



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued May 12, 2011

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**Department of Early Education and Care**

For the period July 1, 2009 through June 30, 2010



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The Department of Early Education and Care (EEC), established by Chapter 15D of the Massachusetts General Laws, is responsible for the licensing of early education and care programs, and for providing the following: financial assistance for child care services to low-income families, information and referral services, parenting support for families, and professional development opportunities for staff in the early education and care field. These services are administered through five regional offices. During fiscal year 2010, EEC administered approximately \$525 million, of which federal funds totaled approximately \$405.6 million.

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor conducted an audit of EEC in conjunction with the Single Audit of the Commonwealth of Massachusetts for the fiscal year ended June 30, 2010.

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Our prior audit report, No. 2010-0837-16S, disclosed that EEC was not in compliance with 801 Code of Massachusetts Regulations (CMR) 21.00, *Procurement of Commodities or Services, Including Human and Social Services*, for certain child care services. In addition, our prior audit indicated that EEC was not in compliance with the requirements of its Treasury-State Agreement (TSA) with the United States Treasury. Our follow-up review disclosed that the EEC has remedied these issues, as follows:

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| <b>a. Compliance with Required Competitive Contract Procurement</b> | <b>5</b> |
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Our prior audit report disclosed that EEC was not in compliance with 801 CMR 21.00, *Procurement of Commodities or Services, Including Human and Social Services*, for certain child care services. More specifically, according to records maintained by EEC, four Requests for Responses (RFRs) originally issued during the period 1998 through 2001 had not been rebid in accordance with state procurement requirements. As a result, without procuring new RFRs, EEC could not be assured that it had obtained quality child care services at the best value available.

Our follow-up audit disclosed that new income-eligible contracts were finalized, effective September 1, 2009. Subsequently, using the same project management structure and work plan developed for the income-eligible contract, EEC fully implemented its contractual obligations in fiscal year 2010 for the remaining contracts.

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| <b>b. Compliance with Cash Management Improvement Act</b> | <b>6</b> |
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In accordance with the Cash Management Improvement Act of 1990, the Office of the State Comptroller (OSC), on behalf of the Commonwealth of Massachusetts, entered into a TSA with the United States Department of the Treasury. This agreement, used to improve the transfer of federal funds between the federal government and the

Commonwealth, specifies the applicable federal programs, entities covered, and the funding technique to be used for the drawdown of federal funds. EEC entered into a sub-agreement with the OSC acknowledging and agreeing to the federal funding techniques listed in the TSA.

Our prior audit report disclosed that EEC was not in compliance with the requirements of the TSA. Specifically, the prior report noted that the drawdown technique used by EEC did not replicate the funding technique defined in the TSA.

Our follow-up audit disclosed that EEC has implemented corrective procedures including amending the Fiscal Year (FY) 2010 TSA to reflect the contracted method of quarterly reimbursement drawdown requests for Child Care Development Fund Discretionary, Mandatory, and Matching Funds.

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**2. PRIOR AUDIT RESULTS UNRESOLVED - INADEQUATE INTERNAL CONTROLS OVER ACCOUNTS RECEIVABLE****7**

Our prior audit report disclosed that EEC continued to credit all recoupments to the Commonwealth's General Fund as part of its accounts receivable process, without the ability to re-obligate funds back to EEC's federal awards or make the appropriate repayment to the United States Department of Health and Human Services, Administration for Children and Families (ACF), where applicable. Specifically, BARS is only capable of depositing recoupment funds into the General Fund.

Our follow-up audit disclosed that this issue has not been resolved despite EEC's continued efforts. As of June 30, 2010, EEC's accounts receivable balance was \$537,230. Additionally, EEC recouped \$377,951 during FY 2010 that has been neither re-obligated nor returned to the federal government. In its response to the audit report, EEC stated that it is awaiting approval for an Expendable Trust Fund so that it may record, track, re-obligate, or, if required, cause the repayment of recouped funds to the ACF. EEC remains committed to resolving this issue. Subsequent to our audit field work, EEC and OSC are in the process of establishing procedures through Commonwealth Billing and Account Receivable Subsystem (BARS) to re-obligate funds back to EEC's federal awards or make the appropriate repayments to ACF.

## INTRODUCTION

### ***Background***

The Department of Early Education and Care (EEC), established by Chapter 15D, Section 2, of the Massachusetts General Laws, serves as the lead state education agency for the administration of public and private early education and care programs and services under federal laws. EEC's mission is to ensure that Massachusetts children and families are helped to reach their full potential by providing and coordinating a range of services and assistance to continuously improve the quality, affordability, and accessibility of early education and care. EEC is responsible for seeking, applying for, and encouraging the use of federal funds for early education and care services, and facilitates the coordination of federal, state, and local policies concerning early education and care.

In February 2008, the Massachusetts Legislature created an Executive Office of Education (EOE) to oversee the Commonwealth's three education agencies: (1) the Department of Early Education and Care (EEC); (2) the Department of Elementary and Secondary Education (ESE); and (3) the Department of Higher Education (DHE). Governor Patrick proposed this new Secretariat to encourage coordination and seamless delivery of education from birth through higher education and beyond. In support of this new vision, Governor Patrick submitted his education agenda entitled "The New Promise of Public Education" in June 2008. With the creation of EOE and within the context of the Governor's proposal to revolutionize the Commonwealth's public education system, EEC, which oversees a family's first point of entry into the Commonwealth's education system, now serves as an integral part of the overall continuum of education in the Commonwealth by providing the foundation for children's healthy development and learning.

In its important and vital role as the entry point to the public education system, EEC reports directly to EOE and is overseen by an 11-member Board of Early Education and Care (Board). In recognition of this role, the Legislature and the Governor have ensured that the Board, which is responsible for, among other things, the oversight and supervision of the administration of a high-quality system of public and private early education and care, contains a dynamic and diverse membership of individuals representing key stakeholders in the field of early education and care.

EEC is responsible for the licensing of early education and care services and issues licenses through its five regional offices (Quincy, Salem, Worcester, Taunton, and Springfield) to providers

throughout the Commonwealth. In addition, EEC provides financial information and referral services, parenting support to families, and professional development opportunities for employees in the early education and child care field of work.

In fiscal year 2010, EEC administered approximately \$525 million; \$405.6 million represented federal funds that included \$199 million in a suballocation from the Department of Transitional Assistance, \$82 million of which is to be used by the Child Care Resource and Referral (CCR&R) agencies to provide daycare services to eligible families in the Temporary Assistance for Needy Families (TANF) program. EEC fiscal year 2010 federal fund expenditures also included \$194.6 million in Child Care & Development Fund (CCDF) grants, \$2.3 million of which was supplemental Child Care Discretionary Fund (CFDA 93.713) grant awards as a result of a fiscal year 2009 appropriation from the American Recovery and Reinvestment Act (ARRA). EEC, acting as the pass-through entity, disbursed a majority of these federal funds to contracted child care providers and CCR&R agencies (subrecipients) for early education and child care services. We noted that EEC had contracts with approximately 220 child care providers and 13 CCR&Rs.

### ***Audit Scope, Objectives, and Methodology***

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of EEC for the period July 1, 2009 through June 30, 2010. We conducted our audit in conjunction with the Single Audit of the Commonwealth of Massachusetts for the fiscal year ended June 30, 2010. The Commonwealth's Fiscal Year 2010 Single Audit Report consists of the following volumes:

- Statutory Basis Financial Report
- Comprehensive Annual Financial Report
- [Office of Management and Budget] OMB Circular A-133 Report

The audit results contained in this report are also reported in the Fiscal Year 2010 Single Audit of the Commonwealth of Massachusetts, OMB Circular A-133 report, as mentioned above.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our

audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit was also conducted in accordance with standards set forth in OMB Circular A-133 and the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, Audits of State and Local Governments. Additionally, our audit evaluated EEC's compliance with Office of the State Comptroller (OSC) policies and procedures; Massachusetts General Laws; and other applicable laws, rules, and regulations.

In performing our audit of EEC's activities, we referred to OMB Circular A-133, the June 2010 Compliance Supplement, and the Memorandum M-10-14 (March 22, 2010) to determine the compliance requirements that must be considered in an audit conducted under OMB Circular A-133. Based upon our audit, we determined requirements applicable to the Child Care Mandatory and Matching Funds of Child Care Development Funds and Child Care Development Block Grant (Discretionary) programs, and designed appropriate tests to determine EEC's compliance with these requirements.

Specifically, our objectives were to:

- Assess the internal controls in place at EEC during the review period.
- Assess and evaluate the program for compliance with the requirements of the Compliance Supplement, the federal Department of Health and Human Services, and the OSC.
- Determine the status of prior audit results (No. 2010-0837-16S).

The criteria for our review were drawn from OMB Circular A-133, the June 2010 Compliance Supplement, Memorandum M-10-14, the Code of Federal Regulations, and the OSC's Internal Control Guide. Those criteria dealt with EEC administration and operation of the programs tested above for compliance with laws and regulations governing:

Activities Allowed or Unallowed  
Allowable Costs/Cost Principles  
Cash Management  
Davis-Bacon Act  
Eligibility  
Equipment and Real Property Management  
Matching, Level of Effort, Earmarking  
Period of Availability of Federal Funds

Procurement, Suspension, and Debarment  
Program Income  
Real Property Acquisition and Relocation Assistance  
Reporting  
Special Tests and Provisions  
Subrecipient Monitoring

We examined, on a test basis, evidence about EEC's compliance with the applicable requirements and performed other procedures as we considered necessary. Based on these tests, we have concluded that, except as reported in the Audit Results section of this report, for the period July 1, 2009 to June 30, 2010, EEC had adequate internal controls in place and complied with the requirements of the federal Department of Health and Human Services; the OMB Circular A-133 and the Compliance Supplement; and other applicable laws, rules, and regulations for the areas tested.

## AUDIT RESULTS

### 1. PRIOR AUDIT RESULTS RESOLVED

Our prior audit report, No. 2010-0837-16S, disclosed that the Department of Early Education and Care (EEC) was not in compliance with 801 Code of Massachusetts Regulations (CMR) 21.00, *Procurement of Commodities or Services, Including Human and Social Services*, for certain child care services. In addition, our prior audit indicated that EEC was not in compliance with the requirements of its Treasury-State Agreement (TSA) with the United States Treasury. Our follow-up review disclosed that the EEC has remedied these issues, as follows:

#### a. Compliance with Required Competitive Contract Procurement

Our prior audit report disclosed that EEC was not in compliance with 801 CMR 21.00, *Procurement of Commodities or Services, Including Human and Social Services*, for certain child care services. More specifically, according to records maintained by EEC, four Requests for Responses (RFRs) originally issued during the period 1998 through 2001 had not been rebid in accordance with state procurement requirements. As a result, without procuring new RFRs, EEC could not be assured that it had obtained quality child care services at the best value available. These RFRs, issued by EEC's predecessor agency, the Office of Child Care Services, were as follows:

| <u>RFR File Number</u> | <u>Total Anticipated Contract Duration</u> | <u>Type of Service</u>                    | <u>Estimated Value</u> |
|------------------------|--|---|------------------------|
| 1998OCCS13             | 09/01/98 to 06/30/03                       | Income-Eligible Child Care                | \$200,000,000          |
| 1998OCCS14             | 10/01/98 to 06/30/03                       | Child Care Resource and Referral Services | \$24,000,000           |
| 2000OCCS04             | 01/01/00 to 06/30/04                       | Supportive Child Care                     | \$47,204,544           |
| 2001OCCS23             | 06/01/01 to 06/30/04                       | Non-Traditional Hours Child Care          | \$624,000              |

Our follow-up audit disclosed that on March 13, 2009, EEC opened the solicitation for Income-Eligible Child Care Financial Assistance in the Commonwealth's Procurement Access and Solicitation System. Vendor responses were collected until April 30, 2009, and the EEC posted the list of vendors that were selected for contract awards on July 17, 2009. New income-eligible contracts were finalized effective September 1, 2009.

Using the same project-management structure and work plan developed for the income-eligible contract, EEC fully implemented its contractual obligations in fiscal year (FY) 2010 for the remaining contracts. In June 2010, EEC sent out the Child Care Resource and Referral (CCR&R) and Priority Population contract award letters for the contracts to commence July 1, 2010. The award letters for the Priority Population contracts include the supportive, teen, and homeless populations. The Non-Traditional contract, which also required a solicitation process, was not renewed by the EEC and, as a result, was extended through August 31, 2010 to allow for the transition of consumers to other EEC child care contracts.

A summary of the re-procured EEC child care programs follows:

| <b>RFR<br/>File Number</b> | <b>Total Anticipated<br/>Contract Duration</b> | <b>Type of Service</b>   | <b>Estimated Value</b> |
|----------------------------|--|--|------------------------|
| 2009EECIECCFAP026          | 9/01/09 to 9/1/16                              | Income-Eligible Child Care                                     | \$100,000,000          |
| 2010EECCCRRS               | 7/01/10 to 6/30/15                             | Child Care Resource and Referral Services                      | \$5,933,862            |
| 2010EECFAPRIORPOPSTPH      | 7/01/10 to 6/30/17                             | Priority Populations (includes Supportive, Teen, and Homeless) | \$84,400,000           |

Our audit review noted that EEC has competitively bid RFRs for child care services in compliance with 801 CMR 21.00.

#### **b. Compliance with Cash Management Improvement Act**

In accordance with the Cash Management Improvement Act (CMIA) of 1990, the Office of the State Comptroller (OSC), on behalf of the Commonwealth of Massachusetts, entered into a TSA with the United States Department of the Treasury. This agreement, used to improve the transfer of federal funds between the federal government and the Commonwealth, specifies the applicable federal programs, entities covered, and the funding techniques to be used for the drawdown of federal funds. The EEC enters into an annual sub-agreement with the OSC acknowledging and agreeing to the federal funding techniques listed in the TSA.

Our prior audit indicated that EEC was not in compliance with the requirements of the TSA. Specifically, the prior report noted that the drawdown technique used by EEC did not replicate the funding technique defined in the TSA. Further, as a result of delays in processing the

funding reimbursement requests and combining expenditures over two-month periods, the completion and submission of the federal drawdown request to the Office of the State Treasurer by the EEC varied significantly, resulting in the loss to the Commonwealth of the use of revenue as well as potential investment income.

Our follow-up audit disclosed that EEC has implemented corrective procedures including amending the fiscal year (FY) 2010 TSA to reflect the contracted method of quarterly reimbursement drawdown requests for the Child Care & Development Fund (Discretionary) and Mandatory and Matching Funds. In addition, EEC has modified business practices to ensure that drawdowns are reviewed, approved, and faxed to OSC for processing within 30 days, as defined in the FY 2009 TSA and well within the FY 2010 quarterly requirement. Our audit review noted that drawdown requests were processed timely and in compliance with the TSA.

## **2. PRIOR AUDIT RESULTS UNRESOLVED – INADEQUATE INTERNAL CONTROLS OVER ACCOUNTS RECEIVABLE**

Our prior audit report disclosed that EEC continued to credit all recoupments to the Commonwealth's General Fund without the ability to re-obligate funds back to EEC's federal awards or make the appropriate repayment to the United States Department of Health and Human Services, Administration for Children and Families (ACF), where applicable.

Child Care & Development Fund (CCDF) regulations allow grantees to re-obligate certain unliquidated or recouped funds within the year the award was made, or within the following fiscal year.

Title 2 of the Code of Federal Regulations (CFR), Subtitle A, Chapter II, Part 230 – *Cost Principles for Non-Profit Organizations* (OMB Circular A-122), Appendix A – *General Principles*, states, in part:

### *A. Basic Considerations. (5) Applicable credits.*

- a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.*

Title 45 CFR Section 98.60, *Availability of Funds*, states, in part:

- (g) *Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall,*
- (1) *if received by the Lead Agency during the applicable obligation period, described in paragraphs (d) and (e) of this section, be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or*
  - (2) *if received after the end of the applicable obligation period described at paragraphs (d) and (e) of this section, be returned to the Federal government.*

In response to our FY 2009 audit, the EEC stated that it was in contact with the Executive Office for Administration and Finance (EOAF) and the Office of the State Comptroller (OSC) for advice on how to best correct this issue. As a result, EEC was in the process of working with EOAF to establish an expendable trust fund for the receipt, recording, re-obligating, or repayment, if necessary, of recouped CCDF funds. Furthermore, EEC is working with the OSC to enable funds previously collected and reported in BARS to be debited to this expendable trust fund, allowing EEC to re-obligate funds or make appropriate payments to the governing federal agency, the ACF.

Our follow-up audit disclosed that this issue has not been resolved despite EEC's continued efforts. As of June 30, 2010, EEC's accounts receivable balance was \$537,230. Additionally, EEC recouped \$377,951 during FY 2010 that has been neither re-obligated nor returned to the federal government.

EEC has been working with the OSC, EOAF, and the ACF in an attempt to resolve this issue and provided the following status update as of June 2010:

*In February 2010, EEC submitted a draft of an Expendable Trust fund to the State Comptroller's Office for review and approval. The trust will allow EEC to record, track, re-obligate, or if required, repay recouped Child Care Development Fund (CCDF) funds in an efficient and timely manner to the granting federal agency, Administration for Children and Families (ACF), for funds recouped that are beyond the re-obligation period.*

*On April 8, 2010, EEC staff met with the State Comptroller's Office to discuss the Expendable Trust fund. EEC was informed at this meeting that the trust was not needed and that all recoupments could be processed through BARS. When EEC explained that the recoupments*

*could be from prior years and that BARS did not recognize prior years the comptroller agreed that an expendable trust fund might be a solution. The meeting was adjourned with the agreement that a solution was eminent in the future, upon further review.*

*In an attempt to resolve the issue prior to the end of the fiscal year, EEC on May 14, 2010, again forwarded the Expendable Trust to the State Comptroller's Office and included the Executive Office [for] Administration of Finance [EOAF] in a second request for review and approval of the trust fund.*

*On May 27<sup>th</sup>, EEC followed up on the progress of the approval of the expendable trust fund and the progress of the approval process through voicemail and e-mail. On June 1, 2010, [EOAF] responded that due to the budget process [it] has been unable to address the request, but assigned an analyst to work with EEC. EEC has responded to the analyst's inquiries and is awaiting further response. In addition to working with [EOAF] and the Comptroller's office, EEC has been in contact with ACF for guidance and other suggested solutions. As a result, ACF has scheduled a visit to EEC in August to assist EEC in addressing this issue.*

During our field work, the EEC Deputy Commissioner for Administration and Finance and other EEC staff met with the ACF Region 1 Child Care Program Manager and the ACF Region 1 Financial Operations Specialist in August 2010 and again in September 2010. ACF provided EEC with contacts who it thought might assist the EEC in identifying a process to preferably re-obligate recouped funds or, if necessary, return them to the ACF. Subsequent to our audit field work, EEC and OSC are in the process of establishing procedures through Commonwealth Billing and Account Receivable Subsystem (BARS) to re-obligate funds back to EEC's federal awards or make the appropriate repayments to ACF.

### ***Recommendation***

EEC should continue to work with the OSC and the EOAF to establish procedures and/or mechanisms to either reallocate recouped funds back to EEC's federal awards where appropriate, or to reimburse the federal government, where necessary.

### ***Auditee's Response***

In its response to the audit report, EEC stated that the issue of inadequate controls over accounts receivable remains unresolved, in spite of numerous attempts throughout the past year to address the issue. EEC has drafted an application and the terms and conditions for an Expendable Trust Fund. EEC has also worked with the OSC to enable funds collected in BARS to be transferred into the Expendable Trust Fund rather than the General Fund. This would allow EEC to record, track, re-obligate, or if required, cause the repayment of those recouped funds beyond the re-obligation period to the ACF in an efficient and timely manner. Although

receiving tentative EOAF approval for the Expendable Trust, questions still remain before final approval is granted. EEC further noted that it had met with ACF staff to seek guidance in handling this matter. Finally, EEC stated that it remains committed to resolving this issue during the current fiscal year.