



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Bronx County
District Attorney's Controls over
Personal Services Expenditures

FM21-070A

December 21, 2021

<http://comptroller.nyc.gov>



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

December 21, 2021

To the Residents of the City of New York:

My office has audited the Bronx County District Attorney's Office (BCDA) to determine whether the BCDA maintained adequate fiscal controls over its Personal Services (PS) expenditures.

The audit found that the BCDA did not maintain adequate controls over its PS expenditures to ensure that compensation to its employees was appropriate, adequately supported, and properly approved. Specifically, the BCDA did not comply with Comptroller's Directive #13, *Payroll Procedures*, regarding the maintenance of payroll records and the contents of employee personnel files, as well as Department of Citywide Administrative Services' (DCAS') requirements for conducting performance evaluations. Therefore, we could not determine whether \$199,710 in bonuses paid to 21 employees was merited and correctly calculated according to the BCDA's procedures. Additionally, we found that BCDA personnel inappropriately approved 15,547 overtime requests. As a result, we estimate that, during our audit scope period, the BCDA improperly paid as much as \$906,595 in cash overtime benefits and improperly awarded an additional 5,987 hours in compensatory time. Further, the BCDA did not provide an approved waiver for one employee that it obtained or should have obtained from DCAS for the period 2019 through 2021, pursuant to Section 211 of the New York State Retirement and Social Security Law. Finally, we found control weaknesses with the BCDA's calculation of steno pay. Specifically, we could not reliably determine whether the total number of pages transcribed by stenographers and used to calculate their steno pay was correct. We also found inadequate segregation of duties within the BCDA's Payroll unit regarding the approval of steno pay and the entering of information into Payroll Interface.

The audit made 13 recommendations, including that the BCDA should: maintain complete employee personnel records that include, at minimum, the information mandated by Comptroller's Directive #13; conduct and maintain performance evaluations for all sub-managerial employees on an annual basis as required; ensure that cash overtime is not paid to employees who work overtime on a voluntary basis in accordance with established procedures; ensure that complete, documented, and appropriate justifications are included with overtime requests prior to approving the requests; and comply with the requirements of Comptroller's Directive #13 regarding the proper segregation of duties of payroll functions.

The results of the audit have been discussed with BCDA 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,

Scott M. Stringer

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
Audit Findings and Conclusion	1
Audit Recommendations.....	2
Agency Response.....	2
AUDIT REPORT	3
Background	3
Objective.....	4
Scope and Methodology Statement.....	4
Discussion of Audit Results	4
FINDINGS AND RECOMMENDATIONS.....	5
Inadequate Recordkeeping of Required Documents	6
The BCDA Maintained Incomplete Personnel Records.....	6
The BCDA Did Not Conduct and Maintain Performance Evaluations	6
The BCDA Maintained Incomplete Payroll Records.....	7
Recommendations	8
Inappropriately Approved Overtime Requests	8
Inappropriate Cash Payments for Voluntary Overtime Worked.....	8
Approved Overtime Requests without Valid, Documented Justifications	9
Inappropriately Approved Overtime Requests for Periods Less Than 15 Minutes .	10
Recommendations	11
Absence of Section 211 Waiver.....	11
Recommendation	12
Weaknesses in the Stenographer Pay Process.....	13
Weaknesses in Calculating Stenographers' Pay.....	13
Weaknesses in Payroll Processing of Stenographers' Pay.....	14
Recommendations	15
DETAILED SCOPE AND METHODOLOGY.....	16
ADDENDUM	

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Bronx County District Attorney's Office's Controls over Personal Services Expenditures

FM21-070A

EXECUTIVE SUMMARY

New York City's five District Attorneys (DAs), including the Bronx County DA, are public officers elected to terms of four years who are responsible for investigating and prosecuting crimes, assisting victims, and implementing crime prevention strategies in their respective boroughs. The Bronx County District Attorney's Office (BCDA) is primarily City-funded. The office's budget is also supplemented with the proceeds of asset forfeitures provided to the BCDA.¹

During our audit scope period, Fiscal Years 2019 and 2020, the BCDA employed or administered the City-funded compensation for 1,554 individuals, consisting of 644 legal staff members and 910 support staff members, mostly unionized members, and included 12 rackets investigators who had previously retired from law enforcement agencies within New York State.

The objective of this audit was to determine whether the BCDA maintained adequate fiscal controls over its Personal Services (PS) expenditures.

Audit Findings and Conclusion

We found that the BCDA did not maintain adequate controls over its PS expenditures to ensure that the compensation paid to its employees was appropriate, adequately supported, and properly approved. Specifically, the BCDA did not comply with Comptroller's Directive #13, *Payroll Procedures*, regarding the maintenance of payroll records for Miscellaneous Pay Adjustments and the contents of employee personnel files. In addition, the BCDA did not fully comply with the Department of Citywide Administrative Services' (DCAS') requirements for conducting performance evaluations and could not provide performance evaluations for 21 of the sampled 41 employees (51 percent). Therefore, there was not adequate documentation to enable a determination of whether the \$199,710 in bonuses paid to these 21 employees was merited and properly calculated according to the BCDA's procedures.

¹ Under state and federal law, assets that have been used for or derived from criminal activities can be seized and forfeited as part of an effort to disrupt those criminal activities, punish criminals, and return assets to the victims of these crimes. Assets that can be liquidated are sold by the U.S. Marshals, with the net proceeds (after victims are compensated) shared with the law enforcement entities that contributed to the seizure of the funds.

Additionally, we found deficiencies with the BCDA's approval of 15,547 overtime requests (44 percent). Specifically, we found inappropriate cash payments for voluntary overtime worked, improper justifications or no documented justifications at all for some overtime requests, and the approval of overtime requests for periods of less than 15 minutes. As a result, the BCDA may have improperly paid as much as \$906,595 in cash overtime and improperly awarded an additional 5,987 hours of compensatory time to its employees.

Further, the BCDA did not provide an approved waiver for one employee it obtained or should have obtained from DCAS pursuant to Section 211 of the New York State Retirement and Social Security Law. Therefore, we could not determine whether this employee was granted a waiver. Moreover, the BCDA did not provide copies of any documentation that it submitted to DCAS to support its Section 211 waiver requests.

Finally, we found control weaknesses with the BCDA's calculation of steno pay. Specifically, we could not reliably determine whether the total number of pages transcribed by stenographers and used to calculate their steno pay was correct. We also found inadequate segregation of duties within the BCDA's Payroll unit regarding the approval of steno pay and the entering of information into Payroll Interface (PI).

Audit Recommendations

To address the issues raised by this audit, we make 13 recommendations, including that the BCDA should:

- Maintain complete employee personnel records that include, at minimum, the information mandated by Comptroller's Directive #13;
- Conduct and maintain performance evaluations for all sub-managerial employees on an annual basis as required;
- Maintain complete payroll records that include Miscellaneous Pay Adjustments made to employees;
- Ensure that cash overtime is not paid to employees who work overtime on a voluntary basis in accordance with established procedures;
- Ensure that complete, documented, and appropriate justifications, including the name of the supervisor, are included with overtime requests prior to approving the requests;
- Ensure that stenographers correctly record their completed page counts in accordance with the dates they certify as having completed the associated transcripts; and
- Comply with the requirements of Comptroller's Directive #13 regarding the proper segregation of duties of payroll functions.

Agency Response

In its response provided on December 14, 2021, the BCDA stated that it "accepts the findings and has already taken steps to implement corrective actions based on the recommendations."

AUDIT REPORT

Background

New York City's five DAs, including the Bronx County DA, are public officers elected to terms of four years by the residents of the boroughs they represent and are responsible for investigating and prosecuting crimes, assisting victims, and implementing crime prevention strategies in their respective boroughs. The BCDA is primarily City-funded. In addition, the office's budget is supplemented with the proceeds of asset forfeitures, which are provided to the BCDA in connection with New York State forfeiture rules as well as separate Equitable Sharing programs administered by the United States Treasury Department and the Department of Justice, respectively.

BCDA's PS expenditures are centrally managed through its Operations and Budget Division, which manages its payroll and timekeeping functions, and its Human Resources Department, which manages its personnel functions.² These departments are overseen by the Chief of Staff and the Chief Assistant District Attorney. The BCDA uses the City's Payroll Management System (PMS) to maintain its payroll records. PMS interfaces with New York City Automated Personnel System (NYCAPS), City Human Resources Management System (CHRMS), and PI, which is used to edit payroll data.

During our audit scope period, Fiscal Years 2019 and 2020, the BCDA employed or administered the City-funded compensation for 1,554 individuals, consisting of 644 legal staff members (including all assistant district attorneys and the District Attorney) and 910 support staff members (including paralegals), most of whom are union members whose positions are subject to the New York State Civil Service Law. BCDA's support staff included 12 rackets investigators who had previously retired from law enforcement and collected a pension. Sections 211 and 212 of the New York State Retirement and Social Security Law set forth the eligibility requirements for civil service retirees' entitlement to collect post-retirement wages upon returning to work at a public agency in New York State.

According to CHRMS, the BCDA paid \$80,733,397 to its employees during Fiscal Year 2019 and \$81,626,682 to its employees during Fiscal Year 2020. These payments included a total of \$1,180,175 in cash overtime payments with associated meal stipends across both fiscal years (\$708,174 and \$472,001 for Fiscal Years 2019 and 2020, respectively).

These payments also included a total of \$10,203,939 in Miscellaneous Pay Adjustments across both fiscal years. Miscellaneous Pay Adjustments are one-time payments not covered under other categories of pay defined by CHRMS. The BCDA uses Miscellaneous Pay Adjustments for "one time salary adjustments," or annual bonuses awarded to all staff, according to BCDA officials. Miscellaneous Pay Adjustments are also used for Transcription Assignment Pay, which is additional monthly compensation paid to Reporter Stenographers, for corrections of previous paycheck errors, for "terminal leave," for payouts of annual leave to departing employees, for payouts to employees changing civil service titles, and to reimburse the biennial \$375 attorney registration fees paid by ADAs to the New York State Office of Court Administration.³

² Personal Services (PS) expenditures are those made for salaries, wages, and fringe benefits of City employees.

³ BCDA's stenographers produce transcriptions of grand jury proceedings as well as other transcriptions deemed necessary by the office, such as witness interviews, 911 calls, and calls made with subjects at Rikers Island.

Objective

The objective of this audit was to determine whether the BCDA maintained adequate fiscal controls over its PS expenditures.

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.

The scope of this audit covers Fiscal Years 2019 and 2020 (the period from July 1, 2018 through June 30, 2020). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests conducted.

Discussion of Audit Results

The matters covered in this report were discussed with BCDA officials during and at the conclusion of this audit. A preliminary draft report was sent to the BCDA on November 8, 2021, and discussed at an exit conference held on November 18, 2021. On November 29, 2021, we submitted a draft report to the BCDA with a request for written comments. On December 14, 2021, we received a written response from the BCDA stating that it “accepts the findings and has already taken steps to implement corrective actions based on the recommendations.” The BCDA did not, however, specify any specific corrective actions that it has taken.

The full text of the BCDA’s response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

We found that the BCDA did not maintain adequate controls over its PS expenditures to ensure that compensation to its employees was appropriate, adequately supported, and properly approved. Specifically, the BCDA did not comply with Comptroller's Directive #13, *Payroll Procedures*, regarding the maintenance of payroll records for Miscellaneous Pay Adjustments and the contents of employee personnel files.⁴ In a sample of 42 BCDA office personnel records we selected for review, 41 were incomplete, and one could not be located by the BCDA. In addition, the BCDA did not fully comply with the Department of Citywide Administrative Services' (DCAS') requirements for conducting performance evaluations and could not provide performance evaluations for 21 of the sampled 41 employees (51 percent).⁵ Therefore, we could not determine whether the \$199,710 in bonuses paid to these 21 employees was merited and correctly calculated according to the BCDA's procedures. Additionally, the BCDA could not provide any payroll records for 9 of 59 (15 percent) sampled Miscellaneous Pay Adjustments made for attorney fee reimbursements to ADAs and Transcription Assignment Pay (steno pay) made to stenographers. The payments associated with these missing records totaled \$7,809.

Additionally, we found that BCDA personnel inappropriately approved 15,547 overtime requests for support staff (44 percent of all approved overtime requests). Specifically, we found that the BCDA approved 9,729 overtime requests for voluntary overtime worked by employees who were then paid in cash, contrary to the BCDA's policy which states that voluntary overtime must be paid in compensatory time, not cash. Moreover, we found that the BCDA inappropriately approved 9,123 overtime requests that lacked either any justification or a valid justification at all, and 1,020 overtime requests for periods of less than 15 minutes, which violates the Citywide Contract. Based on the BCDA's average cash-compensated overtime of \$28 per hour, we estimate that, during our audit scope period, the BCDA improperly paid as much as \$906,595 in cash overtime benefits and improperly awarded an additional 5,987 hours in compensatory time.⁶

Further, the BCDA did not provide an approved waiver for one employee that it obtained or should have obtained from DCAS for the period 2019 through 2021, pursuant to Section 211 of the New York State Retirement and Social Security Law. Therefore, we could not verify whether or not this employee was granted a waiver. Moreover, the BCDA did not provide copies of any of the documentation it submitted to DCAS in support of its Section 211 waiver requests.

Finally, we found control weaknesses with the BCDA's calculation of steno pay. Specifically, we could not reliably determine whether the total number of pages transcribed by stenographers and used to calculate their steno pay was correct. We also found inadequate segregation of duties within the BCDA's Payroll unit regarding the approval of steno pay and the entering of information into PI.

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

⁴ Our sample of 42 employees was comprised of a random selection of 41 employees plus the District Attorney.

⁵ Since a performance evaluation is not prepared for the District Attorney, we are reporting on the 41 randomly sampled employees that should have a performance evaluation in their personnel files.

⁶ Because of overtime requests that had multiple deficiencies, the figures associated with each individual deficiency do not add to the total number of improperly approved overtime requests.

Inadequate Recordkeeping of Required Documents

The BCDA Maintained Incomplete Personnel Records

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 effects."

However, we found that of the 42 sampled BCDA office personnel records, all of the 41 files that we were able to review were incomplete and did not comply with the requirements contained in Comptroller's Directive #13 for the maintenance of documentation in employees' personnel files. Specifically, 27 files (66 percent) were missing information on changes in compensation, including salary increases and authorized one-time payments. In addition, the BCDA could only provide us with an old personnel record for the District Attorney, which contained information related to previous employment at the BCDA in the 1980s, but nothing related to her current position as the District Attorney. Finally, as noted, the BCDA could not locate one of the personnel records that we randomly selected to sample.

The BCDA's noncompliance with Comptroller's Directive #13, regarding the contents of its employees' personnel records, hinders its staff and outside reviewers from properly reviewing its assigned employees' compensation and employment history.

The BCDA Did Not Conduct and Maintain Performance Evaluations

According to DCAS' *Personnel Rules and Regulations of the City of New York*, Rule VII, Section V, "Each agency shall establish and administer a performance evaluation program for sub-managerial employees" and "[s]ub-managerial employees shall receive at least one performance evaluation a year." In addition, according to BCDA officials, annual bonuses for support staff are calculated based on performance evaluation scores, while bonuses for legal staff are "based on a review of staff connected to their evaluations." However, the BCDA did not provide any performance evaluations covering our audit scope for 21 of the 41 sampled employees (51 percent). Without performance evaluations, there is no documented assurance that the BCDA's employees merited a bonus or received a correct amount in accordance with the BCDA bonus calculation formula, nor whether the BCDA complied with DCAS' requirements regarding performance evaluations. The BCDA paid these 21 employees a total of \$199,710 in bonuses during our audit scope. According to BCDA officials, performance evaluations are kept in a separate "evaluation file," and during most of our audit scope (until May 2020), support staff evaluations were maintained by the BCDA's Human Resources Department while the evaluations for the legal staff were maintained within the BCDA's legal units.

In response to concerns we raised regarding missing evaluations, officials stated that the BCDA conducts performance evaluations for the period covering May 1 through April 30 of the following calendar year and that office attendance is a component of these evaluations. However, because of the COVID-19 pandemic, the unions representing the support staff objected to performance evaluations for the period ending April 30, 2020, because of the difficulties in assessing remote work and because attendance was difficult to verify while working remotely. The BCDA eventually agreed with the unions that performance evaluations would not be performed for support staff whose work could not be performed remotely or whose supervisor felt that overall performance evaluation criteria could not be fairly evaluated as a result of the working conditions created by

the pandemic. Accordingly, the BCDA agreed to conduct evaluations for the remaining support staff for the eleven-month period preceding the pandemic, ending in March 2020. The BCDA also agreed that performance evaluation scores would not be used to calculate bonuses paid in 2020. Additionally, BCDA officials stated that they did not evaluate legal staff for the period ending April 30, 2020, because of the closure of the courts during the pandemic. Instead, the BCDA paid an across-the-board bonus to all staff regardless of the existence of an evaluation at a set percentage of the employee's salary.

We understand that the pandemic, remote work, and the closure of the courts dramatically disrupted the working environment and created challenges to monitoring and supervision. However, the BCDA's stated rationale for not conducting evaluations is not supported by the evidence or the circumstances that existed during the audit scope period. Preliminarily, the responsibility of the BCDA to monitor and supervise the work of its staff remained a core component of the office's work, notwithstanding the operational changes necessitated by the pandemic. Moreover, conducting performance evaluations is a citywide requirement dictated by DCAS and not subject to change by an individual agency, whether or not the change is advocated by a labor union. Therefore, the BCDA should have created alternative methods for monitoring and supervising staff in the wake of the pandemic, and it should have performed performance evaluations for all sub-managerial employees based on City rules, rather than abandon compliance with those rules altogether. Additionally, based on the BCDA's stated evaluation period of May 1 through April 30, which includes May 1, 2019 through April 30, 2020, the COVID-19 pandemic affected only approximately 38 days based on the pause of Grand Jury court proceedings on March 23, 2020. Accordingly, we question whether the BCDA was unable to fairly evaluate all of its employees for the approximately 11 months that preceded the pandemic. Finally, we note that, in addition to not providing Fiscal Year 2020 performance evaluations for the 21 above-mentioned employees, the BCDA did not provide Fiscal Year 2019 evaluations for them either. These evaluations would have evaluated performance for July 1, 2018 through June 30, 2019, a year *before* the pandemic began.⁷

The BCDA's noncompliance with DCAS' *Personnel Rules and Regulations* regarding performance evaluations provides limited assurance that annual bonuses were correctly paid to employees or that they merited such bonuses and constitutes a potential waste of City resources.

The BCDA Maintained Incomplete Payroll Records

According to Comptroller's Directive #13, Section 8.3, *Payroll Records*, "All payroll office records used for the review, reconciliation and adjustment of payrolls must be maintained and updated in secure, well-defined files" in accordance with agency records retention policies.

However, in connection with our review of Miscellaneous Pay Adjustments, the BCDA did not provide any evidence for 2 of 18 (11 percent) sampled ADAs that they had paid the attorney registration fees for which they were reimbursed. The BCDA did not provide any evidence of the review and approval of these \$375 Miscellaneous Pay Adjustments in its payroll documents. Additionally, the BCDA could not provide evidence of payroll approvals for 7 of 41 (17 percent) sampled Transcription Assignment Pays made to stenographers. In total, these 9 Miscellaneous Pay Adjustments (attorney registration fees and Transcription Assignment Pay) for which the BCDA did not provide payroll records totaled \$7,809.

⁷ One sampled employee did not work at the BCDA in Fiscal Year 2020. Therefore, 20 of the sampled employees should have been evaluated in Fiscal Year 2020.

The BCDA did not comply with Comptroller's Directive #13 regarding the maintenance of payroll records. Absent such records, there is no assurance that the BCDA's Payroll unit reviewed and properly approved these payments prior to disbursement to its employees.

Recommendations

The BCDA should:

1. Maintain complete employee personnel records that include, at minimum, the information mandated by Comptroller's Directive #13;
2. Conduct and maintain performance evaluations for all sub-managerial employees on an annual basis as required; and
3. Maintain complete payroll records that include Miscellaneous Pay Adjustments made to employees.

BCDA Response to Recommendations 1, 2, and 3: The BCDA "accepts the findings and has already taken steps to implement corrective actions based on the recommendations."

Inappropriately Approved Overtime Requests

During our audit scope, the BCDA approved 35,716 overtime requests, totaling 74,661 hours for 576 support staff employees. 408 of these employees had 13,984 approved requests (39 percent), totaling 42,420 hours, where they elected to be compensated in cash. The BCDA paid a total of \$1,180,175 in cash compensation for this overtime, including meal stipends as required, at an average of about \$28 per hour.

However, we found deficiencies with the BCDA's approval of 15,547 overtime requests (44 percent). Specifically, we found inappropriate cash payments for voluntary overtime worked, improper justifications or no documented justifications at all for some overtime requests, and the approval of overtime requests for periods of less than 15 minutes. As a result, the BCDA may have improperly paid as much as \$906,595 in cash overtime and improperly awarded an additional 5,987 hours of compensatory time to its employees.

Inappropriate Cash Payments for Voluntary Overtime Worked

According to the *Bronx District Attorney's Office Administration/Support Staff Procedural Manual* (Support Staff Manual), "[v]oluntary overtime' is overtime that a supervisor has approved, but which the employee is free to accept or decline." According to BCDA officials, "If it is a voluntary assignment, the overtime pay will be compensation time."

However, we found that 9,729 (27 percent) approved overtime requests, totaling 30,313 hours, were voluntary but paid in cash, not compensatory time, in violation of established procedures. Based on the average cash overtime of \$28 paid per hour, we estimate that the BCDA inappropriately paid \$843,346 in cash overtime to employees that should have instead received compensatory (comp) time.

When we asked about this practice, BCDA officials initially stated that

Cash OT can only be authorized by Supervisors. BCDA policy is to encourage comp time instead of cash as much as possible. Please note that the Finance team closely monitors cash OT payouts to make sure no employee goes over the OT cap. Once an employee reaches the OT cap, if a cash OT request is approved by a Supervisor in the system, timekeeping will cancel it out and resubmit the request as comp time. We also closely monitor our overall PS budget to make sure cash OT approvals are sustainable.

At the exit conference held on November 18, 2021, BCDA officials attributed the approval of cash compensation for voluntary overtime worked to limitations with CityTime⁸ that did not allow support staff to request overtime properly. Specifically, BCDA officials stated that CityTime restricted certain civil service titles from requesting involuntary overtime and as a result, the system would only provide the option of requesting voluntary overtime. However, according to the officials, in some cases, the overtime worked by the staff members was involuntary, and so the staff was entitled to cash compensation for the request. However, the BCDA provided no evidence of this limitation. BCDA officials stated that they will reach out to the Financial Information Services Agency (FISA) to address this issue.

The inappropriate approval of cash payouts for voluntary overtime can constitute a waste of City resources since it enables the distribution of cash in circumstances where staff should have received compensatory time. In addition, 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 in order to increase their cash compensation. Moreover, these improper payments inflate employees' total annual compensation, which could result in greater pension payouts for these employees. For example, the New York City Employees' Retirement System calculates retirement benefits for its Tier 4 members by using "the wages earned by a member during any three consecutive calendar years or the 36 months immediately preceding the member's retirement date, which provide the highest average wage." Not only is an artificially high retirement benefit a further waste of City resources, but it also has the potential to last many years and may be passed on to beneficiaries.

Approved Overtime Requests without Valid, Documented Justifications

BCDA officials stated that after an employee enters an overtime request for which prior approval had been received from their supervisor, "the [overtime] request would then be seen in timekeeping as an approved overtime request with a supervisor's commentary. The supervisor enters the justification of the approved overtime into CityTime."

Of the 35,716 approved overtime requests, the BCDA approved 9,123 (26 percent), totaling 19,408 hours, with no documented justification at all. Rather, the "Comments" field was left blank and so there was no assurance that these overtime requests were properly approved for appropriate reasons.

⁸ CityTime is New York City's electronic timekeeping system. CityTime allows employees to manage their time and leave requests and to view their leave balances.

In response to our concerns about this practice, BCDA officials stated the timekeeping difficulties imposed by the pandemic, specifically the fact that timekeepers were entering timesheet information for all BCDA employees during this time, as a possible reason that the comments section of the records was left blank. However, almost all of the 9,123 approved overtime requests with no justification occurred prior to March 23, 2020, the date when grand jury proceedings were paused, and its staff began to work remotely. Only 203 of the 9,123 approved overtime requests with no justification (two percent) occurred after to March 23, 2020.

BCDA officials further stated, “Outside of the COVID/WFH period, it is possible that Supervisors approved overtime without the ‘Comments’ section completed as they were fully aware of the reason OT was necessary.” However, without written justifications, it is impossible to ascertain the number of cases where this practice is correct, and more importantly, the number of cases where it is not. Additionally, this hinders the BCDA’s ability to perform proper reviews of metrics that would better inform budgeting and personnel decisions.

The BCDA did not ensure that all overtime requests were for appropriate and documented reasons, nor that its personnel followed established procedures in indicating the supervisor who approved the overtime. The 9,123 approved overtime requests with no justifications resulted in as much as an estimated \$376,443 in cash compensation and an additional 5,877 hours in compensatory time that was improperly awarded. The granting of overtime compensation for inappropriate reasons would be a misuse and waste of City resources. In addition, as noted above, the improper payments of cash overtime inflate employees’ compensation, possibly resulting in longer-term financial expenditures in the form of increased pension payouts for these employees.

Inappropriately Approved Overtime Requests for Periods Less Than 15 Minutes

The Citywide Contract, Article IV, Section 6e states that “payment [of overtime] shall be computed and paid on a basis of quarter hour units actually worked beyond the normal scheduled work week.”

However, during our audit scope, we found 1,020 approved overtime requests (three percent) of less than 15 minutes and 73 of these were approved for as low as eight minutes. In response to the concerns we raised about this practice, BCDA officials stated, “Employees must work a minimum of 1 hour within the same work week to receive cash/comp time overtime. It is likely that what is being captured in the spreadsheet is subset of that employee’s request for OT within that week. Please note that if an hour of OT is not achieved in a given week, City Time will not consider the OT as payable either in cash or comp time even if approved by Supervisor.”

While it is correct that CityTime has an automated function that requires a minimum of one hour of overtime in order to get credit for the overtime, the minimum daily requirement, according to the Citywide Contract, is a quarter hour, or 15 minutes. Approving overtime of less than this duration is not only in violation of the contract, but could potentially be used by an employee to reach the one-hour weekly minimum without that employee performing work that requires overtime due to the fact that CityTime automatically rounds up to the nearest quarter hour where between 8 and 14 minutes are worked. At the exit conference held on November 18, 2021, BCDA officials informed us that they have addressed this deficiency and that overtime periods of less

than 15 minutes are no longer acceptable. No additional evidence was provided to demonstrate how this change was effected.

During our audit scope, BCDA officials did not ensure that these overtime requests were of the minimum duration before approving them. The inappropriate approval of overtime of less than 15 minutes in duration is a waste of City resources used to compensate employees who are not eligible to receive this overtime. We estimate that the BCDA paid a total of \$873 and awarded an additional 164 hours of compensatory time for overtime requests of less than 15 minutes in duration.

Recommendations

The BCDA should ensure that:

4. Cash overtime is not paid to employees who work overtime on a voluntary basis in accordance with established procedures or update these procedures appropriately;
5. It refers to FISA any potential system limitations for further investigation and remediation as appropriate;
6. It obtains complete, documented, and appropriate justifications, including the name of the supervisor, with overtime requests prior to approving the requests; and
7. Approval is not given to any overtime requests for periods of less than 15 minutes.

BCDA Response to Recommendations 4, 5, 6, and 7: The BCDA “accepts the findings and has already taken steps to implement corrective actions based on the recommendations.”

Absence of Section 211 Waiver

According to New York State Civil Service Law, Section 150, employees who have retired from civil service in New York State, or any municipal corporation or political subdivision of the State, cannot return to civil service in the State and continue receiving a pension or any other annuity granted upon retirement. However, Sections 211 and 212 of the New York State Retirement and Social Security Law modify this pension suspension requirement for employees under the age of 65. As of January 1, 2020, Section 212 allows retirees to accept civil service employment and earn up to \$35,000 in a calendar year while continuing to collect a pension.⁹ Section 211 allows covered retirees to accept civil service employment without an earnings limitation as long as the retiree is approved for a Section 211 waiver and has not worked in the same or similar position for a minimum of one year after retirement. Section 211 waivers last two years and may be renewed upon review.

To obtain a Section 211 waiver, the agency must submit a written application on behalf of the retiree. Among the requirements of Section 211 waiver applications are that:

- The prospective employer has prepared a detailed recruitment plan to fill such vacancy on a permanent basis;

⁹ Prior to January 1, 2020, the wage limitation was \$30,000.

- His or her employment is in the best interests of the government service; and
- There is an urgent need for his or her services in such position as a result of an unplanned, unpredictable, and unexpected vacancy where sufficient time is not available to recruit a qualified individual and that such hiring shall be deemed as non-permanent rather than a final filling of such position; or that the prospective employer has undertaken extensive recruitment efforts to fill such vacancy and as a result thereof, has determined that there are no available non-retired persons qualified to perform the duties of such position.

In the City of New York, DCAS reviews and approves applications for Section 211 waivers. DCAS reiterates in Personnel Services Bulletin (PSB) 200-8, “Approval under Section 211 is meant to be temporary or on a short-term basis when possible. It is not meant to provide a retiree with a second career in government, particularly when it can be shown there are other qualified non-retirees seeking promotion or employment for the same position.”

During our audit scope period, the BCDA employed 12 individuals, all detective investigators, who had retired from City civil service employment. Eight of these employees were required to obtain a Section 211 waiver during our audit scope (the remaining four left the agency prior to the expiration of Section 211 waivers obtained prior to our audit scope).¹⁰ Payroll records indicate that all eight employees received compensation from the BCDA during our audit scope period that exceeded the threshold requiring a Section 211 waiver. The BCDA could not provide the approved Section 211 waiver for one of the eight covered employees employed during our audit scope period. Instead, the BCDA provided correspondence with DCAS regarding this employee’s pending waiver renewal for 2021, which was delayed due to the COVID-19 pandemic, and implied that this pending renewal was evidence that a waiver covering our audit scope existed. However, absent an approved waiver covering our audit scope, we have no assurance that this employee earning post-retirement wages along with a pension had an approved waiver as required.

The absence of Section 211 waivers for employees earning post-retirement wages is a violation of the New York State Civil Service Law and the New York State Retirement and Social Security Law, as well as a potential waste of City resources.

In addition, the supporting documentation submitted to DCAS in connection with the associated waiver applications for the 12 BCDA employees who had previously retired from City civil service employment was not available for our review. According to a BCDA official, “Once COVID hit all paperwork were sent to DCAS electronically so the records aren’t kept in hardcopy and are held by DCAS.” Consequently, we were not able to verify whether the documentation submitted was sufficient and appropriate.

Recommendation

8. The BCDA should ensure that it obtains and maintains approved Section 211 waivers and supporting documentation for employees earning post-retirement wages.

BCDA Response to Recommendation 8: The BCDA “accepts the findings and has already taken steps to implement corrective actions based on the recommendations.”

¹⁰ None of the eight employees had attained age 65 before or during our audit scope period.

Weaknesses in the Stenographer Pay Process

Weaknesses in Calculating Stenographers' Pay

The BCDA employed 25 stenographers during our audit scope—all full-time salaried support staff. Aside from their regular salary and their annual bonuses, stenographers also receive monthly performance-based Miscellaneous Pay Adjustments which the BCDA calls Transcription Assignment Pay or “steno pay.” The BCDA paid \$585,722 in steno pay over 21 months during our scope period, at an average of \$27,892 per month.¹¹

To calculate the amount of steno pay for each stenographer for a particular month, the Finance unit first allocates a “pie,” or a pool of funds to be used for steno pay based on available funding. In general, this pie is then split proportionately between the stenographers based on the number of pages produced by each stenographer during the month. At the end of each month, or shortly thereafter, the Director of Stenographic Services completes and sends a pre-formatted spreadsheet called the *Monthly Steno Earnings Worksheet* (Monthly Report) to the Payroll unit. This report lists, among other things, the total completed page count and the associated steno pay for each stenographer during the month.

When stenographers complete transcripts they sign and attach a certification page that includes the date the transcript was completed, then send the transcript to the ADA assigned to the case. The stenographers also submit Daily Tabulation Sheets—which are hard copy records of the number of pages transcribed for each day of the month—along with all certification pages of the relevant transcripts to the Director of Stenographic Services for review.

The completed total page counts listed on the Monthly Report may not match the actual pages transcribed by the stenographers for several reasons. First, some transcriptions are deemed to be a higher priority than others and therefore the page count may be doubled or tripled for tabulation purposes. According to BCDA officials, one way a transcript can gain priority status is if it is associated with a “Special Panel,” which includes more intensive cases that often last for months. Another way a transcript can gain priority status is if an ADA requests that the transcript be expedited. In such circumstances, the stenographer would note whether a page count is doubled or tripled on the Daily Tabulation Sheet, which is subject to approval by the Director of Stenographic Services.

In addition, the Monthly Report page counts might not match the actual pages transcribed when the end of a month falls during the middle of the week. In those months, the Director of Stenographic Services may informally “extend” the month to the end of the week – including the first few days of the following month in the current month’s calculation. This would mean that the literal number of pages completed in a month would not necessarily match their calculation, even after accounting for doubling and tripling of page counts.

Our review of transcripts produced by three randomly selected stenographers for the sampled month of April 2019 found that transcription page counts did not match the Daily Tabulation Sheet or the Monthly Report for any of those three employees. The total page count discrepancy among the three stenographers was 162 pages, or 8 percent of the total number of pages claimed on the Daily Tabulation Sheets, after accounting for any doubling or tripling of page counts.

¹¹ No such payments were made during April, May, and June 2020 because of the pandemic and closure of the courts.

During our review, we found weaknesses with the process of tabulating transcription page counts that affected our ability to review and verify the information. First, an ADA may informally request that a transcript is expedited, including via verbal communication, which means the request may not be properly documented. In these cases, there is no reasonable assurance that the doubling or tripling of page counts was for a valid reason. According to a BCDA official, the doubling or tripling of page counts needs to be approved prior to crediting the stenographer for the expedited work. However, no evidence of review and approval beyond this statement was provided.

Second, the dates listed on the certification pages (and the page count of the associated transcript) did not match the information listed on the Daily Tabulation Sheets for all of the reviewed dates. The Daily Tabulation Sheets contain no information other than the date and the number of pages completed on each date, making it impossible to connect the completed number of pages with the corresponding cases unless the stenographer includes this detail. This is problematic because the Daily Tabulation Sheet is used to complete the Monthly Report. In response to our concerns, BCDA officials stated that they would create a new tabulation sheet that would more clearly connect page totals and their associated case number. At the exit conference held on November 18, 2021, and in their subsequent written comments, BCDA officials reiterated that they have updated their process, including the creation of a new “Daily Tabulation Log,” to address these deficiencies and stated that “this sheet is already in use as of November 1, 2021.” No additional evidence of this updated practice was provided by the BCDA.

Third, as previously mentioned, the “month” may be informally extended without recorded evidence. We were unable to determine whether this was the case for our sampled month of April 2019, which ended on a Tuesday. Additionally, there is no assurance that the remainder of the work week (May 1 to May 3, 2019) was not counted for both April and May.

These aforementioned weaknesses in the BCDA’s practices increase the risk that steno payments would be incorrectly calculated and awarded to stenographers.

Weaknesses in Payroll Processing of Stenographers’ Pay

According to Comptroller’s Directive #13, Section 2.3, “Agencies must ensure that the following processes are adequately segregated: authorization of payroll additions, deletions, and changes ... [and] the processing and production of the payroll.” Section 6.1 also states that “to ensure the independence of the payroll office, its employees ... must not have the authority to authorize payroll actions.” In addition, the Comptroller’s Directive #1 Agency Financial Integrity Statement, on Section G of the associated checklist, asks the agency to confirm whether “responsibilities for supervision, timekeeping, personnel, payroll processing, and disbursements [are] all performed by different individuals.”

We reviewed 326 *One-Time Payments* forms (82 percent) from our audit scope period and found that in 267 of them, the Payroll Director signed both the “Manager/Supervisor” and “Data Entry Operator” fields. As a result, the Payroll Director assumed the dual responsibility of approver of the associated steno pays and of recordkeeper who entered the information into PI for disbursement—actions which should be segregated between two individuals. Accordingly, the BCDA did not comply with Comptroller’s Directives #1 and #13 requiring the proper segregation of duties in the payroll processing of steno pay. This failure to properly segregate duties increases the risk of fraud or misappropriation of City funds, as well as errors in either approval or recordkeeping that may go undetected. At the exit conference on November 18, 2021, and in subsequent written comments, BCDA officials informed us that this deficiency has been addressed and stated that “the Payroll Director is no longer the only person reviewing and

approving the one time payments for stenographers. This has been the case for many months.” BCDA officials did not provide any additional evidence of this updated practice.

One additional weakness in the BCDA’s processing of steno pay occurred when a Payroll Assistant received the Monthly Report. At that time, she/he prepared a *One-Time Payments* form with the amount of the steno pay. The Payroll Director then both approved and entered the information into PI for payroll processing. On this form, both the Payroll Assistant and the Payroll Director certified that “the above request is supported by documentation on file.” However, according to BCDA officials, neither individual verified total page counts nor that supporting documentation is on file prior to approving and processing steno pays. Consequently, the Payroll unit had no assurance that steno payments were correctly calculated and merited prior to processing the payment.

Recommendations

The BCDA should:

9. Ensure that stenographers correctly record their completed page counts in accordance with the dates they certify as having completed the associated transcripts;
10. Properly document requests for expedited or other special case transcripts;
11. Document changes to the beginning and ending dates to the monthly periods associated with page count totals, if applicable;
12. Ensure that the Payroll Unit properly verifies page counts and that supporting documentation is on file prior to approving the associated Miscellaneous Pay Adjustments; and
13. Comply with the requirements of Comptroller’s Directive #13 regarding the proper segregation of duties of payroll functions.

BCDA Response to Recommendations 9, 10, 11, 12, and 13: The BCDA “accepts the findings and has already taken steps to implement corrective actions based on the recommendations.”

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 2019 and 2020 (the period from July 1, 2018 through June 30, 2020).

To obtain an understanding of the BCDA's fiscal controls over its personal services expenditures, we independently obtained and used as criteria *Comptroller's Directive #1 – Principles of Internal Control* and *Comptroller's Directive #13 – Payroll Procedures*. We also independently downloaded and reviewed a PY05 (Pay Details) report from CHRMS covering our audit scope in order to obtain an understanding of the BCDA'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.

We also reviewed and used as criteria:

- *DCAS' Personnel Rules and Regulations of the City of New York;*
- *PSB 200-8;*
- *Sections 6e and 7 of the DC37 1995-2001 Citywide Contract (Citywide Contract);*
- *New York State Civil Service Law, Section 150;*
- *New York State Retirement and Social Security Law, Sections 211 and 212;*
- *New York State Civil Service Commission: Section 211 Application – Application for Pension Waiver Pursuant to Section 211 of the New York State Retirement and Social Security Law;*
- *NYCERS, Calculating Your Final Average Salary: Tier 4 Members (Version January 2010);*
- *NYCERS, Earnings Limitations for Service Retirees, dated April 2021; and*
- *NYC FISA-OPA Portals.*

We judgmentally selected two pay periods, June 2 through June 15, 2019, and January 26 through February 8, 2020 -- one period from each of the two Fiscal Years in our audit scope that had no holidays. The pay period in 2020 was also selected because it was the last prior the COVID-19 pandemic. We then obtained from the FISA the following reports from CityTime for these two pay periods:

- *Overtime Requests Report* – we also obtained a separate report covering our entire audit scope
- *Time Entry Detail Report*
- *Timesheet Status Detail Report*

We reviewed these reports to determine whether employees had approved timesheets and corresponding time punches on file for the days they were paid. We also determined whether employees who had worked overtime and had a proper justification for doing so were properly approved. In addition, we determined whether any of the ADAs were approved overtime, as they are not eligible to receive overtime under any circumstances. For Calendar Year 2019, we also determined whether overtime was paid in cash to employees who had exceeded the overtime cap of \$87,860.

We obtained from the BCDA and reviewed the following:

- CHRMS Event Descriptions, their definitions, and the types of employees eligible to receive each category of pay;
- A list of all employees active at the BCDA at any point during our audit scope;
- A list of employees separated from the BCDA during our audit scope;
- The *Bronx District Attorney's Office Employee Manual for Assistant District Attorneys*, dated June 13, 2018;
- The *Bronx District Attorney's Office Administration/Support Staff Procedural Manual*, dated June 13, 2018; and
- The purpose of each payment either earned or paid and classified as a Miscellaneous Pay Adjustment made to BCDA employees during our audit scope.

To understand the BCDA's organizational structure, we obtained and reviewed the agency's organizational charts for its legal staff as of July 7, 2020 and support staff as of August 14, 2020.

To obtain an understanding of the BCDA's operating practices related to personal services, we conducted an initial walkthrough meeting with the BCDA's Finance, Payroll, and Human Resources departments. To obtain information on the individual units, we conducted additional walkthrough meetings with the Timekeeping department and the Human Resources department.

Following these walkthrough meetings, we documented our understanding of the BCDA's operating practices and confirmed our understanding in writing.

We obtained and reviewed updated lists of all payments classified as a Miscellaneous Pay Adjustment made to BCDA employees during our audit scope that included Employee ID numbers and Document number (the transaction number used for payroll purposes).

To determine whether the BCDA complied with Comptroller's Directive #13 regarding the contents of employee personnel files, we requested for review a total of 42 personnel files. We initially requested the personnel files for 21 randomly selected employees—10 ADAs, 10 support staff, and the District Attorney. Because BCDA officials could not locate and provide one personnel file, we replaced their name with another randomly selected file. We then reviewed the files and noted which required documents were missing. We then selected one of the cabinets in the Human Resources department containing personnel files and requested for review an additional 20 personnel files – 11 ADAs and 9 support staff.

To determine whether Miscellaneous Pay Adjustments that BCDA identified as paycheck adjustments were appropriate and adequately supported, we judgmentally selected ten such payments at both extremes—the five highest and five lowest (most negative) payments—and requested an explanation and associated evidence for such payments.

To determine whether Miscellaneous Pay Adjustments that BCDA identified as Attorney Fee Reimbursements paid by ADAs were appropriate and adequately supported, we randomly selected 18 of 181 (10 percent) such \$375 payments and obtained evidence of the ADA's payment to the New York State Office of Court Administration prior to being reimbursed by the BCDA. Because the BCDA identified an additional eight payments as Attorney Fee Reimbursements that were not \$375, we also requested evidence regarding those eight payments and determined that they were mislabeled by the BCDA and were instead made for other purposes.

To determine whether all BCDA employees receiving post-retirement wages had an approved Section 211 waiver on file, we requested a list of all such employees along with their approved waiver. We received a list of 12 such employees—8 who required a Section 211 waiver during our audit scope. The supporting documentation submitted to DCAS in connection with the associated waiver applications for these employees were not available for our review. Consequently, we were not able to verify whether the documentation submitted was sufficient and appropriate.

To determine whether Miscellaneous Pay Adjustments that BCDA identified as steno pay to stenographers were appropriate and adequately supported, we randomly selected 41 of 413 (10 percent) such payments and requested evidence of the work performed prior to being paid by BCDA. We received the following documents:

- All *One-Time Payments* forms used by the Payroll unit for the dates associated with the 41 selected payments, a total of 326 payments; and
- *Monthly Steno Earnings Worksheet* (Monthly Report) for our audit scope, a total of 24 Monthly Reports.

We had additional walkthrough meetings with a stenographer and the stenographer's supervisor, the Director of Stenographic Services, to obtain more information on their job duties and the process of qualifying for and receiving steno pay. We then judgmentally selected the month of April 2019, the month with the highest total amount of steno pay, and obtained and reviewed *Daily Tabulation Sheets*, where stenographers record daily totals of pages transcribed, for all stenographers who received steno pay, and "Steno books," or each stenographer's record of cases they worked on. Additionally, for three randomly selected stenographers, we reviewed all transcripts they certified to have completed during the sampled month to determine whether the total number of pages matched the Daily Tabulation Sheet and the Monthly Report. We then had an additional meeting with the Director of Stenographic Services and the Chief Financial Officer to discuss the identified discrepancies.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis for us to evaluate the BCDA's controls over its PS expenditures.



DARCEL D. CLARK
District Attorney

198 East 161st Street
Bronx, New York 10451

(718) 590-2161
Fax (718) 293-3796

Dahianna Castillo
Chief Financial Officer

December 14, 2021

Gabriela Adina Benedek
Audit Manager, Bureau of Audit
Office of New York City Comptroller Scott M. Stringer
1 Centre Street, 13th Floor North, New York, NY 10007

RE: BXDA Audit Report on PS Expenditures

Dear Ms. Benedek,

In response to the Comptroller's Audit Report, the BXDA accepts the findings and has already taken steps to implement corrective actions based on the recommendations.

Thank you,

Dahianna Castillo

Dahianna Castillo
Chief Financial Officer
Bronx County District Attorney's Office