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OFFICE OF THE STATE COMPTROLLER

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Ms. Katherine Lapp
Commissioner
NYS Division of Criminal Justice Services
Executive Park Tower
Stuyvesant Plaza
Albany, NY 12203

Mr. Gregory Serio
Superintendent
NYS Insurance Department
Empire State Plaza
Albany, NY 12257

Mr. James W. McMahon
Superintendent
NYS Division of State Police
Building 22, State Campus
Albany, NY 12226

Re: Report 2001-F-48

Dear Ms. Lapp and Messrs. McMahon and Serio:

Pursuant to the State Comptroller's authority as set forth in Article 36-A, Section 846-m of the Executive Law, Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the New York State Division of Criminal Justice Services, the Division of State Police and the New York State Insurance Department as of November 27, 2001, to implement the recommendations contained in our audit report *Administration of the Motor Vehicle Law Enforcement Fee (Report 99-S-32)* issued on August 3, 2000. That audit examined whether Motor Vehicle Law Enforcement Fee programs were being managed effectively to achieve program objectives, and whether State Insurance Department and Division of State Police officials fulfilled their respective responsibilities for collecting Fee revenues and accounting for Fee-related expenditures.

Background

Chapter 55 of the Laws of 1992 requires every insurance company authorized to do business in New York State to collect an annual Motor Vehicle Law Enforcement Fee (Fee) of one dollar for each motor vehicle insured by policies issued or renewed after July 1, 1992. The purpose of the Fee

is to create a source of funds to help support the costs of detecting, prosecuting, and reducing automobile theft and insurance fraud in the State.

Insurance companies remit Fee revenues to the State Insurance Department (Department) on or before the 15th day of the month after they are collected, along with a monthly report showing the dollar amount collected by vehicle type (e.g., passenger, livery). Each company also sends to the Department an annual financial report, which includes the number and type of motor vehicles it insured during the preceding year. The Department then transfers Fees collected to the Office of the State Comptroller, which reserves these funds for expenditures from two accounts; the State Police Motor Vehicle Law Enforcement Account (State Police Account) and the Division of Criminal Justice Services' Motor Vehicle Law Enforcement Fund (Motor Vehicle Fund). State Police Account monies, derived from Fees assessed on passenger vehicles are designated for supporting operating expenses of the State Police, including, but not limited to, the costs of detecting, prosecuting and reducing auto theft and insurance fraud. Motor Vehicle Fund monies, derived from Fees assessed on all other types of motor vehicles (e.g., taxicabs, commercial vehicles), are designated for local law enforcement efforts to reduce auto theft and insurance fraud.

In its *2000 Annual Report to the Governor and Legislature*, the New York State Motor Vehicle Theft and Insurance Fraud Prevention Board (Board) indicated the 2000/01 State Budget appropriated \$4.7 million to Demonstration Projects, including administrative funding equal to 3 percent (\$141,000) of the funds appropriated to the Program. Previous funding levels were \$1.8 million in SFY 1998 and \$3.8 million in SFY 1999. The Annual Report indicates that great strides continue to be made in reducing auto theft in New York State; since 1995, for example, motor vehicle theft was reduced by 39 percent. The Department reported motor vehicle insurance rates declined by 0.5 percent, on average, in 1999. Auto theft, however, still remains a large problem throughout the State, accounting for over 62,384 stolen vehicles in 1999, which represents approximately \$381 million in property losses. In 1999, the New York State Insurance Frauds Bureau established a No-Fault Unit to focus on the mounting problem of fraudulent no-fault medical insurance claims that represent nearly half of 19,200 reports of suspected insurance fraud. The National Crime Insurance Bureau estimates that fraud and theft cost consumers an additional \$200 to \$300 per year on their insurance premiums.

Summary Conclusions

Our prior audit concluded that the Board had not developed a mandated statewide plan for the Program, and the Division of Criminal Justice Services (Division) could not demonstrate the Program had an impact on the incidence of auto theft or insurance fraud. The Board also had not adequately documented its grant selection process; monitoring of grantee projects and there was inadequate attendance at Board meetings. The Division of State Police (State Police) did not implement our recommendation to separately account for State Police revenues used for Program purposes. Our report concluded the Department implemented our prior recommendations to improve controls over Fee collections for calendar years up to and including 1997, but had not begun to address discrepancies identified through those reconciliations. In addition, the Department had not developed any way to independently verify the appropriateness of Fees remitted by insurance companies.

Since our prior audit, the Division has made significant progress in developing an effective structure for awarding and monitoring program grants. The State Police has developed a rational and systematic approach for charging Motor Vehicle Funds from the Fees to its various anti-theft programs. We conclude the Department must improve its efforts to ensure it is collecting the correct amount of Fee revenue from individual insurance companies and develop a process to independently verify the appropriateness of the total fees remitted by the insurance companies.

Summary of Status of Prior Audit Recommendations

Of the 10 prior audit recommendations made to the Division, 8 were implemented and 2 were partially implemented. Of the two recommendations made to the Department, one was partially implemented and one was not implemented. The one recommendation made to the State Police was partially implemented.

Follow-up Observations

Recommendation 1

To the Division of Criminal Justice Services:

Develop and implement a plan of operation to help ensure the efficient, effective and coordinated use of Program funds.

Status – Partially Implemented

Agency Action – Division officials provided a copy of their State Plan for addressing motor vehicle theft, as formally adopted by the Board at its April 24, 2001 meeting. The Division's grants to the various governmental agencies and municipalities are consistent with its intent to implement a plan of operation to help ensure the efficient, effective and coordinated use of Program funds. Division officials provided the minutes of the Workgroup meetings on May 1, and May 2, 2001 at which recommendations for addressing no-fault automobile insurance fraud were developed. The Plan for addressing automobile insurance fraud is in the draft stage. On November 20, 2001, officials provided us the draft copy of the Plan to address Motor Vehicle Insurance Fraud that will be presented to the Board in December 2001.

Recommendation 2

Promote improved attendance at Board meetings.

Status – Implemented

Agency Action – Division officials provided the minutes from the four most recent Board meetings that listed the attendance of Board members, or proxies who attended on behalf of Board members. Legislation was passed authorizing members who designate a proxy to vote on their behalf at one Board meeting per year. The quorum necessary to conduct business was

present at the four most recent Board meetings prior to the start of this follow-up review in July 2001.

Recommendation 3

Where possible, expedite the contract approval and execution process. Ensure projects commence upon contract execution.

Status – Implemented

Agency Action – Division officials provided lists of total days until contract execution for Motor Vehicle Fund grants, which indicated the following averages: For 1997, 319.99 days; for 1998, 309.45 days; for 1999, 165.97 days; and for 2000, 155.88 days. The Division provided a listing of the 37 contracts awarded for State Fiscal Year 2000. Officials indicated the majority of State Fiscal Year 2000 contracts from the grantee are returned in a timely manner (22 of 37 contracts within 30 days; and 28 of 37 contracts within 60 days). However, there are local legislative bodies that require greater amounts of time. The checks and balances of governmental administration that are built into their policies and procedures require many levels of review and approval. Among the grantees requiring extensive amounts of time were: Ulster County – 153 days, Onondaga County – 141 days, and Rockville Centre – 118 days. If the time span between the Board's approval of a contract and the date contracts are executed continues to present problems for some governmental administrations, perhaps contracts for multi-year periods could be approved and executed.

Recommendation 4

Develop reporting systems that capture data needed to measure the impact of individual projects, and the Program as a whole, in reducing motor vehicle theft and insurance fraud.

Status – Implemented

Agency Action – Agency officials developed Standardized Performance Measures for Motor Vehicle Fund grant projects to report in all State Fiscal Year 1999 and 2000 grants. Officials provided a log of progress reports received, copies of letters sent to grantees that submitted substandard progress reports and a record of Stop Payments imposed on Motor Vehicle Fund grantees as a sanction for noncompliance. In addition, officials provided comparable performance statistics for the Law Enforcement Investigation/Stings/Surveillance Type Prosecution Program, and the Auto Theft vs. Insurance Fraud Program. Officials provided a listing of 25 programs where it stopped payment, and the reason for such action, including 4 for 2000, 10 for 1999, 7 for 1998, and 4 for 1997.

Recommendation 5

Develop formal, written guidelines to help ensure a consistent and equitable method for the awarding of Program grants and determining individual grant amounts.

Status – Implemented

Agency Action – Officials developed a uniform Year 2000 Motor Vehicle Fund Program Request-for-Proposal format, including a detailed list of the factors that were considered in the grant selection process and the time line for Division review of the proposal. Officials also provided the Year 2000 MVLEF Grant Application Review Form and a copy of the package of materials provided to Board members, which included maps reporting rates of motor vehicle theft and insurance fraud in the regions represented by grant applicants. The selection process includes, but is not limited to, consideration of the following factors: the need for the program within the targeted area; the extent to which the proposed program will reduce the incidence of motor vehicle thefts and motor vehicle insurance fraud; the nature of the services rendered and the target population to be served by such services; the ability of the applicant to effectively implement and administer the program; the qualifications and relevant experience of personnel administering the program; the cost of the proposed program and the availability of other sources of funding; the nature and extent of interagency cooperation and coordination within the service area in support of the project; and the past performance of the grantee in implementing a motor vehicle theft and/or motor vehicle insurance fraud prevention program. Officials provided State Fiscal Year 2000 Motor Vehicle Theft and Insurance Fraud Prevention Application Summaries that were submitted to the Board for review.

Recommendation 6

Require grantees to provide supporting documentation for reported expenditures and review such documentation prior to reimbursing grantees.

Status – Implemented

Agency Action – Officials provided a copy of Appendix A-1 that is contained in all Division Grants and includes the documentation standards grantees must adhere to when supporting reimbursement vouchers. Division officials provided copies of supporting documentation received from various grantees to demonstrate that grantees are in compliance with the requirements.

Recommendation 7

Enforce the timely submission of the requested Fiscal Cost Reports and Progress Reports

Status – Partially Implemented

Agency Action – Officials provided copies of Motor Vehicle Fund Quarterly Progress tracking logs and correspondence sent to grantees regarding delinquent Program Progress Reports and Fiscal Cost Reports and evidence of “Stop Payments” placed against the contracts of grantees that did not comply with reporting requirements. They indicated it should be recognized that fiscal practices vary considerably among localities and result in significant impediments to enforcing consistent compliance with standards in fiscal reporting and

submitting vouchers for reimbursement. The Division provided the following documents: Quarterly Program Progress Tracking Logs; Correspondence Regarding Delinquent Reporting of Program Results; Evidence of Stop Payments; sample vouchers; and a sample Fiscal Cost Report. As of July 24, 2001, for Reporting Year 2001, only 10 of the 22 Progress reports were received within the 45-day period after the end of the quarter as required by program guidelines. A Progress Report was not on file for another 53 grants that were awarded in the Year 2000, but with a reporting year in 2001. It is unclear whether the progress reports were late or that the contract execution date was so late that the progress reports were not required to be filed until the Year 2001. In a sample pertaining to Reporting Year 2000, only 12 of the 43 quarterly progress reports were filed timely. In one instance, a grantee submitted a report 24 days prior to the end of the quarterly period. At our closing conference (November 20, 2001) officials provided evidence that 19 of the 21 grantees filing electronically had submitted timely the most recent quarterly progress report for the period ended September 30, 2001. They could not provide dates for the grantees that continue to manually remit their quarterly progress reports because of compatibility problems between the software used by the Division and used by some of the grantees. The reports should have been postmarked by November 15, 2001, but as of November 20, 2001, Division officials had not yet determined how many of these reports were actually late. However, the key control is Division officials issuing "Stop Payments" against any grantee that has not remitted its Quarterly Progress Report within 75 days after the reporting period.

Recommendation 8

Develop formal comprehensive guidelines and procedures for monitoring grantees, and require Division staff to document their compliance with these guidelines.

Status – Implemented

Agency Action – Division officials provided a copy of the Motor Vehicle Fund Program Grant Monitoring Objectives for the Year 2000 and logs documenting staff administrative monitoring visits per grantee. Officials assert this demonstrates compliance with its own self-imposed objectives. Officials provided the May 22, 2001 final draft of the Schedule of Major Milestones and Grant Monitoring Objectives after contract execution for the Year 2001. The Division provided a list as of July 19, 2001 for all Active 2000 contracts that showed Administrative Site Visits were prepared for 23 of the 26 grantees we sampled. The remaining three grantees were priority II grantees and did not require a site visit within the first 90 days of the contract execution date.

Recommendation 9

Reimburse grantees for only those activities that are Program-related. Investigate the conditions noted at the Bronx County and Rensselaer County District Attorneys' Offices: recoup or offset amounts against future grants, as necessary, to recover grantee expenditures for non-Program activities.

Status – Implemented

Agency Action – Officials provided documentation related to resolving the two audit issues as follows:

- The Rensselaer County Sheriff's department was found to have charged the Rensselaer County District Attorney's Office MVLEF grant with 10.75 hours of unauthorized overtime in the amount of \$225.21. These overtime charges occurred when a deputy from the Auto Theft Task Force was temporarily re-assigned by the Sheriff to investigate a shooting in Rensselaer County. The County agreed to reimburse the State for these inappropriate charges to the grant. The deputy from the Rensselaer County Sheriff's department subsequently resigned his position. The Rensselaer County Sheriff decided not to rehire and train a new deputy to be assigned to the Rensselaer County Auto-Theft Task Force. The Rensselaer County District Attorney's Office requested a contract amendment to use the grant funds to hire and train an investigator for assignment to the DA's Auto-Theft Unit. On September 26, 2001 we met with the Rensselaer County Program Administrator for the Motor Vehicle Fund grant as well as two police officers assigned to the program. Our inquiries and review of the records did not disclose any exceptions to the program.
- The Bronx County District Attorney Motor Vehicle Fund project was found to not have implemented a nighttime component to the Anti-Auto Theft Project. State Police met with the staff of the Bronx County District Attorney on February 10, 2000 to discuss our audit findings. The response and the meeting resulted in the Bronx submitting a contract amendment to document enhanced resources to address non-daytime hours in the auto theft component on the Fiscal Year 1999 Motor Vehicle Fund. The Bronx County District Attorney then implemented full-time nighttime efforts in its fiscal year 2000 grant. We reviewed the Division's Initial Administrative Review Workpapers that reported, "Program is reviewed at a very high standard that may not be appropriate for Criminal Justice Programs." On September 24 and 26, 2001, we visited the Bronx District Attorney's Office to review Fiscal Cost Reports, Time and Attendance Sheets, Cell Phone Bills, Accounting Records and meet with the Assistant District Attorney assigned to the program. Our review of the time sheets indicated there was a significant nighttime component to the program. However, during the six-month period ended June 30, 2001, several daytime hours were charged for the police officers assigned to the nighttime program, including 24 daytime assignments for one investigator and 54 daytime assignments for the other investigator. Bronx County officials explained that daytime work is required for a nighttime program because an investigator has to testify at a trial or provide evidence to the assistant district attorney prosecuting a case. In addition, training sessions are held during the day, and one investigator is a union representative and periodically has union-related activities during the day. We also noted, numerous cell phone calls made during daytime hours (i.e., between 7:00 a.m. and 3:00 p.m.). Bronx County officials explained that the assistant district attorney assigned to automobile theft works primarily during the day, thus, these phone calls are acceptable. We suggest that in the next grant submission to the Division, Bronx County officials indicate that some daytime work is required for the nighttime anti-theft program.

Recommendation 10

Ensure that all grantees comply with contract terms, including establishing separate codes to account for Program-related revenues and expenditure.

Status – Implemented

Agency Action – Division officials indicated that the Internal Audit Plan for SFY 2001/2002 includes post audits of five Motor Vehicle Fund grants. Along with the Division's Internal Audit Director, we reviewed the workpapers pertaining to several aspects of Internal Audit's review of the contracts with the Cities of Syracuse and Rochester. The specific documents for the cross-referenced material we requested were provided. We verified that both the Bronx and Rensselaer County District Attorneys' Offices had separate accounting codes for this program.

Recommendation 11

To the Department of Insurance:

Continue to perform periodic reconciliations of the data included on insurers' monthly reports with that submitted in corresponding annual reports. Continue to identify inconsistencies and ensure that the appropriate revenue collections are recorded.

Status – Partially Implemented

Agency Action – Our review of the Department's Summary of Year 2000 and Year 1999 Motor Vehicle Law Enforcement Fee collections showed that most of the amounts were equal to the insurance company's monthly remittances. However, there were several discrepancies between the amounts listed on the Department's Summary of Motor Vehicle Law Enforcement Fees collected and the amounts identified by the individual insurance companies in their respective annual reports. We provided Insurance Department officials with a list of the discrepancies and they are contacting the individual insurance companies for an explanation. Motor Vehicle Funds are fiduciary funds collected by the insurance companies as an agent of the State of New York. Based on the difficulty of current efforts to implement the recommendation, perhaps the Department should require the insurance companies to reconcile their monthly remittances to the amounts listed on the Annual Reports. A schedule listing the dates and amounts of Fees remitted monthly along with an explanation for all discrepancies would be part of the Annual Report from the insurance company. Department officials asserted that the ability to identify the differences between the amounts listed on an insurance company's annual report and the total of the monthly remittances is evidence that reconciliation was performed. However, the reconciliation process is not complete until the differences are resolved. We shared the results of our follow-up review with Department officials. At the closing conference and in a written response they disagreed with our conclusion that the recommendation was partially implemented. They indicated that letters sent to insurance companies regarding past differences were evidence that the recommendation was implemented. However, we note

that in report 99-F-15, issued on July 16, 1999, and again in report 99-S-32, issued on August 3, 2000, the Department sent letters regarding the discrepancies for calendar years 1996 and 1997, but had not followed up on the discrepancies identified by those reconciliations. During our current follow-up review, we found there was one insurance company where the amount reported for remittance in calendar year 1999 was \$999,757 and \$843 for calendar year 2000; yet, the Department could not provide any evidence this was reviewed and resolved. We believe that were the Department reconciling the amounts as they indicate, such a material difference would have been questioned at an earlier date (i.e., our follow-up review started in July 2001 and the first e-mail provided to us related to this item is dated August 16, 2001.). There were several other unresolved differences, thus we maintain our conclusion that the recommendation is partially implemented.

Recommendation 12

Develop and implement procedures for periodic independent verification of the appropriateness of the fees remitted by insurance companies.

Status – Not Implemented

Agency Action – At a meeting in July 2001, Department officials indicated it is not cost-effective to develop procedures for an independent reconciliation of the Fees remitted by the insurance companies. We provided some information as to how this may be achieved using DMV data. However, Department officials countered that DMV's data is continuously updated whereas they would require historical data to test the appropriateness of the fees remitted by insurance companies and have not provided an alternative solution. We compared Department documents indicating Year 2000 Motor Vehicle Funds collections (\$11,345,208) with total 1999 Motor Vehicle Funds collections (\$12,894,736) - a decrease of \$1,549,528 or about 12 percent in Fees collected. Department officials indicated that we could not conclude there were fewer insured and/or registered vehicles in New York State because less Fees were collected. While they could not account for the difference, they provided an August 16, 2001 e-mail from an insurance company that indicated the 1999 remittances were for 999,767 vehicles should have been reported as 7,009 vehicles, and that the insurance company could be due a substantial refund. If the Department confirms that an error occurred that was not detected prior to August 2001, there is a need for the Department to monitor the amounts reported, as a refund of over \$900,000 would decrease the amount reported for 2000. We still maintain it is important for the Department to compare annual Motor Vehicle Funds remitted to an independent source. Perhaps a snapshot of insured vehicles as of December 31st of each year could act as a reasonableness test. Maximizing the amounts collected as Fees is also important because of the potential impact on the amount of funds available to the Division and the State Police for their programs to reduce automobile theft and insurance fraud.

Recommendation 13

To the State Police:

Develop an action plan for the allocation of Fee monies and ensure that State Police record keeping systems accurately report how much of these monies are expended for activities relating to the detection, prosecution or reduction of automobile theft.

Status – Partially Implemented

Agency Action – Officials indicated they developed a system that identifies where and how Fee monies were expended. They also indicated, “accounting systems currently employed by the State do not allow us to implement a cost accounting system to account for each of the activities undertaken by employees of the Division of the State Police. In order implement (error in the original) the recommendations contained in your report, we have allocated all of the costs associated related to both our Communication and New York Statewide Police Information Network (NYSPIN) sections to reflect the effort the Division has made in the area of auto theft.” The State Police do not agree with our position that Fee expenditures should be directed to programs devoted to the detection and prevention of automobile theft and insurance fraud. The State Police provided us with its Year 2000 Annual Report on motor vehicle theft and detection efforts. We met with the official who prepared the Motor Vehicle Fund cost allocation plan for the State Police. The plan was both rational and systematic - the two key elements of an effective cost allocation plan. We believe the cost allocation plan could be further refined. For example, when developing the 27.1 percent for allocating certain costs to the MVLEF grant, the State Police included all phone calls to the National Crime Information Center, which contains an FBI database on all types of crime – not just on automobile theft. We also noted there were other costs that the State Police could have assigned to the Motor Vehicle Fund program; e.g., administrative costs for a portion of the salary of the employee developing the cost allocation plan and accounting for program expenditures as well as a portion of the salaries of the employees administering the grant and preparing the Motor Vehicle Enforcement Account Annual Report.

The major contributors to this report were Abraham C. Markowitz and Alina Mattie.

We would appreciate your response to this report within 30 days, including any additional actions planned to address the recommendations discussed in this report. We also thank the management of the Division of Criminal Justice Services, the Division of State Police, the State Insurance Department and the District Attorneys' Office of the Bronx and Rensselaer Counties for the courtesies and cooperation extended to our auditors during the review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: Deirdre Taylor, DOB
Phyllis Linker, SID