May 5, 2016

**Via Hand-Delivery**

Frank Haines, Legislative Budget and Finance Officer  
Office of Legislative Services  
State House Annex, First Floor, Room 140  
P.O. Box 068  
Trenton, New Jersey 08625-0068

Dear Mr. Haines:

In anticipation of the hearings before the Senate Budget and Appropriations Committee and the Assembly Budget Committee on May 10 and May 11, 2016, respectively, enclosed please find 20 copies of the Office of the State Comptroller’s response to Discussion Points provided by the Office of Legislative Services concerning the proposed FY17 State budget.

Should you require any additional materials, please do not hesitate to contact me. Thank you.

Very truly yours,

[Signature]

Philip James Degnan  
State Comptroller

Enclosures
Discussion Points

The Office of the New Jersey State Comptroller is an independent office created to bring greater efficiency and transparency to the operation of all levels of New Jersey’s government. The office audits government finances, reviews the performance of government programs and examines government contracts. It is responsible for conducting audits of the executive branch of state government, public institutions of higher education, independent state authorities and local governments and boards of education. The office also is responsible for the oversight of Medicaid funds and acts to detect and recover funds that are improperly expended.

1. The Governor’s FY 2017 Budget recommends an appropriation for the Office of the State Comptroller of $13.975 million, including $9.1 million in State and $4.9 million in federal funds. P.L.2007, c.52 established the office as an independent State agency allocated “in but not of” the Department of the Treasury. The office’s budgeted 147 employees conduct audits of government finances, engage in government procurement contract audits and monitoring, review the efficiency and effectiveness of State and local governmental entities, and investigate misconduct, waste, and abuse at all levels of State government and within the State’s Medicaid program. The office is comprised of four divisions: the Audit Division, the Investigations Division, the Procurement Division, and the Medicaid Fraud Division. Each division is led by a director who reports to the State Comptroller.

- **Questions:** Please provide an organizational chart displaying the current organization and structure of the office. For each of the last five fiscal years, how many positions were allocated to each of the divisions or program areas within the office? How many positions are currently vacant? Has the office encountered any difficulties in filling current vacancies? If so, please describe the difficulties encountered by the office.

Organizational charts displaying the current organization and structure of the office are attached hereto as Exhibit "A".
Discussion Points (Cont’d)

The allocation of positions for the last five fiscal years is as follows:

<table>
<thead>
<tr>
<th>Division</th>
<th>FY12</th>
<th>FY13</th>
<th>FY14</th>
<th>FY15</th>
<th>FY16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigations</td>
<td>15</td>
<td>15</td>
<td>16</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Procurement</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Medicaid Fraud</td>
<td>72</td>
<td>72</td>
<td>72</td>
<td>74</td>
<td>74</td>
</tr>
<tr>
<td>Audit</td>
<td>43</td>
<td>43</td>
<td>37</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Administration</td>
<td>7</td>
<td>7</td>
<td>9</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Totals</td>
<td>145</td>
<td>145</td>
<td>145</td>
<td>143</td>
<td>144</td>
</tr>
</tbody>
</table>

At this time there are 15 funded vacancies throughout the office.

- For FY 2015 and FY 2016 to date, please provide performance data for the office, including the number of audits, investigations, and procurement reviews that were conducted and the total amount of Medicaid payments recovered by the office. Please segregate the number of audits, investigations, and procurement reviews by level of government (i.e. local, county, or State).

Audit Division

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Audits Issued</th>
<th>Local, County, State</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY15 Audits</td>
<td>2</td>
<td>1 local, 1 county</td>
</tr>
<tr>
<td>FY15 Follow-up Audits</td>
<td>6</td>
<td>2 local, 1 county, 3 state</td>
</tr>
<tr>
<td>FY16 Audits (to date)</td>
<td>2</td>
<td>2 local</td>
</tr>
<tr>
<td>FY16 Follow-up Audits (to date)</td>
<td>1</td>
<td>1 local</td>
</tr>
<tr>
<td>FY16 Pending Audits</td>
<td>8 (3 in review, 1 in draft, 4 in fieldwork)</td>
<td>4 local, 1 county, 3 state</td>
</tr>
<tr>
<td>FY16 Pending Follow-up Audits</td>
<td>3 (2 in review and 1 in fieldwork)</td>
<td>1 local, 1 county, 1 state</td>
</tr>
</tbody>
</table>

Investigations Division

<table>
<thead>
<tr>
<th>Complaints Reviewed</th>
<th>FY15</th>
<th>FY16 (as of 4/21)</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>110</td>
<td>76</td>
</tr>
<tr>
<td>County</td>
<td>23</td>
<td>7</td>
</tr>
<tr>
<td>Local</td>
<td>176</td>
<td>149</td>
</tr>
<tr>
<td>Totals</td>
<td>309</td>
<td>232</td>
</tr>
</tbody>
</table>
Discussion Points (Cont’d)

Procurement Division

<table>
<thead>
<tr>
<th>Contracts Reviewed</th>
<th>FY15</th>
<th>FY16 (as of 4/22)</th>
</tr>
</thead>
<tbody>
<tr>
<td>County</td>
<td>68</td>
<td>42</td>
</tr>
<tr>
<td>Local (includes school districts)</td>
<td>119</td>
<td>105</td>
</tr>
<tr>
<td>State</td>
<td>176</td>
<td>126</td>
</tr>
<tr>
<td>Totals</td>
<td>363</td>
<td>273</td>
</tr>
</tbody>
</table>

Medicaid Fraud Division

<table>
<thead>
<tr>
<th></th>
<th>FY15</th>
<th>FY16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audits</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>Investigations</td>
<td>727</td>
<td>421 (as of 4/16)</td>
</tr>
<tr>
<td>Total Medicaid Recovery</td>
<td>$87M</td>
<td>$73M (as of 3/16)</td>
</tr>
</tbody>
</table>

2. The leadership and senior management of the office have undergone significant change over the last few years. In addition to the appointment of a new Acting State Comptroller (October 2015), the office has hired a new Director of the Investigations Division (2012), a new Director of the Procurement Division (June 2015), a new Director of the Medicaid Fraud Division (July 2015), and a new Director of the Audit Division (January 2016).

In addition, the office has modified the structure of the organization to incorporate the position of a deputy state comptroller. According to the office’s annual report for FY 2015, the individual previously serving as Chief of Staff to the State Comptroller is now employed by the office as the Deputy State Comptroller.

- What factors necessitated the recent change in the leadership and management of the office? How has the change affected the hiring and retention of employees in non-leadership positions? Has there been an increase in turnover or difficulty in hiring and retaining new employees as a result of the change? Has the change affected the ability of the office to carry out its mission?

The recent changes in leadership and management within OSC were “necessitated” by the departure of certain key personnel. Whether those departures were the natural result of changes in the position of Comptroller or for other reasons is impossible to know. It is noteworthy, however, that most of the management personnel who have left the office, departed for other, high-level opportunities in the
Discussion Points (Cont'd)

public sector which built on their experiences and successes here at the Comptroller's Office. For example, in 2012, John Hoffman (former Director of Investigations) left the office to assume the position of Executive Assistant Attorney General and later became the Acting Attorney General. In late 2013, Mark Anderson (former Director of Medicaid Fraud) left the OSC for the position of Associate Vice President for Institutional Integrity and Governance at Thomas Jefferson University. In 2015, Karen Shelton (former Director of Procurement) left the office to become a Federal Administrative Law Judge and William Chalice (former Director of Audit) retired from state service.

We cannot confirm that leadership changes resulted in the departure of other personnel, though it may be a reasonable assumption to some extent. Given the size of this office and our employees' varying stages of career development, it is more likely that departures are the result of natural career progression. We continue to attract exceptional candidates for positions across the spectrum and continue to meet the core mission of the office while constantly evaluating the needs of the office and the role of OSC employees.

- Why was the position of Deputy State Comptroller created? Who does the Deputy State Comptroller report to, who does the Deputy State Comptroller, supervise, and what duties and responsibilities does the individual holding the position perform for the office? Is the Deputy State Comptroller subject to the prohibition on holding elective public office following termination of services that currently applies to the State Comptroller pursuant to subsection a. of N.J.S.A.52:15C-4?

The position of Deputy State Comptroller was created by then-Acting State Comptroller Marc Larkins. The position is currently vacant. We are in the process of evaluating the need to fill this position and, if filled, what that individual's responsibilities would entail. During the brief period of time the position of Deputy State Comptroller was filled after my arrival at OSC, the position was an administrative one, reporting directly to the Comptroller. The Deputy had supervisory authority over the Chief of Staff, Legal Affairs Counsel, and certain Division Directors. Pursuant to OSC's enabling statute, the position of Deputy State Comptroller is not subject to the prohibition on holding elected office found in N.J.S.A. 52:15C-4(a).
Discussion Points (Cont’d)

3. N.J.S.A.52:15C-9 directs the State Comptroller to establish a system that ensures certain officers and employees of the Executive and Legislative branches of State government who perform audits, investigations, and performance reviews (that are similar to those performed by the State Comptroller) conduct their audits, investigations, and reviews with the consultation of, and in coordination and cooperation with, the State Comptroller. For purposes of establishing and maintaining this system, the law requires the State Comptroller to meet at least four times annually with the Attorney General, the State Treasurer, the Commissioner of Education, the Commissioner of Transportation, the Director of the Division of Local Government Services in the Department of Community Affairs, staff of the Local Finance Board, and the State Auditor. The law provides that the purpose of these meetings is to: facilitate communication and exchange information on completed, current, and future audits, investigations, and reviews, avoid duplication and fragmentation of efforts, optimize the use of resources, avoid divisiveness and organizational uncertainty, promote effective working relationships, and avoid the unnecessary expenditure of public funds.

- Questions: Please indicate the dates on which these meetings were held in FY 2014, FY 2015, and FY 2016 to date. What was the main focus of each of those meetings in each of those years? Has the mandate to meet at least four times annually achieved its goals of facilitating communication, avoiding duplication, and optimizing the use of resources? If not, please elaborate and indicate what steps can be taken in the future to ensure those purposes are achieved.

The Comptroller and his/her designees meet regularly with representatives of the Attorney General, the State Treasurer, the Commissioner of Education, the Commissioner of Transportation, the Director of the Division of Local Government Services (DLGS) in the Department of Community Affairs (DCA), the Local Finance Board (LFB), and the Office of the State Auditor (OSA). At no time during the history of this office have these meetings taken place according to a pre-set schedule. Rather meetings have taken place both in person and via telephone conference for purposes of developing good working relationships, referring matters, deconfliction of matters, ensuring against duplication of efforts and more.
Discussion Points (Cont’d)

As examples of the in-person meetings that have been held, representatives of OSC’s Audit Division met with personnel from DCA and LGS on August 4, 2014, January 21, 2015 and October 15, 2015 to discuss shared services and other areas of interest for audit planning and risk assessment of municipalities.

OSA provides OSC with their annual audit plan which we use in developing our annual audit plan. Recently, Comptroller Degnan met with State Auditor Stephen Eells in person on February 25, 2016, to discuss planning for the upcoming audit cycle.

On an ongoing basis, the OSC conducts informal discussions with OSA, DCA (DLGS and LFB) and the Department of Human Services (DHS) to communicate and exchange information on audits (planned, approved and issued) and to discuss issues and referrals.

On February 25, 2016, our new Audit Division Director met with representatives of OSA and DHS to discuss sharing our audit plan and matters concerning audit resources. She also met with representatives of the Department of Education (DOE) on February 24, 2016, to discuss similar matters. Meetings with other entities are being planned.

The Investigations Division has regular in-person meetings and/or telephone conferences with counterparts at the Office of the Attorney General (to include the Division of Criminal Justice and the Sandy Fraud Task Force), the Department of Treasury, DOE (to include its Office of Fiscal Accountability and Compliance or OFAC), the Department of Transportation (to include the department’s Inspector General), the DLGS and OSA. On an ongoing and recurring basis, the Investigations Division meets with operational and oversight personnel concerning OSC’s “Deconfliction Policy” requirements, referrals to sister agencies, and general information sharing concerning ongoing reviews and investigations.

MFD meets on a semi-monthly basis with its Medicaid Fraud Control Unit (MFCU) counterpart at the Office of the Attorney General, Division of Law for purposes of discussing ongoing cases, possible referrals and opportunities for joint training.
Discussion Points (Cont’d)

I am aware of the specific language of OSC’s enabling statute. While I believe that we have fulfilled the intent behind that language, I intend to evaluate the nature of these communications, the need for formalizing and tracking those communications and will be prepared to update this Committee during the next budget cycle.

4. The duties and responsibilities of the State Comptroller were expanded in the wake of Hurricane Sandy. In addition to conducting audits, reviews, and investigations of State and local government entities required by statute, the office is directed, through executive order, to help ensure the integrity and accountability of federal reconstruction resources received and distributed by the State to respond to and recover from the damage caused by the storm.

Executive Order #125 of 2013 directs the office to review all procurements by State government agencies that involve the expenditure of federal Hurricane Sandy-related reconstruction resources prior to the commencement of the procurement process. In conducting these reviews, the office must determine if the proposed procurement process complies with applicable public contracting laws, rules, and regulations. If not, the State Comptroller must work with the contracting State agency, and the Governor’s Office of Recovery and Rebuilding, to remedy the deficiency.

The State Comptroller also is directed by the order to ensure all awarded contracts involving the expenditure of federal Sandy-related reconstruction resources are posted on a State website (Sandy Transparency Portal). In addition, the State Comptroller maintains a toll-free hotline that is used to collect any public tips regarding the waste or abuse of Sandy recovery funds. Although not required by the order, the State Comptroller takes part in a collaborative group of agencies called the Statewide Sandy Fraud Working Group to share information on possible Sandy-related scams and fraud.

- Questions: Please provide an update regarding the office’s discharge of its additional duties and responsibilities as required by the executive order? How have the additional duties and responsibilities affected the office’s ability to conduct non-Hurricane Sandy-related audits, reviews, and investigations of State and local government entities required by the State Comptroller’s enabling statute? Are there any instances in which a planned audit was delayed or a pending investigation postponed because of the need to devote limited time and available
resources to comply with the order? If so, please describe the circumstances surrounding the delay or postponement. Please detail the impact the executive order has had on the office’s personnel, including number of positions added or reassigned for Sandy-related purposes.

Most, if not all, of the additional responsibilities conferred upon OSC by Executive Order 125 (EO 125) are borne by the Investigations and Procurement Divisions. For example, in the area of contract reviews, the Procurement Division makes every effort to review EO 125 submissions on an expedited basis. When attorneys are assigned an EO 125 review, that file review is prioritized over all other work and staff attorneys will attempt to provide comments within two business days. For more complicated rebuilding projects, such as engineering services for the Rebuild by Design projects in the Meadowlands and Hoboken, a two-day response time may be impractical.

OSC is also responsible for maintaining a Sandy Transparency Website. Both the Investigations Division and the Procurement Division are responsible for updating the site, with two Procurement Division attorneys and one paralegal compiling contract documents and posting complete and/or redacted versions of those documents on the site. Members of the Investigations Division work with the Governor’s Office of Recovery and Rebuilding (GORR) and the Office of Information Technology (OIT) to ensure that the site is regularly updated, providing timely, accurate information to the public on Sandy contracts, program information and expenditure data. In the past year, the Sandy Transparency website has been visited over 10,000 times and contains the following pages:

(a) **Home Page** - includes a summary chart of Sandy funds awarded by federal departments to New Jersey, including to State and local governments, individuals, businesses and non-profits. (The data is from FEMA and we do not otherwise track funding to local governments, individuals, businesses and non-profits.)

(b) **Contract Center** - posts State Sandy contracts, and includes the contract subject, solicitation, proposal, final contract documents and contract date. Users can sort this data by vendor, subject and date. The site also provides Sandy-related amendments and change orders to existing contracts and other Department of Treasury resources.
Discussion Points (Cont’d)

(c) **Program Information** - provides a link to the Sandy legislation, a breakdown of the overall federal funding and Funding Criteria Worksheets. We required each State agency to complete a Funding Criteria Worksheet for each Sandy program, to include the program funding amount and overview, the federal department of origin and requirements, and selection and eligibility standards.

(d) **Funds Tracker** - provides State agency Sandy expenditure data in a spreadsheet format, State agency data viewable by geography and some direct federal spending data. (The State information is provided by each agency and posted by OIT; information in each format may differ due to time delays and the nature of the information.)

(e) **Helpful Links and Guidance** - provides links to federal, State and OSC Sandy-related resources, including OSC’s Sandy Local Funding Memorandum and State and federal fraud prevention information. These additional responsibilities have not resulted in any measurable decrease in the OSC’s ability to perform statutorily required contract reviews, audits or investigations. To my knowledge, there has been no occasion where an audit or investigation was delayed as a result of EO 125 responsibilities. The OSC has been able to absorb these additional responsibilities due to employees’ willingness to take on additional responsibilities across the office. Indeed, we have had one Investigator deputized to assist the Sandy Fraud Task Force with investigations of Sandy Homeowner and Renter Assistance Program (SHRAP) fraud. To date, that investigator has assisted with 11 matters, 2 of which have been adjudicated.

- For each fiscal year following the issuance of the executive order, please provide performance data for the office, including the number of audits, investigations, and procurement reviews conducted as a result of the executive order. Did any of the audits, investigations, and procurement reviews conducted in accordance with the order result in findings of non-compliance or have errors that complicated the opportunity for an open competition among suppliers and bidders? If so, what was the percentage of audits, investigations, and procurement reviews that resulted in findings of non-compliance or were found to have errors? What steps have been taken to resolve any errors?
Discussion Points (Cont'd)

For each fiscal year since EO 125 came into effect, the Procurement Division has engaged in a significant number of contract reviews and found an error rate in the range of 40%:

<table>
<thead>
<tr>
<th>EO 125 Procurement Reviews</th>
<th>Number of Contracts Reviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY14</td>
<td>235</td>
</tr>
<tr>
<td>FY15</td>
<td>127</td>
</tr>
<tr>
<td>FY16 (as of 4/22)</td>
<td>87</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EO 125 Procurement Reviews</th>
<th>Error Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY14</td>
<td>40%</td>
</tr>
<tr>
<td>FY15</td>
<td>39%</td>
</tr>
<tr>
<td>FY16 (as of 4/22)</td>
<td>41%</td>
</tr>
</tbody>
</table>

In all cases, Procurement Division attorneys provide guidance to ensure that the errors identified during the review process have been corrected.

With respect to the Investigations Division, on September 10, 2013, the OSC issues a report titled, “Mileage Charges Associates with Hauling Superstorm Sandy Debris,” which identified noncompliance and errors. Additionally, the Division has made 161 referrals to the Sandy Fraud Task Force and has a dedicated Special Investigator assigned to investigate SHRAP fraud cases.

- **What is the office’s role in maintaining the Sandy Transparency portal?** What is the cost to the State, on an annual basis, to maintain a Hurricane Sandy Fraud Prevention Hotline? Does the State Comptroller take part in the Statewide Sandy Fraud Working Group to share information on possible Sandy-related scams and fraud? Have any scams or fraudulent activities been identified as a result of the State Comptroller’s participation in the working group?

The OSC is solely responsible for the maintenance of the Sandy Transparency portal, at a cost of approximately $120 per year. Following a contract award, State contracting entities are required to provide final documents to OSC, which typically includes the solicitation released by the State entity, the proposal of the successful vendor and any standard contract terms and conditions. Upon receipt of those documents, Procurement Division Attorneys review all contract documents and interact with the vendor to redact proprietary and confidential
Discussion Points (Cont’d)

information, as necessary and appropriate. Thereafter, the documents are posted to the Contract Center of the Sandy Transparency website.

In addition to the website, the OSC does participate in the Statewide Sandy Fraud Working Group and has done so since March 2013. As of April 16, 2016, the OSC has made 161 referrals to the working group concerning allegations of potential fraud. Moreover, we share information on an operational level with the supervisor of and analyst for the working group. The OSC, along with other state agencies, has provided information to integrity monitors regarding suspected criminal violations or instances of waste, fraud and abuse. The OSC reviews monthly reports to the Department of Treasury and quarterly reports from integrity monitors. All of these reports are also provided to the Legislature. To our knowledge, none of the 161 referrals made by the OSC have resulted in a formal investigation.

5. The Office of the State Comptroller’s Procurement Division reviews certain public contracts involving school districts, counties, municipalities, State agencies, State authorities, local authorities, and public institutions of higher education which involve consideration or an expenditure exceeding $2 million. The division conducts post-award reviews of public contracts exceeding $2 million but not exceeding $10 million, and for contracts valued at more than $10 million the division pre-screens the legality of the proposed vendor selection process and assists government entities in formulating contract specifications 30 days before issuing any advertising or otherwise entering into a contract, unless a waiver is granted by the State Comptroller.

The specific dollar value of these thresholds for post-award reviews and for public contracts required to be pre-screened by the office are established by the State Comptroller’s enabling statute, and are scheduled to be adjusted to account for the effects of inflation. In accordance with current law, the State Comptroller is required, no later than March 1, 2010, and March 1 of every fifth year thereafter, to adjust the threshold amounts in direct proportion to the rise or fall of the index rate, as that term is defined for purposes of the “Local Public Contracts Law,” and to round the adjustment to the nearest $100,000.

- Questions: Have the statutory thresholds for post-award reviews and for public contracts required to be pre-screened by the office been adjusted to account for inflation? If so, please provide a schedule of when these adjustments were made, the dollar
amounts of the thresholds after the adjustments, and the value of the index rate used as the basis for making the adjustments. If the inflation adjustments have not been made, please explain.

The statutory thresholds set forth in N.J.S.A. 52:15C-10 have not been adjusted to account for the minimal rise in inflation. The current thresholds provide a simple bright-line for government contracting entities to follow in estimating the value of a contract that may be subject to OSC’s review. Indeed, the minimal adjustments that could be made due to inflation may only serve to confuse these entities with regard to their responsibility to submit contracts to OSC for review. Moreover, by maintaining the current thresholds, OSC has the opportunity to review more procurements to ensure they comply with the procurement laws, rules, and regulations.

- Adjustments aside, are the statutory thresholds for post-award reviews and for public contracts required to be pre-screened by the office established at a level that maximizes the office’s capacity to provide increased accountability, integrity, and oversight to the public procurement process given the available resources dedicated to the office? Should the statutory thresholds be increased or decreased to better utilize the office’s resources or to expand the scope of procurement reviews currently conducted by the office?

Given the available resources and the rate of inflation over the last several years, the OSC believes that the current thresholds for contract review are appropriate. The OSC will continue to evaluate these threshold amounts, but, as presently formulated, these amounts allow for oversight at all levels of government.

- For each of the last five fiscal years, please provide information on the number of waivers that have been granted to public contracting units seeking to be excluded from the 30-day time frame that must elapse before a public contracting unit is permitted to advertise for or enter into a contract that exceeds $10 million. What are the reasons public contracting units typically seek a waiver, and what factors have compelled the granting of waivers?

The Procurement Division has not formally tracked the number of waivers granted to public contracting units. Rather, Procurement Division attorneys work diligently with contracting entities to meet compressed
Discussion Points (Cont’d)

deadlines, without abdicating the OSC’s role in the procurement process. Notwithstanding, according to our records, in FY15, there were seven requests for expedited review of submissions to OSC and to date in FY16, eight such requests have been made. In each instance, the OSC was able to accommodate the request while still ensuring that the procurement process being proposed was appropriate.

In some instances, these requests were the result of the contracting unit not being aware of the 30-day requirement for pre-advertisement review for contracts valued at $10 million or more. In these situations, OSC ensures that the contracting unit is fully aware of the requirements set forth in N.J.S.A. 52:15C-10. OSC also requires the contracting unit to provide an explanation as to why expedited review is being requested. Regardless of the basis, however, the OSC makes every effort to accommodate these requests while taking into consideration the priority of other reviews. Certain other factors that have been the basis for these requests are:

(a) Environmental – certain work (such as dredging) can only be performed during specific months

(b) School schedule – districts try to perform repairs and construction during the summer while school is not in session

(c) A court has ordered the contracting entity to rebid by a specified date

(d) Project or program funding expires soon

(e) Current contract is expiring.

6. N.J.S.A.52:15C-15 requires the State Comptroller to provide technical assistance and training to units in the Executive branch of State government, including entities exercising executive branch authority, independent State authorities, public institutions of higher education, and units of local government and boards of education. In accordance with the law, the technical assistance and training is to include training and assistance regarding best practices in developing and implementing financial management systems that will strengthen internal control procedures and prevent the misuse of public funds.
Discussion Points (Cont'd)

In fulfillment of the obligation, the State Comptroller has previously published to its website a series of reports to provide guidance to government units. These reports include a best practices checklist for engaging and managing legal counsel, a best practices report regarding the awarding of service contracts, a guide to understanding internal controls, and an alert to government units regarding the hidden costs in using third parties to administer workers’ compensation programs.

- Questions: What unit within the office is responsible for fulfilling the requirement to provide technical assistance and training to units in the Executive branch of State government? How does the office decide what technical assistance and training to provide, and what issues or special topics will be the focus of each technical assistance and training initiative? What is the timeframe typically involved with each initiative, and on average what resources are expended to complete initiatives undertaken by the office?

All Divisions of the OSC are responsible to some degree for fulfilling the requirement to provide technical assistance and training to units in the Executive branch of State Government. MFD is additionally charged with providing technical assistance and training to entities participating in the Medicaid program.

Generally, OSC responds to requests from all types of entities for training and assistance. Assuming a request for training or assistance is within the mandate of the Office, the decision to provide the requested training or assistance is based on staff availability and the extent to which the request will benefit an appropriate population size.

MFD analyzes Statewide and national trends relating to Medicaid fraud, waste and abuse, meets quarterly with representatives from managed care organizations (MCO), and elicits input both internally and from external sources, such as trade groups and Medicaid providers, to determine areas that are in need of additional education and training. Based on these sources of information, MFD compiles prioritized list of subjects that will be addressed through training sessions conducted jointly by MFD, MCO representatives, as well as representatives from the MFCU and the Division of Medical Assistance and Health Services (DMAHS).
Discussion Points (Cont’d)

The time necessary to develop and/or provide training varies depending on the project. Most training events are designed for half-day or full day depending on the agenda and presenter availability. Preparation for a training session can take anywhere from a few hours to three to four months.

- Questions: Has the office engaged in any technical assistance or training initiatives beyond the publishing of reports to its website? Has the office offered any training seminars or workshops regarding best practices in developing and implementing financial management systems for units in the Executive branch of State government? Are there any technical assistance or training initiatives currently in progress or in the planning stages that will be carried out in the near future?

Past Training Initiatives:
The Comptroller and representatives of the Audit, Investigations, Procurement and Medicaid Fraud Divisions provide speakers in a wide range of forums for the purpose of training and providing assistance to the constituencies we serve. The list of training events that OSC has participated in is extensive. Examples of training presentations given range from the Investigations Division speaking about various investigative reports OSC has produced to the Comptroller’s recent presentation at the Rutgers University Public Purchasing Educational Forum on April 28, 2016, to the Audit Division Director’s regular engagements as a panelist for the meetings of the Association of Government Accountants.

The Divisions have also posted and are continuing to post different types of guidance on the website in addition to reports. The Audit Division, for example, provides an Internal Control Guide originally posted on the OSC website in 2011. This Guide is currently being updated and a new version will be posted in 2016. Additionally, MFD has actively searched for third-party prepared tools and resources to post on its website to help educate anyone involved in Medicaid on issues relating to fraud, waste and abuse in the Medicaid program and how to combat same. Among the resources now included as a link on MFD’s website are “toolkits” developed by the federal Center for Medicare and Medicaid Services that cover various Medicaid related topics.
Discussion Points (Cont'd)

Training Initiatives in Development:
In the coming months the Audit Division plans to review the State's FY15 Single Audit report findings to identify common and or repeat findings and to strategize on the best approach (technical assistance, best practices and/or training) to highlight possible corrective actions to agency officials. The Audit Division is also reviewing other avenues of outreach to the Executive Branch and other interested entities regarding OSC responsibilities and to identify technical assistance and training needs.

The Audit Division is preparing for a joint training with OSA and DHS scheduled for June 10, 2016, on the Yellow Book and Performance Audits. Additional joint training with OSA and DHS is planned for October 2016.

The Procurement Division is in the planning stages of developing statewide training regarding contract reviews pursuant to N.J.S.A. 52:15C-10. The Procurement Division's goal in the upcoming fiscal years is to provide training on a county level and invite the municipalities, authorities and other contracting entities in such county to attend.

MFD plans to hold two training sessions in June 2016 relating to pharmacy waste, fraud and abuse in the Medicaid program. These sessions will focus on how pharmacies should properly document claims, red flags for waste, fraud and abuse, the importance and process used for self-disclosure of overpayments, and the use of debarment lists for providers and third party vendors. In addition to these sessions, MFD may roll out training sessions relating to other topics/provider groups, such as behavioral health, later in 2016. For all education sessions, MFD will include the content of each such session on its website.

- Is there any evidence indicating the technical assistance and training initiatives undertaken by the office have strengthened the internal control procedures and prevented the misuse of public funds in accordance with the directives of N.J.S.A.52:15C-15? Has the office received any feedback from units in the Executive branch of State government regarding the effectiveness of the technical assistance and training initiatives provided by the office? If so, please describe.
Discussion Points (Cont’d)

Generally, the OSC has received positive feedback from the various training and educational endeavors it has undertaken. Responses have ranged from general accolades to referrals from other agencies, tips from the public and follow up requests for guidance and/or assistance with specific questions and situations.

The Audit Division in particular always receives feedback as part of its work process. Every audit includes a formal exit conference with executive management of the auditee to provide discussion of the audit findings and recommendations. Most agencies have been receptive to our recommendations. As reported in our FY15 Annual report - 93% of the recommendations were either fully or partially implemented.

Most audits have revealed the responsiveness of agency management to make corrective actions. In some cases, when issues have come to light during the course of the audit, agency management has moved to make corrective actions before the final issuance of our report to prevent further waste and mismanagement.

MFD has received feedback from the sessions it has held indicating that providers, trade association members and other Medicaid stakeholders thought that these education sessions were beneficial. Given that positive feedback, MFD believes that these education sessions will translate into a reduction of fraud, waste and abuse in the Medicaid program.

7. The “Medicaid Program Integrity and Protection Act,” P.L.2007, c.58, established an independent Office of the Medicaid Inspector General in the Office of the Inspector General. A subsequent enactment, P.L.2010, c.33, later abolished both offices and consolidated their functions in the Office of the State Comptroller, where the Office of the Medicaid Inspector General became the Medicaid Fraud Division. The division is intended to prevent, detect, investigate, and reduce fraud, waste, and abuse in the State’s Medicaid program. It has the authority to supervise all State government activities relating to Medicaid integrity, fraud, and abuse, except the activities of the Medicaid Fraud Control Unit in the Department of Law and Public Safety. The division’s oversight focuses on Medicaid providers, managed care organizations, and Medicaid recipients. The federal government matches State expenditures for the division 200 percent through the Medicaid program.

In its annual report for FY 2015, the Office of the State Comptroller indicated that its Medicaid Fraud Division recovered $87.26 million in improperly paid
Discussion Points (Cont'd)

Medicaid funds in FY 2015 for the State and federal government. In addition, an estimated $771.9 million in other potential Medicaid expenses were avoided through the division's proactive anti-fraud efforts. The division also noted that during FY 2015 the office took action to exclude 86 ineligible health care providers from participating in the Medicaid program, made 78 referrals to State and federal law enforcement offices and other outside agencies as a result of investigations conducted by the office, and internally referred 105 cases of anomalous claims behavior to the division’s audit and investigations units as a result of its data mining activities.

The performance data for the division included in the office’s annual report indicate improvements over similar figures recorded for the previous year. In comparison to FY 2014, the division recovered $10 million more in total Medicaid funds for the State and federal government, avoided $170 million more in potential Medicaid expenses, excluded 31 additional health care providers from Medicaid, made 7 additional referrals to law enforcement, and internally referred 17 additional cases from the data mining group to the division’s audit and investigations units. However, in comparison to FY 2011, FY 2012, and FY 2013 total Medicaid funds recovered by the division remain depressed. In FY 2011 the division recovered $116 million in total Medicaid funds, in FY 2012 the division recovered $102 million in total Medicaid funds, and in FY 2013 the division recovered $122 million in total Medicaid funds.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Recovered Medicaid Funds</th>
<th>Estimate of Avoided Expenses</th>
<th>Providers Excluded from Medicaid</th>
<th>Referrals Made to Law Enforcement</th>
<th>Referrals Made By Data Mining Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY11</td>
<td>$116 million</td>
<td>$210 million</td>
<td>44</td>
<td>80</td>
<td>“numerous”</td>
</tr>
<tr>
<td>FY12</td>
<td>$102 million</td>
<td>$402 million</td>
<td>80</td>
<td>53</td>
<td>42</td>
</tr>
<tr>
<td>FY13</td>
<td>$122 million</td>
<td>$392 million</td>
<td>60</td>
<td>45</td>
<td>65</td>
</tr>
<tr>
<td>FY14</td>
<td>$77 million</td>
<td>$601 million</td>
<td>55</td>
<td>71</td>
<td>88</td>
</tr>
<tr>
<td>FY15</td>
<td>$87 million</td>
<td>$771 million</td>
<td>86</td>
<td>78</td>
<td>105</td>
</tr>
</tbody>
</table>

*Data derived from State Comptroller’s Annual Reports for FY11 – FY15
Discussion Points (Cont’d)

- **Questions:** For FY 2013 – FY2016 to date, by fiscal year, what amount of the total funds recovered by the Medicaid Fraud Division was related to recoveries made where Medicaid improperly paid prior to other insurance being appropriately exhausted, what amount is related to audits and investigations conducted by the division, and what amount is related to settlements, including settlements received from involvement in nationwide cases?

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Third Party Liability</th>
<th>Audits and Investigations</th>
<th>National Settlements</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY13</td>
<td>$52,227,681</td>
<td>$13,393,915</td>
<td>$43,003,444</td>
</tr>
<tr>
<td>FY14</td>
<td>$35,137,240</td>
<td>$8,011,608</td>
<td>$22,739,247</td>
</tr>
<tr>
<td>FY15</td>
<td>$52,612,271</td>
<td>$7,738,169</td>
<td>$1,395,027</td>
</tr>
<tr>
<td>FY16 (3/16)</td>
<td>$49,984,210</td>
<td>$5,663,384</td>
<td>$5,908,502</td>
</tr>
</tbody>
</table>

It is worth noting that the figures provided above for Medicaid recoveries do not include funds recovered by the State’s Recovery Audit Contractor, Health Management Systems (HMS), which totals slightly more than $11.5M as of the end of March 2016. When this amount is added to the figures provided above, the total Medicaid recovery amount is $73M, which mirrors the information provided in response to the first Discussion Point on page 3 of this submission.

- **What percentage of total recovered Medicaid funds was returned to the federal government in each of those fiscal years?**

  FY13 – 53%
  FY14 – 53%
  FY15 – 56%
  FY16 – 55%

- **What percentage of total recovered funds was returned to the State?**

  FY13 – 47%
  FY14 – 47%
  FY15 – 44%
  FY16 – 45%
Discussion Points (Cont’d)

- Where are recovered funds returned to the State reflected in the State budget?

Cash recoveries are appropriated in the “Payments for Medical Assistance Recipients – Other Services” account. Recoupments (receivables established on provider accounts to make collections against future payments) reduce payments to the General Medical Service appropriations.

- Please describe the methodology used by the division to calculate the potential Medicaid expenses that were avoided through the division’s anti-fraud efforts as reflected in the office’s annual report.

Cost avoidance measures are undertaken by the State in conjunction with its third party liability services contractor. The current contract for these services is titled, "Third Party Liability Recovery Services" (State Contract A70703), and the State’s current vendor is HMS. Pursuant to this contract, the State and its vendor identify those Medicaid recipients who possess other health insurance to assure that Medicaid is the payer of last resort. For each beneficiary for whom third party insurance is identified, the State and its vendor calculate the annualized capitation fee associated with that person. That annualized capitation amount is considered the Medicaid expenses avoided for the given period.

Consequently, when Medicaid beneficiaries possess commercial health insurance, the Medicaid program and/or the MCO through which the beneficiary is enrolled will only pay claims as the payer of last resort thereby minimizing Medicaid payments and maximizing cost avoidance.

- How did the division arrive at its $771.9 million estimate of avoided expenses for FY 2015?

The State’s vendor, HMS, through data use agreements with commercial insurance carriers, identifies thousands of third party health insurance policies every month. The State’s fiscal agent, Molina Health Care Solutions, then uploads that data into the Medicaid Management Information System. This assures that Medicaid will be the payer of last resort. Using the methodology outlined above, and due to the volume of
Discussion Points (Cont'd)

third party coverage identified through this process, the State’s vendor, HMS, estimated $771.9 million of avoided expenses for FY15.

- **Does the methodology used to calculate its estimate of avoided expenses for FY 2015 differ from the methodology used in prior fiscal years?**

  No, the methodology used to calculate the estimated avoided expenses for FY13 – FY15 remained the same during the entire period.

- **What factors contributed to the increase in avoided expenses in FY 2014 and FY 2015?**

  The Patient Protection and Affordable Care Act (ACA) was signed into law by President Obama in March 2010. The State of New Jersey passed its enabling legislation to facilitate Medicaid eligibility expansion effective January 1, 2014. The ACA has enabled New Jersey to significantly expand its Medicaid enrollments. In fact, since January 1, 2014, more than 778,000 unique members have participated in the New Jersey Medicaid Program as a result of the ACA. Additionally, the expanded eligibility requirements have incorporated single individuals with higher incomes into the Medicaid program. These ACA related enrollees may also have access to commercial insurance coverage through employer sponsored health care plans. Increased Medicaid enrollees coupled with increased access to commercial insurance results in increased cost avoidance.

- **What factors contributed to the decline in total Medicaid funds recovered by the division in FY 2014 and FY 2015 from the total annual amounts recovered by the division in FY 2011, FY 2012, and FY 2013? Was there a particular component part of the recoveries that more heavily contributed to the annual decline, or was there an across-the-board drop-off?**

  The primary factor that contributed to the decline in total Medicaid funds recovered by MFD in FY14 and FY15 as compared to FY11, FY12, and FY13 was a decrease in national settlement recoveries in FY14 and FY15. The average annual recovery from national settlements in FY14 and FY15 was slightly more than $12M as compared to more than $22.4M for this type of recovery in FY11, FY12 and FY13.
Discussion Points (Cont'd)

8. In accordance with the State Comptroller’s enabling statute, the office is required to establish a full-time program of audit and performance review designed to provide increased accountability, integrity, and oversight of the Executive branch of State government, including all entities exercising Executive branch authority, public institutions of higher education, independent State authorities, units of local government, and boards of education. This requirement to establish a program of audit and performance review is fulfilled by the office’s Audit Division, which is staffed by individuals who possess certifications or professional designations such as Certified Public Accountant, Certified Internal Auditor, and Certified Fraud Examiner. The audit division also includes a Planning and Analysis Unit that consists of social science researchers who perform preliminary evaluations, make recommendations regarding potential audits, and produce non-audit research reports on specific policy issues.

In FY 2015, the Audit Division completed a number of audits, including an audit of personnel and fiscal practices at the Township of Hillside, the City of Perth Amboy, and Gloucester City, an audit of controls over the administration of the General Assistance Program at Burlington, Camden, and Passaic County Boards of Social Services, and published an analysis of overtime costs at adult county correctional facilities. The division also issued follow-up reports on six audits that were issued in calendar years 2011 and 2012, and took certain steps to put in place policies and procedures that guide the office’s audit, investigative, and related processes, including further refinement of the office’s audit manual, audit process brochure, and risk/priority evaluation matrix.

- Questions: Please identify the number of employees by certification and professional classification currently employed by the Audit Division. How many employees currently staff the Planning and Analysis Unit? What non-audit research reports on specific policy issues did the unit published in FY 2014, FY 2015, and FY 2016 to date?

The Audit Division consists of 35 positions: Director, Deputy Director, 3 Managers, 7 Auditors-in-Charge, 19 Staff Auditors, 4 Program Analysts, and 1 Administrative Assistant. Currently we are in the process of recruiting: 2 Auditors, 1 Manager of Audits and Planning and Analysis, and 3 Program Analysts.

Respecting professional certifications and advanced degrees, 11 current staff members have professional certifications, 2 of whom have multiple...
Discussion Points (Cont'd)

certifications as follows: Certified Public Accountant (CPA) – 6; Certified Fraud Examiner (CFE) – 4; Certified Management Accountant (CMA) – 1; Certified Internal Auditor (CIA) – 1; Certified Quality Auditor (CQA) – 1; and Certified Public Manager (CPM) – 1. Seven Auditors and the current Program Analyst have advanced degrees (Masters Degree), 4 of whom also have professional certifications (1 is a CPA and 3 hold a CFE).

In FY15 the Planning and Analysis staff produced a whitepaper entitled “Analysis of Overtime Costs at Adult County Correctional Facilities.” Generally, the Planning and Analysis staff has been called upon to be involved in the audit process by performing the front-end research and development in preparation of potential audits. Additionally throughout 2015 and to date this group has been integral in developing and building three databases of statistical information that will form the foundation for audits of three areas of local government for the next several years.

- Please describe the division’s policy in performing follow-up engagements in connection with audits conducted in prior fiscal years. Are all prior auditees subject to follow-up engagements conducted by the division? What is the average length of time that elapses between the completion of an audit and the initiation of a follow-up engagement of that auditee? Does the length of time that elapses vary on a case-by-case basis for each subject of a prior audit?

Generally, if an audit revealed reportable findings and recommendations a follow-up will be performed. The minimum length of time between publication of an audit and a possible follow-up is one year but we also consider the timing of corrective actions being implemented. Scheduling of the follow-up audit will also depend on other scheduled audits, availability of staff to be assigned based on required expertise and receipt of an acceptable corrective action plan from the auditee.

To date, the Audit Division has issued 32 audit reports, 26 of which had reported findings and recommendations requiring OSC follow-up. 15 follow-up reports have been issued, 2 are pending, 1 is in process, 8 are to be scheduled.
Discussion Points (Cont'd)

- Did the division develop its audit manual in-house, or was the manual developed in consultation with an outside entity? What was the total time and cost to the office to develop the manual? How much time and resources are allocated to updating the manual annually? Does the division confer with agencies with similar responsibilities in other jurisdictions to ascertain whether it is following best practices?

OSC's audit manual was developed in-house when the office was established. Details for the time and cost to draft, edit and revise the initial manual are not available. The audit manual is included in the purview of the Quality Control Committee for annual updates, as needed, and staff training. Details for the time and cost to annually revise the manual are not available.

With regard to conferring with other agencies concerning best practices, OSC is subject to an external "peer review" once every three years. The peer review process provides, among other things, independent verification that an organization is conducting its work in accordance with appropriate standards. OSC has successfully passed 2 peer reviews.

9. N.J.S.A.52:15C-5 provides the State Comptroller with broad discretion to establish the internal organizational structure of the office in a manner appropriate to carrying out the duties and functions, and fulfilling the responsibilities, of the office. To that end, the law authorizes the State Comptroller to appoint, employ, promote, and remove such assistants, employees, and personnel as the State Comptroller deems necessary for the efficient and effective administration of the office.

The law also provides the State Comptroller with limited authority to obtain the services of outside consultants. Within the limits of funds appropriated for such purposes, the State Comptroller may obtain the services of certified public accountants, qualified management consultants, and other professionals necessary to independently perform the duties and functions of the office.

- Questions: Has the Office of the State Comptroller ever exercised its authority to obtain the services of outside consultants? Is so, please indicate the fiscal year in which the services were obtained, the total annual cost to the State to obtain the services,
Discussion Points (Cont'd)

the services that were provided by the outside consultants, and
the reason the outside services were obtained by the office.

Generally, outside consultant services are not required. On one occasion,
we retained a consultant to provide translation services for review of
documents. We are currently in the process of retaining the services of a
statistics expert. OSC estimates that the cost of this consultant will be
$1,750.

10. On September 15, 2015, Stockton University released the full text of an
investigative report that was prepared by an independent law firm. The
investigation was undertaken at the request of the Stockton University Board of
Trustees to examine the facts and actions surrounding the university’s purchase
and attempted re-sale of the former Showboat Casino property in Atlantic City.

According to the report, the “ill-fated purchase of the Showboat by Stockton,
and the ensuing developments, were the results of a confluence of facts, risks
and personalities that culminated in a transaction that, with the benefit of 20-20
hindsight, was certainly unwise.” The report places responsibility for the
purchase and attempted re-sale of the property with Stockton’s president at the
time, a deferential board of trustees, and the lead counsel on the deal to
purchase the Showboat from Caesars.

With respect to the responsibility of counsel, the report notes that the lead
counsel miscalculated the risk of closing with a 1988 covenant in place, failed to
advise the president that he ought to advise the board of trustees that Caesars
would not be able to obtain a waiver of the 1988 Covenant from Trump prior to
closing, and missed certain changes in the purchase and sale agreement that
altered the conditions in a way that was unfavorable to the university. The
report also noted that the lead counsel was not admitted to practice law in New
Jersey, a fact that may have contributed to his failure to assist the university in
notifying the State Comptroller that the $18 million purchase of the former
casino property was subject to review in accordance with N.J.S.A.52:15C-10.

• Questions: Please indicate whether the Office of the State
Comptroller was involved in reviewing the purchase and
attempted re-sale of the former Showboat Casino property in
Atlantic City. Has the office conducted, or is the office planning on
conducting, an ex post audit and evaluation of the purchase and
attempted re-sale of the property? Is the office conducting any
Discussion Points (Cont'd)

other investigations, audits, or reviews of the university in connection with its purchase and attempted resale?

Stockton University did not submit its proposed procurements for either the purchase of the former Showboat Casino Property in December 2014 or the attempted resale of the property in April 2015 as required by N.J.S.A. 52:15C-10. Accordingly, OSC did not have the opportunity to conduct a pre-review of these procurements to ensure they complied with public contracting laws, rules and regulations.

As a matter of policy and in order to preserve any applicable privileges, OSC neither affirms or denies whether it is conducting or planning to conduct a review or investigation of a particular governmental entity or matter.

- Does the State Comptroller have an estimate of the extent of noncompliance with the notification requirements prescribed by N.J.S.A. 52:15C-10? Is noncompliance a significant issue that has hampered the office from fulfilling its statutory obligations to review the legality of public procurements, or are cases of noncompliance few and far between? What course of action can the office take to compel compliance if an entity fails to follow the notification requirements prescribed by law?

Because OSC is unaware of the complete universe of State, county and local procurements, it is unable to estimate the extent of non-compliance with the notification requirements of N.J.S.A. 52:15C-10. In FY16, however, OSC has attempted to identify, through post-award submissions and other available means, procurements that should have been submitted for pre-advertisement review. Through April 2016, OSC has identified 18 such procurements.

OSC has no mechanism in its statute to “compel” compliance with the notification requirements of N.J.S.A. 52:15C-10. However, when OSC becomes aware of a government entity’s non-compliance, a member of the Procurement Division will contact the entity’s purchasing representative and fully explain the statutory notice requirements. OSC will also request that, when appropriate, non-compliant entities review and update their purchasing manuals and/or purchasing policies and also reaffirm with their staff OSC’s notification requirements.
Exhibit “A”