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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**NEW YORK STATE THRUWAY
AUTHORITY AND NEW YORK
STATE CANAL CORPORATION**

**ACCURACY OF EMPLOYEE
RETIREMENT REPORTING**

Report 2008-S-57

AUDIT OBJECTIVE

The objective of our audit was to determine whether the New York State Thruway Authority and its subsidiary, the New York State Canal Corporation (hereafter referred to jointly as the Authority), comply with the requirements of the Employees' Retirement System (ERS) when they enroll individuals in the ERS and report information about their earnings and days worked.

AUDIT RESULTS - SUMMARY

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

The Authority must enroll all full-time, permanent employees in the ERS and notify all part-time, temporary, and provisional employees in writing of their right to membership in the ERS; and must enroll them if they elect to participate. We found the Authority is enrolling employees properly in the ERS.

The ERS has rules for determining how earnings and days worked should be calculated and reported. These rules require the Authority to establish a standard workday ranging from six to eight hours for each employee title. Our review of a judgmental sample of 20 enrollees found that the Authority is, for the most part, accurately reporting employee earnings and days worked to the ERS. However, the Authority used a standard work day of only four hours in the calculation of days worked for one employee,

which resulted in the over-reporting of the number of days worked.

The ERS also requires that only employees, and not independent contractors, be enrolled in the ERS. We found that the Authority is enrolling only employees in the ERS. Certain rules apply to participating employers who report appointed officials' time and earnings to the ERS. We found the Authority does not have any appointed officials enrolled in the ERS.

Our report contains one recommendation to correct the standard workday issue we identified. Authority officials agreed with our recommendation and stated they have implemented it.

This report, dated July 31, 2008, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
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BACKGROUND

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

To qualify for membership in the NYSLRS, an individual must be a paid employee of a participating employer. The employers are required to enroll all permanent full-time employees in the ERS, and offer participation in writing to part-time, temporary, and provisional employees. Participating employers are responsible for complying with the enrollment and reporting requirements contained in the New York Codes, Rules and Regulations and the ERS Employer's Guide.

The Authority was established by the New York State Legislature in 1950 to build, operate, and maintain the Thruway system. The Authority, through its subsidiary, the New York State Canal Corporation, is also responsible for the operation, maintenance, and promotion of the State's four historic canals. During November 2007, the Authority payroll included about 4,400 employees. As of December 2007, Authority officials indicated that about 470 active employees were not enrolled in the ERS.

AUDIT FINDINGS AND RECOMMENDATION

Enrollment of Eligible Employees

The Authority is a participating employer in the ERS, covering its employees and those of its subsidiary. According to the ERS Employer's Guide, a participating employer must enroll all full-time, permanent employees in the ERS. The ERS refers to this group as mandatory employees. Other employees, such as part-time, temporary, or provisional employees, must be given the option to enroll in writing, although they cannot be required to do so. The ERS refers to this second group as optional employees.

The Authority is required by Section 45 of the New York State Retirement and Social Security Law to notify all optional employees

of their right to membership in the ERS, and to obtain a signed acknowledgment from the employees that they were so notified. Additionally, the Authority must retain these signed acknowledgments.

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

Each month, the Authority reports the earnings and days worked to the ERS for each enrolled employee. The ERS provided us with reports for the months of September, October, and November 2007. We compared the names on the ERS reports with the payroll registers provided to us by the Authority for the same months. The employees, who appeared on the ERS reports, also appeared on the payroll registers and appeared to be valid employees. We did identify several employees on the ERS reports who were receiving workers' compensation; however, they were eligible to be reported to the ERS even though they were not on the payroll.

We also reviewed personnel files for individuals in certain employee titles to determine whether any consultants or independent contractors had been reported erroneously as employees. We did not identify any such individuals on the payroll.

Authority officials also provided us with a list of 471 employees who were not participating in the ERS, as of December 11, 2007. To determine whether the required acknowledgment forms were on file, we selected a judgmental sample of 26 of the 471 employees. Six of these employees were not required to sign acknowledgments, because they were already retired and, therefore, not

considered optional employees. We found the Authority had the required forms on file for the remaining 20 employees.

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

Accuracy of Reported Earnings and Days Worked

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

To test the Authority's reporting to ERS of employee earnings and days worked, we selected a judgmental sample of 20 Authority employees. We found the Authority accurately reported employee earnings to the

ERS for all 20. However, the workdays reported for one Thruway Station Cleaner were overstated in each of the three months we reviewed. Although the Authority had established a standard workday for this title, we found it had calculated days worked for this person using a four-hour workday, which is two hours less than the minimum allowed by ERS rules. Using the minimum allowable standard workday of 6 hours, we calculated that the Authority over-reported at least 5 days for this employee for September 2007; at least 5 days for October 2007; and at least 7.5 days for November 2007, for a total of at least 17.5 days. No other employees in this title were enrolled in ERS.

ERS rules also require employers to report earnings and days worked for full-time, permanent employees from the date of their appointment in their position. For employees with optional membership, earnings and days worked should generally be reported from the ERS registration date forward. The rules further require employers to correct any reporting errors of either time worked or earnings by filing an adjustment with ERS. We selected a random sample of ten employees who were on leave without pay or at reduced pay during September, October, and November 2007 to determine if the information the Authority reported to the ERS was correct. We found the Authority reported the information appropriately for these employees.

We also reviewed a judgmental sample of ten employees who were either added to or removed from the Authority payroll between September and November of 2007. We found no discrepancies between what appeared on the payroll registers and what was reported to the ERS for these employees.

Lastly, the ERS has rules for determining how the days worked by appointed officials should

be calculated and reported. We found that none of the Authority's appointed officials are compensated or enrolled in the ERS.

Recommendation

Determine the time that was over-reported for the identified employee and work with the ERS to ensure the information gets reported accurately and retroactively, if necessary.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the Authority's enrollment of individuals in the ERS and its reporting of retirement information to the ERS. Our audit covers the period April 1, 2005, through March 13, 2008.

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

To determine whether the individuals who were not enrolled in the ERS had been notified appropriately of their eligibility for enrollment, we reviewed personnel files for selected employees. We also reviewed personnel files to determine whether any consultants or independent contractors had been reported erroneously as employees.

To determine whether earnings and days worked information was reported accurately

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

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

REPORTING REQUIREMENTS

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

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Thruway Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and if the recommendation was not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Frank Houston, John Buyce, Greg Petschke, Sharon Salembier, Jennifer Paperman, Ray Barnes, W Sage Hopmeier, Richard Podagrosi, Andre Spar, and Dana Newhouse.

APPENDIX A - AUDITEE RESPONSE



John L. Buono
Chairman

New York State Thruway Authority New York State Canal Corporation

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Michael R. Fleischer
Executive Director
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July 7, 2008

Mr. Frank J. Houston, Audit Director
Division of State Government Accountability
Office of the State Comptroller
123 William Street, 21st Floor
New York, NY 10038

Dear Mr. Houston:

New York State Thruway Authority (Authority) staff has reviewed the Office of the State Comptroller's (OSC's) draft audit report 2008-S-57 concerning the Authority and New York State Canal Corporation *Accuracy of Employee Retirement Reporting*. The Authority's comments on the one recommendation contained in the draft audit report are indicated below:

- Determine the time that was over-reported for the identified employee and work with the Employees' Retirement System (ERS) to ensure the information gets reported accurately and retroactively, if necessary.

The draft audit report confirmed that the Authority accurately reports employee earnings and days worked to the ERS. The one discrepancy noted by OSC related to an erroneous standard work day used in the calculation of service days for a Toll Station Cleaner. As noted in the draft audit report, no other employees in this title were enrolled in the ERS. Authority staff reviewed all employees whose job record reflected a full-time equivalent of 1.0 and standard hours of less than 37.5 (or 40). All such employees with the exception of the one Toll Station Cleaner were reported correctly. ERS records have since been corrected.

If you need additional information, please contact Mr. Kevin Allen, Acting Director of Audit and Management Services, at (518) 436-2871.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Fleischer".

Michael R. Fleischer
Executive Director

cc: John Buono, NYSTA Chairman
Kevin Allen
Tom Lukacs, DOB