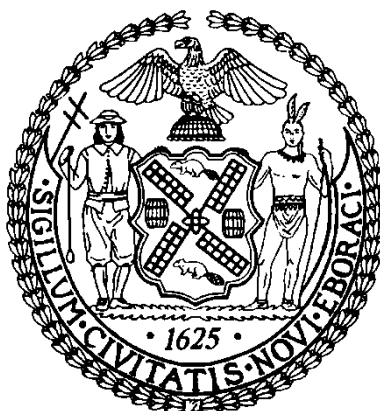


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

MANAGEMENT AUDIT

**Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Management and
Control of Overtime Costs at the
Department of Homeless Services**

MJ11-071A

October 6, 2011



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

October 6, 2011

Dear Residents of the City of New York:

My office has audited the Department of Homeless Services' (DHS) management of employee overtime to determine whether the agency: (1) appropriately approved and paid overtime in compliance with its own policies and procedures, labor laws, and other City regulations and guidelines; and (2) effectively manages and controls its overtime costs. We audit City agencies' use of overtime as a means of ensuring that the overtime usage is appropriate and that the related costs are effectively managed and controlled.

The audit determined that DHS did not fully comply with its own procedures and other applicable rules and regulations governing the approval and payment of overtime. Such inconsistencies along with other disclosed control weaknesses inhibit DHS' effectiveness in managing and controlling employee overtime costs. As a result of such weaknesses, the audit found numerous instances in which DHS paid overtime to employees who: did not have the required levels of senior management signoff; exceeded the City's overtime cap and did not have required waivers; or did not have justification for the overtime hours worked. Further, DHS did not have a formal mechanism or procedure to follow up or investigate continuous high-overtime earners.

The audit made five recommendations to address these issues, including that DHS should: ensure that procedures set in place to manage and control overtime are implemented, enforced, and appropriately followed; ensure that overtime waivers are obtained for applicable employees; and design and implement a procedure to investigate and follow up on continuous high-overtime earners.

The results of the audit have been discussed with DHS officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "JCL".

John C. Liu

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*The City of New York
Office of the Comptroller
Management Audit*

**Audit Report on the Management and
Control of Overtime Costs at the
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AUDIT REPORT IN BRIEF

The New York City Department of Homeless Services (DHS) partners with public agencies and private sector organizations to provide temporary, emergency shelter to homeless families and individuals. Non-managerial DHS employees covered under collective bargaining agreements between the City and municipal labor unions are eligible to earn overtime pay. In accordance with the Citywide Agreement and the Fair Labor Standards Act (FLSA), most non-managerial employees must be paid overtime at a premium of one-and-one-half times the regular rate of pay for all hours worked in excess of 40 hours. For employees whose work week is 35 hours, straight time is paid for hours worked in excess of 35 hours but less than 40 hours. Employees who work overtime may be compensated either by cash payment or in time off (compensatory time).

DHS' Personal Services (PS) expenditures totaled \$122.3 million and \$120.3 million for Fiscal Years 2009 and 2010, respectively. For the same years, DHS' total overtime expenditures represented 7.9 and 7.3 percent, respectively, of its total PS expenditures.¹ According to the City's Payroll Management System (PMS), DHS paid \$9.7 million in overtime wages in Calendar Year 2009 to 1,816 of its approximately 2,000 employees and paid \$8.8 million in overtime wages in Calendar Year 2010 to 1,549 of its approximately 1,900 employees.

The audit determined whether DHS: (1) appropriately approved and paid overtime in compliance with its own policies and procedures, labor laws, and other City regulations and guidelines; and (2) effectively manages and controls its overtime costs.

Audit Findings and Conclusions

DHS did not fully comply with its own procedures and other applicable rules and regulations governing the approval and payment of overtime. Such inconsistencies, along with

¹ As reported in the Mayor's Management Report and Comptroller's Comprehensive Annual Financial Report for Fiscal Years 2009 and 2010.

other disclosed control weaknesses, inhibit DHS' effectiveness in managing and controlling employee overtime costs.

Our tests involved 48 sampled employees, whose 2009 earnings totaled \$4,104,449, including regular earnings of \$3,044,920 and overtime earnings of \$1,059,529. Due to the disclosed control weaknesses regarding these 48 sampled employees, DHS paid overtime wages of: (1) \$220,690 to 39 employees without the required levels of senior management signoff; (2) \$32,641 to 23 employees who exceeded the City's overtime cap and did not have required waivers; and (3) \$3,579 to four employees without justification for the overtime hours worked.

Tests of compliance with applicable criteria disclosed that DHS employees generally provided justification for overtime requests and all such requests were signed as being reviewed by unit supervisors or lower-level managers as required. However, senior management approvals for overtime exceeding 10 percent or more of employees' regular earnings were not always obtained. Further, as stated above, DHS did not obtain overtime cap waivers for required employees nor did it have a formal mechanism or procedure to follow up or investigate continuous high-overtime earners.

On a more positive note, DHS paid overtime wages only to eligible employees and paid those wages at straight time for overtime hours worked in excess of 35 hours but less than 40 hours and at premium pay for hours worked in excess of 40 hours. Further, the audit found that the duties of approving and processing payroll were adequately segregated in compliance with Directive #13.

Audit Recommendations

The audit made five recommendations, including that DHS should:

- Ensure that procedures set in place to manage and control overtime (i.e., DHS' updated overtime control policy, effective March 2011) are implemented, enforced, and appropriately followed by agency management and staff as part of the agency's normal day-to-day business functions. These procedures should be reviewed periodically and updated as required to reflect changes in management's policies.
- Going forward, ensure that overtime waivers are obtained each year from OLR for applicable employees when they exceed the overtime cap, currently set at \$74,079. For employees who require a waiver but one is not requested and obtained, the employee should receive compensatory time rather than paid overtime wages in accordance with the Citywide Agreement.
- Design and implement a procedure to investigate and follow up on continuous high-overtime earners as a means to mitigate and reduce the risk associated with potential overtime abuse.

DHS Response

We received a written response from DHS officials on September 13, 2011. In their response, DHS officials generally agreed with all five of the audit's recommendations; however, they disagreed with some of the audit's findings. After careful review, we found that some of DHS' arguments were without merit. Further, some of their arguments were unsubstantiated; DHS provided no evidence in support of their assertions. Accordingly, in the absence of credible evidence to the contrary, we are unable to give credence to their arguments.

INTRODUCTION

Background

The New York City Department of Homeless Services (DHS) partners with public agencies and private sector organizations to provide temporary, emergency shelter to homeless families and individuals. DHS is divided into nine organizational divisions and employs a staff of approximately 2,000 employees to carry out its mission. DHS' Family Services and Adult Services divisions are collectively the largest users of overtime, representing nearly two-thirds of DHS' overtime budget in Fiscal Year 2010. DHS' intake centers and directly-run shelters operate 24 hours a day, seven days a week, 365 days a year.² DHS is legally mandated to provide housing to eligible homeless families and individuals and to adequately staff its intake facilities and directly-operated shelters.

Non-managerial employees covered under collective bargaining agreements between the City and municipal labor unions are eligible to earn overtime pay. The Citywide Agreement between the City and District Council 37 AFSCME, AFL-CIO³ covers most of DHS' non-managerial employees.⁴ The normal work week for covered, full-time employees is generally 35 or 40 hours. In accordance with the Citywide Agreement and the Fair Labor Standards Act (FLSA), most non-managerial employees must be paid overtime at a premium of one-and-one-half times the regular rate of pay for all hours worked in excess of 40 hours.⁵ For employees whose work week is 35 hours, straight time is paid for hours worked in excess of 35 hours but less than 40 hours.

Employees who work overtime may be compensated either by cash payment or in time off (compensatory time). In general, eligible employees who are ordered to work beyond their normal work hours can receive paid overtime, whereas eligible employees who voluntarily work extra hours beyond their normal work schedule receive compensatory time (one hour off for each hour worked).

In June 2010, DHS implemented the CityTime automated time and attendance system. CityTime is a secure, web-based system intended to provide for the objective and consistent application of citywide compensation rules and policies; automate the submission, authorization, and generation of attendance and leave transactions; and interface with the City's Payroll Management System (PMS) for pay and leave processing. Prior to the implementation of CityTime, DHS relied on timesheets and timecards to account for employee attendance and hours worked, and hard-copy forms and records to account for employee leave and overtime

² DHS oversees 203 (11 agency-run and 192 privately-run) shelter facilities, consisting of 51 adult shelters and 152 family shelters.

³ American Federation of State, County and Municipal Employees, American Federation of Labor-Congress of Industrial Organizations

⁴ For trade titles (i.e., carpenter ,electrician, etc.), New York State Labor Law, §220 and Appendix A supersedes provisions of the Citywide agreement pertaining to overtime. Accordingly, for such titles overtime premium pay of one-and-one-half times regular pay is paid after 35 hours instead of 40 hours.

⁵ The FLSA provides overtime pay exemptions for certain employees, including bona fide executive, administrative, professional, outside sales, and certain computer employees, home care attendants, etc.

requests and supervisory approvals. Employee Time Reports (ETR) were used to enter employee attendance into PMS.

DHS' Personal Services (PS) expenditures totaled \$122.3 million and \$120.3 million in Fiscal Years 2009 and 2010, respectively. For the same years, DHS' total overtime expenditures represented 7.9 and 7.3 percent, respectively, of its total PS expenditures.⁶ According to PMS, DHS paid \$9.7 million in overtime wages in Calendar Year 2009 to 1,816 of its approximately 2,000 employees and paid \$8.8 million in overtime wages in Calendar Year 2010 to 1,549 of its approximately 1,900 employees.

Objectives

The objectives of the audit were to determine whether DHS: (1) appropriately approved and paid overtime in compliance with its own policies and procedures, labor laws, and other City regulations and guidelines; and (2) effectively manages and controls its overtime costs.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions, based on our audit objectives. However, it must be noted that DHS hindered the timely progress of our audit by attempting to limit our direct access to DHS staff and by not providing us with timely, complete information. We therefore do not have the same level of assurance regarding the audit evidence obtained had we been allowed unrestricted access and been provided with timely, complete information. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope covered Calendar Years 2009 and 2010. Please refer to the "Detailed Scope and Methodology" section at the end of this report for the specific procedures and tests that were conducted and details concerning DHS' audit hindrances.

Discussion of Audit Results

The matters covered in this report were discussed with DHS officials during and at the conclusion of this audit. A preliminary draft report was sent to DHS officials and discussed at an exit conference held on July 27, 2011. On August 16, 2011, we submitted a draft report to DHS officials with a request for comments. We received a written response from DHS officials on September 13, 2011. In their response, DHS officials generally agreed with all five of the audit's recommendations; however, they disagreed with some of the audit's findings. After carefully considering their arguments, we found them either to be without merit or unsubstantiated.

⁶ As reported in the Mayor's Management Report and Comptroller's Comprehensive Annual Financial Report for Fiscal Years 2009 and 2010,

In their response, DHS officials attempt to undermine certain audit findings either by asserting that the procedures we used as criteria were not in effect during the review period or by asserting that the deficiencies cited in this report had already been corrected. For example, DHS attempted to refute the finding related to its lack of compliance with its own procedure requiring senior management approval for certain levels of overtime earnings, asserting that the procedures that were in effect were no longer applicable. In another example, officials attempted to refute the finding related to the retention of overtime approvals, claiming that procedures have been initiated that address that issue. However, officials provided no evidence to substantiate their assertions. Accordingly, in the absence of credible evidence to the contrary, we are unable to give credence to their arguments.

The full text of the DHS response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The audit determined that DHS did not fully comply with its own procedures and other applicable rules and regulations governing the approval and payment of overtime. Such inconsistencies, along with other disclosed control weaknesses, inhibit DHS' effectiveness in managing and controlling employee overtime costs.

Our tests involved 48 sampled employees, whose 2009 earnings totaled \$4,104,449, including regular earnings of \$3,044,920 and overtime earnings of \$1,059,529. Due to the disclosed control weaknesses regarding these 48 sampled employees, DHS paid overtime wages of: (1) \$220,690 to 39 employees without the required levels of senior management signoff; (2) \$32,641 to 23 employees who exceeded the City's overtime cap and did not have required waivers; and (3) \$3,579 to four employees without justification for the overtime hours worked.

Our tests of compliance with applicable criteria disclosed that DHS employees generally provided justification for overtime requests and all such requests were signed as being reviewed by unit supervisors or lower-level managers as required. However, senior management approvals for overtime exceeding 10 percent or more of employees' regular earnings were not always obtained. Further, as stated above, DHS did not obtain overtime cap waivers for required employees nor did it have a formal mechanism or procedure to follow up or investigate continuous high-overtime earners.

On a more positive note, we found that DHS paid overtime wages only to eligible employees and paid those wages at straight time for overtime hours worked in excess of 35 hours but less than 40 hours and at premium pay for hours worked in excess of 40 hours. We also found that the duties of approving and processing payroll were adequately segregated in compliance with Directive #13. These matters are discussed in greater detail in the following sections of this report.

Overtime Control Procedures Not Consistently Followed

\$220,690 in Overtime Paid Without Proper Senior Management Approvals

We reviewed 624 weekly time and attendance packages for the 48 sampled employees for the 13-week test period, September 27 – December 26, 2009, from which we identified 406 packages for 41 employees who worked overtime.

In accordance with DHS requirements, written justification for the overtime was provided on all but six of the 406 Usage/Accrual Cards⁷ (UACs). (The four employees associated with these six instances were paid \$3,579 for overtime wages and compensatory time associated with the UACs that did not have justification for the overtime.) However, the justification notations were not always legible or discernable on the UACs. In addition, all 406 UACs were signed as being reviewed by a supervisor. However, overtime requests associated with 356 of those UACs

⁷ Non-managerial employees use the UAC to request leave usages and overtime accruals and to document required approvals.

required one or more additional signatures from senior DHS officials, but were not always approved as required.

Until approximately June 2010, DHS used the UAC agency-wide to document employee requests and supervisory approvals (signatures) of employee leave and overtime requests. According to DHS' procedure, employees were required to obtain preapproval from their supervisor or unit head prior to working overtime using the UAC. Each month, DHS' Human Resources department distributed to unit managers overtime reports showing earnings for employees who had overtime wages exceeding 10 percent, 15 percent, and 20 percent of their regular salary. These reports were to be used by the unit supervisor or manager to determine the required levels of approval for overtime.

According to the UAC procedural instructions, if an employee's cumulative overtime earnings for the year was at or exceeded 10 percent of his/her adjusted annual base pay (AABP) (10-percent overtime threshold), for the employee to be able to work and earn additional overtime pay, the supervisor was required to submit the UAC to the division's Assistant Commissioner for signature. If the employee's total overtime earnings for the year was at or above 15 percent of his/her AABP (15-percent overtime threshold), the Assistant Commissioner was then required to submit the UAC to the Deputy Commissioner for signature. Further, if an employee's total overtime earnings for the year was at or exceeded 20 percent of his/her AABP (20-percent overtime threshold), the UAC form should have been submitted to the Commissioner for approval prior to the overtime being worked. In the case of emergencies, the appropriate signatures could be obtained after the overtime was worked.

As reflected in Table I, the required approvals at the three overtime thresholds were not always obtained. At the 10-percent threshold, 6 percent of the UACs were not signed by an Assistant Commissioner. At the 15-percent threshold, 16 percent of the applicable UACs were not signed by both an Assistant Commissioner and Deputy Commissioner. Further, at the 20-percent threshold, 98 percent of the applicable UACs (or supplemental approval forms) were not signed and approved by all required officials— an Assistant Commissioner, a Deputy Commissioner, and the Commissioner. Collectively, DHS paid \$220,690 in overtime payments without all required approvals from DHS senior officials.

Table I
Analysis of Senior Official Approvals of Overtime at Three Threshold Levels
for the Period September 27 – December 26, 2009

Item	Total Overtime Earnings at or Above 10-percent Threshold: <u>One Signature Required</u> (Asst. Commissioner)	Total Overtime Earnings at or Above 15-percent Threshold: <u>Two Signatures Required</u> (Asst. Commissioner and Deputy Commissioner)	Total Overtime Earnings at or Above 20-percent Threshold: <u>Three Signatures Required</u> (Asst. Commissioner, Deputy Commissioner, and Commissioner)
Number of UACs with overtime for which employee was at or above the applicable threshold	356 (100%)	343 (100%)	341(100%)
Number UACs <i>signed</i> as required at each threshold level	336 (94%)	288 (84%)	7 (2%) (a)
Number UACs <i>not signed</i> as required at each threshold level	20 (6%)	55 (16%)	334 (98%)
Value of overtime payments not properly approved at each threshold (Total \$220,690)	\$5,427	\$27,630	\$187,633

(a) There were seven instances in which the Commissioner signed but a Deputy Commissioner or Assistant Commissioner (or both) did not sign the UAC.

As an added control, DHS' central timekeeping office was supposed to ensure that all required signatures were obtained on the UACs in order to process overtime wages. If a UAC was submitted without appropriate signatures, the timekeeping office was supposed to return the form to the division or work unit to be signed. Apparently, this added control feature was either bypassed or not consistently applied because, as reflected in our sample results, all UACs did not have the required signatures.

When we discussed this matter with DHS officials, they said that despite the established UAC overtime approval procedures, we should not expect to see the Commissioner's signature on the UAC forms. (Of the 341 UACs shown in Table I that did not have the three required signatures, the Commissioner's signature was missing on all but seven of them.) In addition, to address DHS' inconsistent compliance with its own procedure, officials cited the agency's mandate to adequately staff and provide services at its client intake centers and directly-run shelters.

While we recognize that DHS has a mandate to provide services to homeless individuals and families, when management routinely bypasses and forgoes its own procedures to control overtime, there is a weakening in the control environment and an elevation in the risk of potential overtime abuse. Consequently, there is a greater likelihood for the City to incur unnecessary costs, both in additional overtime payments and in higher pension contributions.

At the exit conference on July 27, 2011, DHS officials attempted to undermine this finding area by asserting that DHS' policy did not require that all management levels sign the UACs at the higher overtime thresholds; rather they said one or another signature was sufficient. Further, they said that the UAC does not state that all three signatures are required. Despite DHS' contentions, we found that the UAC instructions clearly stated that the UAC form is to be submitted by one level of management to the next higher level of management if the employee's

level of overtime exceeded a certain threshold. Further, in support of our assessment, we found that it was DHS' general practice for the UACs to have more than one level of management approval. Specifically, as shown in Table I above, 288 (84 percent) of the 343 UACs subject to the 15-percent threshold were actually signed by both an Assistant Commissioner and a Deputy Commissioner, mirroring the instructions accompanying the UACs.

DHS Response: "In response, we note that the approval procedures as stated on the UAC card required executive approval and specifically provides the direction that '[i]f the employee is at or above the 15% threshold, the Assistant Commissioner submits it to the Deputy Commissioner for his/her signature.' There was no requirement that both officials sign the card, although on occasions they did."

Auditor Comment: Although not explicitly stated, the UAC procedures implicitly directed that each level of approval was needed when a certain overtime threshold was met or exceeded. Further, the fact that a significant majority—84 percent—of the UACs tested that were subject to the 15-percent threshold were signed by both a DHS Assistant Commissioner and a Deputy Commissioner indicates that there was a tacit understanding within the agency that both signatures were required. Accordingly, our finding stands unchanged.

DHS Response: "Further, the requirement for the Commissioner sign-off was dropped in 2009. The one exception to this was where the Commissioner supervised OT-eligible employees and was required to sign off as their direct supervisor. At the time the decision was made to drop the Commissioner's signature as a requirement, plans were underway to implement the automated City Time system. In the interest of avoiding unnecessary printing costs, DHS continued to use the old UAC cards with the obsolete instruction regarding the Commissioner's signature."

Auditor Comment: As noted earlier, during the audit, DHS officials told the audit team "not to expect to see the Commissioner's signature" on the UAC forms. However, they never stated that the requirement had been eliminated. Had they done so, we would have requested substantiation (e.g., updated procedures manual, interoffice memorandum) of this change. DHS now makes that assertion in its response, claiming that the requirement was eliminated in 2009. However, the agency has provided us with no credible evidence to support that assertion. Accordingly, in the absence of evidence to the contrary, this finding remains.

Effective March 2011, DHS updated its overtime control policy and reduced the number of percentage thresholds. The new procedure requires that a Deputy Commissioner sign off at the 15-percent threshold level and eliminates the 20-percent threshold and Commissioner sign-off. No mention is made as to the 10-percent threshold. Further, under the new procedure, the UAC is eliminated, meaning that there is no standardized or uniform procedure for documenting a Deputy Commissioner's approval of overtime for employees whose overtime already exceeds the 15-percent threshold. (This issue is discussed later in this report.)

DHS Employees Exceeded the Overtime Cap

The Citywide Agreement provides an overtime cap that limits the payment of overtime to all employees in FLSA-exempt titles covered by the Agreement. According to the Office of Labor Relation's (OLR) Interpretive Memo #100, effective March 3, 2009, if the sum of an employee's total pay (base pay plus differentials, longevity, overtime, etc.) in a calendar year exceeds the cap of \$74,079, the employee is no longer eligible to be paid for overtime worked unless an overtime waiver is obtained from OLR. In the absence of a waiver, the employee is to receive compensatory time for all authorized overtime at the rate of one hour for each hour worked. The overtime cap does not apply for employees in FLSA-covered titles, which by law require premium pay for overtime worked in excess of 40 hours.

Although required, DHS did not obtain waivers for all 23 of the 48 sampled employees for which the overtime cap limits were exceeded. (The remaining 25 sampled employees were either FLSA covered or did not have total earnings exceeding the cap and therefore did not require a waiver.) Consequently, DHS improperly paid these 23 employees a total of \$32,641 for working overtime during the 13 weeks we examined, representing the half-time (.5) component of the overtime premium of one-and-one-half times the regular rate of pay for hours worked in excess of 40 hours. Beyond the sampled employees, DHS did not obtain waivers for any employee who exceeded the overtime cap of \$74,079 in Calendar Years 2009 and 2010 and required a waiver.

We confirmed with an OLR official that DHS had neither sought nor obtained overtime waivers in either Calendar Year 2009 or 2010 for any applicable employee. When we discussed this matter with DHS officials, they said that DHS' previous administration did not seek overtime waivers from OLR. Further, they suggested that DHS' mandate to adequately staff its intake and shelter facilities and to provide client services supersedes control requirements otherwise established.

The adherence to the overtime cap should be viewed as more than just a mere formality. The overtime cap can be used by management as a tool to periodically monitor and evaluate the salaries and work schedules of employees approaching the cap, and, if necessary, to assist in developing new strategies to reduce overtime costs. This would assist the agency to better align its goals and objectives with sound fiscal control.

At a meeting on March 31, 2011, DHS officials stated that beginning in January 2011, waivers would be sought from OLR for all required employees. As proof, DHS provided copies of correspondence from OLR, dated March 1 and March 8, 2011, granting waivers for 194 DHS employees for Calendar Year 2011 which DHS originally requested on February 24 and March 3, 2011, respectively. In addition, DHS officials stated that with all FLSA-exempt employees who earn above the cap and have been granted a waiver, OLR generally limits the employee overtime earnings to 20-percent of his/her base pay. Any overtime hours worked that would result in overtime earnings above this 20-percent limit would have to be compensated in comp time.

Lack of Management or Review of Overtime Costs

DHS paid about 15 percent of its nearly 2,000 employees significant amounts of overtime in both Calendar Years 2009 and 2010. In some instances, the employees' total annual overtime exceeded more than half of their regular earnings. This is of concern because DHS does not have a mechanism or procedure to investigate and follow up on continuous high-overtime earners.

Mayoral Directive 94-3, effective September 14, 1994, requires that agencies review the top overtime earners in their agency, at least quarterly, to ensure that overtime is distributed equitably and to avoid potential abuse.

According to DHS officials, overtime is not assigned on a seniority or arbitrary basis. Rather, overtime is mandated for employees in certain titles to meet client needs in security and operations. These employees must have a relief person before they can depart at the end of their shift. When overtime is necessary, the overtime work is first offered to on-duty employees regularly assigned to the work unit, provided they are not precluded from working overtime. Employees with poor time and attendance records and poor performance may be precluded from performing overtime work. DHS has nine organizational divisions. In the event there are insufficient employees at one work location to perform the overtime, the Division's management will offer the overtime to qualified employees assigned to another location under its jurisdiction or to employees from another of DHS' organizational divisions.

We requested evidence of a mechanism or procedure to investigate and follow up on continuous high-overtime earners, as required by the mayoral directive. According to DHS management, overtime is unavoidable and necessary to its operations, especially given the current fiscal environment that has resulted in a reduction in staff, a hiring freeze, and budget reductions. DHS officials stated that overtime must be justified, pre-approved, and necessary to the operational needs of the agency. Such operational needs arise from a lack of available staff to address increased client volume at its intake and shelter facilities and to carry out special projects, such as the Adult Services division's warming vans in the winter and cooling vans in the summer. Accordingly, they asserted that "all overtime is necessary to meet agency mandates." During the audit, DHS officials did not, however, provide any evidence that the agency followed up on any specific high-overtime earners as required.

We recognize that certain DHS employees may be required to work overtime to fill certain positions and that some employees may be more willing than others, and, consequently, be called upon more frequently by their managers to work overtime when needed. However, we are concerned about the risk of potential overtime abuse. DHS management could mitigate this risk by implementing a procedure requiring follow-up of continuous high-overtime earners.

DHS Response: "We do not believe this finding accurately reflects DHS' current procedures or that there is reason for concern. . . .

In the event that a Division exceeds its OT budget in any given month, the Deputy Commissioner is required to provide an explanation of the excess to the Fiscal Division and the Commissioner. These monitoring mechanisms allow for executive level review

and accountability for OT expenditures, including those associated with high overtime earners.

Moreover, these accountability measures are strengthened by the added process that requires the Division's Deputy Commissioner to give approval for employees whose earnings are at 15% or above regular pay to perform overtime work and be paid for it. In granting this approval, the Deputy Commissioner is making the judgment that the overtime work is justified and necessary to meet agency mandates."

Auditor Comment: DHS' overtime budget "monitoring mechanism" does not provide for effective monitoring of high-overtime earners because the mechanism is triggered only when a DHS division exceeds its overtime budget for a given month.

Further, while a Deputy Commissioner's approval of overtime at the 15-percent threshold may reflect that the overtime is "justified and necessary," it does not serve as a strong control to reduce the risk of potential overtime abuse among continuous high- overtime earners. Moreover, with regard to DHS' current overtime policy that took effect March 2011 (after the end of the audit scope period) and to which DHS refers, the policy document does not specifically address controls to prevent overtime abuse. Instead, it states that each DHS Division "is responsible for establishing its own internal controls." Based on these considerations, our finding stands.

Loosening of Overtime Approval Requirements and Control Procedures

We reviewed DHS' "updated" overtime control policy, issued and effective March 2011, and noted some weaknesses regarding senior management's approval of overtime exceeding established percentage thresholds and the method for documenting such approvals.

We found that the March 2011 policy contained language addressing all of the points about which we inquired prior to its issuance, including the authorization, allocation, assignment, recording, reporting, and control of overtime. In addition, the new policy covers the use of CityTime. However, as the "updated" policy statement was not effective until March 2011, it was outside the audit scope period. Therefore, we did not test DHS' compliance with the new policy. Nevertheless, we reviewed it to assess its adequacy.

Except for the weakness discussed herein, overall we determined that the March 2011 overtime policy adequately addresses key overtime management and control concepts. However, it will only be effective if DHS management actively enforces the policy to ensure compliance agency-wide.

According to the March 2011 policy, as in the past, DHS' Human Resources department "will make available monthly overtime reports showing earnings for employees who have exceeded 10 percent and 15 percent of their regular salary." These are the same reports referred to earlier that are used by department heads to determine whether senior management approval is required for an employee to work overtime.

Prior to CityTime, DHS used the UAC form to approve employee overtime at the 10-percent, 15-percent, and 20-percent thresholds. This form was uniformly used throughout the agency. However, under the new policy, the number of percentage thresholds has been reduced. The new procedure requires that a Deputy Commissioner sign off at the 15-percent threshold level and eliminates the 20-percent threshold and Commissioner sign-off. CityTime only requires one approval for overtime and other transactions, that of the employee's direct supervisor or manager. Therefore, a Deputy Commissioner's approval, when required, must be documented outside of CityTime. This is of concern because, under the new procedure, there is no standardized or uniform procedure for documenting a Deputy Commissioner's approval of overtime for employees whose overtime already exceeds 15 percent of their annual base pay. Instead, each division is responsible for establishing its own procedures to document such approval when required.

DHS Response: “[A]s discussed at the exit conference, the agency does have a simple procedure for documenting and maintaining these electronic approvals. The following is the procedure used:

- The Deputy Commissioners are notified by the Director or Manager of Timekeeping when the employee is nearing the 15% overtime threshold and asked whether additional overtime should be approved.
- The Deputy Commissioners sends an email to either the Director or Manager of Timekeeping either denying or approving additional OT . . .
- If approval is granted, the Deputy Commissioners are notified when the employee approaches the next 5% interval and again asked for permission . . .
- Email approvals or denials of additional overtime . . . are forwarded to the employee's timekeeper and a printed copy is placed in the employee's Timekeeping file. . . .
- The Manager of Timekeeping maintains an electronic file for all employees who have such waivers.
- The employee's hard copy file is retained on site for the required three years, and then it will be sent to the warehouse to be archived for an additional four years. The electronic files are automatically archived every three to four months by DoITT.”

Auditor Comment: Although we questioned DHS officials about this matter in March 2011 and again in May 2011, it was not until the exit conference on July 27, 2011, that DHS officials first told us that the above-mentioned e-mail retention procedure had been established. DHS officials do not state when this procedure went into effect, however. Further, although requested, DHS provided us with no evidence (e.g., e-mails between timekeeping and Deputy Commissioners) to demonstrate that this retention policy is

being followed. Accordingly, in the absence of evidence to the contrary, this finding remains.

Recommendations

DHS should:

1. Ensure that procedures set in place to manage and control overtime (i.e., DHS' updated overtime control policy, effective March 2011) are implemented, enforced, and appropriately followed by agency management and staff as part of the agency's normal day-to-day business functions. These procedures should be reviewed periodically and updated as required to reflect changes in management's policies.

DHS Response: DHS generally agreed, stating: "We note that the updated overtime control policy has been fully implemented and is enforced. DHS plans to review the policy at least once per year beginning in January 2012 and to update it to reflect changes in management policies as suggested in Recommendation 1 of the Draft Report. . . . To ensure compliance with the overtime policy, DHS has instituted a number of measures."

2. Going forward, ensure that overtime waivers are obtained each year from OLR for applicable employees when they exceed the overtime cap, currently set at \$74,079. For employees who require a waiver but one is not requested and obtained, the employee should receive compensatory time rather than paid overtime wages in accordance with the Citywide Agreement.

DHS Response: DHS agreed, stating: "DHS accepts your Recommendation 2 regarding this finding, and going forward will continue to seek these waivers each year and will provide only compensatory time to employees for whom a waiver was not secured, or who work overtime in excess of the waived amount."

3. Design and implement a procedure to investigate and follow up on continuous high-overtime earners as a means to mitigate and reduce the risk associated with potential overtime abuse.

DHS Response: DHS generally agreed, stating: "[B]eginning January 2012 DHS will institute a formalized agency-wide quarterly review procedure focused solely on reviewing the overtime assignments of the top earners in the agency as suggested in Recommendation 3 of the Draft Report."

4. Ensure that overtime assignments are equitably distributed when practicable.

DHS Response: DHS generally agreed, stating: "We believe that our current policies ensure that overtime assignments are equitably distributed when practicable and as such are already in accordance with Recommendation 4 of the Draft Report."

5. Design and implement a uniform procedure for documenting (inside or outside of CityTime) Deputy Commissioners' approvals for employee overtime earnings that

exceed the overtime threshold percentage(s). This procedure should also establish the retention period for such approvals in line with the City's records retention requirements.

DHS Response: DHS generally agreed, stating: “[A]s we discussed at the exit conference, the agency does have a simple procedure for documenting and maintaining these electronic approvals. . . . Therefore, DHS already has in place a procedure which fulfills [sic] Recommendation 5 of the Draft Report.”

Auditor Comment: As stated above, DHS did not provide evidence that this retention policy is currently in effect. Accordingly, if it has not already done so, we urge DHS to implement this recommendation.

Distribution of Overtime

As part of our analysis, we assessed the distribution of overtime wages that DHS paid to high-overtime earners in Calendar Years 2009 and 2010, based on the employees' years of service. Focusing on DHS' high-overtime earners, we determined whether there were indications that higher levels of overtime were being accrued by employees approaching retirement.

For the purpose of this audit, we defined high-overtime earners as those employees paid total overtime of 20 percent or more of their total regular earnings for the calendar year (those that required Commissioner's approval per DHS procedures). Accordingly, 312 (17.2 percent) of the 1,816 DHS employees paid overtime in Calendar Year 2009 were high-overtime earners with overtime earnings totaling \$5.4 million, ranging from 20 percent up to 74 percent of their regular earnings. For Calendar Year 2010, of 1,549 employees who were paid overtime wages, 273 (17.6 percent) were high-overtime earners with total overtime wages of \$5.2 million, ranging from 20 percent up to 80 percent of their regular earnings.

We compared the high-overtime earners from Calendar Years 2009 and 2010 and found that 164 DHS employees were among the high-overtime earners in both years. For 2009, these 164 high-overtime earners were paid \$3.3 million (34 percent) of the total \$9.7 million in overtime earnings paid in that year, and in 2010 the same employees were paid \$3.4 million (38 percent) of DHS' total \$8.8 million in overtime expenditures. We recognize that certain DHS employees may be required to work overtime. As stated earlier, there may be other employees who are more willing to work overtime and, therefore, will more likely be called upon by their managers to do so. However, considering that in both Calendar Years 2009 and 2010, more than one-third of DHS overtime expenditures were paid to the same 164 individuals, we are concerned about the risk of potential overtime abuse.

DHS high-overtime earners were fairly distributed by years of service; however, some issues came to our attention. For example, in Calendar Year 2009, 39 percent of the high-overtime earners had more than 15 years of service, representing 39 percent of the total \$5.4 million paid to all 312 high-overtime earners. This seems reasonably balanced considering that 61 percent of the remaining high-overtime earners had less than 15 years of service and were paid the same percentage (61 percent) of total overtime wages paid to all 312 high-overtime

earners. However, in Calendar Year 2010, more than half (54 percent) of the 273 high-overtime earners had more than 15 years of service, representing 57 percent of the total \$5.2 million overtime wages paid to all 273 high-overtime earners. The breakdown is shown in Table II.

At the exit conference on July 27, 2011, DHS officials stated that they had run various PMS reports and came up with different results than the audit team had regarding the high overtime earners for 2009 and 2010 (discussed above). Even though DHS officials agreed to provide us with the reports for further review, they never did so.

Table II
Analysis of Employees by Years of Service with Paid Overtime Earnings of 20 Percent or More of Regular Earnings in Calendar Years 2009 and 2010

Range Years of Service	Regular Earnings (\$)	Percentage (%) by Category	Overtime Earnings (a) (\$)	Percentage (%) by Category	Number of Employees	Percentage (%) by Category
Calendar Year 2009						
0-5 Years	\$3,478,456	20%	\$1,082,412	20%	74	24%
6-10 Years	\$4,497,222	26%	\$1,537,954	29%	85	27%
11-15 Years	\$1,820,411	11%	\$630,942	12%	31	10%
16-20 Years	\$2,522,650	15%	\$726,966	13%	39	13%
21-25 Years	\$3,891,597	23%	\$1,139,949	21%	69	22%
Over 25 Yrs	\$935,798	5%	\$267,409	5%	14	4%
Totals	\$17,146,134	100%	\$5,385,632	100%	312	100%
Calendar Year 2010						
0-5 Years	\$2,250,267	14%	\$677,227	13%	41	15%
6-10 Years	\$3,118,269	19%	\$1,031,052	20%	58	21%
11-15 Years	\$1,644,799	10%	\$495,257	10%	27	10%
16-20 Years	\$1,860,065	11%	\$588,965	11%	29	11%
21-25 Years	\$5,802,054	36%	\$1,894,212	37%	92	34%
Over 25 Yrs	\$1,618,290	10%	\$470,427	9%	26	9%
Total	\$16,293,744	100%	\$5,157,140	100%	273	100%

(a) In the report text, total overtime earnings for Calendar Years 2009 and 2010 as reflected in the above table, have been rounded to \$5.4 million and \$5.2 million, respectively.

The increase observed in Calendar Year 2010 was associated with an increase in overtime wages paid to high-overtime earners with more years of service. Specifically, in Calendar Year 2010, DHS paid 20 percent more of overtime wages to high-overtime earners with 21 or more years of service than it did in Calendar Year 2009. These overtime wages represented 46 percent of regular earnings of these employees, an increase of 20 percent over 2009's overtime wages.

This increase may be explained by various factors. For example, the reduction of staff with fewer years of service may have necessitated the assignment of overtime to longer-serving employees. Also, more experienced employees or those in specific titles (i.e., supervisors, attorneys, security, etc.) with higher earnings rates may have been assigned overtime based on needed coverage. The increase, however, may also serve as an indicator of potential overtime abuse.

DHS Response: “[C]urrently, almost a quarter of DHS employees have 20 or more years of service, although many are not near the retirement age. Given the age demographics of the agency’s workforce and current Tier IV pension rules (under which most DHS employees are covered) that take into consideration only the last three years of an employee’s earnings and limits pay considered in that into that calculation, we do not see that the 2010 allocation of OT is an indicator for potential overtime abuse.”

Auditor Comment: DHS’ assessment of Tier IV pension rules is only partially correct. An employee’s final average salary for retirement benefit calculation purposes is based on wages earned during that employee’s last three years of service *or* during any three consecutive calendar years, whichever period provides the highest average wage.⁸ Although there is a statutory limitation regarding the final average salary amount wherein it cannot exceed the average of the previous two years by 10 percent or more, this limitation is somewhat neutralized for employees who earn high levels of overtime wages over a period of five years or more.

A study performed by the New York State Attorney General’s (NYSAG) Office of 50 public agencies, including state and local agencies, municipalities, and authorities across New York State, indicated that employees approaching retirement accrued substantially more overtime during the period which likely would be used to calculate their pension benefits, thereby inflating their pension benefit.⁹

As noted earlier, we recognize that overtime may be required of DHS employees in certain positions. Nevertheless, we are concerned about the risk of potential overtime abuse and its associated additional costs, considering the following issues (discussed earlier) disclosed by our audit:

- DHS did not consistently comply with or enforce established overtime control procedures;
- DHS does not investigate or follow up on continuous high-overtime earners;
- DHS paid more than 55 percent of its overtime expenditures to approximately 15 percent of its workforce in both Calendar Years 2009 and 2010; and
- DHS paid more than one-third of its overtime expenditures to the same 164 individuals in both Calendar Years 2009 and 2010.

When overtime abuse occurs, the City and taxpayers incur additional costs. Specifically, for each dollar of employee wages and salaries paid, the City incurs pension contribution costs, which for civilian employees has increased from 8.83 percent in Fiscal Year 2009 to 11.22

⁸ New York City Employee Retirement System’s (NYCERS) Brochure #929, “*Calculating Your Final Average Salary, Tier 4 Members,*” version January 2010.

⁹ “*Pension Padding: We All Pay the Price.* Preliminary Report,” July 7, 2010; State of New York Office of the Attorney General.

percent in Fiscal Year 2011. These costs are projected to continue to increase over the next several years. In general, higher levels of overtime result in higher future pension benefit payments to retirees and greater contribution costs to the City. Consequently, DHS could help to contain such costs and reduce the risk of potential overtime abuse by ensuring that overtime is more equitably distributed among its employees when practicable.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. However, as disclosed in the subsequent paragraphs, DHS hindered the timely progress of our audit by attempting to limit our direct access to DHS staff and by not providing us with timely, complete information. We therefore do not have the same level of assurance regarding the audit evidence obtained had we been allowed unrestricted access and been provided with timely, complete information.

We encountered some difficulties due to DHS' approach to addressing our audit. DHS strictly controlled the release of materials provided to the audit team, requiring that all audit requests and responses be channeled through DHS' audit liaison group, which also attempted to restrict our direct access with staff to clarify various matters. DHS' efforts hindered the timely progress of the audit, necessitating the auditors to perform alternative and more extensive tests to accomplish the audit objectives.

For example, although requested at the start of the audit in October 2010, DHS officials did not provide us with complete information pertaining to its policies and procedures governing overtime. Instead, they provided select information, such as a sample of the UAC form used to document and approve employee leave and overtime accruals, with corresponding instructions. While the UAC was applicable, we had to rely on interviews of relevant officials and staff to wholly ascertain DHS' control procedures for overtime. It was not until May 12, 2011, that we learned from an official that the overtime policies requested at the start of the audit did indeed exist, had been provided to the liaison group months earlier, but were never forwarded to the auditors. On May 19, 2011, DHS finally provided us with a copy of the overtime policy—DHS Policy and Procedure Directive #96-002, effective October 1, 1995—which was in effect during the audit scope period.

This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope covered calendar years 2009, representing the most recent completed calendar year (January 1 – December 31) at the initiation of the audit. We later expanded the audit scope to include Calendar Year 2010; however, our tests for 2009 and 2010 differed. DHS implemented CityTime in June 2010, which eliminated the use of source documentation previously used to document employee attendance and leave activities. Further, parts of the application were still being implemented at the time of the audit. Therefore, for 2010, we limited our tests to reviewing and ascertaining the adequacy of the controls that DHS established under the automated CityTime system. To accomplish our objectives, we carried out audit procedures detailed below.

To understand DHS' organizational structure along with the general roles, responsibilities, resources, and staffing of its organizational divisions, we reviewed various reports, publications, and other relevant materials obtained from DHS officials, the DHS web

site, and other sources. To ascertain the requirements governing payroll and overtime, we reviewed applicable rules and regulations, including the City Comptroller's Directives #1, #13, #14, and #19, Mayoral Directive 94-3, and relevant provisions of the Citywide Agreement, FLSA, and New York State Labor Law. These cited references were also used as audit criteria.

As part of our review of DHS' internal controls, we interviewed DHS officials, conducted walk-throughs, observed relevant processes, reviewed DHS operating procedures, and compared them to cited audit criteria for compliance. Where formal procedures were not available, we documented our understanding of existing procedures and obtained verification from DHS officials. In addition, we reviewed the agency's self-assessment of its internal controls covering Calendar Years 2009 and 2010, performed in compliance with the City Comptroller's Directive #1.

With the assistance of our IT Audit Group, we obtained an electronic file from PMS containing the names, titles, work units, earnings, and other pertinent data of all DHS employees of record in Calendar Year 2009. Using the PMS data file, we identified the population of DHS employees paid overtime wages in 2009. Later in the audit, we obtained a similar PMS file of all DHS employees of record in Calendar Year 2010. We performed analytical procedures using these files to assess patterns in employee overtime wages.

From the population of 1,816 DHS employees paid overtime wages in 2009 (derived from the PMS data file), we judgmentally selected for audit testing a sample of 50 employees. These 50 employees had total earnings of \$4,202,572, including regular earnings of \$3,135,223 and overtime earnings, totaling \$1,067,349, representing nearly 11 percent of all overtime wages that DHS paid in 2009. After initiating test procedures, we found that two of the 50 sampled employees were not on payroll during the test period. One was on military leave and another was terminated earlier in the year. Subsequently, we used the remaining 48 sampled employees in our compliance tests. These 48 employees had total earnings of \$4,104,449, including regular earnings of \$3,044,920 and overtime earnings, totaling \$1,059,529. We targeted the sampled employees based on the employees' work unit, title, and total overtime earnings in Calendar Year 2009. Most of the sampled employees had overtime earnings exceeding 20 percent of their adjusted annual base salary (annual base pay plus longevity, service increments, and differentials) and worked in either DHS' Family Services or Adult Services divisions, which collectively have the highest concentration of overtime expenditures each year.

To determine whether DHS approved and paid overtime wages in compliance with its procedures and other applicable criteria, we obtained and reviewed weekly time and attendance packages for the 48 sampled employees who were on payroll during the 13-week period of September 27 – December 26, 2009. This period was selected for testing as it provided the most complete information of employee overtime earnings needed to carry out our tests. The time and attendance packages included for each employee the Employee Time Report (ETR), timesheet or time card, and when applicable, a Usage Accrual Card (UAC). DHS required employees to use the UAC to request leave and overtime and to document required approvals. To assess the accuracy of the ETRs, we compared the leave and attendance information recorded on the ETRs for 10 of the sampled employees to the PMS 700 (employee earnings detail) report for the two-week period November 29, 2009, to December 14, 2009.

We determined whether the employees provided written justification for overtime requests and whether required approvals were obtained from supervisory, managerial, and/or executive staff based on the level of overtime earnings, according to DHS requirements. We also assessed whether overtime was paid only to eligible employees at straight time or at the premium rate when required. Further, we determined whether DHS obtained waivers from OLR for applicable employees when required.

To ascertain the effectiveness of DHS' management of overtime, we interviewed key DHS officials responsible for establishing strategic and budgetary policies. We also assessed DHS' policies governing the assignment of overtime as well as for budgeting, tracking, and monitoring overtime costs. Further, we assessed control procedures established to account for changes in the requests and approvals of overtime with the implementation of CityTime.

Our audit sample was not selected in a manner to enable the projection of test results to the respective population. Nevertheless, the sample test results provided a reasonable basis for assessing the adequacy of DHS' management and control of employee overtime costs. Further, our audit did not specifically evaluate the reliability and integrity of the computer-processed payroll and personnel data that we obtained from PMS since the City's external auditors review the system as part of their annual audit of the City's financial statements.

Seth Diamond
Commissioner

September 13, 2011

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**Re: Audit Report on the Management and
Control of Overtime Costs at the Department of Homeless Services
MJ11-071A**

Dear Ms. Kim:

The Department of Homeless Services (DHS) appreciates the opportunity to respond to the above-mentioned draft audit report covering Calendar Years 2009 and 2010 ("Draft Report"). Below are our responses to the specific findings and recommendations of the audit.

We are pleased that your Office found that "DHS paid overtime wages only to eligible employees and paid those wages at straight time for overtime hours worked in excess of 35 hours but less than 40 hours and at premium pay for hours worked in excess of 40 hours." This result is a testament to the internal controls and procedures that DHS has in place to control and manage overtime payments to its employees.

In the draft audit report, you detailed five findings and recommendations. We have responded to each finding and the related recommendation in the order you presented them in the Draft Report.

1. Overtime Control Procedures Not Consistently Followed

This finding addresses the overtime (OT) approval process involving the signoffs of multiple officials including the Commissioner for overtime pay above certain levels of an employee's regular base pay. In the draft audit you indicated that DHS' procedures as stated on the Usage/Accrual Cards (UAC) required (1) the signatures of both an Assistant Commissioner and Deputy Commissioner for approval of OT pay at 15% or above the employee's regular base salary and that the dual signatures were missing in 16% of the sample

reviewed, and (2) the Commissioner's signature is required for OT usage above 20% of the employee's annual salary and that it was missing in the majority of cases reviewed.

In response, we note that the approval procedure as stated on the UAC card required executive approval and specifically provides the direction that "[i]f the employee is at or above the 15% threshold, the Assistant Commissioner submits it to the Deputy Commissioner for his/her signature." There was no requirement that both officials sign the card, although on occasions they did. We also point out that a Deputy Commissioner (DC) is the most senior executive in a DHS Division. Therefore, where a DC approved OT usage above 15% by signing off on the UAC, in the interest of adequately staffing its operations and ensuring prompt payment of employees for time worked, the OT was considered authorized and was paid.

Further, the requirement for the Commissioner signoff was dropped in 2009. The one exception to this was where the Commissioner supervised OT-eligible employees and was required to sign off as their direct supervisor. At the time the decision was made to drop the Commissioner's signature as a requirement, plans were underway to implement the automated CityTime system. In the interest of avoiding unnecessary printing costs, DHS continued to use the old UAC cards with the obsolete instruction regarding the Commissioner's signature. CityTime was implemented in June 2010.

2. DHS Employees Exceeded the Overtime Cap

This finding concerns the receiving of waivers from the Office of Labor Relations (OLR) to pay represented employees in FLSA-exempt titles above the contractual overtime cap of \$74,079 for the audit years 2009 and 2010. As demonstrated, DHS sought and received OLR waivers for the current calendar year and provides OT pay in accordance with the contractual limits and provisions. DHS accepts your Recommendation 2 regarding this finding, and going forward will continue to seek these waivers each year and will provide only compensatory time to employees for whom a waiver was not secured, or who work overtime in excess of the waived amount.

3. Lack of Management Review of Overtime Costs

In this finding the Draft Report raised the issue that DHS does not have a mechanism or procedure to investigate and follow-up on continuous high-overtime earners. We do not believe this finding accurately reflects DHS' current procedures or that there is reason for concern.

Historically, DHS' Administration Division (which is responsible for human resources, payroll and other administrative functions) has made available to senior management in each DHS Division monthly data for each employee whose earnings exceeds 10%, 15% or above 20% of their regular base salary. Additionally, the Administration Division and the Fiscal and Procurement Operations Division ("Fiscal Division") prepare a joint monthly report that is provided to each Deputy Commissioner detailing OT monies spent against budgeted OT amounts. In the event that a Division exceeds its OT budget in any given month, the Deputy Commissioner is required to provide an explanation of the excess to the Fiscal Division and the Commissioner. These monitoring mechanisms

allow for executive level review and accountability for OT expenditures, including those associated with high overtime earners.

Moreover, these accountability measures are strengthened by the added process that requires the Division's Deputy Commissioner to give approval for employees whose earnings are at 15% or above regular pay to perform overtime work and be paid for it. In granting this approval, the Deputy Commissioner is making the judgment that the overtime work is justified and necessary to meet agency mandates. We also believe that various other protocols detailed in DHS' updated overtime control policy issued in March 2011 will ensure that overtime will be fairly and evenly distributed among eligible staff.

Nonetheless, as an added control, beginning January 2012 DHS will institute a formalized agency-wide quarterly review procedure focused solely on reviewing the overtime assignments of the top earners in the agency as suggested in Recommendation 3 of the Draft Report.

4. Loosening of Overtime Approval Requirements and Control Procedures

We are pleased that your Office found that the March 2011 overtime policy adequately addresses key overtime management and control concepts. We note that the updated overtime control policy has been fully implemented and is enforced. DHS plans to review the policy at least once per year beginning in January 2012 and to update it to reflect changes in management policies as suggested in Recommendation 1 of the Draft Report. We believe that our current policies ensure that overtime assignments are equitably distributed when practicable and as such are already in accordance with Recommendation 4 of the Draft Report.

To ensure compliance with the overtime policy, DHS has instituted a number of measures. These include the Assistant Commissioner of Human Resources meeting bi-weekly with the relevant Assistant Commissioners of the various DHS Divisions to review each Division's overtime reports and other OT related issues. Additionally, as part of the agency's normal day-to-day business operations, a CityTime Overtime Cap Administrator has been designated and given the responsibility of reviewing time records of OT-eligible employees approaching the OT cap and the authority to lock their timesheets so that they cannot submit time for overtime pay until proper authorization from the Deputy Commissioner is secured.

The Draft Report raised the concern that CityTime does not accommodate electronic documentation of the Deputy Commissioner's approval and asserts that there is no standardized procedure for documenting a Deputy Commissioner's approval of overtime for employees whose overtime exceeds 15% of their annual base salary. However, as we discussed at the exit conference, the agency does have a simple procedure for documenting and maintaining these electronic approvals. The following is the procedure used:

- The Deputy Commissioners are notified by the Director or Manager of Timekeeping when an employee is nearing the 15% overtime threshold and asked whether additional overtime should be approved.
- The Deputy Commissioners sends an email to either the Director or Manager of Timekeeping either denying or approving additional OT above the 15% overtime threshold.
- If approval is granted, the Deputy Commissioners are notified when the employee approaches the next 5% interval and asked again for permission to allow the employee to continue working overtime.
- Email approvals or denials of additional overtime above the 15% overtime threshold are forwarded to the employee's timekeeper and a printed copy is placed in the employee's Timekeeping file. A copy of the email from the Deputy Commissioner approving or denying the additional overtime is forwarded to the employee, the employee's supervisor and appropriate Assistant Commissioner.
- The Manager of Timekeeping maintains an electronic file for all employees who have such waivers.
- The employee's hard copy file is retained on site for the required three years, and then it will be sent to the warehouse to be archived for an additional four years. The electronic files are automatically archived every three to four months by DoITT.

Therefore, DHS already has in place a procedure which fulfils Recommendation 5 of the Draft Report.

5. Distribution of Overtime

The Draft Report raised the final concern that higher levels of overtime were being accrued by employees approaching retirement, in particular, a 20% increase in 2010 over overtime payments made in 2009. DHS acknowledges this increase but submits that staff reductions of more junior employees in 2009 resulted in the assignment of overtime to those with more years of service in 2010.

The agency's intake centers and directly-run shelters operate 24 hours a day, seven days a week, 365 days a year. DHS is legally mandated to provide housing to eligible homeless families and individuals and to adequately staff its intake facilities and directly operated shelters. In addition, DHS must follow NY state and local laws for adequately staffing and operating its shelters, including the provisions of 18 NYCRR Part 491, *et seq.* (see § 491.8(e); § 491.12) for single adult shelters and 18 NYCRR Part 900, *et seq.* (see § 900.11(b)) for family shelters. Section 491.8(e) sets forth staffing requirements, including mandatory staff ratios, for single adult shelters while Section 900.11(b) provides, in pertinent part, that "a sufficient number of competent staff must be on site at all times to supervise, operate and maintain the premises in a safe and sanitary condition... ." As a result, when absences or staffing shortages would prevent compliance with these mandates or interfere with our ability to provide a safe and secure setting for all shelter residents, overtime must be utilized.

We also note that currently almost a quarter of DHS' employees have 20 or more years of service, although many are not near the retirement age. Given the age demographics of the agency's workforce and current Tier IV pension rules (under which most DHS employees are covered) that take into consideration only the last three years of an employee's earnings and limits pay considered in that calculation, we do not see that the 2010 allocation of OT is an indicator for potential overtime abuse.

DHS thanks the Comptroller's audit staff members for their efforts in performing this review and for providing us with the opportunity to respond to the Draft Report's findings and recommendations.

Sincerely,


Valerie Bynoe-Kasden

Cc: Seth Diamond
Steve Pock
Lula Urquhart
Michael King
Michele Ovesey
Michael Taurisano
George Davis
Yurij Pawluk
Lynn Elfers