



Office of the Inspector General
Commonwealth of Massachusetts

Glenn A. Cunha
Inspector General

2012 Annual Report

April 2013

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2012 Inspector General Council

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Executive Summary

The Office of the Inspector General (“Office”) is responsible for preventing and detecting fraud, waste, and abuse in the expenditure of public funds. In August of 2012, former Inspector General Gregory W. Sullivan completed his statutorily-allowed second term. Governor Deval L. Patrick, Attorney General Martha Coakley, and Auditor Suzanne M. Bump unanimously appointed Inspector General Glenn A. Cunha to lead the Office. Upon his appointment, Inspector General Cunha selected a transition leadership team to assist him in assessing the overall operations of the Office and developing a working plan to move the Office forward. Inspector General Cunha decided, based in part on the advice of the transition team, to reorganize the Office into five divisions.

The Audit, Oversight, and Investigations Division is responsible for all of the Office’s investigations and has assumed responsibility for managing the intake process for all complaints addressed to the Office. The Regulatory and Compliance Division manages the Massachusetts Certified Public Purchasing Official program along with the Office’s other educational seminars and publications. The Policy and Government Division oversees the Office’s government, health care, and legislative initiatives. The Legal Division is responsible for providing support and advice to the Office as it encounters routine and complex legal questions. The Administration and Finance Division manages the Office’s information technology, finances, and case management system. Inspector General Cunha has made it a priority to upgrade the Office’s infrastructure to make the Office more efficient, accessible, and transparent while maintaining the confidentiality that is central to the Office’s mission.

The Office has an operating budget of \$2.3 million. Actions by the Office in 2012 led to repayments and the imposition of fines and penalties totaling \$12.6 million. The Office also identified \$233.5 million in potential cost savings for the Commonwealth.

Since the start of Inspector General Cunha’s tenure, the Office has been involved in several large-scale projects. For example, the Office conducted a detailed review of the eligibility procedures at the Department of Transitional Assistance. The Office is also overseeing the review of the policies and procedures at the William A. Hinton State Laboratory Institute’s Drug Analysis Laboratory and is investigating whether there are instances of malfeasance that may have an impact on the Commonwealth’s criminal justice system.

During 2012, the Office also investigated and reviewed matters involving energy, public corruption, affordable housing, social services, transportation, and education. The Office received and responded to approximately 600 complaints from the public. The Office provided extensive technical assistance to state and local government officials regarding Massachusetts public procurement laws, trained over 1,000 participants in procurement law and related issues, and responded to approximately 3,400 inquiries about public bidding laws. The Office initiated health care reviews regarding the Massachusetts Medicaid program and the Health Safety Net. The Office continued to participate in the development of policies and procedures related

to the Commonwealth's public design and construction laws, and reviewed public land transactions throughout 2012. The Office reviewed and provided input on over 100 pieces of legislation, and issued 26 reports and publications during the course of 2012.

Introduction

Created in 1981, the Office of the Inspector General (“Office”) was the first state inspector general’s office in the country. The Legislature created the Office at the recommendation of the Special Commission on State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts. The commission’s findings helped shape the Office’s broad statutory mandate, which is the prevention and detection of fraud, waste, and abuse in the expenditure of public funds. In keeping with this mandate, the Office investigates allegations of fraud, waste, and abuse at all levels of government; conducts programmatic reviews to identify systemic vulnerabilities and opportunities for improvement; and provides assistance to the public and private sectors to help prevent fraud, waste, and abuse in government spending. The Inspector General has the authority to subpoena records and people for investigations and management reviews, and to investigate allegations of both criminal and civil violations of the law.

The Office employs a staff of experienced specialists, including investigators, lawyers, certified public accountants, computer experts, and analysts. In addition, the Office assists local government officials with contracting issues that arise under the Uniform Procurement Act, Massachusetts General Laws Chapter 30B (“Chapter 30B”). Chapter 30B governs the purchase of supplies, services, equipment, and real property, as well as the disposition of real property and other tangible surplus supplies by public entities. The Office also assists state officials with procurement-related questions and concerns, educates public and private employees, and designates and certifies public procurement officials through the Massachusetts Certified Public Purchasing Official training program.

Each year, the Office receives numerous complaints alleging fraud, waste, or abuse in all levels of local, state, and federal government. The Office evaluates each complaint to determine whether it falls within the Office’s jurisdiction and whether it merits action. Some complaints lead to extensive investigations; some are referred to other agencies; some are closed if a preliminary inquiry fails to substantiate the allegations.

At the completion of an investigation, review, or other project, the Office may issue a letter or report detailing findings and recommending reforms to prevent future problems. The Office also reports suspected criminal activity to the appropriate authorities, including the Massachusetts Attorney General’s Office and the United States Attorney for the District of Massachusetts. In addition, the Inspector General meets regularly with the Inspector General Council to discuss the activities and responsibilities of the Office.

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Recovery of Funds, Imposition of Fines, and Identification of Potential Savings

One of the Office’s great strengths is its ability to focus on the propriety of public expenditures by conducting detailed analyses of financial transactions, reviewing the related accounting and financial reporting, and assessing the programmatic structure for which the expenditure is required. Often, the Office’s focus on a particular expenditure results in agencies or municipalities recovering funds that properly belong to them. These recoveries may result from settlements, negotiated agreements, or court action. The Office also conducts reviews that identify potential cost savings for public entities on either a one-time or ongoing basis. Moreover, the Office’s referrals, reviews, and investigations may lead to regulatory agencies imposing fines and civil penalties against individuals or organizations. All told, in 2012 the Office’s investigations and reviews resulted in \$12.6 million in recoveries, fines, and penalties, and the identification of \$234 million in potential cost savings. The tables below summarize these recoveries, fines, penalties, and potential cost savings. Further details of the cases represented in these tables appear throughout the rest of this report.

Recoveries, Fines, and Penalties	
Investigation/Review	Recovery/Fine/Penalty
Merrimack Education Collaborative: Repayment and Debt/Expense Forgiveness	\$8,491,924
Quincy Energy Management Contract Settlement	\$4,000,000
Chelsea Housing Authority: Stop Payment on Check Issued to Resigning Executive Director	\$120,000
Plymouth County Attempted Bid Rigging Penalty	\$15,000
Winthrop Harbormaster: State Ethics Commission Fine	\$2,000
Total	\$12,628,924

Potential Cost Savings Identified	
Medicaid Managed Care Organization Program Changes (annual savings)	\$200,000,000
TAFDC Eligibility Review (annual savings)	\$25,000,000
Grafton 40B Excess Profits (one-time saving)	\$8,548,146
Total	\$233,548,146

Audit, Oversight, and Investigations

The Office investigates potential criminal and civil violations of law that arise from a variety of sources, including complaints from the public, information developed during the course of other reviews and activities, and requests for review and assistance by other investigative agencies, including local and state police and the Attorney General's Office. Overall, the Office receives approximately 600 complaints from the public annually. In some instances, these complaints lead the Office to conduct comprehensive investigations, while in other instances the Office may forward the complaint to the appropriate oversight, regulatory, or prosecutorial agency. The Office forwards complaints to other agencies if a preliminary investigation reveals that the complaints are outside of the Office's jurisdiction or would be more appropriately handled elsewhere.

As investigations develop, the Office often works closely with law enforcement on matters involving potential criminal acts, such as the Federal Bureau of Investigation, the Massachusetts State Police, Federal Inspectors General, local police departments, and prosecutorial agencies, including the Attorney General's Office, the Office of the United States Attorney for the District of Massachusetts, and local district attorney offices. The Office works on matters involving potential civil actions either directly through the affected municipality or with the Attorney General's Office. The Office also alerts the State Ethics Commission regarding potential ethical or conflict-of-interest concerns, as well as with other oversight and regulatory agencies when appropriate.

During the past year, the Office has been involved in numerous cases that have resulted in criminal prosecutions and civil recoveries. Although the Office's enabling statute ("Chapter 12A") restricts disclosure of ongoing investigations – cases in which the Office has not made an official disposition – the Office is able to describe a number of the investigations that it concluded in 2012. As set forth below, over the past year the Office has investigated and reviewed matters involving energy, public corruption, affordable housing, social services, transportation, and education.

Energy

Contract Settlement: Energy Management Services

The Office investigated allegations that a contract between the City of Quincy on the one hand, and Honeywell International, Inc. and Honeywell Building Solutions SES Corporation (together "Honeywell") on the other, failed to comply with state laws for energy management services. The "Guaranteed Energy Savings Contract" procurement followed the process outlined in Massachusetts General Laws Chapter 25A, an exception to the public bidding laws for programs intended to reduce government energy consumption. The Office worked on the matter jointly with the Attorney General's Office. In January 2013, Honeywell agreed to pay \$4 million to settle allegations that the contract failed to comply with state law.

Public Corruption

Falsifying Records: Former Executive Director of the Chelsea Housing Authority

The Office was part of a combined year-long probe that led to the conviction on federal charges of Michael McLaughlin, the former Executive Director of the Chelsea Housing Authority. In February 2013, Mr. McLaughlin pleaded guilty to four counts of falsifying a record in a federal agency matter with the intent to impede and obstruct that matter. Mr. McLaughlin was convicted of falsely reporting his salary in annual budgets required by the United States Department of Housing and Urban Development (“HUD”) and the Massachusetts Department of Housing and Community Development (“DHCD”). Sentencing is scheduled for May 2013. The maximum punishment under the statute is 20 years in prison, followed by three years of supervised release and a fine of \$250,000 on each count. The Office worked on the investigation with the Massachusetts State Police, the Federal Bureau of Investigations (“FBI”), and the HUD Office of the Inspector General. The Office was also responsible for stopping payment on a \$120,000 check to Mr. McLaughlin from the Chelsea Housing Authority after he abruptly resigned.

Attempted Bid Rigging: Former Plymouth County Commissioner

The Office concluded an investigation into an attempted bid rigging scheme related to the procurement of pest control services for seven Plymouth County buildings. The investigation found that former Plymouth County Commissioner Timothy McMullen had provided inside information to Edward Burgess, the owner of Capeway Pest Control, which subverted the competitive procurement process. The Office referred the case to the Attorney General’s Office. On April 27, 2012, the Attorney General’s Office, Mr. McMullen, and Mr. Burgess reached a settlement that resulted in Mr. McMullen and Mr. Burgess each paying \$7,500 in penalties and costs.

Extortion and Wire Fraud: City of Lowell

A joint investigation conducted by the Office, the FBI, and the Lowell Police Department resulted in Thomas H. Byrne of Chelmsford pleading guilty to wire fraud for his involvement in a scheme to extort money from a Lowell businessman. The investigation uncovered evidence that Mr. Byrne and co-conspirator Bernard Joseph Tully falsely represented to the businessman that they needed to make payments to three elected Massachusetts officials in exchange for official acts that would benefit the businessman. The businessman paid the money, which Mr. Byrne and Mr. Tully kept for themselves. Mr. Byrne faced up to 20 years in prison, three years of supervised release, and a \$250,000 fine, but died before sentencing. Mr. Tully pleaded guilty to wire fraud and was sentenced to four months of home confinement, two years of probation, and \$18,000 in restitution.

Lawrence Police Department: Car Swap and Indictments of Officials

In 2012, the Lawrence Police Department (“LPD”) exchanged 13 vehicles for four dealer-owned vehicles without official authorization or direction from the city. In an April 2012 letter to Mayor William Lantigua, the Office concluded that the vehicle

transfer and related activities violated Chapter 30B, the Massachusetts Controlled Substances Act (Massachusetts General Laws Chapter 94C), and the Federal Civil Forfeiture Statute (18 U.S.C. §§981-87). The transfer resulted in the loss of approximately \$35,000 of potential revenue to Lawrence and triggered further investigation by the Office, the FBI, and the Essex County District Attorney's Office.

In September 2012, an Essex County grand jury returned five indictments against Lawrence Deputy Chief of Police Melix Bonilla for his involvement in the LPD car swap. The indictments charged Mr. Bonilla with participating in a trick, scheme, or device to mislead in the procurement of supplies; fraudulently converting city property; the unlawful use of an official position; conspiracy; and extortion or attempted extortion.

In a parallel investigation involving this Office, the FBI, the Massachusetts State Police, and the Essex County District Attorney's Office, the Essex County grand jury also returned five indictments against Mayor Lantigua's former Chief of Staff, Leonard Degan, for his involvement in compelling an employee of Allied Waste, a city vendor, to donate a trash truck to a community located in the Dominican Republic. The indictments accuse Mr. Degan of soliciting a bribe with corrupt intent; knowing solicitation of a bribe; unlawful use of an official position; conspiracy; and extortion or attempted extortion.

Contracting Violations: East Bridgewater Fire Department

In April 2011, the Attorney General's Office referred a complainant to the Office alleging legal and ethical problems in connection with the East Bridgewater Fire Department's 2007 roof replacement project. The Office's investigation found that the East Bridgewater fire chief hired a favored vendor to replace the roof without soliciting competitive bids. The investigation also established that the chosen firm's subcontractor colluded with another roofing firm to manufacture a fake proposal to simulate a competitive bidding process. After the \$31,480 roof work was already completed, the winning bidder and the fire chief collaborated to create documents to disguise violations of state bidding laws. Upon the Office's recommendation, the town has barred the contractors involved from bidding on future contracts.

State Ethics Commission Fine: Winthrop Harbormaster

The Office conducted an investigation regarding allegations that the Winthrop Harbormaster, Charles Famolare III, had improperly received two "finger pier" floats valued at approximately \$7,000. The Office shared the results of the investigation with the State Ethics Commission. On August 16, 2012, the State Ethics Commission issued a Decision and Order finding that Mr. Famolare had violated Massachusetts General Laws Chapter 268A in connection with the receipt and installation of the finger piers. The Commission ordered Mr. Famolare to pay a civil penalty of \$2,000.

Affordable Housing: Massachusetts General Laws Chapter 40B (“Chapter 40B”)

Town of Grafton Chapter 40B Project

In the spring of 2012, the Town of Grafton (“Town”) filed a civil complaint against Hilltop Farms Development, LLC and its parent company, Pulte Homes of New England, LLC (“Pulte”). The Town sought \$51 million in damages related to a Chapter 40B housing development that Pulte built in the Town, basing its complaint in large part on the result of the Office’s investigation. In a November 2011 public report, the Office found that Pulte had filed a Cost Certification representing to the Town that there were no excess profits from the housing development, but the Office identified more than \$8.5 million in undisclosed excess profits. Pulte’s accounting diverted significant profits from the Town, directing those profits to its owners and management.

Oversight of Chapter 40B Affordable Housing

The Office conducted a review regarding affordable housing tenant income certifications and the associated oversight in five randomly selected rental developments constructed under the Commonwealth’s affordable housing law. The Office’s review and associated report identified weaknesses in the Commonwealth’s oversight efforts, a lack of documented policies and procedures, and existing practices that ran counter to the spirit and intent of Chapter 40B. The Office made recommendations to DHCD on ways to address these findings and concerns. As a result of these recommendations, DHCD has taken constructive actions to address the identified weaknesses that will strengthen the overall control process exercised by both Chapter 40B rental development owners and project administrators to ensure that only income-qualified households occupy affordable apartments developed under Chapter 40B.

Low-Income Home Energy Assistance Program

The Office conducted a risk assessment of the Low Income Home Energy Assistance Program (“LIHEAP”), commonly referred to as Fuel Assistance. LIHEAP is funded through the American Recovery and Reinvestment Act and administered by DHCD. The review revealed vulnerabilities within the intake process regarding the lack of sufficient documentation to establish the identity and employment status of adult household members. The Office recommended stronger identity and income verification procedures, including a more detailed review of applicants’ files. DHCD recognized the potential vulnerabilities on both the grantee and sub-grantee levels in administering LIHEAP, and indicated it will work to strengthen LIHEAP integrity protocols.

Weatherization Assistance Program

The Office conducted a risk assessment of the Weatherization Assistance Program (“WAP”), which provides eligible households with full-scale home energy efficiency services. WAP was funded by the American Recovery and Reinvestment Act and overseen by DHCD. The Office found that the community action agencies that

DHCD engaged to administer the program did not segregate intake, certification, weatherization audit, and oversight functions, and that agencies did not effectively monitor in-process change orders. In addition, the Office noted that public utilities administer their own weatherization programs with minimal coordination with other agencies. DHCD addressed many of the concerns identified by the Office before the release of the report and committed to improving the program based on the Office's recommendations and findings.

Social Services

Eligibility for the Transitional Aid to Families with Dependent Children Program

Pursuant to Chapter 161 of the Acts of 2012, the Office studied eligibility information that recipients of Transitional Aid to Families with Dependent Children ("TAFDC") benefits provided to the Department of Transitional Assistance ("DTA"). In carrying out this legislative mandate, the Office examined a statistically valid sample of active TAFDC cases as of June 1, 2012 to evaluate documentation confirming that TAFDC recipients met the program's eligibility requirements. The Office found potential eligibility concerns in approximately 8.9% of the households receiving benefits. These eligibility concerns could result in the termination of benefits for these households, which could potentially have an expected average cost to the taxpayers in the range of about \$25,000,000 a year. The Office recommended in its January 2013 report that DTA improve and standardize its documentation procedures, reevaluate its presumption that unverified applicants do not have income or assets, reexamine its policy not to consider the assets or income of certain caretakers, increase staff training, and enhance both its enforcement and program integrity initiatives. DTA has adopted almost all of the Office's recommendations.

Transportation

Massachusetts Bay Transportation Authority's Ride Program

The Massachusetts Bay Transportation Authority ("MBTA") operates the RIDE, a transportation service that provides door-to-door, shared-ride transportation to eligible individuals who cannot use other forms of public transportation due to a physical, cognitive, or mental disability. The MBTA has referred to the RIDE program as a "budget buster". The Office conducted a programmatic review to identify why RIDE program costs had increased dramatically. As a result of this review, the Office recommended greater efficiencies, a review of policies that have led to increased costs, consolidations, tighter eligibility controls, increased vendor oversight, and other possible cost control measures. The Office provided these recommendations to the MBTA and the Governor's Paratransit Services Commission. The MBTA agreed to review the findings and has implemented some changes, including initiating a new eligibility review process and improving vendor oversight.

Misuse of MBTA Parking Lot

The Office discovered that the MBTA did not have standard identification for authorized vehicles parked regularly at an MBTA parking lot near North Station. The Office also identified certain vehicles parked in that lot that belonged to local

business owners and state employees who did not work for the MBTA. The Office informed the MBTA of its findings, and the MBTA instructed employees that only authorized parking is allowed on MBTA property. The MBTA police also began enforcement action.

Education

Merrimack Special Education Collaborative Settlement

In the spring of 2011, the Office issued a series of letters regarding the Merrimack Education Center, Inc. (“MEC”), a private non-profit organization, and the Merrimack Special Education Collaborative (“MSEC”), a public entity. The letters revealed that John B. Barranco, the longtime executive director of both MEC and MSEC, had improperly used the organizations to enrich himself and his associates. The Office disclosed that Mr. Barranco provided a no-show job to lobbyist Richard McDonough, engineered the transfer of \$5.5 million from MSEC to MEC, and awarded huge bonuses to himself and a small circle of favored employees. In 2009, Mr. Barranco received more than \$530,000 in total compensation.

In October 2012, MEC and MSEC signed a settlement agreement resolving all claims regarding past financial dealings between the two entities. Under the agreement, MEC made a cash payment of \$4,159,060 to MSEC. MEC also renounced \$4,332,864 in debts and unpaid expenses owed by MSEC, bringing the MSEC’s total gain from the settlement agreement to \$8,491,924. On February 27, 2013, the MSEC board voted to refund \$1 million received from the settlement to MSEC’s member school districts.

Greater Lawrence Educational Collaborative Special Education Transportation Costs

The Office conducted a review of reported overcharging for special education (“SPED”) transportation services by the Greater Lawrence Educational Collaborative (“GLEC”) during school years 2007-2008 and 2008-2009. The Office found that GLEC overcharged school districts at least \$321,860 (or 38%) of the \$852,000 in charges reviewed. The SPED overcharging stemmed from inflated route rates, double-billing for on-board bus monitors and nurses, charging for non-existent routes, inefficient bus routes, paying for a no-show vendor employee in a potential conflict of interest situation, arbitrary setting of SPED transportation rates, and a lack of adequate contracting and recordkeeping practices at GLEC. During the Office’s review, GLEC replaced its executive director and the new management has made significant improvements in GLEC business practices.

Educational Collaborative Regulations

The Office worked with the Department of Elementary and Secondary Education (“DESE”) to strengthen the regulations that govern educational collaboratives. In particular, the Office convinced DESE to increase transparency and accountability and to specify that the school committee members and superintendents on collaborative boards have a fiduciary duty to their home school district and the

students served by the collaborative. The Board of Elementary and Secondary Education adopted the strengthened collaborative regulations in January 2013. Moreover, in response to the Office's reports on mismanagement at educational collaboratives, the Legislature amended Massachusetts General Laws Chapter 40, section 4E, which governs such collaboratives.

Boston Public Schools Textbook Procurement

The Office conducted a review of textbook procurement procedures at Boston Public Schools ("BPS") after receiving a complaint that BPS overpaid for textbooks and failed to comply with Chapter 30B in its purchase of textbooks and other educational materials. The Office review found that BPS had violated Chapter 30B by not competitively procuring textbooks and educational materials that are readily available from multiple vendors. The Office compared a sample of textbook purchases made by BPS to prices available from national book resellers and found BPS paid at least 8% more for the books than prices available from the other resellers. BPS has since committed to strengthening compliance with Chapter 30B and will attempt to better coordinate book purchases to benefit from quantity discounts.

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Government Procurement Assistance

The Office provides extensive technical assistance to state and local government officials regarding Massachusetts' public procurement laws. Public purchasing officials are responsible for procuring the supplies, services, and facilities required to provide public services. These procurements involve considerable expenditures of public funds. As a result, it is vital that state and local officials understand the procurement processes and comply with the applicable legal requirements.

The Office encourages effective and ethical public purchasing by local governments by providing training and professional development; publishing manuals and a quarterly "Procurement Bulletin"; and offering a "hotline" to respond to inquiries, complaints, and protests. The Office also interprets and formulates policies on Chapter 30B, which governs the purchase by local public officials of supplies, services, equipment, and real property, as well as the disposition of real property and other tangible surplus supplies.

Training and Professional Development

The Office created the Massachusetts Certified Public Purchasing Official ("MCPPO") program 16 years ago. The Office designed the training program to develop the capacity of public purchasing officials to operate effectively and promote excellence in public procurement. Since 1997, over 11,000 participants, including town, city, and state employees, as well as members of the private sector, have attended the MCPPO program's courses and presentations. There were over 1,000 participants in 2012 alone.

In 2012, the Office held a total of 38 different classes through the MCPPO program, including six video conferences. Specifically, the MCPPO program offered three three-day seminars throughout the year: "Public Contracting Overview", which is a prerequisite for the other two courses and includes segments on Massachusetts procurement and construction bidding laws, purchasing principles, prevailing wage law, public records law, and ethics; "Supplies & Services Contracting," which instructs participants on how to interpret Chapter 30B, how to conduct invitations for bids and requests for proposals, how to write effective specifications, solicit price quotations and how to recognize and solve common bidding problems; and "Design & Construction Contracting", which provides in-depth instruction in the procurement laws governing public design and construction in Massachusetts, effective design and construction contract administration, implementation of the prequalification process and alternative delivery methods, and identification of special issues in construction bidding. During 2012, the MCPPO program also offered the two-day "Advanced Topics Update" seminar, the one-day "Construction Management at Risk Under M.G.L. c. 149A" seminar, and the two-day "Charter School Procurement" seminar, which assists charter schools in satisfying the requirement of Section 11 of Chapter 46 of the Acts of 1997 that certain charter school administrators earn an MCPPO certificate.

In consultation with the Commonwealth's Human Resources Division, the Office recently developed an introductory online course entitled "Bidding Basics M.G.L. c. 30B". This online course is available at no cost and addresses the legal requirements for the procurement of contracts by local governmental bodies for supplies, services, and real property under Chapter 30B. This online course serves as a refresher for staff who does not interpret the law every day, a foundation in procurement law for new employees, or a quick review for experienced purchasing officials. Over 400 people have received this free training.

The Office recently added a four-day course entitled, "Certification for School Project Designers and Owner's Project Managers" in response to the Massachusetts School Building Authority ("MSBA") regulations that require public school designers and owner's project managers receive MCPPO certification. The Office presented this course four times in 2012. The Office also offered the one-day class, "Recertification for School Project Designers & Owner's Project Managers", as an update and a refresher for those private sector designers and owner's project managers who previously received their MCPPO certification. Recertification is required every three years. The Office developed this course and presented it four times in 2012.

Speaking Engagements

The Office also provided speakers on various topics in public procurement principles and/or fraud prevention for: the Massachusetts Office of the Treasurer, DHCD, the Massachusetts Water Resources Authority ("MWRA"), the Massachusetts Emergency Management Agency, the Massachusetts Municipal Association Boot Camp, the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, the Massachusetts Treasurers and Collectors Association, the Massachusetts City Solicitor and Town Counsel Association, the Jamaican Delegation sponsored by World Boston, the Northeast Conference on Public Administration 2012 Annual Conference of the American Society of Public Administration, the University of New Hampshire at Durham, the City of Fall River, the City of Lawrence, the Town of Nantucket, the Town of Needham, the Town of North Attleboro, MASSBuys 2012, and the MASBO Trade Show.

Inquiries, Complaints, and Protests

In 2012, the Office responded to approximately 3,400 inquiries about Chapter 30B and other public bidding laws. The Office regularly advises purchasing officials on how to obtain best value and increase competition for public contracts. The staff also responds to requests from local officials, aggrieved bidders, and concerned citizens by reviewing bid and proposal documents for compliance with Chapter 30B.

Publications

The Office publishes a wide range of materials designed to educate and inform local procurement officials, to provide guidance on best value contracting, and to disseminate lessons learned. All of the Office's publications are available on the Inspector General's website, <http://www.mass.gov/ig/publications/>.

Procurement Bulletin

Since 1994, the Office has published a Procurement Bulletin, a newsletter containing articles, notices of investigations, new legislation, and frequently asked questions about Chapter 30B. The Procurement Bulletin also includes announcements regarding the MCPPO program curriculum and certifications. During 2012, the Office issued three issues of its Procurement Bulletin, which it delivered to over 2,000 subscribers. Representative topics covered in the 2012 editions of the Procurement Bulletin include school transportation contracts, inventory and asset management, and best practices for hiring certified public accountants. Current and past issues of the Procurement Bulletin and an index of past issues are located at <http://www.mass.gov/ig/publications/procurement-bulletins>.

Bylaw and Charter Amendment Reviews

Each year, the Office provides critical feedback to the Attorney General's Office as it reviews municipal bylaws and charter amendments to ensure compliance with state law. Specifically, the Office offers input on whether such bylaws and charter changes comply with Chapter 30B. In 2012, the Office reviewed bylaws for the towns of Essex and Sterling.

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Health Care

The Office has examined public health care issues for many years, ranging from hospital mergers and pharmaceutical patent issues to orthopedic footwear benefits and the disposition of a city-owned nursing facility. In 2004, the Legislature created the Office's Health Safety Net Audit Unit ("Unit"). In that legislation and in each subsequent year, the Legislature has mandated that the Unit oversee and examine practices in Massachusetts hospitals, including those practices related to the care of the uninsured. The Health Safety Net ("HSN") is a health care program that provides access to essential health care services for low-income uninsured and underinsured Massachusetts residents by reimbursing acute care hospitals and community health centers for certain services provided to this population. Since 2011, the Legislature has also directed the Unit to study and review the Massachusetts Medicaid program. As set forth below, in 2012, the Office completed several initiatives and initiated an additional review.

Reimbursement Rates to Medicaid Providers

During 2012, the Office's review of the Massachusetts Medicaid program focused on the reimbursement rates paid to health care providers in the MassHealth Managed Care Organization ("MMCO") program, one of the Commonwealth's Medicaid programs. Under the MMCO program, the Commonwealth pays managed care organizations – essentially health maintenance organizations acting as intermediaries on behalf of MassHealth – to oversee the health care needs of Medicaid-eligible Massachusetts residents. Those organizations, in turn, contract with hospitals and physicians to provide health care services to Medicaid members.

The Office collected and examined the data necessary to determine the reimbursement rates the managed care organizations paid to the hospitals and physicians. The Office then compared those rates with the reimbursement rates the Commonwealth paid to the same hospitals and physicians under the Primary Care Clinician ("PCC") plan. Under the PCC plan, another of the Commonwealth's Medicaid programs, the Commonwealth does not use the services of managed care organizations, but rather sets the hospital and physician reimbursement rates itself and pays the health care providers directly.

In July 2012, the Office issued its report, "Report Pursuant to Section 156 of Chapter 68 of the Acts of 2011: Rates of Reimbursement to Providers in the MassHealth MCO Program". The report showed that, for hospital fiscal year 2011 (October 1, 2010 to September 30, 2011), the MMCOs paid rates to hospitals and physicians that were 33% higher than the corresponding rates paid by the PCC plan. For Hospital Fiscal Year 2012 (October 1, 2011 to September 30, 2012), the differential was only slightly smaller at 26%.

The Office recommended that MassHealth preserve the MMCO program, but that it modify the mechanism for reimbursing providers by using the PCC methodology to establish limits on reimbursement rates in the MMCO program. In general terms, this recommendation would require the MMCOs to pay no more than 105% of the PCC

hospital rates and 110% of the PCC physician rates. The Office estimated that this recommendation, which MassHealth could implement this recommendation without any new legislation, would save the Massachusetts Medicaid program more than \$200 million annually.

Medicaid Noncustodial Parent Review

The Office studied MassHealth’s procedures for ensuring that Medicaid does not pay for health care services that are the legal responsibility of a noncustodial parent of a Medicaid member. Specifically, the Office reviewed how MassHealth gathers and verifies information from custodial parents regarding the availability of noncustodial parents’ commercial health insurance, and to what extent MassHealth uses that information to obtain health insurance coverage for a Medicaid member (referred to as a third party liability or “TPL”). These issues are important because Medicaid is the payor of last resort and should pay only when no other payor is available. Moreover, federal regulations require MassHealth to take reasonable measures to identify TPL, including commercial health insurance from noncustodial parents.

For Medicaid members already covered by a noncustodial parent’s existing health insurance, the Office confirmed that MassHealth has policies and procedures in place, thereby limiting MassHealth’s responsibility to providing coverage for deductibles, copayments, and services not covered by the noncustodial parent’s insurance. However, when a Medicaid member is not covered by a noncustodial parent’s health insurance, the Office observed that MassHealth could, but does not, refer cases to the Department of Revenue’s Child Support Enforcement Division (“DOR/CSE”), the Commonwealth’s child support enforcement unit, which can seek court-ordered health insurance coverage from noncustodial parents. The Office also observed that MassHealth does not require Medicaid applicants to provide basic noncustodial parent information, such as address, date of birth, Social Security number, and employer, which violates federal Medicaid regulations and prevents MassHealth from gathering information that would enhance its ability to pursue TPL.

The Office noted that MassHealth has made changes designed to collect more noncustodial parent information, and that MassHealth is working with DOR/CSE to adopt a set of rules for determining when it is cost-effective for MassHealth to refer cases to DOR/CSE. The Office recommended that MassHealth follow the federal and state rules designed to facilitate MassHealth’s identification and recovery of noncustodial parents’ health insurance, and to do so, should simplify the required language on its application and expand the questions it asks about noncustodial parents and their health insurance. Because MassHealth continues to refine its data collection and referral processes, the Office will report again to the Legislature on MassHealth’s progress in addressing these issues.

Health Safety Net Review

The Office also reviewed MassHealth’s administration of the HSN. In particular, the Office evaluated MassHealth’s compliance with Section 266 of Chapter 224 of the Acts of 2012, which requires MassHealth to obtain all HSN applicants’ Social Security numbers and to verify the identity, age, residence, and eligibility of all

applicants before the HSN makes any payments. The purpose of these requirements is to enhance MassHealth's ability to make accurate HSN eligibility determinations.

The Office recognized that MassHealth has taken steps towards requiring all HSN applicants to provide Social Security numbers on the application forms, but found that MassHealth needs to update all of its related documents to ensure compliance with this requirement. The Office noted that although MassHealth generally has thorough requirements for verifying an applicant's identity, MassHealth should reconsider its use of medical records, school records, and affidavits for this purpose. The Office further recommended that MassHealth evaluate its methods for verifying age at the eligibility stage, as well as strengthen its residency verification protocols by requiring applicants to provide proof of residency along with the HSN application.

MassHealth Claims Review

The Office has initiated a claims review of the Massachusetts Medicaid program to determine whether MassHealth is paying and denying Medicaid claims appropriately. The Office will review a random sample of Medicaid electronic claims, including inpatient, outpatient, and professional claims, to determine whether MassHealth properly paid or denied the claims. The Office will also compare MassHealth's payment and denial of the claims with other health care payment systems to determine whether those systems would have paid or denied the sample claims, as well as the amount that those systems would have paid.

In 2013, the Office expects to complete all of these projects and to initiate additional projects designed to identify ways to improve the Massachusetts Medicaid and HSN programs and to produce savings for the Commonwealth.

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Public Design and Construction

Since its inception, the Office has participated in the development of policies and procedures related to the Commonwealth's public design and construction laws. In 2012, the Office continued to provide guidance and training to public officials and others. The Office worked with the Department of Capital Asset Management and Maintenance ("DCAMM"), the Massachusetts Department of Transportation ("MassDOT"), the MBTA, the MSBA, the Department of Energy Resources ("DOER"), the Attorney General's Office, and other state and local entities to establish best practices. In addition, the Office completed many reviews relating to public design and construction projects, methods, and practices.

Alternative Construction Delivery Methods

Pursuant to Massachusetts General Laws Chapter 149A, the Office reviews applications to use alternative construction delivery methods, including construction manager ("CM") at-risk and design-build projects. Also, the Legislature charged the Office with reviewing and approving the alternative construction delivery method procedures to be used on certain building projects conducted by the following exempt entities: DCAMM, the Massachusetts Port Authority ("Massport"), MWRA, the Massachusetts State College Building Authority, and the University of Massachusetts Building Authority, as well as public works projects conducted by the following entities: MassDOT-Highway Division, Massport, and the MWRA.

Construction Management at-Risk

Since 2005, the CM at-risk delivery method has increasingly been an option used for public building construction projects that cost \$5 million or more. Under the delivery method, the owner typically selects the CM at-risk firm at the outset of, or early in, the design stage. After conducting a selection process that focuses on qualifications and fees, the owner executes an initial CM at-risk contract with the selected CM at-risk firm. At some point during the design stage, the owner and the CM at-risk firm negotiate a guaranteed maximum price for the project and the CM at-risk firm assumes responsibility for the performance of the work, including the work performed by project subcontractors.

In 2012, the Office received 15 applications to use CM at-risk, totaling over \$630 million in project costs. The total in project costs does not include projects conducted by the exempt entities listed above. The projects included nine public schools, two charter schools, one transportation facility project, one parking garage, and one arena. One applicant withdrew its application. Applicants included Lexington, Wakefield, Holden, Cambridge and Worcester.

Design-Build

In 2004, legislation authorized the design-build delivery method as an option for public works construction, reconstruction, alteration, remodeling, or repair projects estimated to cost \$5 million or more. Certain entities, including MassDOT, Massport, and the MWRA, are exempt from the project-by-project approval process, but must submit procedures to the Office for review. All others must submit to the Office an application to use the method for an individual project. In 2012, the Office did not receive any applications to use design-build from non-exempt entities. However, MassDOT and Massport use design-build regularly for their projects.

Incentive/Disincentive Specification Use

The passage of Chapter 233 of the Acts of 2008, “An Act Financing An Accelerated Structurally-Deficient Bridge Improvement Program” (“ABP”), allows bridge projects to be constructed using alternative methods, including incentives and disincentives, if approved by the Office. In 2012, MassDOT-Highway Division submitted procedures for incentive and disincentive specifications for 10 bridge projects, totaling over \$1 billion in project costs. These projects include the Longfellow Bridge, the Whittier Bridge, the Alford-Great Barrington Bridge, and the Upper County Road Bridge. The Office cautioned that to achieve a successful project using incentives and disincentives, it is critical to define in the contract all of the terms and conditions clearly, including those related to design issues, change orders, construction conditions, and third-party conflicts. The Office noted that it is incumbent on MassDOT to escalate its oversight function to ensure that vendors satisfactorily complete all contractual requirements in a quality manner. The Office ultimately approved the MassDOT-Highway Division procedures.

Construction Management/General Contractor for Public Works Projects

In 2012, the Legislature enacted a special act to allow the MBTA to use the Construction Management/General Contractor (“CM/GC”) method for the first time in Massachusetts to construct the Green Line Extension. Other states have used the method, which is similar to CM at-risk, to complete public works projects. The Office participated in discussions leading to the final legislation. The legislation required the Office to approve the project procedures manual after seeking input from Construction Industries of Massachusetts, Inc. Based on the complexities and novelty of the CM/GC method, the Office convened an advisory group of public officials with expertise in public construction to assist in reviewing the manual. MBTA representatives also participated in the advisory group. The Office relayed suggestions to the MBTA on additional procurement requirements, procedures, and project standards to encourage full competition and best construction practices. The MBTA incorporated many of the suggestions into the procedures manual. The Office approved the procedures manual in November 2012.

Massachusetts School Building Projects

In 2012, the Office continued to work with the MSBA to develop model documents and procedures for use by entities seeking state financial assistance to build public schools. In addition, the Office continued to participate in an advisory capacity on the owner’s project manager review board.

Real Estate Transactions

The Office reviews a variety of public real property transactions each year to ensure adequate protection of the public interest. In addition, the Legislature frequently mandates that the Office review and approve independent appraisals of real property interests being conveyed or acquired by the state, counties, and municipalities. The Office provides a report on such appraisals to the Commissioner of DCAMM for submission to the House and Senate Committees on Ways and Means and the Joint Committee on State Administration and Regulatory Oversight. The Office also reviews and comments on the disposition agreements controlling certain conveyances.

The Office generally requires that all real property appraisal reviews conducted at the direction of the Legislature follow the Uniform Standards of Professional Appraisal Practice published by the Appraisal Standards Board for the Appraisal Foundation. The Office's appraisal reviewers opine as to whether the analyses, opinions, and conclusions in the work under review are appropriate and reasonable. If the reviewer disagrees with an appraisal, the reasons for any disagreement are set forth in the Office's response.

Below are a few examples of real property transactions that the Office reviewed in 2012.

Former Edward J. Sullivan Courthouse

The Office reviewed the highest and best use analysis and the appraisal for the former Edward J. Sullivan Courthouse in Cambridge. The appraiser determined the highest and best use of the property to be complete redevelopment of the building into office space. The appraiser also took into account the need for asbestos remediation. The Office approved the methodology and opinion of value presented in the appraisal.

Assembly Square Area of Somerville

In 2011, the Office reviewed the appraisal of multiple fee and easement parcels for transfer to facilitate the development of a planned mixed-use development in the Assembly Square Area. The Office approved the methodology and estimate of value presented in the appraisal. Since the 2011 approval, the developer completed the final surveys and revised the square footage for some parcels, resulting in changes to the values of some of the parcels. In 2012, the Office reviewed and approved the methodology and revised estimate of value presented in the appraisal.

Upton Access and Utility Easement

The Office reviewed the appraisal of an easement in the Upton State Forest that the town intended to convey to a private utility company for the purposes of accessing a wireless communication tower on abutting private land and supplying utility service transmission systems to the tower. The Office approved the methodology and opinion of value presented in the appraisal.

Worcester CitySquare Development

The Office reviewed the fourth amendment to the Worcester CitySquare Development Agreement, which governs the disbursement of public funds to the project. The city's changes incorporate District Improvement Financing plan amendments, including: expanding

the boundary of the project district; providing for construction of a cancer treatment center; addressing unforeseen environmental conditions; and providing for the construction of additional street space. Additionally, the city will be increasing the project budget such that the public investment is substantial in proportion to the private investment. Originally, the city anticipated that private investment would total \$470 million and public investment would be provided in phases in relation to the attainment of specific private development progress. At this point, the developer is investing \$93 million. The taxpayers' contribution now approaches \$57 million, with \$41 million contributed by the state and \$16 million by the city. The city is aware of the risks and is working to ensure that the project is ultimately a success.

Legislative Reviews

The Office reviewed and commented on more than 100 pieces of legislation during the 2011-2012 legislative session. In addition, the Office regularly assisted individual legislators in the development of legislation specific to the districts they represent, as well as legislation that affected the operation of state and local government. Individual legislators often also ask the Office to meet with and provide guidance to municipalities on matters unrelated to legislation. The Office also responds to requests from the Governor's office to review legislation that the Legislature has passed and is awaiting the Governor's signature.

In 2012, the Inspector General and his staff also testified before legislative committees on issues related to the William A. Hinton State Laboratory's Drug Analysis Laboratory, alternative public works construction, and public cost-savings initiatives. In all cases, the main themes involved transparency and safeguards to ensure appropriate oversight of taxpayer dollars, while allowing for innovation.

In addition to commenting on specific legislation, the Office sent to legislative committees a general set of guidelines for lawmakers as they look to craft legislation dealing with land disposition bills that seek to exempt certain property transactions from Massachusetts General Laws Chapter 7C or Chapter 30B. In letters sent to the House and Senate Committees on Bonding, Capital Expenditures and State Assets, the Joint Committee on State Administration and Regulatory Oversight, and the Joint Committee on Municipalities and Regional Government, the Office called for all such bills to: state the purpose of the disposition and any use restrictions; identify the property to be conveyed, including the precise location and total acreage; require an independent appraisal establishing the property's fair market value; require the private party acquiring the property to pay no less than the established value; require the private party to pay all direct transaction costs; require the property to revert in the event the property is not used for the intended purpose; and require that the disposition be subject to disclosure requirements.

This Office also sent letters to lawmakers strongly opposing bills that sought to weaken Chapter 30B.

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Legislative Recommendations: 2013-2014 Session

Massachusetts General Laws Chapter 30, Section 33, permits the Office to file legislation in November of even years for the upcoming legislative session. In November 2012, the Office filed the following bills for the 2013-2014 legislative session:

House 9, An Act Relative to the Office of the Inspector General

The bill would amend Chapter 12A to allow the Inspector General to make referrals and issue a witness summons without the approval of the Inspector General Council (“Council”). The current process, which requires the approval of the Council, does not align well with the confidentiality needed for the work that the Office performs. The bill was referred to the Judiciary Committee.

House 10, An Act Relative to Fraud

The bill would make it a crime to defraud the Commonwealth or any of its political subdivisions. Currently, no such general fraud statute exists. The bill was referred to the Judiciary Committee.

House 11, An Act Relative to Chapter 30B

The bill would increase a fine and make technical corrections to Chapter 30B. The technical changes update Chapter 30B to include correct references based on recently enacted amendments to other statutes. There is also an amendment to correct the language of a section of Chapter 30B that was inadvertently changed in a previous legislative session. The bill was referred to the State Administration and Regulatory Oversight Committee.

House 12, An Act Relative to Operating Agencies

The bill would permit housing authorities and redevelopment authorities to require that certain employees participate in the Office’s MCPPO program. In light of recent events regarding housing authorities, it is vital that purchasing officials understand the public procurement laws. The bill was referred to the State Administration and Regulatory Oversight Committee.

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2012 Reports and Publications

The Office of the Inspector General published dozens of reports and letters in 2012. The following documents are available on the Inspector General's website, www.mass.gov/ig:

- Contracting Violations at the East Bridgewater Fire Department, November 2012
- Massachusetts Inspector General Joint Investigation Leads to Westford Man Pleading Guilty to Wire Fraud
- Lowell Housing Authority Review Regarding Allegations of Illegal Removal of Asbestos and Lead
- Inspector General's Office Part of Combined Probe Leading to Indictment of Lawrence Officials
- Greater Lawrence Educational Collaborative (GLEC) Special Education Transportation Costs Review
- Westford Man Who Falsely Promised to Bribe Public Officials is Charged with Wire Fraud
- Inspector General's Office Winthrop Harbormaster Investigation Leads to State Ethics Commission Fine
- University of Massachusetts Procurement of Analytical Services by the UMMS Commonwealth Medicine Division, August 2012
- Report Pursuant to Section 156 of Chapter 68 of the Acts of 2011: Rates of Reimbursement to Providers in the MassHealth MCO Program, July 2012
- Letter to State Treasurer Steven Grossman regarding the Lottery, July 2012
- Natural Heritage Endangered Species Program Recommendations to Speaker Robert A. DeLeo, May 2012
- Follow-up Letters To the Massachusetts Bay Transit Authority (MBTA) on "The RIDE" Paratransit Services Reports of Feb 2012 and Dec 2011, May 2012
- Electronic Benefits Transfer (EBT) Card Study Delayed Until an Audit is Completed, April 2012
- Greater Lawrence Educational Collaborative (GLEC) Business and Investment Practices, April 2012
- Inspector General Investigation of Attempted Bid-Rigging Allegations Results in Attorney General Settlement with Former Plymouth County Commissioner and a Pest Control Company, April 2012
- Letter to William Lantigua, Mayor, City of Lawrence, Regarding a Police Department Car Swap, April 2012
- Boston Public Schools Textbook Procurement, March 2012

- Letter to Dr. Pia Durkin, Superintendent, Attleboro Public School District, Regarding a 2009 School Bus Contract, March 2012
- Response from Jonathan Davis, Acting General Manager, MBTA Regarding the Possible Misuse of an MBTA Parking Lot, February 2012
- Letter to Jonathan Davis, Acting General Manager, MBTA Regarding the Possible Misuse of an MBTA Parking Lot, January 2012
- Letter to Peter Meade, Director, Boston Redevelopment Authority Regarding the License, Maintenance & Indemnification Agreement with the Boston Red Sox for Use of Air Rights & Yawkey Way, February 2012
- Cognos Case Summary, February 2012
- Letter to John Jenkins, Chairman MBTA Board of Directors Regarding Recommendations for Cost Saving & Operational Efficiencies for the Ride Program, February 2012
- Results of Pension Fraud Investigations, February 2012
- Letter to Bernard Lynch, City Manager, City of Lowell Regarding the Lowell Housing Authority Building Permits & Inspections, January 2012
- Inspector General & State Auditor Issued a Joint Statement Commending the Senate on Passing An Education Collaborative Reform Bill, January 2012