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**Thomas P. DiNapoli  
COMPTROLLER**



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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**NEW YORK STATE  
HOUSING FINANCE  
AGENCY AND STATE OF  
NEW YORK MORTGAGE  
AGENCY**

**ACCURACY OF EMPLOYEE  
RETIREMENT REPORTING**

**Report 2008-S-56**

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## AUDIT OBJECTIVE

The objective of our audit was to determine whether the New York State Housing Finance Agency (HFA) and its affiliated agency, the State of New York Mortgage Agency (SONYMA), are complying with the requirements of the Employees' Retirement System (ERS) when they enroll individuals in the ERS and report information about their earnings and days worked.

## AUDIT RESULTS - SUMMARY

The State Comptroller's Division of Retirement Services carries out the ERS' day-to-day operations, which include enrolling new participants in the ERS and providing employers with guidance that will help them make sound decisions. Both New York State Law and the ERS have established requirements for employers regarding enrolling and reporting employees, as well as elected and appointed officials, to the ERS.

HFA and SONYMA must enroll all full-time, permanent employees in the ERS; and notify all part-time, temporary, and provisional employees in writing of their right to membership in the ERS and enroll them if they elect to participate. We found that HFA and SONYMA are, for the most part, enrolling full-time, permanent employees properly in the ERS. However, they were not notifying student interns of their eligibility to participate in the ERS, as required.

The ERS has rules for determining how earnings and days worked should be calculated and reported. We found that HFA and SONYMA are, for the most part, accurately reporting employee earnings and days worked to the ERS. However, to comply with ERS requirements, they need to improve their reporting of days worked for newly-hired employees. We noted in some

instances that newly-hired employees were reported to the ERS for fewer days than they actually worked during their first pay period.

The ERS also requires that only employees, and not independent contractors, be enrolled in ERS. We found that the HFA and SONYMA are enrolling only employees in the ERS.

Our report contains three recommendations to correct the problems we identified during our audit. HFA and SONYMA officials agreed with our recommendations and are taking steps to implement them.

This report, dated September 11, 2008, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

## BACKGROUND

The New York State and Local Retirement System (NYSLRS) comprises two different retirement systems: the Police and Fire Retirement System and the Employees' Retirement System (ERS). The ERS provides service and disability retirement benefits, as well as death benefits, to employees of participating public employers in non-teaching positions, exclusive of New York City. As of March 31, 2007, the NYSLRS held cash and investments with a value of more than \$154.5 billion. More than 3,000 participating employers had enrolled about 1 million individuals in the NYSLRS, of whom about 627,000 were enrolled in the ERS.

To qualify for membership in the NYSLRS, an individual must be a paid employee of a

participating employer. The employers are required to enroll all permanent full-time employees in the ERS, and offer participation, in writing, to part-time, temporary, and provisional employees. Participating employers are responsible for complying with the enrollment and reporting requirements contained in the New York Codes, Rules and Regulations and the ERS Employer's Guide.

HFA, a public-benefit corporation, was formed to create and preserve high-quality affordable multifamily rental housing that serves communities across New York State. It offers financing to developers to encourage the construction and preservation of affordable housing. As of November 2007, HFA had 85 employees, all of whom were participating in the ERS.

SONYMA, an affiliate of HFA, was created to alleviate shortages of funds available in the private banking system for residential mortgages within New York State. Its programs are geared to first-time home buyers of owner-occupied, one-to-four unit residences that meet eligibility criteria established by SONYMA and by applicable Federal law. As of November 2007, SONYMA had 115 employees, all of whom were participating in the ERS.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

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### *Enrollment of Eligible Employees*

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HFA and SONYMA are participating employers in the ERS. According to the ERS Employer's Guide, a participating employer must enroll all full-time, permanent employees in the ERS. The ERS refers to this group as mandatory employees. Other employees, such as part-time, temporary, or provisional employees, must be given the option to enroll, although they cannot be

required to do so. The ERS refers to this second group as optional employees.

HFA and SONYMA are required by Section 45 of the New York State Retirement and Social Security Law to notify all optional employees in writing of their right to membership in the ERS, and to obtain a signed acknowledgment from the employees that they were so notified. Additionally, HFA and SONYMA must retain these signed acknowledgments.

The ERS Employer's Guide also requires that participating employers report earnings and days worked information only for eligible employees. Such information should not be reported for non-employees, such as independent contractors and consultants, because they are not eligible to join the ERS.

Each month, HFA and SONYMA are required to report the earnings and days worked to the ERS for each enrolled employee. The ERS provided us with reports for the months of September, October, and November 2007. We compared the names on the ERS reports with the payroll registers provided to us by HFA and SONYMA for the same months. The employees who appeared on the ERS reports were also listed on the payroll registers and appeared to be valid employees. However, we found that participants in HFA's Minority Internship Program were not listed on either the ERS reports or the payroll registers.

The HFA Minority Internship Program is a 12-month program for full-time college students. The interns spend half of the year working at HFA and the other half working at an investment banking firm. HFA issues the interns manual paychecks. We found HFA effectively treats these interns as employees by offering them participation in the New York State Health Insurance Plan and by

withholding employment taxes from their paychecks. However, HFA does not give its interns the option to enroll in the ERS.

These interns should be classified as optional employees for the purpose of determining eligibility to participate in the ERS. As of November 2007, HFA had four such interns on the payroll, none of whom were offered the opportunity to enroll in the ERS. Failure to offer ERS enrollment to covered employees could result in future claims for reinstatement of related prior service credit.

ERS also provided us with a list of HFA and SOMYMA employees who were also reported as working for another ERS-participating employer during our scope period. Although most individuals who are reported by more than one employer have either changed jobs during the period or worked part-time at a second job, reporting by multiple employers could indicate that a reported employee may actually be a consultant. Our analysis of this information, however, did not disclose any irregularities. Therefore, we concluded that HFA and SONYMA are enrolling only valid employees in the ERS, not independent contractors, consultants or other ineligible individuals.

#### **Recommendation**

1. Notify interns of their right to membership in the ERS, and obtain a signed acknowledgment from them that they were so notified. Retain these signed acknowledgments.

(HFA and SONYMA officials agreed with our recommendation and stated they will implement it.)

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#### *Accuracy of Reported Earnings and Days Worked*

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The ERS rules require participating employers to establish a standard workday for each employee title. A standard workday can be as many as eight hours, but no fewer than six hours. We found HFA and SONYMA have established a standard workday of 7.5 hours for all employees. The ERS also has rules for determining how earnings and days worked should be calculated and reported. Generally, the employer should calculate days worked by dividing total hours worked for the month by the number of hours in the standard workday for that position. Days worked includes paid sick leave, vacation leave, holidays, and certain other types of leave. Earnings include gross amounts paid during the reporting period, less amounts such as payments for unused sick leave.

To test HFA and SONYMA reporting to ERS of employee earnings and days worked, we selected a random sample of 20 HFA and 20 SONYMA employees. For each of the 40 employees in our sample, we compared the days worked and gross earnings reported to the ERS for the months of September, October, and November of 2007 with the corresponding HFA and SONYMA payroll registers. We calculated the days worked by adding up the hours worked according to the payroll registers and dividing by the standard workday of 7.5 hours. We calculated the gross earnings by adding up the earnings according to the payroll registers and deducting any amounts not allowed by the ERS. We found HFA and SONYMA accurately reported employee earnings and days worked to the ERS for all 40 employees.

ERS rules also require employers to report earnings and days worked for full-time, permanent employees from the date of their

appointment to their position. For employees with optional membership, earnings and days worked should generally be reported from the ERS registration date forward. The rules further require employers to correct any reporting errors of either time worked or earnings by filing an adjustment with ERS.

HFA and SONYMA do not require new hires to begin on the first day of a pay period. As a result, some new hires work less than their entire first pay period. If payroll processing has already begun, new hires will not receive a paycheck until the end of their second pay period. The employee's second paycheck includes the earnings for both pay periods, but the payroll records do not capture the number of days worked in the first period. As a result, HFA and SONYMA may not be reporting all of a new hire's days to the ERS.

We reviewed a judgmental sample of six employees - five new hires and one transfer from SONYMA to HFA - who were added to the payroll between September and November of 2007. Of these six, two were reported to the ERS for three fewer days than they actually worked; while the other four were reported to the ERS for the correct number of days. For all six, HFA and SONYMA reported the correct earnings to the ERS.

We found this error occurred because the HFA and SONYMA internal payroll system has been programmed to treat any regular earnings that are paid in a subsequent pay period as a retroactive payment, without reporting the related days worked. As a result, retirement credit might not be reported for any employee whose initial pay period begins after the cutoff date for a standard pay period. At the time of our fieldwork, HFA and SONYMA had not filed adjustments with the ERS to correct these errors.

Lastly, the ERS has rules for determining how the days worked by appointed officials should be calculated and reported. We found that none of HFA's and SONYMA's appointed officials are compensated or enrolled in the ERS.

### **Recommendations**

2. Report to the ERS the days new, full-time permanent employees worked during their initial pay periods, from the date of their appointment in the position.
3. Determine the time that was under-reported for the identified employees and work with the ERS to ensure such information is reported accurately and retroactively, if necessary.

(HFA and SONYMA officials agreed with these two recommendations and indicated that appropriate adjustments have been made to the ERS records.)

### **AUDIT SCOPE AND METHODOLOGY**

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited HFA's and SONYMA's enrollment of individuals in the ERS and their reporting of retirement information to the ERS. Our audit covers the period April 1, 2005, through January 18, 2008.

To accomplish our audit objectives, we reviewed State laws and regulations addressing employer participation in the ERS, focusing on the requirements for employee enrollment and reporting of earnings and days worked. We also reviewed HFA's and SONYMA's guidelines in these areas. We interviewed HFA and SONYMA officials and staff to identify the policies and procedures in place for enrolling employees in the ERS and

reporting information about their earnings and days worked to the ERS.

We obtained HFA and SONYMA payroll registers for the months of September, October, and November of 2007. We also identified Board members and other appointed officials working for either agency during our scope. To determine whether the individuals who were not enrolled in the ERS had been notified appropriately of their eligibility for enrollment, we reviewed personnel files for selected employees. We also reviewed personnel files for individuals in certain high-risk employee titles to determine whether any consultants or independent contractors were reported erroneously as employees.

To determine whether earnings and days worked information was reported accurately to the ERS, we compared the information on file at the ERS with the payroll registers for selected HFA and SONYMA employees. We also reviewed HFA and SONYMA payroll registers for September, October, and November 2007 to determine whether the employees reported to ERS for those months were, in fact, on the payroll. In addition, the ERS provided us with a list of HFA and SONYMA employees who were also reported to the ERS by another participating employer.

During the course of our audit, we selected various samples of employees for review. We used a combination of judgmental and random samples. The judgmental samples were selected on the basis of potential risk.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State

contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

### **AUTHORITY**

This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5, of the State Constitution and Section 2803 of the Public Authorities Law.

### **REPORTING REQUIREMENTS**

A draft copy of this report was provided to HFA and SONYMA officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the President of the Housing Finance Agency and the State of New York Mortgage Agency shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

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## **CONTRIBUTORS TO THE REPORT**

Major contributors to this report include Frank Houston, John Buyce, Greg Petschke, Sharon Salembier, Jennifer Paperman, Adele

Banks, Ray Barnes, W Sage Hopmeier, Richard Podagrosi, Slamon Sarwari, Andre Spar, and Dana Newhouse.

## APPENDIX A - AUDITEE RESPONSE



State of New York Mortgage Agency  
New York State Housing Finance Agency  
New York State Affordable Housing Corporation

July 25, 2008

Mr. Frank J. Houston  
Office of the State Comptroller  
Division of State Government Accountability  
123 William Street - 21<sup>st</sup> Floor  
New York, New York 10038

Dear Sir:

The following is the Agencies' response to the findings in draft report (2008-S-56) entitled "Accuracy Of Employee Retirement Reporting". We have reviewed the contents of the report and have implemented the recommendations and corrected items identified in the report.

Recommendation 1:

Notify interns of their right to membership in the ERS, and obtain a signed acknowledgment from them that they were so notified. Retain these signed acknowledgments.

Agency Response:

Management agrees with the recommendation. Staff has developed and implemented an ERS notification form that is part of the orientation package presented to the intern upon reporting to the Agencies. The intern will be given the option to enroll in ERS or decline, in either case the form will be retained in their personnel file.

Recommendation 2:

Report to the ERS the days new, full-time permanent employees worked during their initial pay periods, from the date of their appointment in the position.

Recommendation 3:

Determine the time that was under reported for the identified employees and work with the ERS to ensure such information is reported accurately and retroactively, if necessary.

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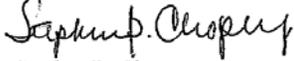
Mr. Frank J. Houston  
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Agency Response to Recommendations 2 & 3:

Management agrees with the recommendations. Staff has reviewed the personnel files of the individuals identified in the examination to determine their date of employment and made the appropriate adjustments to their ERS records. Going forward, the payroll administrator will report the initial days worked prior to the first full pay period as required by ERS.

We would like to thank the staff of OSC for the professional manner in which they conducted their examination.

Sincerely,



Stephen B. Chohey  
Vice President  
Internal Audit Group