

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Review for Anti-Deficiency Violations



MAR - 3 2016

The Honorable Jack Evans  
Chairman  
Committee on Finance and Revenue  
Council of the District of Columbia  
1350 Pennsylvania Avenue, NW, Suite 106  
Washington, DC 20004

**Subject: Board of Review for Anti-Deficiency Violations Oversight Questions**

Dear Chairman Evans:

In response to your questions concerning the FY 2015 and FY 2016 performance of the Board of Review for Anti-Deficiency Violations (Board), I am providing the following answers:

1. Who are the current members of the Board? Please identify/indicate terms (start and finish), Board officers, type of appointee (mayoral, council, agency, etc.).
  - Timothy Barry– appointed by the Chief Financial Officer; term started on January 1, 2015 and will expire on December 31, 2017
  - Jennifer Budoff – appointed by the Chairman; term started on March 20, 2015 and will expire on March 19, 2018
  - Thurman Dutton – appointed by the Inspector General; term started on April 29, 2010 and will expire on April 30, 2016
  - Angell Jacobs (Chairperson) – appointed by the Chief Financial Officer; term started on January 1, 2013 and will expire on December 31, 2017
  - Barry Kreiswirth – appointed by the Mayor; term started on February 5, 2015 and will expire on February 4, 2017

2. Please describe the Board's activities in FY 2015 and FY 2016, to date.

The Board meets on a quarterly basis. Additional meetings can take place, as the Chair must convene a meeting within 30 days of learning of an allegation of a violation of the District Anti-Deficiency Act of 2002.

However, the Board was unable to conduct business on a regular basis in FY 2015 and FY 2016 due to limited investigative powers. The passage of the New Columbia Statehood Initiative, Omnibus Boards and Commissions Reform, and Election Transition Emergency

Amendment Act of 2014, effective November 21, 2014 (D.C. Act 21-481; 61 DCR 12133) and the New Columbia Statehood Initiative and Omnibus Boards and Commissions Reform Amendment Act of 2014, effective May 2, 2015 (D.C. Law 20-271; 62 DCR 6642), deprived the Board of the authority needed to investigate alleged violations. During FY 2015, the Board met on November 19, 2014 and March 23, 2015. The Council passed amendatory legislation, Section 5 of the Fiscal Year 2016 Second Budget Support Clarification Emergency Amendment Act of 2015, effective November 23, 2015 (D.C. Act 21-202; 62 DCR 15276) to reinstate full investigative authority, and the Chair has scheduled the Board to meet on March 30, 2016.

3. Please provide copies of agendas and briefing materials for all meetings held within the past two fiscal years.

Please see Briefing Materials file and the Minutes file on the attached flash drive.

4. According to the Board's response to performance oversight questions last year, the Board sent a formal notice to the agency heads and financial staff of nine agencies in FY 2014. How many notices were sent in FY 2015 and FY 2016, to date? Please provide copies of such notices and any responses received by the Board.

In FY 2015, the Board sent a formal notice to the agency heads and financial staff of four agencies that had capital projects with actual expenditures that exceeded the established budget. All agencies were responsive to the Board's inquiries and provided satisfactory explanations and corrective action plans. The reduction in the number of notices sent more recently reflects an increased level of agency compliance due, at least in part, to the Board's prior efforts.

Please see the Notices and Response files on the attached flash drive.

5. Have any changes been made in FY 2015 and FY 2016 to the personnel that provide administrative and legal support to the Board?

Laurie Ensworth, Traci Fuller, and Patricia Gracyalny continue to support the Board.

6. Please describe any changes to the policies and procedures of the Board that took place in FY 2015 and FY 2016, to date. Additionally, please discuss any anticipated or planned changes to regulations, policies, or procedures over the next calendar year.

Due to the lapse in investigative authority, the Board needs to re-adopt its previous regulations. The Board also plans to clarify its regulations in the future. The areas of focus would be:

- A. Add new citations (1 DCMR 1100, Source of Authority)
- B. Add the Council-appointed representative and remove the term limits (1 DCMR 1102, Members)
- C. Replace the 60 day timeline to convene a meeting with the 30 day timeline that is currently in law (1 DCMR 1103, Meetings of the Board)
- D. Change the requirement from maintaining an office from mandatory to permissive (1 DCMR 1108, Administration)

- E. Change the requirements for case file database from mandatory to permissive (1 DCMR 1108, Administration)
  - F. Replace “Office of Personnel” with “Department of Human Resources” (1 DCMR 1109, Legal Advice)
  - G. Add the violation for capital projects (1 DCMR 1113, Violations)
  - H. Replace the 60 day timeline to convene a meeting with the 30 day timeline that is currently in law (1 DCMR 1115, Review of Reports)
7. As part of the Board’s performance oversight responses last year, the Board mentioned that it was currently reviewing three matters: (1) the Capital Bikeshare Contract at the Department of Transportation; (2) the HUB Grant at the Department of Health Care Finance; and (3) the Turn Around for Children Grant at the District of Columbia Public Schools. Please describe what activities caused the Board to review these matters and the result of that review.

- Capital Bikeshare Contract at the Department of Transportation

The contract was referred to the Board because it contained profit sharing, revenue deposits, and cost offsetting. In response to a request from the Board, Inspector General Charles J. Willoughby had his office conduct an investigation, which found “no evidence of impropriety.” The Board asked the Inspector General Willoughby to conduct an audit of the contract, but the Inspector General declined. When Daniel W. Lucas became Inspector General, the Board resubmitted its request for an audit. Inspector General Lucas accepted the Board’s request and his office is currently reviewing the contract.

- HUB Grant at the Department of Health Care Finance

The Office of the Inspector General conducted an audit of Medicaid administration services contracts; the draft audit recommended that the Chief Financial Officer refer the MedPlus, Incorporated contract to the Board for review. (Note, this audit has not been finalized by the Office of the Inspector General.) The Board’s initial review found that a contract modification had been issued before a certificate of the availability of funds was issued. Obligating the District without a certification of the availability of funds is a violation of the District Anti-Deficiency Act of 2002. After its initial review, the Board wrote to the Director and the Agency Fiscal Officer requesting contract documents and a statement of facts. Neither was provided to the Board. Progress on this matter then stopped because the Board lost its investigative authority. However, the matter is on the agenda of the March 30, 2016 BRADV meeting.

- Turn Around for Children Grant at the District of Columbia Public Schools.

The Office of the Attorney General reviewed a Donation Form and found what appeared to be a donation accepted outside of the donation approval process, which is considered an augmentation of appropriations. The Board found retroactive approval of the donation of services and no violation was found.

8. What matters, if any, are the Board currently reviewing?

- The Department of Transportation entered into a contract with Park Mobile USA, which permitted the contractor to receive District revenue and offset costs. Council to the Board advised the Board that the contract did not violate of the District Anti-Deficiency Act of 2002. Even though the contract was not deficient, it was still flawed. The Board sent a letter to the Director of the Department of Transportation and the District's Chief Procurement Officer about another District law which may have been violated. The Miscellaneous Receipts Rule, contained in the Home Rule Act, D.C. Official Code § 1-204.50, states that all money received by an agent of the District is the District's money and "shall be paid promptly to the Mayor for deposit in the appropriate fund." The contract allowed the contractor, acting as an agent of the District, to retain a portion of the District revenues it collected to offset its costs. The determination of whether or not this violates the Miscellaneous Receipts Rule is not a matter for the Board to investigate and the Board has closed this matter.
- The Department of Transportation is party to a Memorandum of Agreement between the District and CSX Transportation. The agreement requires CSX to pay DDOT \$4,171,044, and requires DDOT to credit CSX the same amount. It is unclear if DDOT received appropriations authority to either accept the CSX payment or to pay CSX. This matter is still under consideration due to the lapse in authority.

9. Please provide copies of all reports transmitted to Council or other official correspondence.

Due to the legislative changes to the Board's investigative authority, the Board did not send any reports or official correspondence to the Council.

10. What support or legislative modifications, if any, may the Council provide to better assist the Board?

The Board does not need any assistance from the Council at this time.

If you have questions, please feel free to call me on 727-0049. In the alternative, you may contact Laurie Ensworth, Counsel to the Board, on 724-5537 or Patricia Gracyalny, Counsel to the Board, on 727-0871.

Sincerely,



Angell Jacobs  
Chairperson

Enclosures