

2021 DEC 14 '21 #21119

Erie County Probation Department

Restitution Payments

DECEMBER 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Erie County Probation Department

Audit Objective

Determine whether the Erie County (County) Probation Department (Department) officials enforced restitution orders, notified the court when a probationer violated the court order and disbursed victim restitution payments promptly and appropriately.

Key Findings

- Department officials did not always properly enforce restitution orders, notify the court when a probationer violated the court order, or disburse victim restitution payments appropriately. As a result, some victims may never receive the payments to which they are entitled.
- Officials did not establish adequate policies and procedures to enforce and monitor restitution obligations.
- 10 of the 30 restitution orders we reviewed had uncollected payments totaling \$24,365.
- Department officials had \$36,013 they could not provide support for the source of the funds that could potentially be used to pay unsatisfied restitution orders.

In addition, officials did not distribute all available undisbursed restitution or maintain sufficient undisbursed restitution records. Department policy also limited paying victims with unsatisfied restitution a maximum of \$100 payment each year their probationer's case was active.

Key Recommendations

- Establish adequate written policies and procedures for enforcing and monitoring restitution obligations.
- Provide meaningful oversight.
- Enforce and monitor restitution according to court orders and Department policies and procedures.

County officials agreed with our recommendations and indicated they will take corrective action. Appendix B includes our comment to the County's response.

Background

The County is located in the western New York Region. The County is governed by the County Legislature (Legislature), which is composed of 11 Legislators, one of whom serves as the Chairperson.

The County Executive is the Chief Executive Officer and is responsible for oversight of County operations.

The County Comptroller is the Chief Fiscal Officer and manages the County's financial affairs.

The Probation Commissioner (Commissioner) oversees and manages the Department.

Restitution Quick Facts

For the Audit Period:

Collections	\$721,290
Disbursements	\$723,190
Orders with Probation Supervision	727

Audit Period

January 1, 2018 – June 30, 2019

Collecting, Enforcing and Disbursing Restitution

Restitution is compensation ordered to be paid to a victim as a result of a defendant's criminal offense that resulted in the victim sustaining losses and/or damages. Courts may require probationers to pay restitution: at the time of the sentencing, in periodic installments or in a lump sum by the end of the probation term. Restitution may include, but is not limited to, reimbursement for medical bills, counseling expenses, loss of earnings and the replacement of stolen or damaged property. It is ordered by the court at the time of sentencing. Further, only a court can modify the restitution terms.

Department officials should ensure the collection and enforcement of restitution is in accordance with State laws, rules and regulations; Department policies and procedures; court-issued restitution orders; and any applicable guidelines set forth by the Office of Probation and Correctional Alternatives. The timely collection and enforcement of court-ordered restitution from probationers helps ensure that victims receive the compensation to which they are entitled.

The Commissioner is responsible for managing the Department's day-to-day operations and developing policies and procedures for collecting, safeguarding, disbursing and enforcing restitution, which includes reporting to the court when probationers fail to make court-ordered restitution payments.

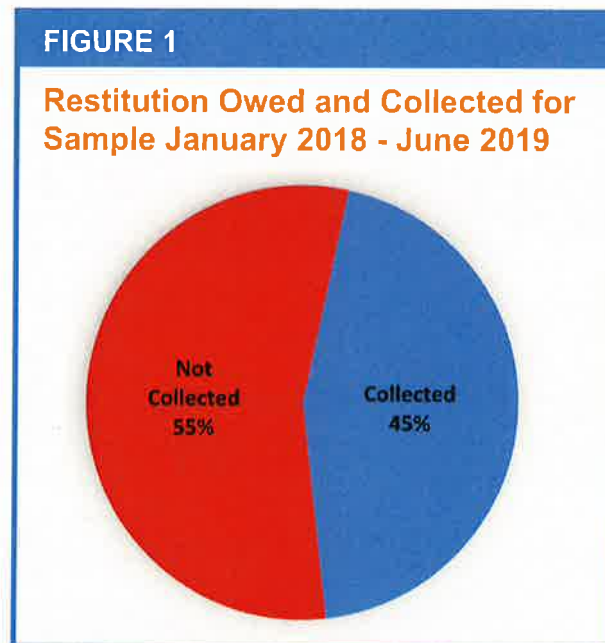
How Should the Collection of Restitution Be Enforced?

Probation departments must have a system that details the use of incentives and sanctions to encourage probationers to comply with the court's restitution order. A probationer's failure to comply with a restitution order must be reported to the court prior to probation supervision ending, allowing the court time to determine how to proceed. Therefore, probation department staff should maintain adequate records of probationers' total current and past due restitution and actions the department took to enforce restitution orders.

Officials Did Not Adequately Enforce Restitution Collections

The Department's "Operations Procedure regarding Review of Financial Obligations with Probationers" (Operations Procedure) states that probation officers are to, on at least a quarterly basis, review all outstanding financial obligations with their assigned probationers, including restitution, remind them of any upcoming or outstanding obligation due dates and document these financial obligation reviews. However, beyond that procedure, the Department has not established specific guidelines for enforcing and monitoring restitution obligations prior to the time at which a probation supervision case is being prepared for closure, including if and when warning letters and/or court notification should be sent when probationers are delinquent with their court-ordered restitution payments.

The Department had 727 restitution orders (cases) with probation supervision during our audit period. We reviewed 30 restitution cases totaling \$622,046, of which 20 had payments due during our audit period, to determine whether the Department enforced the collection of restitution. During our audit period, Department officials should have collected \$44,178 from probationers for these cases, including \$9,292 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However, only \$19,813 was collected while \$24,365 remained outstanding (Figure 1). Specifically, 10 cases were in arrears \$24,365 and the required payments for the remaining 20 cases were in compliance with the restitution order terms, which included 10 with lump sum payments not yet due.



The Department did not adequately enforce the 10 cases with restitution in arrears. We reviewed the last payment made by each probationer during our audit period to determine if and when the Department notified the court when probationers were not compliant with the court's restitution order. Of the 10 cases in arrears, we found:

- The Department did not notify the court for six cases that were 29 to 397 days delinquent from the payment due dates through the end of the audit period.
- The Department notified the court for four cases.
 - One case had court notification issued to inform the court that probation supervision was ending with restitution remaining. This case was partially paid with the last payment made in March 2017 and the Department notified the court in May 2018, 427 days after the last payment was collected and 69 days prior to the end of probation supervision.
 - Three cases had court notifications issued because the probationers did not adhere to other conditions of probation and the Department included non-payment of restitution in the notification.

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- One case had no payments made and the court was notified when restitution was 692 days delinquent.
 - For one case, the court was notified in January 2018 and although payments were subsequently made through April 2018, the probationer remained in arrears. Probation was revoked in June 2018.
 - For one case, the court was notified in December 2018, and the probationer made payments in February, March, April and May 2019.

Of the 10 cases in arrears, probation officers documented having conversations with probationers for nine cases regarding their restitution order (an average of nine conversations per arrears case), in accordance with the Operations Procedure. For the one case with no conversations documented, the probationer's lump sum restitution payment was not yet due at the time the probationer absconded from probation supervision. The probation officers' conversations with probationers regarding late or incomplete restitution payments generally did not result in compliance with court restitution orders.

The Commissioner and Deputy Commissioner told us that the court should be notified if a delinquent order is nearing the end of its restitution term. However, waiting until the end of the restitution term does not help ensure victims receive the money they are owed and provides the courts with less time to adjust restitution orders or probation terms. They also told us that probation officers use professional judgement to determine if a case should have court notification and that the decision to notify the court is situational and depends on the specific circumstances of each case. Because the Operations Procedure did not provide specific guidance on when the court should be notified for nonpayment of restitution, probation officers' actions were inconsistent.

How Should Restitution Payments Be Processed?

The Department should disburse collected restitution to victims promptly. Further, Department officials should make reasonable efforts to locate victims that no longer reside at the address on record in a timely manner.

The Department's Policies and Procedures for the Cashier's Office (Policy) states that twice a month the Cashier's Office reviews disbursement amounts in probationers' accounting records, prepares a list of checks to be printed by the County Comptroller's Office and issues checks to the applicable parties. The Policy also states that on a quarterly basis the Cashier's Office will obtain a report from the County Comptroller's Office regarding uncashed checks. In accordance with the Policy, when a check is returned as undeliverable or remains uncashed, the Cashier's Office will use reasonable efforts to locate the intended beneficiary

and issue a new check. All reasonable efforts are to be documented and must include reviewing case file information, searching through a software program or researching via the Internet (for business victims). If the victims have not been located despite the Department's reasonable efforts after one year from the payment made by the probationer, the unclaimed funds will be transferred to the Department's Victim Trust Account.

Officials Generally Disbursed Restitution Payments and Made Reasonable Efforts To Locate Victims With Uncashed Checks

To determine whether payments were made to victims in accordance with the Policy, for our sample of 30 cases, we reviewed the last restitution payment made by the probationer and determined when it was disbursed to the victim. During our audit period, the last collections received for 19 of the 30 cases totaled \$3,269 with no collections received for the remaining 11 cases. The Cashier's Office made 18 payments totaling \$3,256 to victims on average 20 days (between four and 84 days) after payment was received. Two of the 18 payments were disbursed to victims more than a month after the Department received payment: one was disbursed 72 days later after the Department made efforts to locate the victim and one payment was disbursed 84 days later. One other payment remained undisbursed for 33 days before the audit period ended. Although not specified in the Policy, the Commissioner and the Head Cashier told us the Department does not immediately make payments to victims for small amounts (under \$15) because they have found victims are less likely to cash these checks. This money is paid when either additional amounts are received, or time has passed without additional payments received.

We also reviewed the June 2019 bank statement and Department records to determine if there was idle victim money and whether reasonable efforts were taken to disburse the money. The Department did not have any outstanding checks more than a year old that should have been followed up on or transferred to the undisbursed restitution account.

How Should Undisbursed Restitution Payments Be Administered?

Undisbursed restitution payments (undisbursed restitution) is defined in law as those payments that were remitted by a defendant but not paid to the intended victim and remain unclaimed for a year, and the location of the intended victim cannot be found after using reasonable efforts. A list of unsatisfied restitution orders must be maintained in order to determine which victims' restitution order has gone unsatisfied for the longest period of time to make payments from undisbursed restitution. Unsatisfied restitution orders are defined to mean that the last scheduled payment is at least 60 calendar days overdue. If undisbursed restitution payments have gone unclaimed for a one-year period and the victim

cannot be located after using reasonable efforts, the undisbursed restitution should be paid to the victims with the oldest unsatisfied restitution orders.

Written procedures must be established for how undisbursed restitution will be paid, and should include timeframes for actions, identify the individuals responsible for each of the various steps, the types and the number of victim searches that should be conducted prior to transferring unclaimed money (e.g., unprocessed and outstanding checks) to the undisbursed restitution account and the records to be maintained. Money may be disbursed based upon month or year of the unsatisfied order, and a local director shall provide for a mechanism whereby victims receive a proportion or fixed amount of undisbursed restitution.

The Department's Policy states that the Cashier's Office will, on or about December 1st of each year, produce an Unpaid Victims Report (Report) for any adult probationers active on probation supervision, inclusive of absconders, with unsatisfied restitution orders. The Policy states that the Cashier's Office will review and investigate the Report's information to determine eligible unpaid victims based upon probation order dates that have remained unsatisfied for the longest period of time and the last payment processed from the probationer. The Policy also stipulates that only obligations where the probationer's last restitution payment was at least one year overdue will be considered. In addition, the Policy specifies that the disbursement of money to unpaid victims will be prioritized by the following categories: individuals, businesses or private agencies and government agencies.

The Policy requires that 20 percent of the total Victim Trust Account (undisbursed restitution account) balance will be maintained in the account in order to pay victims who previously could not be located and come forward following the annual disbursement. The fixed amount disbursed to each identified unpaid victim will be \$100. Before disbursing money to unpaid victims, the Cashier's Office is to mail a letter to the unpaid victims in order to verify the victims' locations and that they have not received money from another source.

Officials Did Not Distribute All Available Undisbursed Restitution Payments to Unsatisfied Orders

The Department maintained a list of unsatisfied restitution orders with probationers on probation supervision to make payments from the undisbursed restitution account. The Department documented contact with 34 victims from the list to confirm their location and verify that they had not received payment from another source. The Department made payments totaling \$3,017 to these 34 victims in January 2018 and April 2019, according to the Policy. However, based on the Department's Policy, victims with unsatisfied restitution orders where the payor was no longer on probation supervision with the Department were not eligible to receive undisbursed restitution payments and were not paid.

We reviewed Department records to determine the amount of undisbursed restitution the Department had available to pay victims with unsatisfied restitution orders. Department records identified \$412 as undisbursed restitution in the Victim Trust Account. In addition, the Department has an additional \$36,013 in its bank account for which Department officials could not provide records to support the source of the funds. The Commissioner told us the Department was not reconciling the account. As a result, officials were unaware what the \$36,013 was composed of. Therefore, the Department has as much as \$36,425¹ of undisbursed restitution funds, of which 20 percent (\$7,285) would be retained under the Policy while the remaining \$29,140 should be used to pay other unsatisfied restitution orders if the original victims cannot be located.

The Department identified unsatisfied restitution orders with probationers under probation supervision by age from their software program. At the end of our audit period, there were 53 victims with unsatisfied restitution orders with probationers on active probation supervision that had not received a payment from probationers in at least a year. While these victims are owed a total of \$312,142, the Department can only distribute \$4,058 of the \$29,140 in accordance with its Policy - \$100 to each of 36 victims who are owed more than \$100 and \$458 total to the remaining 17 victims who are each owed less than \$100.

The Commissioner told us the Department does not perform bank reconciliations because she thought the County Comptroller's Office performed them. The Commissioner also said that she thought the additional bank balance was in the account from a software conversion in 2010 but had no support to show when the money was received and from whom. As a result, the Department has additional funds that could potentially be used to pay victims with unsatisfied restitution orders if the Policy allowed for payments in excess of \$100. In addition, it is questionable whether the Department's Policy of paying undisbursed restitution solely to victims whose probationers have active cases is compliant with law. The law states undisbursed restitution must be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time.

Officials Did Not Maintain Sufficient Undisbursed Restitution Records

The Department had records for what comprises their reported \$412 undisbursed restitution balance, but not for the \$36,013 in the Department's bank account. As a result of insufficient and unsupported records, Department officials cannot be sure whether this amount actually constitutes undisbursed restitution or if it is accurate. Further, without complete and accurate records, the risk of theft and misuse of collections significantly increases.

...[T]he
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¹ Of this amount, \$36,013 is potential undisbursed restitution because Department officials must determine if the funds are in fact restitution and have remained unclaimed for at least a year, and perform reasonable efforts to locate the original intended victim before the funds can be used to pay other unsatisfied restitution orders.

What Do We Recommend?

The Commissioner should:

1. Develop adequate written policies and procedures for enforcing and disbursing restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Establishing timeframes for sending late payment and court notifications,
 - Maintaining complete records, and
 - Identifying the individuals responsible for each of the various steps.
2. Enforce and monitor restitution cases according to court orders.
3. Contact the New York State Office of Probation and Correctional Alternatives for guidance on establishing a complete list of unsatisfied restitution orders and making undisbursed restitution payments for these orders, then revise the Policy accordingly to allow for additional payments from the undisbursed restitution account.
4. Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as ensuring bank reconciliations are completed and monitoring such actions by performing critical reviews of bank and unsatisfied restitution order records.
5. Ensure the undisbursed restitution balance is supported with records showing the amount and dates of payments that comprise the balance.

Appendix A: Response From County Officials



County of Erie
Mark C. Poloncarz
County Executive
Department of Probation

Michelle A. Olszowy
Commissioner

Kelli Blakeley
Deputy Commissioner

July 25, 2021

Julie Landcastle, Chief Examiner
Statewide Audit
State off Building, Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

Dear Ms. Landcastle:

The following is the audit response in regards the Erie County Probation Department Restitution Payments Draft Report of Examination (S9-20-11) for the period covered January 1, 2018 – June 30, 2019.

In regards to the findings by the Office of the State Comptroller related to our department's enforcement of restitution collection, I concur with the recommendation for a more thorough policy and procedure which would include timeframes for court notification when a probationer is delinquent in restitution payment in accordance with the court order. In addition, we recognize that a third of the restitution cases sampled during the audit were in arrears with their required payments and the courts were not notified in a timely manner of this delinquency.

Our department recognizes the importance of a probationer's obligation to make restitution to the victim of his/her crime in a timely manner. However, we also recognize that such often is difficult to accomplish without addressing some of the probationer's key criminogenic needs such as substance abuse and/or mental health treatment and employment. Our probation officers ongoingly consider a probationer's risk factors and needs as they relate to recidivism and violence which often affects the focus of restitution payments by the probationer. Regardless, court notification along with the circumstances surrounding is essential.

Secondly, with respect to the distribution of undisbursed restitution payments from the department's Victim Trust Account, the department clearly was on point and in compliance with its policies and procedures when disbursing such funds to victims in both January 2018 and April 2019. Thus, I concur with the initial audit information presented in this section of the report.

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However, I voice strong objection to the information presented in the latter section of the report which references \$36,013 as undisbursed restitution funds. The report further states department officials were unaware of what comprised these funds and could not provide records to support the source of the funds when in fact, the department was well aware and had detailed records to support \$29,752.86 of these funds. Our department remains steadfast in attributing these funds to our 2010 software conversion and in stating that this sum is not comprised of undisbursed restitution. However, I also recognize the clear need to institute a routine bank reconciliation process in conjunction with our Erie County Comptroller's Office. I further recognize that if such a bank reconciliation process had previously been in place, these monies in question would have been identified and resolved in a more expeditious fashion.

Lastly, the findings of the Office of the State Comptroller related to the distribution of undisbursed restitution to victims also cites the department policy limiting such to \$100 as well as the department policy regarding paying only victims whose probationers are under active probation supervision. With respect to the former, the department's annual Victim Trust Account has averaged \$2300 thus, in developing the related policy and determining a maximum disbursement amount, \$100 was determined as appropriate. However, this policy will be amended in order to accommodate those circumstances wherein the annual Victim Trust Account allows for a greater distribution to victims. With respect to the latter policy, our county's legal department is reviewing this matter and consulting with the Office of the State Comptroller to determine the legality of this recommendation. Our department's present stance is that upon the expiration, termination or revocation of a probationer's Order of Probation which outlines the conditions of restitution, our department is no longer authorized and/or responsible to collect and/or disburse restitution.

In closing, I would like to thank the Office of the State Comptroller for conducting such a thorough review of our department's restitution payment processes and appreciate the guidance you have provided to improve such processes. We look forward to your issuance of the final audit report and will, in the interim, initiate our corrective action plan efforts.

Sincerely,

Michelle A. Olszowy
Commissioner

cc: Mark C. Poloncarz, Erie County Executive
Benjamin Swanekamp, Deputy Director - Erie County Division of Budget and Management
Almeria McKnight, Systems Accountant - Erie County Probation Department

Appendix B: OSC Comment on the County's Response

Note 1

While Department officials attribute the money to an error resulting from the Department's 2010 software conversion, officials did not provide documentation to support the composition of the money. Although a software conversion could impact a book balance it would have no effect on the bank account's balance. The source of the money on deposit remains unknown.

Appendix C: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We selected the County based on reported restitution collected in 2016, population and geographical location. For a fair representation of county probation departments, we selected counties with varying levels of reported restitution, population sizes and geographic locations across the State for this multi-unit audit.
- We interviewed Department staff to gain an understanding of the financial operations and existing internal controls related to collecting, disbursing and enforcing court-ordered restitution.
- We reviewed relevant State laws, rules and regulations. We also requested from Department officials all Department policies and procedures applicable to collecting, disbursing and enforcing court-ordered restitution and reviewed what was provided.
- We interviewed Department officials to gain an understanding of the Department's computer systems used to monitor, collect, record and disburse restitution funds and reviewed employees' user access to the computer systems in comparison to their job duties.
- We determined the total amount of restitution collected and disbursed during our audit period by obtaining and reviewing a report that showed cash receipts and disbursements related to all court-ordered restitution during our scope period.
- Using a random number generator, we selected a sample of 30 restitution cases from the Department's reports showing all new, open and closed court cases that involved restitution during our audit period to determine whether payments are made promptly and appropriately, and how the Department monitors cases with restitution.
- For the same sample of 30 restitution cases, we reviewed the last payment made by the probationers to determine if and when the Department notified the court for noncompliance with court-ordered restitution payments. If a payment was not made by a probationer, we used the first payment due date.
- We obtained and reviewed the June 2019 bank statement and other Department records to determine the total amount of undisbursed restitution available to disburse to unsatisfied restitution orders.
- We reviewed a quarterly report of outstanding checks to determine if the Department was attempting to locate the intended victims of these payments, and what those efforts included. If the victim was located, we

determined if a new check was issued and if the victims could not be located, whether the money was appropriately moved to undisbursed restitution. The first quarterly report in our audit period was selected because the checks in the report had more than a year elapsed by the end of our audit period and reasonable efforts should have been made to locate the victims or move the money to undisbursed restitution.

- We obtained and reviewed a report of unpaid restitution orders to determine which restitution orders have remained unsatisfied for the longest period of time, and to calculate how many of the oldest unsatisfied orders reported by the Department could be paid from the available undisbursed restitution balance.
- We determined the last time the Department made a payment of unclaimed restitution. For any payment of unclaimed restitution made during the audit period, we determined if the recipient had a restitution order that remained unsatisfied for the longest period of time, and whether contact was made with the victims prior to making payments to determine if they were still owed restitution.
- Based on our review of the Department's Policy, we determined if the Department had written procedures regarding the processing and disbursing of unclaimed restitution, victim location, and whether the Department staff was following the procedures for disbursing unclaimed restitution.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make the CAP available for public review in the Clerk's office.

Appendix D: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

<https://www.osc.state.ny.us/local-government/publications>

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

<https://www.osc.state.ny.us/local-government/publications>

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

<https://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf>

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

<https://www.osc.state.ny.us/local-government/publications>

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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