

Clinton-Essex-Warren- Washington Board of Cooperative Educational Services

Employee Benefit Plan Forfeited Funds

AUGUST 2022



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Clinton-Essex-Warren-Washington Board of Cooperative Educational Services

Audit Objective

Determine whether Clinton-Essex-Warren-Washington Board of Cooperative Educational Services (BOCES) officials ensured the third-party administrator (administrator) returned forfeited funds from the health flexible spending arrangement (FSA), dependent care assistance program (DCAP) and health reimbursement arrangement (HRA) in a timely manner.

Key Findings

BOCES officials did not ensure the administrator returned forfeited funds from the FSA, DCAP and HRA in a timely manner.

- As of December 31, 2021, the administrator had not returned \$83,068 (97 percent) in forfeited funds from the FSA, DCAP and HRA for the 2014-15 through 2020-21 plan years to BOCES. As a result, all forfeited funds were not annually available for BOCES' use. Officials were not aware of the unreturned funds until we notified them in January 2022.
- BOCES lacked adequate procedures to ensure the administrator returned all forfeited funds from the FSA, DCAP and HRA in a timely manner.

Key Recommendations

- Establish procedures to ensure the administrator returns all forfeited funds from the FSA, DCAP and HRA in a timely manner.
- Ensure the administrator returns all forfeited funds owed to BOCES.
- Consult with legal counsel with respect to the proper use of forfeited funds returned by the administrator.

District officials generally agreed with our recommendations and have initiated, or indicated they planned to initiate corrective action.

Background

BOCES is composed of 16 component school districts and is governed by the 15-member BOCES Board (Board) elected by the boards of the component districts. The Board is responsible for the general management and control of financial and educational affairs.

The District Superintendent is the chief executive officer and, along with other administrative staff, is responsible for the day-to-day management and regional planning and coordination.

The Assistant Superintendent of Management Services oversees BOCES' financial operations, including employee benefits. BOCES contracts with a third party to administer the FSA, DCAP and HRA.

Quick Facts

Employees	345
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Forfeited Funds 2014-15 – 2020-21 Plan Years

FSA	\$30,649
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DCAP	\$2,065
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HRA	\$53,303
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Participating Employees and Employee/Employer Contributions 2020-21 Plan Year

FSA	56	\$55,525
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DCAP	3	\$7,800
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HRA	30	\$18,300
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Audit Period

July 1, 2014 – January 31, 2022

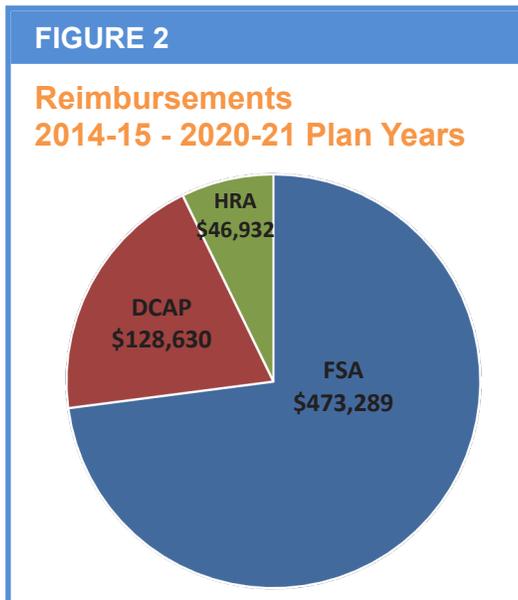
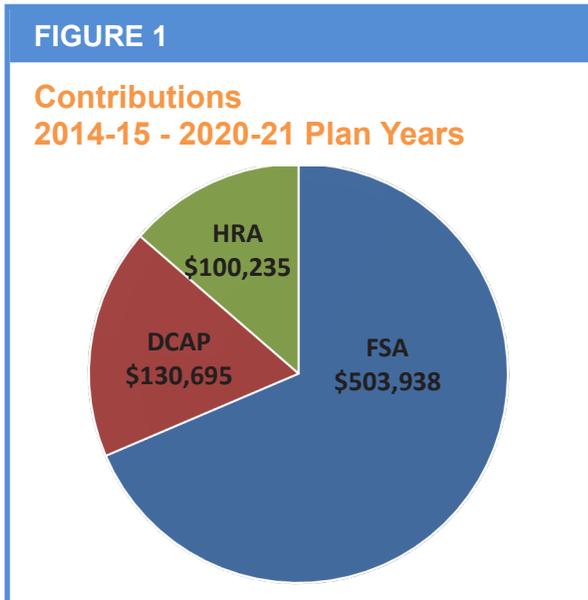
FSA, DCAP and HRA Forfeited Funds

BOCES authorized a cafeteria plan including an FSA and a DCAP component that allows enrolled employees to have pre-tax deductions from their wages set aside to reimburse employees for eligible costs. BOCES also authorized a HRA plan. The plan documents developed for these plans establish the rules for participation, contributions, eligible expenses and forfeiture of funds. BOCES contracts with a third party to administer the FSA, DCAP and HRA. The administrator's responsibilities include, but are not limited to, designing and providing enrollment forms, maintaining participant accounts and processing reimbursements for eligible expenses incurred by participants.

The FSA and DCAP plan years are for the 12-month period beginning October 1 through September 30. Participation in the FSA and DCAP is available to any employee that is eligible to participate in BOCES' health insurance plan. Contributions to the FSA and DCAP are solely funded by employees through payroll deductions based on the annual benefit amount elected by each employee. The contributions are remitted to the administrator and used to reimburse participating employees for eligible expenses incurred during the plan year based on the submission of claims. Eligible expenses for the FSA consist of medical care expenses (e.g., hospital services and dental cleanings) and DCAP consist of dependent care expenses (e.g., daycare).

The HRA plan year is for the 12-month period beginning July 1 through June 30. Participation in the HRA is only available to employees whose individual employment contract or collective bargaining agreement contains a provision authorizing contributions to be made by the employer (i.e., BOCES) to the HRA on their behalf and that meet the corresponding eligibility requirements (e.g., participate in BOCES' health insurance plan). Contributions to the HRA are solely funded by BOCES based on the authorized contract amount for each employee. The contributions are remitted to the administrator and used to reimburse participating employees for eligible expenses incurred during the plan year based on the submission of claims. Eligible expenses for the HRA consist of medical care expenses (e.g., health insurance plan copays).

Contributions and reimbursements made for the FSA, DCAP and HRA for the 2014-15 through 2020-21 plan years totaled \$734,868 and \$648,851, respectively (Figures 1 and 2).



FSA, DCAP and HRA balances that remain in the participant’s account after all reimbursements have been made for the coverage period are forfeited. On an annual basis, the administrator should remit forfeited balances to BOCES.

The plan document for the FSA and DCAP established that forfeited funds returned to BOCES must be used, in the following order, to:

- Offset any losses experienced during the plan year because of reimbursements made in excess of the contributions,
- Reduce the cost of administering the FSA and DCAP during the plan year or the subsequent plan year, and
- Provide increased benefits or compensation to participants in subsequent years in a weighted uniform fashion that the plan administrator deems appropriate, consistent with applicable regulations.

The plan document for the HRA does not contain provisions for the use of forfeited funds. However, because the HRA is only funded by BOCES’ contributions, forfeited funds should be equitably allocated to the corresponding BOCES programs that the contributions were expensed.

How Should Officials Ensure the Administrator Returns Forfeited Funds From the FSA, DCAP and HRA in a Timely Manner?

A well-designed system for ensuring the administrator returns forfeited funds from the FSA, DCAP and HRA in a timely manner requires assigning the responsibility

to employees for specific activities to ensure each employee understands the overall objectives and their role in the process. Officials should ensure the administrator provides a year-end accounting of employees' FSA, DCAP and HRA accounts, including a summary of claims paid and account balances, as required by the written agreement with the administrator. In addition, an annual reconciliation should be prepared of the contributions remitted to the administrator for the FSA, DCAP and HRA and corresponding reimbursements made by the administrator to calculate the amount of forfeited funds that should be returned by the administrator. Officials should also provide adequate oversight to ensure that forfeited funds are returned as soon as possible after the administrator has processed all reimbursements requested.

Officials Did Not Ensure the Administrator Returned All Forfeited Funds From the FSA, DCAP and HRA in a Timely Manner

The administrator returned \$2,949 in forfeited funds from the FSA for the 2014-15 plan year in a timely manner. However, BOCES officials did not ensure the administrator returned all forfeited funds from the FSA, DCAP and HRA in a timely manner. We reviewed the FSA, DCAP and HRA for the 2014-15 through 2020-21 plan years and found that as of December 31, 2021, the administrator had not returned \$83,068 of the \$86,017 (97 percent) in forfeited funds to BOCES. The \$83,068 in unreturned forfeited funds consisted of funds from the FSA, DCAP and HRA (Figure 3).

Figure 3: Forfeited Funds Not Returned as of December 31, 2021

Plan Year	FSA	DCAP ^a	HRA	Totals
2014-15	\$0	N/A	\$3,097	\$3,097
2015-16	2,333	N/A	3,419	5,752
2016-17	7,420	N/A	6,979	14,399
2017-18	3,834	\$1,250	7,997	13,081
2018-19	2,579	277	10,468	13,324
2019-20	7,791	538	11,435	19,764
2020-21	3,743	N/A	9,908	13,651
Total	\$27,700	\$2,065	\$53,303	\$83,068

a) There were no forfeited funds from the DCAP for the 2014-15, 2015-16, 2016-17 and 2020-21 plan years.

The failure to return forfeited funds occurred because officials did not establish adequate procedures to ensure the administrator returned all forfeited funds from the FSA, DCAP and HRA in a timely manner. For example, officials did not ensure the administrator provided them with a year-end accounting of employees' FSA, DCAP and HRA accounts, including a summary of claims paid and account

...[A]s of December 31, 2021, the administrator had not returned \$83,068 of the \$86,017 (97 percent) in forfeited funds. ...

...[O]fficials did not establish adequate procedures to ensure the administrator returned all forfeited funds. ...

balances, as required by the written agreements with the administrator. As a result, as of December 31, 2021, the administrator had not provided BOCES with a year-end accounting of employees' accounts for the 2014-15 through 2020-21 plan years, except for employees' FSA and DCAP accounts for the 2014-15 plan year. In addition, officials did not prepare an annual reconciliation of the contributions remitted to the administrator for the FSA, DCAP and HRA and corresponding reimbursements made by the administrator to calculate the amount of forfeited funds that should be returned by the administrator.

As a result, forfeited funds were not returned in a timely manner and available to BOCES on an annual basis to be used as required by the plan document for the FSA and DCAP or to be equitably allocated to BOCES programs that the contributions were expensed for the HRA. This also negatively impacted the operating results of BOCES programs that the forfeited funds would have been allocated to and any apportioned surpluses returned to school districts participating in those programs.

Officials were not aware that the administrator had not returned all forfeited funds until we notified them in January 2022. As a result, officials contacted the administrator and requested that they return any outstanding forfeited funds. While the administrator agreed to return any outstanding forfeited funds, they did not provide officials with a reasonable explanation as to why the forfeited funds had not been returned in a timely manner.

As of January 31, 2022, the administrator had returned forfeited funds totaling \$26,111 to BOCES, which consisted of forfeited funds from the FSA for the 2015-16 through 2020-21 plan years totaling \$24,257, and DCAP for the 2017-18 through 2019-20 plan years totaling \$1,854. While the administrator's intention was to return all outstanding forfeited funds from the FSA and DCAP for the 2015-16 through 2020-21 plan years, we found that due to calculation errors, the administrator returned \$3,654 less than the amounts owed.

In addition, as of January 31, 2022, the administrator had not returned any of the outstanding forfeited funds from the HRA for the 2014-15 through 2020-21 plan years totaling \$53,303. The administrator notified officials that these funds would be returned in February 2022. As a result, as of January 31, 2022, the administrator still owed BOCES a combined total of \$56,957 in forfeited funds from the 2014-15 through 2020-21 plan years.

What Do We Recommend?

BOCES officials should:

1. Establish procedures to ensure the administrator returns all forfeited funds from the FSA, DCAP and HRA in a timely manner.
2. Ensure the administrator provides a year-end accounting of employees' FSA, DCAP and HRA accounts, including a summary of claims paid and account balances, as required by the written agreement with the administrator.
3. Prepare an annual reconciliation of the contributions remitted to the administrator for the FSA, DCAP and HRA and corresponding reimbursements made by the administrator to calculate the amount of forfeited funds that should be returned by the administrator.
4. Ensure the administrator returns all remaining forfeited funds owed to BOCES as identified in this report.
5. Consult with BOCES' legal counsel with respect to the proper use of forfeited funds that have been or are subsequently returned by the administrator.
6. Review records of the FSA, DCAP and HRA prior to the 2014-15 plan year to determine whether the administrator owes BOCES additional forfeited funds.

Appendix A: Response From BOCES Officials



CENTRAL ADMINISTRATION
518-561-0100

District Office FAX 518-562-1471
Management Services
Business Office FAX 518-561-9382
Employee Services FAX 518-324-6612

CVES MISSION

Champlain Valley Educational Services empowers students, schools and communities by providing exemplary education, training, support and shared services.

July 8, 2022

Response to Audit Findings and Recommendations OSC Audit of Clinton-Essex-Warren-Washington BOCES Draft Audit Report Dated June 8, 2022

We are appreciative of the work done by the NYS Comptroller's audit team. They completed a thorough review of multiple years of our financial operation. This audit report only shows a small portion of the review and work that was completed. We are grateful for the on-site auditor's professionalism and collaboration to work with our team on various parts of his extensive financial review. The work of the auditor has helped to improve many areas of our financial operations throughout the BOCES. Furthermore, it brings us great pride in our organization and teams for the positive findings shared during the thorough review process that included the strong systems, processes, and procedures CEWW BOCES had in place for our financial operation.

In response to the audit findings, we offer the following response and corrective action plan for each finding in this letter. We have addressed all of the findings, including recouping all funds owed to CEWW BOCES from the vendor, and implemented new processes and procedures as per the recommendations. Lastly, CEWW BOCES, responding to the opportunity presented by this audit, has created a new HRA/FSA Co-Ser to address the areas of concern in this report for CEWW BOCES and our component districts. The Co-Ser began July 1, 2022 and is meeting the need of 9 component districts and the BOCES.

Audit Finding:

BOCES officials did not ensure the administrator returned forfeited funds from the FSA, DCAP and HRA in a timely manner.

***Summary Response to the Audit Finding:**

CEWW BOCES acknowledges the oversight in follow-up with the third-party administrator for proper year-end closeout and accountability of funds for FSA & DCAP from 2014-2015 through 2020-2021, and HRA plans from 2009-2010 through 2020-2021. Due to various staffing changes and changes to job responsibilities, oversight of these plans had been temporarily unplaced. However, this duty is now assigned with dual coverage to ensure the oversight does not occur with any third-party administrator utilized by CEWW BOCES in the future.

In January 2022, immediate steps were taken to obtain year-end information from 2014-2015 through 2020-2021 plan years, based on available information from the plan administrator, and requested reimbursement from such. With the assistance of the OSC auditor, a full reconciliation of contributions and claims paid for each year above was performed and corresponding payment of unused/forfeited funds were obtained from the administrator. For HRA plan years prior to 2014-2015, the administrator was

unable to provide year-end reconciliation reports. In addition, the HRA contributions for these years was very minimal, thus CEWW BOCES determined it cost-prohibitive to proceed with further action.

CEWW BOCES believes the procedures put in place as of January 31, 2022, will ensure adequate financial oversight for all future endeavors with any third-party administrators.

OSC Recommendation #1:

Establish procedures to ensure the administrator returns all forfeited funds from the FSA, DCAP and HRA in a timely manner.

OSC Recommendation #2:

Ensure the administrator provides a year-end accounting of employees' FSA, DCAP and HRA accounts, including a summary of claims paid and account balances, as required by the written agreement with the administrator.

***Response and Implementation Action for Recommendations #1 and #2:**

At the time this oversight was brought to the attention of CEWW BOCES, procedures were immediately implemented to identify dual parties as the responsible persons to ensure all future closeouts are completed, year-end reports are obtained from the third-party administrator, and any forfeited funds are received timely. The Treasurer and Benefit Services Office will ensure all plans are monitored and appropriately accounted for in a timely manner.

OSC Recommendation #3:

Prepare an annual reconciliation of the contributions remitted to the administrator for the FSA, DCAP and HRA and corresponding reimbursements made by the administrator to calculate the amount of forfeited funds that should be returned by the administrator.

***Response and Implementation Action for Recommendations #3:**

Procedures have been established as part of the year-end closeout of each plan year and plan type to reconcile contributions remitted through payroll and direct vendor payments to the administrator. The process will be similar to the one used by the OSC auditor when completing his reconciliations during the audit process. This will be the responsibility of the Benefit Services Office in conjunction with a review and approval by the Treasurer.

OSC Recommendation #4:

Ensure the administrator returns all remaining forfeited funds owed to BOCES as identified in this report.

***Response and Implementation Action for Recommendations #4:**

As of April 14, 2022, the Treasurer has confirmed that all forfeited funds identified in the OSC Audit Report have been paid by the administrator to CEWW BOCES.

OSC Recommendation #5:

Consult with BOCES' legal counsel with respect to the proper use of forfeited funds that have been or are subsequently returned by the administrator.

***Response and Implementation Action for Recommendations #5:**

A review of plan documents for FSA and DCAP have identified that forfeited funds will be allocated towards the costs of administering the plans and will be returned to districts as part of the year-end BOCES surplus.

For HRA, these contributions are employer paid and have been credited to the original BOCES service codes that the expense was charged against in a pro-rated fashion.

OSC Recommendation #6:

Review records of the FSA, DCAP and HRA prior to the 2014-15 plan year to determine whether the administrator owes BOCES additional forfeited funds.

***Response and Implementation Action for Recommendations #6:**

All FSA and DCAP plan years, including prior to 2014-2015, were reconciled with the administrator and all forfeited funds have been received. For HRA plan years prior to 2014-2015, BOCES administration have reviewed the contributions made to these plan years and deemed them minimal and immaterial to pursue further action from the administrator. Therefore, no further steps are being taken for HRA contributions.

Please accept this report as our response and corrective action plan to the Draft Audit Report dated June 8, 2022. Again, we are appreciative of the work done by the NYS Comptroller's audit team to help CEWW BOCES improve our organization. This audit has benefited our organization and all our component districts. If you need any further information, do not hesitate to reach out to our CEWW BOCES team.

Dr. Mark C. Davey, District Superintendent
Clinton-Essex-Warren-Washington BOCES



Appendix B: 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 BOCES officials and an employee of the administrator and reviewed records and reports to gain an understanding of BOCES' FSA, DCAP and HRA and BOCES' procedures related to ensuring the administrator returns forfeited funds from the FSA, DCAP and HRA in a timely manner. We documented any associated effects of deficiencies in those procedures.
- We compared the contributions remitted to the administrator for the FSA, DCAP and HRA for the 2014-15 through 2020-21 plan years and corresponding reimbursements made by the administrator to calculate the amount of forfeited funds that should have been returned by the administrator to BOCES.
- We reviewed the forfeited funds from the FSA, DCAP and HRA for the 2014-15 through 2020-21 plan years that the administrator had returned to BOCES as of December 31, 2021, to determine whether the administrator returned all forfeited funds to BOCES in a timely manner.
- We calculated the amount of forfeited funds from the FSA, DCAP and HRA for the 2014-15 through 2020-21 plan years that the administrator had not returned to BOCES as of December 31, 2021 and January 31, 2022.
- We reviewed forfeited funds from the FSA, DCAP and HRA for the 2014-15 through 2020-21 plan years that the administrator had returned to BOCES in January 2022 to determine whether they were returned in the proper amounts owed.

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.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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. The CAP should be posted on BOCES' website for public review.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

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

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

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

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/files/local-government/publications/pdf/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

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