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OFFICE OF THE COMPTROLLER
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AUDIT

BUREAU OF AUDIT

June 21, 2019

By Electronic Mail

Commissioner Jacques Jiha, Ph.D.
New York City Department of Finance
1 Centre Street, Room 500
New York, NY 10007

**Re: Letter Report on the Department of Finance's
Bail Fund Management (Audit Number ME19-062AL)**

Dear Commissioner Jiha:

This Letter Report concerns the New York City (City) Comptroller's audit of the City Department of Finance (DOF) and its management of bail funds. The objective of this audit was to determine whether DOF properly manages its bail fund responsibilities. Our audit found that DOF's controls allow the agency to properly manage its bail fund responsibilities. Specifically, the audit found that DOF: established clearly defined policies and procedures for bail deposits, refunds, forfeiture, and abandonment; properly accounted for the bail funds deposited to the agency's account; processed the bail refunds in a timely manner; handled forfeiture cases in accordance with the agency's established procedures; and followed abandonment requirements when determining whether cash bail funds should be reported and transmitted to the State Comptroller.

Background

DOF has a broad range of responsibilities, including administering the tax and revenue laws of the City and maintaining public property records. DOF's Treasury Division administers the City's network of bank accounts and manages the City's cash flow. In addition, the Treasury Division holds all cash bail and court-ordered funds in trust until the courts direct that the funds be released. The Court Assets Unit within the Treasury Division is the fiduciary of the cash bail and court-ordered funds.

The Court Assets Unit manages the bail funds posted by sureties—persons who pay the cash bail for defendants. The bail amount is set by the court and serves as collateral to allow the discharge of a defendant on the condition that the defendant complies with the orders of the court.

Department of Correction (DOC) detention facilities and the courts collect cash bail and remit bail funds, along with copies of the bail receipts given to the sureties, to DOF's designated

cash bail deposit lockbox account with the Wells Fargo Bank via either a manual or virtual lockbox process. Funds in the cash bail account are then swept into DOF's common trust account with Wells Fargo. Wells Fargo submits a data file that contains all the information pertaining to the cash bail receipts received, including the Treasury Receipt numbers, sureties' names and addresses, and bail amounts, to DOF's Information Technology Division, where the file is uploaded to DOF's bail tracking system—the Court Assets Tracking System (CATS). This process is performed on a daily basis.

DOF holds cash bail in the agency's account until it receives either a court refund order to return the money to the surety or a court forfeiture order, which leads DOF to transfer the bail funds to the City Comptroller's Office, or until three years have elapsed since the receipt of the bail funds, at which time they must be processed for abandonment to the New York State Comptroller, as required by Article VI of the New York Abandoned Property Law.¹

Prior to February 2018, there was a 2 percent administrative fee and a 1 percent Alternatives to Incarceration fee for all refund orders where the court found the defendant guilty. The fees in those cases would be deducted from the full bail amount prior to refunding the cash bail to the surety. If the defendant was found not guilty, DOF would refund 100 percent of the cash bail to the surety. Effective February 17, 2018, DOF waived these bail fees regardless of the case disposition.

From January 1, 2018 through June 30, 2018 (the scope period for this audit), Wells Fargo processed 6,317 bail receipts, totaling \$15,436,524.

Audit Findings

Our audit found that DOF maintained adequate controls over its management of cash bail funds. To ensure that bail funds are properly accounted for, the Reconciliation Unit in DOF's Citywide Payment Standards and Services (CPSS) Division performs daily and monthly reconciliations of bail deposits and disbursements. To track bail fund management, DOF uses CATS to record the activities related to each case, including the following: the bail deposit; research to confirm the surety's address; correspondence among DOF, the surety and the court; and bail disbursement. Our review of the reliability of CATS data revealed that key information in CATS accurately reflected the information on the bail receipts regarding the bail receipt date, Treasury Receipt number, surety name and address, and bail amount.

DOF's bail disbursement process requires multiple reviews before a court-ordered refund check is issued to a surety or before funds are transferred to the City's Comptroller's Office in response to a court forfeiture order. Our review of 25 randomly selected refund cases found that all of them had a court refund order attached to the case, that there was evidence that the surety information and bail amounts on the court refund order had been reviewed by DOF staff and

¹ Article VI of the New York Abandoned Property Law states that "where it is apparent to a County Treasurer or the Commissioner of Finance that the funds will be paid out pursuant to a court order in the very near future, the account may be excluded from the report to [the State Comptroller's Office]."

compared to the bail receipt, and that the correct bail fund amount had been refunded to the surety. Furthermore, we found that during our scope period, DOF generally processed the refunds within the agency's targeted time frame of two weeks from the date of the receipt of the refund order.

Our review of the 24 forfeiture cases in our scope period found that all of them had a court forfeiture order attached to the case and that DOF had sent a 45-day letter to the sureties for these cases to notify them that the cash bail was determined by the courts to have been forfeited and that if they did not contact the court within 45 days, their bail funds would be forfeited to the City's Comptroller's Office. Since DOF did not receive a subsequent refund order or a forfeiture vacate order from the courts for any of these cases, DOF properly transferred these forfeited bail funds to the City's Comptroller's Office.

In order to meet the various time requirements imposed by the State Abandoned Property Law, DOF created an abandonment schedule for its staff and management to follow. Of the 30 cases that were still open as of March 7, 2019 and had bail receipt dates of December 31, 2014 or earlier, we sampled 14 cases and determined that there were legitimate reasons for DOF's not having processed these bail fund cases as abandoned funds in 2018. For three of these cases, the bank's vendor (Klik) or DOC had provided incorrect bail receipt dates when they deposited the bail funds with Wells Fargo. The remaining 11 cases had an active claim status during the 2018 abandonment cycle (i.e., refund checks had been issued, but they had neither cleared nor expired). Therefore, the 14 cases had not been subject to abandonment in 2018. In addition, there was evidence that DOF had endeavored to locate the sureties for the 11 cases.

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 objective. 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 was January 1, 2018 through June 30, 2018. To evaluate DOF's internal controls over its bail fund management, we conducted walkthroughs and observations of DOF's day-to-day operations related to bail deposit, refund, forfeiture, and abandonment. This included meetings with the Assistant Commissioner of the Treasury, as well as with the Director and other officials of the Court Assets Unit. We also met with the Director and other officials of the Reconciliation Unit in CPSS to obtain an understanding of the bail deposit and disbursement reconciliation process. In addition, we met with officials from the Bureau of Accountancy of the City's Comptroller's Office to understand their role in processing court-ordered refunds of forfeited cash bail. To understand how DOF tracks bail-related transactions and activities, we attended a DOF demonstration of CATS.

To assess the adequacy of DOF's internal controls as they related to our audit objective, we evaluated information obtained from our interviews of agency officials and our review of the agency's policies and procedures. We used the following as audit criteria:

- DOF's Standard Operating Procedures for cash bail deposits, refunds, forfeiture, and abandonment;
- DOF's Daily Reconciliation Process Guide;
- Rules of the City of New York, Title 19, Chapter 8, Court and Trust Funds;
- New York State Comptroller's Handbook for Reporters of Unclaimed Funds; and
- Article VI of the New York Abandoned Property Law.

To determine the reliability of the CATS data for the population of 6,317 bail cases with a total of \$15,436,524 in cash bail during our scope period, we sorted the cases according to their status as of June 30, 2018.² We then randomly selected 25 of the 3,816 open cases (5,583 open cases minus the 1,767 of them that were \$1 or \$2 bail cases) and reviewed the information in CATS for these sampled cases to determine whether key information in CATS accurately reflected the information on the bail receipts regarding the bail receipt date, Treasury receipt number, surety name and address, and bail amount.

To assess DOF's controls over bail deposits during the period of January 1, 2018 through June 30, 2018, and to determine whether funds were properly recorded and reconciled, we randomly selected the month of April 2018 and traced the bail deposits uploaded into CATS to DOF's bank statements and the reconciliation file produced by CPSS. Specifically, we traced a total of 1,015 bail receipts totaling \$1,829,835 that were uploaded into CATS during the month of April 2018. Of these 1,015 bail receipts, 32 (totaling \$54,254) were deposited in March 2018 and were reconciled by CPSS in April 2018; 982 (totaling \$1,774,081) were deposited in April 2018 and reconciled by CPSS in May 2018; and one bail payment for \$1,500 was deposited in May and was reconciled by CPSS in June 2018.³ In addition, we randomly selected seven days in April 2018 and traced the bail receipts received from DOC to DOF's bank statements and to CATS records. A total of 184 receipts totaling \$502,265 was received from DOC for the seven days selected for review.

To determine whether DOF followed established procedures when handling refunds of bail deposits, we randomly selected 25 of the 710 refunded cases during the scope period for review. We also reviewed the 710 refunded cases to determine whether DOF processed the bail refund in a timely manner.

² Of the 6,317 cases, 5,583 were open, 710 were closed/refunded, 4 were closed/forfeited, and 20 were pending forfeiture as of June 30, 2018. In addition, 1,767 of the 5,583 open cases were \$1 or \$2 bail cases, which cannot be refunded and are transmitted to the State Comptroller as abandoned funds.

³ Starting in April 2018, sureties could make bail payments online. Case information on such payments is immediately uploaded into CATS. In the case involving the \$1,500 bail payment, information on the April 2018 online payment was uploaded into CATS in April 2018 even though it was not deposited into DOF's bank account at Wells Fargo until May 2018 and was not reconciled by CPSS until June 2018.

Commissioner Jacques Jiha

June 21, 2019

Page 5 of 5

To evaluate whether DOF followed established procedures when handling forfeiture of bail funds, we reviewed the four forfeited cases and the 20 pending forfeiture cases as of June 30, 2018, for a total of 24 cases. For the 20 forfeiture cases that were pending as of June 30, 2018, all of the cases had a forfeited status at the time of our review in March 2019.

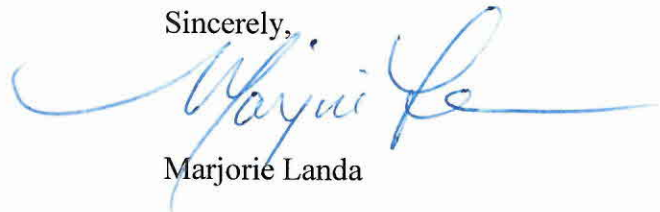
To determine whether DOF properly reported and transmitted abandoned bail funds to the State Comptroller's Office in 2018, we generated a CATS list of the 30 cases that were still open as of March 7, 2019 and had bail receipt dates of December 31, 2014 or earlier. We randomly selected 10 cases and judgmentally selected an additional 4 cases from the list to determine the reasons that these 14 cases were not treated in 2018 as cases with abandoned funds.

Although some of the above tests involved samples, the results of which were not projectable to the respective populations, these tests, along with other tests and analyses performed on this audit, provided us with a reasonable basis to assess DOF's controls over its management of cash bail funds.

The matters covered in this report were discussed with DOF officials during and at the conclusion of this audit. A preliminary letter report was sent to DOF officials on May 13, 2019. DOF officials agreed to forgo an exit conference, and on June 3, 2019, we submitted a draft letter report to DOF officials with a request for comments. We received a written response from DOF officials on June 7, 2019. In their response, DOF officials stated that they were "pleased with the audit's findings that DOF has adequate controls in place to ensure that the bail fund management operation is appropriate."

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

Sincerely,



Marjorie Landa

- c: Sam Mayer, Senior Director of Internal Audit, Department of Finance
- Celia Carino, Director of Internal Audit, Department of Finance
- Jeff Thamkittikasem, Director, Mayor's Office of Operations
- George M. Davis, III, Deputy Director, Mayor's Office of Operations



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Karen A. Cassidy
Assistant Commissioner and Treasurer

June 7, 2019

Ms. Marjorie Landa
Deputy Comptroller for Audit
Office of the City Comptroller
1 Centre Street, room 1100 North
New York, NY 10007

Re: Draft Letter Report on the Audit of the Department of Finance's Bail Fund Management (Audit #ME19-062AL)

Dear Deputy Comptroller Landa:

The Department of Finance (DOF) hereby provides its response to the draft report for the Bail Fund Management Audit referenced above. We are pleased with the audit's findings that DOF has adequate controls in place to ensure that the bail fund management operation is appropriate. The Court Assets Unit strives to continuously monitor and improve operations and process applications in a fair, efficient and transparent manner while providing exceptional customer service.

DOF thanks you and your audit team for the courtesy and professionalism shown to DOF personnel during this audit. Please do not hesitate to contact my office if you have any questions or would like additional information.

Sincerely,


Karen Cassidy
Assistant Commissioner/Treasurer

Cc: Jacques Jiha Ph.D., Commissioner
George Davis III, Deputy Director, Mayors Office of Operations
Jeffrey Shear, Deputy Commissioner
Sam Mayer, Senior Director, Internal Audit
Yania Frias, Director, Treasury Division