

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Financial and Operating Practices of the New York County Public Administrator's Office

FP00-190A

June 25, 2003



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office has examined compliance of the New York County Public Administrator's Office (NYCPA) with Article 11 of the New York State Surrogate's Court Procedure Act, the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators*, and other applicable federal, State, and City laws, rules, and regulations. The results of our audit, which are presented in this report, have been discussed with NYCPA, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that public administrators are properly managing estate assets and following all applicable rules and regulations.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my office at 212-669-3747 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/GR

Report: **FP00-190A**
Filed: **June 25, 2003**

*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the
Financial and Operating Practices of the
New York County Public Administrator's Office**

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AUDIT REPORT IN BRIEF

We performed an audit of the compliance of the New York County Public Administrator's Office (NYCPA) with Article 11 of the New York State Surrogate's Court Procedure Act (the Act), the Guidelines of the Administrative Board for the Offices of the Public Administrators, and other applicable federal, State, and City laws, rules, and regulations. For the fiscal year ended June 30, 2000, the NYCPA expense budget totaled \$773,637, consisting of \$486,644 for Personal Services (PS) and \$286,993 for Other Than Personal Services (OTPS). As of February 28, 2001, the NYCPA had 10 City employees, including the Public Administrator and Deputy Public Administrator. The NYCPA also employed six non-City employees whose salaries and benefits were paid from a suspense account. During calendar year 2000, the suspense account funded \$162,100 in payroll expenses.

Audit Findings and Conclusions

The NYCPA generally complied with many of the provisions of Article 11 of the New York State Surrogate's Court Procedures Act (the Act), the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators* (Administrative Board Guidelines), and other applicable federal, State, and City laws, rules, and regulations. Specifically, we noted that:

- The Public Administrator and the Deputy Public Administrator are bonded;
- The salaries of the Public Administrator and Deputy Public Administrator are in accordance with provisions of the Act;
- Commissions and costs are accurately calculated and deducted from estates;
- Commissions are deposited in the City treasury on a monthly basis;
- Estate personal property is sold at public auction;

- The Public Administrator maintains a central record-keeping system for each estate;
- Estate assets are usually maintained in interest-bearing accounts;
- Interest is posted to estate ledgers on a monthly or quarterly basis;
- Funds payable to unknown beneficiaries are forwarded to the Department of Finance;
- The suspense account is used to finance estate expenditures prior to the conversion of estate assets to cash; and
- Suspense account funds used for payroll expenses are documented with timekeeping records.

We found, however, that the NYCPA did not properly manage estate assets, disregarded certain provisions of the Act and Administrative Board Guidelines (concerning the use of outside vendors and the performance of independent audits), and used the suspense account for inappropriate purposes. In addition, we found timekeeping weaknesses that should be corrected. Specifically, the audit disclosed that:

- The NYCPA does not ensure that estate earnings are maximized;
- The NYCPA is not adhering to the Administrative Board Guidelines and is not adequately protecting estate assets by allowing estate checking account balances to exceed the Federal Deposit Insurance Corporation's (FDIC) limit;
- The NYCPA does not comply with Administrative Board Guidelines in its selection and use of outside vendors. The NYCPA neither advertises for vendors nor maintains lists of vendors as required by Administrative Board Guidelines;
- The NYCPA has not ensured that fees charged by the CPA firm it uses to prepare estate tax returns are fair and reasonable. Nor is there a contract or other document that defines the services to be performed and the fees to be paid;
- Tax returns prepared by the CPA on behalf of 15 of the larger estates contained errors and omissions. These may have resulted in overpayment or underpayment of federal, State, and City taxes;
- NYCPA neither reports to the Internal Revenue Service (IRS) nor issues the required IRS form to its vendors when making payments from estate accounts;
- The NYCPA has never had an independent audit performed of its records by an independent certified public accountant (CPA), as required by §1109 of the Act;
- The NYCPA made inappropriate disbursements totaling \$2,440.75 from the suspense account; and
- The NYCPA maintains no time records for the Public Administrator and the Deputy Public

Administrator.

Audit Recommendations

The audit made 15 recommendations, including that the NYCPA should:

- Comply with all provisions of the New York State Surrogate’s Court Procedures Act and the Guidelines of the Administrative Board for the Offices of the Public Administrators, as well as all other applicable federal, State, and City laws, rules, and regulations.
- Ensure that estate earnings are maximized by surveying banks and depositing estate funds in those institutions paying the highest rates of interest.
- Analyze bank records and confirm that estate bank accounts receive the highest interest rates offered by those institutions.
- Create and implement a formal written policy for purchasing Treasury Bills and consider purchasing them directly from the U.S. Treasury.
- Ensure that estate funds are safeguarded. Specifically, ensure that bank accounts do not exceed the FDIC insurance limit.
- Comply with Administrative Board Guidelines with regard to selecting, using, and monitoring outside vendors.
- Discontinue using the current CPA and use the tax services of multiple CPAs. To ensure the quality of services received, the NYCPA should consider a “peer review” system whereby other CPAs periodically review the tax preparation services received by the NYCPA.
- Require that the current or newly selected CPA prepare amended tax returns to correct the errors identified in the report. If the current CPA amends the returns, no additional fee should be incurred.
- Issue IRS Form 1099 to vendors paid with estate funds.

INTRODUCTION

Background

The Offices of the Public Administrators for the counties within New York City are governed by Article 11 of the New York State Surrogate’s Court Procedures Act (the Act). Under the Act, the

head of each Office—the Public Administrator—“is appointed by and may be removed by the judge or judges of the court . . . and shall continue in office until removed.” Each Public Administrator acts as the fiduciary for the estates of intestate decedents (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate. The City pays the salaries of the five City Public Administrators.

The Act requires, among other things, that the Public Administrator execute a bond to the City; deposit all commissions and costs received in the City treasury; make all books, records, and documents available to the City Comptroller for examination; and have an annual audit of the office performed by an independent certified public accountant (CPA), the cost of which is to be funded by the City. As estate administrator, the Public Administrator arranges funerals, collects and manages the decedent’s assets, pays estate creditors, collects estate debts, sells the personal property of the decedent, prepares and files estate tax returns, locates and distributes assets to heirs, and submits an accounting of estate assets to the Surrogate’s Court.

Pursuant to the Act in September 1993, the Administrative Board for the Offices of the Public Administrators in New York State (the Board) was established. The Board’s mission is to develop formal guidelines and uniform fee schedules for the operation of the various public administrator offices in the State. On November 13, 1995, the Board issued the *Report and Guidelines of the Administrative Board for Offices of the Public Administrators* (Administrative Board Guidelines). This publication contains guidelines for record keeping; accounting; case management; cash, property, and other asset management and sale; maintenance of “suspense accounts”; payment of fees; and selection of outside vendors.

The value of an estate’s assets dictates the administration and settlement of the estate, including the records that must be maintained. The processes to be followed are similar, but the corresponding record keeping requirements are increasingly more stringent as the value of the estate’s assets increase. Estates with assets below \$500 require no special accounting (generally, funeral expenses exhaust all estate assets). For estates with assets between \$500 and \$20,000, the Public Administrator must file with the Surrogate Court “informatory accounting” records and provide copies to the appropriate interested parties. This abbreviated accounting summarizes estate assets and transactions. The Surrogate’s Court must be petitioned for “Letters of Administration” when an estate’s assets are in excess of \$20,000. These letters empower the Public Administrator to act as estate administrator. Prior to final settlement and estate distribution, the Public Administrator must again petition the Surrogate’s Court. This time, the Public Administrator seeks approval of the “final accounting” and a court decree to distribute the estate assets. The final accounting details all estate assets, liquidation expenses, claims, reserve, and the proposed asset distribution. Subsequently, this accounting is served to the appropriate parties, including the State Attorney General.

As of June 30, 2001, the New York County Public Administrator (NYCPA) was administering 1,305 open estates with assets totaling approximately \$79 million. These assets were on deposit in 19 banks—\$36.7 million in 553 money market accounts; \$22.8 million in checking accounts at six banks; \$138,000 in a miscellaneous account at one bank; and \$19.2 million in US Treasury Bills in a brokerage account at one bank.

The NYCPA is entitled to an administrative fee of one percent for its handling of the estate. These charges are usually listed in the Surrogate Court’s final decree and are collected when estate funds are disbursed. The fees are deposited into a special “suspense” account to be used to pay certain

office expenses not funded by the NYCPA budget as appropriated by the City. The Administrative Board Guidelines stipulate that suspense account funds be used to pay expenses “necessary for the proper functioning of the office’s operations and for the administration of estates.” The NYCPA uses a major portion of suspense account funds to hire additional personnel. The suspense account also loans money to estates to pay estate expenses prior to the conversion of estate assets to cash.

For the fiscal year ended June 30, 2000, the NYCPA expense budget totaled \$773,637, consisting of \$486,644 for Personal Services (PS) and \$286,993 for Other Than Personal Services (OTPS). As of February 28, 2001, the NYCPA had 10 City employees, including the Public Administrator and Deputy Public Administrator. The NYCPA also employed six non-City employees whose salaries and benefits were paid from the suspense account. During calendar year 2000, the suspense account funded \$162,100 in payroll expenses.

Objectives

The objectives of this audit were to determine whether the Office of the NYCPA complied with Article 11 of the New York State Surrogate’s Court Procedure Act, the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators*, and other applicable federal, State, and City laws, rules, and regulations.

Scope and Methodology

The scope of our audit was July 1, 1999, to December 31, 2000. However, we performed tests regarding investments made for the estates for the period December 1998 to June 2001, and reviewed estate tax returns covering tax years as early as 1988 (the year that one of the sampled estates was opened).

To obtain an understanding of the procedures and regulations with which the NYCPA must comply, we reviewed Article 11 of the Act, the Administrative Board Guidelines, and Comptroller’s Directives #13 and #24 pertaining to payroll and procurement. We also reviewed applicable federal, State, and City laws, regulations, and policies. In addition, we interviewed NYCPA staff to gain an understanding of the payroll, timekeeping, purchasing, inventory, cash management, and suspense account procedures. We interviewed the counsels and outside accountant of the NYCPA to determine how they assist in the NYCPA’s estate management responsibilities. We also discussed with the outside accountant how his fees are calculated.

To assess NYCPA internal controls applicable to our audit objectives, we evaluated the information obtained in the above-mentioned interviews and conducted various tests of NYCPA records. To assess NYCPA cash management procedures, we reviewed bank statements, canceled checks, bank reconciliations, estate ledger sheets, confirmations of Treasury Bill (T-Bill) purchases and sales, and money market account statements. We also reviewed bank statements to determine the interest rates on the accounts containing estate funds.

We reviewed tax returns prepared by the CPA on behalf of 15 of the larger estates that were active during our audit period. We traced entries on the estate ledgers accounts, bank statements, 1099 interest statements, sales confirmations of stocks, bonds and notes, and various other financial records, to the tax returns.

We reviewed and tested the NYCPA Fiscal Year 2000 payroll and timekeeping records for employees funded by the City. We determined the accuracy of leave balances by comparing employee time worked, as recorded on timecards, with the leave use recorded on the City Payroll Management System report PEILR721, "Employees Leave Details Report." We also determined whether all of these individuals were bona fide employees by reviewing their personnel files, and by conducting a surprise observation of a payroll distribution in which we required each employee to display his or her City identification card. For employees funded with proceeds from the suspense account, we checked whether the NYCPA maintained personnel files, daily attendance records, and leave accrual and use balances.

To determine whether the NYCPA followed purchasing guidelines, we examined 10 payments totaling \$46,435, of the 109 purchase payments totaling \$140,407 made during Fiscal Year 2000. We determined whether each transaction was processed for the correct amount and in the proper time period. We also examined purchase requisitions and order forms for requisite approvals. We traced purchase order amounts to supporting invoices and payment vouchers, which we also reviewed for mathematical accuracy. We also determined whether purchase orders and payment vouchers were properly coded and that proper documentation (i.e., invoices) was maintained.

Our audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) and included such tests of accounting records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller set forth in Chapter 5, § 93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with NYCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCPA officials and was discussed at an exit conference held on April 8, 2003. On April 30, 2003, we submitted a draft report to NYCPA officials with a request for comments. We received a written response from the New York County Public Administrator on May 14, 2003.

In her response, the Public Administrator stated that: she is not required to comply with Administrative Board Guidelines; she purchases Treasury Bills (T-Bills) when it is prudent to do so; she implemented a policy to analyze interest rates offered by banks; she now limits deposits in individual banks to under \$100,000 unless the amounts are collateralized; a list of outside vendors is maintained, and fair and reasonable fees are negotiated; a policy has been adopted to annually advertise for vendors; the retention of the current CPA is justified; she is not required to issue Form 1099s to vendors paid with estate funds; sufficient funds were not provided to contract with a CPA to perform an annual audit; it is appropriate to use suspense account funds for personal reimbursements, holiday

parties, and fruit baskets; and her office is now in compliance with Citywide time and leave regulations.

The Public Administrator did not respond to our recommendations dealing with the selection of competitively priced vendors and ensuring that vendor contracts specify the services to be provided and the fees to be charged. In addition, the Public Administrator did not indicate whether she will consider using the accounting firms on the New York City Comptroller's list of CPAs eligible to bid on City contracts. Finally, she did not respond to our recommendation to track estate bank accounts to avoid paying finder's fees to "asset locators."

The specific issues raised by the Public Administrator and our rebuttals are included within the respective sections of this report. The full text of the Public Administrator's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The NYCPC generally complied with many of the provisions of Article 11 of the Act, the Administrative Board Guidelines, and other applicable federal, State, and City laws, rules, and regulations. Specifically, we noted that:

- The Public Administrator and the Deputy Public Administrator are bonded;
- The salaries of the Public Administrator and Deputy Public Administrator are in accordance with provisions of the Act;
- Commissions and costs are accurately calculated and deducted from estates;
- Commissions are deposited in the City treasury on a monthly basis;
- Estate personal property is sold at public auctions;
- The Public Administrator maintains a central record keeping system for each estate;
- Estate assets are usually maintained in interest bearing accounts;
- Interest is posted to estate ledgers on a monthly or quarterly basis;
- Funds payable to unknown beneficiaries are forwarded to the Department of Finance;
- The suspense account is used to finance estate expenditures prior to the conversion of estate assets to cash; and
- Suspense account funds used for payroll expenses are documented with timekeeping records.

We found, however, that the NYCPC did not properly manage estate assets, disregarded certain provisions of the Act and Administrative Board Guidelines (concerning the use of outside vendors and the performance of independent audits), and used the suspense account for inappropriate purposes. In addition, we found timekeeping weaknesses that should be corrected. These issues are discussed in the following sections of this report.

Recommendation

1. The NYCPC should comply with all provisions of the New York State Surrogate's Court Procedures Act and the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators*, as well as all other applicable federal, State, and City laws, rules, and regulations.

NYCPC Response: "The Public Administrator is required to abide by governing statutes.

Compliance with the Guidelines of the Administrative Board for the Offices of the Public Administrators (“Guidelines”), however, is not mandated. The Guidelines provide for uniform practices which each Public Administrator should follow absent a reasonable reason to act otherwise. When making administrative and discretionary fiduciary decisions, the Public Administrator abides by the governing statutes and seeks to apply the relevant Guideline unless such guideline is impossible to comply with (e.g., see response to Recommendation 9.) or, inappropriate for the operation of her office.

“The Public Administrator files an account for every estate her office administers where assets exceed \$500.00. An informatory account is filed for estates between \$500.00 and \$20,000 and a judicial account is filed where the assets exceed \$20,000. Each transaction made by the Public Administrator for a particular estate is revealed on the account. Thereafter, the persons interested in the estate (creditors, distributees and in most cases the Attorney General of the State of New York) are provided notice of the Public Administrator’s account and an opportunity to object. Thus, all actions taken by the Public Administrator are subject to review by the persons interested and the Surrogate. A review of the Public Administrator’s compliance with the governing statutes and the Guidelines is implicit in every account.”

Auditor Comment: As previously stated, the Administrative Board for the Offices of the Public Administrators in New York State was established pursuant to the Act in September 1993. The driving force behind the creation of the Board and the Administrative Board Guidelines was a 1987 report by the New York State Comptroller and the New York State Attorney General that found “a pervasive pattern of unconscionable delays, excessive fees awarded to the PA’s [Public Administrator’s] private counsel, inadequate record keeping, failure to account for funds and property, and the imposition of questionable fees by the administrators.”

As the NYCPA’s response indicates, the Administrative Board Guidelines are intended to establish uniform best practices that the Public Administrator should follow, absent a compelling basis to deviate from them. The audit identified numerous areas in which the practices of the NYCPA were inconsistent with the Guidelines. The NYCPA, however, provided no explanations or documentation showing that the deviations from the Guidelines were justified and in the best interests of the beneficiaries of the estates.

Nevertheless, on a more positive note, the NYCPA responded that it has moved forward to implement several of the audit recommendations—e.g., implementing new policies and directives with regard to its use of banks based on offered interest rates and the collateralization of all deposits over the FDIC amount, as well as the procurement of outside vendors. These changes in NYCPA operating procedures will bring the office more in line with the Guidelines and provide for more effective estate management.

Deficiencies in the Management of Estate Funds

Administrative Board Guidelines require that when the NYCPA receives funds of \$500 or more

“from any source for a decedent dying within the PA’s county, the PA (Public Administrator) shall open a separate, interest-bearing account for each estate.” All interest earned on these accounts is the property of the estate. Although the Guidelines do not specifically state that the NYCPA has the duty to obtain the best rate of return for the estates, we believe that this is part of the Public Administrator’s responsibilities, given that she has a fiduciary responsibility to the estates. §11-2.2 of the New York State Estate Powers and Trusts Law states that “a fiduciary holding funds for investment may invest the same in such securities as would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income.” In fact, case law has held that “fiduciaries, whether executors or trustees, are under a duty to profitably employ funds in their hands under penalty of personal liability for their neglect.”¹ The NYCPA, however, does not ensure that estate earnings are maximized and estate funds are safeguarded.

Interest Earnings Not Maximized

Checking Accounts

On June 30, 2001, the NYCPA had \$22 million in checking accounts on deposit at six banks. Of this amount, \$4.31 million from 239 estates was earning 0.76 percent interest; \$2.06 million from 129 estates was earning one percent interest; \$1.23 million from 44 estates was earning 1.92 percent interest; \$5.38 million from 178 estates was earning 2.4 percent interest; \$5.21 million from 495 estates was earning 3.12 percent interest; and \$3.24 million from 181 estates was earning 3.72 percent interest.

Had the NYCPA deposited these funds in only the three banks paying the highest interest, the estates would have earned an additional \$143,128 on an annual basis. In addition, one of the three banks paying the lowest interest requires that funds covering checks issued but not paid be held in non-interest-bearing accounts. The NYCPA notifies the bank as to the amount of newly issued checks, and the bank transfers the funds from the interest-bearing account to a non-interest-bearing account. We do not understand why the NYCPA keeps checking accounts at this bank, since the bank pays low interest and imposes that provision and especially since Administrative Board Guidelines require that estate funds in excess of \$500 be maintained in interest-bearing accounts.

Money Market Accounts

On December 31, 1998, the NYCPA had \$1.6 million from 24 estates on deposit in money market accounts at one bank earning a 2.22 percent annual yield. At the same time, the NYCPA’s list of approved money market account depositories contained nine banks that were paying at least 3.6 percent annually. In fact, one bank on the list was paying 4.8 percent on balances greater than \$70,000, and another bank was paying 4.4 percent on balances greater than \$10,000. Of these 24 estate accounts, 13 had balances greater than \$70,000, and all other accounts had balances greater than \$10,000. Despite the relatively low interest rate of 2.2 percent, the NYCPA continued opening new money market accounts at this bank. During 1999, seven accounts were opened, and \$500,000 was deposited. Again, funds on deposit earned an annual percentage yield of 2.22 percent, while eight other banks on its approved list were paying interest of at least 3.6 percent. In 2000, the NYCPA opened another nine accounts at this bank with deposits totaling \$500,000, again earning a 2.22 percent annual yield. At the same time, there were 12 banks on the NYCPA approved list paying at least 3.6 percent, of which six banks were paying interest of at least 4.3 percent.

¹ Will of Nelson, 1977, 95 Misc.2d 215, 407 N.Y.S.2d 773.

In addition, one bank used by the NYCPA offers two types of money market accounts—a “Money Market Savings” account that has no minimum balance requirement and pays a relatively low interest rate and a “Premium Money Market” account that offers varying interest rates depending on the balance of the account. Premium Money Market accounts with less than \$25,000 on deposit are paid at the lowest interest rate. Accounts with balances greater than \$75,000 are paid the highest rates. Our review indicated that the NYCPA maintained many estate accounts in Money Market Saving accounts even though the accounts had balances that would qualify them for the highest interest rate offered in the Premium Money Market account. In fact, only \$373,117 of estate funds was invested at the highest rate offered, while more than \$2.1 million was invested at the lowest rate. During the month ending December 2000, the variance between the highest interest (5 percent) on funds on deposit in the Premium Money Market account and the lower interest (1.76 percent) paying Money Market Savings accounts, was 3.24 percent. Assuming that the funds on deposit during December of each year were on deposit during the entire year and the interest rates paid in December are annualized, these accounts would have earned an additional \$119,917 in interest for calendar years 1998, 1999, and 2000. After we brought this matter to the NYCPA’s attention in June 2001, all existing Money Market Savings accounts were converted to Premium Money Market accounts.

Furthermore, on March 31, 2001, the NYCPA maintained brokerage accounts for 19 estates at one bank’s brokerage firm. Each of these accounts had a corresponding money market account at the bank that contained estate funds. We found that six of the money market accounts, having a total of \$143,500 on deposit, were earning a 30-day yield of between 4.15 and 4.66 percent. The remaining 13 accounts, containing more than \$425,000, were yielding only 2.5 percent. In fact, some accounts containing more than \$50,000 were yielding two percentage points less than accounts that contained under \$5,000. A NYCPA official stated that the office was unaware that accounts with larger balances were yielding less than accounts with lower balances. According to the NYCPA, this condition was rectified in May 2001 after we brought the matter to the NYCPA’s attention.

Treasury Bills Are Not Regularly Purchased and When Purchased, Are Not Purchased at Public Auction

The NYCPA does not have a formal policy for purchasing U.S. Treasury Bills. According to NYCPA’s accountant, when estates have at least \$250,000 to invest, T-Bills may be purchased. However, the NYCPA does not always purchase T-Bills when the estates have more than \$250,000 available for investment. As a result, estate income is not maximized. For example, on May 15, 1996, the NYCPA invested \$880,000 from one estate by opening eleven \$80,000 money market accounts at eleven banking institutions. These accounts were open for an average of three years and four months, with accounts closed intermittently, as funds were distributed to creditors and beneficiaries. The last three accounts were closed in January 2000. Overall, these accounts earned a total of \$99,147 interest until the last account was closed. The NYCPA could have increased this estate’s income by approximately \$49,000, had the funds been invested in three-month T-Bills. Based upon the actual discounted price of T-Bills auctioned on May 20, 1996, and rolled over every 13 weeks thereafter until the last money market account was closed, a total of \$148,640 would have been earned instead of the \$99,147 earned from the 11 banks.

In addition, the NYCPA purchases T-Bills through one of the bank’s brokerage units rather than directly from the U.S. Treasury. Although no fee was charged for this service, the brokerage unit purchased the T-Bills on the secondary market and resold them to the NYCPA at a higher price. As a

result, estates did not get the best possible purchase price, and their yield to maturity was reduced. Our review of the 44 purchases made on behalf of 20 NYCPA estates between January 1998 and May 2001 showed that these estates would have saved a total of \$55,000 if these purchases had been made directly from the U.S. Treasury. When informed in May 2001 about the higher prices being paid for T-Bills, the NYCPA instructed the brokerage firm to make future T-Bill purchases at the public auction price. This should have taken care of the problem. However, since June 2001, the brokerage firm began charging a \$75 fee for each T-Bill purchase. This exposes the estates to needless costs, since estates for which T-Bills are purchased are usually open for at least a year, and T-Bills mature every three months. This means that the estates incur an annual cost of \$300 in brokerage fees. The NYCPA could avoid most of this cost if it purchased T-Bills directly from the U.S. Treasury without the aid of the brokerage firm since the U.S. Treasury charges only an annual maintenance fee of just \$25 per account. It should be noted that T-Bills can easily be purchased and sold by simply setting up a telephone account with the U.S. Treasury.

Recommendation

2. The NYCPA should ensure that estate earnings are maximized by:
 - Surveying banks and depositing estate funds in those institutions paying the highest rates of interest.
 - Analyzing bank records and confirming that estate bank accounts receive the highest interest rates offered by those institutions.
 - Consider selecting banks that do not require that funds covering checks issued but not paid be held in non-interest-bearing accounts.
 - Creating and implementing a written policy for purchasing Treasury Bills and consider purchasing them directly from the U.S. Treasury.

NYCPA Response: “In her capacity as an administrator, the Public Administrator invests estate assets for a limited period of time during which she must ensure liquidity of assets to satisfy claims and pay ongoing administration expenses. The Public Administrator has never received an objection to her account, from any person interested in an estate, that the interest rate received on the deposit of funds was too low.

“In determining whether it is prudent to purchase a U.S. Treasury Bill (“T-Bill”) for an estate, the Public Administrator considers the following factors: 1) whether the estate requires liquidity of its assets; 2) whether the estate is near completion; and 3) the value of funds available for investment. The nominal charge for the purchase of a T-Bill (i.e., semiannually \$75.00) is a reasonable expense, particularly in relation to the size of the bill purchase (an average of \$680,000). The Public Administrator has never received an objection to the payment of such fees. Moreover, the Public Administrator’s budget does not permit her to hire an individual to handle the purchase and sale of T-Bills, directly from the Treasury Department.

“The Public Administrator has implemented a policy whereby her office will analyze interest rates offered by those banks approved by the City of New York on a quarterly basis and upon obtaining such information will determine whether estate assets should be transferred.

“The Public Administrator has implemented a policy for the quarterly review of bank interest rates and services provided by said banks.”

Auditor Comment: The NYCPA’s decision to implement a quarterly review of interest rates will undoubtedly increase income for estates. However, the assertion that interest rates were satisfactory merely because the NYCPA never received any objections to them simply lacks merit. There were no complaints because the parties were unaware of those rates. No comparison of NYCPA bank interest rates has been made available to interested parties or the Surrogate’s Court. It is also possible that the NYCPA may not have received any objections from beneficiaries because the confidentiality of estate records precludes her from discussing with beneficiaries the interest rates that other estate accounts earn. Therefore, beneficiaries cannot compare interest rates earned on their estate funds with those of other estates. In addition, the accounting reports submitted to the Surrogate’s Court do not list the interest rate paid by each bank; rather, the reports list only the amount of interest earned from a particular bank. Therefore, from the information provided in these court accountings, it would be impossible to determine that some banks pay a significantly greater rate of interest than other banks used by the NYCPA.

The factors that the NYCPA asserts it uses to determine how and when to purchase U.S. T-Bills appear to be prudent. However, our recommendation was that a written policy for the purchase of T-Bills should be established. We could not determine the NYCPA’s position on this issue from the response. We also recommended that the NYCPA consider purchasing T-Bills directly from the U.S. Treasury to reduce estate transaction costs. Once an account has been opened with the US Treasury, the maturing T-Bills can be allowed to “roll over,” or be reinvested automatically, without any additional action by the NYCPA staff until the T-Bills are redeemed. Thus, if implemented, our recommendation would allow estates to incur lower transaction costs when purchasing T-Bills without needing additional NYCPA personnel to administer this function. We therefore maintain that a written policy for purchasing Treasury Bills should be issued that incorporates the features cited above.

Estate Checking Account Balances
Exceed FDIC Insurance Limit

The NYCPA is not adhering to the Administrative Board Guidelines and is not adequately protecting estate assets by allowing estate checking account balances to exceed the Federal Deposit Insurance Corporation’s (FDIC) limit for insurance coverage available for these deposits. FDIC guarantees the reimbursement of deposits up to \$100,000 per account if a depository bank becomes insolvent; funds on deposit exceeding this amount would not be reimbursed. According to the Administrative Board Guidelines, the NYCPA is to “maintain procedures to insure that no funds held for an estate in a particular bank exceed the amount insured by the FDIC.” The Administrative Board Guidelines further state:

“If funds held for an estate in a particular bank exceed FDIC insured amount, the PA shall immediately: 1) open a separate account or accounts in a different bank or banks .

. . . 2) invest such additional funds in U. S. treasury Bills . . . 3) collateralize such sums with approved government securities, pursuant to a written security agreement between the PA and the bank.”

We found that 59 estate accounts had balances that exceeded the FDIC limit in at least one of the three months we reviewed for all estates. The balance in these accounts ranged from \$102,243 to \$1,603,341. Nine of the 59 accounts exceeded the limit in more than one of the three months. In fact, four of the nine exceeded the FDIC limit for more than 12 consecutive months. One account, whose balance ranged from \$107,264 to \$1.6 million, exceeded the FDIC insurance limit for 13 consecutive months. Another account with balances ranging from \$124,629 to \$144,822 exceeded the limit for 35 consecutive months.

Recommendation

3. The NYCPA should ensure that estate funds are safeguarded by ensuring that bank accounts do not exceed the FDIC insurance limit.

NYCPA Response: “Presently, the Public Administrator deposits funds with six banks, all of which are approved by the City of New York Banking Commission. When determining the appropriate bank as the repository of estate assets, the Public Administrator considers . . . 1) the interest rate paid; 2) whether costs and fees are imposed; 3) the need to limit deposits for each estate to under \$100,000; 4) preventing concentration of assets with one institution; and 5) the quality of service provided by the institution to the office.”

In addition, the NYCPA stated that it “has contacted the four institutions which are depositories for checking accounts which do not collateralize deposits over \$100,000. Said institutions are being directed to collateralize all deposits over the FDIC amounts in order to remain on the checking account bank list.”

Unnecessary Expense Incurred

The NYCPA paid a \$15,646 finder’s fee to an “asset locator” who identified \$104,309 belonging to an estate that was being held by the Dime Savings Bank. While we do not question that payment was due to the locator, we do question this payment from estate funds. In this instance the NYCPA should have been aware of these funds since it had in its files a 1099 interest statement covering the account. Had the NYCPA not lost track of this account, the beneficiary of the estate would have received the \$15,646 paid to the locator. Please note that after we discussed our finding with NYCPA officials they presented this issue to the Surrogate’s Court, which approved payment of the \$15,646 fee from the estate’s funds.

Recommendation

4. The NYCPA should ensure that each estate's records list every bank account owned by that estate. In this regard the NYCPA should match 1099 interest statements received to the estate bank accounts.

NYCPA Response: The NYCPA did not respond to this recommendation. Instead, the NYCPA described the process for approving and paying fees to asset locators and the specifics of the case at hand.

Guidelines for Use of Outside Vendors Not Followed

The NYCPA does not comply with Administrative Board Guidelines in its selection and use of outside vendors.² The NYCPA neither advertises for vendors nor maintains lists of vendors as required by Administrative Board Guidelines. The Guidelines allow the NYCPA to use the services of an outside vendor “whenever the PA determines that the services . . . are necessary to properly administer the estate.” In this regard, the Guidelines state that:

- “On an annual basis, the PA shall advertise in a newspaper of general circulation within the county where the PA maintains his or her office, that the PA is formulating a list of outside vendors to provide services to the PA. The advertisement should detail the services sought, a description of the work involved, and the requirements for inclusion on the list.”
- “Based on response to the advertisement and the PA’s knowledge of competent outside vendors, the PA shall prepare a list of providers in each category, specifying the provider’s usual fee. The PA shall include on the list only those outside vendors (a) holding all necessary licenses for their field, (b) with a good reputation in the community, and (c) if they have provided goods or services in the past, those who have performed the services competently or have provided goods of serviceable quality. The list should be updated at least annually and shall be available for public inspection at the PA’s office.”
- “In selecting an outside vendor . . . the PA shall select one who is competitive with other vendors in the classification.”
- “Fees paid to outside vendors . . . shall be fair and reasonable.”

The NYCPA does not take any of the steps required by the Guidelines. Instead, the NYCPA uses the same vendors over many years. For example, the NYCPA has been using one CPA firm to “perform accounting duties for the Office of the Public Administrator” since August 20, 1990. Since at least that date, the NYCPA has not: advertised for CPA services; ensured that the CPA firm’s fee is competitive with other vendors that could have been hired had a list been maintained; or determined that the CPA firm’s fees are fair and reasonable. In addition, there is no contract or other document that defines the services to be performed and the fees to be paid—an August 17, 1990, retainer letter notified the CPA firm of its appointment but did not specify services or fees. Currently, the CPA is paid according to a fee schedule that was implemented February 1, 1995. However, the fee schedule is incomplete—there is no fee itemized for estates valued in excess of \$400,000, and the fee schedule does not state how the estates are to be valued. According to the CPA, his fee is calculated based on the total value of the estate at the decedent’s date of death, without regard to any subsequent distributions made. Thus, the CPA does not consider the estate’s current value, which may be significantly lower than the amount used to calculate the fee charged. Moreover, the NYCPA pays whatever amount the CPA firm bills without regard to whether the service was provided. In fact, some payments were made 12 or 13 months prior to the services being rendered, and the NYCPA does not

² The Guidelines state that outside vendors include: “real estate appraisers, accountants, private investigators, real estate brokers, appraisers, auctioneers, movers, contractors, insurance brokers, stock and bond brokers, commodities traders, funeral directors, abstract companies, heir tracers, warehousemen, managing agents, cleaning services, tradesmen (such as plumbers, electricians, locksmiths, carpenters), and investment advisors.”

maintain records linking the advance payments to the actual tax returns prepared. Since the CPA firm is paid approximately \$500,000 per year, we would expect more detailed records of the services to be performed and the fees to be paid.

The Administrative Board Guidelines are intended to ensure the integrity of the vendor selection process. Failure to follow these guidelines, however, makes the selection process susceptible to fraud, waste, and abuse.

Recommendation

5. The NYCPA should comply with Administrative Board Guidelines with regard to selecting, using, and monitoring outside vendors. In this regard, the NYCPA should:
 - Advertise for and formulate a list of outside vendors annually for each category of service necessary to properly administer an estate.
 - Include on the list only those outside vendors that: hold all necessary licenses for their field; have a good reputation in the community; and have performed the services competently or have provided goods of serviceable quality in the past. With regard to tax preparation services, the NYCPA should consider using the firms on the New York City Comptroller's list of CPAs eligible to bid on City contracts for firms meeting this criterion.
 - Pay fees to outside vendors that are fair and reasonable and do not pay in advance for services not performed.
 - Select vendors who are priced competitively with other vendors providing the same goods or services.
 - Ensure that each vendor's contract clearly specifies the services to be provided and the respective fee for each type of service. In this regard, payments to the vendors should be made in accordance with the pre-approved fee schedule in the contract. In addition, the NYCPA should pay for tax preparation services based on the highest undistributed value of the estate during the tax year.

NYCPA Response: "The Public Administrator maintains a list of outside vendors with whom she negotiates a fair and reasonable fee . . . As a general rule, the Public Administrator does not pay vendors in advance of the services rendered. However, there are instances where a vendor will not provide a service unless a payment is made. In order to secure such services, the Public Administrator must make payment and only does so in limited cases where the facts compel such action.

"The Public Administrator has adopted a policy whereby she will annually advertise for vendors seeking to be placed upon a vendor's list. Vendors will be added to the list maintained by the Public Administrator only if they are reputable and hold the necessary license in their field."

The NYCPA did not respond to our recommendation dealing with selecting vendors who are competitively priced and ensuring that the vendor contracts specify the services to be provided and the fee for the service. In addition, the NYCPA did not indicate whether it will consider using the firms on the New York City Comptroller's list of CPAs eligible to bid on City contracts.

Auditor Comment: Since the NYCPA did not indicate which of its vendors require advance payments, we cannot evaluate the propriety of such an arrangement. Certainly, the NYCPA would be able to find a CPA willing to provide accounting services without requiring prepayment of fees. The prepayments noted in the report were made to the CPA as far as 13 months in advance of services being rendered. We strongly suggest that such prepayments be discontinued.

Inaccurate Tax Returns Prepared

Our review of tax returns prepared by the CPA on behalf of 15 of the larger estates that were active during our audit period revealed that many of the tax returns contained errors and omissions that may have resulted in the overpayment or underpayment of federal, State, and City taxes. For example:

- Interest income was either overstated or understated on the tax returns of 12 of the 15 estates. Overstated interest ranged from \$400 to \$8,200, while understated interest ranged from \$160 to \$240,000.³ Many of these errors were caused by the CPA's failure to wait for various documents from financial institutions and the updating of estate records by the NYCPA before preparing tax returns. Instead, the CPA prepared the tax returns based on his own estimates of interest earnings.
- Dividend interest was overstated or understated for three estates. For another estate the CPA reported dividends for stocks that had already been sold.
- Stock sales were reported for three estates whose returns showed no profit or loss on the sales. It is improbable that a sale for one estate of 19 securities totaling \$460,280 could be made in which the basis of each security equaled the selling price, with no profit or loss occurring. In fact, our review of another estate's stock transactions in which no gain or loss was reported revealed that the CPA failed to report gains of \$9,429 and \$127,128, on the estate's tax returns. In these two instances, the estates would have owed additional taxes. In other cases, stock sales were omitted from the returns—in one instance a \$35,489 stock sale was not reported.
- Credit for federal income tax withheld for seven estates was not taken on the tax return, and certain expenses totaling \$77,129 were excluded from the returns from three estates. In these instances, the estates either overpaid the tax due by \$9,269 or beneficiaries did not receive deductions for losses incurred by the estate in their final year.

³ The understatement of \$240,000 would not result in additional taxes since the beneficiary of the estate is a charitable trust that is exempt from income taxation.

- Expenses for three estates were incorrectly deducted twice, and in another instance the same loss was deducted erroneously on two successive tax returns.

Since the tax preparer is a CPA, we would expect that he would exercise due professional care when preparing tax returns. Clearly, the tax return problems noted and the NYCPA's fiduciary responsibility to the estates make it incumbent upon the NYCPA to discontinue using the current CPA and select other vendors in accordance with the Guidelines.

Recommendations

The NYCPA should:

6. Discontinue using the current CPA and use the tax services of multiple CPAs on the list of outside vendors mentioned in recommendation #5. To ensure the quality of services received, the NYCPA should consider a "peer review" system whereby other CPAs periodically review the tax preparation services received by the NYCPA.
7. Require that the current or newly selected CPA prepare amended tax returns to correct the errors identified in the report. If the current CPA amends the returns, no additional fee should be incurred.

NYCPA Response: With regard to Recommendation #6, the NYCPA stated that the Public Administrator "believes that continued retention of the CPA which has rendered services accepted by both the IRS, NYS and the Surrogate's Court is a prudent exercise of her discretion." In addition, the NYCPA stated that "given that the services rendered by the CPA firm are reviewed by the appropriate taxing authority, the Court and parties interested in the estate, additional review is not necessary."

The NYCPA did not respond to Recommendation #7.

Auditor Comment: As stated previously, tax returns prepared by the CPA on behalf of 15 estates contained many errors and omissions that may have resulted in the overpayment or underpayment of federal, State, and City taxes. We find it hard to believe that the Public Administrator is attempting to justify her decision to retain the current CPA based on the fact that the taxing authorities "accepted" the returns for filing purposes. Clearly, the amount of funds paid by the NYCPA for tax services could attract an accountant who is well versed in estate tax law and would carefully prepare estate tax returns.

Vendor Payments Not Reported

Despite correctly reporting to the Internal Revenue Service (IRS) and issuing the required IRS Form 1099 to outside vendors when payments are made from suspense account funds, the NYCPA neither reports to the IRS nor issues the required IRS form to such vendors when making payments from estate accounts. The NYCPA refused to provide information relating to the number of vendors used or the amount paid to these vendors. We estimate that the NYCPA uses as many as 100 vendors

and pays more than \$3 million dollars annually to these service providers. However, none of these payments was reported to IRS.

Title 26, §6041-1 of the Internal Revenue Code, states:

“Every person engaged in a trade or business shall make an information return for each calendar year with respect to payments made by him during the calendar year in the course of his trade or business to another person of fixed or determinable salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating \$600 or more.”

The NYCPA’s responsibilities, as outlined in the Act, clearly include management and oversight functions for the administration of an estate and payment for services provided to the estate. The NYCPA does not merely make payments to vendors; the NYCPA decides which vendor to use and is supposed to ensure that these services are properly performed before payments are made. In fact, Administrative Board Guidelines state that “whenever the PA determines that the services of an outside vendor are necessary to properly administer the estate, the PA may employ an outside vendor.” Therefore, we maintain that the NYCPA should report the vendor payments to the IRS and issue the required IRS forms to the vendors. In addition, we see no reason for NYCPA adherence to IRS reporting requirements when paying service providers from suspense account funds, but the lack of adherence to IRS regulations when paying vendors from estate accounts. Moreover, when the 1099 issue was brought to the attention of the Kings County Public Administrator’s Office in a prior audit (FP96-136A, issued June 27, 1997), a tax attorney was consulted and subsequent vendors were issued 1099s when they received payments from estate funds. Finally, the Bronx County Public Administrator made its in-house accountant responsible for issuing 1099s in response to our finding in a prior audit (MD99-098A, issued June 23, 1999) that earnings were not reported to the IRS.

Recommendation

8. The NYCPA should issue IRS Form 1099 to vendors paid with estate funds.

NYCPA Response: “Reference is made to Title 26, §6041-1 of the Internal Revenue Code (‘IRC’) as authority requiring the issuance of a form 1099 to each vendor retained by the Public Administrator who rendered services to an estate. An estate is not engaged in a trade or business as defined under the referenced section. Based upon an inquiry, the practice among corporate fiduciaries is not to issue a form 1099 to persons retained by an executor, administrator or trustee on behalf of an estate or trust. The Internal Revenue Service and the New York State Department of Taxation have never directed or indicated that the Public Administrator should issue Forms 1099 to each vendor.”

Auditor Comment: We agree that individual estates do not have to issue Form 1099. Therefore, we did not recommend that they do so. Rather, we recommended that the NYCPA, as the third party making the payment on behalf of estates, issue the form. Our position is supported by the IRS, which recently responded to our inquiry concerning this issue, as follows:

“Section 1.604-1(e) of the regulations provides that a person that makes a

payment in the course of its trade or business on behalf of another person is the payor that must make the information return with respect to that payment if the person performs management or oversight functions in connection with the payment. . . .

“A person that arranges services for another, including hiring service providers and overseeing the services provided, generally exercises management or oversight over the payments to such service providers. See, e.g., § 1.6041-1(e)(2), Examples 5 and 7. As described in your letter, the Office’s [i.e., the NYCPA] functions with respect to payments made to service providers on behalf of estates suggests that the Office exercises management or oversight over these payments.) If the Office exercises management or oversight over these payments. It would be the payor for information reporting purposes pursuant to § 1.6041-1(e) of the regulations.

“If the Office is the payor for purposes of information reporting with respects to payments to a service provider on behalf of estates that it administers, the Office would issue form 1099-MISC to such service provider in its own name and TIN, [Taxpayer Identification Number] and would aggregate amounts paid to the service provider during the year on behalf of such estates.”

Obviously, the NYCPA meets the requirements of the cited sections and should therefore, issue Form 1099 to vendors it pays with estate funds.

Independent Audits Not Performed

The NYCPA has never had an independent audit performed of its records by an independent certified public accountant as required by §1109 of the Act, which states:

“Each public administrator shall conduct annually an audit of his office by an independent certified public accountant. . . . The audit shall be conducted in compliance with generally accepted government audit standards and shall include a review of the performance of the office with respect to guidelines and uniform fee schedules established by the administrative board. The costs of such audit shall be included annually in the budget of the city of New York.”

In addition, Administrative Board Guidelines require that the annual audit include the bookkeeping system, which records and summarizes the receipts and disbursements of each estate as well as the non-estate-related receipts and disbursements received and paid by the NYCPA. We note that the NYCPA budget for Fiscal Years 2000 and 2001 include \$5,000 each year for an audit. In each case, the appropriation was not spent. NYCPA officials told us they have been unable to contract with a CPA for an annual audit due to a lack of sufficient funding from the City.

Recommendation

9. The NYCPA should contract with an independent CPA to conduct an annual audit of the office in accordance with Generally Accepted Government Auditing Standards, as required by §1109 of the Act.

NYCPA Response: “Section 1109 of the SCPA [the Act] sets forth the requirement of the Public Administrators to report on the status of estates and mandates that each year they conduct an independent audit. Public Administrators within the City of New York have sought funding for such an audit for many years and only recently were budgeted the amount of \$5,000 which is insufficient to pay for an audit. The Public Administrator has repeatedly obtained bids from independent accountants for such audit which range from \$65,000 - \$80,000. Information related to the efforts made to comply with the audit requirement of SCPA 1109 has been provided to the Administrative Board and City and State Comptroller’s offices.

“The Administrative Board has recognized the dilemma facing the Public Administrators in their inability to comply with the statute, and is considering solutions. At this time the Public Administrator lacks the necessary funds to pay for an independent audit. Thus, compliance is not within the Public Administrator’s control.”

Auditor Comment: Contrary to the NYCPA response, the office provided no documentation to support the assertion that an independent audit would cost at least \$65,000. In addition, we do not see why the NYCPA does not pay for the audit out of suspense account funds. As previously stated, the suspense account is to be used to pay certain office expenses not funded by the NYCPA budget as appropriated by the City. The Administrative Board Guidelines state that suspense account funds should be used to pay expenses “necessary for the proper functioning of the office’s operations and for the administration of estates.” Expenses made to ensure that the NYCPA complies with the Act would meet the definition contained in the Guidelines. In fact, for the past three years the Queens County Public Administrator’s Office has paid for its annual audit entirely with its suspense account funds.

Issues Related to the Suspense Account

The NYCPA made two purchases for a holiday luncheon and a fruit basket from the suspense account totaling \$760.75 during Fiscal Year 2000 that were unallowable according to Administrative Board Guidelines. The Guidelines state that “the PA may use the suspense account to pay certain office expenses not funded by the PA’s budget. . . . Expenses which may be funded . . . must be necessary for the proper functioning of the office’s operations and for the administration of estates.” Payments for a holiday luncheon and a fruit basket do not meet these criteria.

Furthermore, the Public Administrator receives \$15 per day from the suspense account, but is not required to document the business purpose or to maintain other records for the expenditure of those funds. For example, in December 1999, the Public Administrator received six checks from the suspense fund totaling \$1,680 to cover expenses from January through June 1999. We question whether these payments are an appropriate use of suspense account funds, particularly since the purpose of the expenses is unknown.

In accordance with the Guidelines, the NYCPA pays estate expenses from suspense account funds prior to the conversion of estate assets to cash. Once estate assets are collected, however, Administrative Board Guidelines require that “the suspense account should be reimbursed promptly.” The NYCPA generally does not adhere to this provision. As a result, the NYCPA has forgone the collection of interest on funds that should have been on deposit in its suspense account. Our review indicated that 784 estates owed the suspense account a total of \$347,159 as of February 13, 2001. Of these estates, 528 (67%) had enough funds on deposit in their checking account for the NYCPA to pay back the suspense account and thereby retire the entire loan. Another 49 estate loans could have been partially paid by the NYCPA with estate assets on deposit.

As previously stated, the NYCPA is entitled to an administrative fee that is to be deposited in the suspense account. In one instance, the NYCPA did not take the fee due it for approximately six years—instead a suspense account receivable was set up. Because the funds were on deposit in the estate’s account, the estate received interest on funds that did not belong to it.

Recommendations

The NYCPA should:

10. Ensure that the funds in the suspense account are used only for purchases allowable under the Guidelines. In this regard, all payments to the Public Administrator should be only for reimbursements of allowable expenses, and those expenses should be documented.

NYCPA Response: “The Public Administrator is a Commissioner of the City of New York. Such position entitles her to reimbursement for expenses related to the use of her automobile payable from the suspense account. In fact, the Public Administrator’s expenses related to the use of her automobile, insurance, gas, etc. exceeds the reimbursement of \$15.00 per day from the suspense account. Thus, reimbursement at the rate of \$15.00 per day reduces the operating expenses of the Public Administrator’s office.

“The tradition of the Public Administrator’s holiday party and fruit basket is a legitimate office expense. It is noted that the Public Administrator’s staff forgoes their lunch hour several times a year to assist with public auctions. The Public Administrator’s staff is not otherwise compensated for this time.”

Auditor Comment: Contrary to the response, the Public Administrator’s position as a “City Commissioner” does not automatically entitle her to be reimbursed for the use of her private automobile. Rather, just like any other City employee, she may be entitled to be reimbursed for mileage, tolls, and parking, based on the business reason for the use of her automobile and the documentation of the expense. In any case, the City never reimburses the costs of insurance and gasoline.

We do not agree that holding holiday parties and giving fruit baskets are legitimate expenses for the suspense account since only expenses that are necessary for the proper functioning of the NYCPA’s operation and for the administration of estates are allowed, according to

Administrative Board Guidelines. We fail to see how these expenses meet the requirements.

11. Repay the suspense account for all outstanding loans to estates once estate assets are converted to cash.

NYCPA Response: “Each estate repays the Public Administrator’s suspense account for any outstanding advances made on its behalf as reflected in each estate accounting. As previously noted, the account is filed with the Surrogate’s Court.”

Auditor Comment: Our finding does not suggest that the NYCPA does not use estate funds to repay the suspense account for expenses advanced before estate funds are available. Rather, we found that the suspense account is not *promptly* reimbursed, as required by the Guidelines. Failure to promptly reimburse outstanding loans results in the loss of interest income for the suspense account. The additional revenue from interest could be used to offset the costs of financing the NYCPA’s operations.

Timekeeping Weaknesses

The NYCPA has an adequate timekeeping system for its non-managerial employees who are paid with tax levy funds. However, the NYCPA does not maintain time records for two of its managerial employees: Neither the Public Administrator nor the Deputy Public Administrator maintain time records of their daily arrival and departure times. Comptroller’s Directive #13, “Payroll Procedures,” states that “daily attendance reports . . . are the source documents for employee time. Accurate record keeping is essential to ensure both that employees are paid only the amounts due to them and the overall effectiveness of payroll procedures and controls.” According to the office timekeeper, the Public Administrator’s and the Deputy Public Administrator’s time is verbally reported to the Office Manager for recording in the City Payroll Management System. This method is unacceptable since we cannot be assured that it reliably captures all information necessary to track these officials’ attendance, nor does it hold anyone accountable for recording their arrival and departure times.

In addition, five of the office’s 13 employees paid with tax levy funds were allowed to carry annual leave balances in excess of the maximum provided for by City guidelines. According to the City Time and Leave Regulations, non-managerial employees can have no more than “the amount accruable in the preceding two years” to their credit as of May 1st each year. As of April 30, 2000, these five employees had a total of approximately 294 days in excess of the two-year limit to their credit. At their current salaries, this excess leave would cost \$48,945 if the employees were to leave City service.

Finally, the office allowed three employees to use sick leave without providing proof of disability even though the employees used undocumented sick leave more than five times in a six month “sick leave period.” The City’s Time and Leave Regulations generally require proof of an employee’s disability. This provision may not be waived when, as indicated above, undocumented sick leave has been used more than five times during a sick leave period.

Recommendations

The NYCPA should ensure that all:

12. Employees, including the Public Administrator and the Deputy Public Administrator, record their daily attendance and maintain documentation for all approved leave use.

NYCPA Response: “The timekeeping records maintained by the Public Administrator’s timekeeper comply in all respects with the requirements set forth under the New York City ‘Leave Regulations for Management Employees.’ The Public Administrator and Deputy Public Administrator will maintain records of their own time.”

13. Employees are aware of City guidelines regarding the restriction on maximum annual leave balances. If appropriate, the NYCPA should provide written authorizations to employees requested to forgo their vacations. In the event that such an authorization is not appropriate, the employee’s excess annual leave should be converted to sick leave, according to City leave regulations.

NYCPA Response: “The Public Administrator’s office is now in full compliance with the City guidelines governing employees’ annual leave.”

14. Employees are aware of the City’s guidelines regarding use of undocumented sick leave. If employees violate the City’s Time and Leave Regulations with regard to undocumented sick leave, the NYCPA should take the steps outlined in the Citywide Time and Leave Regulations about disciplining such behavior.

NYCPA Response: “The Public Administrator’s office is now in full compliance with the City guidelines governing employees’ sick leave.”

15. Use of annual and compensatory leave is pre-approved and that authorized leave slips are completed for all leave use.

NYCPA Response: The NYCPA did not respond to this recommendation.



Public Administrator

County of New York

ETHEL J. GRIFFIN, *Commissioner*
Public Administratrix

THOMAS R. PURCELL, *Deputy Commissioner*
Deputy Public Administrator

May 14, 2003

Honorable William C. Thompson, Jr.
Comptroller of the City of New York
Executive Offices
1 Centre Street, Room. 530
New York, New York 10007-2341

Re: Response to Recommendations of "Audit Report on the Financial and Operating Practices of the New York County Public Administrator's Office FP00-190A"

Dear Comptroller Thompson:

Attached is a copy of the Response to Recommendations and Agency Implementation Plan which is to be included as an attachment to the Final Report.

The Public Administrator of New York County appreciates the opportunity to respond to the audit report of the New York City Office of the Comptroller. The professional manner in which the audit was conducted allowed for an ongoing dialogue between the Public Administrator, her staff, and the auditors.

If you have any questions regarding this response, please contact me.

Yours truly,


Ethel J. Griffin

cc: Greg Brooks, Deputy Comptroller
Thomas R. Purcell, Deputy Public Administrator

**SUMMARY OF RESPONSES AND AGENCY IMPLEMENTATION PLAN TO AUDIT
REPORT FP00-190A FOR THE PUBLIC ADMINISTRATOR OF NEW YORK**

COUNTY:

In summary, the New York County Public Administrator (the "Public Administrator") responds as follows:

- ▶ The Public Administrator complies with all statutory provisions;
- ▶ For every estate over \$500 the Public Administrator files an accounting with Surrogate's Court wherein all estate transactions are revealed and the necessary parties are given an opportunity to object;
- ▶ The Public Administrator's compliance with statutory authority and the Guidelines is implicit in every account filed with the Court;
- ▶ The Public Administrator has implemented a policy for the quarterly review of bank interest rates and services provided by said banks;
- ▶ The Public Administrator has contacted each bank where checking accounts are maintained to seek an agreement whereby all deposits in excess of \$100,000 are collateralized; currently one third of said banks maintain such collateralization;
- ▶ In the specific case involving fees paid to an asset locator, all interested parties were notified of the existence of the form 1099 and fee of the asset finder was listed in an accounting filed with the Surrogate's Court; no objection was made and payment of the fee was provided for in the Decree on Accounting;
- ▶ The Public Administrator has implemented a procedure whereby her office advertises for vendors on an annual basis;

- ▶ The tax returns filed by the CPA firm retained by the Public Administrator were accepted by the Internal Revenue Service and New York State Department of Taxation and Finance and the transactions reflected on such returns were revealed in the related estate accounts, no objection was made and the Public Administrator was discharged by the Surrogate;
- ▶ An estate is not engaged in a trade or business as defined under the Internal Revenue Code necessitating the service of a Form 1099 upon vendors;
- ▶ The Public Administrator shall implement a sliding fee scale for all fees payable to the CPA firm;
- ▶ It is impossible for the Public Administrator to obtain an annual independent audit estimated to cost \$65,000 with the \$5,000 budgeted for such expense by the City of New York;
- ▶ The Public Administrator's reimbursement for automobile related expenses in the amount of \$15 a day is less than that which would be allowed by the City of New York;
- ▶ Payment for a holiday luncheon and fruit basket is a legitimate office expense;
- ▶ The suspense account is reimbursed by estates for outstanding loans;
- ▶ Timekeeping records comply in all respects with the New York City " Leave Regulations for Management Employees".
- ▶ The Public Administrator and Deputy Public Administrator will maintain a record of their own time; and
- ▶ The Public Administrator is now in full compliance with the City guidelines governing employees' annual and sick leave.

**DETAILED RESPONSES TO RECOMMENDATIONS AND AGENCY
IMPLEMENTATION PLAN:**

A detailed explanation of the New York County Public Administrator's (the Public Administrator") responses follow:

Response to Recommendation 1. :

The Public Administrator is required to abide by governing statutes. Compliance with the Guidelines of the Administrative Board for the Offices of the Public Administrators (the "Guidelines"), however, is not mandated. The Guidelines provide for uniform practices which each Public Administrator should follow absent a reasonable reason to act otherwise. When making administrative and discretionary fiduciary decisions, the Public Administrator abides by the governing statutes and seeks to apply the relevant Guideline unless such guideline is impossible to comply with (e.g., see response to Recommendation 9.) or, inappropriate for the operation of her office.

The Public Administrator files an account for every estate her office administers where the assets exceed \$500.00. An informatory account is filed for estates between \$500.00 and \$20,000 and a judicial account is filed where the assets exceed \$20,000. Each transaction made by the Public Administrator for a particular estate is revealed on the account. Thereafter, the persons interested in the estate (creditors, distributees and in most cases the Attorney General of the State of New York) are provided notice of the Public Administrator's account and an opportunity to object. Thus, all actions taken by the Public Administrator are subject to review by the persons interested and the Surrogate. A review of the Public Administrator's compliance with the governing statutes and the Guidelines is

implicit in every account.

Response to Recommendations 2. and 3. :

In her capacity as an administrator, the Public Administrator invests estate assets for a limited period of time during which she must ensure liquidity of assets to satisfy claims and pay ongoing administration expenses. The Public Administrator has never received an objection to her account, from any person interested in an estate, that the interest rate received on the deposit of funds was too low.

Presently, the Public Administrator deposits funds with six banks, all of which are approved by The City of New York Banking Commission. When determining the appropriate bank as the repository of estate assets, the Public Administrator considers the following factors: 1) the interest rate paid; 2) whether costs and fees are imposed; 3) the need to limit deposits for each estate to under \$100,000; 4) preventing concentration of assets with one institution; and 5) the quality of service provided by the institution to the office.

In determining whether it is prudent to purchase a U.S. Treasury Bill ("T-Bill") for an estate, the Public Administrator considers the following factors: 1) whether the estate requires liquidity of its assets; 2) whether the estate is near completion; and 3) the value of funds available for investment. The nominal charge for the purchase of a T-Bill (i.e., semiannually \$75.00) is a reasonable expense, particularly in relation to the size of the bill purchase (an average of \$680,000). The Public Administrator has never received an objection to the payment of such fees. Moreover, the Public Administrator's budget does not permit her to hire an individual to handle the purchase and sale of T-Bills, directly from the Treasury Department.

The Public Administrator has contacted the four institutions which are depositories for checking accounts which do not collateralize deposits over \$100,000. Said institutions are being directed to collateralize all deposits over the FDIC amounts in order to remain on the checking account bank list.

The Public Administrator has implemented a policy whereby her office will analyze interest rates offered by those banks approved by the City of New York on a quarterly basis and upon obtaining such information will determine whether estate assets should be transferred.

Response to Recommendation 4. :

In the estate referred to in Recommendation 4 of the Draft Report, a judicial accounting was filed by the Public Administrator which proposed payment of a finder's fee in connection with the recovery of an account at Dime Savings Bank. The Public Administrator's policy is that any fee sought by an asset finder is subject to objections by the parties and approval by the Surrogate's Court. The finder's fee is not paid unless directed by the Court.

The Attorney General of the State of New York and decedent's alleged distributees were cited in the accounting proceeding. In addition, a guardian ad litem was appointed to act on behalf of decedent's unknown distributees.

During the course of their review of the Tax Department's file in this estate the auditors discovered a 1994 Form 1099 for interest paid on an Anchor Savings Bank (predecessor to Dime Savings Bank) account. That interest was not received by the Public Administrator, and presumably was paid to the decedent while he was alive.

The existence of the Form 1099 was disclosed to all of the parties in an amendment to

the Public Administrator's accounting. Having been given this information, none of the parties objected to the payment of the finder's fee. The accounting Decree, which was served with Notice of Settlement upon all parties, included a separate decretal paragraph directing payment of the fee. The Decree was signed without objection and the finder's fee was then paid.

Response to Recommendation 5. :

The Public Administrator maintains a list of outside vendors with whom she negotiates a fair and reasonable fee. As noted in the response to Recommendation 1, any fee paid to an outside vendor is revealed in an account which is served upon the persons interested in the estate. As a general rule, the Public Administrator does not pay vendors in advance of the services rendered. However, there are instances where a vendor will not provide a service unless a payment is made. In order to secure such services, the Public Administrator must make payment and only does so in limited cases where the facts compel such action.

The Public Administrator has adopted a policy whereby she will annually advertise for vendors seeking to be placed upon a vendor's list. Vendors will be added to the list maintained by the Public Administrator only if they are reputable and hold the necessary license in their field.

Response to Recommendation 6. and 7. :

The Public Administrator retains a firm of certified public accountants for the preparation of decedent's final individual tax return and fiduciary tax returns. Such returns are filed with the Internal Revenue Service (the "IRS") and New York State Department of Taxation and Finance ("NYS") and reviewed by those offices. The accounts filed by the

Public Administrator set forth payment of any fiduciary taxes and/or income taxes incurred and the fees paid to the CPA firm. The Public Administrator has never been surcharged for retention of this or any other CPA firm, the payment of fiduciary taxes, decedent's income taxes or fees charged by the firm. Given that the services rendered by the CPA firm are reviewed by the appropriate taxing authority, the Court and parties interested in the estate, additional review is not necessary.

Where relevant, the preparation of a decedent's income tax returns and fiduciary income tax returns is done in conjunction with the preparation of estate tax returns. Consideration is made as to the maximum benefit which may be achieved by utilizing deductions on either the estate or fiduciary income tax return. In addition, in order to maximize deductions for an estate it may be prudent to pay fees in a particular fiscal year in advance of completion of services. The Public Administrator considers this factor when paying fees.

Based upon the foregoing, the Public Administrator believes that continued retention of the CPA which has rendered services accepted by both the IRS, NYS and the Surrogate's Court is a prudent exercise of her discretion.

Reference is made to Title 26, § 6041-1 of the Internal Revenue Code ("IRC") as authority requiring the issuance of a form 1099 to each vendor retained by the Public Administrator who rendered services to an estate. An estate is not engaged in a trade or business as defined under the referenced section. Based upon an inquiry, the practice among corporate fiduciaries is not to issue a form 1099 to persons retained by an executor, administrator or trustee on behalf of an estate or trust. The Internal Revenue Service and the

New York State Department of Taxation have never directed or indicated that the Public Administrator should issue Forms 1099 to each vendor.

The Public Administrator is in the process of implementing a sliding scale for fees of the CPA firm.

Response to Recommendation 9. :

Section 1109 of the SCPA sets forth the requirement of the Public Administrators to report on the status of estates and mandates that each year they conduct an independent audit. Public Administrators within the City of New York have sought funding for such audit for many years and only recently were budgeted the amount of \$5,000 which is insufficient to pay for an audit. The Public Administrator has repeatedly obtained bids from independent accountants for such audit which range from \$65,000 - \$80,000. Information related to the efforts made to comply with the audit requirement of SCPA 1109 has been provided to the Administrative Board and City and State Comptrollers' offices.

The Administrative Board has recognized the dilemma facing the Public Administrators in their inability to comply with the statute, and is considering solutions. At this time the Public Administrator lacks the necessary funds to pay for an independent audit. Thus, compliance is not within the Public Administrator's control.

Response to Recommendation 10. :

A. The Public Administrator is a Commissioner of the City of New York. Such position entitles her to reimbursement for expenses related to the use of her automobile payable from the suspense account. In fact, the Public Administrator's expenses related to the use of her automobile, insurance, gas, etc. exceeds the reimbursement of \$15.00 per day from the

suspense account. Thus, reimbursement at the rate of \$15.00 per day reduces the operating expenses of the Public Administrator's office.

B. The tradition of the Public Administrator's holiday party and fruit basket is a legitimate office expense. It is noted that the Public Administrator's staff foregoes their lunch hour several times a year to assist with public auctions. The Public Administrator's staff is not otherwise compensated for this time.

Response to Recommendation 11. :

Each estate repays the Public Administrator's suspense account for any outstanding advances made on its behalf as reflected in each estate accounting. As previously noted, the account is filed with the Surrogate's Court.

Response to Recommendation 12. :

The timekeeping records maintained by the Public Administrator's timekeeper comply in all respects with the requirements set forth under the New York City "Leave Regulations for Management Employees." The Public Administrator and the Deputy Public Administrator will maintain records of their own time.

Response to Recommendation 13. :

The Public Administrator's office is now in full compliance with the City guidelines governing employees' annual leave.

Response to Recommendation 14. :

The Public Administrator's office is now in full compliance with the City guidelines governing employees' sick leave.