

**Nassau County
Office of the Comptroller**



**Limited Review
of the Office of Consumer Affairs**

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NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Executive Summary

Background

The Nassau County Office of Consumer Affairs (“OCA”) is a Nassau County (“County”) governmental department established by the Nassau County Charter (“Charter”) to provide consumer protection services to County residents and other business patrons located in the County. Codified laws, regulations, and ordinances regulate the responsibilities of the office.

The powers and duties of the Commissioner of Consumer Affairs (“Commissioner”) are defined in the Nassau County Administrative Code (“County Administrative Code”).¹ According to OCA, the department’s mission is “...to protect consumers and businesses from fraudulent enterprises and business practices; enhance consumer safety; strictly enforce consumer legislation; support competitive business practices; improve internal service delivery; provide consumer education and information; and, strengthen the consumer voice.”²

The department performs a wide-range of functions to accomplish its mission. Included in its responsibilities, are the following:

- Investigate complaints and initiate investigation of frauds or unfair dealings against consumers;
- Work with federal, state and local agencies, including any law enforcement agencies, to protect the interests of consumers;
- Educate and advise residents regarding consumer protection;
- Inspect and test weighing and measuring devices, which are used commercially, to ensure that they are accurate and being used properly;³
- Licensing of home improvement contractors;
- Collect and administer the Home Improvement Restitution Fund⁴, which was established to compensate consumers who are unable to collect a judgment from a licensed home improvement contractor;
- Registration of for-hire vehicles operating in the County;
- Registration of Automated Teller Machines (“ATM”) operating in non-financial institutions located in the County; and
- Other enforcement matters, such as, sale of water contaminated gasoline, sale of adulterated motor fuel, required posting of tax-exempt foods and drugs, disclosure requirements for refund anticipation loans, and display and distribution of adult material.

In order to accomplish its duties, OCA is organized into the following responsibility

¹ Nassau County Administrative Code §21-10.0 (Chapter XXI – Miscellaneous Officers – Title D Consumer Affairs).

² Office of Consumer Affairs website,
<http://www.nassaucountyny.gov/agencies/OCA/Commissioner/welcome.html>

³ Pursuant to New York State Agriculture and Markets Law Article 16 §180.

⁴ Pursuant to County Administrative Code §21-11.16.

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centers or divisions:

- Consumer Protection, which includes:
 - Legal counsel to support investigative activities;
 - Taxi and Limousine Commission (“TLC”), which regulates the registration of for-hire vehicles, such as taxicabs and limousines that operate in Nassau County. Fees are collected for the registration of these vehicles; violation penalties may be assessed against for-hire vehicles owners or operators for violations of law or ordinances.
- Weights and Measures Division:
 - Performing inspections, testing, and sealing of all weighing and measuring devices used commercially to assure that they are accurate. During the audit period an average of 15,000 inspections were performed annually.
 - Unfair, deceptive and unconscionable trade practices enforcement, especially for food markets, gasoline stations and fuel oil deliveries.
 - Collection of gasoline and diesel fuel samples to test for octane and cetane levels, and for compliance with Federal Clean Air Standards.
 - Enforcement related to item pricing, pricing accuracy, and dating of perishable foods.
 - Fees are collected for performing inspections and granting item-pricing waivers; violation fees are collected if vendors are found to be in violation of any state or local law.
- Investigations and Complaints Division:
 - Provides consumer protection to County residents and regulates unfair, deceptive and unconscionable trade practices, include investigating, mediating, and resolving consumer complaints against businesses including home improvement contractors and retail stores. This division received an average of 2,800 consumer complaints each year, over the audit period.
 - Violation penalties may be assessed against businesses as a result of investigations.
- Licensing Division:
 - Licenses home improvement contractors. During the audit period, the division received, on average, 4,500 applications annually. Registration fees are collected for new licenses and renewals.
 - Responds to consumer inquiries regarding the licensing status of contractors;
 - Administers the Home Improvement Restitution Fund and collects the required fee from all new home improvement contractors that subsidizes this fund; and

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- Registers non-bank Automated Teller Machines (“ATM”). Fees are collected for new and renewal registrations.
- Information and Education – to educate and inform consumers and businesses on laws and public safety issues affecting County residents and businesses, and administering all Freedom of Information Law (“FOIL”) requests.

For 2004 through 2006, OCA reported the following revenue from its activities:

| Office of Consumer Affairs - Revenues Reported* | | | | |
|--|---------------------|---------------------|---------------------|----------------------|
| | 2004 | 2005 | 2006 | Total |
| Total Revenues** | \$ 2,911,216 | \$ 4,252,487 | \$ 4,320,872 | \$ 11,484,575 |
| Home Improvement Licenses | \$ 1,571,267 | \$ 2,257,375 | \$ 1,730,614 | \$ 5,559,256 |
| Weights & Measures | 741,420 | 772,715 | 809,685 | 2,323,820 |
| TLC Registration | - | 360,255 | 940,305 | 1,300,560 |
| ATM Registration | - | 27,670 | 12,160 | 39,830 |
| Fines | 553,828 | 784,242 | 782,186 | 2,120,256 |
| Miscellaneous Receipts | 50 | 442 | 620 | 1,112 |
| State Reimbursements | 44,651 | 49,788 | 45,302 | 139,741 |

*Source: Nassau County Integrated Financial Systems (NIFS)

** Does not include the collection of fees for the Home Improvement Restitution Fund; this fund is a County Agency and Trust account.

As of the date of this report, OCA was in the process of implementing a new case management system with the expectation of improving the efficiencies of its operations. Considering its lack of up-to-date technology, OCA had implemented many manual processes to manage its complex operations, with effective results.

Audit Scope, Objective, and Methodology

The objective of our audit was to examine OCA’s compliance with the Nassau County Administrative Code, Miscellaneous Laws and Ordinances, and to review internal controls surrounding receipts in order to provide reasonable assurance that an effective system of internal controls was in place to safeguard receipts and accurately report the revenues collected by OCA on a timely basis. The period audited was January 2004 through December 2006. On a test basis, we examined different categories of receipts, and attempted to verify that funds collected were correctly presented to the Nassau County Treasurer (“Treasurer”) for deposit. We reviewed County laws, regulations and ordinances, OCA’s procedures, relevant supporting documentation and interviewed staff. We did not examine OCA’s expenses, including salary expense, or time and leave compliance. This audit includes our examination of documents and other available evidence that would substantiate the accuracy of the information tested, including all relevant records and contracts. We tested for compliance with applicable laws and regulations, and other auditing procedures necessary to complete the examination. We believe that the audit provides a reasonable basis for the audit findings and recommendations.

Based upon the response we received from OCA during discussions of our recommendations, we expanded our scope to perform some subsequent testing. We noted

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that many of the recommendations informally suggested to OCA were in the process of being implemented.

Summary of Significant Audit Findings

Overall, based on our audit of OCA, we concluded that while there were good controls over operations, we were unable to ensure that their cash receipts were consistently recorded in the County's general ledger system timely and accurately. In addition, OCA's technology was outdated.

During our audit, we noted two general weaknesses that appeared to affect all OCA divisions – the collection of and accounting for cash receipts, and the technology made available to OCA.

Collection of and Accounting for Cash Receipts

Several of OCA's divisions collect payments from merchants. These payments are made in person or via mail and represent licensing, registration, inspection and violation fees. OCA does not have a centralized process or accounting function to collect and record cash receipts. As a result, for some of the divisions, deposits are not made on a timely basis and individual receipts could not be traced to the County's general ledger – *Nassau Integrated Financial Systems* ("NIFS"). However, OCA does not accept cash and payments are collected in the form of certified/bank checks or money orders, thus reducing the risk of lost or misappropriated funds.

Inadequate Information Technology

The technology available to OCA resulted in there being an inconsistency in the use of software applications and allowed for minimal integration of data among OCA's divisions. The system OCA uses to track consumer complaints and home improvement licenses, *Consumer Affairs Record Access System* ("CARAS"), lacks the necessary functionality, including the ability to provide financial data. Many of the processes within OCA are manual and labor-intensive because of CARAS's inability to provide the functionality required by OCA's different divisions. Each division is using a Microsoft software application to manage their respective data and recordkeeping responsibilities. However, as there is no integration among the different databases maintained, repetitive entry of duplicate information is necessary.

Non-Compliance with Administrative Code

Although the County Administrative Code established a Board of Consumer Affairs and a Home Improvement Industry Board, neither advisory board existed during the audit period. In addition, the County Administrative Code required all home improvement contractors to be fingerprinted, however compliance with this requirement was not possible due to a lack of authority given to OCA. Our testing noted that while the County Administrative Code specifies that, for item pricing waiver inspections, 100 stock items must be counted, OCA has reduced the number of items tested in smaller stores even though the County Administrative Code does not make a distinction between the size of each store when inspecting pricing accuracy.

Inadequacy of Automated Teller Machines Registration ("ATM")

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Beginning in 2005, legislation was passed to require the registration of all non-financial institution ATMs located within the County, in an effort to protect consumers. However, due to difficulties with the start-up of the registration program, registration fees were not consistently collected until 2007. In addition, we noted other deficiencies in the process including the retention of incomplete documentation.

Inadequacy of Taxi and Limousine Registrations

During our review of registrations of for-hire vehicles operating in the County, we noted that there were deficiencies in the review and documentation process for new, renewal and replacement registrations. We noted some registration applications that had no employee signature documenting approval, others did not indicate that a background check was performed and some applications had omitted required information.

Home Improvement Licensing

Home improvement contractors are required to maintain a minimum amount of liability insurance in order to be licensed. However, because the licenses are valid for a two-year period and liability insurance policies are renewed annually, there is no mechanism for OCA to confirm that the contractor maintained the required liability insurance for the second year. We also noted that applicants are not required to provide a copy of their workers' compensation insurance policy when applying for a license or renewal. In addition, Licensing Division employees did not evidence their review of applications by initialing or signing them.

Other Findings

Our audit noted the following deficiencies:

- Due to the lack of a case management system, consumer complaints are tracked manually and records are kept in folders – a labor-intensive process that may result in lost documentation.
- A deputy commissioner and a division supervisor act as hearing officers for many of the violation hearings, which takes them away from their day-to-day duties. In addition, hearing proceedings are not documented consistently among the hearing officers, making it difficult to determine if all relevant data was retained and recorded.
- Lack of written policies and procedures for each division.
- Invoice books, utilized by the inspectors of the Weights and Measures division, are not issued sequentially, and not all invoices are accounted for.
- Scheduling of violation hearings was recorded in a manual appointment book and then transcribed into Microsoft Word; hand-written notations were added to the hard-copy to indicate the resolution of the hearing, resulting in duplication of effort.

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On July 2, 2008, our Office submitted this report in draft to OCA for comments. The matters covered in this report were discussed with OCA management in an exit conference held on August 5, 2008. After reviewing OCA's comments, which were received at the exit conference, we submitted a revised draft report to OCA on September 18, 2008 and again on October 14, 2008. OCA's revised comments, received on October 10, 2008 and revised again on October 24, 2008, and our responses to the latter revision's comments, are included as an appendix to this report.

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Audit Findings and Recommendations

Audit Finding (1):

Collection of and Accounting for Cash Receipts

Payments, such as licensing and registration fees, are collected by the Weights and Measures, Licensing (which includes Automated Teller Machine licensing), and the Taxi and Limousine divisions. Payments for violations are received by these divisions but are recorded by another individual in OCA. We reviewed the receipts collection process for each of the divisions. The majority of collections are received in the form of certified/bank checks, or money orders; some merchants may pay with business checks⁵, primarily for scale inspections and item price waivers. *No* cash is accepted by OCA.

The cash collection and control process is primarily an accounting function. We found that while OCA has long sought to hire an accountant and an accounting assistant to oversee these activities, approval has not been granted. As a result, each division, without the benefit of an accountant's guidance established, on an ad hoc basis, its own (mostly manual) process for the collection, recording and internal control of revenue.

Each division aggregates its receipts, inputs an entry into NIFS⁶, and presents the receipts to the Treasurer's Office for deposit, however this process is not consistently performed on a timely basis. Depending upon the type of fee paid, the registration or transaction that resulted in the revenue may then be recorded in one several databases maintained by OCA. Each division maintains its own database, or in some cases, multiple databases, to record the transactions for which fees are collected. There is no consistency among the divisions regarding the data captured; some divisions do not record the fee collected in their databases.

In addition, there was not always a mechanism in place for OCA to trace an individual record in a database to the deposits made for a particular day. As a result, we could not ensure that all collections were recorded in NIFS accurately and on a timely basis, primarily because the process is manual and decentralized, and the records maintained in the databases were not easily reconcilable to the NIFS deposits, or its internal reports.

Receipts are collected either in person or via mail. Although payments are made at the front desk of OCA, the collection process is not centralized. An employee of the division (to which the payment is to be made) will come to the front desk to receive and process the payment. There is no centralized accounting function to oversee the collection of, and accounting for, the cash receipts. While OCA collected over \$4 million each year in 2005 and 2006, it has not been provided with the resources to employ an accountant to reconcile all collections and postings to the department's internal reports and NIFS. This, increases the risk that fees are not accounted for properly in NIFS. OCA has acknowledged its need for accounting staff, as far back as 2002, however, this resource has not been provided.

Weights and Measures

The division of Weights and Measures is responsible for inspecting and sealing scales, such as those found in supermarkets and delicatessens, gasoline pumps, oil trucks, and

⁵ Occasionally, small businesses may pay by use of a personal check.

⁶ Nassau Integrated Financial Systems.

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other measuring devices used commercially.⁷ It charges a fee for its inspections of weight and measuring devices, a duty required under New York State Agriculture and Markets Law Article 16 §180.⁸ The fees are based upon the type of measuring device or its weight capacity. The division assigns its inspectors to territories that are rotated on an annual basis. Upon completion of the test, the inspector issues to the store, or station, a pre-numbered invoice from an invoice book. The division receives business⁹ checks by mail from merchants for device inspections and other services performed, such as item pricing waivers¹⁰. It uses four Microsoft Access databases (for each year), one for each type of inspection,¹¹ to track the status of all inspections, including the recording of invoices issued and payments received. The inspection fee, along with a copy of the invoice, is mailed to OCA. The inspector submits a copy of the invoice to a division supervisor who inputs the relevant data, including the invoice number and fee amount. When fees are received from the merchants, a clerk will enter the invoice number and payment amount into the applicable database to ensure that payments received from merchants agree with the invoices issued by the inspectors.

The Nassau County Charter requires departments to deposit cash receipts with the County Treasurer at times designated by the Treasurer, but “in no instance less frequently than once a week”.¹² Checks collected by Weights and Measures are not consistently deposited on a timely basis as defined by the Charter, but are typically held until the held checks accumulate to a significant dollar amount. If a check for a large amount is received, it is usually forwarded to the Treasurer’s Office for immediate deposit. OCA explained that it requested, but was denied approval, to hire a messenger who would be available to deliver checks to the Treasurer’s Office and that it did not believe it cost effective for current employees to deliver small dollar amounts of checks.

During the audit period, none of the four Access databases recorded the date that the payment was submitted to the Treasurer’s Office for deposit and, therefore, it was not possible to trace deposits recorded into NIFS to the individual payments received from the businesses. As a result of our audit and our discussions with OCA management, the Weights and Measures division strengthened its procedures and now records the deposit date in their databases for each payment received, thus facilitating the reconciliation of cash receipts to NIFS.

Since we could not trace individual deposits to NIFS at the time of fieldwork, we performed an analytic test. We compared 2004 to 2006 total revenues collected per OCA internal reports to NIFS, and noted that the cash deposited and recorded in NIFS was higher than the revenues shown on the internal operations and revenue data reports; the net difference was approximately \$37 thousand (1.59%) on total revenues reported in NIFS of approximately \$2.3 million. Differences are primarily due to a timing lag

⁷ NYS Weights and Measures Law Article 16 § 180 and 181.

⁸ New York State Weights and Measures Law, Article 16 of the Agriculture and Markets Law and Related Sections, §181.8.

⁹ See footnote 7.

¹⁰ Businesses requesting an item pricing waiver will mail the fee to OCA prior to the inspection; no invoices are issued by inspectors.

¹¹ Retail Stores, Gasoline Stations, Heavy-duty fuel oil, such as home heating delivery trucks, and Item Pricing of stores.

¹² Nassau County Charter §2205

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between the recording of the revenues by OCA versus the actual receipt of revenues. As invoices are entered into the database, the invoice amount is recorded and the total of all invoice amounts are reported by Weights and Measures as revenues received for the year; this total may include fees not yet collected. However, in accordance with governmental accounting rules, revenues are only reflected in NIFS when the fees are actually collected and deposited. In addition, we noted that reports generated from the Access database presenting statistical information on the number of inspections performed, and amounts paid for store, gas and oil inspections in the audit period, did not agree to internal operations and revenue data reports that were generated in the department to present annual revenues earned. For example, the operations and revenue data reports for 2004-2006 reported a total of \$2,287,510 in revenues, while the sum of the payments for store, gas and oil inspections reported in the Access database for this same period was \$2,308,642. Neither report agreed to what was reported in NIFS (\$2,323,820).

Licensing

The majority of revenues collected by the Licensing division result from fees charged for the biennial licensing of home improvement contractors. Since 2005, the division has also been responsible for registering Automated Teller Machines (“ATM”) located within the County that are not physically situated in a financial institution.

The Licensing division records receipts for new home improvement contractor licenses in a cash receipts book, on an individual basis. However, the receipts for renewal licenses, which are typically received via mail, are recorded only on a handwritten schedule, and solely in the aggregate for each day’s receipts; OCA does not issue receipts for renewal fees. Although the division maintains an internal report listing the renewal notices mailed, the recording of payments received for these renewals are only kept in handwritten notations.

During the audit period, the Licensing division processed an average of approximately 3,300 home improvement contractor license renewal applications per year, at \$400 per license. We were unable to assure that all renewal fees were properly paid and deposited because:

- there was no mechanism to trace individual renewals received on a daily basis to NIFS deposits; and
- due to the lack of an effective case management system (*see Audit Finding (10): Inadequate Information Technology*) records of renewals, including payments received, are *manually* noted on a monthly internal report.

We reviewed 35 renewal applications and noted that for 30, there were no initials or signatures to indicate who had reviewed the application, recorded the date the fee was received, and the method of payment (*See Audit Finding (4), Home Improvement Licensing*).

There is no detailed record made of the checks sent to the Treasurer’s Office for deposit that would allow for an adequate audit trail of its individual receipts to its deposits. OCA records the number of renewals included in the deposit, but does not identify the specific license for which the fee was paid. As a result, we were unable to reconcile the amounts recorded in NIFS to a list of individual receipts collected during the audit period. This

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increases the risk that deposits may not be reported in NIFS accurately or on a timely basis.

ATM registrations are a relatively new responsibility of OCA. Any ATM, located within the County but not physically situated in a financial institution, is required to be registered with the County on a calendar year basis. Registration forms and fees are received for new registrations (\$100 per ATM) and renewals (\$50 per ATM). A Microsoft Access database is used to capture ATM registration information, however, as with the home improvement contractor licenses, it was not possible to trace amounts reported as revenues in NIFS to the specific registrations for the audit period. During the audit period, the only evidence of cash receipts found were copies of checks that were maintained within the registration folders. However, of the 23 folders that we reviewed, four were missing copies of the checks evidencing that the vendor had paid the ATM registration fee. After discussions with OCA management, the division now attaches copies of checks to the NIFS deposit records it maintains on file in order to provide an audit trail of cash receipts.

Taxi and Limousine Commission

Similar to our finding regarding Weights and Measures, we noted that receipts were not presented to the Treasurer's office for deposit on a timely basis.

Audit Recommendations:

OCA should:

- a) renew its efforts to seek to hire an accountant to oversee all financial aspects of the department including, ensuring that all internal databases in each division are reconciled to NIFS on a regular basis and that NIFS correctly reflects revenues received;
- b) centralize its cash receipts functions;
- c) ensure that all cash receipts are properly accounted for, deposited on a timely basis as defined by the County Charter, and that deposits can be traced to the supporting documentation;
- d) include in its databases all relevant data related to payment received, including, payment type, amount and NIFS deposit date;
- e) ensure that uncollected fees are not included in any amounts that may be reported as revenues, either internally or externally; and
- f) ensure that all internal reports, including statistical information, are consistent and in agreement, or may be reconciled to each other and NIFS.

Audit Finding (2):

Inadequacy of Automated Teller Machine Registration

In 2005, the County Legislature passed a law that required all Automated Teller Machines, not located “within the dominion and control of a banking institution,”¹³ to be registered with OCA. ATM owners or operators are required to apply for registration each year, on a calendar year basis. To evidence registration, OCA issues a registration sticker for each ATM located in the County. The sticker must be affixed to the exact ATM, identified by its serial number, for which the registration was issued. If a previously registered ATM is moved from one retail location to another, a new registration and sticker must be issued. Weights and Measures inspectors will notify the ATM registration unit if, during their inspection, they notice an unregistered ATM in a retail location.

The annual registration fee is \$100 for a new ATM registration and \$50 for a registration renewal. The owner of the store where the ATM is to be located has the responsibility of ensuring that the machine is registered prior to its being placed in the store for service. Failure to comply may result in a \$250 fine for the storeowner and, up to, a \$5,000 fine for the ATM owner.

During the audit period, ATM registration documentation was maintained in folders, with each folder containing the records for each owner or operator. In reviewing OCA’s administration of this local law, several internal control weaknesses were noted.

We randomly selected 25 ATM registrations to review the files for completeness of documentation, to ensure that the correct fees were charged and to determine if registration stickers were properly issued. Our review noted the following:

- OCA was unable to provide the documentation for two of the registrations and, therefore, we were unable to determine if the documentation was complete, if the correct payment had been received, or if registration stickers had been properly issued.
- One registration lacked the proof of ownership/lease agreement for a machine.
- One registration included an improperly executed lease agreement as the lease was undated and only signed by one party.
- OCA had not established adequate procedures to ensure that all ATM registration and renewal fees were properly paid; of the registrations examined:
 - four did not have a proof of payment;
 - two could not be identified to a particular location or machine; and
 - three had evidence that the owner paid more than the required registration fee. OCA explained that the owner had sent in \$50 to renew a registration and an additional \$100 in anticipation of registering a new machine. OCA, however, could not provide the registration forms for the new machines and, therefore, we could not determine if overpayments were received.

¹³ Nassau County Administrative Code §21-22.8, of the Automated Teller Machine Safety Act.

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Due to the lack of a comprehensive case management system, OCA established a Microsoft Access database of ATMs as an alternative. The database records information on each ATM registered and is intended to be updated as fees are collected and registration stickers are issued. Records are maintained by location but not by a unique account number or other identifier. Each location was assigned a code, however, we noted that location codes were not consistently assigned to the same merchant each year. OCA did not effectively use its database to track ATM registrations and revenues. Specifically, the database listed a check number and date of registration, however, we noted cases where the same check number had multiple registration dates assigned to different ATMs. In addition, without payment and the check deposit dates recorded in the database, there is no means to reconcile revenues collected for a particular period to NIFS.

We attempted to reconcile the registration revenues recorded in the Access database to the ATM registration revenues recorded in NIFS and noted that, in 2005, NIFS revenue was \$26,120 higher than the \$1,600 recorded in the database. In 2005, OCA collected ATM registration fees in anticipation of issuing registration stickers that were on order with a vendor. However, due to a defect in the stickers which caused the ink to run, they were never issued. . According to NIFS, in 2006, revenue of \$12,000 was collected; however, the Access database did not report any 2006 revenues. The problem with the stickers was resolved and registrations, along with the issuance of stickers, commenced with the 2007 registration year. Consequently, we could not be assured that all ATM registration fees were properly reported in NIFS during the audit period.

Audit Recommendations:

OCA should ensure that:

- a) complete applications and all documentation is received in proper form before issuing registrations;
- b) the applications are safeguarded and retained in a manner that makes them easily accessible;
- c) proper payment is received for each registration and evidence of the payment is retained in the applicant's file and recorded in the database;
- d) duplicate payments be investigated and, if necessary, overpayments are returned to the applicants; and
- e) in the absence of a case management system, the database be modified to more effectively administer the registration of ATMs and related revenues.

OCA should establish a method for tracking registered ATMs in a manner that will allow integration of data among its other divisions. This integration will facilitate a means of identifying all items that would routinely require OCA onsite inspections – such as scales, item price waivers and computer scanner accuracy.

In order to ensure that all ATMs are properly registered, Weights and Measures inspectors should note the individual sticker number for each ATM identified during their field inspections and the serial number of the machine. The inspector should then

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provide this information to the ATM registration unit as a means for them to confirm that the ATM is properly registered.

Audit Finding (3):

Deficiencies in Process for the Registration of Taxis and Limousines

The Nassau County Legislature created the Taxi and Limousine Commission in 2004 to help ensure the public's safety. Responsibility to oversee the administration of the regulations was assigned to the OCA; however, OCA indicated that requests for additional staffing commensurate with the additional responsibilities were not approved. In the absence of a comprehensive case management system, the administration of this responsibility is primarily a manual process.

All taxis and limousines operating in the County are required to be registered with the Nassau County Taxi and Limousine Commission ("TLC") with the exception of those vehicles that are registered with the New York City or Westchester Taxi and Limousine Commissions. In order to register their vehicles with the County, taxi and limousine owners must submit an application, along with supporting documentation, which includes a valid driver's license, vehicle registration, and insurance card. If approved, owners are issued a registration sticker ("diamond"), which is affixed to the registered vehicle. Each diamond is numbered and includes the vehicle's license plate number to ensure that the correct vehicle is registered. Replacement registrations may be issued in the event of a change warranting the need for a new diamond; for example, a change in vehicle ownership, the issuance of a new license plate or registration, or replacement of the vehicle's windshield.

Prior to issuing any registration, OCA must review its internal databases to determine if the applicant has any outstanding violations. OCA uses three different application forms, one for new or renewal registrations, a second one that may be used for mail-in renewals, and a third for replacement registrations. All registration documents are maintained in folders. We selected a test sample of 30 new/renewal registrations, and 21 replacement registrations issued during the audit period. In reviewing these applications, we noted that vehicle registrations were approved even though some applications were not properly completed, or the applicant did not submit the required supporting documentation.

OCA could not locate the files for one of the 51 registrations tested. Deficiencies noted during our testing included the following:

- There was no employee signature documenting the approval of the registration application;
- The majority of the applications had no indication that background checks had been performed on the applicants;
 - The application form includes a section where an employee of OCA is required to indicate whether background checks were completed and if OCA's internal databases were checked for outstanding violations.
- Information was omitted from some of the applications, such as the names of the principals of the company owning the vehicles, applicant responses regarding criminal convictions or license suspensions, receipt number issued by OCA, and vehicle identification information.

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The mail-in renewal and the replacement registration application forms do not provide a section for OCA to indicate its review, approval, or denial of the registration, or that the data was entered into OCA's database.

Audit Recommendations:

OCA should:

- a) ensure that:
 - i. applicants complete the appropriate registration application form and provide all necessary information and documentation; and
 - ii. all the necessary checks and reviews of the applications are performed by OCA prior to the issuance of registrations and employees sign, or initial, and date the applications to evidence their review and approval or denial..
- b) consider amending its application form to include evidence of OCA's internal review and approval, or denial of a registration on mail-in renewals and replacement registration applications.

Audit Finding (4):

Internal Control Limitations in Home Improvement Licensing

Administrative Code §21-11.2 requires any person who owns, maintains, conducts, engages in, or transacts a home improvement business to be licensed by the County.¹⁴ These licenses are valid for a two-year period from the date of issuance.

An important consumer safeguard in the law is the requirement that contractors maintain minimum liability insurance coverage.¹⁵ In addition to submitting a completed application, applicants must provide a copy of their current liability insurance certificate. During the audit, it was noted that liability insurance certificates were in effect for only one year while home improvement licenses were effective for a two-year period. In accordance with Rule #13 of the Rules & Regulations of OCA,¹⁶ all contractors are required to submit proof of insurance to OCA for the second year of their license. OCA does not have a procedure to ensure that licensees submit proof of their continued insurance coverage.

New York State law requires that contractors obtain workers' compensation insurance. New applicants, who are not exempt from carrying this insurance, must include their policy number on their application but OCA does not independently confirm the existence of this policy.

Our audit also noted a lack of evidence of the proper review of renewal applications. When license renewal applications are reviewed by OCA, the reviewer is expected to initial or sign the "Checked By" portion of the "For Department Use Only" section of the application. Of 35 renewal applications reviewed, we noted that 30 of them had no reviewer initials or signatures.

Audit Recommendations:

OCA should:

- a) establish a mechanism for tracking insurance coverage by licensee. For example, OCA could compile a list of licensees whose insurance was due to expire during a particular month and ensure that proof of insurance coverage is obtained for the second year of the license. Consideration should be given to incorporating this functionality into the new case management system;;
- b) require applicants to submit proof that they have workers' compensation insurance or independently verify the existence of a policy; and
- c) ensure that the employee who reviews applications sign and date the application to document the review and approval process.

¹⁴ This excludes plumbers and electricians, who are licensed by the individual towns and villages.

¹⁵ Nassau County Administrative Code §21-11.4, (2) (c).

¹⁶ All applicants must sign a document included in the application package that evidences their agreement to comply with OCA's *Rules and Regulations Relating to the Home Improvement Business* in order to obtain a license.

Audit Finding (5):

Consumer Complaint Investigations

The Investigations division is responsible for investigating complaints submitted by consumers against businesses, except for those related to Weights and Measures and TLC. Complaints may be submitted to OCA in person, by mail, directly on OCA’s “Contact” section of its website, or via telephone. The Investigations division handles complaints submitted via the consumer complaint form, telephone, or by mail, and the Information and Education division’s Deputy Commissioner handles those inquiries sent through the website.

After an investigator is assigned to a consumer complaint, the complaint is entered into *Consumer Affairs Record Access System*, or “CARAS”, which automatically assigns it a case number. CARAS only captures some of the complaint data – vendor name, address, product, and a coded description of the problem – but details of conversations with the consumer or the vendor cannot be captured. The County’s IT department provides monthly reports of open cases based on CARAS data. See *Audit Finding (10), Inadequate Information Technology* for further detail.

A hard-copy file is created; this file contains the complaint form and other supporting documentation pertaining to the case, such as copies of cancelled checks, contracts, and correspondence. Using reports generated by CARAS, we selected a sample of 60 complaint cases, 20 from each year of the audit period. Of the sample, OCA could not locate one hard-copy file. We examined the documentation for the remaining 59 cases.

According to the division’s procedures, a supervisor is required to review each case before it is closed. We noted that in 31 of the 59 case files examined, there was no evidence of this supervisory review in the complaint file. In addition, OCA’s complaint form does not have a specific space reserved for supervisory sign-off evidencing approval for the case to be closed.

We also noted that there is no record of all the inquiries and resolutions handled by the Information and Education division. The Deputy Commissioner informed us that he does not:

- maintain a log of inquiries;
- document any discussions held with consumers or businesses; and
- document how the inquiries were resolved.

OCA indicated to us that it requests that consumers file official complaints whenever they are unsatisfied with the resolution of their inquiry.

The absence of logs and documentation of inquiries increases the risk that they may not be considered when determining if there are patterns of complaints against certain businesses.

Audit Recommendations:

Until the case management system, with scanning capability, is functional (see *Audit Finding (10), Inadequate Information Technology*), OCA should:

Audit Findings and Recommendations

- a) require a supervisor to sign the copy of the complaint after his or her review to evidence authorization to close the case; and
- b) ensure that all complaint files and related documentation are available for review.

OCA should require the Information and Education division provide it with information regarding inquires and their resolution so that they can be considered in determining patterns of complaints against businesses.

Audit Finding (6):

Violation Hearings Process

OCA issues violations to home improvement contractors, retailers, taxi and limousines and other business entities, based upon a breach of County or New York State laws, rules, or regulations. When a violation is issued, OCA schedules a hearing to allow the violator an opportunity to respond.

During our fieldwork, we observed that a deputy commissioner and a supervisor spent a significant amount of time acting as hearing officers. In addition to the amount of time spent in the actual hearings, these employees also review the case and complete their findings after the hearing. OCA does not track the amount of time these employees spend as hearing officers.

We also noted an instance where a deputy commissioner acted as a hearing officer, although, according to documentation we reviewed, he was involved in the investigation of the complaint. Consumers, as well as retailers or contractors, should have an assurance that an objective party will preside over a violation hearing before any judgment is made.

Notes of the hearings are handwritten on an OCA form. Our review noted that records were incomplete and that, among the different hearing officers, there were inconsistencies in how the records were kept. Important details, such as, the name of the presiding hearing officer, the name of the investigator on the case, or the outcome of the hearing, were often not part of the record or noted in the case file.

Audit Recommendations:

OCA should:

- a) track the amount of time employees spend performing the duties of a hearing officer, including any preparation time and their time spent writing decisions. OCA should analyze this information to determine if it may be more economical to hire administrative hearing officers on a part-time or per diem basis.
- b) ensure that the investigation and hearing officer functions should be segregated in order to present a more objective hearing process for both the consumer and violator (contractor, retailer, etc.); and
- c) maintain a complete accurate and consistent official record of the hearings to ensure that proper OCA procedures are followed and documented for transparency purposes, and promulgate procedures to ensure that there is consistency in the manner in which hearings and subsequent dispositions are documented.

Audit Finding (7):

Lack of Policy and Procedure Manuals

OCA does not have formal policy and procedure manuals for any of its divisions to document its activities, policies, and responsibilities. When the auditor's requested copies of the department's policies and procedures, OCA presented the 2004 study performed by OMB, which included flow charts documenting the various processes within each division. However, this is not an adequate substitute for an official policy and procedure manual for the department.

Written policies and procedures are tools in an effective internal control environment. A management-approved policy and procedures manual should address significant activities, employee responsibilities, authorization levels and limits, control procedures, reporting responsibilities and performance standards. Policy and procedure manuals can also be helpful to a department in ensuring that business is uninterrupted should an employee be absent for a lengthy period.

Audit Recommendations:

OCA should:

- a) create and promulgate policy and procedure manuals for each division outlining all activities, policies and responsibilities; and
- b) periodically review and update, as required, all policies and procedures outlined in the manuals.

Audit Findings and Recommendations

Audit Finding (8):

Non-Compliance with the Administrative Code

The County Administrative Code sections establishing advisory boards have not been complied with during the audit period.

- Administrative Code §21-10.1 established a Board of Consumer Affairs to consist of 15 members appointed by the County Executive, who reflect a cross section of consumer and business interests. The Board's function is to assist and advise the Commissioner in his duties and functions.
- Administrative Code §21-11.14 established a Home Improvement Industry Board. The purpose of this Board is to recommend "standards for the issuance, suspension and revocation of licenses and identification cards, including the conditions for issuance of same, the type of examination required, the terms and fees, and the conditions upon and the circumstances under which the same may be revoked or suspended."¹⁷ This Board is to have seven members appointed by the Commissioner of Consumer Affairs and be composed of individuals having a personal knowledge and interest in home improvement contracting.

During the audit period, neither of these Boards existed. Without these Boards, the public did not have the advisory role envisioned by the Administrative Code in regulating businesses that affect consumers.

The Administrative Code also requires that home improvement license applicants be fingerprinted. In accordance with Administrative Code §21-11.4 (2) (b), "All applicants for a home improvement license shall be fingerprinted by the Nassau County Police Department." During the audit period, applicants were not fingerprinted. According to OCA, Licensing ceased referring applicants to the Police Department for fingerprinting because neither OCA nor the Police had the authority to access background information on the applicants based on the fingerprints. Subsequent to the audit period, OCA implemented a mechanism for the TLC licensing program to use fingerprints for background checks. OCA indicated that the intent was to rollout these procedures to include home improvement licensing applicants. However, an amendment to the current Administrative Code would be required to implement the fingerprinting for home improvement contractors.

OCA did not always adhere to the Administrative Code when inspecting stores for price labeling compliance. Local law # 20-2002 § 7(c) incorporated into Administrative Code §21-18, is intended to ensure that consumer goods offered for sale are clearly, accurately and adequately marked as to selling price; it requires that each retail store item bearing a universal produce code and offered for sale must be affixed with a price.¹⁸ Stores that use computer assisted checkout systems may apply for an annual waiver of the requirement to individually price each stock item and pay a fee based upon its gross store size. However, before a waiver is granted, OCA must conduct two separate scanner

¹⁷ Nassau County Administrative Code § 21-11.14 3. (4).

¹⁸ Nassau County Administrative Code § 21-18.2 (b) exempts certain items from the individual item pricing, including but not limited to, milk, eggs, and loose fresh produce items.

Audit Findings and Recommendations

accuracy inspections, with a minimum of 100 items tested for each inspection. A random selection of items are chosen by the OCA inspector for scanning to ensure that the price charged for each item does not exceed the shelf, sale or advertised price, whichever is less.¹⁹ If both scanner inspections, taken together, result in an error rate of two percent or less, OCA grants the applicant a one-year revocable waiver from the individual item pricing requirement. If the store fails the inspection, the merchant may reapply and pay half of the original waiver fee, however, before issuing the waiver, two new scanner accuracy inspections are performed.

We reviewed the scanner accuracy inspections by randomly selecting 20 stores out of 209 listed in the Weights and Measures Item Price Waivers Access database; we examined each sample store's inspection reports for 2004, 2005, and 2006. Our testing concluded that OCA did not always comply with Administrative Code §21-18.

- Of the 20 stores examined, there were five stores where inspectors only tested 50 stock items at each inspection, rather than the minimum 100 stock items as required by the Administrative Code. The rationale for testing just 50 items was that they did not want to hold smaller-sized stores to a higher standard. For example, a test of 100 items at a store with 1,000 items represents a test of 10% of all stock, but testing 100 items in a store with 5,000 items in stock results in testing just 2% of the store's stock items. Store size is determined by gross square footage.

Audit Recommendations:

OCA should:

- a) comply with all local laws by:
 - i. requesting that the County Executive appoint 15 members to the Board of Consumer Affairs;
 - ii. having the Commissioner appoint seven members to the Home Improvement Industry Board; and
 - iii. ensuring that it test the required 100 stock units on all inspections for the item price waivers;
- b) alternatively, pursue revisions to the Administrative Code to allow OCA:
 - i. to implement a fingerprinting process for all home improvement license applicants in order to determine if the applicant's record warrants the denial of a license. A copy of the fingerprint background check report should be retained as part of the completed application; and
 - ii. to test a graduated number of stock units in accordance with the stated fee schedule which is based on store size.

¹⁹ Nassau County Administrative Code § 21-18.3(a).

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Audit Finding (9):

Miscellaneous

During our audit, we also noted the following weaknesses related to OCA's various divisions.

Inadequate Tracking of Weights and Measures Invoice Books

Weights and Measures inspectors are issued pre-numbered invoice books. The division maintains a log that tracks the invoice book given to each inspector and the invoice number sequence for each invoice book distributed; each inspector must sign or initial receipt of a book. Upon completing an inspection or test of a weighing or measuring device used commercially, the inspector issues an invoice to the business. During our audit, we noted that OCA did not adequately account for all invoices due to the following weaknesses:

- The dates that the invoice books were distributed were not recorded in the log;
- Inspectors were supplied two or three invoice books that were not in sequential order;
- Invoice books that were printed with errors and cannot be used, or those never delivered to OCA by the County's Printing and Graphics division, are not accounted for in the Weights and Measures log or database. Consequently, it cannot be determined if invoice books are missing.

Each invoice issued to an establishment is recorded in the Weights and Measures Access database when the inspector returns to the office. We could not determine if missing invoice numbers were voided, still in the inspectors' possession and yet to be issued to merchants, not yet distributed to inspectors, or not yet entered into the database. Without monitoring the numerical sequence of all invoices, OCA cannot be sure that all invoices were issued, or that cash receipts were not misappropriated or lost, or that existing operating practices would detect the shortage.

Scheduling and Recording Violation Hearings

OCA manually records the scheduled hearings in an appointment book and also prepares a weekly schedule of those appointments in Microsoft Word. This weekly schedule is printed out and manual notations are made to indicate if a violator failed to appear for a hearing, if a hearing was rescheduled, and/or the resolution of the hearing (including any amount fined). Transcribing information from the manually kept appointment book to the weekly Microsoft Word schedule is a duplication of effort.

Audit Recommendations:

OCA should:

- a) maintain a systemized log to account for the entire sequence of invoice numbers, including those retained in inventory, the defective or missing books, and those issued to each inspector; and

Audit Findings and Recommendations

- b) ensure that the case management application provides functionality to allow OCA to enter, maintain and track detailed hearing information (i.e., fine mailed in, rescheduled date, violator failed to appear, etc.).

Audit Finding (10):

Inadequate Information Technology

OCA utilizes CARAS, a computer system created in the 1980's to track consumer complaints, issued violations, and home improvement contractor licenses. In addition to CARAS, OCA's divisions also use the software applications, Microsoft Word, Excel, and Access, to track licenses, registrations, and inspections. CARAS does not interface with the Microsoft applications, therefore data is not integrated among the divisions. There is no consistency in how each division is using technology nor is information being shared among the divisions.

Based upon our review, CARAS does not have the ability to:

- query the system for subsets of data or to produce real time reports. OCA receives monthly reports from the County's Information Technology ("IT") department that provide detailed information such as: open complaints, open complaints by inspector and/or business type, violations for the past three years, and statistical reports of refunds/credits given to consumers. For reports to be obtained more frequently than once per month, OCA must file a request with IT and wait at least one business day for the requested report to be run;
- record sufficient case notes within the system. As a result, all details of a complaint/case are recorded manually and then placed in a folder. This manual process not only increases the risk that information may be lost but is inefficient because case files must be physically retrieved by employees before they can be worked on or reviewed;
- electronically scan and store documents related to a complaint or licensee;
- maintain financial records. Cash receipts related to licenses, inspection fees, or taxi and limousine registrations cannot be recorded in the system and receipts for payments cannot be automatically generated; and
- electronically track complaint processing times or the status of a complaint. Without an efficient access to information notations such as *contact made with retailer/contractor, awaiting additional information from consumer, or awaiting review by a supervisor*, it is difficult for OCA to inform a consumer of the status of a complaint without engaging in a time-consuming effort to locate the physical file.

For several years, OCA has acknowledged its need for a case management system. In 2004, the Nassau County Office of Management and Budget ("OMB") reviewed the capabilities of CARAS and determined that the system impaired the efficiency of OCA's operations because it could not provide the department with the functionality necessary to eliminate manual processes. As a result of its internal study, OMB recommended that a case management system be obtained, which would provide more efficiency and allow for the integration of OCA's operations. However, funding for this was not available until the end of 2007 and, as of the date of this report, OCA is in the process of migrating to a case management system. We did not review the functionality of the proposed system nor did we perform any testing related to its capabilities.

Audit Findings and Recommendations

OCA's website is not optimized for providing information and services to the public; for example, their site could be a resource for finding out if a home improvement contractor is properly licensed by the County. As of the end of our fieldwork in March 2007, consumers had to call OCA in order to confirm that a contractor was licensed or to determine if there were any complaints against the contractor. Obtaining more details regarding reported complaints against a contractor required an employee of OCA to request a report from the County IT department and then, once received, mailing the report to the consumer. A public website offering this same kind of information would provide a more timely method for consumers to obtain the information and would be a more efficient use of County resources.

Subsequent to our fieldwork, OCA had implemented some web-based functionality to allow vendor/contractor lookups and to make complaint inquiries. We did not review this functionality.

Audit Recommendations:

An effective case management system should integrate all processes of the department, regardless of the division, as well as provide OCA with more timely and useful reporting capabilities, status updates, financial information, and quantitative statistics. The auditors acknowledge that OCA and IT have been working on the implementation of a new case management system, as well as having implemented new web-based applications to its website, subsequent to our audit.

We recommend that OCA ensure that the all aspects of its operations – the tracking of scale testing and related fees by Weights and Measures, TLC and ATM registrations, consumer complaints, and home improvement contractor licenses – be included in one system and that the system addresses all weaknesses that are noted within this report, including the inability of the current systems and processes to:

- obtain real time data;
- track consumer complaints;
- identify time frames for the processing of the complaints;
- scan documents;
- record all financial activity, including the collection of cash receipts and reconciliations to NIFS;
- produce receipts for customers;
- interface information among all the divisions; and
- integrate with web-based applications to provide consumers with more timely and accurate information regarding licenses, complaints, or registrations.

Appendix -Office of Consumer Affairs Audit Response and Auditor’s Follow-up

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COUNTY EXECUTIVE



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To: Aline Khatchadourian
Deputy Comptroller for Audits and Special Projects

From: Roger C. Bogsted
Commissioner, Office of Consumer Affairs

Re: OCA revised response to Audit Report

Date: October 24, 2008

Introduction

This memorandum is in response to your request to provide comments on the draft “audit” report written and forwarded by your office following the on-site reviews, interviews, research and discussions by your office with the members of my staff in early 2007. I and my staff spent many hours in discussion and providing access to records and procedures that are the history and every day workings of the Office of Consumer Affairs. Questions raised were promptly responded to by the most competent people who have not only the knowledge of what needs to be done, but also how things are actually accomplished in practice day after day. We were honest, forthcoming and enlightening throughout the process.

While we appreciate your acknowledgement that this office was one of the finest you have ever audited, we are compelled to do our best to make certain the procedures and processes utilized by this department are accurately portrayed. The following additions and deletions will

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reflect our concern that the auditors, in several instances, failed to grasp the inner workings of this office and at times have portrayed our excellence in a poor light.

Background

Any thorough audit should include a basis in history so that findings can be properly gauged. Since the appropriate history provided by this Office was omitted by the study, let us give you the brief appropriate overview.

The Nassau County Office of Consumer Affairs continues to experience revenue growth while limiting expenses. We have established revenue records above and beyond expenses, since the current team arrived here in 2001-2002. This has all been accomplished with a workforce 25% below 1990 levels and with Office expenses remaining nearly constant since 1990.

It is important to note that, in the 34-year history of the Office of Consumer Affairs prior to the current leadership, expenses exceeded revenues by approximately \$800,000 to \$1.5 million EVERY year. We continue to accomplish something that had never been achieved before: revenues continue to exceed expenses by approximately \$2 million EVERY year. Since 2002, we have shown and continue to show annual profits to the County, yet this Office has continually expanded responsibilities in investigations and enforcement through our own consumer protection initiatives and those imposed through legislation. Indeed, OCA is the only department that generates its own revenue to the point where revenues exceed expenses, resulting in savings to taxpayers while providing superior services to consumers.

The Nassau County Office of Consumer Affairs was recognized as the best consumer agency in the nation when receiving the 2008 “Agency of the Year” Award from The National Association of Consumer Agency Administrators (NACAA) for “setting the standard in protecting consumers, for outstanding accomplishments, and for creating innovative and responsive programs.” For the past 34 years, federal, state and local agencies have competed for this prestigious award. Nassau County is the first county to receive this award and the OCA is the first consumer agency in the State of New York to be so recognized.

Our Investigations and Complaints Division successfully handles approximately 3,000 complaints each year. Since the current team was assembled in 2001-2002, well over \$4 million has been returned to Nassau County consumers. Last year, \$976,928 was returned to consumers, a new record for the second consecutive year. We continue to be acknowledged as the “Go To” experts in all consumer-related issues in the region. The department showcased high profile sting operations on all three major national TV networks with undercover operations televised on Dateline, ABC Prime Time and Good Morning America. The OCA has gained national media attention throughout the past six years, becoming a crown jewel agency for Nassau County as well as a much sought-after resource for media outlets.

This report glaringly omits the many recently adopted departmental regulations and consumer protection legislation that have added to the mandated responsibilities of the Office. The Office does not shy away from taking on issues that affect consumers and the entire staff is fully committed to on-going consumer protection, whether it be by our own initiative or by

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others so concerned in the Administration and Legislature. We welcome all new initiatives to protect consumers and we have always been willing to do whatever work needs to be done to assure that protection. However, it must be noted that each initiative requires a great deal of work by many staff members, in addition to the duties already mandated, before and after the initiative is operational. Once adopted, most of these initiatives involve increased enforcement activities, licensing duties, administrative implementation and duties, and have further stretched the staff and available resources more thinly to accomplish all that we must do. We believe that these aspects ought to be acknowledged when, for example, your staff points out that, in their opinion, an application should have been initialed by a clerk but was not.

Since 2002, this Office has had added to it the duties to implement, enforce and administer the following major laws and regulations, in addition to others of a more minor nature:

- Regulation of the sale of expired/outdated food and over-the-counter health care products
- Store Item Pricing Exemption Administration and Enforcement
- Home Improvement Restitution Fund Entitlement Expansion Administration
- Unlicensed Home Improvement Contractor Seizure Administration and Enforcement
- For-Hire Vehicle Registration Administration and Enforcement through the establishment of a new Taxi and Limousine Commission Division
- Licensing Painters, Carpet Installers and Residential Demolition Work Administration and Enforcement
- ATV Sale Notice Requirement Enforcement
- Video Game Ratings Store Notice Enforcement
- Sign Hangers Licensing Administration and Enforcement
- Locksmith Licensing and Enforcement
- Automated Teller Machine (“ATM”) Registration Administration and Enforcement
- Adult Material Store Placement Requirement Enforcement

Finally, your report almost entirely omits the extensive public outreach and education duties of this Office. This Office presents consumer protection information to over 300 community organizations annually, in addition to providing personnel and informational materials at street fairs and other venues. Moreover, I and members of my staff meet with many industry trade associations and representatives, both in the OCA and at their meetings where we discuss compliance and other issues. We never refuse a request for information and guidance where such efforts will result in enhanced consumer protection.

I trust that this background and history provides a more comprehensive overview of where the Office has been and how the duties and responsibilities have expanded while staffing and expenses have remained at levels basically established in 2001-2002.

Findings and Responses

I. Individual Daily Deposit Records:

Finding/Recommendation:

Page 1, paragraph 4

“In addition, there was not always a mechanism in place for OCA to trace an individual record in the database to the deposits made for a particular day.”

Response:

All collections are recorded in NIFS. Each check or money order received is stamped right away. (The OCA accepts only certified check or money order. No cash receipts.)

Given the staff and diversity of the divisions, and the lack of a centralized case management and accounting system, the methods currently utilized are the most cost effective and have not resulted in the loss of any fee.

Auditor’s Follow-up Response:

The OCA did not have a mechanism in place that allowed us to trace individual receipts to bank deposits. Without the internal control provided by the reconciliation process, the loss of fees may occur, but may not be detected.

II. Weights and Measures Deposits:

Finding/Recommendation:

Page 2, paragraph 2

“Checks collected by Weights and Measures are not consistently deposited on a timely basis, but are typically held until a number of checks are available for deposit . . .”

Response:

Weights and Measures deposits are reconciled to a list of all checks included in the deposit. The list shows: the invoice number, the date paid, the check number, and the amount. We also now have a database which shows the date of deposit for each check.

The auditors failed to reflect the fact that monies deposited in 2004 were generated by inspections and work performed in the final weeks of 2003. These payments were entered into

the 2003 database and recorded in the system in 2004. When taking this into account, all figures are perfectly reconciled.

In addition, for County Stat purposes, only revenue-producing inspections are reported. In the New York State annual report, all inspections are reported.

Auditor's Follow-up Response:

We concur with OCA's decision to adopt our recommendation to strengthen its procedures to facilitate reconciliation by creating a field within its database showing the date a check is deposited.

III. Licensing Receipts, Deposits and Application Review:

Finding/Recommendation:

Page 3, paragraphs 3, 5 & 6

Page 4, paragraph 1 [Page 4, paragraphs 1 and 2 in final report]

"The Licensing division records receipts for new home improvement contractor licenses in a cash receipts book, on an individual basis. However, the receipts for renewal licenses . . . are recorded only on a hand written schedule, and solely in the aggregate for each day's receipts; OCA does not issue receipts for renewal fees . . ."

". . . there were no initials or signatures to indicate who had reviewed the application . . . OCA records the number of renewals included in the deposit, but does not identify the specific license for which the fee was paid. As a result, it was not possible to reconcile the amounts recorded in NIFS to a list of individual receipts collected during the audit period."

'there was no mechanism to trace individual renewals received on a daily basis...'

Response:

The renewal is the receipt. A daily log is kept by the Licensing Division, detailing the number of new applications, renewals, late payments, etc. that are received. These were shown and explained to the auditors.

Auditor's Follow-up Response:

We reiterate our finding that we were unable to trace individual renewals received on a daily basis to NIFS deposits. The daily log lists the number of new applications, renewals, etc., and the total dollars collected for each of these categories; collections are not listed individually.

Although deemed unnecessary, the OCA has implemented the recommendation to initial or sign reviewed applications.

Auditor's Follow-up Response:

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We concur with the corrective action taken to require the employee who reviews applications to sign or initial the application to document his/her review and approval.

Due to a lack of technology and manpower, it is not feasible to rewrite every license number that renews into a database. Every check is accounted for and all deposits reconcile.

Astonishingly, the audit report omits the facts that there are no financial discrepancies and that no wrong doing was found here or in any Division.

Auditor's Follow-up Response:

The manual records maintained in the absence of a case management system were inadequate and prevented us from performing reconciliations. Without reconciliations, we could not be assured that discrepancies do not exist.

Renewals are recorded by date and filed as receipts. To state that there is no mechanism is false. Although this audit states, that *'there was no mechanism to trace individual renewals received on a daily basis...'*, the audit's own review of 35 applications, indicates the renewals are manually noted on a monthly internal report. We see these types of contradictions throughout the audit.

Auditor's Follow-up Response:

As indicated in the audit report, the manual log for license renewals was maintained solely in the aggregate for each day's receipts. Therefore, there was no way to identify that the deposit on any specific day included the renewal payment from a specific licensee and the specific date on which the check was received.

VI. Accounting Reconciliation and Accountant Staffing Need:

Finding/Recommendation:

Page 5, paragraph 3 c, d, e & f [Page 4 in final report]

"OCA should:

c) ensure that all cash receipts are properly accounted for, deposited on a timely basis, and that deposits can be traced to the supporting documentation;

d) include in its databases all relevant data related to payment received, including payment type, amount and NIFS deposit date;

[e]) ensure that uncollected fees are not included in any amounts that may be reported as revenues, either internally or externally;

f) ensure that all internal reports, including statistical information, are consistent and in agreement."

Response:

- c) The Office accepts no cash payments at all and requires that payments be made by check or money order. All “cash receipts”, i.e., checks and money orders, are accounted for and all deposits can be traced to supporting documentation. In addition, the Office uses one receipt book for all payments to the Office. For efficiency, the majority of small receipts are deposited on a weekly basis.

Auditor’s Follow-up Response:

The audit report acknowledged that OCA does not accept cash, which is an effective internal control. However, for some divisions the internal records could not be reconciled to NIFS. Our testing indicated that deposits, for some of the divisions, were not deposited on a weekly basis in accordance with the County Charter.

- d) The recommendation to include all data in a database would require the hiring of additional computer data entry personnel which will not occur in the current economic climate. Our present procedures are sufficient to document all payments received with all pertinent information.

Auditor’s Follow-up Response:

As the agency implements a comprehensive case management system it should enable the current staff to maintain the appropriate records.

- e) County Stat reports are reports of activity, not actuals. Money actually collected is reported in FAMIS and readily available to anyone.
- f) Same response as in “e” above.

Auditor’s Follow-up Response:

We reiterate our recommendation that OCA ensure that uncollected fees are not included in any amounts that may be reported as revenues, either internally or externally.

VII. ATM Registration and Enforcement:

Finding/Recommendation:

Page 8, paragraphs 1 & 3 [Page 6, paragraphs 1 & 3 in final report]

Page 8, paragraph 2 [Page 6, paragraph 2 in final report]

“In 2005, the County Legislature passed a law that required all Automated Teller Machines, not located ‘within the dominion and control of a banking institution,’ to be registered with OCA. ATM owners or operators are required to apply for registration each year, on a calendar year basis . . .”

“ . . . several internal control weaknesses were noted.”

‘In order to ensure that all ATMs are properly registered, Weights and Measures inspectors should note the individual sticker number . . . to confirm that the ATM is properly registered.’

Response:

The registration of ATMs was a newly implemented law at the time of the audit. All audit recommendations were implemented prior to the audit finding, despite not having been able to hire additional personnel that the legislators had proposed when adopting this law.

The documents reviewed by auditors were those of the first year when the law was initiated. All issues have been addressed since then, as per the auditor’s statement on page 4.

Auditor’s Follow-up Response:

The statement we made on page 4 of the audit report related to internal controls over the receipt and deposit of cash receipts and acknowledged that OCA was now providing for an audit trail of receipts, by maintaining copies of the checks with each NIFS deposit. However, we found no evidence that our recommendations to this finding (Audit Finding (2) - Inadequacy of Automated Teller Machine Registration) have been addressed by OCA.

The suggestion that Weights and Measures inspectors should do ATM inspections is ridiculous. Given the fact that each inspector currently conducts 2,500 inspections as noted in your executive summary, we are able to internally verify licensing requirements when the inspectors simply note that the sticker is absent.

Auditor’s Follow-up Response:

OCA’s method of verifying licensing requirements “when inspectors simply note that the sticker is absent” is deficient. The mere presence of a sticker does not assure that the machine is properly licensed for that location. We adhere to our suggestion that the Weights and Measures inspectors note relevant information when they are in a location where they are already conducting an inspection and observe that there is an ATM machine.

VIII. Taxi & Limousine Commission Division:

Finding/Recommendation:

Page 9, paragraph 4 [Page 8 in final report]

Page 10, paragraphs 1 & 2 [Page 9, paragraph 1 in final report]

“Deficiencies in Process for the Registration of Taxi and Limousines . . .

Deficiencies noted during our testing included the following:

-There was no employee signature documenting the approval of the registration application;

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-The majority of the applications had no indication that background checks had been performed on the applicants;

-Information was omitted from some of the applications, such as the names of the principals of the company owning the vehicles, applicant responses regarding criminal convictions or license suspensions, receipt number issued by OCA, and vehicle identification information.

Response:

The TLC is a new division within the Office of Consumer Affairs, having originated operations in 2004 and which has internally created from scratch everything necessary to function, including multiple applications, enforcement tickets, accounting sheets, registration diamonds, rules and regulations, etc.

Since its inception, the TLC has been remarkably understaffed and repeated requests for additional staffing have not been granted. While generating over \$2,000,000 in revenue, not until 2008 has the TLC averaged more than four employees and during its existence has experienced a very high turnover rate, at least partially due to the high stress environment of working under each of these mentioned points.

It should also be noted that TLC employees operate within a highly complex environment involving 22 licensing jurisdictions within Nassau County alone, in addition to the New York City and the Westchester County Taxi & Limousine Commissions, the New York State Department of Motor Vehicles, the New York State Department of Transportation and multiple industry associations.

An employee signature or initials should be present as mentioned. Current practice is for the person who takes in the application to write his or her initials on the application as the one who initially accepted it. A receipt is written with the signature of the same employee who took the application in. The person who enters the registration information into our computer and prints the diamond enters his or her initials in the computer.

Further, if the application was filed in 2005, it must be understood that the TLC received so many applications from New York City owner/operators that totals were pushed to approximately 15,000 applications and the entire OCA office staff had to be utilized just to process these registration diamonds.

The employee approving the registration application is now required to sign it, thereby documenting the approval.

Auditor's Follow-up Response:

We concur with the corrective actions taken by OCA.

Background checks are not necessary for vehicles.

Finally, checking internal databases to see if violations are owed is critical and should be done. Again, checks were done though indications on this section may not have been completed.

However, this is a critical component and reason why our repeated requests for case management software were made time and time again. Small numbers of staff can be effective if they have the modern tools to allow them to be so.

Auditor's Follow-up Response:

Our recommendation is that background checks be performed on the applicants, not on the vehicles. We concur and have recommended that OCA implement a comprehensive case management system.

While we agree that some information was not filled out on some applications, this must be put into context. For example, an application without a vehicle identification number written on it is likely to have included with it a New York State DMV registration or a license from a licensing jurisdiction, which would have that same information. While it may look like the application is not complete, as a whole the application may have all of the required information.

Further, depending on the type of application and when that application came in, the required information and documentation necessary may be altered. Finally it must be pointed out that the overwhelming majority of applications processed by the TLC are applications for vehicle registrations from owners who have already been vetted by another licensing jurisdiction; that is, their information, backgrounds and vehicles have been checked and licenses issued to them prior to the applicants coming to the TLC.

We have been aware of issues with the applications we originally created. The replacement registration application has already been redesigned and we are awaiting proof from Printing and Graphics. Other applications will be redesigned as time permits.

We share the belief that the review and approval of applications should be consistent and thorough and we are working hard each day to ensure that we can improve in these areas.

Auditor's Follow-up Response:

We concur with the corrective action taken by OCA.

IX. Home Improvement Licensee Insurance Proofs:

Finding/Recommendation:

Page 11, paragraphs 2, 3 & 4 [Page 10 in final report]

“OCA does not have a procedure to ensure that licenses submit proof of their continued insurance coverage. New York State law requires that contractors obtain workers’ compensation insurance. New applicants, who are not exempt from carrying this insurance, must include their policy number on their application but OCA does not independently confirm the existence of this policy. Our audit also noted a lack of evidence of the proper review of renewal applications. When license renewal applications are reviewed by OCA, the reviewer is expected to initial or sign the ‘Checked By’ portion of the ‘For Department Use Only’ section of the application . . .”

Response:

Although not required by Nassau County Administrative Code, the OCA now requires workers' compensation certificates as proof of their continued insurance coverage.

The "lack of evidence of the proper review of renewal applications" has been corrected. A reviewer now initials the 'Checked By' portion of the 'For Department Use Only' section.

Auditor's Follow-up Response:

We concur with the corrective action taken by the OCA.

X. Home Improvement Licensee Insurance Verification:

Finding/Recommendation:

Page 11, paragraph 5 [Page 10 in final report]

"OCA should:

- a) establish a mechanism for tracking insurance coverage by licensee . . . ;*
- b) require applicants to submit proof that they have workers' compensation insurance or independently verify the existence of a policy; and*
- c) ensure that the employee who reviews applications sign and date the application to document the review and approval process."*

Response:

- a) The procedure has always been set up so that, if insurance is not in effect, the license is suspended and/or a violation is issued. OCA is the certificate holder on each policy. Any non-payment or non-renewal is reported by the insurance company to OCA.

Auditor's Follow-up Response:

OCA should follow its stated Rules and Regulations, which require home improvement licensees to submit proof of insurance to OCA for the second year of the license. We reiterate our recommendation that OCA establish a mechanism for tracking insurance coverage by licensee. Consideration should be given to incorporating this functionality into the new case management system.

- b) Done, although not required by the Administrative Code.
- c) Done.

Auditor's Follow-up Response:

We concur with the corrective actions taken to ensure that the contractor's workers' compensation insurance is continually in force and to require employees to document the review and approval process.

XI. Complaint Resolution:

Finding/Recommendation:

Page 13, paragraphs 4 & 5 [Page 11 in final report]

"According to the division's procedures, a supervisor is required to review each case before it is closed. We noted that in 31 of the 59 case files examined, there was no evidence of this supervisory review in the complaint file. In addition, OCA's complaint form does not have a specific space reserved for supervisory sign-off evidencing approval for the case to be closed.

We also noted that there is no record of all the inquiries and resolutions handled by the Information and Education division . . ."

Response:

Each case is reviewed by a supervisor for investigator case findings. The investigators do not have the ability to close the complaint; only a supervisor reviews and makes the final determination to close the case.

Auditor's Follow-up Response:

We reiterate our recommendation that OCA require the supervisor's signature on the file as evidence of authorization to close the case.

Whenever matters cannot be resolved through simple inquiry and use of reason, consumers are requested to submit official signed complaint forms and the matters are assigned to our Investigators. The Information and Education division does not handle official complaints. When an inquiry rises to the level of a complaint (written, signed, affidavit), it is sent to OCA investigators and is recorded as a formal complaint. Formally filed and verified complaints are used to monitor patterns of complaints against businesses and will continue to be used for such purposes. The auditors recommend that inquiries be tracked to be used to monitor these complaints but inquiries are not investigated for verification as is a formal complaint. As an example, gasoline price increases result in many inquiries, but nearly every one is not a matter that would constitute a valid complaint and would not show a legitimate pattern of complaint against gasoline retailers.

This office does not have the time or the inclination or the resources to document every inquiry. All inquiries responded to via email are in the system.

Our success in responding to inquiries is reflected by the hundreds of letters we receive each year thanking us for timely assistance. No disciplinary action has ever been taken against this

department for failure to respond to any inquiry in an inappropriate manner. Does the auditor really think it is necessary to log every call asking if a contractor is licensed?

Auditor's Follow-up Response:

We do not consider consumer inquiries regarding license status to be complaints. Likewise, we understand that gasoline price increases are not the responsibility of OCA and therefore are not inquiries that would need to be tracked.

Our audit finding focused on informal complaints handled by the Deputy Commissioner. We reiterate our recommendation that OCA should require that the Information and Education division provide it with information regarding informal complaints (for which it has jurisdictional responsibility) and their resolution so that these complaints can be considered in determining patterns of complaints against businesses.

XII. Administrative Hearings:

Finding/Recommendation:

Page 15, paragraph 5 [Page 13 in final report]

“OCA should:

- a) track the amount of time employees spend performing the duties of a hearing officer, . . . to hire administrative officers on a part-time basis or per diem basis.*
- b) ensure that the investigation and hearing officer functions should be segregated in order to present a more objective hearing process for both the consumer and violator (contractor, retailer, etc); and*
- c) maintain a complete accurate and consistent official record of the hearings to ensure that proper OCA procedures are followed and documented for transparency purposes, and promulgate procedures to ensure that there is consistency in the manner in which hearings and subsequent dispositions are documented.”*

Response:

Tracking the time on hearings is not necessary. We have already considered hiring a part-time administrative officer and have made the objective decision that it is more cost effective and beneficial to consumers to do hearings in-house.

Auditor's Follow-up Response:

We concur with OCA's decision to investigate the possibility of hiring part-time administrative hearing officer(s).

The investigation and hearing officer functions are already segregated in the OCA. It is office policy for designated hearing officers to recuse themselves even if there is a remote possibility of being an acquaintance or where the hearing officer is involved in the investigation or issuance of a specific violation.

Auditor's Follow-up Response:

OCA should enforce its policy to ensure that instances do not occur where employees who act as hearing officers are also involved in the investigation of the complaint that is the subject of the hearing.

We keep an accurate, consistent, official record. Each violation has a hearing file, which includes the copies of the violation issued, communications, proofs of the violation and submissions of proofs offered by the respondent. Each hearing officer notes the findings of the hearing, and extensive detailed notes are written when necessary. It is important to note that these files serve as the official record of the administrative hearing and are submitted in court cases where decisions are challenged. We have never been overturned because of the inadequacy of the record. Efforts have been made and are continually reinforced to maintain a complete accurate and consistent official record of the hearings.

Auditor's Follow-up Response:

We stand by our finding that hearing notes were inconsistent and incomplete. We reiterate our recommendation that OCA ensure that there is consistency in the manner in which hearings and subsequent dispositions are documented.

XIII. Policies and Procedure Manuals:

Finding/Recommendation:

Page 18, paragraph 2 [Page 14 in final report]

"OCA should:

a) create and promulgate policy and procedure manual for each division outlining all activities, policies and responsibilities;"

Response:

A 2004 study was performed by the OCA with assistance from two consultant PhDs that were referred by OMB. The detailed flow charts represent the procedural guidelines for this department. Policy changes adapt to new laws or reinterpretation of existing laws in the evolving consumer environment as necessary.

Office policy and guidelines are constantly reinforced through various meetings and written communications during the workday as deemed necessary.

Auditor's Follow-up Response:

We reiterate our recommendations. Flowcharts, meetings and memos are not a replacement for a policy and procedures manual governing the routine business of the office that is readily accessible to employees. Policy and procedure manuals should be codified and periodically reviewed and updated to ensure that they conform to current practices. This will help ensure

that controls are in place and further ensure the continuity of business should key employees be absent for a period of time. Additionally, the 2004 study did not include two areas that were examined during this audit, the TLC and the ATM registrations, as these were not functioning areas of OCA when this study was performed.

XIV. Advisory Boards:

Finding/Recommendation:

Page 21, paragraphs 1 & 2 [Page 15 in final report]

“The County Administrative Code sections establishing advisory boards have not been complied with during the audit period.

-Administrative Code §21-10.1 established a Board of Consumer Affairs to consist of 15 members appointed by the County Executive...

-Administrative Code §21-11.14 established a Home Improvement Industry Board...

During the audit period, neither of these Boards existed...”

Response:

The Board of Consumer Affairs has not existed formally in several decades. Even the OCA employees with the most longevity cannot recall the existence of a Board of Consumer Affairs. Indeed, the advent of new communication technology has allowed consumers to more easily and readily identify problems and rights and to apprise OCA rapidly of situations needing enforcement and investigation. Moreover, the staff meets regularly with consumers with concerns and has input of legislators who are contacted by consumers with concerns. When the board was first contemplated, the lawmaking body was much different than the representative legislature in existence today. We are presently proposing an amendment to the Code to remove the Board. We also have not reconstituted the Industry Advisory Board in several years, finding that the meetings produced little more than gripe sessions, directed at both the enforcement efforts of the Office and each Board member against other Board members. Instead, we encourage and meet regularly with various trade associations whenever they request meetings about issues, and we attend their meetings to address issues and concerns when we are invited to do so, which is several times a year. An amendment to the Code to remove this Board is also being proposed in the near future.

Auditor’s Follow-up Response:

We concur with the actions taken by OCA to propose changes to the Administrative Code to reflect its view that the Board of Consumer Affairs is no longer needed.

XV. Item Pricing Inspections:

Finding/Recommendation:

Page 19-21 [Pages 15 and 16 in final report]

To test all 100 items as required by law or to seek an amendment to the Administrative Code to test a graduated number of items based upon store size.

Response:

As noted, testing is based upon a practical assessment of the store, for fairness to the merchant in relation to other stores, for efficient use of Office resources, and for the protection of consumers. Stores with 50 items tested have a decreased risk of consumer overcharge as compared to much larger stores that have 100 items tested from a much larger inventory of items. OCA has proposed an amendment to the Administrative Code to provide for the number of items to be tested in relation to the size of the store.

Auditor's Follow-up Response:

We concur with OCA's decision to propose an amendment to the Administrative Code to authorize a reduced testing schedule for smaller stores.

XVI. Administrative Hearing Schedules:

Finding/Recommendation:

*Page 22, paragraph 4 [Page 17 in final report]
"Scheduling and Recording Violation Hearings..."*

Response:

Manually recording scheduled hearings and keeping a weekly schedule is the best and most efficient way to keep track of them until we get a case management system. Records are put in the database, readily available to anyone with access to a computer.

Auditor's Follow-up Response:

OCA's response does not address our finding that it performs duplicative work by entering the same information manually in an appointment book and then also in a Microsoft Word document. We concur with OCA that hearings administration should be part of a comprehensive case management system.

XVII. Weights and Measures Invoicing and Number Sequences:

Finding/Recommendation:

*Page 23, paragraph 2(a) [Page 17 in final report]
"OCA should:*

a) maintain a systemized log to account for the entire sequence of invoice numbers including those retained in inventory, the defective or missing books, and those issued to each inspector;"

Response:

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It is unfeasible and meaningless – all invoices assigned to inspectors are accounted for in the database; they are either reconciled to inspections or voided by Assistant Directors.

Auditor’s Follow-up Response:

We disagree with OCA’s response. The purpose of pre-numbering invoices is to enable OCA to determine which invoices were issued, which have yet to be used and which invoices were voided. Failure to account for the numerical sequence of defective books, and of books not received from Printing and Graphics, leaves gaps in the sequence. Without monitoring the numerical sequence of all invoices, OCA cannot be assured that all invoices were issued, or that cash receipts were not misappropriated or lost. We reiterate our recommendation that OCA maintain a systemized log to account for the entire sequence of invoice numbers, including those retained in inventory, the defective or missing books, and those issued to each inspector.

XVIII. Inadequate Information Technology:

Finding/Recommendation:

Page 24, paragraph 1 [Page 19 in final report]

“Inadequate Information Technology . . .”

Response:

This is one of the few areas this office is in agreement. We are encouraged that another agency has recognized our often-stated need for Case Management and in-house accounting help. It is worth repeating that the OCA has been requesting new technology and accounting help for more than 6 years. It is the sincere hope of this agency that this audit will result in the long sought after upgrades in technology and supplemental accounting staff. As indicated throughout the audit, the OCA has actively attempted with the most forceful language to obtain this help.

Auditor’s Follow-up Response:

We concur with OCA’s response that it implements a case management system.

Conclusion

As stated above, we have disagreed with some aspects of the audit report. However, despite the effort to point out perceived deficiencies, the report does convey the fact that this Office accomplishes its mission of consumer protection effectively and efficiently despite the ever-present need for more personnel and material resources.

It is disappointing that, while noting that the Office lacks necessary information technologies that would improve the efficiency of the procedures used, the report nearly ignores the creative ad hoc efforts by the staff to use all available means to accomplish the main duties of the Office in providing for the protection of consumers in the context of greatly expanded duties imposed upon the Office. However, this spirit of innovation and creativity that the staff of this Office brings to the County is something of which we all are proud. Despite the effort to point out

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faults, the report actually showcases how this Office achieves the successes that it has and will continue to achieve.

In conclusion, we are disputing some of the findings of this audit, have adopted some recommendations, and have rejected others. While we have some disagreements with the final report, we have welcomed this opportunity to review the operations of the Office and this examination will result in changes that will continue to make this Office one of the most respected consumer protection agencies not only in New York but in the entire United States.

Auditor's Follow-up Response:

We appreciate OCA's cooperation with the audit and will work with OCA in reviewing its corrective action plan.