



**STATE OF VERMONT
OFFICE OF THE STATE AUDITOR**

To: House and Senate Committees on Government Operations
Date: 28 January 2020
Re: Audit Recommendation Follow-Up

Each year we review prior audits to determine the extent to which the auditees have implemented our recommendations. We cannot compel state entities to do so, but we hope the recommendations are sufficiently clear and evidence-based to persuade managers to see their value. We look back one year and three years. The links will take you to the reports.

Department for Children & Families – Alleged Beneficiary Fraud (2016)

[Audit](#) [Rec. Follow-up Report](#)

The Department had only implemented 4 of the 13 recommendations offered when we reported in 2018. Since then, DCF has implemented 3 more recommendations intended to improve its internal procedures. However, there are 6 remaining recommendations that the Department has indicated it will not implement.

All relate to the Department's failure to discipline those found to have defrauded one or more programs and the Department's decision to not use all available tools to recover overpayments or benefits fraudulently obtained. The Department's stated reason for not implementing these recommendations is that they believe it would negatively impact children and families.

The Department's justification is understandably compassionate. However, absent some type of penalty (e.g., temporary disqualification), there is no deterrent for fraud. And since program resources are limited, funds obtained fraudulently result in other deserving families not receiving needed assistance. While the amount of money at issue is not large as a percent of total program expenditures, it is hardly *de minimis*.

"Between January 1, 2013 and April 21, 2016, ESD's fraud unit determined that \$1.8 million was owed by program beneficiaries resulting from 1,036 improper payment claims. However, all of the cases were in the 3SquaresVT and Reach Up programs with no claims having been established in the Seasonal Fuel Assistance or General Assistance programs. ESD's fraud unit did not check whether overpayments in these programs also occurred when they substantiated client violations that resulted in overpayments in the 3SquaresVT and Reach Up programs. As a result, ESD may not be seeking repayment for all inappropriately obtained benefits."

Agency of Agriculture, Food, and Markets -- Best Management Practices Program (2018)

[Audit](#) [Rec. Follow-up Report](#)

The Agency has implemented 12 of the 14 recommendations. However, the Agency's explanation as to why the other two have not been implemented is internally inconsistent.

- BMP grant agreements contain a provision that says final payment may be withheld for those grantees that are not in good standing with the Tax Department when statute does not provide the authority for that. We recommended the Agency seek advice from Finance & Management and the AG's Office about this matter as it seems odd that Tax can withhold payments to contractors that owe money to the State but not grantees.

The Agency claimed that the relevant provisions of Attachment C of the State's standard agreements cannot be revised. This is not accurate as the Bulletins are routinely revised as circumstances warrant.

- Farms may be required to carry workers' compensation insurance for the farm employees that perform grant work. AAFM has not been requesting proof of workers' compensation insurance prior to issuing BMP program grants, so we recommended they do so.

Without any justification, the Agency stated that it was seeking a waiver of that provision from the State's contract office.

Department of Disabilities, Aging & Independent Living – Choices for Care (2018)

[Audit](#) [Rec. Follow-up Report](#)

The Department has only implemented 3 of the 8 recommendations. However, of the remaining 5, 3 are in process, 1 is scheduled for 2021, and management is exploring solutions for the last.

Good news: We identified about \$150,000 of improper payments in the audit, and the Department was able to recoup \$117,159. In addition, we reported several questionable cases to the AG's MFRAU, which subsequently obtained an additional \$42,000 in restitution from three cases of fraud.

Judiciary – Public Defender Fees (2016) [Audit](#) [Rec. Follow-up Report](#)

The Judiciary has implemented all 7 of our recommendations and has taken steps to improve procedures for collecting payments when warranted from those eligible for assistance from the Defender General. Data from the Tax Department shows an increase in revenues for the Defender General since the audit.

Agency of Education – Equalized Pupils (2016) [Audit](#) [Rec. Follow-up Report](#)

The Agency has implemented 4 of the 7 recommendations we offered in 2016. The 3 not yet implemented deal with identifying and verifying the number of English Language Learners (ELL). The equalized pupil methodology includes a weighting factor for ELL students and the subsequent calculation helps determine the homestead property tax rate. Fortunately, the fiscal impact of the errors we found is very small¹ so it is understandable why AOE has not prioritized the needed corrective actions.

Department of Taxes – Personal Income Taxes (2016) [Audit](#) [Rec. Follow-up Report](#)

The Department has now implemented all 8 of our recommendations. The last one was in response to our suggestion that the Department collaborate with the Vermont Lottery to implement a process to facilitate offsets of delinquent personal income tax debt with lottery winnings. They have now done so.

Departments of Human Resources, Finance & Management, and Information & Innovation – Annual Performance Evaluations (2016) [Audit](#) [Rec. Follow-up Report](#)

The three departments have now implemented all 13 of our recommendations. As a result, most supervisors have completed relevant trainings and the percent of timely employee evaluations has increased significantly in all three Departments.

Vermont Information Technology Leaders (2016) [Audit](#) [Rec. Follow-up Report](#)

VITL has implemented or partially implemented all 7 of our recommendations, including 2 that were not implemented when we checked in 2018. The recommendations still requiring attention involve contract terms about performance and criteria for retroactive approval of work.

Vermont's Self-Funded Web Portal (2016) [Audit](#) [Rec. Follow-up Report](#)

The Web Portal Board and the Agency of Digital Services (ADS) have implemented 4 of the 5 recommendations offered. The one remaining calls upon ADS to conduct additional review of all financial reports provided by the vendor (Vermont Information Consortium), which were found to have errors.

Milton Town Core Tax Increment Financing District (2018) [Audit](#)

There were no recommendations to review.

¹ See Table 9 on page 36 of the audit [report](#).

Agency of Transportation – Bridge Inspections (2018) [Audit](#) [Rec. Follow-up Report](#)

The Agency fully implemented 1 of the 2 recommendations and partially implemented the other. The issue that gave rise to the latter is described below.

“Officials at four municipalities were not aware of specific deficiencies raised by the VTrans inspectors in 2014 and 2015 because they were unaware that the bridge inspection reports had been issued. VTrans does not notify the municipality when a new inspection report is posted. Officials at almost all of the municipalities in our review stated that notifications would help them improve the condition or maintenance of town bridges because without notification they may forget to check for new reports.”

We suggested that AOT develop a process to notify municipalities when a new inspection report is available. The Agency reported that they do not plan to contact each municipality when inspections of town-owned bridges are complete. Instead they plan to rely on verbally informing municipalities that bridge inspection reports are available on-line during various meetings. Our audit found that this method was not always effective.

Department of Taxes – Abatements of Business Tax Liabilities

[Audit](#) [Rec. Follow-up Report](#)

The Department has partially or fully implemented all 10 of our recommendations.

DHR and AHS – Employee Misconduct (2017) [DHR Audit](#) [Rec. Follow-up Report - DHR](#)
[AHS Audit](#) [Rec. Follow-up Report - AHS](#)

As we [reported](#) last year, DHR implemented only 4 of 25 recommendations from the 2017 report. The Department stated that it had no intention of implementing many of the outstanding recommendations, which is odd because the recommendations flow directly from our findings, which themselves were derived from the evidence obtained during the audit. They are sensible and not terribly onerous. We disputed DHR’s objections to adopting the recommendations and responded in detail in Appendix IV of the audit [report](#) (see pages 52 – 56).

In my experience, such a blanket refusal to implement recommendations is unusual and deserves scrutiny by this committee. For this reason, and because there is a lot of money at issue (see below), we decided to review DHR’s situation again even though it’s off cycle.

We conducted two audits since AHS had its own investigative unit at the time (now moved back to DHR). Since DHR wrote the management response for both entities we will report on them together. We made a total of 35 recommendations and the two entities partially or fully

implemented only five (14%). However, AHS' poor showing (AHS Central, DCF, DMH and DOC) is the result of DHR's direction and guidance (see below).

These were the audit objectives: (1) evaluate how decisions to investigate alleged employee misconduct are made, (2) assess the extent to which investigations into alleged misconduct are documented and completed in a timely manner, and (3) characterize the types of resolutions to alleged employee misconduct cases and evaluate the processes used to decide which type is appropriate.

In many cases, DHR stated explicitly that it "does not intend to implement [these] recommendations." Here are some examples of recommendations ignored by DHR.

- #2: Develop and implement a procedure for ensuring that extensions of employees' Temporary Relief from Duty (RFD) status beyond 30 workdays is approved and ensure that the subject employee is notified in writing of such extensions.

DHR had a meeting with Field Personnel on 1/30/2019 where the requirement for RFD extension letters was reviewed. Documentation provided by DHR for extension letters for two departments issued in 2019 shows that the extension letters are still not being sent after 30 days in many cases. Therefore, this recommendation is not implemented.

- #5: Require that Appointing Authorities or designees document their rationale (e.g., analysis of the 12 factors) for the decision to impose a particular type of discipline.

Once again, DHR responded that they do not intend to implement this recommendation.

- #6: Develop a mechanism to maintain a comprehensive and easily accessible record of all discipline and stipulated agreements for all employees and make this information available to appointing authorities and designees.

Once again, DHR responded that they do not intend to implement this recommendation.

- #10: Develop a target for when AAs or designees are expected to finalize the disposition of a case and track the extent to which this target is being met. There could be separate targets depending on the type of expected outcome (e.g., unsubstantiated, suspensions, or stipulated agreements).

Once again, DHR responded that they do not intend to implement this recommendation.

We also made recommendations to several entities whose misconduct-related activities are overseen by DHR (AOT, BGS, DOL, DPS and VVH) and they all informed us that DHR advised

them “that the recommendations in question not be implemented.” Here are the three recommendations made to all five entities.

- #1: Develop a process in conjunction with DHR to document the decisionmaker for each disposition of an employee misconduct case, when the decision was made, and confirmation that the disposition was carried out.
- #2: When considering imposing discipline in an employee misconduct case and in conjunction with DHR, document the rationale used in the decision-making process, including how the 12 factors were applied.
- #3: Develop a process in conjunction with DHR to notify DHR of all employee misconduct allegations and resolutions.

Note on relief from duty (RFD): There are circumstances where management believes that it is in the best interest of the parties to remove an employee from the workplace while allegations are investigated. In such instances, the employees are paid while the process plays out.

Our audit found that the State paid almost \$3 million in salaries and benefits to employees in temporary relief from duty status for alleged misconduct during our scope period (2014 – 2016). Another \$4,187,391 was paid for 2017 & 2018 (**totaling more than \$7 million**).

It appeared that some employees remained in this status longer than necessary. In some cases, the State paid the salaries and benefits of non-working employees after the investigation was completed—sometimes for months while the appointing authorities considered disciplinary options—even though the allegation was determined to be unsubstantiated or disposition of the case did not involve removing the employee from employment. If the State intends to return an employee to work, it is not fiscally prudent to continue to pay the salary and benefits of a non-working employee for weeks and sometimes months as decisions are made on the final dispositions that are less than dismissal.

DHR acknowledged the problem and stated that “DHR agrees that additional steps may be taken to ensure that employees are removed from RFD status as soon as possible.”²

To be clear, there are many reasons for these delays, some unavoidable. But we found reason to believe that DHR and the appointing authorities could improve the process and save taxpayers’ money. I encourage you to invite DHR to explain what steps are being taken to reduce these expenditures.

² SAO Employee Misconduct audit report, Appendix IV (p.45): DHR Management comments.

Percent of recommendations implemented					
2016	Short Title	# of Recs.	# of Recs. Partially or Fully Implemented	Three-year Target	Actual
16-01	Public Defender Fees: Judiciary	7	7	75%	100%
16-02	Equalized Pupils: Agency of Education	7	4		57%
16-03	Personal Income Taxes: Dept. of Taxes	8	8		100%
16-04	Annual Performance Evaluations: Human Resources, Finance & Management, and Information &	13	13		100%
16-05	Alleged Beneficiary Fraud: Department for Children and Families	13	7		54%
16-06	Vermont Information Technology Leaders, Inc. (VITL)	7	7		100%
16-07	Vermont's Self-Funded Web Portal	5	4		80%
Total 2016 – Three Years Out		60	50		83%

2018	Short Title	# of Recs.	# of Recs. Partially or Fully Implemented	One-year Target	Actual
18-01	Milton Town Core Tax Increment Financing District	0	NA	50%	NA
18-02	Municipal Bridge Inspections: Agency of Transportation (AOT):	2	2		100%
18-03	Best Management Practices Program: Agency of Agriculture, Food, and Markets (AAFM)	14	12		86%
18-05	Choices for Care: Dept. of Disabilities, Aging & Independent Living (DAIL)	8	3		38%
18-06	Abatements of Business Tax Liabilities: Department of Taxes (DOT)	10	10		100%

Total 2018 – One Year Out	34	27	79%
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