

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER



FEB 16 2017

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

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

Dear Chairman Evans:

In response to your questions concerning the FY 2016 and FY 2017 performance of the Board of Review for Anti-Deficiency Violations (Board), I have provided 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.). Please also comment or note status of reappointment or replacement of members whose terms expired in 2016 or expire in 2017.
 - Timothy Barry– appointed by the Chief Financial Officer from January 1, 2015 to January 1, 2018;
 - Jennifer Budoff – appointed by the Chairman from March 20, 2015 to May 20, 2018;
 - Thurman Dutton – appointed by the Inspector General from May 1, 2016 to May 1, 2019;
 - Angell Jacobs (Chairperson) – appointed by the Chief Financial Officer from January 1, 2016 to January 1, 2019;
 - Barry Kreiswirth – appointed by the Mayor from June 3, 2015 to June 3, 2018.
2. Please describe the Board's activities in FY 2016 and FY 2017, to date. Did the Board meet quarterly, as of March 30, 2016?

The Board held its quarterly meetings on the following dates: April 14, 2016, July 28, 2016, October 27, 2016, and February 9, 2017. Although the Chairperson must convene an additional meeting within 30 days of learning of an allegation of a violation of the Anti-Deficiency Act, the Board did not need to hold any additional meetings.

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

The hard copies of the FY 2016 and FY 2017 materials are attached.
For the electronic copies, 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 four agencies in FY 2015, which was a decrease from the

previous year. I commend you and the Board for your hard work. How many notices were sent in FY 2016 and FY 2017 to date? Please provide copies of such notices and any responses received by the Board.

In FY 2016, the Board sent formal notices to two agencies: the District Department of Transportation (DDOT) and the Department of Behavioral Health (DBH). The notices to DDOT pointed out issues with the capital budget for the Traffic Management Center Operations, the 11th Street Bridge, and the Chevy Chase Bus Station. In addition, the Board wrote to DDOT about the capital budget for the Washington Metropolitan Area Transit Authority's subsidy. The Board wrote to DBH because of concerns about the capital budget for the Integrated Care Applications Management. The Board has not sent any notices in FY 2017.

Hard copies of the notices and agencies' responses are attached.
Please see Notices file and Response file on the attached flash drive.

5. Have any changes been made in FY 2016 and FY 2017 to the personnel that provide administrative and legal support to the Board?

David Clark, Laurie Ensworth, Traci Fuller, Patricia Gracyalny, Leticia Stephenson, and Tayloria Stroman continue to support the Board.

6. Please describe any changes to the policies and procedures of the Board that took place in FY 2016 and FY 2017 to date. Please provide a copy of your policies and procedures. Additionally, please discuss any anticipated or planned changes to regulations, policies, or procedures over the next calendar year.

Due to the change in the statutory authority that created the Board, the Board no longer has rulemaking authority. Furthermore, the new statute is broad enough to cover all aspects of the rules related to the Board's authority. In place of regulations, the Board is developing a set of policies and procedures. While the policies are being developed, the Board is relying on its statute and past practice for guidance. Once the Board finalizes the policies, the Board will share a copy with the Finance and Revenue Committee.

7. As part of the Board's performance oversight responses last year, the Board mentioned the following items were under review: (1) the District Department of Transportation (DDOT) contract with Park Mobile USA; and (2) the District Department of Transportation party to a Memorandum of Agreement between the District and CSX Transportation. Please describe what activities caused the Board to review these matters and the result of that review.

- DDOT contract with Park Mobile USA

The District 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 that 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.

- DDOT Memorandum of Agreement with CSX Transportation

The DDOT 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. DDOT had not received appropriations authority either to accept the CSX payment or to pay CSX. The Anti-Deficiency Act prohibits making or authorizing “an expenditure or obligation exceeding an amount available in an appropriation for an agency, fund, or capital project.” The Anti-Deficiency Act also prohibits obligating “the District for the payment of money before an appropriation is made.” See D.C. Official Code § 47-355.02(1) and (2). Given the gap of almost eight months between the execution of the agreements and the approval of authority to enter into the agreements, the Board found that DDOT had violated the Anti-Deficiency Act. The Board required the DDOT Director to certify that he had read the Anti-Deficiency Act and intended to comply with it. After receipt of the Director’s response, the Board closed the matter.

8. What matters, if any, is the Board currently reviewing? Please also comment on any matters reviewed and closed all within the past 12 months not already discussed.

- The Community Partnership for the Prevention of Homelessness

The Office of the D.C. Auditor referred this matter to the Board. The found not violation of the Anti-Deficiency Act; funds were used before they expired and no augmentation of appropriations was found due to the parallel missions of the Department of Human Services, and The Community Partnership. The Board is in the process of closing this matter.

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


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, working with the Office of the Attorney General’s Legal Counsel Division, will be seeking to amend the Anti-Deficiency Act as part of the Fiscal Year 2018 Budget Support Act of 2017. The Board hopes that the Council will support the amendments.

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
Board of Review for Anti-Deficiency Violations

Delivered electronically with six printed copies

Enclosures