



**New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor**

**Department of Banking and Insurance
Administration**

July 1, 2014 to September 30, 2017

**Stephen M. Eells
State Auditor**



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Enclosed is our report on the audit of the Department of Banking and Insurance, Administration for the period of July 1, 2014 to September 30, 2017. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in black ink, appearing to read "Stephen M. Eells".

Stephen M. Eells
State Auditor
February 28, 2018

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Scope

We have completed an audit of the Department of Banking and Insurance (department), Administration for the period July 1, 2014 to September 30, 2017. Our audit included financial activities accounted for in the state's General Fund.

The mission of the department is to regulate the banking, insurance, and real estate industries in a professional and timely manner. Its aim is to protect and educate consumers and promote the growth, financial stability, and efficiency of the industries it regulates.

During our audit period, the department's annual expenditures averaged \$55.6 million, of which 66 percent pertain to payroll charges. Annual revenues deposited in the General Fund averaged \$343.9 million for the same period. Certain revenues are calculated, billed, and collected by the department on behalf of other state departments. This includes an average of \$180 million for the Health Care Subsidy Fund and \$28.8 million from a tax on insurance premiums. Any remaining revenues in excess of the department's operational costs are deposited in the state's General Fund. The major components of this revenue are annual assessments for the banking and insurance industries, and license fees collected from individuals and companies engaged in insurance, consumer finance, or real estate businesses in New Jersey.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the department's programs, were reasonable, and were recorded properly in the accounting systems. An additional objective was to identify possible cost savings and efficiencies.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. 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.

In preparation for our testing, we studied legislation, the administrative code, circulars promulgated by the Department of the Treasury, and policies of the department. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our testing of financial transactions. We also read the budget messages, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions on our audit objectives as well as internal controls and compliance. Sample populations were sorted and transactions were judgmentally selected for testing.

Conclusions

We found that the financial transactions included in our testing were related to the department's programs, were reasonable, and were recorded properly in the accounting systems. We found criminal history background checks should be required for department employees, cost savings could be achieved by reducing the vehicle fleet, and office space dedicated to the department was being underutilized. We also found that proper training on the use of and correction of calculation inconsistencies within the department's timekeeping system are needed to prevent time recording errors.

We made an observation that the state should consider examining the governing administrative code related to the administration of benefit leave time to determine whether segments of the code should be revised and updated to ensure that the regulations are equitable and reflect advancements in timekeeping technology.

Background Checks

Criminal history background checks are not required for department employees.

The department regulates the banking, insurance, and real estate industries in the State of New Jersey. This includes issuing licenses to qualified individuals and companies, ensuring the entity's solvency and compliance with existing statutes and regulations through regular examinations and analysis, protecting the public from unlawful practices, promptly investigating complaints filed by consumers, and aggressively prosecuting violators. Licensees are required to complete both Federal Bureau of Investigation (FBI) and New Jersey state criminal history background checks.

Department employees directly responsible for regulating these industries are not subject to the same stringent standards as those licensed by the state. In the normal course of their work, department employees have access to highly sensitive personal information such as social security numbers, bank account numbers, insurance information including medical data, and proprietary business data which could be misused and therefore negatively impacting an individual's or business's financial condition and the department's reputation.

The department's enabling legislation does not provide it with statutory authority to perform criminal history background checks on its own employees. Authorization to perform federal background checks requires a federally-approved state statute. The Code of Federal Regulations Title 28 indicates the FBI may exchange identification records, if authorized by state statute and approved by the Director of the FBI, with officials of state government for purposes of employment and licensing.

Recommendation

We recommend the department seek legislation requiring criminal history background checks for all employees charged with handling sensitive personal, financial, and proprietary information. Any proposed legislation would also require approval by the Director of the FBI to obtain federal criminal history background checks.



Vehicles

The department should reduce its existing vehicle fleet.

The department's non-compliance with the Department of the Treasury Circular #17-05 regarding vehicle assignment and use, has enabled it to maintain more vehicles than necessary to fulfill official duties. The department maintained a fleet of 94 state-owned vehicles at an average annual cost of \$371,000 during our audit period. All of the department's vehicles are classified as pool vehicles. Eighty-one have confidential plates, and bear no insignia identifying

them as a state-owned vehicle. The justification provided on the vehicle request forms for those with confidential plates stated that all vehicles will be used for field investigations.

We selected for our review the 14 newly purchased vehicles to determine if pool vehicles were used for commuting, if employees were properly classifying business versus personal miles, and if the Vehicle Request Justification Forms accurately reflected vehicle usage. Our review of vehicle logs noted that these pool vehicles were actually being used by only one individual each. An analysis of the vehicle's mileage and the driver's commuting distance from his/her home to their primary workstation revealed that the vehicles were primarily used for commuting purposes. According to the circular, pool vehicles should not be assigned, under any circumstance, where the primary purpose is commutation when comparing business miles to commuting miles. In addition, none of the 14 vehicles reviewed met the mileage requirements for either a pool (750) or individually assigned (1,250) vehicle, as required by the circular. For the vehicles tested, we noted only 25 percent of the vehicles' mileage was for business purposes.

Our analysis also found 11 vehicle logs had improper classification of business commuting and personal use of the vehicle. In total, these drivers misclassified and underreported a total of 1,916 miles for the two-month period tested. A common misclassification of mileage was use of the vehicle for the authorized lunch hour, which is permitted according to the circular, but considered a personal use of a state vehicle.

Based on our initial results, the analysis of vehicle use was expanded to the entire fleet. A review of the department-provided vehicle database disclosed that all vehicles, although classified as pool vehicles, were actually individually assigned. This review also disclosed business use of these vehicles was insufficient to justify the need to maintain all these vehicles.

We determined the department could achieve cost savings by having employees drive their own personal vehicle; receiving travel reimbursement at \$0.31 per mile versus the department renting a vehicle from Central Motor Pool. The department's budgeted rental fee for a majority of the vehicles is \$276 per month for each vehicle. Utilizing the vehicle database, and assuming all reported business travel was indeed business related, we computed the cost for monthly business travel for each vehicle as a travel reimbursement versus the CMP monthly rental fee. We calculated cost savings for pool-classified vehicles that were underutilized 50 percent or more during each fiscal year under review. We estimated the department could have saved at least \$169,000 from July 1, 2014 to March 31, 2017 if employees were reimbursed for use of their personal vehicles versus using state-owned vehicles for business purposes. This included 16 vehicles identified as consistently underutilized throughout this period, which alone would have provided cost savings of \$59,000.

The improper use of department vehicles for commuting purposes increases annual cost, accelerates the need to replace vehicles, and unnecessarily increases the risk of liability to the state for potential damage or injury from motor vehicle accidents.

Recommendation

We recommend the department comply with the state circular regarding vehicle assignment and use, and reduce their existing vehicle fleet. Reimbursement of employees using their personal vehicles for business mileage should be considered.



Underutilized Office Space

The state-owned building housing the department has underutilized office space.

The Mary Roebling Building is a state-owned property. It was dedicated in 1988 specifically to house the Department of Banking and the Department of Insurance. The 300,000 square foot building includes one floor dedicated to meeting rooms and the ground floor utilized to service the public.

Over the years, with the reduction in staff, the space needed by the department has decreased. The department now occupies six floors, totaling 143,180 square feet at an average of 24,000 square feet per floor. Other state agencies occupy the remaining four floors. During our audit, the department had 433 employees assigned at this location. In 2016, the department paid \$2,492,782 in building operations and maintenance costs and \$624,462 for debt service to occupy this building.

We observed ample empty and underutilized space during a walkthrough of the building and confirmed this with the New Jersey Division of Property Management and Construction (DPMC). According to DPMC, the department's current individual employee average is approximately 250 square feet of office space. In comparison, based on the building's original floor plans, the average office space allotment per employee was approximately 100 square feet. Utilizing an estimated total employee allotment of 200 square feet to include support space (conference, storage, copy, and file rooms, and libraries and reception areas), the department's current space requirements would be approximately 87,000 square feet or the equivalent of four substantially-occupied floors. Taking into consideration other design restrictions, the department should be able to reduce its total space requirements by at least one floor.

Recommendation

We recommend the department work with the DPMC to determine its needs and ensure building space is allocated to maximize use and efficiently utilizes department funds.



Benefit Leave Time Overpayments

Electronic timekeeping system manual errors and system calculation inconsistencies involving benefit leave time adjustments have resulted in overpayments to employees.

Our review of employees in zero pay status found multiple instances where their benefit leave balances following an unpaid leave of absence were not properly adjusted under the terms specified by the administrative code, resulting in overpayments to these employees. After the first year of employment, employees receive their current year's full allowance of benefit leave time at the beginning of the calendar year in anticipation of their continued employment. Since these allowances are not yet earned, employees who terminate from state service or go on a leave of absence without pay before the end of the calendar year are liable for any unearned time they used.

Per the administrative code, when an unpaid leave occurs the employee's benefit leave time needs to be reduced to account for leave time not earned. This is accomplished by utilizing the proration rule, the intermittent rule, or a combination of the two rules depending upon the circumstances.

The proration rule (N.J.A.C. 4A:6-1.5 (b)) is utilized when there is an approved extended unpaid leave of absence. Under this rule an employee will earn a full month's allowance of benefit leave time when an employee is "In Pay Status" for greater than 23 calendar days in a given month. The 23 days need not be consecutive and it includes weekends and holidays. In addition, an employee can earn one-half month's allowance of benefit leave time only if the employee is "In Pay Status" from the 9th through the 23rd of a given month.

The intermittent rule (N.J.A.C. 4A:6-1.5 (c)) is utilized when there is an unauthorized unpaid leave of absence or when the unpaid leave is infrequent or taken randomly over a period of time. Under the intermittent rule an employee's benefit leave allowance is reduced by one-half of one month's credit when intermittent days off without pay equal 11 working days.

The department utilizes the Electronic Cost Accounting and Timekeeping System (eCATS) to track and process employee time records. In June 2011, the Civil Service Commission issued a memo to the eCATS project manager at the Office of Information Technology regarding the correct processing rules to be used by eCATS to properly prorate benefit leave time allowances when an extended unpaid leave of absence occurs. In reference to the N.J.A.C. 4A:6-1.5(b) (proration rule), the memo further states:

"Note that the interpretation of this is very literal, since if an employee is "In Pay Status" from the 8th through the 22nd or the 10th through the 24th of a given month, he/she is NOT eligible to receive one-half month's worth of benefit time. The rule refers to the actual dates of the month, not the number of days worked."

The intermittent rule allows an employee to earn a half-month credit of benefit leave time as long as they have worked a half month, while under the proration rule an employee can only earn a half-month credit if they are in pay status every day during the crucial 15-day period from the 9th to the 23rd of the month. This difference in the interpretation of these rules when proration entries are not present in the eCATS system can often result in employees receiving a half-month credit of benefit leave time that they are not entitled to, which results in overpayments to the employees.

Testing revealed there were two main causes for the errors and inconsistencies detected:

1. Proration entries either were not being made or were being reversed by human resource employees leaving eCATS to adjust the benefit leave time using the intermittent rule, which is its default setting and;
2. Evidence that the eCATS intermittent rule calculations did not agree with our calculation utilizing the same data.

There were 56 employees in zero pay status during our audit period of which we judgmentally selected 11 who remained in zero pay status for 10 or more pay periods. We detected errors in 10 of the 11 employees sampled covering multiple calendar years. We noted seven instances where the benefit leave time was not in compliance with the proration rule, the intermittent rule, or a combination of the two rules. Of the seven instances identified, six involved both a manual error and a system calculation inconsistency. One employee was overpaid for 22.5 hours totaling \$1,158 as a lump sum vacation payment upon retirement due to these conditions. There were two instances where a combination of the two rules was warranted and only the intermittent rule was utilized, which resulted in the employees receiving too much benefit leave time valued at \$1,359.

In another instance eCATS incorrectly reduced an employee's negative leave balance total between 2013 and 2015 from 85 hours to 51 hours without evidence of any adjusting entries. Therefore, the department was unaware that the employee was still liable for 34 hours of overdrawn leave valued at \$1,166.

The system calculation inconsistencies identified within eCATS could potentially impact multiple state agencies that utilize the same system to track employee time charges.

Recommendation

The department should ensure human resource employees are properly trained and supervised to ensure that appropriate entries are posted in eCATS to adjust benefit leave time earnings when an extended unpaid suspension or leave of absence occurs. The department should also work with the Office of Information Technology to determine if eCATS processing results are in compliance with the administrative code for the proration rule, the intermittent rule, and

when circumstances warrant the combination of both rules. The department should continue its efforts to recover the value of overdrawn leave in the most cost effective and timely manner.



Observation

State Administrative Code – Title 4A Civil Service

Changes in regulations for the calculation and recovery of unearned benefit leave time should be considered and consistently implemented.

While analyzing department data regarding benefit leave time earned for employees who had an unpaid leave of absence, we learned that the state's two primary electronic timekeeping systems, the Electronic Cost Accounting and Timekeeping System (eCATS) and the Time and Leave Reporting System (TALRS), currently interpret the New Jersey Administrative Code's proration rule ((N.J.A.C. 4A:6-1.5 (b)) differently. In TALRS, if an employee is in pay status at least one of the dates between the 9th and the 23rd of the month, the employee can earn a half-month increment of benefit leave time. For example, in TALRS an employee who is in pay status from the 1st of the month through the 16th and is on an unpaid leave for the balance of the month would still earn a half month increment of benefit leave time. However, in eCATS, an employee would not earn any time for the month since the employee was not in pay status every single day from the 9th through the 23rd of the month. The eCATS programming processing is a literal interpretation of the state's administrative code and is consistent with the Civil Service Commission's interpretation. Currently the language in the governing sections of the administrative code does not allow an employee to earn one-half of a month's increment of benefit leave when the employee is "In Pay Status" for half of the working days in any given month unless it occurs during the specified dates. Benefit leave time earned by state employees should be earned consistently across state agencies, whether the time is tracked manually or electronically through a variety of software programs. Consideration should be given to simplifying the criteria for determining benefit leave time earned.

Another section of the administrative code that should be examined pertains to unpaid leaves and union leaves, which can last months or even years. The administrative code stipulates that an employee shall reimburse the state for paid working days in excess of his or her prorated and accumulated entitlements when the employee returns from their leave of absence. The code also states that an appointing authority may grant a leave of absence without pay to any employee elected or appointed as an official of the employee's union. The maximum period of such leaves shall be subject to negotiation between the employer and the union. While the employees work for the union, they receive compensation for these services and therefore would have a source of income to reimburse the state for the unearned leave time taken prior to the start of their union leave of absence from the state. The administrative code only references the length of the union leave when mentioning a negotiated agreement. This portion of the code should be expanded to specifically address negative and overdrawn leave balances that have accrued as a result of the requested union leave to ensure that the funds are recovered in a reasonable time

frame since the employee will be compensated by the union for their services.

We brought the discrepancy between the two timekeeping systems to the attention of the Civil Service Commission (CSC) who is responsible for ensuring consistency with their regulations for the state's various timekeeping functions/systems. The CSC confirmed that there is a discrepancy between eCATS and TALRS. CSC indicated that staff will immediately direct the Office of Information Technology to make the necessary programming changes within TALRS to assure that leave adjustment calculations are consistent with the N.J.A.C. 4A:6-1.5(b) and that no greater benefit than provided by the rule is afforded to any particular agency.

The state should consider examining the governing administrative code to determine whether certain segments of the code could be revised and updated to ensure that the regulations are equitable and reflect advancements in technology related to timekeeping. State officials should ensure that program processing for all of the state's timekeeping systems is in agreement with governing regulations. In addition, the state should consider adopting regulations allowing officials to begin recovery efforts for the value of overdrawn and negative leave balances prior to when the employee returns from their leave of absence.





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February 20, 2018

John J. Termyna
Assistant State Auditor
New Jersey State Legislature
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125 South Warren
PO Box 067
Trenton, NJ 08625-0067

Dear Mr. Termyna:

Thank you for providing the opportunity for the Department of Banking and Insurance to comment on the audit recommendations set forth in your letter dated February 1, 2018. Attached, please find our response to these recommendations.

The Department would also like to take this opportunity to thank you and your staff for their courtesy and professionalism towards our staff during the audit process.

Should you have any further questions concerning our responses, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "M. Caride".

Marlene Caride
Acting Commissioner

Department Of Banking and Insurance Response

Recommendation

"We recommend the Department seek legislation requiring criminal history background checks for all employees handling sensitive personal, financial, and proprietary information. Any proposed legislation would also require approval by the Director of the FBI to obtain federal criminal history background checks."

Department Response

The Department generally agrees that background checks for employees handling sensitive information is desirable. The legislative changes required are beyond the authority of the Department.

Recommendation

"We recommend the department comply with the state circular regarding vehicle assignment and use, and reduce their existing vehicle fleet. Reimbursement of employees using their personnel vehicles for business mileage should be considered."

Department Response

The Department agrees that our vehicle fleet usage required analysis. At the time of the audit, the Department had already started a review of its vehicle use. The review resulted in the Department returning sixteen vehicles to the Central Motor Pool and an improvement in the procedures for monitoring fleet usage. The Department will continue to monitor fleet usage to ensure the most economical use of State resources.

Recommendation

"We recommend the department work with the DPMC to determine its needs and ensure building space is allocated to maximize use and efficiently utilizes department funds."

Department Response

The Department is currently reviewing the use of the space it occupies and will work with DPMC to ensure the office space is used efficiently.

Recommendation

"The department should ensure human resource employees are properly trained and supervised to ensure appropriate entries are posted in eCATS to adjust benefit level time earnings when an extended unpaid suspension or leave of absence occurs. The department should also work with the Office of Information Technology to determine if eCATS processing results are in compliance with the administrative code for the proration rule, the intermittent rule, and when circumstances warrant the combination of both rules. The department should continue its efforts to recover the value of overdrawn leave in the most cost effective timely manner."

Department Response

The Department agrees with this recommendation. Since the Audit, staff in the human resources section have been retrained in the appropriate use of eCATS. We will refer the Auditor's recommendation to the Office of Information Technology for review of the relevant programming.