



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Controls and Accountability of Court, Trust and Bail Funds

New York City Department of Finance



Report 2013-N-1

April 2014

Executive Summary

Purpose

To determine if New York City Department of Finance accurately accounts for Court, Trust and Bail funds. This audit covered from January 1, 2011 through March 7, 2013.

Background

Section 2601 of the New York State Civil Practice Law and Rules requires that all moneys paid into the New York City courts be forwarded to the City's Department of Finance (Finance). These moneys include bail postings made on behalf of defendants, trust funds from estates controlled by Public Administrators (such estates have no known heirs or no heirs able or willing to administer the estates), and other miscellaneous funds. Finance's Court Assets Department is responsible for the accounting of these moneys and maintaining a computerized accounting ledger for Court, Trust and Bail funds. According to Finance's records, as of December 31, 2012, Finance had a total of \$295,394,265 in two accounts.

Key Findings

- Finance's Court Assets Department could not accurately account for Court, Trust and Bail funds. For example, Finance's Court Assets Tracking System (CATS) reported a balance of \$296.7 million, while the bank and investment firm that held the money had a balance of \$299.1 million. Finance stated that the difference was due to Alternative to Incarceration program fees it withheld, but could not provide the details to support the amount. Finance also could not demonstrate that it applied the full, correct amount of interest to the Court and Trust accounts.
- Bail funds were not accurately accounted for because the computer system did not include fees due the City for certain abandoned accounts.
- Court orders to pay out Bail funds were not always processed timely resulting in underpayments to sureties and to the City and incorrect abandonment of funds to the State.

Key Recommendations

- Investigate the differences between CATS ledgers and the financial institution balances and make appropriate corrections. Maintain the documentation to support each error and the necessary corrections.
- Take appropriate action to determine the causes of unallocated interest and develop a plan to fully distribute interest to the proper accounts.
- Ensure all bail cases are abandoned timely, and that all necessary fees have been withheld before abandonment.
- Review previously abandoned accounts and determine if fees that were not collected can still be recovered.

Other Related Audit/Report of Interest

[New York City Department of Finance: Accountability Over Court, Trust and Bail Funds \(2007-N-8\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

April 16, 2014

Ms. Beth E. Goldman
Commissioner
New York City Department of Finance
59 Maiden Lane
New York, NY 10038

Dear Ms. Goldman:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is an audit report entitled *Controls and Accountability of Court, Trust and Bail Funds* at the New York City Department of Finance. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article 3, Section 33 of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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This report is also available on our website at: www.osc.state.ny.us

Background

Section 2601 of the Civil Practice Law and Rules requires that all moneys paid into the New York City courts be forwarded to the City's Department of Finance (Finance). These moneys include bail postings made on behalf of defendants, payments made pursuant to court orders, trust funds from estates controlled by Public Administrators (such estates have no known heirs or no heirs able or willing to administer the estates), and other miscellaneous funds. Payments made pursuant to court orders commonly involve landlord/tenant disputes and surplus moneys from foreclosures.

These funds are held by the City in a trust account; these are not City funds, and are not reported in the New York City Financial Statements as Trust and Agency funds.

Finance's Court Assets Department (CAD) is responsible for the moneys in its possession, including maintaining accurate account balances, and investing the funds. According to Finance's records, as of March 7, 2013, Finance had a total ledger balance of \$296,681,975 in its computer system. A small portion is held in a checking account to cover checks, but the majority is invested by the City Comptroller in a common investment pool.

Finance receives these moneys from various City courts, New York City Public Administrators, the New York City Department of Correction (Bail funds), and other City agencies. In accordance with Section 1504.3(c) (iii) of Chapter 58 of the New York City Charter, Finance must open and maintain separate ledger accounts whenever Court, Trust or Bail funds are received, and keep an exact accounting of all funds. A ledger is a record for each Court, Trust and Bail action showing deposits, withdrawals, additions of interest, and deductions of fees. The amount of fees that can be deducted is governed by various statutes.

Prior to August 2012, CAD operated the Bail Automated Receipt System (BARS) to account for Bail funds, and the "HOD" system to account for Court and Trust assets. In August 2012, Finance converted these systems into its new Court Assets Tracking System (CATS).

Audit Findings and Recommendations

We concluded that Finance's Court Assets Department could not accurately account for Court, Trust and Bail funds. We found discrepancies between the total account balances as shown on CATS and the balances held by the bank and investment firm. Finance also could not demonstrate that it applied the full, correct amount of interest to the Court and Trust accounts.

Accountability for Court, Trust and Bail Funds

Accounting for Funds

According to Finance's computer system, as of March 7, 2013, the total ledger balance for Court, Trust and Bail funds was \$296,681,975. Reports from its financial institutions showed \$5,972,553 held in a checking account to cover checks, and \$293,131,272 invested by the City Comptroller in a common investment pool, for a total of \$299,103,825. There was an excess of \$2,421,850 over the ledger balance on that date. Our prior audits of Court, Trust and Bail funds have also found discrepancies between ledger accounts and financial institution accounts.

Finance officials stated that the unaccounted for difference represents Alternative to Incarceration (ATI) program fees collected from bail cases. However, our review of documents provided to support the amount Finance reported as ATI fees determined that Finance actually collected \$3,304,700 in ATI fees. This includes \$2,543,406 prior to May 2010 and an additional \$761,294 collected since. When these funds are added to the ledger balances of Court, Trust and Bail funds there is a shortage of \$882,850 on deposit. Finance officials could not account for the shortage.

Subsequent to being advised of our findings, Finance officials opened a bank account to hold the funds for the ATI programs. Finance deposited \$2.9 million in this account. Finance needs to fully account for the difference between the amount deposited and the \$3.3 million that it collected.

We also found that when Finance posts interest each month, there is a balance left that is referred to as "unallocated interest." For the period March 2011 to June 2012, Finance's reports indicate a total of \$479 in unallocated interest. Finance officials could not explain where the funds are posted or why they were not allocated.

Recommendations

1. Investigate the differences between CATS ledgers and the financial institution balances and make appropriate corrections. Maintain the documentation to support each error and the necessary corrections.

(Finance replied to our draft report that it deposited all of the ATI moneys to a new bank account. It added that the difference between the \$3,304,700 and the amount deposited of \$2,421,850 was due to errors in its manual records. As a result, it considers the matter resolved.)

Auditor's Comments: We are pleased that Finance deposited the ATI moneys into a new bank account. However, these funds should have been distributed to the ATI programs. Furthermore, the difference in the two amounts for the ATI fees collected is significant and requires more than just stating the manual records were incorrect. Finance officials should take additional actions to ensure that the ATI moneys were properly accounted for.

2. Take appropriate action to determine the causes of unallocated interest and develop a plan to fully distribute interest to the accounts.

Court and Trust Funds

Investment Fee

Each month, CAD apportions earnings from the common investment pool between Bail funds and Court and Trust funds. The interest from the Bail funds is paid to the City as income. Finance calculates the rate of interest earned on the Court and Trust portion in the pool investment. If the interest earned exceeds half of one percent (annual rate of return), Finance retains an amount equal to half of one percent as an investment fee and the balance of the interest earned is then allocated to the Court and Trust accounts as income. If the annual rate of return is half of one percent or less, Finance retains the entire amount. For the period January 2011 through February 2013, the Commissioner of Finance received investment fees totaling \$2,958,418.

We concluded that, under State statute, the Finance Commissioner is entitled only to a one-time fee of half of one percent when the funds are initially invested. The statute does not mention interest earned on the investments; therefore, CAD should not be withholding and remitting a monthly amount to the Commissioner of Finance. Rather, the interest earned each month should have been allocated to the Court and Trust accounts.

In contrast, according to Finance officials' interpretation of the statute, the interest earned should go to the New York City Commissioner of Finance. Therefore, it is their practice to remit the first one-half percent of interest earned to the Commissioner monthly. As a result, the Commissioner of Finance has incorrectly received monthly interest payments instead of the one-time fee allowed when the funds are initially invested.

In response to our preliminary findings report, Finance stated that it will review its practice with regard to the investment fee prescribed by New York State Civil Practice Law and Rules, Section 8010(2), to ensure the City of New York receives the correct fee. However, Finance offered no response to ensuring the Court and Trust accounts were accurately credited for interest earned.

Interest Calculation

State regulations require proration of interest at least quarterly and posting of the interest to each ledger (New York Codes, Rules and Regulations, Title 2, Part 70, §70.7(b)).

We reviewed 57 accounts in CATS to determine whether the proper amount of interest was posted to the accounts for calendar year 2011, and the period January through June 2012. Finance officials could not demonstrate that they have actually credited the appropriate amount of interest to each ledger account. They also could not provide any documentation showing exactly how the system calculates the interest, and only provided partial reports or summaries which could be evaluated. For example, no documents were produced for January or February 2011 or for June 2012, and records for only one borough's accounts (Richmond) were produced for March 2011 through June 2012. Because these records were not available, Finance could not demonstrate that the formula was used to prorate and post interest accurately to the accounts.

In addition, the interest earned from August 2012 to February 2013 was less than half of one percent, and CAD officials therefore remitted all interest earned to the Commissioner of Finance. We noted that the regulation cited by Finance officials as the basis for this practice does not mention "interest." Instead, the regulation refers to a one-time fee of half of one percent at the time the money is invested. Thus, Finance needs to change its practices to comply with the Civil Practice Law and Rules, section 8010(2).

Account Adjustments

When we inquired about differences in account balances, CAD staff showed us they were reviewing the accounts and had found several accounts where they had detected and corrected large differences in account balances. They attributed the errors to data entry/key punching errors and programming errors that could not handle amounts over \$9,999,999. In one example, a deposit was incorrectly entered for \$722,672 but the amount of the check was \$222,672. CAD staff advised they are continuing to look for other account errors. Even so, procedures should be such that keying errors which cause \$500,000 out-of-balance conditions would be detected the same day, when closing the cashier's work.

Recommendations

3. Ensure compliance with New York State Civil Practice Law and Rules, section 8010(2) and that the Commissioner of Finance receives the correct fee and that Court and Trust accounts are properly credited for the interest earned from the investments.

(Finance replied to our draft report that it will comply with the provision of New York Civil Practice Law and Rules, section 8010(2) regarding the one-time fee when funds are initially invested.)

Auditor's Comments: We are pleased that Finance has taken action to address this issue; however, there is no indication that it reviewed these accounts. Finance officials should develop a plan to review accounts to ensure that they are correct.

4. Prepare and maintain records that document that the correct amount was posted to each Court and Trust account.

Bail Funds

We also concluded that CAD did not accurately account for Bail funds. We found that the accounts were incorrect because the computer system did not include fees due the City for certain abandoned accounts. In addition, delays in processing court orders to disburse Bail funds resulted in underpayments to sureties and to the City and inappropriate abandonment of funds to the State.

Abandoned Bail

We reviewed 10 unclaimed bail cases totaling \$52,000, which Finance abandoned over a two-year period. In nine cases, we found Finance remitted the money to the State as unclaimed funds timely. In one case, it took Finance 14 years to abandon the funds. A further review of the 10 abandonment cases disclosed that seven cases totaling \$45,500 were for guilty verdicts and that Finance had correctly withheld three percent as fees (two percent administration and one percent incarceration fee). However, when Finance closed the accounts to forward the moneys to the State Comptroller's Office of Unclaimed Funds, CATS reversed the fees. This resulted in the Commissioner of Finance and the ATI programs losing the fees to which they were entitled.

To determine whether this condition affected other bail cases, we checked Finance's CATS system, and found Finance had abandoned 776 guilty bail cases (including the seven) totaling \$767,000 in April 2011 and April 2012. Finance originally withheld \$23,010 in fees for the Commissioner of Finance and ATI programs, but in the process of abandoning the unclaimed/uncashed checks, CATS reversed the fees, resulting in the Commissioner of Finance and ATI programs losing \$15,340 and \$7,670, respectively. Finance officials were not aware that CATS was reversing the fees every time they abandoned a guilty bail case.

Dormant Accounts

Unlike abandonment cases where Finance has issued a check and the recipient has failed to cash or claim the funds, cases are termed dormant when an open bail case has not been adjudicated by the courts and Finance has had the money for three years with no activity. Prior to April 2011, the dormancy for such bail accounts was five years. The funds in these accounts are subjected to New York State Abandoned Property Law; however, the full amount does not go to the Office of Unclaimed Funds because, under an agreement with the City, a portion of these moneys goes to the New York City Comptroller's Office.

We reviewed 20 closed bail cases, and found that three cases were resolved by the courts, but Finance did not distribute the funds as the court requested. Instead, Finance took no action and these three cases totaling \$5,001 became dormant. The net result was that the State was overpaid \$2,996 and the City was underpaid \$540 while the sureties were owed \$2,456.

Our review of 25 open bail cases disclosed two cases had a court order from 2010, but Finance did not take any action to either close these accounts or distribute the funds which totaled \$8,500

minus the applicable fees. As a result, both cases could become dormant with the funds being paid to the wrong parties.

Finance officials stated that the dormancy process occurs automatically in CATS and they do not manually review any of the cases before they are termed dormant. They also stated that, even though a court order has been filed, as long as CATS shows the case is open with no activity, the case may go dormant.

Finance agreed with our recommendation to review all the Cash Bail cases that are scheduled to be abandoned or become dormant to ensure that no cases abandoned to the State are closed or have a pending court order. As part of their review, they will correct any Cash Bail cases that should have been closed or were erroneously classified as dormant. Officials are also working with the State's Unclaimed Funds personnel to determine the best way to recover the funds that were inadvertently sent to the State instead of the City.

Incarceration Fees

Our review of eight guilty bail cases totaling \$65,200 found that Finance withheld the 1 percent fee of \$652 as required, but they have never remitted the funds to New York City's ATI programs. Finance officials stated that no one has requested the incarceration fee moneys in recent history. Instead, the money was kept in the common trust account.

Finally, New York State Civil Practice Law and Rules, section 540.10, states that any bail money forfeited shall be applied to the use of the county. We reviewed 10 forfeited bail cases totaling \$73,000 and found that Finance incorrectly withheld \$730 in incarceration fees. Finance officials could not provide us with any court order, law, rule or regulation requiring them to collect the ATI fee from the 10 forfeited cases. However, Finance officials stated that it is their practice to treat forfeited bail money as a guilty verdict case, which would require the one percent fee for the ATI programs.

In response to our preliminary findings report, Finance stated that it has asked its legal staff to review the basis for withholding incarceration fees from forfeited Cash Bail.

Recommendations

5. Ensure that all bail cases are properly handled including but not limited to:

- Timely abandonment of cases and all necessary fees have been withheld before forwarding to the Office of Unclaimed Funds, and
- Closing bail cases timely and ensuring that cases which are pending dormancy do not already have a court order issued.

6. Review the five dormant bail cases in this report that were not handled properly (refunds to two open cases with court orders and three cases that should not be dormant).

7. Review the practice of withholding incarceration fees from forfeited bail, take action to correct the accounts and discontinue withholding incarceration fees from forfeited bail.

Required Reports

Finance must prepare and submit several reports regarding the Court and Trust moneys held by the Commissioner, which were deposited into court. For example, an “Annual Report of Custodial Funds” as of December 31 is due by the first day in February of the following year. In addition, a listing of all the funds and property deposited into court and held by the Commissioner must be filed with the State Comptroller in the form and manner prescribed by the State Comptroller. The Comptroller has specified that the form for this report is form AC231 A&B.

During our scope period, Finance did not file either the Annual Report of Custodial Funds or the AC231 A&B report as required. According to officials of the Court Assets Department, they were not aware that form AC231 A&B has to be filed with the State Comptroller’s Office. When we requested the Annual Report of Custodial Funds, Finance filed the report for December 31, 2012 with the Comptroller’s Office, on March 1, 2013, and a copy of this report was provided to the auditors.

In response to the preliminary findings, Finance officials indicated that they will prepare a comprehensive report in the required format and submit it to the New York State Comptroller’s Office.

Recommendation

8. Prepare and send the AC231 A&B to the State Comptroller each year, as required.

Audit Scope and Methodology

We audited New York City Department of Finance’s controls over Court, Trust and Bail funds for the period January 1, 2011 through March 7, 2013. Our audit objective was to determine if Finance accurately accounts for Court, Trust and Bail funds. To accomplish our objective, we interviewed Finance officials and reviewed New York City and New York State laws, rules and regulations related to the operation and accounting of funds for Court, Trust and Bail. We also reviewed selected account files, records and related documentation maintained by Finance.

We conducted our audit in accordance with generally accepted government auditing standards. 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.

As is our practice, we notified New York City Department of Finance officials at the outset of the audit that we would be requesting a representation letter, in which management would provide

assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In this letter, Agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further affirm that either the Agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, Finance officials have not provided a representation letter in connection with this audit. As a result, we lack assurance from Finance officials that all relevant information was provided to us during the audit.

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 the 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 V, Section 1 of the State Constitution and Article 3, Section 33 of the General Municipal Law.

Reporting Requirements

A draft copy of this report was provided to New York City Department of Finance officials for their review and comment. Their comments were considered in preparing this draft report and are included in their entirety at the end of this report. Finance officials agreed with our recommendations and have taken actions to implement them.

Within 90 days after final release of this report, we also request the Commissioner of the New York City Department of Finance report to the State Comptroller advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

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To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



December 20, 2013

Carmen Maldonado
 Audit Director
 Office of the State Comptroller
 Division of State Government Accountability
 123 William Street - 21st Floor
 New York, NY 10038

Re: Draft Audit Report of Controls and Accountability of Court & Trust and Cash Bail Funds

Dear Ms. Maldonado:

The NYC Department of Finance ("Finance") has reviewed the draft audit report (Report 2013-N-1) issued by the New York State Comptroller on November 19, 2013. Consistent with the findings of your prior audits, the Court Assets team transferred all its Court & Trust cases from an outdated, unreliable database system called HOD to a new Court Assets Tracking System ("CATS"), which successfully went live in July 2012. The period of this audit from January 1, 2011 to March 7, 2013 includes both a period when we utilized the old HOD system and the new CATS system.

Finance's responses to the audit findings and recommendations are provided below.

Accountability for Court and Trust and Bail Funds

Accounting for Funds

- 1. Finance should investigate differences between CATS ledgers and the financial institution balances and make appropriate corrections. Maintain the documentation to support each error and the necessary corrections.***

Your report states that Finance "could not accurately account for Court & Trust and Bail Funds" and notes the difference of \$2,421,850 between the balance as shown in CATS of \$296,681,975, and the balance as shown on reports from financial institutions of \$299,103,825. We have determined that the difference of \$2,421,850 represents the Alternative to Incarceration (ATI) fee that was previously included in Court & Trust

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balances. Per your recommendation made during the audit, last May we opened a new ATI fee bank account at Wells Fargo Bank and we transferred \$2,421,850 of ATI fees to this bank account.

Further, before CATS went live in July 2012 Finance also kept a manual ledger separate from CATS that had an ATI fee balance of \$3,304,700. We believe that this amount in the manual ledger was booked incorrectly and did not tie to our bank account balances. We no longer keep a separate manual ledger and we rely on our records in CATS.

In addition, as part of an internal review undertaken in December 2012, Finance reviewed all cases that had been transferred into CATS in July 2012 to ensure that all case balances were accurately transferred. Therefore, we consider this issue to be resolved, and we have adjusted our Court Assets books and records accordingly.

2. Finance should take appropriate action to determine the causes of unallocated interest and develop a plan to fully distribute interest to the accounts.

Your report states that during the monthly posting of interest to eligible accounts a balance of unallocated interest could not be explained. Finance posts interest to qualified Court & Trust cases on a monthly basis. Prior to July 2012, this process was performed in our legacy HOD system for Court & Trust cases. While reviewing the reports associated with the monthly interest spread, it was noted that a small amount was referred to as unallocated interest. Since we migrated the Court & Trust cases to CATS in July 2012, all interest earned is allocated to eligible open Court & Trust cases and no amount is left unallocated. Finance considers this matter resolved.

Court & Trust Funds

3. Finance should ensure compliance with NY Civil Practice Law and Rules, section 8010(2) and that the Commissioner of Finance receives the correct fee and that court and trust accounts are properly credited for the interest earned from the investments.

4. Finance should prepare and maintain records that document that the correct amount was posted to each Court and Trust account.

- 1) Investment Fee: Your report states that under State Statute, the Finance Commissioner is entitled only to a one-time fee of 0.5% when Court & Trust funds are initially invested. We reviewed our practice regarding the investment fee and the provision of New York Civil Practice Law and Rules, Section 8010(2) with Finance's Legal Division. As a result, we have concluded that your interpretation of this law is correct and that Finance is entitled only to a 0.5% when Court & Trust funds are initially invested. In September 2013, we adjusted our internal processes and completed major programing changes to CATS for the one-time deduction only when such funds are deposited. The new method to calculate this fee was first utilized in September 2013 for cases deposited retroactively to July 1, 2013. Going forward all

investment fees will be deducted only when the Court & Trust funds are deposited. Finance considers this matter resolved.

- 2) Interest Calculation: Your report states that we could not demonstrate that interest earnings were accurately credited to eligible Court & Trust accounts and could not provide related documentation. Finance allocates interest earned to eligible Court & Trust accounts at the beginning of every month for the prior month. During the audit, Finance shared our manual and systems calculation for the monthly allocation of interest.

Finance's old legacy HOD system was unable to show the amount of interest earned on a monthly basis which made it appear as though interest was only applied to Court & Trust cases at the end of each year. However, under the new CATS system, Finance is able to show the amount of interest earned on a monthly basis and records these amounts as separate monthly transactions. CATS is also able to generate a detailed Accounts Payable Invoice report on how the interest was allocated. Finance regularly reviews these reports and the documentation that the correct amount of interest has been posted to each Court & Trust case. Finance considers this matter resolved.

Your report also states that the interest earned from August 2012 to February 2013 was less than the 0.5% investment fee the City is entitled to and, as a result, all the interest earned during that period was remitted to the Commissioner of Finance. Prior to July 2013, our practice was to deduct the 0.5% investment fee from the interest earned on Court & Trust cases and then to allocate the remaining interest to the eligible Court & Trust cases. As stated above, based on your preliminary recommendation, Finance has reviewed this process and has made the necessary changes to ensure that the 0.5% investment fee is deducted upon deposit from the principal balance as provided by New York Civil Practice Law and Rules Section 8010(2). Finance maintains records which show the amount of interest posted to each Court & Trust case on a monthly basis. Finance considers this matter resolved.

- 3) Account Adjustments: Your report references a deposit for a Court & Trust case that was recorded incorrectly and overstated by \$500,000. This error was discovered during an independent review we began prior to the audit in December 2012. This project involved carefully reviewing all cases transferred into CATS in July 2012 to ensure that all case balances were accurately transferred. We have corrected the \$500,000 overstatement for this particular Court & Trust case in CATS.

Your report further states that data entry errors made in the accounts should be detected and corrected the same day and we should maintain records documenting the adjustment. Since the CATS implementation in July 2012, our practice has been to verify our daily bank deposits with the new cases created in CATS and our ledger entries. Any error made when creating a case or applying funds to a case would prevent these files from matching, thus giving us a chance to correct the error. We

maintain a record of all adjustments made to the Court & Trust cases. Finance considers this matter resolved.

Cash Bail Funds

Abandoned Cash Bail

5. Finance should ensure that all bail cases are properly handled, including but not limited to:

- *Timely abandonment of cases and all necessary fees have been withheld before forwarding to the Office of Unclaimed Funds, and*
- *Closing bail cases timely and ensuring that cases which are pending dormancy do not already have a court order issued.*

Your report states that one of the cases you reviewed during the audit was abandoned after 14 years and that many of the cases abandoned in 2011 and 2012 were remitted to New York State along with the City's Administration fee and Alternative to Incarceration fee. Prior to April 2012, we relied on our legacy HOD system to identify cases eligible for abandonment based on the deposit year. As you are aware, there were major shortcomings with this old system. Since we began using CATS in July 2012, we have been able to accurately identify the cases eligible for abandonment and deduct the necessary fees prior to remitting the funds to the State.

The instances mentioned in your report in which some Cash Bail cases were remitted to the New York State Office of Unclaimed Funds along with the fees owed to the City were due to human error and not because the CATS system reversed the fees, as stated in your report. One of the processing steps in CATS is to select City fees that must be deducted from a case before it is abandoned to the State. This step was inadvertently omitted during processing of these aforementioned cases in CATS.

Since learning of this error, Finance has recouped \$18,768.53 of 2011 and 2012 City fees that had been mistakenly sent to New York State. Finance also has instituted procedures to prevent this from happening in the future. These include reviewing each case thoroughly before it is abandoned to the State to ensure that City fees are not included with the funds sent to the State. We will also work with our software designer to program CATS to flag any cases that still include the City fees before such cases are abandoned to the State. Finance considers this matter resolved.

Dormant Accounts

6. Finance should review the five dormant bail cases in this report that were not handled properly (refunds to two open cases with court order and three cases that should not be dormant.)

Your report states that Finance failed to refund Cash Bail funds to sureties in three cases and, as a result, the cases became dormant. According to our records, these three Cash Bail cases had been correctly abandoned in 2011 and 2012 because these cases had no activity for three years and were classified as dormant cases.

Your report also stated that Finance had failed to act on Cash Bail refund orders for two other Cash Bail cases and, as a result they could become improperly classified as dormant. We have reviewed these two cases and we found that in both instances refund orders had been processed within three days of receipt. However, both of the Cash Bail refund checks were never cashed and they became stale-dated after 180 days. Although they had been erroneously first classified as dormant, we have updated the status as pending abandonment. These two Cash Bail cases are scheduled to be abandoned in April 2014. We believe that these cases were correctly processed based on our procedures. Lastly, our current abandonment process includes a thorough review of all cases prior to abandonment. We consider this matter resolved.

Incarceration Fees

- 7. Finance should review the practice of withholding incarceration fees from forfeited bail, take action to correct the accounts and discontinue withholding incarceration fees from forfeited bail.***

Your report states that funds for the ATI programs were kept in the Common Trust account. In May 2013, we transferred \$2,928,471.48 of ATI funds to a new separate ATI bank account at Wells Fargo Bank. This account balance includes the accumulated ATI funds retained through June 2013. In addition, under the instruction of the Office of Management and Budget (OMB), since July 1, 2013 all ATI fees have been sent to the City's Central Treasury account and recorded in the City's Financial Management System (FMS) as miscellaneous revenue to fund alternatives to incarceration programs. We consider this matter to be resolved.

Your report also states that our practice of withholding the 1% Alternative to Incarceration Fees from forfeited Cash Bail cases should be reviewed and discontinued. Finance believes this practice is appropriate. Section 99-m(1) of the General Municipal Law ("GML") provides that "[e]xcept as provided herein", the City is entitled to this fee. The only exception provided in the statute is that the bail depositor recovers the fee if the defendant is acquitted (GML § 99-m (4)). The reference in GML § 99-m(1) to forfeiture does not require the City to forgo the ATI fee.

Required Reports

- 8. Finance should prepare and send the AC 231A&B to the State Comptroller each year, as required.***

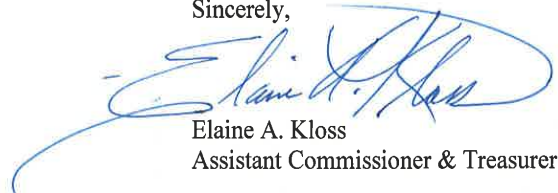
Your report states that Finance did not file the required Annual Report of Custodial Funds using the AC231 A&B Form. Finance filed this annual report with State Comptroller (with a

copy to you) on March 1, 2013. In May 2013 you notified us that the required report format had not been followed. Since that time, we have had a correct AC 231 A&B report format developed in CATS and we plan to file this annual report with the New York State Comptroller's on each February 1 going forward. Finance considers this matter resolved.

In closing, I would like to take this opportunity to thank you for the time you and your audit team spent with us reviewing our Court Assets procedures and records. As you know, we significantly restructured the Court Assets team in the past two years, and we continue to strive to streamline and improve our processes to manage the Court Assets. We also launched our new CATS database system for state of the art record keeping and reporting of Court Assets. We take our Court Assets fiduciary responsibilities very seriously and greatly appreciate all the suggestions you and your team have made to improve our internal controls and to better safeguard these funds.

Thank you again for all your recommendations and guidance.

Sincerely,



Elaine A. Kloss
Assistant Commissioner & Treasurer

Cc: Beth E. Goldman, Commissioner, NYC Department of Finance
Elizabeth Botwin, Deputy Commissioner, NYC Department of Finance
Jacqueline Gold, Esq., Legal Division, NYC Department of Finance
Sheila Vyard, Director of Court Assets, NYC Department of Finance
Celia Carino, Director of Internal Audit, NYC Department of Finance
George Davis III, Deputy Director of Audit Services, Mayor's Office of Operations