

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 Municipal Retired Employees Welfare Trust Fund of the International Union of Operating Engineers Local 30

FK07-105A

December 22, 2009



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 Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the financial and operating practices of the Retired Municipal Employees Welfare Trust Fund of the International Union of Operating Engineers Local 30, 30-A, 30-B, 30-C, and 30-D (Retiree Fund).

Under the terms of a Fund Agreement and Declaration of Trust with the City, the City makes contributions to the Retiree Fund, and the Retiree Fund uses these contributions to provide supplemental benefits to its members and their dependents. Audits such as this provide a means of ensuring that entities receiving public monies spend the funds appropriately, reasonably, and as intended and that they comply with applicable procedures and reporting requirements.

The results of our audit, which are presented in this report, have been discussed with Retiree Fund officials, and their comments have been considered in the preparation of this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau 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/fh

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

**Audit Report on the Financial and Operating Practices of
the Municipal Retired Employees Welfare Trust Fund of the
International Union of Operating Engineers Local 30**

FK07-105A

AUDIT REPORT IN BRIEF

The Retired Municipal Employees Welfare Trust Fund of the International Union of Operating Engineers Local 30, 30-A, 30-B, 30-C, and 30-D (Retiree Fund) was established on March 15, 1978, under the provisions of a Fund Agreement between the City of New York and the International Union of Operating Engineers, Local 30, 30-A, 30-B, and 30-C, AFL-CIO (the Union) and a Declaration of Trust. The agreement and trust stipulate that the City make contributions to the Retiree Fund and the Retiree Fund use these contributions to provide supplemental benefits to its members. The Retiree Fund is required to comply with the *New York City Comptroller's Internal Control and Accountability Directives*, Directive #12, "Employee Benefit Funds – Uniform Reporting and Auditing Requirements," which sets forth accounting, auditing, and financial guidelines for funds and their boards of trustees. For the year ending December 31, 2005, the Retiree Fund reported an operating surplus of \$32,091 and a fund balance of \$1,609,554.

Audit Findings and Conclusions

The Retiree Fund Trustees did not accurately represent the Fund's financial position in its annual report and did not disclose material facts to members. Additionally, the Trustees of the Retiree Fund and the Active Fund—who are the same individuals—approved a merger of the funds that, if not carefully managed, could prove detrimental to the benefits of the retirees in the future. From 2002 through 2005, while the Retiree Fund was prospering, the Active Fund was incurring operating deficits that reduced its fund balance until it became insolvent in 2005. In February 2006, the funds merged, and Retiree Fund reserves were used to pay off Active Fund liabilities. The Retiree Fund did not consult its membership or disclose either the possibility of a merger or the actual merger in its annual report to membership.

Our review also found that during calendar year 2005, the Retiree Fund did not comply with Comptroller's Directive #12 procedures. Additionally, the Retiree Fund misstated

administrative and benefit expenses; did not maintain eligibility documentation for all claims paid for members' dependents; did not pay all benefits in accordance with Retiree Fund guidelines; and did not have a written allocation plan for shared administrative expenses and valid agreements with professional service providers.

At our exit conference, Retiree Fund officials informed us that they considered their actions appropriate and that they acted with due care and performed due diligence prior and subsequent to merging the Active and Retiree Funds. The basis for that assertion is that the Retiree Fund:

- Retained separate legal counsel for the Active and Retiree Funds and sought opinions as to the legality of the merger.
- Informed the New York City Office of Labor Relations (OLR) of its intention to merge and asked OLR to advise it if the City had any legal objections.
- Continues to monitor the effects of the merger by keeping separate books and records and analyzing prescription drug costs for the Active and Retiree Funds.
- Structured payment of Active Fund liabilities incurred prior to merger as a loan from the Retiree Fund payable with 1.1 percent interest.
- Satisfied the loan on September 30, 2008.

Audit Recommendations

We make nine recommendations to the merged Active and Retiree Fund (the Fund), including that the Fund should:

- Accurately advise membership of the Fund's financial condition and operations of the Fund in its annual report.
- Ensure that administrative and benefit expenses are correctly classified.
- Maintain eligibility documentation for members' dependents.
- Ensure that it pays benefit expenses in accordance with its guidelines.
- Establish and employ an allocation plan that methodically distributes the costs of shared expenses among the various Local 30 entities as required by Comptroller's Directive #12.
- Maintain valid agreements with consultants that stipulate the services to be provided, the rate and method of compensation, and the period covered.

INTRODUCTION

Background

The Retiree Fund was established on March 15, 1978, under the provisions of a Fund Agreement between the City of New York and the Union and a Declaration of Trust. The agreement and trust stipulate that the City make contributions to the Retiree Fund and the Retiree Fund use these contributions to provide supplemental benefits to its members. During calendar year 2005, the Retiree Fund received contributions totaling \$827,473. These funds were used to provide health and welfare benefits to eligible retired City employees who served in various titles, including Oilers, Plant Maintainers, Stationary Engineers, and Senior Stationary Engineers, as well as their spouses and dependents.

The Retiree Fund is required to comply with the *New York City Comptroller's Internal Control and Accountability Directives*, Directive #12, "Employee Benefit Funds – Uniform Reporting and Auditing Requirements," which sets forth accounting, auditing and financial guidelines for funds and their boards of trustees. Table I shows the benefits that were available to the 539 members of the Retiree Fund and the total amount reportedly paid for each type of benefit during calendar year 2005.

Table I

Retiree Fund Benefits and Amounts Paid as Reported by the Retiree Fund
Calendar Year 2005

Benefit	Amount	Coverage
Prescription Drugs	\$505,334	Caremark, Inc., administers this self-insured ^(a) benefit. Coverage is as follows: <ul style="list-style-type: none"> • Mandatory generic plan • Annual maximum benefit of \$2,000 per family • Prescriptions for up to 30-day supply must be filled at a retail pharmacy • 50% co-pay with a \$5 minimum for prescriptions filled at a retail pharmacy • Prescriptions for more than 30-day supply must be filled through mail order • No co-pay for prescriptions filled through mail order
Dental	123,268	Healthplex, Inc., administers this self-insured benefit. Members can choose either an in-network or out-of-network dentist. Coverage is as follows: <p>In-network</p> <ul style="list-style-type: none"> • Services provided in accordance with Schedule of Allowances • Annual maximum benefit of \$2,000 per family for dental services (exclusions and limitations apply) • Lifetime deductible of \$1,000 per child for orthodontic services

Benefit	Amount	Coverage
		<p>Out-of-Network</p> <ul style="list-style-type: none"> • Annual maximum benefit of \$2,000 per family for dental services • Lifetime deductible of \$1,000 per child for orthodontic services • Deductible of \$50 per person or \$150 per family (waived for diagnostic and preventative services)
Optical	40,750	<p>General Vision Services and Vision Screening administer this self-insured benefit. Alternatively, members may seek direct reimbursement from Local 30. Coverage is as follows:</p> <p>General Vision Services and Vision Screening</p> <ul style="list-style-type: none"> • One free eye exam per year • One pair of glasses or contact lenses per year • Unlimited follow-up visits for eligible participants that choose contact lenses <p>Retiree Fund Direct Reimbursement Reimbursed up to \$75 per year per eligible participant</p>
Health Reimbursement	20,155	<p>The Retiree Fund administers this self-insured benefit. Coverage is as follows:</p> <ul style="list-style-type: none"> • Members and eligible dependents are reimbursed up to \$250 per year for medical expenses that are not covered by another plan. • Members must submit a claim form and sufficient support documentation.
Medicare Benefits	18,373	<p>The Retiree Fund administers this self-insured benefit. Coverage is as follows:</p> <ul style="list-style-type: none"> • Members or eligible dependents that are eligible for Medicare are entitled to be reimbursed \$6 per month towards Medicare Part “B” Premium payments.
Death	9,500	<p>The Retiree Fund administers this self-insured benefit. Coverage is as follows:</p> <ul style="list-style-type: none"> • Beneficiary receives \$500 upon member’s death • Member receives \$500 upon the death of their spouse
Chiropractic	1,335	<p>The Retiree Fund administers this self-insured benefit. Members and eligible dependents are reimbursed up to \$25 for up to 12 visits per year. (\$300 maximum)</p>
Total	\$718,715	

(a) A self-insured plan is one that is not backed by an insurance policy. Instead, the Fund pays claims with its own money. The Fund may outsource the administration of the plan to a third-party administrator (TPA), but the TPA does not provide the Fund with any financial backing or assume any financial risk.

For the year ending December 31, 2005, the Retiree Fund reported an operating surplus of \$32,091 and a fund balance of \$1,609,554. We are conducting a separate audit of the Municipal Employees Welfare Trust Fund of the International Union of Operating Engineers Local 30, 30-A, 30-B, and 30-C (Active Fund). The results of that audit will be covered in a separate report (Audit #FK07-104A).

Objectives

The objectives of the audit were to determine whether the Retiree Fund: complied with applicable procedures and requirements of Comptroller's Directive #12; had adequate and proper benefit-processing and accounting procedures and complied with them; and paid administrative expenses that were appropriate and reasonable.

Scope and Methodology

This audit covered the period January 1, 2005, through December 31, 2005. This period corresponds with the scope of the most recent Directive #12 filing available when we initiated our audit.

To determine whether the Retiree Fund complied with applicable procedures and requirements of Comptroller's Directive #12, we reviewed its filings and determined whether they included: annual certified financial statements prepared in accordance with generally accepted accounting principles; Internal Revenue Service Form 5500; and other required schedules.

We asked the Retiree Fund to provide us with a membership list for our audit period; however, it could not provide us with such a list. Therefore, we compiled our own membership list by identifying all individuals included on New York City contribution reports for calendar year 2005. To ascertain whether the Retiree Fund maintained membership files for all eligible members, we randomly selected 50 of 539 members identified on City contribution reports and ascertained whether the Retiree Fund had membership files for these individuals. We also determined whether these membership files contained documentation of eligibility for members' dependents.

We determined whether benefit payments were for appropriate amounts, eligible drugs and services, and eligible members and their dependents, as follows:

Prescription Drug Benefit

We obtained a prescription Claims Detail Report from Caremark, the Retiree Fund's third-party administrator (TPA), and selected 34 of the 411 individuals who received prescription drug benefits totaling \$100 or more during calendar year 2005. We judgmentally selected all four members who exceeded the annual maximum benefit of \$2,000. And we randomly selected 30 of the 407 members who received prescription drug benefits totaling \$100 or more and did not exceed the benefit cap.

For the 34 sampled members, we traced all claims processed during calendar year 2005 from the Claims Detail Report to City contribution reports to verify that claims were paid only for eligible members. For claims paid for members' dependants, we determined whether membership files contained proof of dependency, such as a marriage or birth certificate. We determined whether members paid required co-payments and filled prescriptions for maintenance drugs through the mail order program.

Self-Insured Dental Benefit

We obtained a dental claims report from Healthplex, Inc., the Retiree Fund's TPA, and randomly selected 30 of the 295 members who received dental benefits during calendar year 2005. For the 30 sampled members, we traced all claims processed during calendar year 2005 from the dental claims report to City contribution reports to verify that claims were paid only for eligible members. For claims paid for members' dependants, we determined whether membership files contained proof of dependency. We also checked whether Retiree Fund payments were correct and did not exceed the amounts specified in the fee schedule.

TPA Optical Benefits

We compiled separate listings of members who received optical benefits from each of the Retiree Fund's optical TPAs. Based on the monthly invoices, we determined that 100 members received optical benefits through GVS, and 66 members received optical benefits through Vision Screening. We randomly selected 10 members from each of these provider populations. For the 20 sampled members, we traced all claims processed during calendar year 2005 from GVS and Vision Screening invoices to City contribution reports to verify that claims were paid only for eligible members. For claims paid for members' dependants, we determined whether membership files contained proof of dependency.

Retiree Fund Direct Optical Reimbursement

We compiled a listing of members who were reimbursed directly by the Retiree Fund for optical benefits. We reviewed the Retiree Fund's general ledgers for calendar years 2005 and 2006, and optical reimbursement vouchers, and determined that 60 members were reimbursed by the Retiree Fund for optical benefits received during calendar year 2005. We randomly selected 10 of these 60 members and traced all claims for services from the general ledger to City contribution reports to verify that claims were paid only for eligible members. For claims paid for members' dependants, we determined whether membership files contained proof of dependency.

Healthcare Reimbursement Benefit

We compiled a listing of members who received healthcare reimbursement payments from the Retiree Fund. We reviewed the Retiree Fund's general ledgers for calendar years 2005 and 2006, and healthcare reimbursement vouchers, and determined that the Retiree Fund paid 89 claims for healthcare reimbursement benefits received during calendar year 2005. We traced all claims for services from the general ledger to City contribution reports to verify that claims were paid only for

eligible members. For claims paid for members' dependants, we determined whether membership files contained proof of dependency.

Medicare

We traced all payments for Medicare premium reimbursement made in the 2005 bank statements to the general ledger. We also traced the members receiving payments to the City's contribution reports to verify member eligibility. For instances in which a member's spouse or child received benefits, we determined whether a marriage certificate, child's birth certificate, or other proof of dependency was on file.

Death Benefit

For all death benefit payments recorded in the 2005 and 2006 general ledgers, we determined whether payments were recorded in the proper period by looking at dates of death recorded on decedents' death certificates. To verify that payments were properly documented and paid only for eligible members or spouses, we determined whether death and marriage certificates were contained in membership files and traced members to City contribution reports.

Chiropractic Benefit

We compiled a listing of members who were reimbursed directly by the Retiree Fund for chiropractic benefits. We reviewed the Retiree Fund's general ledgers for calendar years 2005 and 2006 and chiropractic reimbursement vouchers, and determined that the Retiree Fund paid 13 claims for chiropractic benefits received during calendar year 2005. We traced all claims for services from the general ledger to City contribution reports to verify that claims were paid only for eligible members. For claims paid for members' dependants, we determined whether membership files contained proof of dependency.

To determine whether contributions were properly recorded, we reconciled the Retiree Fund's certified financial statements with its general ledger, records of adjusting entries, cash receipts journal, and other related documentation. Specifically, we verified the amounts reported on the New York City contribution reports and traced contribution amounts for the audit period from the contribution reports and copies of canceled checks to the Retiree Fund's cash receipts journal and bank statements.

To confirm the Retiree Fund's reported balance as of December 31, 2005, we reviewed its bank statements, reconciliations, and check history reports, and accounted for all checks paid, outstanding, and voided.

We traced all reported administrative expenses from the Retiree Fund's general ledger to supporting documentation, such as vendor invoices, expense allocation reports, and payroll records, to determine whether they were properly recorded, reasonable, and appropriate.

The results of our tests while not projected to the respective populations provide a reasonable basis for us to determine whether the Retiree Fund: complied with applicable procedures and requirements of Comptroller's Directive #12; had adequate and proper benefit-processing and

accounting procedures and complied with them; and paid administrative expenses that were appropriate and reasonable.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. The audit was performed in accordance with the audit responsibilities of the City Comptroller as 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 Fund officials during and at the conclusion of this audit. A preliminary draft report was sent to Fund officials and discussed at an exit conference held on November 17, 2008. On December 17, 2008, we submitted a draft report to Fund officials with a request for comments. We received a written response from the Fund's attorney on April 23, 2009.

In the Fund's response, the Fund attorney stated that "Retired Fund trustees acted prudently and in the best interest of their members. . . . We respectfully request that the Audit Reports for both the Active and Retired Funds be adjusted to reflect the additional information and facts provided in this response."

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

FINDINGS AND RECOMMENDATIONS

The Retiree Fund Trustees did not accurately represent the Fund's financial position in its annual report and did not disclose material facts to members. Additionally, the Trustees of the Retiree Fund and the Active Fund—who are the same individuals—approved a merger of the funds that, if not carefully managed, could prove detrimental to the benefits of the retirees in the future. From 2002 through 2005, while the Retiree Fund was prospering, the Active Fund was incurring operating deficits that reduced its fund balance until it became insolvent in 2005. In February 2006, the funds merged, and Retiree Fund reserves were used to pay off Active Fund liabilities. The Retiree Fund did not consult its membership or disclose either the possibility of a merger or the actual merger in its annual report to membership.

Our review also found that during calendar year 2005, the Retiree Fund did not comply with Comptroller's Directive #12 procedures. Additionally, the Retiree Fund misstated administrative and benefit expenses; did not maintain eligibility documentation for all claims paid for members' dependents; did not pay all benefits in accordance with Retiree Fund guidelines; and did not have a written allocation plan for shared administrative expenses and valid agreements with professional service providers.

At our exit conference, Retiree Fund officials informed us that they considered their actions appropriate and that they acted with due care and performed due diligence prior and subsequent to merging the Active and Retiree Funds. The basis for that assertion is that the Retiree Fund:

- Retained separate legal counsel for the Active and Retiree Funds and sought opinions as to the legality of the merger.
- Informed OLR of its intention to merge and asked OLR to advise it if the City had any legal objections.
- Continues to monitor the effects of the merger by keeping separate books and records and analyzing prescription drug costs for the Active and Retiree Funds.
- Structured payment of Active Fund liabilities incurred prior to merger as a loan from the Retiree Fund payable with 1.1 percent interest.
- Satisfied the loan on September 30, 2008.

These issues are discussed in detail in the following sections of this report.

Trustees Approved a Merger Not in The Best Interest of Membership

The Trustees of the Retiree Fund and Active Funds—who are the same individuals—approved a merger of the funds. From 2002 through 2005, while the Retiree Fund was prospering, the Active Fund was incurring operating deficits that reduced its fund balance until it finally became insolvent in 2005. According to the Comptroller's reports entitled *Analysis of the*

Financial and Operating Practices of Union-Administered Benefit Funds for calendar years 2002 through 2005, the Retiree Fund had excess reserves, and the Active Fund was cited as having a short-term risk of insolvency due to operating deficits and declining reserves for calendar years 2003 through 2005. Table II summarizes the Retiree and Active Funds' reported operating surplus (deficits) and fund balances for the years ending December 31, 2002, through December 31, 2005.

Table II

Summary of Retiree and Active Funds' Reported
Operating Surplus (Deficit) and Fund Balances

Year	Retiree Fund		Active Fund	
	Operating Surplus (Deficit)	Fund Balance	Operating Surplus (Deficit)	Fund Balance
2002	\$81,805	\$1,588,341	(\$73,683)	\$595,463
2003	(2,913)	1,605,228	(275,369)	355,694
2004	27,485	1,514,813	(197,166)	103,555
2005	32,091	1,609,554	(117,298)	(115,843)

At board meetings the Trustees discussed the merger as a “way to alleviate short-term cash flow issues” of the Active Fund and the merger document depicts the merger as beneficial to both funds stating, that it

is in the best interests of the participants of both the Active and the Retiree Funds because it will align the common interests of active and retired municipal employees and reduce the administrative expenses of both Funds, thereby enhancing the long-term growth and viability of such Funds.

The Trustees' assertion that the merger would reduce administrative expenses is not clear. Administrative expenses have always been shared by the various Local 30 entities, and the merged fund will continue to pay the same total allocated portion. Prior to the merger, the Active and Retiree Funds were responsible for approximately 20 percent of administrative expenses (except for rent) and will continue to be responsible for this amount. Whether the merged fund makes individual payments or a combined payment, the amount paid remains the same. Therefore, it appears that the merger was a short-term solution to help with the Active Fund's financial problems.

Also, the Retiree Fund did not consult its membership or disclose either the possibility of a merger or the actual merger in its annual report to membership. Comptroller's Directive #12 requires funds to issue annual reports to members that advise them of the financial condition and operations of the fund and significant changes and other important matters. The Trustees were in continuous discussions regarding the merger from at least August 2004 and had informed the OLR of their intent to merge in January 2005. However, they did not disclose the potential merger in its 2004 annual report issued in June 2005. The Trustees also did not disclose the actual merger in its 2005 annual report. This report was sent to members in May 2006. Fund Trustees have an obligation to report *all* significant matters to members.

Fund Response: With regard to acting prudently and in the best interest of members, and exercising due care, the Fund stated: “In general, Local 30’s position is that the trustees acted prudently and reasonably when they merged the Active Fund with the Retired Fund. . . .

“The trustees further exercised due care when they sought advice and consent before merging the funds from the New York City’s Office of Labor Relations (‘OLR’) and from outside, independent legal counsel for both the Active and Retired Funds. OLR did not object to the merger. In fact, OLR has indicated publicly that the merging of all union benefit funds would be cost efficient and something it would want to discuss in collective bargaining. The trustees asked OLR to reach out to the Comptroller’s Office to determine if it had any objections to Local 30’s proposed merger. Matthew Campese, Assistant Director of Labor Relations, informed us that the Comptroller’s Office was not going to take a position on the matter. Had the Comptroller’s Office indicated to Local 30 or OLR at the time it had any reservations on the issue, Local 30 would have addressed those concerns at the time. It is patently unfair for the Comptroller’s Office to now voice objections to the merger when it had every opportunity to do so prior to the merger.

“Furthermore, outside counsel was retained for both the Active and Retired Funds to evaluate the soundness of the merger. Outside counsel approved of the merger and determined that it was in the best interest of the Retired Fund membership. . . . Due diligence was performed and the best interests of the participants of both funds were considered.”

Auditor Comment: While OLR did not object to the merger, OLR did not endorse the merger either. Further, OLR did not indicate that the merging of these two funds would be cost efficient. Rather, OLR has stated that a single-payer health and welfare benefits system for *all funds* might be cost efficient. As noted, the merger of the Active and Retiree Funds did not reduce expenses. Administrative expenses have always been shared by the various Local 30 entities, and the merged fund will continue to pay the same total allocated portion.

Also, outside counsel retained for the Retiree Fund did not—as the Fund asserts—approve the merger and determine that it was in the best interest of retirees. Retiree Fund counsel merely stated that the merger “and the acts and agreements relating thereto comply with all applicable laws.”

With regard to OLR’s seeking the Comptroller’s Office position on the merger, OLR requested that “the Comptroller provide the Office of Labor Relations with a formal response indicating if this merger would be permitted under the applicable Comptroller’s Directives.” And in response, Comptroller’s Office General Counsel explained to OLR that Comptroller’s Directive #12 “only sets forth accounting, auditing and financial guidelines It does not give this office any authority to make a determination as to whether a particular union’s active and retiree welfare funds can or cannot merge.”

Fund Response: With regard to notifying membership of the merger, the Fund stated: “The Audit Reports take issue with the trustees’ failure to indicate the possibility of the merger in the annual report. While this may be true, it is well established that all Local 30 members were regularly apprised of the possibility of a merger. Prior to the merger, the trustees informed the membership of Local 30 of the potential merger at regularly scheduled membership meetings.”

Auditor Comment: The Fund did not provide us meeting schedules, agendas, and attendance records for the meetings. The Fund should issue annual reports and send them to each member so that all members will be advised of Fund financial conditions and operations, significant changes, and other important matters as required by Comptroller’s Directive #12.

Fund Response: With regard to the merger not harming retirees, the Fund stated that “the Audit Reports fail to point out one instance where retirees were actually harmed in any way by the merger. . . .

“The Audit’s claim that the merger was not in the best interest of retirees because their reserves were used to pay off Active Fund liabilities is incorrect. On March 28, 2006, the Retired Fund advanced the Active Fund \$313,540.00 and this was repaid on a schedule of 1.10% which was the CD rate in effect at the time of the advance. Further, the Active Fund completed repayments totaling \$319,656.00 in September 2008. The two funds are now one entity, but the merged fund still maintains its records separately.

“The Audit Report indicated that active participants and retired participants do not have identical benefits. This discrepancy in benefits is warranted based on the different needs of these participants and in no way harms the Retired Fund members. Retiree usage and cost per member are higher. For example, a recent analysis of health claims per active and per retired participant indicated that retired participants claim nearly \$100.00 more than active participants. Since the merger, Retired Fund members are afforded a wide-array of benefits that are suitable to their needs and which vary from the Active Fund members.”

Auditor Comment:

- Although the Fund maintains that it keeps separate books and records for the Active and Retiree Funds and that Retiree Fund reserves were loaned to and subsequently repaid by the Active Fund, this distinction exists only on paper—there is only one merged Fund. Retirees have no rights to former Retiree Fund reserves and they are liable for Active Fund obligations. Under the terms of the merger agreement, the Retiree Fund transferred and assigned “all money, property, insurance contracts and other assets” and “any and all sums of money now due or coming due” to the Active Fund, and these assets are to be used for all members—active and retiree—of the merged Fund. Hence, Retiree Fund reserves were in fact used to pay off Active Fund liabilities.

- Additionally, the Active Fund did not pay the Retiree Fund the CD interest rate in effect at the time of the purported loan. On March 28, 2006, the average CD rate was approximately 5 percent, not 1.1 percent as the Fund claims. Therefore,, the Retiree Fund should have received interest payments of at least \$40,674¹ and not \$6,116 (\$319,656 repaid less \$313,540 borrowed from the Retiree Fund).
- Retiree Fund reserves were used to subsidize enhanced benefits for active members rather than to expand coverage for retirees, as recommended by Comptroller’s reports for calendar years 2002 through 2005 entitled *Analysis of the Financial and Operating Practices of Union-Administered Benefit Funds*. Although the Fund receives the same per capita contribution for members, the Fund spends less money per capita on benefits for retirees than their active counterparts. For example, as noted, active members received an annual maximum prescription drug benefit of \$5,000 per family while retirees received only \$2,000 per family. As a result, 155 of the 452 retirees who utilized prescription drug coverage—nearly 35 percent—exceeded the annual maximum benefit and incurred out-of-pocket costs totaling \$113,154. Further, these retirees exhausted their coverage as early as February, and more than half of them exhausted their coverage by August.
- Subsequent to the merger, the Fund eliminated the chiropractic benefit for retirees while benefits offered active members remained the same.

The Retiree Fund Did Not Fully Represent Its Financial Position to Membership

The Retiree Fund did not fully represent its financial position to its membership in its 2005 annual report. As previously stated, Comptroller’s Directive #12 requires funds to issue annual reports that advise their membership of the financial condition and operations of the fund and send copies to each member. In the Retiree Fund’s annual reports to membership, it reported a fund balance of \$1,699,304 for 2005. However, the reported figures did not include the Retiree Fund’s most significant liability—benefit obligations—which were \$89,750 for 2005. Consequently, the Retiree Fund should have reported a fund balance of \$1,609,554. The Retiree Fund accurately reported its liabilities and fund balance on its financial statements and Form 990 filing for 2005, therefore, we do not understand why it did not report these same figures in its annual report.

Fund Response: “The General Guidelines and Requirements of Directive #12 provide ‘Benefit Funds [must] maintain accurate records and books of account *in conformance with generally accepted accounting principles.*’ [Emphasis added.] Thus, the fund’s Summary Annual Report (‘SAR’) was prepared based upon GAAP as required. The SAR did not however reflect the benefit liabilities of the fund. The omission of the benefit liabilities figure from the SAR was an oversight which was inadvertent and unintentional. The

¹ Interest calculated assuming a five percent rate of interest compounded annually.

trustees, in conjunction with their accountants, made every effort to comply with the GAAP as required by Directive #12.”

Auditor Comment: The Retiree Fund’s annual report did not comply with GAAP because as the Fund noted, it did not reflect Retiree Fund benefit obligations. Again, given that the Retiree Fund accurately reported its liabilities and fund balances on its financial statements and Form 990 filings, we do not understand why it did not report these same figures in its annual reports. The Fund should include all liabilities in order to accurately reflect its bottom line.

Recommendation

The Fund should:

1. Accurately advise membership of the Fund’s financial condition and operations of the Fund in its annual report.

Fund Response: “The trustees will make every effort to advise their membership of the fund’s true financial condition and to include other substantial issues related to the fund in the annual report. Further, the accountants will continue to prepare the SAR using accrual basis benefit expenses.”

The Retiree Fund Did Not Accurately Report Administrative and Benefit Expenses on Its Financial Statements and Directive #12 Filing

Administrative Expenses

The Retiree Fund did not accurately report administrative expenses for Calendar Year 2005 on its financial statements and Directive #12 filing because it did not include any administrative fees paid to the TPAs of self-insured benefits on its Administrative Expense Schedule. Instead, the Retiree Fund reported all fees paid to TPAs as benefit expenses.

We determined that the Retiree Fund paid Healthplex administrative fees totaling \$18,378. Based on this additional fee, the Retiree Fund’s administrative expenses were understated by \$18,378—19 percent of the Retiree Fund’s total administrative costs—and benefit expenses were overstated by the same amount. Accordingly, the percentage of revenue spent on administrative expenses was also understated. The percentage of revenue spent on administrative expenses was reported as 11.55 percent rather than 13.71 percent. It should be noted that these figures—the understatements of administrative expenses and percentage of revenue spent on administrative expenses—do not include administrative fees paid to the Retiree Fund’s other TPAs—Caremark, General Vision, and Vision Screening. These TPAs and the Retiree Fund maintain that fees were charged only for benefits and not administrative services. However, although administrative fees are not explicitly stated, these TPAs use some portion of fees to cover administrative costs incurred by providing benefits.

It is important that the Retiree Fund accurately report all administrative expenses so that the City can properly assess the fund's financial activities. Caremark, General Vision, and Vision Screening accounted for approximately 81 percent of the Retiree Fund's reported benefit expenses paid for third-party administered and insured benefits. Had the Retiree Fund included in its Administrative Expense Schedule administrative fees paid to these three providers as well as the \$18,378 paid to Healthplex, it may well have exceeded the category average of 15.52 percent and been found to have incurred higher than average administrative costs and to have high administrative cost-to-revenue ratios.

Fund Response: "The language in Directive #12 regarding 'Benefit Expense' and 'Administrative Expense' is not clear on its face. As such, the accountants for the fund included provider fees as part of the fund's 'Benefit Expense,' rather than as part of the fund's 'Administrative Expense.' . . .

"Currently, the fund includes provider fees as part of its administrative expenses as indicated in Directive #12. . . .

"The Audit Report also states that the fund should be reporting implied administrative expenses included in benefit claims even though third party administrators maintain that fees are only charged for benefits. The assumption in the Audit that hidden fees exist is unfounded and unsupported by any evidence. The trustees of both funds assert that it is inappropriate to use anything but actual figures in its financial statement reporting."

Auditor Comment: Comptroller's Directive #12 states "fees paid to third party or fund administrators for administrative purposes" as an example of administrative expenses. The Retiree Fund and its accountants should have reported these fees and charges as administrative expenses.

Also, proper financial statement reporting dictates that the Fund develop and employ estimates when actual figures are not available.

Benefit Expenses

The Retiree Fund did not accurately report benefit expenses for calendar year 2005 on its financial statements and Directive #12 filing because it did not prepare its financial statements on the accrual basis of accounting. While the Retiree Fund reported its administrative expenses on the accrual basis, it reported benefit expenses on a cash basis. The Retiree Fund did not record \$67,742 in benefit payments (the Retiree Fund understated prescription drug benefit by \$70,672, understated dental benefits by \$4,099, understated Medicare reimbursements by \$71, overstated optical benefits by \$6,200, and overstated death benefits by \$900) because its benefit expenses were recorded on a cash basis of accounting and not an accrual basis as required by Comptroller's Directive #12. According to §3.2 of Comptroller's Directive #12: "Every Benefit Fund is required to maintain adequate books of account and related records that will enable it to prepare complete and auditable financial statements on an accrual basis of accounting in conformity with Generally Accepted Accounting Principles."

The \$67,742 understatement of benefit expense, combined with the \$18,378 overstatement discussed above, resulted in a net understatement of benefit expenses of \$49,364 (approximately 7 percent of the total reported benefit expenses). Again, it is important that the Retiree Fund accurately report its revenue and expenses so that the City can properly assess the fund's financial activities and monitor its degree of solvency.

Fund Response: “The Audit Report claims that the fund did not report benefit expenses on its financial statements and Directive #12 filing because it did not prepare the financial statements on the accrual basis of accounting, specifically the benefit payments. . . .

“[T]he fund prepares its financial statements in accordance with GAAP as required by Directive #12. As such, the financial statements were prepared on the accrual basis of accounting and include information about the benefit obligations in a separate statement. . . . Since Directive #12 requires filing in conformance with the GAAP, the fund appropriately reported benefit payments in a separate document.”

Auditor Comment: This is a content and not a presentation issue. The report takes issue with what benefit obligations were reported and not where they were reported. The Retiree Fund reported benefit obligations paid—cash basis—and not benefit obligations incurred—accrual basis—as required. Therefore, the Retiree Fund did not accurately report benefit expenses on its financial statements and Directive #12 filing.

Recommendations

The Fund should:

2. Ensure that administrative and benefit expenses are correctly classified.

Fund Response: The Fund stated that “the trustees will ensure that administrative and benefit expenses are correctly classified. Currently, the Directive #12 filing is prepared grouping health providers as administrative expenses.”

3. Maintain adequate books of account and related records that will enable it to prepare complete and auditable financial statements on an accrual basis of accounting in conformity with Generally Accepted Accounting Principles.

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

Auditor Comment: The Fund should maintain adequate books of account and related records that will enable it to prepare complete and auditable financial statements on an accrual basis of accounting in conformity with Generally Accepted Accounting Principles.

The Retiree Fund Paid for Dependents Whose Eligibility Was Not Documented

The Retiree Fund did not maintain eligibility documentation for all claims paid for members' dependents during calendar year 2005. We reviewed 548 claims totaling \$32,991, for services provided to individuals identified as members' dependents. The Retiree Fund did not maintain documentation of dependents' eligibility, such as birth and marriage certificates, for 502 (92 percent) claims, totaling \$28,232. The Retiree Fund should require members to submit documentation of dependents' eligibility to ensure that it provides benefits only to eligible individuals.

Fund Response: "After the fund received the first draft of the Audit Report, the Active [sic] Fund requested the names of those participants whose files were incomplete in order to verify the Comptroller's findings. The Comptroller's Office did not provide the requested information. Therefore, the Active [sic] Fund then took its own random sampling to determine the validity of the Comptroller's findings. A random search of one hundred retired members showed that each file was complete including necessary documentation for participant eligibility."

Auditor Comment: The Fund's assertion that we did not provide it with the names of cited members is not true. We provided the Fund's accountants with this information after our exit conference on November 17, 2008. (See Appendix.) In response, Fund officials agreed to review cited members' files, ascertain whether eligibility documentation was in fact on file, and provide us available documentation. However, the Fund did not do so.

Recommendation

The Fund should:

4. Maintain eligibility documentation for members' dependents.

Fund Response: "The trustees will maintain eligibility documentation for members' dependents. . . . In the future, trustees will continue to assess members' files to ensure completeness. If a participant or dependent is lacking the proper documentation, the fund will contact the individual to demand submission in a timely manner."

Improper Benefit Payments

The Retiree Fund did not pay for \$3,518 of \$102,971 benefit payments reviewed in accordance with Retiree Fund guidelines. Specifically, the Retiree Fund paid:

- \$1,875 for optical benefits for Active Fund members. These claims should have been paid by the Active Fund;

- \$906 for 20 prescription claims after members exceeded the annual maximum benefit;
- \$352 for 23 claims that were improperly filled through the mail order service. These claims should have been filled at a retail pharmacy and paid by members;
- \$200 for two optical claims without having an optical voucher on file;
- \$110 for one health reimbursement claim without proper supporting documentation; and,
- \$75 for one chiropractic claim without a voucher on file.

By not paying benefits in accordance with Retiree Fund guidelines, the Retiree Fund is incurring unnecessary expenses.

Fund Response: “According to the Audit Report, the Retired Fund did not pay for \$3,518.00 of \$102,971.00 in accordance with the guidelines. This amounts to approximately 3% of the benefit payments, and thus any improper payments were de minimis. Further, the \$906.00 listed as in excess of the annual maximum benefit was addressed by the Retired Fund’s accountant. Thus, the Audit Report should be corrected to reflect this fact. On November 26, 2008, the accountant provided the Comptroller with the utilization reports to address participants who went over the limit. Additionally, the accountant addressed the \$352.00 listed as claims which were improperly filed through mail order service. Namely, the accountant explained that mail order is required for prescriptions of three months or more; however, the member is not required to go to a retail pharmacy for prescriptions less than three months. Members are always permitted to obtain their prescriptions via mail order.”

Auditor Comment: Although these improper benefit expenses are not individually material, they are material when aggregated with improper benefit payments made for members’ dependents whose eligibility was not documented.

Recommendation

The Fund should:

5. Ensure that it pays benefit expenses in accordance with its guidelines.

Fund Response: “The fund will ensure that it pays benefit expenses in accordance with its guidelines.”

No Allocation Plan for Shared Administrative Expenses

The Retiree Fund does not have a written allocation plan for expenses shared by various Local 30 entities (such as the Union, and Active, Annuity, and Pension Trust Funds), except for rent. The Retiree Fund shares expenses such as rent, salaries, and utilities, which are allocated among the Local 30 entities. According to §3.8 of Comptroller's Directive #12: "Benefit Funds that share premises with related or other entities will have common Administrative Expenses such as rent, utilities, general management and other general expenses. These costs should be allocated equitably for reporting and accountability purposes. The allocation must be made systematically, applied consistently from year-to-year, and must be reviewed annually."

The Retiree Fund did not have a written allocation plan, except for rent, and could not justify the manner in which expenses were allocated. And although the Retiree Fund has a rent allocation plan, it is based on an allocation study dated May 14, 2003. There were no updates to the study or evidence that it was subsequently reviewed, as required by Directive #12. Without an updated rent allocation study and an allocation plan for other shared expenses, the Retiree Fund cannot be sure that it is paying a reasonable and appropriate amount for shared expenses.

Recommendations

The Fund should:

6. Establish and employ an allocation plan that methodically distributes the costs of shared expenses among the various Local 30 entities, as required by Comptroller's Directive #12.

Fund Response: "The fund will establish and employ an allocation plan that methodically distributes the costs of shared expenses among the various Local 30 entities, as required by Directive #12. Additionally, the fund hired the accounting firm of Schultheis & Panettieri, LLP to perform an expense allocation study, which the firm is currently undertaking."

7. Review its allocation plan and rent allocation study annually to ensure that it is paying a reasonable and appropriate amount for shared expenses.

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

Auditor Comment: We reiterate that the Fund should review its allocation plan annually to ensure that it is paying a reasonable and appropriate amount for shared expenses.

No Updated Agreements for Consultants

The Retiree Fund did not have valid agreements with its attorney and actuarial consultant. The Retiree Fund provided us with agreements for these professional service providers; however, they were dated July 1, 2001, and July 12, 1984, respectively. Given that the Retiree Fund paid

its attorney \$12,000 and its actuarial consultant \$1,500, it should have valid agreements that stipulate the services to be provided, the rate and method of compensation, and the period covered. Further, the Retiree Fund did not assess the services rendered every two years as required by Comptroller's Directive #12 and therefore could not determine whether the agreements still met its needs.

Recommendations

The Fund should:

8. Maintain valid agreements with consultants that stipulate the services to be provided, the rate and method of compensation, and the period covered.

Fund Response "The fund will maintain valid legal agreements with consultants that describe the services provided, the rate and method of compensation, and the period covered. Further, the fund administrator will review annually all agreements to ensure they are up to date and reflect the terms of the parties."

9. Assess services rendered by consultants at least once every two years, as required by Comptroller's Directive #12.

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

Auditor Comment: We reiterate that the Fund should assess consultants' performance at least once every two years, as required by Comptroller's Directive #12. As noted, performance assessments are needed to ensure that services still meet the Fund's needs.

[REDACTED]

From: [REDACTED]@snpcpa.com]
Sent: Monday, November 17, 2008 2:39 PM
To: [REDACTED]
Subject: Re: Local 30

Looks like we have what we asked for. Thank you

Sent using my wireless handheld.

-----Original Message-----
From: [REDACTED]@comptroller.nyc.gov>
To: [REDACTED]@snpcpa.com>
Sent: Mon Nov 17 14:30:35 2008
Subject: RE: Local 30

Do I need to fax it?

From: [REDACTED]@snpcpa.com]
Sent: Monday, November 17, 2008 2:15 PM
To: [REDACTED]
Subject: Re: Local 30

Got it now

Sent using my wireless handheld.

-----Original Message-----
From: [REDACTED]@comptroller.nyc.gov>
To: [REDACTED]@snpcpa.com>; [REDACTED]@snpcpa.com>
CC: [REDACTED]@comptroller.nyc.gov>
Sent: Mon Nov 17 12:55:13 2008
Subject: FW: Local 30

Hi -

Please see attached.

From: [REDACTED]
Sent: Friday, November 07, 2008 3:14 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Local 30

Please see attached. Sorry for the delay.

5/15/2009

From: [REDACTED]@snpcpa.com]
Sent: Friday, November 07, 2008 2:20 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Local 30

Hi [REDACTED]

Carol told me that you are compiling the information we requested regarding the testing errors found during your audit. Do you know when that will be available? We have the meeting scheduled for November 17 and would like a chance to review that information first.

Thanks, [REDACTED]

Thank You,

[REDACTED]
Schultheis & Panettieri, LLP
210 Marcus Boulevard
Hauppauge NY, 11788-3740
Tel: [REDACTED]
Fax: [REDACTED]
[REDACTED]@snpcpa.com
www.snpcpa.com <<http://www.snpcpa.com/>>

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SETH H. GREENBERG *

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April 22, 2009

* ALSO ADMITTED IN NEW JERSEY

John Graham
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, New York 10007

**Re: Audit Report on the Financial and Operating Practices of the
Municipal Employees Welfare Trust Fund of the International
Union of Operating Engineers Local 30 FK07-104A**

**Audit Report on the Financial and Operating Practices of the
Municipal Retired Employees Welfare Trust Fund of the
International Union of Operating Engineers Local 30 FK07-105A**

Dear Mr. Graham:

Please be informed that the law firm of Greenberg Burzichelli Greenberg P.C. represents the International Union of Operating Engineers Local 30 (hereinafter referred to as "Local 30" or "the Union") in the above-referenced matters. I write to you in response to your letter dated December 17, 2008 and updated Audit Reports. In general, Local 30's position is that the trustees acted prudently and reasonably when they merged the Active Fund with the Retired Fund. Further, the passing of time has demonstrated that their actions have been in the best interest of both active and retired members as the Fund is now fiscally sound and in position to consider enhancing benefits for all members.

The assertions in the Audit Reports which suggest that the merger benefited Active Fund members only, are incorrect and misleading. It must be pointed out that there are no legal or contractual requirements that retirees must receive the same welfare benefits or contributions as active members. Thus, any discrepancy between the benefits retirees receive and those active members receive is of no moment. Furthermore, the Audit Reports fail to point out one instance where retirees were actually harmed in any way by the merger. Retired benefits remained the same, the loan by the Retired Fund to the Active Fund was repaid with interest, a separate set of books are currently maintained

in order to assess the effects of the merger on both groups and the revenue from the City is the same for both groups per capita. Finally, the fund is fiscally sound.

The trustees further exercised due care when they sought advice and consent before merging the funds from New York City's Office of Labor Relations ("OLR") and from outside, independent legal counsel for both the Active and Retired Funds. OLR did not object to the merger. In fact, OLR has indicated publicly that the merging of all union benefit funds would be cost efficient and something it would want to discuss in collective bargaining. The trustees asked OLR to reach out to the Comptroller's Office to determine if it had any objections to Local 30's proposed merger. Matthew Campese, Assistant Director of Labor Relations, informed us that the Comptroller's Office was not going to take a position on the matter. Had the Comptroller's Office indicated to Local 30 or OLR at the time it had any reservations on the issue, Local 30 would have addressed those concerns at the time. It is patently unfair for the Comptroller's Office to now voice objections to the merger when it had every opportunity to do so prior to the merger.

Below you will find detailed responses to the recommendations made in the audits, which further bolster our position that the trustees acted in the best interests of their members.

I. Active Fund FK07-104A

A. The Comptroller's Assertion that the Active Fund Failed to Reduce Its Operating Costs is Inaccurate and is Not Supported by the Evidence

First and foremost, the trustees of the Active Fund acted prudently in the best interests of their members. Further, the trustees complied with the Comptroller's Internal Control and Accountability Directive #12 ("Directive #12") as required.

In the Audit Report the Comptroller asserted that the Active Fund failed to reduce operating costs. However, this assertion is untrue and fails to take note of the trustees' efforts to secure group pricing for prescription drug benefits and cut benefits effective September 1, 2005. In 2004, the Fund joined the International Union of Operating Engineers agreement with PCS Caremark to obtain group pricing for its prescription drug benefits. From 2004 to 2005, prescription drug costs decreased nearly \$100.00 per participant. Now, prescription drug costs for active participants are less than half of what they were in 2004. This effort by the trustees greatly reduced operating costs to the Fund.

The trustees considered acting earlier to secure group pricing but the financial penalty for breaking its drug benefit contract with a different provider was cost prohibitive. Thus, administrators of the Active Fund did work proactively towards reducing operating costs contrary to what the Audit Report indicates. Also, during this period of time the trustees were awaiting the conclusion of collective bargaining conducted by the Municipal Labor Committee and OLR regarding welfare benefit contributions. The trustees expected an increase in funding which would enable them to meet their financial obligations without reducing member benefits.

The Audit Report fails to take into account the devastating effect a reduction in drug benefits has on members and their families. The trustees endeavored to maintain benefits during the collective bargaining process so as not to disrupt the lives of their members. The trustees were actively trying to protect their members and the trust by maintaining benefits and avoiding harsh penalties. Given these circumstances, the trustees' actions were admirable.

Additionally, the Comptroller asserted that "the merger could adversely impact the Retired Fund's financial position and consequently the benefits provided to its members." However, the trustees can show that there were no negative implications for the Retired Fund and its participants. The Active Fund fully repaid the money it borrowed from the Retired Fund with interest. The Retired Fund was not harmed; benefits for retirees were not reduced, nor were any complaints lodged by the members against the trustees for their decision to merge the funds. The merged fund is solvent and has rebounded after the cost-cutting measures were implemented.

B. The Trustees of the Active Fund Did Not Misrepresent Their Financial Condition to the Members, but Rather Made Every Effort to Comply with GAAP, Directive #12, and Fully Inform the Membership of the Impending Merger

The Audit Report cites the fact that the Summary Annual Report (“SAR”) to participants does not include the benefit obligations of \$321,500. A SAR is usually prepared based on Form 5500 (which the Fund is not required to file). Because the 5500 reports benefit payments on the accrual basis, the SAR typically reports them the same way. The Fund’s SAR was prepared based on the GAAP financial statements and did not reflect the benefit liabilities of the fund. This was simply an oversight. The trustees of the Fund endeavored to correct this and in 2007 the SAR was prepared using accrual basis benefits and mirrors the 5500 presentation rather than the GAAP financial statement. Thus, this alleged problem is no longer at issue.

The General Guidelines and Requirements of Directive #12 provide “Benefit Funds [must] maintain accurate records and books of account in conformance with generally accepted accounting principles” (see Paragraph 3.1 “Supplementary Benefit Agreements”). Thus, the fund’s SAR was prepared based upon generally accepted accounting principles (“GAAP”) as required. The SAR did not however reflect benefit liabilities of the fund. The omission of the benefit liabilities figure from the SAR was an oversight which was inadvertent and unintentional. The trustees in conjunction with their accountants made every effort to comply with the GAAP as required by Directive #12.

The Audit Reports take issue with the trustees’ failure to indicate the possibility of the merger in the annual report. While this may be true, it is well established that all Local 30 members were regularly apprised of the possibility of a merger. Prior to the merger, the trustees informed the membership of Local 30 of the potential merger at regularly scheduled membership meetings. Additionally, the financial conditions of the funds were regularly reported to the members at membership meetings. Not one member objected to the merger of the funds either before or since the merger occurred, indicating the overwhelming support the merger enjoys from both active and retired members.

C. The Active Fund Properly Reported Administrative and Benefit Expenses on Its Financial Statements and Directive #12 Filing

The Audit Report states that the Active Fund did not accurately report administrative expenses on its financial statements or Directive #12 filing because it included Healthplex administrative fees of \$25,922.00 and Aetna retention charges of \$6,464.00 with benefit payments rather than administrative expenses.

The language in Directive #12 regarding “Benefit Expense” and “Administrative Expense” is not clear on its face. As such, the accountants for the fund included provider fees as part of the fund’s “Benefit Expense,” rather than as part of the fund’s “Administrative Expense.” Directive #12, Paragraph 2.3 defines “Benefit Expense” as follows:

2.3 Benefit Expense

Benefit expenses, as used herein, are the direct costs of providing benefits. These costs include:

Claims paid by the fund for self-insured benefits.

Insurance premium payments less any retention charges.

The cost of providing medical services.

Salaries or other payments to:

- Attorneys who provide direct legal services to members.
- Instructors who conduct in-house training for members.
- Physicians who examine members for workers' disability purposes.
- Other professionals and consultants who provide services directly to members.

Directive #12, Paragraph 2.4 defines "Administrative Expense" as follows:

2.4 Administrative Expense

Administrative Expenses are all those costs that are not Benefit Expenses, including, but not limited to:

Salaries and allowances for the funds' administrative support staff.

Rents and other occupancy costs.

Insurance policies for offices, equipment and other general business purposes.

Fees paid to third party or fund administrators for administrative purposes.

Miscellaneous fees and commissions.

Insurance company retention charges.

Currently, the fund includes provider fees as part of its administrative expenses as indicated in Directive #12. However, previously, the fund's accountants included provider fees as part of Benefit Expense. Given the ambiguous language of both Paragraphs 2.3 and 2.4 it is easy to understand the confusion as to whether to include provider fees as Administrative or Benefit Expenses. As such, subsequent to the 2005 Directive #12 filing, the fund's accountants became aware that the Comptroller's Office requires it to be included in administrative expenses on the Directive #12 filing and has corrected this issue.

The Audit Report also states that the fund should be reporting implied administrative expenses included in benefit claims even though third party administrators maintain that fees are only charged for benefits. The assumption in the Audit that hidden fees exist is unfounded and unsupported by any evidence. The trustees of both funds assert that it is inappropriate to use anything but actual figures in its financial statement reporting.

The Audit Report claims that the fund did not report benefit expenses on its financial statements and Directive #12 filing because it did not prepare the financial

statements on the accrual basis of accounting, specifically the benefit payments. Paragraph 3.2 of Directive #12 provides:

Every Benefit Fund which receives New York City Contributions is required to maintain adequate books of account and related records that will enable it to prepare complete and auditable financial statements on an accrual basis of accounting in conformity with Generally Accepted Accounting Principles.

Thus, the fund prepares its financial statements in accordance with GAAP as required by Directive #12. As such, the financial statements were prepared on the accrual basis of accounting and include information about the benefit obligations in a separate statement. The fund's financial statement presentation mirrors the recommended presentation for financial statements prepared in accordance with GAAP. Since Directive #12 requires filing in conformance with the GAAP, the fund appropriately reported benefit payments in a separate document. Furthermore, the fund, accurately maintained books which enabled its financial statements to be audited.

D. The Active Fund's Payment for Legal Fees was Proper

In the Audit Report the Comptroller criticized the fund for failing to provide invoices and utilization reports for legal services rendered. The unavailability of utilization reports has no impact on what the fund paid in 2005. The fund made payments for legal services based upon a per participant rate of \$4.17 per month. The amount was calculated by the fund based upon eligible participants each month. Thus, based on this arrangement, all payments were for the proper amount and only for eligible participants.

E. The Active Fund Maintains Proper Documentation Regarding Participant Eligibility

After the fund received the first draft of the Audit Report, the Active Fund requested the names of those participants whose files were incomplete in order to verify the Comptroller's findings. The Comptroller's Office did not provide the requested information. Therefore, the Active Fund then took its own random sampling to determine the validity of the Comptroller's findings. A random search of one hundred active members showed that each file was complete including necessary documentation for participant eligibility. Attached hereto as Exhibit No. 1 is a list of the random one hundred active members the trustees searched to assess their eligibility documentation. In the future, trustees will continue to assess members' files to ensure completeness. If a participant or dependent is lacking the proper documentation, the fund will contact the individual to demand submission in a timely manner.

F. Improper Administrative Payments Were De Minimis

The Audit Report indicated that the Active Fund failed to provide documentation including original bills and invoices for \$3,099.00 out of \$109,878.00, (approximately 3%) in administrative expenses reported in its 2005 Directive #12 filing. However, the fund made every effort to provide the requested documentation and now estimates that less than \$1,000.00 (approximately 1%) worth of documentation has yet to be provided.

G. Alleged Improper Benefit Payments were De Minimis

According to the Audit Report, the Active Fund did not pay for \$1,725.00 of \$135,563.00 in accordance with the guidelines. This amounts to approximately 1% of the benefit payments, and thus any improper payments were de minimis. Further, the \$297.00 listed as in excess of the annual maximum benefit was addressed by the Active Fund's accountant. On November 26, 2008, the accountant provided the Comptroller with the utilization reports to address participants who went over the limit.

II. Retired Fund FK07-105A

A. The Merger of the Active and Retired Fund Was in the Best Interest of the Membership

The Retired Fund trustees acted prudently and in the best interest of their members. As explained above, the merger of the Active Fund and the Retired Fund was not detrimental to retirees, and all borrowed funds were returned to the Retired Fund with interest.

The Audit's claim that the merger was not in the best interest of retirees because their reserves were used to pay off Active Fund liabilities is incorrect. On March 28, 2006, the Retired Fund advanced the Active Fund \$313,540.00 and this was repaid on a schedule of 1.10%, which was the CD rate in effect at the time of the advance. Further, the Active Fund completed repayments totaling \$319,656.00 in September 2008. The two funds are now one entity, but the merged fund still maintains its records separately.

The Audit Report indicated that active participants and retired participants do not have identical benefits. This discrepancy in benefits is warranted based on the different needs of these participants and in no way harms the Retired Fund members. Retiree usage and cost per member are higher. For example, a recent analysis of health claims per active and per retired participant indicated that retired participants claim nearly \$100.00 more than active participants. Since the merger, Retired Fund members are afforded a wide-array of benefits that are suitable to their needs and which vary from the Active Fund members. In fact, the trustees formally survey participants to determine the types of benefits they are interested in being provided.

Furthermore, outside counsel was retained for both the Active and Retired Funds to evaluate the soundness of the merger. Outside counsel approved of the merger and determined that it was in the best interest of the Retired Fund membership. Not only was outside counsel retained, but also the Active and Retired Fund trustees proceeded to seek approval from OLR. Thereafter, OLR stated in writing that it did not object to the merger. Due diligence was performed and the best interests of the participants of both funds were considered.

B. Failure to Include Benefit Liabilities in the Summary Annual Report Was an Oversight

The General Guidelines and Requirements of Directive #12 provide "Benefit Funds [must] maintain accurate records and books of account in conformance with generally accepted accounting principles." Thus, the fund's Summary Annual Report ("SAR") was prepared based upon GAAP as required. The SAR did not however reflect the benefit liabilities of the fund. The omission of the benefit liabilities figure from the SAR was an oversight which was inadvertent and unintentional. The trustees, in

conjunction with their accountants, made every effort to comply with the GAAP as required by Directive #12.

The fund classified provider fees as benefit expenses; however, subsequently the fund's accountants became aware that the Comptroller requires, pursuant to Directive #12, that provider fees be included as an administrative expense. Currently, the fund's financial statements are prepared in compliance with Directive #12. Additionally, the assumption in the Audit that hidden fees exist is unfounded and unsupported by any evidence. The fund asserts that it is inappropriate to use anything but actual figures in its financial statement reporting.

The fund prepares its financial statements in accordance with GAAP as required by Directive #12 (see Paragraph 3.2, "Accounting Standards"). As such, the financial statements were prepared on the accrual basis of accounting and include information about the benefit obligations in a separate statement or presented in the notes to the financial statements. The fund's financial statement presentation mirrors the recommended presentation for financial statements prepared in accordance with GAAP. Since Directive #12 requires filing in conformance with the GAAP, the fund appropriately reported benefit payments.

C. The Retired Fund Properly Reported Administrative and Benefit Expenses on Its Financial Statements and Directive #12 Filing

The language in Directive #12 regarding "Benefit Expense" and "Administrative Expense" is not clear on its face. As such, the accountants for the fund included provider fees as part of the fund's "Benefit Expense," rather than as part of the fund's "Administrative Expense." Directive #12, Paragraph 2.3 defines "Benefit Expense" as follows:

2.3 Benefit Expense

Benefit expenses, as used herein, are the direct costs of providing benefits. These costs include:

Claims paid by the fund for self-insured benefits.

Insurance premium payments less any retention charges.

The cost of providing medical services.

Salaries or other payments to:

- Attorneys who provide direct legal services to members.
- Instructors who conduct in-house training for members.
- Physicians who examine members for workers' disability purposes.
- Other professionals and consultants who provide services directly to members.

Directive #12, Paragraph 2.4 defines "Administrative Expense" as follows:

2.4 Administrative Expense

Administrative Expenses are all those costs that are not Benefit Expenses, including, but not limited to:

- Salaries and allowances for the funds' administrative support staff.
- Rents and other occupancy costs.
- Insurance policies for offices, equipment and other general business purposes.
- Fees paid to third party or fund administrators for administrative purposes.
- Miscellaneous fees and commissions.
- Insurance company retention charges.

Currently, the fund includes provider fees as part of its administrative expenses as indicated in Directive #12. However, previously, the fund's accountants included provider fees as part of Benefit Expense. Given the ambiguous language of both Paragraphs 2.3 and 2.4 it is easy to understand the confusion as to whether to include provider fees as Administrative or Benefit Expenses. As such, subsequent to the 2005 Directive #12 filing, the fund's accountants became aware that the Comptroller's Office requires it to be included in administrative expenses on the Directive #12 filing.

The Audit Report also states that the fund should be reporting implied administrative expenses included in benefit claims even though third party administrators maintain that fees are only charged for benefits. The assumption in the Audit that hidden fees exist is unfounded and unsupported by any evidence. The trustees of both funds assert that it is inappropriate to use anything but actual figures in its financial statement reporting.

The Audit Report claims that the fund did not report benefit expenses on its financial statements and Directive #12 filing because it did not prepare the financial statements on the accrual basis of accounting, specifically the benefit payments. Paragraph 3.2 of Directive #12 provides:

Every Benefit Fund which receives New York City Contributions is required to maintain adequate books of account and related records that will enable it to prepare complete and auditable financial statements on an accrual basis of accounting in conformity with Generally Accepted Accounting Principles.

Thus, the fund prepares its financial statements in accordance with GAAP as required by Directive #12. As such, the financial statements were prepared on the accrual basis of accounting and include information about the benefit obligations in a separate statement. The fund's financial statement presentation mirrors the recommended presentation for financial statements prepared in accordance with GAAP. Since Directive #12 requires filing in conformance with the GAAP, the fund appropriately reported benefit payments in a separate document. Furthermore, the fund, accurately maintained books which enabled its financial statements to be audited.

*D. The Retired Fund Maintains Proper Documentation
Regarding Participant Eligibility*

After the fund received the first draft of the Audit Report, the Active Fund requested the names of those participants whose files were incomplete in order to verify the Comptroller's findings. The Comptroller's Office did not provide the requested information. Therefore, the Active Fund then took its own random sampling to determine the validity of the Comptroller's findings. A random search of one hundred retired members showed that each file was complete including necessary documentation for participant eligibility. Attached hereto as Exhibit No. 1 is a list of the random one hundred retired members the trustees searched to assess their eligibility documentation. In the future, trustees will continue to assess members' files to ensure completeness. If a participant or dependent is lacking the proper documentation, the fund will contact the individual to demand submission in a timely manner.

E. Alleged Improper Benefit Payments were De Minimis

According to the Audit Report, the Retired Fund did not pay for \$3,518.00 of \$102,971.00 in accordance with the guidelines. This amounts to approximately 3% of the benefit payments, and thus any improper payments were de minimis. Further, the \$906.00 listed as in excess of the annual maximum benefit was addressed by the Retired Fund's accountant. Thus, the Audit Report should be corrected to reflect this fact. On November 26, 2008, the accountant provided the Comptroller with the utilization reports to address participants who went over the limit. Additionally, the accountant addressed the \$352.00 listed as claims which were improperly filed through mail order service. Namely, the accountant explained that mail order is required for prescriptions of three months or more; however, the member is not required to go to a retail pharmacy for prescriptions less than three months. Members are always permitted to obtain their prescriptions via mail order.

III. Agency Implementation Plan

Because the Active and Retired Funds have been merged into the Active Fund, we will address the implementation plan of the merged Fund to comply with the Comptroller's recommendations.

At the time of the merger, a budget was prepared detailing monthly expenses and income in order to ensure that the fund's expenses do not exceed revenue. The fund has operated with a surplus for 2006 and 2007. The trustees will continue to implement monthly budgetary process and review in order to monitor the fiscal health of the fund.

The fund will assess benefit cost and utilization annually. The fund currently has the necessary information available to undertake this analysis.

The trustees will make every effort to advise their membership of the fund's true financial condition and to include other substantial issues related to the fund in the annual report. Further, the accountants will continue to prepare the SAR using accrual basis benefit expenses.

Additionally, the trustees will ensure that administrative and benefit expenses are correctly classified. Currently, the Directive #12 filing is prepared grouping health providers as administrative expenses.

Furthermore, the trustees will ensure that they maintain complete and accurate records of benefits provided, including but not limited to invoices and utilization reports. The trustees have required utilization reports to be submitted to them on an annual basis by the law firm handling the group legal benefit. The utilization reports of other benefits are being collected and analyzed on an annual basis.

The trustees will maintain eligibility documentation for members' dependents. To date, the trustees performed a random search of both active and retired members to ascertain whether their files were complete. A random search of one hundred active members and one hundred retired members showed that each file was complete. Attached hereto as Exhibit No. 1 is a list of the random one hundred active member and one hundred retired members the trustees searched to assess their eligibility documentation. In the future, trustees will continue to assess members' files to ensure completeness. If a participant or dependent is lacking the proper documentation, the fund will contact the individual to demand submission in a timely manner.

The fund will maintain documentation such as original bills and invoices, for all administrative expenses in accordance with its guidelines.

The fund will ensure that it pays benefit expenses in accordance with its guidelines.

The fund will establish and employ an allocation plan that methodically distributes the costs of shared expenses among the various Local 30 entities, as required by Directive #12. Additionally, the fund hired the accounting firm of Schultheis & Panettieri, LLP to perform an expense allocation study, which the firm is currently undertaking.

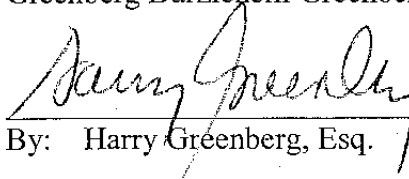
The fund will maintain valid legal agreements with consultants that describe the services provided, the rate and method of compensation, and the period covered. Further, the fund administrator will review annually all agreements to ensure they are up to date and reflect the terms of the parties.

III. Conclusion

For all of the foregoing reasons, we respectfully request that the Audit Reports for both the Active and Retired Funds be adjusted to reflect the additional information and facts provided in this response. The trustees acted in the best interest of the membership and obtained advice from outside legal counsel and the Office of Labor Relations. To date, the Active Fund returned all monies it borrowed from the Retired Fund including interest.

Very truly yours,

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