agency provide proof to DFG of their compliance with the Commonwealth's Post-Retirement Employment Guidelines, *including the signed annual earnings certification required by M.G.L. c. 32, s.91(c).*

Auditor's Reply

We strongly encourage and support the department's proposal to seek out assistance and guidance from the Attorney General's Office, the Office of the State Comptroller, and the State Board of Retirement with the objective of developing and coordinating a shared commitment toward the design of an appropriate recovery action plan that best protects the Commonwealth's interest, identifies suitable recovery options, and lessens the risk of payments owed not being collected. Working together in a complementary effort is a much-needed step forward in addressing current inadequacies. More importantly, this strategy should help ensure that the Commonwealth's interest is adequately protected and that funds are efficiently and effectively recovered. To that end, we urge the department to thoroughly examine all recovery options and implement those that simultaneously protect the Commonwealth and best satisfy our recommendation.

In addition, on three separate incidences (during the period October 2005 through September 28, 2007) the former CFO did not remit to the department the verbally agreed-upon $200 monthly payment. Management should ensure that appropriate systems and internal controls are in place and that monitoring and tracking controls are reassessed and strengthened so that past due amounts are collected in a timely manner. Effective monitoring and tracking controls should allow employees to proactively identify and timely alert management of delinquent payments to assure appropriate corrective action, thereby increasing the likelihood of recoupment.

As a final consideration, we recommend that the department notify and educate all organization employees about the importance of ethics and that all employees receive training on ethics and anti-fraud policies of the department. Awareness training can dramatically reduce the risk of unethical behavior. Furthermore, providing employees with a confidential system for reporting suspected violations of ethics and department policies, such as a hotline, is an effective early detection technique to help management identify suspected violations.

2. IMPROVEMENTS NEEDED OVER REVENUE INTERNAL CONTROLS AT THE DIVISION OF MARINE FISHERIES

Our follow-up review disclosed that although the Division of Marine Fisheries (DMF) has implemented improved control procedures over its revenues following our fiscal year 2005 year-end review of agency compliance with the Office of the State Comptroller's (OSC) closing instructions for cash and revenue management, improvements are still needed to ensure that (a) cash receipts are deposited on a daily basis, (b) required cash receipts (CR) documents are prepared and entered in a timely manner into the Massachusetts Management Accounting and Reporting System (MMARS), and (c) reconciliations of cash receipts to bank statements are performed monthly. These added controls would ensure compliance with applicable OSC policies and procedures and General Laws, and that all revenue collected and due the Commonwealth is properly deposited, accounted for, and reported in MMARS. Additionally, our review disclosed that the DMF internal control plan was not complete and needed improvement (See Audit Results No. 3).

a. Daily Deposits

Our prior year-end audit disclosed that the DMF did not deposit daily revenues it collected on behalf of the Commonwealth. As part of our follow-up review, we scheduled and examined DMF cash receipts[13] and deposits for the period July 2004 to December 2005. During this 18-month period, monthly receipts ranged from $607,910.55 (February of 2005) to $9,796.06

[13] The DMF receives revenue from the following sources: commercial licensing fees, shellfish fees, funds collected for its Marine Mammals and Fisheries Research and Conservation Trust, miscellaneous fees (primarily commercial lobster license transfers), credit card income, and non-sufficient check fees.

(November 2005). Our examination tested four months of cash receipts—two months during peak receipts (January and February of 2005) and two months during non-peak receipts (July of 2004 and September 2005)—and included the number of deposits processed during the month and a comparison of dates of cash receipts to dates of deposit. Our analysis disclosed that the length of time between the receipt date and date of deposit varied from one to 48 days, averaging seven to 10 days during peak months and 15 to 29 days during non-peak months, and the number of deposits processed per month varied from 10 (February 2005) to two (September 2005). Although the DMF deposited cash receipts more frequently during its peak receipts period (January through June 2005), deposits are still not being processed daily and in compliance with policies issued by the OSC.

The OSC's Cash Recognition and Reconciliation Policy, issued July 1, 2004, states, in part:

> *All cash receipts must be deposited within a designated and authorized TRE location, within one business day of receipt.*

On December 29, 2005, the DMF director formally requested in a letter to the Office of the State Treasurer (OST) a waiver of the daily deposit requirement during the months of June to December, when revenues are received more sporadically. In response, the OST advised the DMF that it must obtain approval from the Commissioner of Administration as required by Chapter 30, Section 27, of the General Laws[14]. As of March 2006, the DMF had not received a waiver of its daily deposit requirement. Consequently, without an authorized waiver, the DMF should be depositing its cash receipts daily in accordance with OSC requirements. DMF personnel explained that deposits were not processed and deposited daily due to a lack of staff and the part-time status of its revenue coordinator.

Not depositing cash receipts daily increases the risk of revenues being misplaced, lost, stolen, or misused. Moreover, funds that are not deposited in a timely manner decrease potential investment income and deprive the Commonwealth of the use of revenues collected on its behalf.

[14] Chapter 30, Section 27, of the Massachusetts General Laws, states: Except as otherwise expressly provided, all fees or other money received on account of the commonwealth shall be paid daily into the treasury thereof, but if in the opinion of the commissioner of administration and the state treasurer the interests of the commonwealth require, payments may be made weekly in accordance with such rules and regulations as the state treasurer may prescribe.

b. CR Documentation

Our prior year-end review noted that the DMF needed to strengthen its internal controls over revenues to ensure that required cash receipts (CR) documents allocating revenue are entered accurately and in a timely manner into MMARS, and that supporting CR documentation is maintained for all cash deposits. Additionally, our prior review determined that the DMF's internal control plan lacked clear responsibility of duties regarding the processing of CR forms that resulted in intermittent preparation and processing and duplicate, inaccurate, and untimely CR forms entered into MMARS.

Our follow-up review disclosed that the DMF has assigned the responsibility of preparing and processing CR forms to one individual to ensure their accuracy and timeliness, and that a supervisory review and sign-off has been implemented. Further, this individual also corrected all previously identified inaccurate and duplicate CR forms in MMARS prior to assuming these new responsibilities in October 2005. However, our review of the CR forms prepared and processed from October to December of 2005[15] disclosed that although controls have improved, CR forms are still prepared and entered monthly into MMARS. The OSC requires that CR forms be processed and recorded in MMARS immediately following a cash receipts deposit to ensure cash receipts are properly credited to the correct revenue account. DMF management explained that, due to the lack of staff and resources, CR forms are not prepared when cash receipts are deposited, but rather prepared and entered into MMARS monthly.

Not preparing and entering CR forms in a timely manner increases the risk that cash receipts may not be properly and accurately accounted for in MMARS.

c. Reconciliations

Our prior year-end review disclosed that the DMF did not perform monthly reconciliations between division records and MMARS tables or reports to ensure that all collected revenue is properly reflected. In addition, the DMF lacked written policies and procedures regarding monthly revenue reconciliations.

[15] The processing of CR forms was the responsibility of three individuals prior to October 2005. The DMF CFO terminated employment during October 2005 and to improve controls, the responsibility of processing CR forms was assigned to one individual. We reviewed the CR forms processed from July to December of 2005.

Our follow-up review determined that since October 2005, the DMF implemented procedures to complete monthly reconciliations of division records to MMARS deposit reports. Further, the task to reconcile receipts to MMARS deposit reports was assigned and performed by an individual other than the DMF's revenue coordinator, whose responsibilities included preparing CR forms. Our review also determined that the DMF had established written monthly revenue reconciliation procedures in a draft update of its internal control plan[16] that included a review and reconciliation to monthly bank statements. However, notwithstanding these improvements, our review determined that, contrary to internal control guidelines published by the OSC, monthly reconciliations (for October, November, and December 2005) did not include a review and reconciliation to monthly bank statements.

The OSC's Internal Control Guide for Commonwealth Departments, Chapter 3, states, in part:

> *Collected revenue should be reconciled monthly to the state accounting system records and to the monthly bank statement.*

DMF management (Acting CFO) explained that, although it is the DMF's plan to conduct monthly reconciliations of department records to monthly bank statements, the shifting of responsibilities due to the present CFO position vacancy and inadequate staffing have hindered the division's adherence to OSC requirements.

As a result of the lack of reconciliations to monthly bank statements, the DMF cannot be assured that all revenue collected and due the Commonwealth is properly accounted for, deposited, and reported in MMARS.

Recommendation

The DMF should implement internal control procedures to ensure that its revenue is properly processed and recorded in accordance with applicable laws, rules, and regulations. Accordingly, the DMF's control procedures should ensure that cash receipts are deposited daily or within one business day of receipt, that CR forms are processed and recorded in MMARS at the time deposits are made to ensure proper accountability and accuracy, and that monthly reconciliations

[16] The DMF is currently updating its internal control plan. Due to the current CFO position vacancy, the division does not anticipate completion of its internal control plan until the CFO position is filled and its operations and procedures are reassessed.

between department records and bank statements are completed to ensure all revenue is properly accounted for.

Auditee's Response

> *With respect to the Part 2 of the draft report, the Division of Marine Fisheries…does not dispute the findings and the recommendations of the auditors. The…employee charged with the responsibility of revenue management was terminated and…controls have been implemented to the extent possible to address these issues.*

3. INTERNAL CONTROL PLAN AND ORGANIZATION-WIDE RISK ASSESSMENT NEED IMPROVEMENT

Our audit disclosed that, contrary to Chapter 647 of the Acts of 1989 and OSC regulations, the DFG did not complete a department-wide risk assessment as part of the development of their internal control plan. The absence of a department-wide risk assessment may hinder or prevent the department from fulfilling its responsibilities, achieving goals and objectives, and ensuring the integrity and effectiveness of its control system. Developing a department-wide internal control summary and performing an annual department-wide risk assessment are requirements of Chapter 647 and internal control guidelines published by the OSC that the department is responsible to follow.

More specifically, Chapter 647 of the Acts of 1989, An Act Relative to Improving Internal Controls within State Agencies states, in part:

> *Internal control systems for the various state agencies and departments of the Commonwealth shall be developed in accordance with internal control guidelines established by the Office of the Comptroller.*

These guidelines, the *Internal Control Guide for Managers* and *Internal Control Guide for Departments*, require the development of a documented internal control plan. The plan is defined as "a high level summarization, on a department-wide basis, of the department's risks (as a result of a risk assessment) and of the controls used by the department to mitigate those risks."

OSC's Internal Control Guide for Managers states, in part:

> *Risk assessment is the process used to identify, analyze, and manage the potential risks that could hinder or prevent an agency from achieving its objectives.*

Risk assessment is an integral part of an internal control plan because it identifies and analyzes risks and assists management in prioritizing those activities where controls are most needed.

Management uses risk assessments for all aspects of business, including programmatic and financial operations, to determine the extent to which legislative, regulatory, or organizational goals and objectives are being achieved, and to design and implement cost-effective and productive internal controls. To comply with Chapter 647, management is responsible for evaluating and implementing, at least annually, any changes necessary to promote efficiency, reduce the risk of asset loss, help ensure the reliability of financial activity and compliance with laws and regulations, and to maintain the integrity and effectiveness of the internal control system.

The DFG is made up of four divisions: Fisheries and Wildlife, Marine Fisheries, the Office of Fishing and Boating Access, and the Riverways Program. DFG personnel stated that, because the department is partially de-centralized, each division had its own internal control plan. The DFG's internal control plan[17] was dated November 2005 (fiscal year 2006) and included a statement from the department's internal control officer[18] certifying that internal controls had been reviewed, were current, and complied with the requirements of Chapter 647 of the Acts of 1989. However, our review disclosed that the department's plan was not up to date; contained references to old MMARS documents, reports, and the defunct Personnel/Payroll Management Information System (PMIS); and lacked evidence that its internal control plan was based on a department-wide risk assessment. As defined in the OSC internal control guidelines, a department-wide risk assessment is one of five interrelated components necessary for an effective internal control system. Furthermore, although the DFG plan made references to its Fisheries and Wildlife (DFW) and Marine Fisheries Divisions (DMF), its Office of Fishing and Boating Access was not referenced. Additionally, our review noted that only the DFW and DMF had established internal control plans within their divisions. Our review of the two division plans disclosed that, although the DFW plan was comprehensive, both the DMF and DFW plans were not complete. The plans focused exclusively on financial operations, disregarding the goals and objectives of the divisions. Furthermore, the divisions' plans did not discuss the various programs of research, conservation, protection, and restoration over the Commonwealth's marine and freshwater fisheries, wildlife species, plants, and natural

[17] The Commissioner's Office, which provides administrative functions of human resources, finance, procurement, and legal assistance to the divisions, also includes the Riverways Program, which helps concerned citizens in organizing local watchdog and advocacy groups to protect the Commonwealth's rivers and streams.

[18] Effective 2005, the DFG designated its Assistant Commissioner/Chief Fiscal Officer the department's Internal Controls Officer.

communities. Additionally, our review determined that none of the three internal control plans discussed integrity and ethical values expected of management and staff[19], risks associated in attaining goals and objectives, and controls implemented to mitigate identified risks.

Recommendation

The DFG, in compliance with Chapter 647 of the Acts of 1989 and the OSC published internal control guidelines, should prioritize the completion of its internal control plan, beginning with the documentation of a department-wide risk assessment. After the risk assessment is completed, the DFG should develop and implement internal controls to mitigate identified risks. Furthermore, the DFG should ensure that its internal control plan is updated and incorporates all aspects of the department's business, including programmatic and financial operations, and that its internal control system is evaluated and necessary changes are implemented, at least annually or when conditions warrant. Moreover, the incorporation of and specific reference to the department's commitment to integrity and ethical values should be readily identified in its internal control plan.

Auditee's Response

> *In addition to the…revision to the ICP to address compliance by DFG employees with the Commonwealth's* Post-Retirement Employment Guidelines, *DFG has made further revisions to the ICP, as compared to the version reviewed by the State Auditor during its audit.*
>
> *Consistent with the draft audit report's recommendation, the ICP has been revised to make clear that the "control environment" - the foundation for all other components of internal control – encompasses DFG's commitment to integrity, ethical values and competence. DFG is providing the State Auditor with the latest revised version of the DFG ICP….*
>
> *Consistent with a finding in the draft audit report, the revised ICP also affirms that DFG will conduct a new organization-wide risk assessment, and sets forth the elements of such an assessment in line with recently released criteria from OSC pursuant to Internal Control Guides.*
>
> *DFG has made other administrative changes to further ensure or enhance the protectiveness of its fiscal operations. In March 2006, the new CFO at DFG*

[19] The Control Environment is the first of five interrelated internal control components (control environment, risk assessment, control activities, information and communication, and monitoring) that sets the tone of an organization and is the foundation of an effective internal control system. A key factor included in the control environment is management's commitment to integrity and ethical values. Source: Definition and description contained in *Internal Control—Integrated Framework*, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and *Internal Control Guide for Managers – Volume I, second edition 7/1/2004*, published by the Office of the State Comptroller.

recommended segregating sign-off authority for key contacts in DFG so that overly broad sign-off authority did not reside with the CFO position only (as previously had existed). These additional controls included the designation of the current Chief of Staff to serve as the Internal Control Officer at DFG. The new CFO also oversaw the hiring of a budget/revenue control officer in the Commissioner's Office. The duties of this new position are to provide central oversight and audit review of DFG budget and revenue activities. In addition, the hiring of a business analyst in the Commissioner's Office is included in DFG's spending plan for FY 2008. The overall goal of these new positions is to consolidate the oversight of other required business functions of the Commonwealth within the Commissioner's Office.

The new CFO has also instituted monthly meetings with the administrative and fiscal staff in the Commissioner's Office as well as monthly meetings with the Division CFOs and budget managers within DFG's Divisions of DFW, DMF, Riverways and FBA. The purpose of these regular internal meetings is to facilitate communication and consistency between the Commissioner's Office and divisions in DFG. In that regard, the new CFO also forwards relevant state-wide communications from FAD, HRD, OSC, and OSD to the Division CFOs of each Division to ensure that Commonwealth policy directives are disseminated internally in a timely manner. DFG is also in the process of reinstituting the DFG Intranet site to provide an easily accessible location for electronic versions of the policies and forms applicable to DFG's activities.

APPENDIX

Chapter 647, Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies

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Chapter 647

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Eighty-nine

AN ACT RELATIVE TO IMPROVING THE INTERNAL CONTROLS WITHIN STATE AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Notwithstanding any general or special law to the contrary, the following internal control standards shall define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and shall constitute the criteria against which such internal control systems will be evaluated. Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the office of the comptroller.

(A) Internal control systems of the agency are to be clearly documented and readily available for examination. Objectives for each of these standards are to be identified or developed for each agency activity and are to be logical, applicable and complete. Documentation of the agency's internal control systems should include (1) internal control procedures, (2) internal control accountability systems and (3), identification of the operating cycles. Documentation of the agency's internal control systems should appear in management directives, administrative policy, and accounting policies, procedures and manuals.

(B) All transactions and other significant events are to be promptly recorded, clearly documented and properly classified. Documentation of a transaction or event should include the entire process or life cycle of the transaction or event, including (1) the initiation or authorization of the transaction or event, (2) all aspects of the transaction while in process and (3), the final classification in summary records.

(C) Transactions and other significant events are to be authorized and executed only by persons acting within the scope of their authority. Authorizations should be clearly communicated to managers and employees and should

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include the specific conditions and terms under which authorizations are to be made.

(D) Key duties and responsibilities including (1) authorizing, approving, and recording transactions, (2) issuing and receiving assets, (3) making payments and (4), reviewing or auditing transactions, should be assigned systematically to a number of individuals to ensure that effective checks and balances exist.

(E) Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved. The duties of the supervisor in carrying out this responsibility shall include (1) clearly communicating the duties, responsibilities and accountabilities assigned to each staff member, (2) systematically reviewing each member's work to the extent necessary and (3), approving work at critical points to ensure that work flows as intended.

(F) Access to resources and records is to be limited to authorized individuals as determined by the agency head. Restrictions on access to resources will depend upon the vulnerability of the resource and the perceived risk of loss, both of which shall be periodically assessed. The agency head shall be responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison shall be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the agency resources shall determine the frequency of this comparison.

Within each agency there shall be an official, equivalent in title or rank to an assistant or deputy to the department head, whose responsibility, in addition to his regularly assigned duties, shall be to ensure that the agency has written documentation of its internal accounting and administrative control system on file. Said official shall, annually, or more often as conditions warrant, evaluate the effectiveness of the agency's internal control system and establish and implement changes necessary to ensure the continued integrity of the system. Said official shall in the performance of his duties ensure that: (1) the documentation of all internal control systems is readily available for examination by the comptroller, the secretary of administration and finance and the state auditor, (2) the results of audits and recommendations to improve departmental internal controls are promptly evaluated by the agency management, (3) timely and appropriate corrective actions are effected

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by the agency management in response to an audit and (4), all actions determined by the agency management as necessary to correct or otherwise resolve matters will be addressed by the agency in their budgetary request to the general court.

All unaccounted for variances, losses, shortages or thefts of funds or property shall be immediately reported to the state auditor's office, who shall review the matter to determine the amount involved which shall be reported to appropriate management and law enforcement officials. Said auditor shall also determine the internal control weaknesses that contributed to or caused the condition. Said auditor shall then make recommendations to the agency official overseeing the internal control system and other appropriate management officials. The recommendations of said auditor shall address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The agency oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified.

House of Representatives, December 21, 1989.

Passed to be enacted, George Keverian, Speaker.

In Senate, December 22, 1989.

Passed to be enacted, William M. Bulger, President.

January 3, 1990.

Approved,

Michael S. Dukakis, Governor.