

Albany County

Ethics Oversight

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OFFICE OF THE NEW YORK STATE COMPTROLLER
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Report Highlights

Albany County

Audit Objective

Determine whether Albany County (County) officials used resources to implement certain ethics oversight standards.

Key Findings

County officials did not implement certain ethics oversight standards.

The Ethics Commission (Ethics Board) did not:

- Develop ethics educational and training materials for officers and employees.
- Adequately administer the County’s disclosure system that is intended to foster transparency and help identify conflicts of interest.
 - 25 Legislator, 404 officer and employee, and 159 other required filer annual statements of financial disclosure (disclosure statements) were not filed, filed late and/or had questions left blank.
- Review the lists of required filers for completeness and disclosure statements for potential conflicts of interest or completeness or submit an annual report to the County Executive and the Legislature summarizing its activities.

Key Recommendations

- Ensure that all required annual financial disclosure filers are identified and that they file complete and timely disclosure statements that are carefully reviewed for potential conflicts of interest.
- Develop ethics educational and training materials for officers and employees and prepare and submit an annual report summarizing its activities.

County officials disagreed with certain aspects of our findings and recommendations, but indicated they planned to implement some of our recommendations. Appendix C includes our comments on issues raised in the County’s response letter.

Background

The County is located in the Capital District region of New York. The County is governed by the County Legislature (Legislature) composed of 39 elected Legislators, one of whom serves as the Chair.

The County Executive is the County’s chief executive officer (CEO) and is responsible, along with other administrative staff, for day-to-day management in accordance with applicable County Charter provisions and local laws enacted or amended by the Legislature.

The Legislature established an Ethics Board responsible for providing ethics oversight. An Assistant County Attorney provides legal counsel to the Ethics Board under the Legislature’s direction.

Quick Facts

Population 304,204

Officers and Employees 2,471

Required Disclosure Statement Filers

2017 434

2018 419

Audit Period

January 1, 2017 – September 30, 2018

Ethics Oversight

How Can Local Governments Establish Proper Ethics Oversight?

A county's governing body must establish a code of ethics to set forth the standards of ethical conduct reasonably expected of county officers and employees. The code of ethics must address certain provisions including disclosure of interest in legislation before the governing body, holding of investments in conflict with official duties, private employment in conflict with official duties and future employment.

To reduce risk that officers and employees actions could violate a county's code of ethics and public assets could be subject to misuse, the governing body should adopt a code of ethics that addresses each of the four required statutory provisions of GML and vigorously enforce the code provisions.¹

Within the code of ethics, the governing body may also set forth other standards of ethical conduct such as provisions addressing nepotism, public disclosures for recusals and abstentions and the proper use of municipal resources.² The county's CEO is responsible for distributing a copy of the code of ethics to every county officer and employee. Although not required, the county could also post the code of ethics on the county website.

In addition to establishing a code of ethics, counties with a population of 50,000 or more are required to have certain individuals annually complete a financial disclosure statement. Filing annual disclosure statements helps increase transparency about the private interests and activities of officers and employees, which may identify potential conflicts of interest.

A board of ethics may be established by the governing body to administer a system to maintain the financial disclosure statement filings.³ The board of ethics, if established, should develop procedures to review and examine the financial disclosure statements filed with the county, to promote compliance with the filing requirement, and verify that officials and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities. A board of ethics can help ensure that the local government operates in a transparent and ethical manner, and local government officers and employees act in the best interests of taxpayers and are not conflicted by personal interests.

The governing body may also develop additional standards of conduct to provide more comprehensive ethical guidance to meet a county's specific circumstances. For instance, the governing body may establish procedures to ensure that county

1 New York State General Municipal Law (GML), Section 806

2 State Comptroller's Model Code of Ethics – Local Governments available at: <https://www.osc.state.ny.us/localgov/pubs/ethics.htm>

3 GML provides that the board of ethics, if established by the governing body, is responsible for receiving the annual financial disclosure statements.

officers and employees receive ethics compliance training, including notifying officers and employees of the whistleblower provisions provided by State Law. In addition, the governing body could require that every officer and employee attest to receiving and reviewing the code of ethics at the time of their election or appointment and at least once every five years.

To help ensure proper ethics oversight, the County's CEO is responsible for posting a copy of certain portions of the conflict of interest statute in each county building.⁴ The statute must be posted in a place visible to its officers and employees.

The County Established an Ethics Board and Adopted a Code of Ethics

The County established an Ethics Board, which is composed of members recommended by the Legislature's majority and minority leaders and the County Executive, and appointed by the Chair. The Ethics Board is responsible for receiving the financial disclosure statements. The County adopted a code of ethics that provides general authority for the Ethics Board to ensure that the disclosure statements are filed and complete.

In addition, the County code of ethics provides that the County Executive is to cause copies of certain provisions of the code of ethics, deemed necessary by the Ethics Board, are posted conspicuously in each County building and distributed to each officer and employee. However, the code of ethics does not require officers and employees to periodically attest to receiving and reading the code of ethics.

The Code of Ethics Complied With GML but the CEO Did Not Post the Conflict of Interest Statute or the Code of Ethics

The Legislature adopted a code of ethics and posted it on the County website. The code of ethics includes all four statutorily required provisions set forth in GML.⁵ While the CEO was required to visibly post certain sections of GML and the code of ethics in each County building, we found that neither the statutory provisions nor the code of ethics were posted in the five buildings tested.

A representative of the County Executive's office told us that he was unaware that posting these sections of the conflict of interest statute is a statutory requirement and unaware that the code of ethics was required to be posted, in accordance with the code of ethics.

⁴ GML, Section 807 requires the posting of GML Sections 800 through 809 in each public building.

⁵ GML, Section 806, refer to Appendix A, Figure 4

The Ethics Board Did Not Receive or Provide Ethics Training

The County code of ethics requires the Ethics Board to develop educational materials and an educational program for all officers and employees on the provisions of the code of ethics and Article 18 of GML. While the code of ethics does not dictate the timing or frequency of ethics training for all officers and employees, it requires all policy making officials (as defined in the code of ethics) to participate, every-other-year, in an education program developed in a manner prescribed by the Ethics Board. The Commissioner of Human Resources (Commissioner) told us that officers and employees do not receive ethics training. While the Ethics Board was aware of its obligation to provide ethics training, and discussed training in its meetings, it did not provide educational materials for officers and employees.

Furthermore, Ethics Board members did not receive ethics training. In an effort to help ensure proper ethics oversight, the Legislature may wish to have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics. For example, training could relate to the provisions of Article 18 of GML, codes of ethics, annual financial disclosure and decisional law relating to conflicts of interest and ethics.

The Commissioner told us they provide a copy of the code of ethics as part of an orientation packet to newly hired, elected and appointed officers and employees and require them to attest in writing to receiving a packet, including the code of ethics. We reviewed attestations for 20 employees hired during our audit period to determine whether these employees attested to receiving the code of ethics. The Commissioner indicated that the five employees received the code of ethics, but that she was unable to locate the signed attestations.

Although not required by law, the Legislature could reinforce code of ethics awareness of officers and employees by requesting that all officers and employees attest in writing to their review of the code of ethics at least once every five years. They could also distribute the code of ethics to all officers and employees whenever the code of ethics is amended.

Unless the Legislature vigorously enforces the code of ethics provisions, reinforces employee awareness of the code of ethics and ensures the conflict of interest statute and code of ethics are posted in each building, there is a higher risk that officers' and employees' actions may violate the code of ethics and public assets could be subject to misuse.

What Are the Responsibilities of a Board of Ethics for Reviewing the Code of Ethics and Disclosure Statements?

A board of ethics is responsible for making recommendations with respect to drafting, adopting or amending the code of ethics, upon the request of the governing body. Therefore, a periodic review of the code of ethics by the board of ethics may be appropriate to help ensure the code continues to comply with GML. If requested, the board of ethics may also provide recommendations to the governing body as it relates to other ethical considerations that may help ensure ethical awareness for officers and employees.

In addition, the responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements. The board of ethics may also develop procedures to review and examine the financial disclosure statements to help ensure that the filings are complete.

When a board of ethics is established by the governing body to administer an annual financial disclosure system, the board of ethics should establish a process to verify that all required filers have submitted their disclosure statement with the board of ethics. In addition, the board of ethics should ensure that the disclosure statements submitted by the required filers are complete.

To help verify the filing and completeness of the disclosure statements, the governing body could include procedures for an appointed official or support staff to assist the board of ethics in ensuring that each financial disclosure statement is filed, reviewed, all questions are addressed and any inconsistencies or missing information are followed-up on.

In addition, the board of ethics should develop procedures to help ensure that disclosure statements are reviewed to identify transactions that could pose conflicts of interest. For example, boards of ethics could maintain a list of filers' outside business interests, and supply the list to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.

Further, the board of ethics could be required to obtain a list of vendors from the accounts payable department to reference during their review of the disclosure statements to help it identify potential conflicts of interest. If local governments' boards of ethics do not ensure compliance with filing requirements or review the information on disclosure statements to identify any conflicts of interest, taxpayers have less assurance that officers and employees in policy-making positions are free from conflicts of interest.

The County's code of ethics establishes certain procedures for the Ethics Board to administer the annual financial disclosure system. For instance, the code of ethics requires policy making officials, political candidates, officers and employees

...[T]he responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements.

holding titles indicated in appendix a of the code of ethics, and individuals voluntarily serving on County boards, commissions and advisory councils to file a disclosure statement.

The code of ethics states that, by March 1 each year, each elected executive branch official (e.g., County Executive) is required to provide the Ethics Board with a list of names and offices or positions of all officers and employees, subordinate to that official, who are required to file disclosure statements. Similarly, by March 1 each year, the Clerk of the Legislature (Clerk) also is required to provide the Ethics Board with a list of names of all officers and employees who work for the Legislature and are required to file disclosure statements. In addition, each elected executive branch official and Clerk must notify these officers and employees of their obligation to file a disclosure statement.

Further, within 20 days of being provided with these lists, the Ethics Board is to meet to determine whether the lists of names and offices or positions are complete and proper. The Ethics Board may also add or remove names or positions from the lists as they deem appropriate, and must notify executive branch elected officials or the Clerk of any changes.

In addition, officers and employees identified by title in the code of ethics are to file a disclosure statement with the Ethics Board by May 15 each year, or within 45 days of becoming subject to the disclosure filing requirements (e.g., newly hired or change in reporting level), unless an extension is requested by the filer and granted by the Ethics Board.⁶

The code of ethics requires the Ethics Board to review all disclosure statements to determine whether required filers failed to file, filed a deficient statement, or filed a statement that reveals a potential violation of the code of ethics. The Ethics Board is to notify individuals in writing of any deficiencies or possible violations of the code of ethics and affords them 15 days to correct the disclosure statement.

The code of ethics also requires the Ethics Board to review the code of ethics periodically, to determine whether it promotes integrity, public confidence, and participation in County government and whether it sets forth clear and enforceable, common sense standards of conduct. The Ethics Board is also required to prepare and submit an annual report to the County Executive and Legislature summarizing its activities, and may recommend changes to code of ethics text or administration.

⁶ Candidates for elective office, as defined in the County's code of ethics, are required to file disclosure statements within 20 days of filing candidacy or independent nominating petitions for County office with the County Board of Elections.

The Ethics Board Did Not Adequately Monitor the Filing of Disclosure Statements

The Ethics Board did not administer the County's disclosure system as required in the County's code of ethics. The County's disclosure system lacked sufficient procedures to ensure that all required financial disclosure statements were actually filed, filed on time and complete. We found that 69 percent of the required disclosure statements were not filed, filed late and/or had questions left blank. Under these circumstances, there is an increased risk that potential conflicts of interest were not identified and/or not reported to the Ethics Board.

In 2017 and 2018, the Ethics Board did not ensure that all officers and employees required to file submitted a timely and complete disclosure statement. In 2017 and 2018, 32 percent of Legislator (Figure 1), 66 percent of officer and employee (Figure 2)⁷ and 97 percent of other required filer (Figure 3)⁸ disclosure statements were not filed, were filed late and/or had questions that were left blank.

In 2017 and 2018, 39 Legislators were required to file disclosure statements. However, in 2017, six filed disclosure statements with questions left blank, six filed late and one filed late with questions left blank. In 2018, one did not file, six filed with questions left blank, three filed late and two filed late with questions left blank.

In 2017, 314 officers and employees were required to file disclosure statements. However, 73 did not file, 64 filed disclosure statements with questions left bank, 46 filed late and 29 filed late with questions left blank. In 2018, 297 officers and employees were required to file. However, 70 did not file, 81 filed disclosure statements with questions left blank, 23 filed late and 18 filed late with questions left blank.

In 2017, 81 other individuals associated with the County were required to file disclosure statements. However, 77 did not file, one filed a disclosure statement with questions left blank, one filed late and one filed late with questions left blank. In 2018, 83 other individuals were required to file. However, 74 did not file, one filed a disclosure statement with questions left bank, two filed late and two filed late with questions left blank.⁹

We found that 69 percent of required disclosure statements were not filed, filed late and/or had questions left blank.

7 The number of officers and employees includes three political candidates who were required to file disclosure statements.

8 Other required disclosure statement filers included the following individuals associated with the County: members of the Agricultural and Farmland Protection Board, Alcoholism and Substance Abuse Sub-Committee, Board of Commissioners Sewer District, Board of Health, Capital District Regional Planning Commission, Community Services Board, Developmental Disabilities Sub-Committee, Ethics Board, Fire Advisory Board, Human Rights Commission, Mental Health Sub-Committee, Planning Board, Regional Fish and Wildlife Management Board and Traffic Safety Board.

9 Refer to Appendix A for details on individuals who did not file in 2017 and 2018.

FIGURE 1

**County Legislature
Annual Financial Disclosures
2017 and 2018**

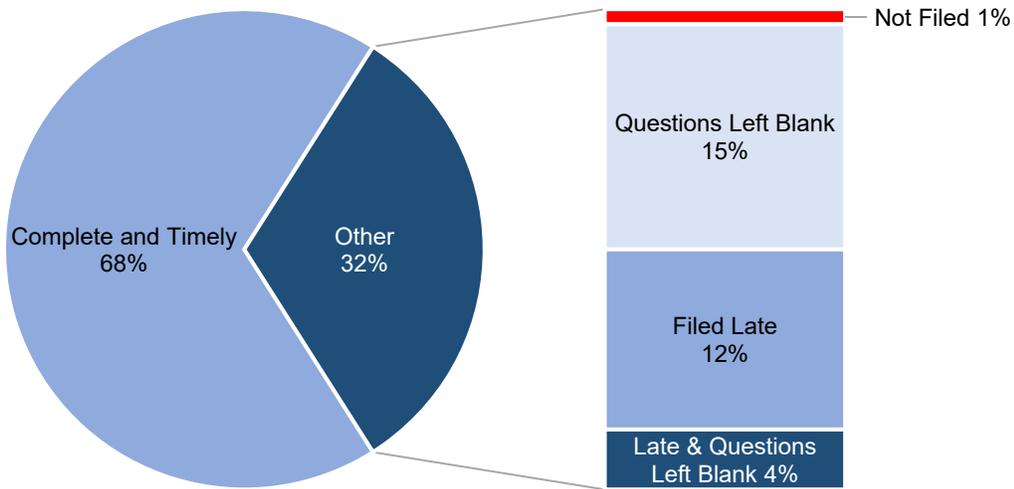


FIGURE 2

**Officer and Employee
Annual Financial Disclosures
2017 and 2018**

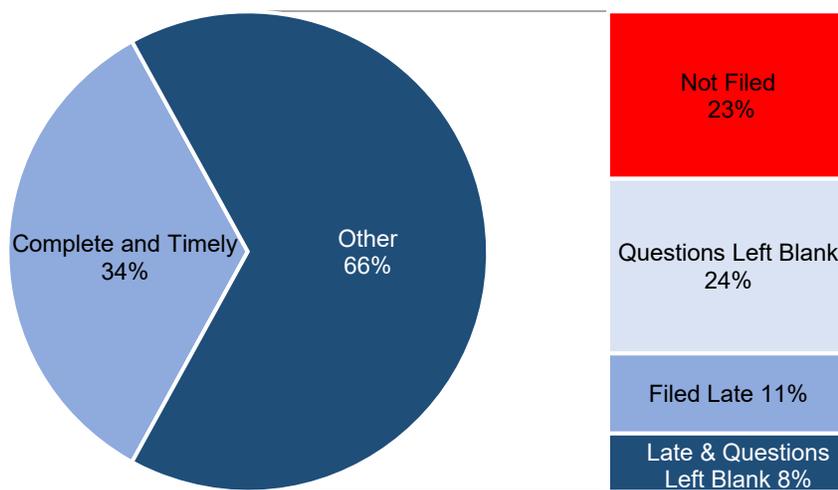
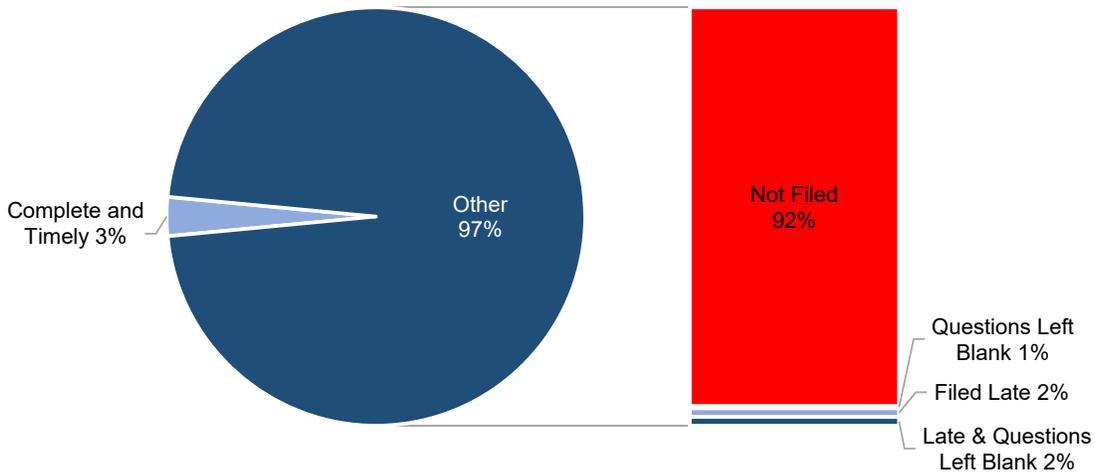


FIGURE 3

**Other Individuals Associated With the County
Annual Financial Disclosures
2017 and 2018**



The code of ethics stipulates that the lists of current required filers are to be compiled by each elected executive branch official and the Clerk. However, the Commissioner performed these duties. While the code of ethics does not clearly specify who is responsible for identifying individuals serving on County Boards, commissions, and advisory councils or notifying those individuals of their obligation to file disclosure statements, the code of ethics requires the Ethics Board to take reasonable measures to attempt to identify and notify candidates required to file a disclosure statement.

The Commissioner told us that she compiled a list of officers and employees required to file by comparing the job titles and positions listed in Appendix A, of the code of ethics, to a current employee list from the computerized accounting system. In addition, the Commissioner contacted each department head to determine any additional high ranking officials¹⁰ who should be included on the list of required filers. However, we identified 99 additional officers and employees not included on the list of required files who, based on the code of ethics, were required to file due to their title.

¹⁰ The code of ethics defines a high-ranking County position as any elected County office, commissioner or deputy commissioner position, and policy making official positions (as further defined in the code of ethics) within the Legislature, County Executive's office, Office of Management and Budget and Office of Audit and Control, or the equivalents of such positions.

The Ethics Board was unaware that it was responsible for meeting to review the list of required filers to determine whether it was complete and proper. As a result, in 2017, 73 officers and employees were omitted from the list of required filers and not notified of their obligation to file a disclosure statement, including three employees hired into required filer positions after the filing deadline. In 2018, 70 officers and employees were omitted from the list of required filers and not notified of their obligation to file a disclosure statement.

Additionally, the Commissioner told us that she only notified officers and employees identified on her list of required filers of their obligation to file disclosure statements. She also said that she provided the list of officers and employees to the Clerk and advised the Clerk to notify other individuals who voluntarily serve on County boards, commissions and advisory councils of their requirement to file disclosure statements.

The Clerk told us that he was not provided a list and did not prepare a list of individuals serving on County boards, commissions and advisory councils to notify them of their requirement to file. As a result of the code of ethics' ambiguity and the Ethics Board's failure to identify these additional filers, in 2017, 77 other required filers were not notified of their obligation to file disclosure statements and, in 2018, 74 other required filers were not notified.

Two Ethics Board members, including the Ethics Board Chair, told us that disclosure statements were collected by the Clerk and that the Ethics Board receives a list from the Clerk's office showing who has not filed. Once the disclosure statements are received by the Clerk, they are electronically copied and distributed equally among Ethics Board members for their review.

One Ethics Board member told us that the Ethics Board reviewed disclosure statements to determine whether they were signed and notarized but not whether they were complete.

Another Ethics Board member told us that he reviewed the disclosure statements for completeness and returned all disclosure statements to the Clerk's office, with any incomplete disclosure statements grouped together to be returned to the filer. While it is the Ethics Board's responsibility to notify individuals in writing of any disclosure statement deficiencies, an Ethics Board member said that he was under the impression that someone in the Clerk's office was returning incomplete disclosure statements to filers and he never received any revised disclosure statements from the Clerk's office for further review by the Ethics Board.

The Clerk told us that he did not return disclosure statements to filers because it was not his responsibility to ensure disclosure statements were complete. While the code of ethics provides for the Ethics Board to request the services of other County officers and employees as are necessary to carry out its duties, it is ultimately the Ethics Board's responsibility to ensure these duties are properly

carried out. Furthermore, it is unclear whether the Ethics Board requested the Clerk to return incomplete disclosure statements to filers on its behalf.

Our review of all 558 disclosure statements filed in 2017 and 2018 by required filers revealed that 212 (38 percent) of those filed had questions left blank. We recognize that an individual who leaves one or more questions blank on the disclosure statement may have done so because the question was not applicable to that individual. However, without a definitive response to each question, it remains unclear to a reviewer of the disclosure whether that particular section was not applicable or the filer chose not to provide the information.

For example, one Legislator submitted a disclosure statement for 2017 and did not answer whether she or her spouse had any investments of at least 5 percent in the stock of an entity. This Legislator did not file a disclosure statement in 2018. In addition, six Assistant County Attorneys submitted disclosure statements that contained questions left blank in 2017 and/or 2018.¹¹

The disclosure statements submitted by the six Assistant County Attorneys omitted answers to one or more of the following questions:

- Select the category that best describes your role with the County
 - Policy making official
 - Volunteer member of a County board or commission
 - High ranking County position.
- List the names of spouse, household member or relative and the name of any outside employer or business, the nature of its business and indicate whether self-employment, sole proprietorship or, in the case of an entity, the type of entity. State the nature of the spouse's, household member's relationship to the entity.
- List the entity in which the filer or spouse has any investments of at least 5 percent of the stock in such entity and identify the nature of and type of business.
- List the name and position of any relative in County service.
- For filer and spouse list any volunteer officer position held during the previous 12 months with any not-for-profit organization for which they have volunteered in a policy-making or administrative capacity.
- List the name and address of each client or customer for whom the filer personally provided services, or was referred to the filer's firm from whom

¹¹ Two Assistant County Attorneys submitted incomplete financial disclosures in 2017 and 2018, one submitted an incomplete financial disclosure in 2017, and three submitted an incomplete disclosure statement in 2018.

the filer earned in excess of \$250,000 during the preceding 12 months for such services rendered in direct connection with:

- A contract from the County or any County agency for:
 - Equipment, commodities or goods in an amount totaling \$10,000 or more;
 - Public works in an amount totaling \$20,000 or more; or
 - Professional services or consulting work in an amount totaling \$20,000 or more.
- List the location of any property owned within the County by the filer, spouse or household member.

Not completing a disclosure in its entirety could be a misrepresentation to the Ethics Board and creates a risk that potential conflicts will go undetected. To avoid an incomplete filing or misunderstanding, when a question does not apply, the filer should be required to write “none” or “not applicable” on their disclosure statement. In addition, the form should clearly state the filer must answer each question, noting “none” or “not applicable” when appropriate.

Furthermore, Ethics Board members said while they reviewed the filed disclosure statements for content, they did not notify individuals if the annual disclosure statement revealed a possible or potential violation of County law. Ethics Board members told us that they did not identify any potential conflicts during their review of the disclosure statements for 2017 and 2018.

Although not required to do so, the Ethics Board did not compare disclosed business interests to vendor payments or compile a list of filer’s outside business interests for the purchasing department to identify potential interests in contracts that would be prohibited by GML. Lack of procedures that require reviewing the submitted information reduces its usefulness.

Without careful review of the information reported on disclosure statements, and procedures to identify transactions that could pose a conflict of interest, taxpayers have less assurance that the County has a strong stance on transparency and can identify potential conflicts of interest of officers and employees that could compromise impartiality in decision-making.

The Ethics Board Did Not Review the Code of Ethics or Prepare an Annual Report

The Ethics Board met in September 2018 and discussed seeking an amendment to the code of ethics appendix a, which lists the titles required to file disclosure statements. It also discussed this in February and September 2017 and again in September 2019. However, we found no other documented discussions on

reviewing the code of ethics and determining whether it promoted integrity, public confidence and commonsense standards of conduct and we found no documentation of any proposed amendments sent to the Legislature.

In addition, the Ethics Board did not prepare and submit an annual report to the County Executive and Legislature summarizing its activities, as required by the code of ethics. The Ethics Board Chair told us he did not feel there was anything to report to the County Executive and Legislature. We also found that the Ethics Board did not submit any recommended changes to the code of ethics, as authorized under the County's code of ethics.

As a best practice, a review of the code of ethics at least every five years or when deemed necessary, would help to ensure it adequately addresses the expected conduct for all officers and employees.

What Do We Recommend?

The Legislature should:

1. Have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics.
2. Amend the code of ethics to require all officers and employees attest in writing to the receipt and review of the code of ethics at the time of their elections or appointment, at least once every five years and upon amendment to the code.
3. Amend the code of ethics to clearly define which County official(s) are responsible for preparing the list of required filers who voluntarily serve on County Boards, commissions and advisory councils.
4. Review or request the Board to review the code of ethics, at least every five years or sooner, if deemed necessary.

The County Executive should:

5. Visibly post Sections 800-809 of the conflict of Interest statute and provisions of the code of ethics deemed necessary by the Ethics Board in each County building.

Each elected Executive official and the Clerk should:

6. By March 1 each year, provide the Ethics Board with lists of the names and offices or positions of officers and employees who are required to file annual disclosure statements.

...[T]he Ethics Board did not prepare and submit an annual report to the County Executive and Legislature summarizing its activities, as required by the code of ethics.

The Ethics Board should:

7. Develop ethics training and educational materials for officers and employees on the provisions of the code of ethics and Article 18 of GML.
8. Obtain and compile the complete list of required disclosure statement filers from the various County officers required to provide such lists pursuant to the code of ethics and meet to ensure the list is complete and proper. Take reasonable measures to identify and notify candidates required to file a disclosure statement, who may not be included on the lists provided by elected officials or the Clerk.
9. Obtain a list of vendors from the accounts payable department to reference during its review of the disclosure statements to help identify potential conflicts of interest and maintain a list of filers' outside business interests to supply to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.
10. Verify that all individuals covered by annual financial disclosure requirements file a complete and timely disclosure statement.
11. Carefully review information contained on the disclosure statements to identify interests that could pose a conflict of interest or violation of the code of ethics.
12. Prepare and submit an annual report to the County Executive and Legislature summarizing its activities, and making recommended changes to the code of ethics as it deems necessary.

Appendix A: County Code of Ethics Information

Figure 4: Required Code of Ethics Provisions^a and Other Ethical Considerations^b

Required Provisions	Included in the County's Code of Ethics?
Disclosure of Interests in Legislation Before the Local Governing Body	Yes
Future Employment	Yes
Holding of Investments in Conflict With Official Duties	Yes
Private Employment in Conflict With Official Duties	Yes
Other Ethical Considerations	
Applicability	No
Confidential Information	Yes
Definitions	Yes
Enforcement	Yes
Effective Date	Yes
Establishing a Board of Ethics	Yes
Gifts	Yes
Interests in Contracts	Yes
Nepotism	No
Political Solicitations	Yes
Posting and Distributing the Code of Ethics	Yes
Prohibition on Use of Municipal Position for Personal or Private Gain	Yes
Purpose of the Code of Ethics	Yes
Recusal and Abstention	Yes
Ethics Board Members Term Limits ^c	Yes

a GML, Section 806

b Refer to OSC's Model Code of Ethics for Local Governments available at: <https://www.osc.state.ny.us/localgov/pubs/ethics.htm>.

c Not included within OSC's Model Code of Ethics for Local Governments but should be considered as a best business practice

Figure 5: Legislators, Officers and Employees and Other Individuals Associated With the County Who Did Not File Annual Financial Disclosure Statements

Job Title	2017	2018
Legislature		
Legislator		Not Filed
Officers and Employees		
Assistant County Attorney	Not Filed	
Assistant County Attorney (3)		Not Filed
Assistant Director of Child Support	Not Filed	Not Filed
Assistant Director of Leisure		Not Filed
Assistant Director of Nursing	Not Filed	Not Filed
Assistant Director of Social Service Programs (6)	Not Filed	Not Filed
Assistant District Attorney	Not Filed	
Assistant District Attorney (3)		Not Filed
Assistant Public Defender (3)	Not Filed	
Assistant Public Defender (5)		Not Filed
Building Maintenance Supervisor	Not Filed	
Building Superintendent	Not Filed	Not Filed
Bureau Chief Assistant District Attorney		Not Filed
Candidate - County Clerk	Not Filed	
Candidate - County Coroner	Not Filed	
Candidate - County Legislative	Not Filed	
Chief Criminal Investigator	Not Filed	Not Filed
Chief Deputy Sheriff (2)		Not Filed
Clinical Director (2)	Not Filed	
Clinical Director		Not Filed
Commissioner		Not Filed
Coroner	Not Filed	
Custodial Work Supervisor (3)	Not Filed	
Custodial Work Supervisor		Not Filed
Deputy Commissioner	Not Filed	
Deputy Commissioner (3)		Not Filed
Deputy County Clerk	Not Filed	
Deputy County Clerk (2)		Not Filed
Deputy Director Emergency Management		Not Filed
Deputy Director of Mental Health	Not Filed	
Deputy Fire Coordinator HAZMAT	Not Filed	Not Filed
Deputy Fire Coordinator PT (8)	Not Filed	
Deputy Fire Coordinator PT (7)		Not Filed
Director (7)	Not Filed	Not Filed
Director of Occupation Therapy	Not Filed	

Director of Child Support	Not Filed	Not Filed
Director of Communications	Not Filed	Not Filed
Director of Divisional Nursing Home (4)	Not Filed	Not Filed
Director of Emergency Prep Perfm Management	Not Filed	Not Filed
Director of Employment & Training (2)	Not Filed	
Director of Leisure Time Activities	Not Filed	
Director of Majority Operation	Not Filed	
Director of Municipal Affairs		Not Filed
Director of Patient Relations	Not Filed	Not Filed
Director of Physical Therapy	Not Filed	
Director of Real Property Tax Service Agency		Not Filed
Director of Safety and Security	Not Filed	
Director of Social Service Programs	Not Filed	Not Filed
Director of Social Work	Not Filed	
Director of Speech Therapy	Not Filed	
Elections Administrator	Not Filed	Not Filed
Executive Assistant	Not Filed	Not Filed
Housing Coordinator		Not Filed
Medical Director PT		Not Filed
Personnel Administrator	Not Filed	Not Filed
Preparedness Communications Director	Not Filed	
Probation Supervisor	Not Filed	Not Filed
Program Analyst	Not Filed	Not Filed
Program Director (2)	Not Filed	Not Filed
Superintendent Correctional Facility	Not Filed	
Supervisor of Accounts	Not Filed	
Support Collector Supervisor	Not Filed	Not Filed
Other Individuals Associated With the County		
Agricultural and Farmland Protection Board (7)	Not Filed	Not Filed
Alcoholism and Substance Abuse Sub-Committee (3)	Not Filed	Not Filed
Board of Commissioners Sewer District (4)	Not Filed	
Board of Commissioners Sewer District (2)		Not Filed
Board of Health (6)	Not Filed	Not Filed
Capital District Regional Planning Commission (4)	Not Filed	Not Filed
Community Services Board (10)	Not Filed	
Community Services Board (12)		Not Filed
Ethics Board	Not Filed	Not Filed
Fire Advisory Board (19)	Not Filed	Not Filed
Human Rights Commission (2)	Not Filed	
Human Rights Commission (5)		Not Filed
Mental Health Sub-Committee (5)	Not Filed	

Planning Board (4)	Not Filed	
Planning Board		Not Filed
Regional Fish and Wildlife Management Board	Not Filed	
Regional Fish and Wildlife Management Board (3)		Not Filed
Traffic Safety Board (11)	Not Filed	Not Filed
() represents the number of individuals that did not file a disclosure statement		

Appendix B: Response From County Officials¹²



DANIEL P. MCCOY
COUNTY EXECUTIVE

DANIEL C. LYNCH, ESQ
DEPUTY COUNTY EXECUTIVE

COUNTY OF ALBANY
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JENNIFER S. CLEMENT
COMMISSIONER

SARAH K. SEYMOUR
DEPUTY COMMISSIONER

MEMORANDUM

To: Office of the New York State Comptroller Division of Local Government and School Accountability

From: Albany County

Date: October 13, 2020

RE: Albany County's response to the State Comptroller's Draft Audit Report

Introduction

It was a pleasure to work with the Comptroller's staff members assigned to review Albany County's Ethics Commission during this audit process. They conducted themselves with professionalism and were more than courteous in their interactions with Albany County personnel. Upon receipt of Albany County's Draft Audit Report we conducted a detailed review of its contents. We are pleased to note that in 2019 many of the issues discussed in the draft audit report were addressed. Through the mechanisms provided for in our Local Law that governs the Ethics Commission steps were taken, prior to the start of the auditing process to address many of the issues that the draft audit report details. We are also pleased to note that other issues raised during the auditing process were resolved before the auditors even finished reviewing Albany County records. While we find that the audit report is outdated as a result of these updates, we nevertheless had some concerns about the data analysis provided to us in the draft report. We detail them by distinguishing the page of the draft report the material is found on and what area of Albany County Government the section is discussing. On behalf of the County Executive of Albany County, Daniel P. McCoy please find our response to the draft audit report as follows:

I. General Notes –

- i. Page three (3) Background section – The draft report inaccurately states that the County Executive operates under the direction of the Legislature. This is an inaccurate statement as to how the government of Albany County Operates. **“The County Executive shall be the chief executive and elective officer of the County government. Except as may be otherwise provided in this Charter, the County Executive shall have and exercise all the executive powers and duties now or hereafter conferred or imposed upon him or her by this Charter and any applicable law upon a county executive officer or the executive branch of County government[t].”** (Albany County Charter Section 302). The County

See
Note 1
Page 24

¹² The County's response letter refers to page numbers that appeared in the draft report. The page numbers have changed during the formatting of this final report.

Executive is not under the direction of the Legislature but is elected directly by the voters of Albany County perform the duties of Chief Executive Officer.

- ii. The Draft report cites a failure by the Ethics Commission to properly post relevant sections of the County Ethic’s law in all county facilities. All legally required postings were updated and posted before the Comptroller’s Office finished their data collection and review of Albany County files. The Ethics Commission has deemed the relevant sections of the County Ethics law to be in plain-language that is straightforward and self-explanatory. The County Ethic’s Commission has a website where all relevant materials concerning the Ethics law and possible violations can easily be accessed by anyone in the community. In addition, the County Ethic’s Law also accounts for any individual who encounters a question regarding ethical behavior to seek an advisory opinion from the Commission. This material is also provided on the Commission’s website. Additionally the Ethics Commission has ensured that each employee is given a copy of the Ethics law at the time of their hiring.

II. **Ethics Commission** – The Ethics Commission is comprised of members of the community who serve as part time, volunteer members. They are recruited on the basis of their well-known character who were asked to, and willingly chose to serve their community. They are and have been retired judges, members of the clergy and respected men and women of the highest integrity from throughout Albany County who are tasked specifically in their powers and duties with administering and collecting the annual financial disclosure form. They have taken care to work within the boundaries of their powers granted by law to develop and enhance the strategies that have been put in place over the past few years to ensure higher compliance numbers than what this audit purports. They have advocated for and developed changes with the reporting process to great success. The changes that have been enacted by the Commission long before this audit process began have yielded results that will ensure many of the draft reports recommendations to the ethic’s commission are obsolete or inapplicable.

- i. Page five (5) - Section 29 of the County Ethics Law (Local Law 8 for 2011) requires the Ethic’s Commission to decide to post the sections of the local law they deem relevant and necessary. The draft report’s statement that no postings exist comes with no explanation, examination or inquiry as to why this did not occur. The duty imposed by the law requires the Commission to make a discretionary determination as to what sections of the Local Law are required for posting. The absence of posted materials does not mean that the commission failed in it’s duty. It was decided that the distribution of a copy of the County Ethics law to all employees and the availability of all materials on the Commission’s website was sufficient distribution. In conjunction with the straightforward language of the ethics law it was determined that there was no need to post. No mention is made in the draft report of an attempt to discuss this matter with anyone from Albany County. Instead, the draft report makes conclusory findings with no mention of any due diligence done to investigate why there are no postings of the local law.
- ii. Page six (6) – The second paragraph contains factual errors. The paragraph inaccurately states the auditors reviewed twenty (20) newly hired employee files for the period of the audit. In fact, all new hires for the period of the audit were requested, provided and reviewed for this purpose. Additionally the paragraph cites five (5) employees described as part time or temporary employees who did not sign attestations stating they received a copy of the code of ethics at the time of their hiring. These five individuals were all youth interns under the age of eighteen. The draft reports attempt to assert these interns as employees, full time or part time, grossly overstates their relevance and impact on day to day functions of County Business. More importantly, the attestations of these summer youth interns could not be found, it was never stated they do not exist yet the draft report makes that allegation.

See
Note 2
Page 24

See
Note 3
Page 24

iii. Page seven (7) – Discusses recommendations to aid in verifying the completeness of annual financial disclosure forms. Prior to the commencement of this audit this issue was addressed by the Commission. The Ethics commission made recommendations to the legislature to make the system by which required personnel subject to the duty to file annual financial disclosure forms are identified. These efforts resulted in Local Law 7 for 2019 which made significant changes to the process in existence during the audit time period of January 1, 2017 through September 2018. These changes have resulted in greater efficiency, increased the flexibility of the Commission to identify issues and institute corrective measures as well as seeing increased compliance with the completion rate of the Annual Financial Disclosure Form. Other recommendations listed on this page go beyond the scope of the powers and duties of the Ethics Commission as currently constructed.

See
Note 4
Page 24

iv. Pages eight (8) through eleven (11) – The Commission has concerns with the manner in which your data was derived. Your cited numbers do not explain whether an individual was counted as one individual or two (or more) positions. For example, if an employee also serves on a board or commission and inaccurately filled out their annual financial disclosure form does your methodology count that as two positions that failed to fill out the form correctly? Or does it account for the fact the one individual filed one form out incorrectly but that form applies for two positions? Our position is that the numbers you cite are infeasibly high and therefore a result of counting one person who may hold multiple positions as one filer but marking the other positions they hold as non-filers. This would explain the large numbers in the draft report of positions that did not file.

See
Note 5
Page 24

In fact, we found one legislator who served on two (2) different boards/ commissions during the auditing time period. Records indicate that they filed an annual disclosure form properly in both years. Your data analysis makes no mention or distinction of individuals such as this legislator who although serving in multiple capacities that require filing an annual disclosure form to be filed, has filed but once in both years. In this instance, one person holding multiple spots would have properly filed but your audit report's discussion of the number of positions that did not file fails to reflect whether these types of individuals were counted as one individual counting as three (3) positions and properly filed; or one individual counting as one position properly filed but two positions that were not filed despite being the same person.

Page nine (9) - The sheer number of positions alleged by the draft report that did not file raises concerns about the accuracy of the draft's tabulations. The Commission's concern is that although positions on various boards and commissions exist, positions are oftentimes vacant for a variety of reasons. However, it is unclear from the draft report whether your methodology accounts for positions being unfilled and therefore counted in your summary as a failure to file, or whether the position was verified to have been filled found to have not filed. Our belief, based on the presented numbers is that vacant positions were counted as non-filers when in fact there was no individual to fill it at the time.

See
Note 6
Page 25

Secondly, amongst the various boards there are numerous positions that are not county appointees. Therefore these positions are not subject to the requirement that the position holder file an annual disclosure report. The draft report does not discuss nor distinguish these positions and it raises questions as to whether those spots have also been counted in your summaries as positions that have not filed when they are not in fact required filers. We believe that if these two sets of positions were filtered out of your totals the number of non-filers would be dramatically reduced.

Page eleven (11) – There is mention of ninety-nine (99) positions that were filled but not filed. The auditors requested a master list of current employees as of 2020 from the Commissioner of Human Resources. There was no request by the Auditors for a master list of people and positions during the time period of the audit. Comparing the 2020 list with the annual disclosure forms from the period the audit covers appears to be how the ninety-nine positions were tabulated. The Human Resources Commissioner expressed concerns that many people that appear on both lists hold different titles in 2020 than they did in 2017 and therefore may have attained a position by 2020 in which they were required to file an annual financial disclosure form but during the audit period were not in a position to do this. However, during the time period of the audit, they did not hold a position where this was required. So comparing the titles from 2020 to the list of employees in 2017 raises concerns about the accuracy of the draft reports numbers in regards to the amount of employees who failed to file their annual disclosure form.

See
Note 6
Page 25

v.

- a. Page thirteen (13) – This page contains a paragraph discussing the issues that could arise from annual financial disclosure forms not being completely filled out. As stated previously, this issue has already been addressed before the Audit was commenced. Under the powers and duties granted to the Ethic’s Commission is the power to make such a change and in 2019, recognizing the concern that incomplete disclosure forms posed, the Commission made policy change to mandate that leaving lines blank or answering with a “n/a” or “not applicable” were not acceptable. Therefore, this issue as others, was remedied.
- b. Since its creation in 2014 through the end of this Comptroller’s audit time period the Commission received no ethics complaints and received and responded to one request for an advisory opinion from a county legislator.

vi. Page fourteen (14) and fifteen (15) – These pages contain specific recommendations various bodies within Albany County should undertake. The following should be noted as to each recommendation:

1. This recommendation will be incorporated moving forward.
2. The contents of this recommendation have already been done.
3. The contents of this recommendation have already been done.
4. This provision can easily be done moving forward.
5. The contents of this recommendation have already been done.
6. The contents of this recommendation have already been done.
7. This recommendation will be reviewed and discussed by the Ethics Commission as to the way in which to incorporate it going forward.
8. The contents of this recommendation have already been done
9. This is a policy recommendation that is currently outside the scope of the powers and duties of the Commission. The Commission will review the recommendation and decide its merits moving forward.
10. The contents of this recommendation have already been done.
11. This is a policy recommendation that is currently outside the scope of the powers and duties of the Commission. The Commission will review the recommendation and decide its merits moving forward.
12. There has not been a request during the time period of the audit for the Ethics Commission to perform any of its other enumerated duties aside from the previously discussed proposal to the legislature contained in Local Law 7 for 2019 discussed above.

See
Note 7
Page 25

III. County Executive

Page five (5) of the draft report states that the County Executive is required by law to post certain sections of New York’s General Municipal Law (GML) but was not aware of his duty to do so. This is a misrepresentation. Representatives of the County Executive told Auditors that the County Executive was unaware that the required sections of the GML were not properly posted, not that he was unaware of his duty to post. Once the County Executive’s office was made aware that the statutorily required material was not properly posted immediate steps were taken to ensure that the materials were properly posted in all county facilities in accordance with the law.

See
Note 8
Page 25

IV. County Legislature

Page five (5) - In 2017 An Ethic’s training presentation was developed and given to the Legislature. This directly refutes the statement made in the draft report on page 5 that the Ethics Commission failed to ensure training was given to policy making officials.

See
Note 9
Page 25

Summary

We find your data gathering and analysis methodology to be deeply flawed and thus disagree with much of your data analysis. We further take issue with the lack of data refinement that would distinguish characteristics of the data provided to you during the audit process. A better organization of the data would result in a more comprehensive breakdown of information that would lend itself to a better understanding of the numbers used in your draft report on Albany County. Presumably, this refinement would only aid your analysis and recommendations of your report to further increase the productivity of the Albany County Ethics Commission and others.

See
Note 10
Page 25

On a positive note, we are pleased to note that more than half of the draft reports recommendations have already been resolved prior to the draft audit report being distributed.

Sincerely,

Peter-Daniel Apostoľ, Esq.
Director of Employee Relations
112 State Street Suite 900
Albany, NY 12207

Appendix C: OSC Comments on the County's Response

Note 1

We amended the report to reflect this information.

Note 2

The County's code of ethics required that the Ethics Board transmit copies of those provisions of local law to the County Executive, which the Ethics Board deemed necessary for posting in the County. Within 10 days after receiving those copies, the County Executive was required to cause the copies be posted conspicuously in every public building under the County's jurisdiction.

During our audit, we asked a representative from the County Executive's office why the code of ethics was not posted in the building tested and included his response in our report.

Note 3

The report accurately reflects the number of attestations reviewed; see our audit methodology in Appendix D. Our report neither attempts to overstate the relevance of these five individuals nor assert that these individuals are anything other than what they are defined as under the code of ethics, i.e., County officers or employees.

We amended our report to reflect that it is unclear whether those individuals received the code of ethics because the attestations of such could not be located.

Note 4

We disagree with the County's assertion that the more general recommendation that the Ethics Board should develop procedures to help ensure that disclosure statements are reviewed to identify transactions that could pose conflicts of interest goes beyond the scope of the powers and duties of the Ethics Board as currently constructed.

Our recommendation is merely a reiteration of certain code of ethics sections, under which the Ethics Board is required to review disclosure statements for potential conflicts of interest, and authorized to promulgate rules governing its own internal procedures for carrying out such duties.

Note 5

The audit report does not double count individuals serving in more than one required filer position.

Note 6

We requested and obtained a list of individuals employed by the County in June 2019. We shared a list of the employee filer exceptions with the Commissioner during our audit field work and worked with her to ensure the exceptions were accurate. We did not include individuals serving in positions that were not appointed by the County and we amended the report to remove exceptions associated with unfilled positions.

Note 7

In accordance with the local law in place at the time of our audit, the Ethics Board was required to prepare and submit an annual report to the County Executive and County Legislature, summarizing the activities of the Commission. In its report, the Ethics Board may also make recommended changes to the text or administration of this local law.

Note 8

A representative from the County Executive's office told us that they were unaware that posting the conflict of interest statute is a statutory requirement. We commend the County for taking swift action to comply with the requirement.

Note 9

We asked the Ethics Board Chair why training was not provided although it was discussed during an Ethics Board meeting in February 2017. The Chair explained to us the Ethics Board met for the first time in 2014, and then not again until 2016 due to Ethics Board member resignations. The Ethics Board Chair further explained that they were working on the initial foundation of the Ethics Board, were aware the training had to be completed, and were still working on a way to get it accomplished. As discussed in the Ethics Board meeting minutes, training discussion was limited to providing ethics training to the Legislature, not all officers and employees, as is required by the code of ethics.

Note 10

We believe that our audit methodology resulted in accurate results and that our report clearly reflects the methods used and conclusions reached.

Appendix D: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed County officials, employees and Ethics Board members to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures and Board of Legislators' and Ethics Board minutes related to ethics.
- We reviewed all 558 disclosure statements filed for 2017 and 2018 to determine whether they were completely and properly filed on time and any potential conflict of interests were reported to the Ethics Board.
- We reviewed all advisory opinions issued by the Ethics Board during the audit period.
- We reviewed procedures to receive ethical complaints from the public.
- We used our professional judgment to select a sample of five of 26 County buildings and walked through these buildings to determine whether the conflict of interest statute was posted. For our sample, we selected the building where we conducted a majority of our fieldwork and four additional nearby County buildings with no expectations of greater or lesser results.
- We used our professional judgment to select a sample of 20 of 697 newly hired employees during our audit period, with no expectations of greater or lesser results, to determine whether they signed an acknowledgement to having reviewed the code of ethics.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or relevant population size and the sample selected for examination.

The Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and

filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make the CAP available for public review in the County Clerk's office.

Appendix E: Resources and Services

Regional Office Directory

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

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