



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Financial and
Operating Practices of the Office of the
Special Narcotics Prosecutor

FM19-087A

June 28, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the Office of the Special Narcotics Prosecutor (OSNP) to determine whether it maintained adequate fiscal controls over its City-funded Personal Service (PS) and Other Than Personal Service (OTPS) expenditures as required by applicable rules, regulations, policies, and procedures.

The audit found that OSNP generally maintained adequate controls over its OTPS expenditures, totaling \$2,362,758. However, we found that certain of those expenditures, totaling \$12,203, lacked adequate support in OSNP's records to establish that they: (1) were allowable under Comptroller's Directive #6, *Travel, Meals, Lodging, and Miscellaneous Agency Expenses* or other applicable guidelines; and (2) supported OSNP's criminal justice activities, in accordance with OSNP's classification of them as "Special Expenses" under budgetary Object Code 460. Many of these problematic OTPS expenditures, totaling \$5,905 (48 percent by dollar value), were charged to a credit card assigned to the Special Narcotics Prosecutor. OSNP has now closed the credit card account. The audit also found that, regarding PS expenditures, OSNP paid a total of \$1,077,475 in City-funded one-time payments to 151 ADAs during our audit scope period, as directed by their employing DAs, but with no documentation that those payments were based on appraisals of their job performance. Additionally, OSNP did not maintain adequate personnel records for its ADAs as required by Comptroller's Directive #13, *Payroll Procedures*.

The audit made eight recommendations, including that, with regard to OTPS expenditures, OSNP should properly use the City's Chart of Accounts, including its definitions, in identifying and classifying expenditures, and ensure that the 460 object code is used only for special expenses that are: (a) not chargeable to other object codes, and (b) related to law enforcement activity; and that OSNP follow Comptroller's Directive #6 regarding the proper use of City funds in the agency's operations. With regard to PS expenditures, the audit recommendations included that OSNP should ensure that one-time payments to ADAs are appropriately supported by documented justifications based on the ADAs' job performance and that information regarding the dates and amounts of and justification for one-time payments is maintained in the recipients' personnel files.

The results of the audit have been discussed with OSNP officials, and their comments have been considered in preparing this report.

Their complete written response is attached to this report. If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Financial and Operating Practices of the Office of the Special Narcotics Prosecutor

FM19-087A

EXECUTIVE SUMMARY

The Office of the Special Narcotics Prosecutor (OSNP) is responsible for felony narcotics investigations and prosecutions in the five boroughs of New York City (City). OSNP was founded in 1971 and is the only agency of its kind in the United States. The Special Narcotics Prosecutor is appointed by the City's five independently elected District Attorneys (DAs).

During our audit scope period, Fiscal Years 2018 and 2019, OSNP employed or administered the City-funded compensation of 313 individuals, consisting of 156 Assistant District Attorneys (ADAs) the City's five DAs assigned to OSNP, referred to as legal staff, and 157 support staff members.

OSNP pays salaries, benefits, and one-time payments for recognition and retention purposes for both legal and support staff. However, ADAs' salaries and any additional one-time payments are determined by each ADA's home DA's office.

According to the City's Comprehensive Annual Financial Reports, OSNP expended \$22,184,198 in City funds in Fiscal Year 2018, consisting of \$20,626,249 for Personal Services (PS) and \$1,557,949 for Other Than Personal Services (OTPS). In Fiscal Year 2019, OSNP expended \$23,292,327 in City funds, consisting of \$21,734,222 for PS and \$1,558,105 for OTPS.

The objective of this audit was to determine whether OSNP maintained adequate fiscal controls over its City-funded PS and OTPS expenditures as required by applicable rules, regulations, policies, and procedures.

Audit Findings and Conclusion

For the period July 1, 2017 through May 30, 2019, OSNP generally maintained adequate controls over its OTPS expenditures, totaling \$2,362,758. However, we found that certain of those expenditures, totaling \$12,203, lacked adequate support in OSNP's records to establish that they (1) were allowable under Comptroller's Directive #6, *Travel, Meals, Lodging, and Miscellaneous Agency Expenses* or other applicable guidelines; and (2) supported OSNP's criminal justice

activities, in accordance with OSNP's classification of them as "Special Expenses" under budgetary Object Code 460.¹

Generally, the inadequately supported and potentially inappropriate OTPS expenditures involved transportation expenses, restaurant and meal charges, and expenditures related to special events, such as two functions honoring other law enforcement officials. Many of these problematic OTPS expenditures, totaling \$5,905 (48 percent by dollar value), were charged to a credit card assigned to the Special Narcotics Prosecutor. OSNP has now closed the credit card account.

With respect to PS expenditures, we found that OSNP paid a total of \$1,077,475 in City-funded one-time payments to 151 ADAs during our audit scope period, as directed by their employing DAs, but with no documentation that those payments were based on appraisals of their job performance. Additionally, OSNP did not maintain adequate personnel records for its ADAs as required by Comptroller's Directive #13.

Finally, we found that OSNP improperly authorized the payment of an estimated \$88,710 in cash overtime to employees who, according to OSNP's records, worked overtime voluntarily and were therefore ineligible to receive cash compensation for doing so.

Audit Recommendations

To address the issues raised by this audit, we make the following eight recommendations:

Regarding OSNP's OTPS expenditures that lacked adequate support and were potentially inappropriate, OSNP should:

- Properly use the City's Chart of Accounts, including its definitions, in identifying and classifying expenditures, and ensure that they use the 460 object code only for special expenses that are (a) not chargeable to other object codes, and (b) related to law enforcement activity;
- Follow Comptroller's Directive #6 regarding the proper use of City funds in the agency's operations;
- Ensure that established internal procedures regarding the use of agency credit cards are followed at all times and by all employees; and
- Ensure that payment vouchers submitted through FMS are adequately supported to ensure compliance with Comptroller's Directive #1.

Regarding OSNP's weaknesses in PS expenditures, OSNP should ensure that:

- One-time payments to ADAs are appropriately supported by documented justifications based on the ADAs' job performance;

¹ According to the New York City Chart of Accounts, Object Code 460 denotes "all special expenditures relative to elected officials and other criminal justice activities." An object code is a "3-character code which classifies expenditures pursuant to the Chart of Accounts issued by the City Comptroller." City of New York, Adopted Budget, Fiscal Year 2021, Expense, Revenue, Contract, p. iv, <https://www1.nyc.gov/assets/omb/downloads/pdf/erc6-20.pdf>

- Complete employee personnel records that include, at minimum, the information mandated by Comptroller's Directive #13 are maintained;
- Information regarding the dates and amounts of and justifications for one-time payments is maintained in the recipients' personnel files; and
- Established procedures regarding eligibility for cash overtime payments are followed.

Agency Response

In its response OSNP agreed with seven of the eight recommendations and partially agreed with one recommendation. However, OSNP disagreed with certain findings of the audit. Specifically, OSNP disagreed with the audit's questioning OTPS expenditures related to meals, taxis, and other miscellaneous expenses, including those charged to an American Express credit card, based on the lack of documentation in OSNP's files or the contents of some of the documentation. OSNP maintained that generally its expenditures were appropriate, although OSNP acknowledged the need for improvement in its process to ensure that each expenditure's business purpose is documented in its payment records. OSNP also disagreed with certain statements in the draft report suggesting an inadequate review process for issuing one-time payments to its ADAs. However, OSNP conceded that its records lacked documentary evidence of such reviews. In its response, OSNP stated, "We welcome the thoughtful recommendations provided by the Comptroller in this report and have begun to incorporate those that are appropriate into our internal policy and procedures."

AUDIT REPORT

Background

OSNP is responsible for felony narcotics investigations and prosecutions in the five boroughs of the City. OSNP was founded in 1971 and is the only agency of its kind in the United States. OSNP was granted broad authority under New York State Judiciary Law, Article 5-B, to root out sophisticated narcotics trafficking organizations and track offenders across traditional jurisdictional boundaries. Recognizing the link between drugs and violence, the office also investigates gang-related activity.

The Special Narcotics Prosecutor is appointed by the City's five DAs and enforces the provisions of the penal law relative to felony narcotics offenses and predicate felony cases through the investigation of complaints, preparation of indictments, and trial of defendants indicted on felony narcotics charges.

During our audit scope period, Fiscal Years 2018 and 2019, OSNP employed or administered the City-funded compensation of 313 individuals, consisting of 156 legal staff members and 157 support staff members. The legal staff consists entirely of ADAs, sworn in by the offices of the City's five District Attorneys and assigned to OSNP on narcotics-related cases. According to OSNP officials, these assignments are "negotiated" transfers of employees under the New York State Civil Service Law §70.6.² Support staff are generally hired by OSNP as civil servants, except for those employees working under managerial titles, and support the ADAs' work.

According to the *New York Narcotics Court District Attorneys' Plan of 1971* (DA Plan), last amended in 2018, DAs assign ADAs to OSNP in one of two categories that it refers to as *Central* and *Decentral*. The DA Plan states that *Central* ADAs work on-site at OSNP under its authority and supervision. *Decentral* ADAs, the DA Plan states, work at and remain under the authority and supervision of their home DAs' offices. The DA Plan also provides that the DAs appoint a Special ADA whose job is to oversee all ADA assignments and performance and who "serves at the pleasure of the District Attorneys." The DA Plan defines the Special ADA as the Special Narcotics Prosecutor.

OSNP pays salaries, benefits, and one-time payments for recognition and retention purposes for both legal and support staff. However, ADAs' salaries and any additional one-time payments are determined by each ADA's home DA's office, which directs OSNP to pay the ADA in specified amounts—regardless of where and under whose authority the ADA works.

OSNP's Human Resources unit (HR) manages the agency's Personal Services (PS) expenditures and oversees its payroll, timekeeping, and personnel functions. Support staff account for their own time, using the City's timekeeping system, CityTime, while legal staff account for their time on hard-copy timesheets, which OSNP's timekeeping staff later enter into CityTime.

OSNP's Fiscal Unit manages the agency's Other Than Personal Services (OTPS) expenditures, primarily as procurements through the City's Financial Management System (FMS). Aside from

² New York State Civil Service Law §70.6 provides, in relevant part that the City may by "agreement negotiated between such city and an employee organization . . . provide for the involuntary transfer of employees between city agencies." However, it does not stipulate which agency retains authoritative control over the employee after the transfer, nor which agency is responsible for paying the salary of the employee. Rather, such arrangements are based on agreements between the agencies in connection with each negotiated transfer.

the usual procurement process managed through FMS, OSNP also maintains an office bank account (also referred to as a demand bank account) that has two credit card accounts associated with it that are used to make time-sensitive purchases of goods and services. Checks can also be written against this account. OSNP staff later process the associated bills through FMS by submitting a voucher in FMS matched to the amounts of the credit card expenditures and other funds drawn from this account. The Fiscal Unit performs reconciliations of both the demand bank account and the credit card accounts on a monthly basis.

OSNP is primarily City-funded. However, the office's budget is also supplemented with the net proceeds of asset forfeitures (forfeiture funds) which are provided to OSNP in connection with New York State forfeiture rules as well as separate equitable sharing programs administered by the Treasury Department and the Department of Justice, respectively.³

This audit report concerns OSNP's financial and operating procedures regarding its use of City funds and therefore does not address OSNP's use of forfeiture funds.

According to the City's Comprehensive Annual Financial Reports, OSNP expended \$22,184,198 in City funds in Fiscal Year 2018 – \$20,626,249 for PS and \$1,557,949 for OTPS. In Fiscal Year 2019, OSNP expended in City funds \$23,292,327 – \$21,734,222 for PS and \$1,558,105 for OTPS.⁴

According to the City Human Resources Management System (CHRMS), during our audit scope, OSNP paid 156 ADAs (81 *Central ADAs* and 75 *Decentral ADAs*) \$11,716,333 in Fiscal Year 2018 (57 percent of all PS expenditures) and \$11,995,414 in Fiscal Year 2019 (55 percent of all PS expenditures), all with City funds.

Objective

The objective of this audit was to determine whether OSNP maintained adequate fiscal controls over its City-funded PS and OTPS expenditures as required by applicable rules, regulations, policies, and procedures.

Scope and Methodology Statement

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

³ Law enforcement authorities effect asset forfeitures through the confiscation of assets that have been used for or derived from criminal activities to disrupt those criminal activities, punish criminals, and return assets to victims of these crimes. Assets that can be liquidated are sold by U.S. Marshals, with the net proceeds (after victims are compensated) shared with the law enforcement entities which seized the funds.

⁴ OTPS expenditures included 2,012 payment vouchers totaling \$2,362,758 for the period July 1, 2017 through May 30, 2019. The total OTPS expenditure figures also include corrections of vouchers from fiscal years prior to our audit scope. A payment voucher may encompass multiple individual payments to a single vendor.

The scope of this audit covers Fiscal Years 2018 and 2019 (the period from July 1, 2017 through June 30, 2019). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with OSNP officials during and at the conclusion of this audit. A preliminary draft report was sent to OSNP and discussed at an exit conference on April 1, 2021. On May 12, 2021, we submitted a draft report to OSNP with a request for written comments. We received a written response from OSNP on May 26, 2021. In its response, OSNP agreed with seven of the audit's eight recommendations (#1, #2, #3, #4, #6, #7, #8) and partially agreed with one recommendation (#5). However, OSNP disagreed with certain statements related to the audit's findings as set forth in the draft report. OSNP maintained that generally its OTPS expenditures were appropriate, although it acknowledged the need for improvement in its supporting documentation. OSNP also disagreed with certain statements in the draft report suggesting that it lacks a review process in issuing one-time payments to its ADAs. However, OSNP conceded that its records lacked documentary evidence of such reviews.

We address OSNP's specific disagreements with aspects of the report's findings in the applicable sections of the report below.

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

FINDINGS AND RECOMMENDATIONS

For the period July 1, 2017 through May 30, 2019, OSNP generally maintained adequate controls over its OTPS expenditures, totaling \$2,362,758. However, we found that certain of those OTPS expenditures, totaling \$12,203, lacked adequate support in OSNP's records to establish that they (1) were allowable under Comptroller's Directive #6, *Travel, Meals, Lodging, and Miscellaneous Agency Expenses* or other applicable expenditure guidelines, and (2) supported OSNP's criminal justice activities in accordance with their classification as "Special Expenses" under budgetary Object Code 460. Generally, the problematic OTPS expenditures involved transportation expenses, restaurant and other meal charges, and expenditures related or charged to special events, such as external functions honoring other law enforcement officials and offices.

The Introduction to Comptroller's Directive #6 explains the risks associated with spending public funds for employee transportation, meals and refreshments, and miscellaneous expenses:

The expenditures covered herein are necessary to conduct official City business. However, they are often targets of abuse and should be the subject of careful agency scrutiny. Consequently, Agency Heads must take special precautions to ensure that these expenditures are incurred for appropriate agency business needs; that they are in the City's best interest; and that agencies establish policies to ensure compliance with this Directive. Likewise, all City employees are required to exercise good judgment and reasonableness when incurring expenses on behalf of the City.

Many of OSNP's problematic OTPS expenditures, totaling \$5,905 (48 percent by dollar value), were charged to a credit card assigned to the Special Narcotics Prosecutor. Because OSNP paid the credit card bill out of an office bank account (its demand account) rather than through FMS, those charges, like all OSNP's "Special Expenses," lacked the degree of external transparency that exists for City expenditures processed directly through FMS. This is because OSNP maintained the City's only documentation of the credit card bill and the specific charges on it. After paying the credit card bill out of its office-administered bank account, OSNP replenished that account with a FMS voucher that described that replenishment payment only as a "Special Expense." The replenishment voucher provided no further information—such as the purpose of the underlying expenditures—in the FMS record.

With respect to PS expenditures, we found no documentary evidence that OSNP reviewed and documented the performance of the ADAs to whom it paid one-time payments as directed by the five DAs' offices that employed them and assigned them to OSNP. OSNP paid a total of \$1,077,475 in one-time payments to 151 ADAs using its City-funded budget during our audit scope period, with no documentation that the one-time payments were based on appraisals of their job performance. Additionally, OSNP did not maintain adequate personnel records for its ADAs as required by Comptroller's Directive #13.

Finally, we found that OSNP improperly authorized the payment of cash overtime to employees who worked overtime on a voluntary basis, according to OSNP's payroll records, and were therefore ineligible to receive cash compensation for those hours. In total, OSNP approved 843 of 1,488 requests for cash compensation for voluntary overtime (57 percent) totaling, we estimate, approximately \$88,710 during our audit scope period.

These issues are discussed in detail in the findings that follow.

Certain OTPS Expenditures Were Inappropriate or Lacked Adequate Support

For the period July 1, 2017, through May 30, 2019, OSNP generally maintained adequate controls over its OTPS expenditures, which exceeded \$2.36 million. However, we found that a sub-group of those expenditures were problematic as described below. Specifically, we reviewed all 114 expenditures, totaling \$27,282, OSNP categorized as Special Expenses during the audit scope period. We found that 75 of them, totaling \$12,203 (45 percent by dollar value), lacked adequate support in OSNP's records to establish that (1) they were allowable under Comptroller's Directive #6, which governs expenditures of City funds for employee transportation and meals and similar miscellaneous expenses, and other applicable expenditure guidelines; and (2) served a City business purpose relative to criminal justice activities. In that regard, we found that OSNP's designation of these expenditures as "Special Expenses" under Object Code 460 may have been inappropriate, in that, as applied to OSNP, only payments "relative to" criminal justice activities qualify as "Special Expenses" according to the Chart of Accounts issued by the City Comptroller. If the expenditures in question lacked a demonstrable City business purpose relative to criminal justice activities, OSNP should not have charged them as such.

In addition, Comptroller's Directive #1, section 5.11, *Appropriate Documentation of Transactions and Internal Controls*, states, "All transactions and significant events need to be clearly documented and the documentation readily available for use or examination. Internal controls should be documented in management administrative policies or operating manuals. All documentation should be properly managed and maintained in accordance with updated records retention schedules."

After the exit conference, OSNP provided supporting documentation to justify certain OTPS expenditures that we initially identified as problematic in the preliminary draft report. Although that supporting documentation was not properly maintained with the appropriate payment vouchers as required by Comptroller's Directive #1, we accepted it, eliminated references to those expenditures in this report, and reduced the dollar amount of the finding accordingly. OSNP is required to properly maintain all supporting documentation for its expenditures. The remaining problematic OTPS expenditures are discussed below.

Potentially Inappropriate Meal Expenditures

Comptroller's Directive #6 states that eligibility for meal reimbursement, in accordance with Federal per diem guidelines, includes meals that employees purchase while traveling long-distance on behalf of the City. The Directive also allows for the purchase of "light refreshments or modest meals for employee incentive and recognition events, including awards ceremonies" in accordance with the Department of Citywide Administrative Services' (DCAS') *Agency Guidelines for Incentive Programs*, and in several "[a]ppropriate [m]eeting [s]ituations" listed in the Directive.

However, our review of OSNP's "Special Expense" expenditures found 33 meal expenditures totaling \$8,162 that either appeared inappropriate, based on the documentation in OSNP's records, or lacked sufficient documentation to establish that they were appropriate. Expenditures that appeared inappropriate based on OSNP's records included three lunch outings, each of which entailed restaurant meals for three employees "scouting out holiday party locations" and four meal

expenditures incurred in connection with retirement parties. Under Comptroller's Directive #6, "Costs incurred in connection with . . . retirement or farewell parties . . . generally may not be charged to an agency," as discussed further below. Other expenditures for meals lacked a documented City business justification. While some of these expenditures were expressly approved by the Special Narcotics Prosecutor, that fact alone did not necessarily make them allowable under Comptroller's Directive #6 in the absence of a documented City business justification.

OSNP Response: "We would like to clarify that nearly all of our meal expenditures referred to above were appropriate [sic] expenses per Directive 6. Specifically, of the 33 meal expenditures that were deemed potentially inappropriate, the majority or 93% were for events that included non-City employees and staff lunches where employees were required to forgo their lunch hour, both are permitted expense categories per Directive 6 section 8.1.2 #9 and #5. A small group totaling \$586 or 7% were for business luncheons with officials or executives from other agencies over the two year period audited, these expenses are also permissible under Directive 6 section 8 and 15. . . . In our opinion, it is good for the morale of the office to show our appreciation of staff's dedication to the important work we do for the City, which is why we provided light refreshments (cake and coffee) in honor of an employee's retirement after many years of service."

Auditor Comment: As previously noted, the questioned meal expenditures either appeared inappropriate, based on the documentation in OSNP's records, or lacked sufficient documentation to establish that they were appropriate. Although OSNP states in its response that some of the questioned meal expenses involved staff lunches where employees were required to forgo their lunch hour, OSNP did not provide evidence to support that statement or to show that the expenditures were allowable. Similarly, expenditures of City funds for meals that include non-City employees are not appropriate under Comptroller's Directive #6 in the absence of a documented City-business purpose. According to Comptroller's Directive #6, "Agency Heads must take special precautions to ensure that these expenditures . . . are in the City's best interest; and that agencies establish policies to ensure compliance with the Directive." Finally, because the Directive allows for light refreshments and modest meals in certain circumstances, we did not question such expenditures or include them in the dollar value of the meal expenditures cited in this report.

Miscellaneous Inappropriate Expenditures

Comptroller's Directive #6, §14.6 states, in part, "Costs incurred in connection with swearing-in ceremonies, testimonial dinners, funerals, retirement or farewell parties, and other similar events are considered social functions that are inappropriate City expenditures. Generally, these items may not be charged to an agency, either directly or as reimbursement to an employee." Further, the Directive prohibits the use of City funds on ceremonial items such as plaques, flowers, plants, and other decorative items, with some exceptions, including purchases of up to \$100 to memorialize employees who died in the line of duty and items purchased for employee incentive and recognition events.

However, our review identified 21 expenditures totaling \$3,536 that were or may have been inappropriate based on the documentation or absence of supporting documentation in OSNP's records, including the following:

- Six expenditures for flowers, none expressly covered under the above-mentioned Comptroller's Directive #6 exceptions;
- Two tickets to a tribute for one of the City's DAs; and
- Four tickets to a retirement party for a federal law enforcement agent.

OSNP Response: "We would like to make clear that the six expenditures for flowers referred to above were funeral floral arrangements for the passing of **direct relative** of our staff. The recognition of a bereaved employees personal loss was intended to provide moral [*sic*] and grievance support to staff experiencing the loss of **close family members** and struggling with emotional hardship. Staff are comforted and appreciative of the office's support during such difficult times. They often return to work after bereavement leave with gratitude and are more devoted to their work." [Emphases in original.]

Auditor Comment: We credit OSNP's explanation that it purchased flowers in an effort to support bereaved employees. As the report notes, however, Comptroller's Directive #6 limits the permissible use of City funds for the purchase of flowers to a few specific situations that did not apply in these cases.

Transportation Expenditures that Lacked Adequate Documentary Support

According to Comptroller's Directive #6 – *Travel, Meals, Lodging, and Miscellaneous Expenses*,

When traveling, whether Local or from a Long-Distance destination, or while at a Long-Distance destination, employees must make every effort to use Public Mass Transit or the most efficient and economical alternate means of travel for transportation purposes. When it is determined that Public Mass Transit is not practical, the use of alternate means of transportation must be authorized in writing by the employee's supervisor.

The Directive further states, "As a rule, Taxi services must not be used for City business." However, it also states that the cost of taxi transportation "may be allowable under certain exceptional circumstances" and provides "a non-exhaustive list of scenarios when Taxi transportation may be appropriate." Those scenarios include, among others:

- transportation for an employee with a physical disability;
- travel after 8:00 p.m. when an employee works overtime;
- late night and/or early morning travel when appropriate based on consideration for employees' safety and security;
- transportation for groups of employees, where the cost of a taxi is cheaper than the cost of the group's "aggregated public mass transit fares";
- transportation of valuable or bulky items; and
- transportation to and from airports and transportation hubs when other more economical means of travel are unavailable or deemed inappropriate.

Thus, the cost of taxi service is generally inappropriate as a City expense, but it is allowable in certain situations.

However, in reviewing the abovementioned 114 "Special Expense" expenditures, we found that 21 of them, totaling \$505, were for taxi rides, none of which demonstrated, based on the information printed on the receipts, that the taxi services corresponded to any of the scenarios

listed in Comptroller's Directive #6. OSNP provided no other supporting documentation for those trips, and consequently we have no basis to determine whether any "exceptional circumstances" existed to make them allowable under Comptroller's Directive #6.

OSNP Response: "The Special Narcotics Prosecutor (SNP), as the head of a law enforcement agency like the DAs, is assigned an office vehicle due to safety concerns related to investigating and prosecuting narcotics traffickers, narcotics gang members, and other individuals involved in violent criminal enterprises. Unlike the DAs, SNP does not have a dedicated driver and/or security guard. When the vehicle assigned to SNP is being repaired and unavailable, it is our practice for the SNP to be driven by an investigator or take a taxi (if investigators are unavailable) for all business travel for personal security. As per Directive 6, taxi transportation 'may be allowable under certain exceptional circumstances' including those 'based on consideration for employees' safety and security'. Therefore, it is our opinion that the taxi charges are permissible and appropriate expenses."

Auditor Comment: Regarding OSNP's expenditures for taxi services, the receipts OSNP provided indicated that the travel occurred during regular business hours, not in the late night and early morning timeframes Comptroller's Directive #6 mentions in relation to employees' safety and security. Moreover, OSNP did not maintain or provide documentation indicating that it incurred the taxi charges in question based on other specific security concerns, such as those outlined in its written response to the draft audit report. Inasmuch as OSNP acknowledges the need for improved documentation of the business purposes of such expenditures, we expect that the office, going forward, will ensure that they are allowable and supported by appropriate justifications before approving them.

Potentially Inappropriate Use of the American Express Credit Card

Of the 75 OTPS expenditures we identified as either potentially inappropriate or inadequately documented, 66, totaling \$5,905 (48 percent by dollar value of the total sum questioned), were charged to an American Express credit card assigned to the Special Narcotics Prosecutor.

With respect to credit card usage, all OSNP employees, including the agency head, are required to follow the agency's *Fiscal Internal Control and Accountability Policy and Procedure*. That procedure, which is in addition to Comptroller's Directive #6, requires that the user of an OSNP credit card, among other actions:

- Complete and submit an approved form (requesting the credit card), detailing the purpose of and the special need to obtain an office credit card;
- Provide payment confirmation and/or receipts;
- Return the card immediately after use; and
- Not use the card for personal purchases.

Although we found that, overall, OSNP employees followed these instructions, we found that the abovementioned \$5,905 OTPS charges on the American Express card assigned to the Special Narcotics Prosecutor lacked some of the required documentation, and, as a result, there was insufficient evidence to establish compliance with OSNP's abovementioned policy and with Comptroller's Directive #6 with regard to these expenditures. According to OSNP's Fiscal Unit, the

card is “used for official business only.” The Fiscal Unit further stated that OSNP assigned a credit card to the Special Narcotics Prosecutor at the time of the official’s appointment, prior to the employment of the current Fiscal staff.

Of OSNP’s 33 expenditures for restaurant meals that either were not allowable under Comptroller’s Directive #6 or lacked sufficient documentation to establish that they were allowable, 26, totaling \$2,673, were charged to the American Express card assigned to the Special Narcotics Prosecutor. OSNP provided no documentation to establish that those meals were related to law enforcement activity or to any other City business allowable under Comptroller’s Directive #6. Twenty of the 21 questioned expenditures for transportation, totaling \$488, and 20 expenditures totaling \$2,736 of the 21 expenditures for purchases other than meals and transportation that either lacked a documented justification or were not allowable under Comptroller’s Directive #6, were also charged to the same credit card. Without a documented justification, OSNP lacks assurance that these expenditures served a City business purpose and did not constitute prohibited personal purchases under OSNP’s abovementioned fiscal policy.

As noted previously, OSNP paid the American Express credit card bill through the bank account that it maintains and administers, rather than through the City’s FMS. After OSNP made payments from this bank account for the credit card bill and otherwise expended funds from that account, it replenished the bank account by submitting a FMS payment voucher that identified the underlying payments only as a Special Expense in FMS, with no further description or supporting documentation in that system. Accordingly, there was no record in FMS of the individual charges and so they lacked the transparency that FMS generally provides for expenditures of City funds paid directly through FMS. Consequently, OSNP’s “Special Expense” spending, including credit card spending, requires careful, documented internal review and control to ensure that the confidentiality required for the office’s law enforcement activities does not incidentally facilitate or obscure inappropriate spending.

Comptroller’s Directive #1, *Principles of Internal Control*, at §4.1, discusses the importance of agency management’s leadership role in establishing a “progressive control environment”:

Maintaining and demonstrating an atmosphere of teamwork, integrity and ethical values, among management and staff, is an important environmental factor towards the success of business financial control. Agency management must play an active and visible role providing the leadership in this area, especially in setting the tone of the organization’s behavioral values. Management’s philosophy and operating style bear a significant influence on organizational values.

In this context, the Special Narcotics Prosecutor’s adherence to the agency’s internal policy on credit card usage is integral to OSNP’s control environment and its ability to provide reasonable assurance of the appropriate use of all City funds entrusted to it.

While Special Expenses constitute a small portion—just over 1 percent—of the total OSNP charged to Object Code 460, the significant percentage of OSNP’s Special Expenses that raise concerns of potential noncompliance with both Comptroller’s Directive #6 and OSNP’s internal control and accountability policy reflects a control weakness that OSNP should address.

After the exit conference, OSNP officials informed us and provided evidence that this American Express credit card account has been closed as of April 15, 2021.

OSNP Response: “The American Express credit card referred to above was an office credit card assigned to the Special Narcotics Prosecutor (SNP) at the time of appointment in 1998. This credit card was accessible by SNP and an executive administrative staff member only and used solely for business purchases authorized by or related to SNP. This card was not shared with other users; therefore, we did not require that it be returned to fiscal after each use. In addition, this card was never used for personal purchase. The executive administrative staff managed card transactions daily and forwarded monthly statements with supporting documentations i.e. confirmation and receipts to fiscal for review and reconciliation purposes.

We would like to reiterate the fact that the vast majority of our expenses cited above were appropriate expenditures per Directive 6, as explained in our responses to each expense category above. These expenses might have been **authorized** by SNP but were **incurred** by and for the office, and not a personal business expense incurred by the SNP. A small number of expenditures, such as funeral flowers were authorized by SNP at her discretion. The SNP incurred minimum business expenses over the two-year audit period, which include taxi rides for \$488 and business lunch meetings totaling \$586 (see responses above under meal and transportation).” [Emphases in original.]

Auditor Comment: As the report notes, the OSNP’s *Fiscal Internal Control and Accountability Policy and Procedure* specified a process that in effect required any employee using an office credit card during our audit scope period to document the need and business purpose for each such use, i.e., for each credit card charge. That process was not followed in relation to the credit card assigned to the SNP individually, and those charges, as our report states, lacked the required documentation of need and business purpose. Inasmuch as OSNP acknowledges the need for improved documentation of the business purposes of certain expenditures, we believe it will be in a better position going forward to ensure that they are allowable and supported by appropriate justifications before approving them.

Recommendations

OSNP should ensure that:

1. The City’s Chart of Accounts is properly used, including its definitions, in identifying and classifying expenditures, and ensure that they use the 460 object code only for special expenses that are (a) not chargeable to other object codes and (b) related to law enforcement activity;

OSNP Response: OSNP agreed with this recommendation and stated, “Although the Special Narcotics Prosecutor is not an elected official, she is appointed by the five DAs who are elected officials and as such expenses relative to and/or authorized by the SNP at her discretion as well as other criminal justice activities have been charged to the 460 code.

After our discussions with the audit team, we understand that some of these expenditures should be charged to other object codes instead of 460. We have since edited our COA and will continue to do so where required.”

Auditor Comment: We are pleased that OSNP agrees with this recommendation and will not classify non-qualifying expenditures as object code 460 expenditures going forward. While the SNP is appointed by elected officials, the SNP is not an elected official, and therefore expenditures the SNP individually authorizes cannot be charged to the 460 object code as “special expenditures relative to elected officials.” Only the OSNP’s special expenditures relative to criminal justice activities should be charged to that code.

2. Comptroller's Directive #6 regarding the proper use of City funds in the agency's operations is followed at all times and by all employees;

OSNP Response: OSNP agreed with this recommendation and stated, “In the future, in accordance with your recommendations, we will require a detailed memo for each business event for fiscal file to support all future meal expenditures” and agreed it would “no longer incurr [sic] such expenses per your recommendations.” OSNP also stated, “[I]n light of your recommendation, The Special Narcotic [sic] Prosecutor will no longer seek reimbursement for such expenses [for funeral flowers]” and will “no longer incur expenses related to business networking events, as recommended.” OSNP also agreed to “update [its] internal policy accordingly and maintain a detailed documentation supporting each business travel incurred under these exceptional circumstances.”

3. Established internal procedures regarding the use of agency credit cards are followed at all times and by all employees; and that

OSNP Response: “In summary, we agree that the fiscal file should have contained more detailed information related to business events for some expenses. In the past, executive event calendars and related expense documentation were managed by administrative staff instead of fiscal staff. We have updated our internal protocol and require that a detailed memo for each business event is submitted as part of the expense supporting document package [sic] to fiscal, so we can ensure there is sufficient documentaion [sic] and justification for relation to City business for all future expenses.

Based on your recommendations, to avoid further misunderstanding of the purpose and use of this credit card, we have decided to cancel the credit card and close the account. Document confirming card cancellation has been provided to the audit team.”

Auditor Comment: We are pleased that OSNP has updated its internal protocols to require sufficient documentation and justification relating to City business expenditures. We continue to recommend that established internal procedures regarding the use of agency credit cards are followed at all times and by all employees.

4. Payment vouchers submitted through FMS are adequately supported to ensure compliance with Comptroller’s Directive #1.

OSNP Response: “We agree . . . there is room for improvement in terms of documentation supporting city business justification. Although these expenses were all related to City business and supported with receipts and documents such as emails/memos/notes to file, a detailed explanation for each event specifically in

relation to city business is a better way to explain the justification for these expenses.” OSNP further stated, “We have updated our internal protocol and require that a detailed memo for each business event is submitted as part of the expense supporting document package [sic] to fiscal, so we can ensure there is sufficient documentation [sic] and justification for relation to City business for all future expenses.”

Lack of Documented Review Process in Issuing One-Time Payments to ADAs

Aside from the payment of regular and recurring salary and cash overtime to its employees, OSNP also pays annual one-time payments to its staff, including to ADAs when so directed by their home DAs’ offices who employ and assign them to OSNP. The home DAs’ offices direct these one-time payments for both the *Central* ADAs who work under OSNP’s authority and direct oversight, and the *Decentral* ADAs working at and under the authority of their home DAs’ offices. OSNP paid \$1,077,475 in such one-time payments to its ADAs during our two-year audit scope period. We found that OSNP did not generally maintain adequate documentation to establish that the one-time payments to these ADAs, from OSNP’s City-funded budget, were supported by evaluations of their job performance.

As previously noted, Comptroller’s Directive #1, section 5.11, *Appropriate Documentation of Transactions and Internal Controls*, states, “All transactions and significant events need to be clearly documented and the documentation readily available for use or examination. Internal controls should be documented in management administrative policies or operating manuals. All documentation should be properly managed and maintained in accordance with updated records retention schedules.” In addition, according to Comptroller’s Directive #13, *Payroll Procedures*, “The personnel office must maintain records supporting and authorizing documentation for all personnel actions including hiring new employees, changes in compensation or title, salary deductions, terminations, resignations, retirements, and all intervening events.”

According to the DA Plan, the SNP, the Chief ADA, and five DAs are to “meet semi-annually every year, either in person or by conference call” and “review the assignments of assistant district attorneys to centralized and decentralized parts and make such changes as appropriate.” Moreover, according to the SNP, the DA Plan states that “[i]n the event that an assistant district attorney assigned to the centralized parts fails to perform satisfactorily, the Special Assistant District Attorney [the SNP] shall report that fact to the District Attorney from whose office the assistant was assigned and that District Attorney may replace the assistant with another from the District Attorney’s staff.”

Notwithstanding the collaborative review process the DA Plan prescribes, however, we found no evidence that OSNP officials evaluated or participated in an evaluation of the performance of the ADAs assigned to it. OSNP officials stated that they participate in performance reviews of the ADAs assigned to OSNP only “when [they] are invited to do so” by the ADAs’ home DAs’ offices and that the home DAs’ offices maintain whatever information may exist relating to evaluations of the ADAs’ performance. However, as the agency responsible for paying all compensation to its assigned ADAs, including one-time payments, out of City funds, OSNP should ensure that it maintains appropriate documentation to establish that such payments are supported by evaluations of the ADAs’ performance or another appropriate review process.

OSNP Response: “The audit report refers to a statement from an ‘OSNP official’ that the agency participates in performance reviews ‘when [they] are invited to do so’ by the ADA’s

home DA. This selected partial quote reflects a misunderstanding of what was explained to the auditors. The report, however, offers no detail as to who at OSNP said this, when it was said or what the full statement was, making it difficult to understand how the auditors may have misinterpreted what the OSNP official was seeking to explain.”

Auditor Comment: This statement was provided by an OSNP official in writing on May 22, 2020, regarding the wide variations in one-time payment amounts between boroughs, described below, and states in full, “Again, as we have explained previously, home DA offices determine their ADA’s salary structure and one-time pays based on their own budgets and priorities. We participate in performance reviews when we are invited to do so by home offices only.”

According to OSNP, with respect to one-time payments, the ADA’s home DA’s office sends an e-mail to OSNP listing the ADA’s name, the amount to be paid to the ADA, and the payroll date for which that payment is to be processed. OSNP makes no inquiries and undertakes no independent review as to the appropriateness of such payments; nor does it have, obtain, or require any justification for these payments. Nothing in the DA Plan would preclude it from doing so. At the exit conference, OSNP officials informed us that a performance review process is in place with established criteria and that OSNP participates in this process annually. Additionally, OSNP officials stated that they continuously provide oral feedback to the relevant county DA offices regarding ADAs’ performance. However, no evidence of these reviews and oral feedback was maintained or provided to us.

OSNP Response: “In its finding, the audit report states that, ‘OSNP did not review and document the performance of the ADAs to whom it paid one-times [*sic*] payments as directed by the five DAs’ offices.’ This is wrong and contrary to what was explained to the auditors. For example, the vast majority of Central ADAs assigned to OSNP are from the New York County District Attorney’s Office (DANY) and the performance review process for those ADAs was outlined in detail to the auditors. DANY has a centralized on-line evaluation system and OSNP supervisors use that evaluation system to review and create a comprehensive written annual review online for each DANY ADA. Those performance evaluations are then individually examined and discussed by OSNP supervisors together with DANY executives during an annual in-person meeting.

Following OSNP’s review of the preliminary audit report, OSNP offered to make available to the auditors the contact information of the executives who maintain and are responsible for their respective offices performance evaluations, including those ADAs assigned to OSNP. We were informed that a decision was made not to contact those respective executives to learn about the evaluation and compensation process or secure specific evaluations for their ADAs assigned to OSNP because the DA offices were not the subject of the audit. OSNP can appreciate that decision and accept appropriate recommendations regarding the need to improve our on-site personnel files. However, OSNP objects to the heading, ‘Lack of Review Process in Issuing One-Time Payments,’ as inaccurate. Similarly, the statement in the report that the auditors, ‘found no evidence that OSNP evaluated or participated in an evaluation of the performance of the ADAs assigned to it,’ does not take into account the information conveyed about our active participation in ADA performance reviews as described above. For the same reason, we object to any other finding or conclusion that goes beyond the issue of incomplete personnel files (which we concede) and inaccurately questions the agency’s participation in the evaluation process or the appropriateness of payments to OSNP ADAs.”

Auditor Comment: As previously noted, OSNP officials informed us at the exit conference—after we had completed our audit testing—that a performance review process is in place with established criteria and that OSNP participates in it. According to OSNP’s current written response, that review process—an online evaluation system—exists in one of the five DAs’ offices that assign ADAs to OSNP, and OSNP supervisors use the system to review and create written annual reviews online for the ADAs assigned to OSNP by that individual DA’s office. OSNP has not provided documentary evidence of those written reviews, however.

During the audit, an OSNP official stated that OSNP participates in the various DAs’ performance reviews of the ADAs assigned to OSNP only “when . . . invited to do so.” In addition, as discussed below, we found performance evaluations in OSNP’s files for only 2 of the 25 sampled ADAs. Therefore, we have no assurance that the one-time payments OSNP issued to its assigned ADAs during our audit scope were consistently supported by documented reviews of their performance. This final report, including the heading OSNP references in its response, has been reviewed and adjusted where necessary to ensure that specific finding is stated clearly and consistently.

Only 2 out of 25 (8 percent) sampled OSNP personnel files of ADAs (8 *Central* ADAs and 17 *Decentral* ADAs) contained performance evaluations related to the one-time payments; none of the other 23 sampled personnel files contained documentation potentially supporting those payments.⁵

Moreover, we found wide variation in the amounts of the one-time payments the ADAs assigned to OSNP received, depending on which DA’s office directed the payment. The average annual one-time payment by county ranged from \$1,852 to \$7,451.⁶ When we brought this variation to the attention of OSNP officials, they stated that they “process one time payments made to ADAs as directed by their home [District Attorney’s] office.” As stated above, OSNP, at the direction of the county DAs, paid these one-time payments without obtaining and maintaining documented justification.

We also found that OSNP paid \$19,430 in one-time payments to an ADA who was on military leave, and on active military duty, during our entire audit scope. According to DCAS Personnel Services Bulletin 440-11R, a “City employee is entitled to receive his/her City salary while on leave for ordered military duty . . . not to exceed 30 normally scheduled work days in any one calendar year.” This ADA, a *Decentral* ADA assigned to OSNP by his home DA’s office, was appropriately paid a City salary while on military leave—equivalent to 30 normally scheduled work days in each year—in accordance with DCAS’ instructions. The additional one-time payments, however, increased the ADA’s compensation in both years beyond the 30-work-day level. The DCAS bulletin contains no provision to allow one-time payments to be added to an employee’s City salary during military leave. In the absence of any supporting documentation in OSNP’s records, it is not clear whether the one-time payments to the ADA on military leave—which the home DA’s office directed and OSNP executed—resulted from an informed decision by the home DA’s office or an oversight, i.e., an error. In either case, a documented review of this ADA’s performance by

⁵ We reviewed an additional two ADA personnel files for ADAs who did not receive any bonuses (for a total of 27 reviewed personnel files). However, we did not include them in our analysis because we determined they worked at OSNP for a very brief period.

⁶ The average annual one-time payments to ADAs by borough during our audit scope were as follows: Staten Island - \$7,451; Bronx - \$7,046; Queens - \$4,822; Manhattan - \$2,181; and Brooklyn - \$1,852.

OSNP would almost certainly have alerted it to the fact that it was paying two one-time payments to an ADA for two years in which the ADA was on continuous military leave and raised the question of whether those payments were allowable under the above-cited DCAS policy.

One-time payments for recognition and retention purposes, a form of compensation added to regular wages, are typically awarded by an employer after a performance appraisal and analysis of projects an employee completes or productivity standards an employee meets during a specific period. In the absence of an appraisal or other documented review, OSNP and the City risk inappropriately using agency and City resources by paying one-time payments to employees whose performance may not merit them. By paying one-time payments with no documented consideration of the recipients' performance, OSNP risks the appearance of having abdicated its responsibility, as an independent City agency with its own budget, to ensure that its PS expenditures are appropriate.

Recommendation

5. OSNP should ensure that OSNP's one-time payments to ADAs are appropriately supported by documented justifications based on the ADAs' job performance.

OSNP Response: OSNP partially agreed with the recommendation and stated, "To the extent that these recommendations are limited to an assessment of the need for OSNP to improve the supporting documentation contained in the OSNP personnel files maintained on site, our office understands the need for such improvement and has already implemented the needed corrective actions. While the specific language in the three recommendations addresses, and is limited to, the need for better supporting documentation in personnel files, the descriptive language in the audit report goes a step beyond that, suggesting the absence of our involvement in a performance review process to support the issuing of payments to ADAs. This suggestion is inaccurate."

Auditor Comment: We are pleased that OSNP agrees to improve the supporting documentation maintained in its personnel files, and we continue to recommend that OSNP ensure that its one-time payments to ADAs include justifications based on the ADAs' job performance.

Incomplete Personnel Records Maintained for ADAs

As noted above, according to Comptroller's Directive #13, *Payroll Procedures*, "The personnel office must maintain records supporting and authorizing documentation for all personnel actions including hiring new employees, changes in compensation or title, salary deductions, terminations, resignations, retirements, and all intervening events."

However, we found that OSNP's personnel records for its assigned ADAs were incomplete and did not comply with Comptroller's Directive #13 with regard to the documentation that should be maintained in such records. Specifically, we found that 10 of the 25 sampled files we reviewed (40 percent) did not contain a transfer letter documenting these ADAs' assignments to OSNP from their respective home DAs' offices. The remaining 15 files we reviewed contained transfer letters that did not indicate which office was responsible to exercise authority and oversight as to those ADAs.

In response to our concerns, OSNP officials subsequently provided correspondence memorializing the transfers from the relevant home DAs' offices to OSNP of 9 of the 10 ADAs whose files had not contained such letters. They did not find any such correspondence for the tenth ADA, citing the length of time that had elapsed since this ADA's transfer in 1990 as the likely reason. These cases illustrate the need for OSNP to maintain complete personnel records for each employee as mandated by Comptroller's Directive #13.

Additionally, 7 of the 25 sampled personnel records for ADAs (28 percent) did not contain any information regarding any salary increases the ADAs received while assigned to OSNP. However, we found that all 25 ADAs received a salary increase for Fiscal Year 2019. At a minimum, OSNP should have documented those increases by placing copies of the increase-notifications from the relevant DAs' offices in the recipients' personnel files.

Furthermore, we found that OSNP did not have records in the 25 sampled ADAs' personnel files documenting the one-time payments they received during our audit scope period, which totaled \$190,220 (18 percent of the \$1,077,475 in one-time payments OSNP issued to ADAs during that period). At a minimum, the authorizations for the payments from the relevant DAs' offices should have been present in the recipients' personnel files.

OSNP's lack of compliance with Comptroller's Directive #13 regarding the contents of the office's personnel records hinders its staff and outside reviewers from properly reviewing its assigned employees' compensation and employment history. The need for complete records is particularly important with respect to the *Central* ADAs whose compensation is determined by agencies other than OSNP, but who work under OSNP's authority and are paid by OSNP.

Recommendations

OSNP should ensure that:

6. Complete employee personnel records that include, at minimum, the information mandated by Comptroller's Directive #13 are maintained; and that

OSNP Response: OSNP agreed with this recommendation and stated, "To the extent that these recommendations are limited to an assessment of the need for OSNP to improve the supporting documentation contained in the OSNP personnel files maintained on site, our office understands the need for such improvement and has already implemented the needed corrective actions."

7. Information regarding the dates and amounts of and justifications for one-time payments is maintained in the recipients' personnel files.

OSNP Response: OSNP agreed with the recommendation and stated, "To the extent that these recommendations are limited to an assessment of the need for OSNP to improve the supporting documentation contained in the OSNP personnel files maintained on site, our office understands the need for such improvement and has already implemented the needed corrective actions."

Inappropriate Cash Payments for Voluntary Overtime Worked

According to OSNP's *Support Staff Employee Handbook*, voluntary overtime "occurs when [a] supervisor asks for a volunteer to work beyond regularly scheduled hours. [Employees] receive compensatory time for [their] additional hours of work." In other words, employees who voluntarily work overtime are eligible to receive only compensatory time and are not to be paid in cash for that overtime work. Cash overtime is reserved for instances of involuntary overtime, which "[o]ccurs when [employees] are ordered to work beyond [their] regularly scheduled work hours. In that case, [they] can opt to be compensated with either compensatory time or in cash."

However, OSNP officials did not ensure that they followed the above-cited established procedures when approving cash overtime. Specifically, we found that, during our audit scope, 843 of 1,488 approved requests for cash overtime by support staff (57 percent) were for voluntary overtime, contrary to OSNP's written procedures. The cash payments for voluntary overtime totaled approximately \$88,710 during the two-year audit scope period.

When informed of this issue, OSNP officials stated that a "significant percentage" of these approved requests were for involuntary overtime that employees had incorrectly entered as voluntary overtime and that "[they] will be working with [their] staff and supervisors to better clarify the distinction between voluntary and involuntary overtime."

The inappropriate approval of cash payouts for voluntary overtime can constitute a waste of City resources. Aside from the unwarranted cash expenditures, the practice may have the unintended consequence of encouraging employees to work more hours than necessary to complete their assigned work merely to increase their cash compensation.

Recommendation

8. OSNP should ensure that the office follows established procedures regarding eligibility for cash overtime payments.

OSNP Response: OSNP agreed with this recommendation and stated, "As noted in the audit report, a significant percentage of these overtime entries were for involuntary overtime hours and were mistakenly entered as voluntary. We clarified with our staff the distinction between voluntary and involuntary overtime and have taken additional oversight steps to ensure that future record keeping accurately reflects the nature of the overtime taken and complies with our established procedures."

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers Fiscal Years 2018 and 2019 (the period from July 1, 2017 through June 30, 2019).

To obtain an understanding of OSNP's financial and operating practices surrounding its use of City funds, we reviewed and used as criteria the following, obtained from OSNP:

- *Support Staff Employee Handbook;*
- *Employee Handbook for Legal Staff;*
- *OSNP Fiscal Approval Requirements;*
- *Fiscal Internal Control and Accountability Policy and Procedure;* and
- *New York Narcotics Court District Attorneys' Plan of 1971 (DA Plan), last amended in 2017.*

Additionally, we independently obtained and used as criteria:

- *Comptroller's Directive #1 – Principles of Internal Control;*
- *Comptroller's Directive #6 – Travel, Meals, Lodging, and Miscellaneous Expenses;*
- *Comptroller's Directive #11 – Cash Accountability and Control;*
- *Comptroller's Directive #13 – Payroll Procedures;*
- *Comptroller's Directive #24 – Agency Purchasing Procedures and Controls;* and
- *Chart of Accounts: Description of Object Codes for Other Than Personal Services.*

To understand OSNP's organizational structure, we obtained and reviewed the agency's organizational chart, dated February 13, 2019.

To understand the nature of OSNP's OTPS expenditures, we obtained from OSNP a list of its FMS payment vouchers entered into FMS for the period July 1, 2017 through May 30, 2019.⁷ Additionally,

⁷ Our final request for OTPS expenditures was provided on May 30, 2019. Because there were no subsequent special expenses based on information independently extracted from FMS for the remainder of Fiscal Year 2019, we performed our OTPS-related reviews based on the listing provided by OSNP.

to establish the reliability of this information, we independently obtained a list of these payment vouchers from FMS.

To obtain an understanding of OSNP's operating practices regarding PS expenditures, we conducted a walkthrough meeting with OSNP's Human Resources department. To obtain an understanding of OSNP's operating practices regarding OSNP's OTPS expenditures, we held walkthrough meetings with OSNP's Fiscal department to discuss its procurement process, bank reconciliation process, and use of FMS for entering payment vouchers.

Following these walkthrough meetings, we obtained and reviewed the following:

- NYC Payroll Management System (PMS) *Paycheck Distribution Control Report*;
- OSNP's *Master Credit Card Log* covering Fiscal Years 2018 and 2019;
- List of active requirements contracts used by OSNP active during Fiscal Years 2018 and 2019;
- Credit card statements for its demand bank accounts active during Fiscal Years 2018 and 2019;
- OSNP's *Purchase Requisition Form*; and
- OSNP's *Tax Exemption Certificate* used during the procurement process, issued to OSNP by the New York State Department of Taxation and Finance.

To determine whether OSNP performed bank and credit card reconciliations for the demand bank account and the associated credit card accounts, we obtained and reviewed all monthly reconciliations for these accounts performed covering the period July 1, 2017 through May 30, 2019.

We selected a sample of 50 FMS payment vouchers and obtained and reviewed OSNP's documentation on file supporting these vouchers. These 50 vouchers included a total of 10 object codes and were valued at \$832,015.

This sample was comprised of three strata, chosen as follows:

- 20 randomly selected vouchers with the object code 460. This stratum was judgmentally selected because of the high inherent risk of *Special Expenses* and for which no further detail was available in FMS. Additionally, this object code had the largest expenditures by amount -- \$1,441,780 (61 percent of all OTPS expenditures by amount);
- 20 randomly selected vouchers with the object code 465 (Obligatory County Expenditures for stenographers, services of experts, psychiatric services, and printing of court minutes). This stratum was judgmentally selected because of the high inherent risk of payments to individuals rather than companies. Additionally, this object code had the most individual payments – 745 payments (37 percent of the individual payments); and
- 10 randomly selected vouchers of all remaining object codes. This stratum contained eight additional object codes.

We then selected a new sample of source documentation corresponding to an additional 50 FMS payment vouchers. We judgmentally selected a box containing a wide variety of vendors to which these vouchers were paid and selected the first 50 vouchers in order. These vouchers included 11 object codes and were valued at \$77,546.

To assess the reliability of the information for the total of 100 payment vouchers, we first traced the information regarding object code, amount, and invoice description from the first set of 50 sampled vouchers to the source documentation on file. We then reviewed for the second set of 50 sampled vouchers the source documentation and matched the object code, amount, and invoice description to the list of all payment vouchers paid by OSNP during our audit scope. After establishing the reliability of our sample, we performed testing on the source documentation to determine the following:

- Whether the expenses pursuant to the voucher were reasonable and appropriate based on established Comptroller's Directives and the agency's internal criteria;
- Whether the vouchers were charged to the correct object code based on the Chart of Accounts and the expenses contained within the vouchers;
- Whether there was sufficient supporting documentation regarding the nature of the expenditures; and
- Whether OSNP properly approved requisitions according to its internal criteria.

The results of our testing showed deficiencies with the vouchers charged to the object code 460 and classified as "special expenditures." Therefore, we proceeded to fieldwork testing and expanded the audit sample by selecting all vouchers under the 460 object code during our audit scope and which were not previously selected. This consisted of 15 vouchers in addition to the previous nine selected during limited survey testing – a total of 24 vouchers comprised of 114 individual expenditures within those vouchers.

After the conclusion of these tests, we met with OSNP officials to discuss deficiencies with the special expenditures charged to object code 460 and obtained explanations and additional supporting documentation from OSNP to justify apparently inappropriate expenses.

We independently downloaded and reviewed a PY05 (Pay Details) report from CHRMS covering our audit scope in order to obtain an understanding of OSNP's PS expenditures. In addition, we independently downloaded and reviewed AC01 (New Hire Details) and AC03 (Separation Details) reports from CHRMS to determine which employees were newly hired and separated during our audit scope. Based on our review, we selected three pay periods as follows:

- Pay period ending December 29, 2017 – judgmentally selected because of the large number of Miscellaneous Pay Adjustments (one-time pays) paid on this date;
- Pay period ending March 22, 2019 – judgmentally selected because of the increased frequency of regular gross salary paid on this date; and
- Pay period ending June 15, 2018 – randomly selected from the remaining pay dates during our audit scope.

To determine whether employees had approved timesheets and corresponding time punches on file for the days they were paid, we obtained from OSNP and reviewed the *Time Entry Detail Report* and the *Timesheet Status Detail Report* from CityTime corresponding to the above three pay dates.

To determine whether employees who had worked overtime had a proper justification for doing so was properly approved and chose the correct method of overtime compensation (cash or compensatory time), we obtained from OSNP and reviewed the *Overtime Request Report* for our entire audit scope. In addition, we determined whether the ADAs were approved overtime, as they are not eligible to receive overtime under any other circumstance.

Because of the wide variation in bonuses paid to ADAs assigned to OSNP by the five DA offices, we judgmentally selected 27 ADAs and obtained their full personnel files, as follows:

- 5 *Central* ADAs with the highest one-time pay amounts during our audit scope;
- 10 *Decentral* ADAs with the highest one-time pay amounts during our audit scope – a larger sample was chosen because OSNP does not have a first-hand account of those ADAs' performance;
- 10 ADAs who we found received one-time pays during our audit scope but were not initially disclosed on a list of ADAs we received from OSNP (out of a total of 18) with the highest one-time pay amounts – in order to determine why they were not disclosed to us;⁸ and
- 2 randomly selected ADAs who did not receive any bonuses (out of 5) in order to determine why they were not paid any bonuses.

We reviewed these files to determine whether:

- OSNP complied with Comptroller's Directive #13 regarding the contents of the personnel files;
- OSNP complied with Comptroller's Directive #1 regarding their transfers from their respective DA office to OSNP; and
- OSNP maintained justification for ADA bonuses in their personnel files.

Note: We intended to also conduct this test with ten randomly-selected support staff. However, we were not able to continue with this test because of the COVID-19 pandemic and the associated office closures, which restricted our access to these personnel files.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis for us to evaluate OSNP's financial and operating practices regarding its use of City funds.

⁸ Subsequent correspondence with the OSNP, along with updated listings, resolved these discrepancies.



**Office of the
Special Narcotics Prosecutor
for the City of New York**

Bridget G. Brennan, Special Narcotics Prosecutor

80 CENTRE STREET, SIXTH FLOOR
NEW YORK, NY 10013
212-815-0413, GEN.
212-815-0144, FAX

May 26, 2021

Marjorie Landa
Deputy Comptroller for Audit
Office of the Comptroller
Municipal Building
1 Centre Street, Room 1100
New York, NY 10007

Re: Audit Report on the Financial and Operating Practices of the Office of Special Narcotics Prosecutor

Dear Deputy Comptroller Landa:

We have reviewed the Draft Audit Report regarding the Office of Special Narcotics Prosecutor for the City of New York's (OSNP) Financial and Operating Practices completed by your office and received on May 12, 2021. Please find our written response to the report's findings and recommendations attached.

We would like to thank members of the audit team for their diligent work over the past two plus years, especially for their efforts during the COVID-19 epidemic over this past year. They were professional and their recommendations are helpful for the improvement of our agency's practices.

We are pleased to hear that "OSNP generally maintained adequate controls over its OTPS expenditures, totaling \$2,362,758." We are very proud of the fact that we are in compliance with City guidelines in terms of our procurement practices as well as our management and control over agency bank accounts and cash operations.

As for our personnel related practices, as noted in the report, the Special Narcotics Prosecutor is appointed by the City's five District Attorneys. Our legal staff consists entirely of Assistant District Attorneys (ADA) hired by the five District Attorneys and assigned to OSNP to prosecute narcotics-related cases. We are the only agency of its kind in the nation, with a unique personnel structure. Our ADA personnel related transactions are processed following home District Attorney Human Resources policies. This complex structure can be challenging to understand, especially during a timeframe with discussions interrupted by the COVID19 related restrictions. Therefore, although we may not agree with some of the findings in light of the unique nature of our personnel structure, we appreciate the difficult task the audit teams faced

and appreciate their efforts. We will continue to work with the Comptroller to resolve any pending issues and reconcile our differences.

Should you have any questions regarding our comments or need any further information, please do not hesitate to reach out to me at (212) 815-0913.

Sincerely,

Steven Goldstein

Steven Goldstein
Chief Assistant District Attorney

Response of the Office of the Special Narcotic Prosecutor

May 26, 2021

Audit Report on the Financial and Operating Practices of the Office of the Special Narcotic Prosecutor FM19-087A

We welcome the thoughtful recommendations provided by the Comptroller in this report and have begun to incorporate those that are appropriate into our internal policy and procedures. Below please find our responses to the findings of the audit report and each individual recommendation of the Comptroller:

OTPS Expenditures:

Finding: "Certain OTPS Expenditures Were Inappropriate or Lacked Adequate Support"

Recommendation #1:

1. Properly use the City's Chart of Accounts, including its definitions, in identifying and classifying expenditures, and ensure that they use the 460 object code only for special expenses that are (a) not chargeable to other object codes, and (b) related to law enforcement activity;

OSNP Response #1:

We are pleased to hear that *"OSNP generally maintained adequate controls over its OTPS expenditures, totaling \$2,362,758."* Specifically, we are proud to see we are in compliance with City guidelines in our office's procurement practices, our management and control over bank accounts as well as our cash operations. With regard to the less than 1% (0.46%) of expenditures in question, please see our response to each section below.

With regard to coding of OTPS expenses, over the years we have tried to obtain an updated chart of account (COA) from the Comptroller's office multiple times but were unsuccessful. In 2018, we were able to obtain a copy from another City agency. Per this copy of the COA, the description under the 460 code states: "Charge to this account all special expenditures relative to elected officials AND other criminal justice activities." Although the Special Narcotics Prosecutor is not an elected official, she is appointed by the five DAs who are elected officials and as such expenses relative to and/or authorized by the SNP at her discretion as well as other criminal justice activities have been charged to the 460 code.

After our discussions with the audit team, we understand that some of these expenditures should be charged to other object codes instead of 460. We have since edited our COA and will continue to do so where required.

Recommendations #2 & #3:

2. Follow Comptroller's Directive #6 regarding the proper use of City funds in the agency's operations;
3. Ensure that payment vouchers submitted through FMS are adequately supported to ensure compliance with Comptroller's Directive #1.

a. Potentially Inappropriate Meal Expenditures

OSNP Response #2; #3- a:

We would like to clarify that nearly all of our meal expenditures referred to above were appropriate expenses per Directive 6. Specifically, of the 33 meal expenditures that were deemed potentially inappropriate, the majority or 93% were for events that included non-City employees and staff lunches where employees were required to forgo their lunch hour, both are permitted expense categories per Directive 6 section 8.1.2 #9 and #5. A small group totaling \$586 or 7% were for business luncheons with officials or executives from other agencies over the two year period audited, these expenses are also permissible under Directive 6 section 8 and 15.

We agree, however, there is room for improvement in terms of documentation supporting city business justification. Although these expenses were all related to City business and supported with receipts and documents such as emails/memos/notes to file, a detailed explanation for each event specifically in relation to city business is a better way to explain the justification for these expenses. Since executive event calendars were managed by executive administrative staff instead of fiscal staff, some of the detailed information for these business events were not included in fiscal file. In the future, in accordance with your recommendations, we will require a detailed memo for each business event for fiscal file to support all future meal expenditures.

In our opinion, it is good for the morale of the office to show our appreciation of staff's dedication to the important work we do for the City, which is why we provided light refreshments (cake and coffee) in honor of an employee's retirement after many years of service. Nonetheless, we agree to no longer incur such expenses per your recommendations.

b. Miscellaneous Inappropriate Expenditures

OSNP Response #2; #3 -b:

We would like to make clear that the six expenditures for flowers referred to above were funeral floral arrangements for the passing of **direct relative** of our staff. The recognition of a bereaved employees personal loss was intended to provide moral and grievance support to staff experiencing the loss of **close family members** and struggling with emotional hardship. Staff are comforted and appreciative of the office's support during such difficult times. They often return to work after bereavement leave with gratitude and are more devoted to their work. However, in light of your recommendation, The Special Narcotic Prosecutor will no longer

seek reimbursement for such expenses.

The office will no longer incur expenses related to business networking events, as recommended.

c. Transportation Expenditures that Lacked Adequate Documentary Support

OSNP Response #2; #3 -c:

The Special Narcotics Prosecutor (SNP), as the head of a law enforcement agency like the DAs, is assigned an office vehicle due to safety concerns related to investigating and prosecuting narcotics traffickers, narcotics gang members, and other individuals involved in violent criminal enterprises. Unlike the DAs, SNP does not have a dedicated driver and/or security guard. When the vehicle assigned to SNP is being repaired and unavailable, it is our practice for the SNP to be driven by an investigator or take a taxi (if investigators are unavailable) for all business travel for personal security. As per Directive 6, taxi transportation “may be allowable under certain exceptional circumstances” including those “based on consideration for employees’ safety and security”. Therefore, it is our opinion that the taxi charges are permissible and appropriate expenses.

We agree, however, to update our internal policy accordingly and maintain a detailed documentation supporting each business travel incurred under these exceptional circumstances.

Recommendations #4:

4. Ensure that established internal procedures regarding the use of agency credit cards are always followed and by all employees.

OSNP Response #4:

The American Express credit card referred to above was an office credit card assigned to the Special Narcotics Prosecutor (SNP) at the time of appointment in 1998. This credit card was accessible by SNP and an executive administrative staff member only and used solely for business purchases authorized by or related to SNP. This card was not shared with other users; therefore, we did not require that it be returned to fiscal after each use. In addition, this card was never used for personal purchase. The executive administrative staff managed card transactions daily and forwarded monthly statements with supporting documentations i.e. confirmation and receipts to fiscal for review and reconciliation purposes.

We would like to reiterate the fact that the vast majority of our expenses cited above were appropriate expenditures per Directive 6, as explained in our responses to each expense category above. These expenses might have been **authorized** by SNP but were **incurred** by and for the office, and not a personal business expense incurred by the SNP. A small number of expenditures, such as funeral flowers were authorized by SNP at her discretion. The SNP incurred minimum business expenses over the two-year audit period, which include taxi rides

for \$488 and business lunch meetings totaling \$586 (see responses above under meal and transportation).

Finally, it is important to note that we have been paying for other bills from demand account, in addition to the credit card bills referred to above, instead of through FMS directly. This has been our practice for over 20 years and the Comptroller reviews and approves renewal of this demand account each year after auditing transactions via year-end closing and reconciliation process.

In summary, we agree that the fiscal file should have contained more detailed information related to business events for some expenses. In the past, executive event calendars and related expense documentation were managed by administrative staff instead of fiscal staff. We have updated our internal protocol and require that a detailed memo for each business event is submitted as part of the expense supporting document package to fiscal, so we can ensure there is sufficient documentation and justification for relation to City business for all future expenses.

Based on your recommendations, to avoid further misunderstanding of the purpose and use of this credit card, we have decided to cancel the credit card and close the account. Document confirming card cancellation has been provided to the audit team.

PS Expenditures:

Finding: “Lack of Review Process in Issuing One Time Payments”

Recommendation #5; #6; and #7:

5. One-time payments appropriately supported by documented justifications based on the ADAs job performance.
6. Complete employee personnel records that include, at minimum, the information mandated by Comptroller’s Directive #13 are maintained.
7. Information regarding the dates and amounts of and justifications for one-time payments is maintained in the recipients’ personnel files.

OSNP Response #5; #6; and #7:

To the extent that these recommendations are limited to an assessment of the need for OSNP to improve the supporting documentation contained in the OSNP personnel files maintained on site, our office understands the need for such improvement and has already implemented the needed corrective actions.

While the specific language in the three recommendations addresses, and is limited to, the need for better supporting documentation in personnel files, the descriptive language in the audit report goes a step beyond that, suggesting the absence of our involvement in a performance review process to support the issuing of payments to ADAs. This suggestion is inaccurate.

As explained to the auditors, OSNP does not directly hire any of its Assistant District Attorneys (ADAs). Instead, ADAs are assigned to OSNP by one of the five New York City District Attorneys and work citywide on narcotics related investigations and prosecutions. Although OSNP pays the salary, benefits and one-time payments of its legal staff as directed to do so by the DAs, these ADAs remain employees of the District Attorneys' while assigned to OSNP, and the respective offices' employee policies, protocols and procedures continue to cover their employment. These procedures include the evaluation process of ADAs and compensation practices.¹

In its finding, the audit report states that, "OSNP did not review and document the performance of the ADAs to whom it paid one-times payments as directed by the five DAs' offices." This is wrong and contrary to what was explained to the auditors.² For example, the vast majority of Central ADAs assigned to OSNP are from the New York County District Attorney's Office (DANY) and the performance review process for those ADAs was outlined in detail to the auditors. DANY has a centralized on-line evaluation system and OSNP supervisors use that evaluation system to review and create a comprehensive written annual review online for each DANY ADA. Those performance evaluations are then individually examined and discussed by OSNP supervisors together with DANY executives during an annual in-person meeting.

Following OSNP's review of the preliminary audit report, OSNP offered to make available to the auditors the contact information of the executives who maintain and are responsible for their respective offices performance evaluations, including those ADAs assigned to OSNP. We were informed that a decision was made not to contact those respective executives to learn about the evaluation and compensation process or secure specific evaluations for their ADAs assigned to OSNP because the DA offices were not the subject of the audit. OSNP can appreciate that decision and accept appropriate recommendations regarding the need to improve our on-site personnel files. However, OSNP objects to the heading, "Lack of Review Process in Issuing One-Time Payments," as inaccurate. Similarly, the statement in the report that the auditors, "found no evidence that OSNP evaluated or participated in an evaluation of the performance of the ADAs assigned to it," does not take into account the information conveyed about our active participation in ADA performance reviews as described above. For the same reason, we object to any other finding or conclusion that goes beyond the issue of incomplete personnel files (which we concede) and inaccurately questions the agency's participation in the evaluation

¹ A copy of the "District Attorney Plan" for OSNP was provided to the auditors. The Plan states, in relevant part, that the OSNP operates under "the policy direction of the five District Attorneys," that the ADAs are "drawn from the offices of the five District Attorneys," and that each "assistant district attorney assigned to work in [OSNP] shall be paid at such rates as may be established by the District Attorney from whose staff he or she is assigned...."

² The audit report refers to a statement from an "OSNP official" that the agency participates in performance reviews "when [they] are invited to do so" by the ADA's home DA. This selected partial quote reflects a misunderstanding of what was explained to the auditors. The report, however, offers no detail as to who at OSNP said this, when it was said or what the full statement was, making it difficult to understand how the auditors may have misinterpreted what the OSNP official was seeking to explain.

process or the appropriateness of payments to OSNP ADAs.

Finding: “Inappropriate Cash Payments for Voluntary Overtime Worked”

Recommendation #8:

8. OSNP should ensure that the office follows established procedures regarding the eligibility of cash overtime payments.

OSNP Response #8:

As noted in the audit report, a significant percentage of these overtime entries were for involuntary overtime hours and were mistakenly entered as voluntary. We clarified with our staff the distinction between voluntary and involuntary overtime and have taken additional oversight steps to ensure that future record keeping accurately reflects the nature of the overtime taken and complies with our established procedures.