



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Administration for
Children's Services' Controls over
Adoption Subsidies

FP19-090A

June 30, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the Administration for Children's Services (ACS) to determine whether ACS had adequate controls over adoption subsidies and issued subsidy payments appropriately to adoptive parents in compliance with governing rules and regulations. We perform audits such as this to increase accountability and ensure that City agencies are complying with applicable laws and regulations.

The audit found that ACS did not exercise adequate controls over adoption subsidy payments. Specifically, we identified adoption subsidy payments ACS issued in the names of adoptive parents who were no longer eligible to receive them, including instances where we provisionally determined that the adoptive parents or the adopted children appear to have died, based on death records compiled by federal agencies, including the U.S. Social Security Administration. The audit also found that ACS did not recover overpayments made on behalf of adoptive parents and adopted children reported as deceased to ACS by sources other than this audit. In addition, we found that ACS did not take appropriate follow-up action when adoptive parents failed to submit required annual certifications attesting that they were providing support to the adoptees. Finally, ACS made duplicate adoption subsidy payments in cases involving changes of guardianship of adopted children.

As a result of these deficiencies, we provisionally estimate that ACS issued inappropriate payments totaling at least \$3,462,482 to individuals who were not entitled to them. Of that amount, \$1,401,182 was paid during our scope period, and we estimate that the remaining \$2,061,300 was inappropriately paid prior to our scope period.

To address these issues, the audit conveyed seven recommendations to ACS. We recommended that ACS: review and recover the inappropriate payments made in the names of deceased parents and children; investigate cases in which adoptive parents or adopted children may have died and stop payments where the adoptive parents are deceased, are no longer legally responsible for the adopted children, or are no longer providing support for the adopted children. We further recommended that ACS develop internal procedures to actively check whether adoptive parents and adopted children are alive and actively use the annual certification process to ensure the well-being of adopted children and prevent fraud, waste, and abuse.

The results of the audit have been discussed with ACS officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report. If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Administration for Children's Services' Controls over Adoption Subsidies

FP19-090A

EXECUTIVE SUMMARY

The Administration for Children's Services (ACS) is responsible for protecting and promoting the safety and well-being of New York City's children by providing child welfare, juvenile justice, and early care and education services. ACS, as a Local Department of Social Services for the City of New York (the City), oversees adoption subsidy payments in the City. Adoption subsidies are monthly maintenance payments to support children's needs and to facilitate and encourage adoption.

ACS calculates adoption subsidy payments based on the daily rates set by the NYS Office of Children and Family Services (OCFS). The rates are classified as basic, special, or exceptional, and are determined based on each child's: placement history; if applicable, handicap; individual needs; and age. From July 2017 through January 2020, ACS paid a daily rate for children with basic needs that ranged from \$20.38 to \$29.31; for children with special needs, the pay rate ranged from \$43.49 to \$45.48; and for children with exceptional needs, the pay rate ranged from \$65.32 to \$67.31.

ACS, on a yearly basis, must notify adoptive parents that they are required to submit a certification attesting that they are currently providing support to the adoptees. If the parents fail to respond, additional follow-up by ACS is allowed to verify that the adoptive parents continue to provide support to the adopted child.

The City's Financial Management System (FMS) reflects that ACS spent \$237 million, \$224 million, and \$213 million in adoption subsidies in Fiscal Years 2018, 2019, and 2020, respectively.

Audit Findings and Conclusion

Our audit found that ACS did not exercise adequate controls over adoption subsidy payments. Specifically, we identified adoption subsidy payments made to or in the names of adoptive parents who were no longer eligible to receive them, including instances where we provisionally determined that the adoptive parents or the adopted children had died, based on various death

records, including those maintained by the U.S. Social Security Administration (SSA).¹ The audit also found that ACS did not recover overpayments made on behalf of adoptive parents and adopted children reported as deceased to ACS by sources other than this audit. In addition, we found that ACS did not take any action when adoptive parents failed to submit required annual certifications attesting that they were providing support to the adoptees. Finally, ACS made duplicate adoption subsidy payments in cases involving changes of guardianship of adopted children.

As a result of these deficiencies, we provisionally estimate that ACS issued inappropriate payments totaling at least \$3,462,482 to individuals who were not entitled to them. Of that amount, \$1,401,182 was paid during our scope period, and we estimate that the remaining \$2,061,300² was inappropriately paid prior to our scope period.

Audit Recommendations

To address the issues raised by this audit, we make seven recommendations to ACS. They include the following.

ACS should:

- Review and recover the inappropriate payments referenced in this report.
- Investigate cases in which adoptive parents or adopted children may have died and stop payments issued to or in the names of adoptive parents found to be: (a) deceased; (b) no longer legally responsible for the adopted children; or (c) no longer providing support for the adopted children.
- Recover duplicate payments, including those made to the original adoptive parent or guardian after a new guardian legally takes custody of the adopted child.
- Develop internal procedures to actively check whether adoptive parents and adopted children are alive rather than depend solely on notifications of deaths from external sources. Actively use the annual certification process as a form of internal control to ensure the well-being of adopted children and prevent fraud, waste, and abuse by: (a) ensuring that requests for certification letters are sent to all adoptive parents; (b) following up in every case in which adoptive parents do not submit the certification letters when requested; and (c) ensuring that all active adoption cases have current annual certification letters readily available in their case files.

Agency Response

In its response, ACS agreed with four recommendations and partially agreed with the remaining three recommendations. Specifically, ACS agreed to implement recommendations #1 through 4 that it: (#1) review and recover the inappropriate payments referenced in this report; (#2) investigate cases in which adoptive parents or adopted children may have died and stop payments issued to or in the names of adoptive parents found to be: (a) deceased; (b) no longer legally responsible for the adopted children; or (c) no longer providing support for the adopted

¹ Our determinations that specific adoptive parents or adopted children may have died are identified as “provisional” because, for the reasons detailed in this report, they require further investigation and verification by ACS of the adoptive parents’ and the children’s deaths.

² We used the pay rate during our scope period and calculated from the date of death until the audit scope start date.

children; (#3) upon confirmation of the death of a sole adoptive parent or an adopted child, recover payments made to or in the names of deceased adoptive parents or on behalf of a deceased adopted child after the relevant date of death; and (#4) recover duplicate payments, including those made to the original adoptive parent or guardian after a new guardian legally takes custody of the adopted child. ACS stated in its response regarding these recommendations that it will review and investigate the cases referenced in this audit and where it has confirmed that the payments are inappropriate it will attempt to recover the overpayments.

In addition, ACS agreed to implement, in part, our recommendations that it (1) develop internal procedures (recommendation #5); and (2) consider utilizing services such as the U.S. Treasury Department's Do Not Pay service or others offered by commercial and nonprofit vendors to actively check whether adoptive parents and adopted children are alive and to prevent, recoup, and take appropriate follow-up action concerning improper payments to ineligible persons (recommendation #6). For those two recommendations, ACS stated it "will revisit with our State oversight agency the feasibility of OCFS engaging in a deceased match on a national level which would provide the most complete and accurate information for all counties in New York State." ACS also partially agreed with our recommendation (#7) to actively use its annual certification process as a form of internal control. In response to that recommendation, ACS stated, "In order to strengthen processes and controls, ACS will further develop internal procedures including follow up on certification documents, but ACS cannot ensure the outcome that all active adoption cases have current annual recertification letters submitted."

AUDIT REPORT

Background

ACS is responsible for protecting and promoting the safety and well-being of New York City's children by providing child welfare, juvenile justice, and early care and education services. To meet part of its responsibility, ACS contracts with not-for-profit organizations that provide support to at-risk families and provide foster care for children not able to safely remain at home. Children remain in foster care until they return home or, if that is not possible, are adopted. Foster parents and other individuals that adopt foster children can receive adoption subsidies and federal or State-funded medical assistance for hard-to-place or handicapped children.³

ACS, as a Local Department of Social Services for the City of New York, oversees adoption subsidy payments in the City. Adoption subsidies are monthly maintenance payments to support children's needs and to facilitate and encourage adoption. To obtain subsidy payments, the adoptive parents must enter into an adoption subsidy agreement with ACS. The agreement contains eligibility criteria, medical documentation, and historical information to support the child's classification as hard-to-place or handicapped. The agreement also specifies the amount approved by New York State (NYS or State) for the subsidy payment. In administering adoption subsidy payments, ACS is required to follow State regulations and the Administrative Directives (ADM) and Local Commissioners Memorandums (LCM), which contain policy, procedures, and instructions issued by the OCFS.

Preliminarily, Title 18 Part 421.24(c)(5) of the New York Code of Rules and Regulations (NYCRR) provides that adoptive parents will receive monthly payments until the child's 21st birthday, unless ACS determines that "the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents." The adoption subsidy agreement mandated by OCFS provides that the adoptive parents are responsible for informing ACS if they are no longer legally responsible for their child's support or no longer providing any support to the child. Accordingly, adoptive parents must inform ACS if the child has moved out of the home, gotten married, joined military service, or passed away.

ACS calculates adoption subsidy payments based on the daily rates set by OCFS. The rates are classified as basic, special, or exceptional, and are determined based on each child's: placement history; if applicable, handicap; individual needs; and age. From July 2017 through January 2020, ACS paid a daily rate for children with basic needs that ranged from \$20.38 to \$29.31; for children with special needs, the pay rate ranged from \$43.49 to \$45.48; and for children with exceptional needs, the pay rate ranged from \$65.32 to \$67.31. In addition to monthly subsidy payments, New York State's Adoption Subsidy program provides for a one-time payment of up to \$2,000 per adopted child for non-recurring expenses involved in the adoption process, such as legal and medical costs.

ACS, on a yearly basis, must notify adoptive parents that they are required to submit a certification attesting that they are currently providing support to the adoptees. If the parents fail to respond, additional follow-up by ACS is allowed, as prescribed by OCFS memorandum 16-OCFS-LCM-02, to make additional efforts to verify that the adoptive parents continue to provide support to the adopted child. OCFS memorandum 16-OCFS-LCM-02 also defines support as anything "that is

³ An adoption subsidy is a legally prescribed monthly payment for the care, maintenance, and medical needs of a child who has been classified as handicapped or hard-to-place pursuant to New York State law and regulations.

directly for the benefit of the adopted child that meets the food, clothing, education, medical and shelter needs of the adopted child and which has an identifiable value.” Under ACS’ follow-up procedures, the parents’ failure to produce evidence of support is a basis for termination of adoption subsidy payments.

The City’s FMS reflects that ACS spent \$237 million, \$224 million, and \$213 million in adoption subsidies in Fiscal Years 2018, 2019, and 2020, respectively.

Objectives

The objectives of this audit were to determine whether ACS:

- had adequate controls over adoption subsidies; and
- issued subsidy payments appropriately to adoptive parents in compliance with governing rules and regulations.

Scope and Methodology Statement

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 the audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

This audit covered the period of July 1, 2017 through January 31, 2020. Please refer to the Detailed Scope and Methodology section at the end of this report for the specific audit procedures and detailed tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with ACS officials during and at the conclusion of this audit. A preliminary draft report was sent to ACS and discussed with ACS officials at an exit conference on May 25, 2021. On June 7, 2021, we submitted a draft report to ACS with a request for written comments. We received a written response from ACS on June 21, 2021.

In its response, ACS agreed with four recommendations and partially agreed with the remaining three recommendations. Specifically, ACS agreed to implement recommendations #1 through 4 that it: (#1) review and recover the inappropriate payments referenced in this report; (#2) investigate cases in which adoptive parents or adopted children may have died and stop payments issued to or in the names of adoptive parents found to be: (a) deceased; (b) no longer legally responsible for the adopted children; or (c) no longer providing support for the adopted children; (#3) upon confirmation of the death of a sole adoptive parent or an adopted child, recover payments made to or in the names of deceased adoptive parents or on behalf of a deceased adopted child after the relevant date of death; and (#4) recover duplicate payments, including those made to the original adoptive parent or guardian after a new guardian legally takes custody of the adopted child. ACS stated in its response regarding these recommendations that it will review and investigate the cases referenced in this audit and where it has confirmed that the payments are inappropriate it will attempt to recover the overpayments.

In addition, ACS agreed to implement, in part, the recommendations that it (1) develop internal procedures (recommendation #5) and (2) consider utilizing services such as the U.S. Treasury Department's Do Not Pay service or others offered by commercial and nonprofit vendors to actively check whether adoptive parents and adopted children are alive and to prevent, recoup, and take appropriate follow-up action concerning improper payments to ineligible persons (recommendation #6). For those two recommendations, ACS stated it "will revisit with our State oversight agency the feasibility of OCFS engaging in a deceased match on a national level which would provide the most complete and accurate information for all counties in New York State." ACS also partially agreed with our recommendation (#7) to actively use its annual certification process as a form of internal control. In response to that recommendation, ACS stated, "In order to strengthen processes and controls, ACS will further develop internal procedures including follow up on recertification documents, but ACS cannot ensure the outcome that all active adoption cases have current annual recertification letters submitted."

However, in its response, ACS disagreed with the audit's findings related to overpayments made to deceased adoptive parents or on behalf of deceased adopted children, stating:

ACS' core adoption subsidy process is well-structured and, given the immense size of the operation, the identified gaps are miniscule. Importantly, the Audit Report itself describes its primary findings around ostensible overpayments made to deceased adoptive parents or children as ". . . provisional because . . . they require further investigation and verification by ACS of the adoptive parents' and the children's deaths." . . . In the 2005-2021 period referenced by the auditors . . . more than \$4 billion in payments were made to families. The auditors identified *possible* overpayments in a very small percentage of these disbursements, less than .1%. Further, additional research has determined that some of the overpayments identified by the Comptroller were not in fact overpayments. In addition, while there may have been instances of overpayments when ACS was not timely advised of the death of an adoptive parent, in virtually all cases, the overpayment was of short duration and any disbursement so made was used for the care of the child. [Emphases in original.]

In its response, ACS attempts to dismiss the importance of the findings in this audit report as a means of deflecting responsibility for weaknesses in its oversight. We are concerned that ACS focuses on what it calls "miniscule" gaps and obfuscates the connection between such "gaps" and the efforts necessary to ensuring the safety and well-being of adopted children whose adoptive parents may be deceased or who may themselves have died, unbeknownst to ACS, while ACS continued to issue publicly funded adoption subsidy payments—in some cases for years—intended for their support.

Moreover, the "\$4 billion in payments" ACS cites in its response is misplaced and misleading for two reasons, both of which ACS should know: (1) Our audit did not examine or test \$4 billion in ACS payments and did not cover the 16-year period, 2005-2021, as ACS suggests. Rather, our audit covered a shorter 31-month period in which ACS issued approximately \$585 million in adoption subsidies, including \$1,401,182 (.24 percent) in the names of 106 persons (101 adoptive parents and 5 adopted children) who were or may have been deceased. After identifying those cases, we looked back at ACS payment records for those 106 cases only and determined, as we informed ACS, that ACS may have issued an additional \$2,061,300 in the names of *those same persons* in prior years; (2) Even if ACS' representation of the scale of the potentially improper payments was accurate, which it is not, the sums in question, totaling \$3,462,482, would demonstrate—rather than negate—the need for ACS to implement proper internal controls to prevent waste and protect the interests of the adopted children and the City. It is ACS'

responsibility to establish and use appropriate controls that ensure that the adults who receive the publicly funded adoption subsidies ACS is entrusted with administering are alive and are providing support for their hard-to-place adopted children, and that the children the subsidies are supposed to support are also alive.

Furthermore, ACS did not provide any information to us concerning the 24 adoptive parents and 3 adopted children we provisionally identified as deceased in a letter we sent to ACS on December 14, 2020, included as an appendix to this report. ACS has had more than six months to investigate those cases but as of the date of this report has provided no information to our office concerning the status of any of those children and adoptive parents or the disposition of the payments ACS has made and may be continuing to make in their names.

ACS should have been using the resources available to it, including the information we provided more than six months ago, to ensure the safety of the children whose sole parent or legal guardian may have passed away, to ensure that they continue receiving proper support as required, and to prevent overpayments.

The full text of ACS' response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Our audit found that ACS did not exercise adequate controls over adoption subsidy payments. Specifically, we identified adoption subsidy payments made to or in the names of adoptive parents who were no longer eligible to receive them, including instances where we provisionally determined that the adoptive parents or the adopted children had died, based on various death records, as described below.⁴ The audit also found that ACS did not recover overpayments made on behalf of adoptive parents and adopted children reported as deceased to ACS by sources other than this audit. In addition, we found that ACS did not take any action when adoptive parents failed to submit required annual certifications attesting that they were providing support to the adoptees. Finally, ACS made duplicate adoption subsidy payments in cases involving changes of guardianship of adopted children.

As a result of these deficiencies, we provisionally estimate that ACS issued inappropriate payments totaling at least \$3,462,482 to individuals who were not entitled to them. Of that amount, \$1,401,182 was paid during our scope period, and we estimate that the remaining \$2,061,300 was inappropriately paid prior to our scope period.

Lack of Oversight on Adoption Subsidy Payments

ACS did not exercise adequate controls over the adoption subsidy payments. Our audit identified payments totaling \$3,462,482 that appear to have been inappropriate. Of that amount, ACS paid \$1,638,193 in the names of adoptive parents we provisionally identified as deceased and additionally paid \$539,544 to adoptive parents for the support of adopted children who appear to have been deceased. We also found that ACS failed to recover an additional \$1,151,576 in payments that had been made to or in the names of deceased parents after their deaths had been reported to ACS. Finally, we identified \$133,169 in duplicate payments. Table I, which follows, summarizes these findings by category of inappropriate payments.

⁴ Death data sources such as Obituary Death Data, American InfoSource Probate Death Data, Department of Defense Death Data, Department of State Death Data, and the SSA Death Master File were utilized.

Table I

Inappropriate Payments

| | Payments Made during Scope Period | Estimated Payments Made during Pre-Scope Period | Estimated Total |
|--|--|--|------------------------|
| Post-death Payments in the Names of Parents Provisionally Identified as Deceased | \$692,108 | \$946,085 | \$1,638,193 |
| Post-death Payments on Behalf of Children Provisionally Identified as Deceased | 121,983 | 417,561 | 539,544 |
| Non-Recovery of Post-death Payments Issued to or for Deceased Parents/Children Reported to ACS | 453,922 | 697,654 | 1,151,576 |
| Duplicate Payments | 133,169 | - | 133,169 |
| Total | \$1,401,182 | \$2,061,300 | \$3,462,482 |

These findings are described in more detail below.

ACS Issued Payments in the Names of Deceased Adoptive Parents and to Adoptive Parents on Behalf of Deceased Adopted Children

As noted above, ACS issued adoption subsidy payments in the names or for the benefit of adoptive parents and adopted children, respectively, whom we have provisionally identified through the audit as being deceased at the time those payments were made. Specifically, we estimate that ACS issued at least \$1,638,193 in subsidy payments to 39 adoptive parents who appear to have been deceased, and \$539,544 in subsidy payments to support 3 adopted children after their reported dates of death as they appear in the death records.⁵

Because the adoption subsidy payment records maintained by ACS do not contain the Social Security numbers of either the adopted children or the adoptive parents, we obtained what we believe are the Social Security numbers (SSNs) for the adoptive parents from data maintained by CLEAR, a service offered by a private vendor that compiles public records.⁶ After we determined that the Social Security numbers we identified in CLEAR appeared to belong to adoptive parents

⁵ None of the 39 adoptive parents we provisionally identified as deceased had a surviving co-adoptive parent identified in the adoption subsidy agreement.

⁶ We used Thomson Reuters' CLEAR, a commercially available research tool, to obtain Social Security numbers of adoptive parents identified in ACS records as recipients of ACS' adoption subsidy payments. To obtain the Social Security numbers from CLEAR, we searched the adoptive parents' names and addresses as they appeared in the ACS Payment Data.

for whom we had adoption subsidy payment information, we compared that information with the SSA death records. We also utilized the assistance of the U.S. Treasury's Do Not Pay program, which provides data matching services to local governments in connection with federally supported benefit programs to identify deceased individuals.⁷ Through the analysis conducted by our office and Do Not Pay, we provisionally identified 39 adoptive parents who, according to the data we reviewed, appeared to have died between one and sixteen years before our review.⁸

ACS had not been notified of these deaths before our audit, and the agency continued to issue adoption subsidy payments in the names of the provisionally identified decedents for varying periods after their deaths. During our audit scope period, ACS paid out a total of \$692,108 in the names of the 39 adoptive parents we provisionally identified as deceased. Additional payments to many of these provisionally identified decedents preceded the audit scope period and, based on the reported dates of death, we estimate that ACS paid out an additional \$946,085 in the names of the deceased adoptive parents after they died but before our audit scope period.

In cases where adoptive parents die, New York State allows subsidy payments to continue to a legal guardian or in some cases to the adoptee if they are 18 years of age or older as set forth in Title 18 Part 421.24. However, nothing in ACS' records indicates that ACS issued the post-death payments to a legal guardian or to the adoptees in the case of the 39 adoptive parents we have provisionally identified as deceased.

We also conducted a similar review of all adopted children identified in ACS' adoption subsidy records and, based on that review, provisionally identified three adopted children who, according to SSA records, had passed away in 2007, 2011, and 2013, respectively. ACS made payments totaling \$539,544 on behalf of these three provisionally identified deceased children after their reported dates of death: \$121,983 during our audit scope period, and an estimated \$417,561 from their reported dates of death to the start of our audit scope period.

If the 42 deceased individuals we provisionally identified as being adoption subsidy recipients or beneficiaries are in fact the 39 adoptive parents and 3 adopted children in ACS' adoption subsidy program, ACS' lack of awareness of their deaths indicates significant gaps in ACS' controls over the continued eligibility of subsidy recipients. It is particularly troubling where, as in the case of the 39 adoptive parents we have provisionally identified as deceased, the adoptive parents were the sole caretakers for the adopted children on record with ACS.

We brought this matter—including the subsidies ACS had paid and was continuing to pay, the names and identifiers of 24 possibly deceased adoptive parents, their adopted children, and the 3 possibly deceased adopted children—to ACS' attention in a letter to the ACS Commissioner dated December 14, 2020 (See Appendix I).⁹ We recommended that ACS immediately investigate and take such action as may have been warranted, including for the protection of the affected children. To date, we have not received information we requested from ACS concerning any action that it has taken in response to our letter.¹⁰

Generally, ACS does not initiate data-based death matches or actively perform other forms of due diligence to verify that its payments are going only to adoptive parents who are alive and only for

⁷ Do Not Pay is a service provided by the Bureau of the Fiscal Service of the U.S. Department of the Treasury. It provides a variety of data matching and data analytics services to support agency programs in an effort to prevent and detect improper payments.

⁸ Our initial review provisionally identified 24 deceased parents and the Do Not Pay review identified an additional 15 deceased parents that appear to have received inappropriate payments.

⁹ Results from Do Not Pay were not included in the letter as the review by Do Not Pay was conducted in 2021.

¹⁰ ACS requested and we provided a description of the steps we took and the data we used in our review.

the support of living adopted children. Rather, ACS relies solely on death notifications it may or may not receive from the family or a friend of the deceased person or from an OCFS death match report. ACS' passive reliance on these external sources appears insufficient to prevent improper payments from continuing after the named payee or beneficiary dies. For example, the most recent death match OCFS provided to ACS before our audit, in 2018, failed to identify the possibly deceased individuals this audit has provisionally identified. ACS should therefore implement more effective controls, including but not limited to an annual data match based on the most comprehensive data available, to help prevent improper and potentially fraudulent payments and to better protect the interests and safety of adopted children in ACS' program.¹¹

ACS Response: In its response to this finding, ACS stated that it “continues to review the payments alleged to be ‘provisionally’ improper by the auditors. Although a ‘match’ was done by the auditors, that match alone is inadequate to conclude that a payment was made in error and thus support the termination of adoption subsidy payments. Per guidance from our oversight, New York State OCFS, ACS must confirm the status of the payee and acquire the death certificate for our records – a more time consuming and complex investigatory process. For example, our research has already confirmed at least one ‘deceased’ parent from the audit match process is very much alive and was wrongly included.”

Auditor Comment: ACS' response misstates our audit finding and process, misleadingly suggests—falsely—that we recommended that ACS immediately terminate adoption subsidy payments based solely on the results of a single match, and explains gratuitously why it cannot do something that we never recommended. It also states, without evidence, that one adoptive parent we provisionally identified as deceased is alive. ACS had multiple opportunities to identify the parent its statement references. To the extent ACS has done so, the sole adoptive parent it identified was not a parent we included in this or *any* finding of this audit as possibly deceased.

This audit report, like the letter we provided to ACS more than six months earlier, clearly describes the steps we took: (a) analyzed ACS' payment records, which ACS provided to us; (b) obtained Social Security numbers for the persons we believe are the payees and beneficiaries named in ACS' records, based on their names and addresses reflected in ACS' records; and (c) compared the results—names and SSNs—with official death records the federal government compiles.¹² Through that process, we have now *provisionally* identified 42 persons (39 adult adoptive parents and 3 adopted children) who *may have died* before ACS issued a total of \$2,177,737 in adoption subsidy payments in their names. In that regard, we have attempted, for more than six months, to bring 27 of those persons to ACS' attention for *further investigation* and appropriate follow-up action.

Indeed, we met with ACS officials most recently on May 25, 2021, at an exit conference for this audit, approximately two weeks after providing ACS with a preliminary draft of this

¹¹ We have identified a significant limitation in the data the City receives indirectly from SSA concerning deaths that states report to SSA. We reviewed U.S. Treasury/Do Not Pay's material and determined its data includes additional death records available to that agency through SSA and its other data resources.

¹² Letter to ACS Commissioner, December 14, 2020, appended to this report. At that time, we identified for ACS, and provided supporting documentation, including SSNs, for 24 adoptive parents and 3 adopted children we had provisionally identified as deceased based on the above-described process. We later informed ACS of 15 additional adoptive parents/ACS payees we provisionally identified as deceased, based on a similar process, with additional assistance we received from the U.S. Treasury Department's Do Not Pay program, which has access to a more comprehensive federal database of death reports than those available to us from the U.S. Social Security Administration.

audit report and more than five months after our letter notifying ACS of 27 (24 parents and 3 children) of the 42 cases where we provisionally identified parents or children who may have died. At the May 25 exit conference, ACS officials informed us generally that ACS had made efforts to investigate our findings and stated that ACS had determined that an unspecified number of adoptive parents referenced in our findings may be alive. We asked ACS for supporting documentation. However, none of the information we received in response to that request contained information about any of the 42 persons we provisionally identified as deceased in this finding of our audit.

Specifically, in response to our request, (1) on May 28, 2021, ACS provided a spreadsheet and (2) on June 1, 2021, ACS provided supporting materials for that spreadsheet. That spreadsheet and the supporting materials ACS provided to us concerned 17 cases, *all of which related solely and entirely to a separate finding of this audit*, discussed in the next section of this report. Specifically, that finding is that ACS did not recover \$1,151,576 in *additional* overpayments it had made in the names of 64 *additional* persons (62 adoptive parents and 2 adopted children) after ACS had been notified of their deaths through various means *prior to and wholly separate from* our audit. We emphasize that those 64 persons do *not* include any of the 42 persons we provisionally identified as deceased through data matches described in this finding of our audit.

In other words, as recently as May 28, 2021, the only substantive response ACS provided to us had *nothing to do* with what ACS now refers to as our “audit match process” or any of the 39 adoptive parents and 3 adopted children we provisionally identified as deceased through our audit process. ACS did not identify with any specificity a single case in which it has either confirmed, eliminated, or even investigated the possibility that it has been issuing payments in the names of 42 persons who may be deceased as referenced in this section of our report.

ACS Did Not Recover Overpayments to Adoptive Parents Reported Deceased or on Behalf of Deceased Adoptees

ACS did not recover \$1,151,576 in payments it may have improperly made to or in the names of adoptive parents and adoptees who, prior and during the scope of this audit, were reported to ACS as deceased by sources *other than this audit* [emphasis added in this final audit report]. ACS is required to recover overpayments it has made to or in the names of deceased parents or to parents whose adopted child passed away. OCFS’ Local Commissioners Memorandum 16-OCFS-LCM-02, section C states:

There are circumstances when the [Local Department of Social Services (LDSS)] is responsible for recovery of overpayment, such as when it has been determined that the adoptive parent(s) has not been providing any support to the adopted child, yet adoption subsidy payments continued, or the sole remaining adoptive parent(s) has died but adoption subsidy payments continued to their bank account through direct deposit. Another situation is where the adoptee has died, and the adoptive parent failed to notify the social services official of the death. In these cases, the LDSS must determine appropriate action based on the case circumstance.

However, although ACS received notifications of the reported deaths of 62 adoptive parents and 2 adoptees, ACS records did not reflect that it recovered or took any steps to recover the

\$1,151,576 in overpayments it may have made both during and before our audit scope period.¹³ Specifically, based on the dates of the adoptive parents' or adoptees' reported deaths, we determined that ACS inappropriately paid adoption subsidies totaling \$453,922 in the names of 62 deceased payees and on behalf of 2 adoptees during our audit scope period. In addition, we found that 11 of the 62 adoptive parents had passed away prior to the audit scope start date. Based on their reported dates of death, we estimate that ACS paid an additional \$697,654 in their names after they died and before the audit scope period.

The death of an adoptive parent or adopted child is not always reported to ACS immediately; in some instances, ACS was notified eight years after the death of an adoptive parent. ACS explained that once it receives notification and confirms the death of the parent or child, it either transfers adoption subsidy payments to a new legal guardian or stops payment. If overpayment is determined, ACS stated that its practice is to refer the matters to the City's Law Department to recover the overpaid subsidy payments. However, in the 64 instances where ACS received actual notice of the deaths of adoptive parents or children at issue in this section of the report, ACS had already paid out benefits for varying lengths of time in the names of payees or on behalf of adoptees who were deceased prior to its receiving notice of the deaths. Based on documentation provided by ACS, it referred two of those instances to the City's Law Department to attempt recovery of overpayments totaling \$6,929 issued to two deceased adoptive parents.

ACS Response: In its response to this finding, ACS stated that it “continues to review the cases cited by the City Comptroller. However, preliminary research has flagged *the matches done by the auditors* as unreliable. For example, in at least 18 of the cases, ACS has already confirmed that the payment was appropriate or that ACS had previously taken requisite follow-up action. Contrary to the assertion within the audit report, ACS had shared this information and back up documentation with the auditors prior to the issuance of the report. *As mentioned above, one parent identified as deceased by the audit match is alive.*” [Emphases added.]

Auditor Comment: ACS' response again misstates our audit finding, and misleadingly conflates this finding with the previous finding of this audit report. ACS also, again, provides no evidence that any adoptive parent we included in this finding as reportedly deceased is instead alive. Rather, it appears that ACS misconstrued a case we included in this finding because ACS issued adoption subsidy payments to the living adoptive parent after the adopted *child* had died, as detailed below.

As is fully evident from this report, the finding ACS references in this section of its response has *nothing to do with* the “matches done by the auditors” discussed in the previous section of the report. Rather, this audit finding concerns 64 cases in which ACS received notifications of deaths of 62 adoptive parents and 2 adopted children from “sources *other than this audit,*” as the first sentence of this section of this report finding clearly states. These 64 cases do not include any of the 42 additional persons we provisionally identified, in the preceding finding, as deceased. In addition, the issue in these 64 cases is also different—it is whether ACS took steps to recover any overpayments it had already made between the dates on which the 64 individuals died

¹³ ACS has not provided requested information indicating whether it recovered and attempted to recover the overpayments for these 64 individuals. Initially our finding in the preliminary report listed 66 individuals, and this was changed to 64 because on June 1, 2021, ACS provided documentation showing that it had recovered funds for 2 individuals.

and the dates on which ACS was notified of their deaths or the dates on which it terminated payments.

Moreover, inasmuch as ACS' letter includes in its response to this finding the statement that "*one parent identified as deceased by the audit match is alive*," and includes that living parent in its discussion of "18 [*sic*] of *the cases*" covered in this finding [emphasis added], it appears that the parent ACS determined is alive is *not* one of the 39 adoptive parents we provisionally identified through our match process as deceased, but rather is connected to one of these 64 additional cases, which ACS should know had nothing to do with "matches done by the auditors."

Furthermore, in the materials ACS provided to us on May 28 and June 1, 2021, which concerned 17 (not 18) cases ACS *had* investigated, all of which were in this group of 64 adoptive parents or children whose deaths ACS had received notice of outside of the audit, ACS noted in its determination of 1 case that the adoptive parent was alive and that the person who had died in that case was the adopted child. However, our audit findings and the data shared with ACS identified the adopted *child* as reportedly deceased and *not* the adoptive parent. In other words, ACS misconstrued our finding; we never identified *or* included the adoptive parent in question as deceased.

ACS Response (continued): "Other appropriate payments include: checks with dual payees, in which only one payee is deceased; checks returned for payroll cycles subsequent to the death of the adoptive parent; cases previously referred to the NYC Law Department for recovery; and a case already on a repayment plan since 2019. It is simply incorrect to state that follow up action related to identified and concluded overpayments has not been taken.

In another 33 of the cases, ACS has not yet been able to obtain a death certificate as is required by OCFS guidance. ACS is further researching these cases and will consult with the NYC Law Department and OCFS regarding an appropriate response.

In any event, the majority of possible overpayments has been of relatively short duration and family members have specified that funds were used for the care of the child. As referenced above, the possible errors identified constitute less than .1% of payments made since 2005."

Auditor Comment: ACS' continued reference to a supposed .1 percent error rate is inaccurate, as previously explained.

ACS Issued Duplicate Payments after Changes of Guardianship

Pursuant to Title 18 Part 421.24(c)(5), New York State mandates: "No payments may be made if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents." In addition, according to Local Commissioners Memorandum 16-OCFS-LCM-02, if it is determined that the adoptive parent is no longer providing any support, the LDSS is responsible to recover overpayments.

These rules are applicable to situations where an adopted child's guardianship changes during the child's time in the adoption subsidy program. Such change commonly occurs as a result of the death of the adoptive parent or because the adoptive parent is no longer able to provide support for the adopted child and New York State Adoption Services approves a guardian change.

ACS may receive notification of the change of guardian months after the official custody of the child has changed. Because the new guardian is entitled to payments from the date of the new or amended adoption, ACS makes retroactive payments to the new guardian corresponding to the date the new guardian obtained custody of the child. However, we found that ACS failed to recover payments it had already made to the original adoptive parent for the period in which the new guardian had custody of the adopted child, resulting in duplicate payments for the support of a child. These duplicate payments not only constitute a waste of public funds, but they may indicate potential abuse of the system by the recipients of the funds.

During the audit scope period, we found that ACS issued retroactive payments to new guardians for 38 adoptees after payments of \$133,169 had already been made to the original adoptive parents. In these cases, ACS ultimately made duplicate payments on behalf of the same children for the same time period—payments to both the adoptive parents who were no longer providing support to the children and to the children’s new guardians. Duplicate payments were made for as long as 354 days. ACS has not provided records or other information indicating that it has recovered or taken the necessary steps to recover the duplicate payments.

ACS Did Not Ensure Timely Return of Annual Certifications

ACS failed to ensure that adoptive parents submitted annual certification forms to certify that they are providing support to their adopted children. ACS also did not take necessary steps to follow up to resolve cases where certifications were not received.

New York State Regulation, Title 18 Part 421.24(c)(19), provides: “The social services official on an annual basis in a written notification must remind the adoptive parents of their obligation to support the adopted child. . . . Such notification must include a requirement that the adoptive parents must certify that the adopted child is a full-time elementary or secondary student or has completed secondary education.” Further, OCFS Local Commissioners Memorandum 16-OCFS-LCM-02, issued in February 2016, provides that the agency should send a second, or follow-up, letter to the adoptive parents who do not submit the requested certification.

ACS officials stated that OCFS provides the City’s Human Resources Administration (HRA) with the data needed to send out the required notification letters to the adoptive parents and that those letters are “sent out via HRA systems mailing.” After HRA sends out the annual certification letters, it provides a file to ACS of the letters HRA sent. According to ACS, the ACS Post Adoption Support/Subsidy Recertification Letter Processing Unit then monitors and reviews the annual certifications the adoptive parents return to ACS. Through that review, ACS generates a file identifying the adoptive parents who have not returned the required certifications, which ACS sends to HRA.

When we asked what steps ACS takes when parents do not return the annual certification forms mailed to them, ACS responded, “Effective May 2020, a second/follow-up letter is being mailed by HRA to adoptive parents who did not return the initial recertification. Going forward, if there is no response to the second/follow-up mailing (or if there is no information about education/employment/medical), ACS will review the case and attempt outreach. If ACS is unable to reach the parent, ACS will send a Suspension Letter to the adoptive parent and suspend the adoption subsidy. ACS is establishing a new Recertification team for this function.” However, this follow-up procedure was not in effect during our audit scope period, although based on the May 2020 effective date, it appears to have been initiated while the audit was underway.

We reviewed a random sample of 100 case files for cases of adopted children that were active with ACS during the audit scope period—July 2017 through January 2020—and found that 48 (48 percent) did not contain current annual certifications. When asked about the missing certifications, ACS responded that it provided us with all the documents it found in its files. Based on the information provided by ACS, we found that the agency continued to issue subsidy payments to 46 of the 48 adoptive parents without establishing that they were alive, still legally responsible for their adopted children, and that they were still providing support to the adopted children. Regarding the remaining two cases in which ACS stopped payments prior to our review, one involved a child who returned to foster care, and the other involved an adoptive parent who affirmatively requested that ACS suspend payment of the adoption subsidy.

The files and documents ACS submitted contained no evidence that ACS made any effort to ensure that the adoptive parents who received or were supposed to receive the annual certification requests from HRA returned the required certifications timely or at all. ACS did not provide any evidence that either ACS or HRA issued a second notice to adoptive parents who had not submitted the required certification or that it took any other steps, prior to our audit, to contact the adoptive parents to determine why they had not returned pending certification forms or to investigate whether they were supporting the adopted children.

An annual certification by adoptive parents should provide ACS with information on whether children are still living at the home on record with ACS, and the children's educational status. The process is intended to ensure that ACS checks-in with the adoptive family and determines whether the adoption agreement in place reflects the child's current needs. Without a signed and up-to-date annual certification, and in the absence of other affirmative, comprehensive monitoring procedures, ACS cannot ascertain whether the adoptive parents receiving adoption subsidy payments from ACS are meeting their corresponding obligation to provide continuous support for their adopted children. The annual certification in some cases may be the only form of communication and oversight ACS has with the adoptive parents. Thus, it is an important internal control that ACS should be using to ensure that its adoption subsidy payments are going to the intended recipients and for their intended purpose and that the adopted children continue to be supported. The annual certification, if properly tracked and acted upon, can help ACS to prevent, detect, and deter fraud, waste, and abuse in its adoption subsidy program.

RECOMMENDATIONS

ACS should:

1. Review and recover the inappropriate payments referenced in this report.

ACS Response: ACS agreed with this recommendation and stated, “ACS will review each of the payments cited by the City Comptroller. If it is determined that an overpayment was made, follow up will be done and ACS will attempt to recover the inappropriate payments via the legal measures available to us.”

2. Investigate cases in which adoptive parents or adopted children may have died and stop payments issued to or in the names of adoptive parents found to be: (a) deceased; (b) no longer legally responsible for the adopted children; or (c) no longer providing support for the adopted children.

ACS Response: ACS agreed with this recommendation and stated, “ACS will investigate cases identified by the auditors, and as determined appropriate, terminate payments with proper documentation.”

Auditor Comment: We are pleased that ACS agreed with the recommendation. However, we urge ACS to not only investigate the cases that this audit has identified but also in the future to regularly investigate cases in which adoptive parents or adopted children may have died and stop payments issued to or in the names of adoptive parents found to be: (a) deceased; (b) no longer legally responsible for the adopted children; or (c) no longer providing support for the adopted children.

3. Upon confirmation of the death of a sole adoptive parent or an adopted child, recover payments made to or in the names of deceased adoptive parents or on behalf of a deceased adopted child after the relevant date of death.
4. Recover duplicate payments, including those made to the original adoptive parent or guardian after a new guardian legally takes custody of the adopted child.

ACS Response for Recommendations #3 and #4: ACS agreed with these recommendations and stated, “ACS accepts and will do so with the legal measures available to us. In the event of identification of a potential overpayment due to the verified death of an adoptive parent and no surviving adoptive parent, or death of an adopted child, ACS conducts an assessment including follow-up research to determine whether an inappropriate overpayment has actually occurred, and if the case is open, suspend or terminate the adoption subsidy, as appropriate. ACS then refers the matter to the NYC Law Department, if appropriate. It is the NYC Law Department which may determine to pursue **recovery** of overpayment—whether an open case or an older, closed case.” [Emphasis in original.]

5. Develop internal procedures to actively check whether adoptive parents and adopted children are alive rather than depend solely on notifications of deaths from external sources.
6. Consider utilizing services such as the U.S. Treasury Department’s Do Not Pay service, and others offered by commercial and nonprofit vendors, to identify, through data matches that access the most comprehensive data available, cases in which adoptive parents and adopted children may have died and to prevent, recover, and take appropriate follow-up action concerning improper payments to ineligible persons.

ACS Response for Recommendations #5 and #6: “ACS will revisit with our State oversight agency the feasibility of OCFS engaging in a deceased match on a national level which would provide the most complete and accurate information for all counties in New York State.”

Auditor Comment: We encourage ACS to discuss with OCFS the importance of conducting the most effective data matches available on a regular basis, not only to prevent and recover overpayments but to ensure that the adopted children are safe and receiving the support ACS’ payments are intended to provide.

7. Actively use the annual certification process as a form of internal control to ensure the well-being of adopted children and prevent fraud, waste, and abuse by: (a) ensuring that

requests for certification letters are sent to all adoptive parents; (b) following up in every case in which adoptive parents do not submit the certification letters when requested; and (c) ensuring that all active adoption cases have current annual certification letters readily available in their case files.

ACS Response: “Adoptive families’ rights concerning decisions over the care of their children are guaranteed by constitutional case law, and our judicial system. A recommendation that suggests a child’s well-being is in jeopardy because a parent has not returned a certification letter is a troubling and presumptive suggestion. In order to strengthen processes and controls, ACS will further develop internal procedures including follow up on recertification documents, but ACS cannot ensure the outcome that all active adoption cases have current annual recertification letters submitted.”

Auditor Comment: ACS’ response is predicated on a misstatement of our audit finding and recommendation. In no way does our recommendation suggest or presume that a parent’s failure to return a certification is a sign that the child’s well-being is in jeopardy. As stated in the report, “The annual certification in some cases may be the only form of communication and oversight ACS has with the adoptive parents. Thus, it is an important internal control that ACS should be using to ensure that its adoption subsidy payments are going to the intended recipients and for their intended purpose and that the adopted children continue to be supported. The annual certification, if properly tracked and acted upon, can help ACS to prevent, detect, and deter fraud, waste, and abuse in its adoption subsidy program.” The annual certification is required by both the State law and the adoption agreement between ACS and the adoptive parent, thus we urge ACS to fully implement the recommendation.

DETAILED SCOPE AND METHODOLOGY

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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers Fiscal Years 2018, 2019, and part of Fiscal Year 2020 (July 1, 2019 to January 2020).

To obtain an understanding of the rules and regulations of the adoption subsidy program, we requested and reviewed the New York State Regulation Title 18 Part 421 Standards of Practice for Adoption Services and NYS Office of Children and Family Services' Local Commissioners Memorandums and Administrative Directives.

To gain a better understanding and identify potential internal control weaknesses of ACS' adoption subsidies payment operations, we obtained and reviewed its standard operating procedure and observed an adoption case opening demonstration. In addition, we reviewed the Division of Financial Services internal Guidelines, and flowcharted the major areas of its operations.

To assess ACS' controls over adoption subsidies payments, we conducted system walk-throughs and interviewed ACS officials responsible for the program application review and the program payment processes. We documented our understanding through narrative memoranda.

To determine whether ACS accurately calculated and issued subsidy payments to parents in compliance with governing rules and regulations, we reviewed OCFS issued Administrative Directives (ADM) and subsequent Adoption Subsidies Maximum State Aid Rates (MSARs) Tables for Fiscal Years 2017, 2018, and 2019. Additionally, we reviewed and compared ACS subsidy payment files to the MSARs.

To assess the completeness and accuracy (data reliability) of ACS' electronically processed data, we randomly sampled 50 adoptees from the State's Benefits Issuance Control System (BICS)¹⁴ payment data to compare with the hard copy source documents. To ensure ACS entered the correct adoption subsidy information into the system, we matched Child's Name, Child's Date of Birth, Case Name, Case Number, and Address. We also selected another 50 line items from the non-recurring adoption attorney fees payments file. We traced and matched the names of children whose lawyers received non-recurring payments against the monthly subsidy payment file. None of these additional selections duplicated the prior 50 cases selected from the monthly subsidy payment data.

To determine whether ACS only paid non-recurring legal fees with proper supporting documents; and an amount not exceeding \$2,000, we reviewed and documented invoice packages extracted from ACS' IBM Case Manager System (IBM).¹⁵

¹⁴ BICS is a State system for automated billing and claiming transactions related to payments for foster care and adoption services.

¹⁵ IBM Case Manager System is used to document and store legal invoices and related backups, and to reconcile non-recurring legal fees.

To determine whether payments were issued to or in the names of deceased adoptive parents after their dates of death, we used CLEAR Research tools to search and gather adoptive parents' Social Security numbers. We then ran the social security information against the Social Security Administration's Death Master File.

To determine whether ACS paid adoptive parents whose adopted children passed away we ran adopted children's names and dates of birth against the Social Security Administration's Death Master File. We also utilized the assistance of the U.S. Treasury's Do Not Pay program, which has access to a variety of death databases.¹⁶ We provided the names and Social Security numbers of the adoptive parents and the names and dates of birth of the adopted children for DNP to perform the death match.

To determine whether ACS paid multiple parents for the same service period for the care of the same child, we first analyzed the payment data to find all children linked to more than one case number. We then identified the time periods both the original and new guardian were paid and calculated the number of days to find the total dollar amount that was paid twice. To avoid double counting the same parent, we checked this list against the list of parents already identified in the death match and termination files.

To determine whether ACS stopped payment in a timely manner, we reviewed the cases from the Termination/Suspension file provided by ACS and checked whether payments were stopped.

To ensure ACS receives a returned Annual Certification from parents, we randomly selected case files for 100 out of 17,758 children listed in the adoption subsidy payment data to determine whether parents returned the Certification; and to determine whether ACS suspended payments if the Certification was not returned.

For every child, we grouped the data fields for CIN and date of birth to determine how many children have had more than one date of birth associated to their case.

To determine whether ACS paid adoptive parents for children after they turned the age of 21 we compared dates of birth against the last payment's care date to ensure payments stopped when the child turned 21.

The results of the above tests, while not statistically projected to their respective populations, provide a reasonable basis to assess whether ACS has adequate controls over adoption subsidies and appropriately issued subsidy payments to adoptive parents.

¹⁶ Do Not Pay utilizes death data sources such as Obituary Death Data, American InfoSource Probate Death Data, Department of Defense Death Data, Department of State Death Data, and the Death Master File.



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MARJORIE LANDA
DEPUTY COMPTROLLER FOR
AUDIT

BUREAU OF AUDIT

December 14, 2020

David A. Hansell
Commissioner
New York City Administration for Children's Services
150 William Street
New York, NY 10038

Dear Commissioner Hansell:

As you are aware, we are currently auditing the controls the Administration for Children's Services (ACS) has in place for the payment of adoption subsidies (Audit # FP19-090A). Although the audit is not complete, I am writing to inform you of the preliminary results of our comparison of ACS' payment records with death records obtained from the Social Security Administration (SSA). Specifically, some of ACS' payments continued, and some may be continuing to date, after the SSA's reported dates of death of persons we provisionally identified as the adoptive parents named as ACS' payees or the adopted children who were the intended beneficiaries. Further, we have not seen evidence of an assignment of a new guardian to care for the children under the age of 21 whose adoptive parents may have died. My purpose in bringing this information to your attention now is to enable ACS to perform its own review and take further action promptly where appropriate while the audit proceeds.

We compared a list of adoptive parents ACS identified as the recipients of its adoption subsidy payments during the audit scope period—from July 2017 through January 2020—with death records provided by the SSA. For that comparison, we independently researched records available to us to obtain Social Security numbers (SSNs) for persons we provisionally identified as the adoptive parents. Our comparison indicates that, during our 30-month audit scope period, ACS issued payments totaling \$392,117 in the names of 24 adoptive parents we provisionally identified as deceased persons listed in SSA's records who had died between 1 and 10 years earlier. The records we obtained from ACS do not show the assignment of new guardians for the adopted children who are now or who were minors with possibly deceased adoptive parents. Specifically, the analysis identified the following cases:

- 11 cases of adopted children currently under age 21 with possibly deceased adoptive parents named as the payees of ACS adoption subsidy payments that continued through at least January 31, 2020 and no evidence of the assignment of new guardians; and
- 18 cases of adoptees currently over age 21 who were minors when their provisionally identified adoptive parents died, with no evidence of the assignment of new guardians, and with payments that ACS continued to issue in the names of the decedents until the adopted children turned 21.

David A. Hansell
December 14, 2020
Page 2 of 2

Because our review covered only the period through January 2020, we do not know whether or for how long thereafter payments in the first group of 11 cases continued. It is possible that those payments are continuing to date. We also are concerned that adopted children, including 11 who are under age 21, may be at risk in the absence of properly appointed guardians.

In addition, we compared ACS' list of children whose adoptive parents received adoption subsidy payments during our audit scope period with SSA death records. We provisionally identified three children with reported dates of death in 2007, 2011, and 2013, respectively, whose adoptive parents thereafter continued to receive ACS' adoption subsidy payments for periods of 7 to more than 13 years. The post-death payments totaled \$121,983 during our 30-month audit scope period. That total does not include payments issued before July 2017 or after January 2020.

We recommend that ACS take appropriate follow-up action, including but not limited to the following:

- Immediately investigate and take action as may be warranted to protect the affected children.
- Determine whether the deceased persons we provisionally identified were in fact the intended payees and beneficiaries of ACS' adoption subsidy payments.
- Preserve all records reflecting and relating to the payments in question, including but not limited to annual certifications.
- Promptly inform the Department of Investigation of any instance in which ACS or a City agency issued a payment in the name or for the benefit of a person now believed to have been deceased.
- Determine and take the appropriate steps needed to prevent continuing and future payments in the names or for the benefit of decedents and action to recoup past payments in such cases.

To facilitate your review, I have attached a list of the payees and children we provisionally identified as deceased with the relevant dates and amounts through January 31, 2020.

Please acknowledge this letter upon your receipt and contact me with any questions. Additionally, please inform me of the action taken in response.

Thank you for your assistance and cooperation.

Sincerely,



Marjorie Landa

c: Jennifer Fiellman, Assistant Commissioner Audit & Accountability



June 21, 2021

Marjorie Landa
Deputy Comptroller for Audit
Office of the Comptroller
1 Centre Street
New York, NY 10007

David A. Hansell
Commissioner

Eden Hauslaib
Chief Accountability Officer

*Re: Audit Report on the Administration for Children's Services'
Controls Over Adoption Subsidy
(FP19-090F)*

Jennifer Fiellman
Assistant Commissioner

Dear Ms. Landa:

150 William Street
7th Floor
New York, NY 10038

Phone: 212-341-8968

Thank you for the opportunity to comment on the audit findings and recommendations.

Background

The Administration for Children's Services (ACS) administers New York City's child welfare system, protecting children and supporting families, providing protective, preventive, foster care, adoption, early care and education, and juvenile justice services to promote children's safety and well-being.

In the continuum of child welfare services, adoption provides permanency for children who have been placed in foster care, and who the Family Court has determined—following reasonable efforts to preserve or reunify children and parents—cannot safely return to their birth families. The Federal Adoption Assistance and Child Welfare Act of 1980, established financial assistance—adoption subsidy—to be administered by the states, to help adoptive families care for adopted children who meet eligibility requirements including classification as “handicapped” and “hard-to-place.”

Under the aegis of New York State, ACS administers adoption subsidy in New York City. In conformance with New York State requirements, adoptive parents receive a comprehensive home study assessment and complete the New York State Adoption Subsidy and Non-Recurring Expense Agreement which must be approved by the Local Social Services District, in this case, ACS, and New York State before the adoption is finalized by Family Court. Once an adoption takes place and is finalized, the ACS foster care case is closed, and ACS is not permitted under law to have any further child welfare monitoring role. The adoptive family has the same legal rights as all other families to be free of unwarranted governmental interference.

Adoption subsidy payments are issued monthly to adoptive parents, by check or direct deposit, via the State's BICS system. During FY20, ACS issued \$212,051,039 in adoption subsidy payments to 9,311 parents (or guardians/payees) for 14,218 adopted children.

ACS' core adoption subsidy process is well-structured and, given the immense size of the operation, the identified gaps are miniscule. Importantly, the Audit Report itself describes its primary findings around ostensible overpayments made to

deceased adoptive parents or children as “...provisional because.... they require further investigation and verification by ACS of the adoptive parents’ and the children’s deaths” (Audit Report, page 2, footnote 1). In the 2005-2021 period referenced by the auditors on page 5, more than \$4 billion in payments were made to families. The auditors identified *possible* overpayments in a very small percentage of these disbursements, less than .1%. Further, additional research has determined that some of the overpayments identified by the Comptroller were not in fact overpayments. In addition, while there may have been instances of overpayments when ACS was not timely advised of the death of an adoptive parent, in virtually all cases, the overpayment was of short duration and any disbursement so made was used for the care of the child.

The context here is important. The purpose of an adoption subsidy is to support a child. This is not a pension payment made to those of retirement age, but rather support provided to a parent on behalf of a child for a limited window of time. Currently, ACS receives the results of a match regularly conducted by New York State Office of Children and Family Services (OCFS) with New York State Department of Health records. Our intent is to support families and children and not deny them access to monetary assistance based on matches by agencies that cannot provide reliable proof of death to support their claims, which would be a death certificate. Notwithstanding the relatively small possibility of death rendering these payments improper, ACS will revisit with OCFS, our State oversight agency, the feasibility of OCFS engaging in a deceased match on a national level which would provide the most complete and accurate information for all counties in New York State.

Response to Audit Findings:

“Lack of Oversight on Adoption Subsidy Payments”

“ACS Issued Payments in the Names of Deceased Adoptive Parents and to Adoptive Parents on Behalf of Deceased Adopted Children”

ACS continues to review the payments alleged to be “provisionally” improper by the auditors. Although a “match” was done by the auditors, that match alone is inadequate to conclude that a payment was made in error and thus support the termination of adoption subsidy payments. Per guidance from our oversight, New York State OCFS, ACS must confirm the status of the payee and acquire the death certificate for our records – a more time consuming and complex investigatory process. For example, our research has already confirmed at least one “deceased” parent from the audit match process is very much alive and was wrongly included. We must be certain that the adoptive parent or child is in fact deceased, as the impact from wrongful termination of approved adoption subsidy payments to a child and family can be destabilizing both financially and traumatizing emotionally for the family. Audit findings based upon an admittedly “provisional” and non-conclusive match is not, and should not be, enough to terminate payments.

“ACS Did Not Recover Overpayments to Adoptive Parents Reported Deceased or on Behalf of Deceased Adoptees”

ACS continues to review the cases cited by the City Comptroller. However, preliminary research has flagged the matches done by the auditors as unreliable.

For example, in at least 18 of the cases, ACS has already confirmed that the payment was appropriate or that ACS had previously taken requisite follow-up action. Contrary to the assertion within the audit report, ACS had shared this information and back up documentation with the auditors prior to the issuance of the report. As mentioned above, one parent identified as deceased by the audit match is alive. Other appropriate payments include: checks with dual payees, in which only one payee is deceased; checks returned for payroll cycles subsequent to the death of the adoptive parent; cases previously referred to the NYC Law Department for

recovery; and a case already on a repayment plan since 2019. It is simply incorrect to state that follow up action related to identified and concluded overpayments has not been taken.

In another 33 of the cases, ACS has not yet been able to obtain a death certificate *as is required by OCFS guidance*. ACS is further researching these cases and will consult with the NYC Law Department and OCFS regarding an appropriate response.

In any event, the majority of possible overpayments has been of relatively short duration and family members have specified that funds were used for the care of the child. As referenced above, the possible errors identified constitute less than .1% of payments made since 2005.

“ACS Issued Duplicate Payments after Changes of Guardianship”

The audit identified three cases out of the entire pool of adoption subsidy payments to thousands of families in which adoption subsidy was issued to new guardians and also continued incorrectly to the original adoptive parents—two parents who no longer had custody of the children and one parent who had passed away. ACS has referred these cases (totaling \$133,169) to the NYC Law Department.

“ACS Did Not Ensure Timely Return of Annual Certifications”

Historically, federal law and guidance upon our request was clear: ACS was precluded from suspending adoption subsidy payments due to an adoptive parent’s failure to respond to, or return, the annual certification letter. As specified in 16-OCFS-LCM-02, after discussion based in part upon ACS’ advocacy for changes to this process, the U.S. Department of Health and Human Services approved modifications to New York State’s policies regarding adoption subsidy suspension or termination. However, the 2016 LCM specified that adoption subsidy may not be withheld for failure to “respond to request for completion of the annual certification” but “advised” local districts to conduct “additional follow-up.” (The LCM did note one exception—situations in which an adoptee is age 18 and over, had attained the age of 16 before the adoption subsidy agreement took effect, and was a hard-to-place youth.)

ACS had not previously instituted a process to suspend adoption subsidy if an adoptive parent failed to return the annual certification letter, as that was expressly prohibited by Federal and State rules. Since the new LCM was issued, ACS continues to discuss with OCFS the permissible methods by which we may conduct “additional follow-up”; the difficulty in establishing investigative or follow-up policy and processes for failure to return a certification; privacy concerns including potential hardship for children and parents of governmental intrusion upon private family matters; and the costs/resources involved in conducting the “additional follow-up.”

The annual recertification letter to adoptive parents is mailed by the New York City Human Resources Administration (HRA), which houses the State systems. ACS collaborated with HRA to develop and implement a process and systems for mailing a second letter to individuals who fail to submit the initial recertification form. The second letter process is in place. If there is no response to the second mailing, ACS will review the case and attempt outreach to parents.

5,988 [77%] parents currently receive the adoption subsidy payment via Direct Deposit. As an unintended consequence, this convenience may cause parents who change addresses to fail to notify ACS. Thus, the chief reason for failure to return the recertification form should not be concluded to be presumptively improper, as the

failure to return the form may be simply that parents who have moved are likely not to have received the recertification form.

Response to Recommendations

Recommendation 1: Review and recover the inappropriate payments referenced in this report.

ACS Response to Recommendation 1

As noted above, ACS will review each of the payments cited by the City Comptroller. If it is determined that an overpayment was made, follow up will be done and ACS will attempt to recover the inappropriate payments via the legal measures available to us. But the payment must be concluded to have been made improperly; termination of subsidy supports or attempts to recover alleged improper payments cannot be undertaken upon “provisional” findings alone – we must be certain before such an intrusive step is undertaken.

Recommendation 2: Investigate cases in which adoptive parents or adopted children may have died and stop payments issued to or in the names of adoptive parents found to be a) deceased, b) no longer legally responsible for the adopted children, or c) no longer providing support for the adopted children.

ACS Response to Recommendation 2

ACS will investigate cases identified by the auditors, and as determined appropriate, terminate payments with proper documentation.

Recommendation 3: Upon confirmation of the death of a sole adoptive parent or an adopted child, recover payments made to or in the names of deceased adoptive parents or on behalf of a deceased adopted child after the relevant date of death.

ACS Response to Recommendation 3

ACS accepts and will do so with the legal measures available to us. In the event of identification of a potential overpayment due to the verified death of an adoptive parent and no surviving adoptive parent, or death of an adopted child, ACS conducts an assessment including follow-up research to determine whether an inappropriate overpayment has actually occurred, and if the case is open, suspend or terminate the adoption subsidy, as appropriate. ACS then refers the matter to the NYC Law Department, if appropriate. It is the NYC Law Department which may determine to pursue **recovery** of overpayment—whether an open case or an older, closed case.

Pursuant to guidance from OCFS, **recoupment** by reducing future payments of adoption subsidy to make up for prior adoption subsidy overpayment in an open case is not permitted – unless the adoptive parent consents. In such situations, ACS will send a letter to the adoptive parent notifying of the overpayment and requesting repayment. The adoptive parent may choose to enter into a repayment plan. If there is no response from the adoptive parent, the matter is referred to the NYC Law Department as noted. It must also be remembered that not every overpayment results in recovery.

Recommendation 4: Recover duplicate payments, including those made to the original adoptive parent or guardian after a new guardian legally takes custody of the adopted child.

ACS Response to Recommendation 4

ACS accepts, as discussed in the response to recommendation 3.

Recommendation 5: Develop internal procedures to actively check whether adoptive parents and adopted children are alive rather than depending solely on notifications of deaths from external sources.

ACS Response to Recommendation 5

ACS will revisit with our State oversight agency the feasibility of OCFS engaging in a deceased match on a national level which would provide the most complete and accurate information for all counties in New York State. ACS has requested this match in prior discussions.

Recommendation 6: Consider utilizing services such as the U.S. Treasury Department's Do Not Pay service or others offered by commercial and nonprofit vendors to identify, through data matches that access the most comprehensive data available, cases in which adoptive parents and adopted children may have died and to prevent, recoup, and take appropriate follow-up action concerning improper payments to ineligible persons.

ACS Response to Recommendation 6

ACS will revisit with our State oversight agency the feasibility of OCFS engaging in a deceased match on a national level which would provide the most complete and accurate information for all counties in New York State. As discussed during the audit and at the exit conference, ACS does not have the ability or authority to utilize these matching services directly.

Recommendation 7: Actively use the annual recertification process as a form of internal control to ensure the well-being of adopted children and prevent fraud, waste, and abuse by: a) ensuring that requests for certification letters are sent to all adoptive parents; b) following up in every case in which adoptive parents do not submit the certification letters when requested; and c) ensuring that all active adoption cases have current annual recertification letters readily available in their case files.

ACS Response to Recommendation 7

Adoptive families' rights concerning decisions over the care of their children are guaranteed by constitutional case law, and our judicial system. A recommendation that suggests a child's well-being is in jeopardy because a parent has not returned a certification letter is a troubling and presumptive suggestion. In order to strengthen processes and controls, ACS will further develop internal procedures including follow up on recertification documents, but ACS cannot ensure the outcome that all active adoption cases have current annual recertification letters submitted.

Thank you for your consideration and attention in support of New York City's children and families.

Sincerely yours.



Jennifer Fiellman
Assistant Commissioner