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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

July 9, 2013

Honorable Members
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Response to Erie County Comptroller Audit of Eligibility and Recertification Processes within the Temporary Assistance Unit of the Department of Social Services for the Period January 1, 2011-March 31, 2013

Dear Honorable Members:

On June 25, 2013 the Erie County Comptroller's office issued the above-noted audit regarding the Temporary Assistance ("TA") function in the Department of Social Services ("DSS"). The Comptroller announced this audit in a letter dated January 31, 2013, which was amended by the Comptroller on February 11, 2013.

It is important to clarify that throughout the audit report and in an accompanying press release, the Comptroller's office conflates commentary, opinion, conjecture and a few facts from multiple inquiries: his TA audit, a suspended Medicaid certification audit, his Medicaid "investigation", and his exploration of recycling totes located in a secure space in the DSS records storage unit in the subbasement of the Rath Building. Consequently, in reviewing the Comptroller's document it was challenging to differentiate between the true audit subject – TA – as opposed to the other areas.

On behalf of the Department of Social Services, I hereby provide the following response to the Comptroller's TA audit.

Government Auditing Standards not Followed

In reviewing the Comptroller's audit report, one thing became clear immediately; contrary to the Comptroller's assertion on page one of the audit report, the Comptroller's Office **did not conduct its audit in accordance with Generally Accepted Government Auditing Standards** ("GAGAS") as promulgated by the U.S. Government Accountability Office ("GAO"). As a governmental auditor, the Comptroller's office is required to follow GAGAS in conducting audits. Based on our review of GAGAS, and after consulting with a certified internal auditor, we believe that the Comptroller did not follow GAGAS, which raises serious questions about the integrity of the process and the conduct of Deputy Comptroller-Audit Teresa Fraas. For your information, the standards can be found at http://www.gao.gov/assets/590/587281.pdf. In addition, Article 18, Section 1802 (e) of the County Charter also requires the Comptroller's Office to follow GAGAS.

The Comptroller's office did not provide DSS with an opportunity for an exit conference, and did not allow DSS any opportunity to make oral or written comments in response to the audit. In fact, DSS and the administration became aware that the Comptroller had issued the audit report when he clocked it in at your Honorable Body and disseminated a press release attacking DSS. In this regard, **it appears, the Comptroller violated Sections 7.32 and 7.33 of GAGAS**.

During the audit field work, the Comptroller expanded his TA audit scope and objectives into a review of records security and the recycling totes issue. Evidence was provided to your Honorable Body on June 25, 2013 that Ms. Fraas engaged in deception and misrepresented her actions in obtaining DSS records from a recycling tote. **Through these actions, it appears, Ms. Fraas violated Sections 1.1-1.24 of GAGAS** regarding auditor ethical principles, integrity, objectivity, proper use of government resources and position, and professional behavior.

Furthermore, at no time during the five months the Comptroller was pursuing this matter did the Comptroller's office issue any interim audit memoranda ("IAM") or written alerts to DSS, which is a standard auditing practice to immediately notify an auditee of any serious issues found by the auditors. As stated by the GAO, "Early communication of deficiencies" is contained in GAGAS Section 6.78, which directs auditors to:

> Report deficiencies in internal control, fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse. For some matters, early communication to those charged with governance or management may be important because of their relative significance and the urgency for corrective follow-up action. Further, when a control deficiency results in noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse, early communication is important to allow management to take prompt corrective action to prevent further noncompliance.

At the audit entrance conference on February 14, 2013, Ms. Fraas agreed to provide IAMs to DSS and communicate with the auditee if her staff found serious issues. However, not only did she not do so, but Comptroller Mychajliw contacted and personally spoke with media about issues contained in the TA audit report (regarding records security) before the audit was completed and provided to DSS. Because of the Comptroller's failure to notify DSS of issues which the Comptroller himself has alleged are serious and involve potential violations of federal and state law or regulations, **it appears, the Comptroller's Office violated Section 6.78 of GAGAS**. More information on this issue is contained below.

Scope Limitation Cited by Comptroller to Avoid Conclusions

The Comptroller has stated that a scope limitation existed for the TA audit due to actions by DSS, and as a result, the Comptroller cannot express an opinion on the adequacy of internal controls. The audit report does not specify the scope limitation per se, but discusses the State's Welfare Management System ("WMS"). In fact, as DSS communicated to the Comptroller's office in writing that any potential scope limitation was due to the State's own restrictions on access to data in WMS, not DSS. See below for more details on this issue.

Scope Expansion in Middle of Audit to Look at Recycling Totes

In the middle of the audit, the Comptroller became aware of a situation involving records in recycling totes in DSS. This development, which took place on March 22, 2013, led the Comptroller to issue an amended audit entrance letter dated April 4, 2013. That amended letter changed the audit scope to include a review of storage and disposal of original documentation and records, and to expand the audit date through March 31, 2013 (as opposed to the prior scope ending January 31, 2013).

This scope expansion is important to note, because it became readily apparent from the last three pages of the audit report that the Comptroller, in fact, did not really audit TA, but instead shifted his focus in March 2013 to an "investigation" of recycling totes. In a five page audit report, one and one half (1.5) pages are boilerplate audit terminology and nearly three full pages are dedicated to a discussion of records storage/retention and security and recycling totes, neither of which were within the original scope or purpose of the audit.

The audit report details Ms. Fraas' rendition of how the Comptroller came to be in possession of a recycling tote from a DSS storage room in the subbasement of the Rath Building in March 2013 and how the issue of paper records retention and security emerged as an issue. Unfortunately, Ms. Fraas' narrative is entirely inaccurate.

Through separate, voluminous written submissions and oral testimony before the Legislature's Government Affairs Committee on June 11, 2013 and June 25, 2013, Deputy County Executive Richard Tobe and DSS Commissioner Carol Dankert-Maurer addressed the recycling tote issue in great detail and rebutted the Comptroller's oral comments with compelling evidence. Video evidence and a sworn affidavit from a DSS representative were introduced during the aforementioned June 25th Committee meeting. This evidence contradicted Ms. Fraas' audit report narrative and calls into question Ms. Fraas' and Comptroller Mychajliw's oral testimony as to how the Comptroller came to possess the recycling tote.

There is no dispute that there was a paper records disposal issue involving unsecured recycling totes that DSS management and the County administration first learned about on April 1, 2013. However, the administration immediately took steps to correct the deficiency and address the problem – actions the Comptroller acknowledged in his oral testimony in June 2013 and in the audit report. There is no evidence of any disclosure of records or information or any suggestion that the public was harmed. Furthermore, the Comptroller's office publically misrepresented the facts and circumstances surrounding the manner in which records are handled, stored and disposed of.

What is clear is that the Comptroller's office engaged in deception to gain access to the DSS documents in March 2013. In May and June 2013 testimony concerning what and when the Administration knew about the records disposal concern was presented that was shown to be completely untrue. In addition, the Comptroller's office has admitted knowing about a records security issue in mid-March 2013, and not bringing it to the Administration's attention until DSS asked about the matter in a meeting with Ms. Fraas on May 2nd regarding the Medicaid investigation and audit and the expansion of the audit scope.

Welfare Management System Controls

Aside from the recycling totes issue, the Comptroller's main area of inquiry in the audit was intended to examine internal controls including the New York State Welfare Management System ("WMS") and the limits therein on DSS employees' ability to make data changes on client records. However, the Comptroller stated that they were unable to complete testing over WMS access and as such, they could not form an opinion on this objective.

From the commencement of the audit, based on guidance and directives from State officials in the New York State Office of Temporary and Disability Assistance, DSS was compelled to redact certain customer/client information from records to be reviewed by auditors. The Comptroller was made aware of this condition from the start of the audit and agreed to the redacted client data (domestic violence history and HIV status).

During the Comptroller's field work, DSS staff repeatedly explained WMS and noted that the system is controlled, managed and programmed by the State's Office of Temporary and Disability Assistance ("OTDA") in conjunction with the New York State Office of Information Technology Services ("ITS"). WMS is the State's system and the data contained therein is their data, with DSS serving as a de facto contractor. The system is designed by the State to allow local social service districts and their employees to update client records to change data due to shifting client situations and circumstances. DSS informed auditors that user access for WMS is determined by the DSS employees' role and function and employees are not given universal or carte blanche access to all levels of WMS.

The Comptroller's audit report stated that they requested data, including user profiles, passwords, transaction logs, user access logs, and so forth in order to test transactions in WMS, but were rebuffed. The audit included a lengthy quote in which the Comptroller's office said it was rebuffed on this request for several reasons, including the magnitude of the Comptroller's request, size of the data, logistical concerns in producing the data, security concerns, and the absence of technical knowledge needed to interpret the files, which would be voluminous. The Comptroller did not directly attribute the quote, but insinuated that DSS refused the Comptroller's request for data logs. **That is not true**.

DSS staff told the Comptroller's office in writing on June 6, 2013 that the quote and explanation came from ITS staff in Albany. DSS is not an information technology/WMS specialist and had to rely on the State agency for expertise and guidance on the Comptroller's large request, noting once again that WMS is the State system – not a County system. ITS provided a response to the Comptroller's request to DSS, and we passed along the State's explanation that the Comptroller's request was not technically feasible or practicable. ITS, which controlled the data, explained a myriad of technical and other reasons why the State agency would have difficulty providing the information sought by the Comptroller. The audit failed to make this distinction and note the State's response.

Eligibility and Recertification

The Comptroller stated that they sought to create a sample set of client records for TA in order to review both the initial eligibility and recertification for clients but were thwarted. Though the Comptroller commenced the TA audit in February 2013, they waited several months to initiate any

effort to seek client specific information. By the time the Comptroller's office requested the WMS transactions they had already made public allegations regarding client records and the recycling totes. It is important to note that the Comptroller's office never requested actual case records.

On June 7, 2013, citing Ms. Fraas' improper removal, custody and retention of DSS records from the DSS recycling tote, the Comptroller's refusal to respond to the administration's request for the return of the records, and the Comptroller's violation of confidentiality agreements that they signed to conduct the TA audit, DSS' Office of Legal Counsel declined to provide auditors with access to the TA records. DSS formally suspended the Comptroller's access to confidential client records until the Comptroller returned other client records improperly taken by the Comptroller. On June 27, 2013, two days after issuing the TA audit, the Comptroller returned the recycling tote to DSS. Once the breach of the confidential records was cured, the Comptroller's office was properly positioned to resume the TA audit and DSS would have resumed cooperation. However, the Comptroller's office concluded the audit rather than resume. That was their decision and their action.

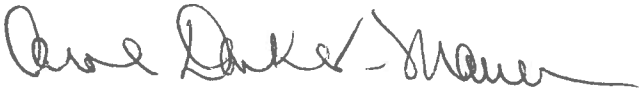
Conclusion

DSS supports well-founded, objective performance audits that help County government and its largest department to operate more efficiently and effectively. However, it is clear from the conduct of Ms. Fraas that the TA audit falls demonstrably short in this regard. By all measures, the report and process employed by the Comptroller does not meet the rigorous standards of an audit under GAO standards.

Based on the aforementioned numerous violations of GAGAS and deceptions, as well as the other evidence cited above, DSS rejects the opinions expressed by the Comptroller's office in the TA audit.

Thank you for the opportunity to provide this formal written response to the Erie County Comptroller's Temporary Assistance report.

Sincerely,



Carol Dankert-Maurer
Commissioner of Social Services

cc: Mark C. Poloncarz, Erie County Executive
Stefan I. Mychajliw, Erie County Comptroller
Robert W. Keating, Director of Budget and Management
Erie County Fiscal Stability Authority