



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL

June 12, 2013

Honorable Thomas P. DiNapoli, Comptroller  
Office of the State Comptroller  
110 State Street  
Albany, NY 12236

Re: Audit Report 2011-S-25

Dear Mr. DiNapoli:

Pursuant to Executive Law §170, on behalf of the Office of the Attorney General (OAG), I report actions that have been taken, or will be, by the OAG to implement the recommendations set forth in the above-referenced Audit Report of the Civil Recoveries Bureau (the "Bureau"). Where a recommendation was not implemented, I have identified the reasons why. The Report makes the following two recommendations:

1. Prepare a formal analysis identifying the optimal staffing to maximize revenue collections while minimizing delays in the collection process. Utilize the analysis, as appropriate, to support budget requests that are cost justified.
2. Assess other potential practices to improve operations such as the use of contractors and temporary employees to augment available resources and the use of other databases such as the New York State and New York City payrolls to locate debtors.

The OAG has already taken actions that respond to issues identified in the course of the lengthy audit review; the audit notification occurred in June 2011 and the Report was issued in March 2013. The timeliness of case assignments improved during the course of the audit following additional staff training and increased management oversight. In addition, the OAG filled the Bureau's vacant Deputy Bureau Chief position in October 2012, thereby facilitating,

among other things, renewed focus on hospital collections, an area extensively reviewed by the audit. Further actions are described below.

### **Response to Recommendation 1**

The Report recognized that the Bureau has continuously undertaken steps to assess staffing needs despite the recent budget constraints applicable to all state agencies. However, the Report recommends a more formal analytical process. As part of its own management imperatives and so as to fully address the audit recommendations, the OAG is currently undertaking a comprehensive review of how the Bureau provides legal services to all of its clients. The top-to-bottom analysis of the Bureau's litigation role in debt collection is intended to respond to the changing nature of debts owed to state agencies, and to take into account technology advances, including the Bureau's newly implemented technology-based operational system and the recent roll-out of the Statewide Financial System. The Bureau's review process predates the audit and encompasses, as shared with the auditors, prior discussions with the Division of the Budget (DOB) concerning revisions to DOB's Guideline for the Management of Accounts Receivable, known as "Section K." The Bureau has proposed increasing the monetary threshold for debts referred to the OAG in order to reduce the volume of small dollar referrals and optimize the State's ability to recover the large dollar debts. As part of this work effort, the Bureau anticipates assisting DOB in improving agency debt collection practices. The OAG resumed discussions with DOB in April of 2013 in light of the impact of any Section K modifications on the Bureau's work and long-term planning for staffing.

In addition, we met with staff from your office in April of 2013 to discuss ways to improve the process for waiver and compromise of debt at medical facilities, particularly in light of the substantial changes in medical debt collection in the past forty years. Further, the OAG is also reviewing business processes and roles and responsibilities with one of its primary client agencies. The outcome of these discussions may serve as a model for the way the OAG provides

legal services to other clients with similar needs.

The OAG, in consultation with the DOB, your office, and its client agencies is aiming to leverage its limited resources to improve the State's overall position on debt collection. Assessing OAG staffing needs will necessarily be part of the multi-agency review. Depending on the outcome of these discussions, the State may focus on debt recovery efforts taken by state agencies prior to referrals to the OAG for litigation. If the agencies were to be more successful in their efforts, fewer referrals would be made to the OAG. Accordingly, revenue generated by the OAG may decline, though revenue generated on behalf of the State may increase. Once we collectively refine the State's model for debt collection, the OAG can then make appropriate staffing recommendations for the Bureau.

### **Response to Recommendation 2**

With respect to the second recommendation, the OAG views the use of contractors and temporary employees as a short term solution to staffing issues. Due to the complex nature of the legal work performed by the Bureau, it is difficult to recruit and train temporary employees to handle such work. Yet, the OAG is considering the use of temporary employees to: (1) handle a backlog of administrative tasks identified in one hospital unit and (2) undertake other discrete projects in order to enable the Bureau's legal and collection staff to handle more substantive work. However, the use of contractors and temporary employees has been curtailed statewide in recent years due to budget constraints and public policy considerations.

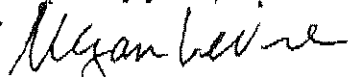
As specifically identified in the second recommendation, the OAG is considering the use of other databases, such as the payroll records of the State and City of New York, to locate debtors if the Bureau can successfully avoid jeopardizing personal privacy rights. We have had a preliminary discussion with your office, but have not yet engaged in formal discussions with those who are responsible for these databases, and have not determined what steps must be taken to avail ourselves of the technology necessary to implement these searches.

We are also pursuing relying on the Accounts Receivable Module of the Statewide Financial System to identify payments being made by the State to judgment debtors other than those already recovered through the Statewide Offset Program (SWOP). These efforts would buttress the State's current actions designed to prevent the distribution of funds to those who owe the State for an outstanding debt.

Relying on databases to locate debtors other than those discussed above implicates significant public policy issues. The tools available to locate debtors include a wide variety of on-line resources which can often include information that was obtained in a manner that may compromise the privacy rights of New Yorkers. For instance, consistent with long term practice, the Bureau does not attempt to locate a debtor's social security number prior to the entry of judgment, unless one was provided by the debtor or the state agency. Although these identifiers may be easily located on the Internet, they may have been made public in violation of state and federal privacy laws and regulations. The OAG will continue to revisit its practices in exercising its responsibilities to ensure that the State is being as aggressive as the law permits.

We look forward to continuing our work with your office, the Division of Budget and our clients to maximize the State's recovery efforts.

Sincerely yours,



Megan Levine  
Deputy Attorney General

cc:

Honorable Andrew M. Cuomo  
Honorable Dean Skelos  
Honorable Jeffrey Klein  
Honorable Andrea Stewart-Cousins  
Honorable Sheldon Silver  
Honorable Joseph Morelle  
Honorable Brian Kolb  
Honorable Jonathon A. DeFrancisco  
Honorable Liz Krueger  
Honorable Herman Farrell, Jr.  
Honorable Robert Oaks