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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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# Protection of Child Performers

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## Department of Labor

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Report 2016-S-70

July 2017

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## Executive Summary

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### Purpose

To determine if the Department of Labor (Department) adequately ensured that parents/guardians and employers complied with the legal requirements that help protect the welfare of child performers. The audit covers the period April 1, 2014 through March 16, 2017.

### Background

The Department of Labor (Department) is charged with protecting workers in New York State. Part 186 of the New York Codes, Rules and Regulations (NYCRR) and Article 4-A of the State Labor Laws (Law) were established to protect child performers, including models, whose interests and well-being during employment may be vulnerable to exploitation. The Department's Child Performers Unit (Unit) is responsible for monitoring compliance with all parts of the Law and NYCRR.

The Law and NYCRR establish certain responsibilities and requirements for parents/guardians and employers to protect child performers' safety, well-being, and educational rights. Furthermore, the Law and NYCRR also ensure that a portion of each child's earnings is protected, in accordance with Article 7, Part 7, of the Estates, Powers and Trusts Law. Specifically, the Law requires 15 percent of a child performer's earnings to be placed in trust on behalf of the child. If an employer or payroll company does not have valid information about a child's trust account, it is required to deposit those funds with the State Comptroller. As of October 2016, the Comptroller had received over \$640,000 in trust for more than 5,600 child performers.

The Department has used its Child Performers Registration System database (System) to maintain permit and certificate information since 2004. Information from annual permits and employer certificate applications is manually entered in the System by Department staff. Information related to one-time temporary permits is entered by the child's parent or guardian when applying through a web portal and automatically posted to the System. Unit staff use System-generated reports as a permit management tool to streamline permitting processes.

System records indicate that, from April 1, 2014 to October 31, 2016, the Department issued about 27,000 child performer permits, including approximately 8,000 temporary permits, 11,000 new annual permits, and 4,500 annual permit renewals. The remaining 3,500 permits were not identified by type. For the same period, the Department issued 844 employer certificates.

### Key Findings

- The Department has not created a sound and effective system of internal controls for the Unit. Several systemic weaknesses exist that undermine the Department's ability to adequately monitor the child performers program, detect violations, and prevent non-compliance with legal requirements. We found instances where: children were likely working without permits; parents or guardians had circumvented the Department's System to improperly obtain permits for their children; and child permits and employer certifications were issued without all required documentation.
- The Department does not have the necessary controls to monitor and enforce compliance

with regulations designed to protect child performers' earnings. Although deposits to the Comptroller's trust account should be limited, the number has increased over the years and approached 1,200 in 2016.

- The Department has not designed or implemented proactive monitoring activities to verify that permits, certifications, and education, safety, and work conditions fully comply with the Law and the NYCRR.
- The System has significant deficiencies – with data entry, maintenance, and functionality – that limit its effectiveness and reliability as a monitoring tool. The Unit does not have an adequate process to validate information entered in the database, nor does it properly use data analysis or System data reports to identify and correct potential System flaws. Further, the System does not have edit checks requiring all fields to be completed, and reports generated from the System contain errors.

### **Key Recommendations**

- Design and implement a system of internal controls to ensure that the welfare of child performers is protected and that parents/guardians and employers comply with the requirements of the Law and the NYCRR.
- In conjunction with the Office of Information Technology Services, develop a System that can easily and readily store, access, and analyze required child performer and employer information and develop a process to identify and correct apparent System flaws.

### **Other Related Audits/Reports of Interest**

[Department of Labor: Wage Theft Investigations \(2013-S-38\)](#)

[Department of Labor: Wage Theft Investigations \(2015-F-9\)](#)

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**State Of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

July 27, 2017

Ms. Roberta Reardon  
Commissioner  
Department of Labor  
Building 12, W.A. Harriman Campus  
Albany, NY 12240

Dear Commissioner Reardon:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By doing so, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Protection of Child Performers*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*  
*Division of State Government Accountability*

## Table of Contents

Background	5
Audit Findings and Recommendations	7
Permit/Certification Application Processing Procedures	7
Compliance Monitoring and Enforcement	8
System and Data Reliability	11
Recommendations	13
Audit Scope, Objective, and Methodology	14
Authority	15
Reporting Requirements	15
Contributors to This Report	16
Agency Comments and State Comptroller's Comments	17

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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The Department of Labor (Department) is charged with protecting workers in New York State. Part 186 of the New York Codes, Rules and Regulations (NYCRR) and Article 4-A of the State Labor Laws (Law) were established to protect child performers, including models, whose interests and well-being during employment may be vulnerable to exploitation. The Law assigns the Department with responsibility for monitoring and enforcing compliance.

The Law and NYCRR establish certain responsibilities and requirements for parents/guardians and employers to protect child performers' safety, well-being, and educational rights. Furthermore, the Law and NYCRR also ensure that a portion of each child's earnings is protected, in accordance with Article 7, Part 7, of the Estates, Powers and Trusts Law. Specifically, the Law requires 15 percent of a child performer's earnings to be placed in trust on behalf of the child. The Department's Child Performers Unit (Unit) monitors compliance through comprehensive permit requirements of child performers and certification of employers.

All child performers (younger than 18 years of age) who work in the State must have a valid Child Performer Permit. According to provisions in NYCRR, to obtain a permit, parents/guardians are required to submit specific information and documentation, including:

- Proof of the child's date of birth;
- Evidence of the child's satisfactory academic performance (school form);
- Documentation of the child's health (health form); and
- Proof that a trust account has been established to hold the child's earnings (trust form).

The Department issues standard one-year permits once the Child Performer Permit application, including all required information and documents, is received. The permits are free of charge and must be renewed annually. For first-time applicants, the Department also offers a temporary, 15-day permit as an option – a one-time-only authorization intended to give the parent/guardian time to produce and mail the required information and documents. The temporary permit application requires only basic information, which the parent/guardian submits electronically through a web portal, generating a printable permit.

Parents/guardians are required to provide employers with a copy of the child performer's permit as well as the trust account documentation necessary for the employer to make the required transfers to the account, and updates to trust account information as changes occur. Trusts are required for all paid employment, even if the child is working under a temporary permit.

All employers must have a Certificate of Eligibility to Employ Child Performers from the Department, which is renewable every three years. If hiring children to perform as a group (e.g., for a background scene), employers can also apply for a Certificate of Group Eligibility to Employ Child Performers; this type of certificate permits each child listed to work no more than two days. Children do not need to be individually permitted if they are employed under a group permit.

Employers are required to submit specific information and documentation to be approved for certification, such as their federal employer identification number, physical address, and proof of compliance with workers' compensation and disability benefits laws. The NYCRR also assigns certain responsibilities in support of child protective measures. For example, employers must:

- Provide the Department with a two-day notice of intent to employ child performers (Notice of Use);
- Ensure that parents/guardians have provided a copy of a valid permit by the start of employment, and maintain copies of permits at child employment locations;
- Ensure that parents/guardians have provided trust account information by the start of employment; and
- Retain at least 15 percent of the child's earnings and deposit the amount into the trust account. Should the parent or guardian fail to set up or provide the employer with trust information, the employer must remit the 15 percent to the Comptroller's Office. In 2004, the Comptroller established an account for this purpose.

Where the Department finds parents/guardians or employers are in violation of NYCRR or the Law (e.g., for providing inaccurate or false information on an application or failing to meet trust account requirements), the Department may suspend or revoke child permits and employer certificates as well as issue penalties to employers.

The Department has used its Child Performers Registration System (System) database to maintain permit and certificate information since 2004. Information from annual permit and certificate applications is manually entered in the System by Department staff. Information for temporary permits is automatically entered by the parent/guardian applying through the web portal. Unit staff use System-generated reports as a permit management tool to streamline permitting processes.

According to Department records, from April 1, 2014 to October 31, 2016, the Department issued about 27,000 child performer permits, including approximately 8,000 temporary permits, 11,000 new annual permits, and 4,500 annual permit renewals. The remaining 3,500 were not identified by specific type. For the same period, the Department issued 844 employer certificates.

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## Audit Findings and Recommendations

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The Department has not created a sound and effective system of internal controls for the Unit. Systemic weaknesses exist that undermine the Department's ability to competently monitor the child performers program, detect violations, and prevent non-compliance with legal requirements. As such, there is significant risk that the health, safety, and financial rights of child performers are not adequately protected.

We determined that the Department has not conducted risk assessments to identify monitoring vulnerabilities for the Unit, and certain basic controls have not been established to mitigate risks. Procedures and activities that are integral to effective oversight and enforcement are either inadequate or non-existent. Furthermore, weak controls over its System – including data entry, maintenance, and functionality – significantly limit the System's effectiveness and reliability for monitoring activity beyond the basic processing of performer permit and employer certificate applications. These deficiencies affect virtually every aspect of oversight, and the Department has insufficient assurance that permits and certifications are properly issued and that parents/guardians and employers comply with all applicable laws and regulations, including trust account requirements.

For example, our audit tests found:

- The Department issued both annual permits and employer certificates without receiving all the documentation required under the NYCRR.
- For many children, either a trust account had not been established to hold earnings or the trust information was not provided to the employer. It is also likely that these children were working without permits.
- At least 133 children were issued multiple temporary permits, which the System and the Department failed to identify.

We also concluded that the Department has not cultivated a sufficient presence in the industry to establish its role as compliance enforcer and advocate – a condition that in and of itself invites non-compliance. Neither the Department nor the Unit conduct site visits to verify that permits, certifications, and educational, safety, and work conditions are executed in accordance with the Law or NYCRR. Rather, the Department has adopted a reactive approach to identifying violations, relying primarily on stakeholders to make complaints. This approach is not proactive and tends to focus attention on the concerns of parents/guardians and employers, who are most likely to be making complaints. Complaints are less likely to come from children, particularly if both the parents/guardians and employers violate the Law. Furthermore, when complaints were confirmed, the Department did not issue penalties or suspend or revoke certificates or permits.

### Permit/Certification Application Processing Procedures

The Unit's policies and procedures for processing child permits, employer certifications, and other functions are not comprehensive. Instead, procedures are documented in a collection of general

program guidance, along with miscellaneous handwritten notes and email correspondence that explain more specific directions. With policies and procedures maintained in this way, the Unit is at increased risk for improperly processing permits and certifications. The results of our sample testing bear this out.

Based on our review of records for 50 annual permits, 50 certificates, and 25 group certificate eligibility permits, we determined that:

- Thirty-four (68 percent) of the annual permits were issued without all the required documentation and information (e.g., Social Security number [SSN], trust information, health forms).
- Thirty (60 percent) of the employer certificates were issued without all the required documentation and information, and generally omitting required contact information.
- Of the 25 group eligibility permits, 21 were approved and issued. Of these, 14 (67 percent) were missing required information.

Furthermore, the Unit did not have any procedure for using or tracking employers' Notices of Use (Notices). Although employers are required by NYCRR to provide a Notice at least two days before the scheduled date that a child performer will be working in the State, we found they did not always do so. Of the 89 Notices that the Department received between October 28, 2016 and January 12, 2017, 51 were submitted late, including one that was submitted 25 days after the date of the performance. Additionally, two employers submitted Notices after their certificates had expired. In January 2017, after we brought this issue to the Department's attention, management began requiring staff to check the Notices against employer certificates to ensure the employer had an active certificate.

## Compliance Monitoring and Enforcement

### *Employment Conditions*

The Department has not designed or implemented any proactive monitoring activities to verify that permits, certifications, and education, safety, and work conditions are executed in accordance with the Law and the NYCRR. Further, the Department has not established a significant presence in the industry. For example, neither Unit staff nor Department investigators performed any site visits, based on Notices submitted or otherwise, to routinely assess conditions. Activities such as these are a first line of defense against non-compliance. Although the Unit does respond to calls or correspondence from employers or parents/guardians as needed, the Department uses its website as its primary channel of interaction with parents/guardians and employers. The Department's use of its website for this purpose is inadequate as it does not allow real-time response to certain conditions. This barrier to communication can increase the risk of non-compliance.

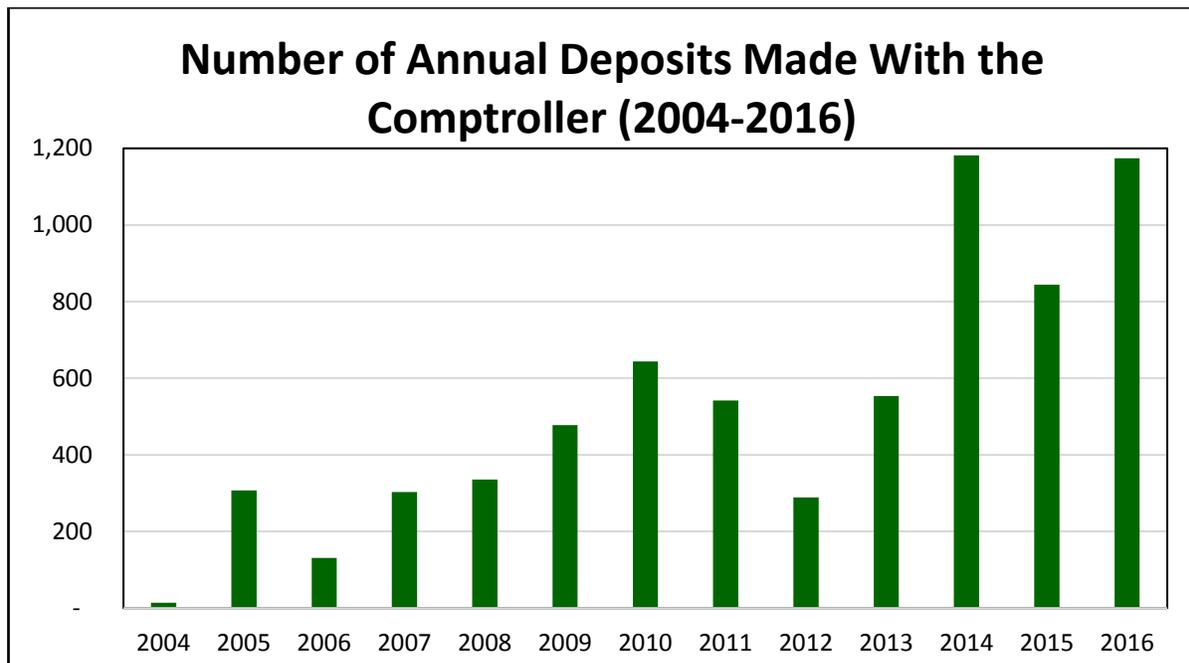
Based on statements by Unit staff, the Department has taken a generally reactive approach to identifying violations, relying primarily on stakeholders to make complaints. This approach is not

proactive and focuses attention on the concerns of parents/guardians and employers. Complaints are less likely to come from children, particularly if both the parents/guardians and employers violate the Law. During the 29-month period from April 1, 2014 through August 29, 2016, the Department received only six complaints, and as of the end of our fieldwork only four had been completely resolved. Our review of the complaint files indicated that two were valid (i.e., the employer did not comply with the Law requiring children to be permitted). Nonetheless, the Department has never issued penalties for violations.

### *Trust Accounts*

Our review of the Department's child performer data and information from units within the State Comptroller's Office indicates that the Department does not have the necessary controls to effectively monitor and enforce parental/guardian compliance with regulations designed to protect child performers' earnings.

In 2004, the Comptroller established an account for performers' earnings (deposits from employers) if parents/guardians failed to establish a trust account or to provide trust account information to the employer. Although deposits with the Comptroller should be limited, the numbers of annual deposits have generally increased, from 14 deposits in 2004 to 1,174 in 2016 (as illustrated in the following graph). Some accounts consist of multiple deposits over years, and some are for just one performance. The highest number of deposits for one performer was 27, and the highest single deposit was over \$26,000. Accounts are as old as May 2004, including one with a balance over \$25,000. Through October 2016, a total of more than \$640,000 had been deposited with the Comptroller on behalf of more than 5,600 child performers.



The Comptroller's Office maintains a list of deposits made on behalf of each child performer, and staff work to ensure the funds are dispensed properly: either by locating the trust account or, for child performers who have reached age 18, locating the individual for direct disbursement. To this end, the Comptroller's staff contact pertinent parties for information to assist in the proper distribution of these funds. In the past, Comptroller's staff provided the Unit with monthly listings of children with accounts, but did not receive responses or follow-up inquiries about the children. According to Department officials, the Comptroller's listing did not contain enough information to determine if the children had been permitted by the Department. However, we note that the Department did not advise the Comptroller's staff that additional information was needed to make this determination. Further, we determined that the Comptroller's Office maintains more detailed information that Unit staff could use to help identify child performers.

We sampled 73 child performers from the Comptroller's listing and matched them against the Department's permit records, which should include valid trust information, and found the following:

- 23 child performers did not have a permit, either annual or temporary, to work. For an additional 8 performers who did not have an annual permit, we could not determine whether a temporary permit had been issued;
- 33 child performers obtained annual permits from the Department, although the permit may not have covered the period of time of the performance;
- 15 child performers were improperly issued permits before the Department had received trust information from parents/guardians; and
- 9 child performers were issued temporary permits that did not cover the entire period the child worked.

Additionally, we identified child performers with OSC accounts – some containing multiple deposits for performances over a several-year period – who, based on Department records, appear to have been unpermitted or improperly permitted at the time of employment. For example, we found:

- One performer who obtained a temporary permit, which is only valid for 15 days, had 19 deposits for multiple performances over a two-year period, which should instead warrant an annual permit; and
- Five performers without permits were paid over \$10,000 for a single performance, and three performers without permits were paid over \$20,000 each for a single performance.

According to Department officials, these performers could have worked under an employer's group eligibility certificate, which would obviate the need for children to have an individual permit, although parents/guardians were still required to provide trust information to the employer for any paid work. However, group eligibility certificates only apply when an employer uses a group of children as "extras" – for background scene work, for example – and then only for a maximum of two days. Due to the amounts of monies involved, we question whether the work performed pertained to group eligibility certifications.

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## *Coordination and Outreach*

The Department is directly responsible for protecting the financial interests of children engaged in the performance industry, but does little in the way of coordination with other agencies or outreach to individuals when children's funds are deposited with the State. Department officials told us that the information they receive about children's pay deposited with the Comptroller is generally not sufficient for them to identify if the child has a permit or a trust toward which the funds should be directed. As a result, while the Comptroller's staff has had some success by routinely sending letters to the child's last known address whenever monies are received, the Department itself does little to ensure that these funds make it to the child.

As of October 2016, the Comptroller's Office still held in trust over \$483,000 of the more than \$640,000 deposited by employers since 2004. The longer these funds remain on deposit with the State, the more difficult it could become to locate the rightful owners. Our analysis shows 35 percent of this money was deposited in just the last year. However, half of this money has been on deposit for more than five years, and 29 percent for over ten. In some cases, the funds have been held for so long that the performers are no longer children, having already attained the age of 18.

To demonstrate how increased coordination and relatively simple, yet targeted, data analysis could help identify children who are due money, we compared data from the Comptroller's Office and the Department to identify performers who are now over 18. Because these individuals are no longer minors, they can have direct access to their funds and are no longer required to have an established trust. After comparing the data, we still did not have reliable birthdate information for more than half of the children with funds on deposit with the State, but we nevertheless identified over \$21,000 that is due 364 individuals who have become adults since their money was deposited.

## **System and Data Reliability**

The Department has used its System to maintain permit and certificate information since 2004. Unit staff use System-generated reports as a permit management tool to streamline permitting processes. Based on our audit, we determined the Unit does not have a process for validating information entered in the database, nor does it properly use data analysis or System data reports to identify and correct potential System flaws. Thus, the Department has little assurance that data was accurately entered into the System and that System-generated reports are reliable.

### *Annual Permit and Employer Certification Applications*

Applications for annual permits and employer certificates are submitted to the Department, along with the appropriate documentation, through mail or fax. Department staff manually enter data from the hard copy application, including all information required under the NYCRR. To assess the quality of data maintained in the System, we compared a data download with the hard copy files for a sample of 50 employer certification applications and 25 annual permit applications.

For 47 (94 percent) of the 50 employer certificate applications and all 25 of the annual permit applications, we found the downloaded data contained some type of deficiency (e.g., missing or incorrect dates, names, telephone numbers, certificate numbers, and SSNs) compared with hard copy files. In addition, fields were left blank or were unused or ignored by staff.

Based on our audit, we determined the Unit does not have a process to validate information entered in the database, nor does it properly use data analysis or System data reports to identify and correct potential System flaws. Thus, there is little assurance that data has been accurately entered and the information it contains is reliable. Further, the System does not have edits in place to require that all fields be completed. In response, officials stated that some information may not have been entered into the System because it was not necessary for the permit. However, our data review included only those data elements that are specifically required by the NYCRR.

### *Temporary Permit Applications*

Parents or guardians are allowed to obtain only one temporary permit for each child during his/her lifetime. After that, they are required to obtain an annual permit for subsequent performances. To streamline the process, applications for temporary permits can be submitted, along with required information, via a web portal, and the permit can be printed as soon as the information is entered into the System.

For these online temporary permit applications, the System only checks the SSN and permit number fields to ensure they are complete and not a duplication of previously submitted data. Changing the SSN slightly will therefore allow multiple permits to be issued to the same performer, even if all the other fields remain the same. As a result, the System does not have sufficient functionality to identify and prevent duplicate applications. Nor does the Unit's staff routinely analyze the data to protect against them.

We ran seven simple tests, using the Department's data, to determine if parents/guardians effectively circumvented the requirements (e.g., having to establish a trust account) by obtaining multiple temporary permits for their child instead of an annual permit. We checked for duplicate SSNs, parent names, and child names. After reviewing the results for just two of our tests, it was clear that some parents/guardians manipulated the data they entered into the web portal to deliberately obtain multiple temporary permits. We found 133 children with a total of 315 temporary permits issued among them. Specifically, we noted:

- For 86 (of the 133) children, the permits were issued on different dates;
- For the remaining 47, the permits were issued on the same day, indicating a problem with the System (e.g., the ability to print out the permit); and
- One child had 21 temporary permits issued between April 1, 2014 and October 31, 2016. In each case, the SSN had been altered slightly, allowing another temporary permit to be generated.

We reviewed the Department's files for 20 of the 86 performers who had multiple permits issued on different dates to determine if their temporary permits had ever been converted to annual

permits. We found only six had been converted to annual permits. Additionally, seven of the performers had funds deposited with the Comptroller by their employers or a payroll company, indicating that the parent/guardian either: did not establish a trust account as required; or did not provide the employer/payroll company with correct trust information.

### *Management Reports*

We also found errors in the reports that the System generated that could have been prevented if the Unit had taken action to identify and correct potential System flaws and ensured accurate data entry. For example, the 2016 “Total Applications Received” report indicated a total of 10,223 applications; however, the report’s detail data actually totaled 12,266 applications (a difference of 2,043). This same problem existed in at least two other reports generated from the System and across three reporting years. Access to better, useful data – achievable through data analysis – could improve the Unit’s effectiveness and efficiency. Data analytics can point out weaknesses or anomalies in operating activities that are not otherwise apparent, allowing management and staff to adjust activities and focus resources more effectively. Without a fully functioning system capable of generating useful, accurate reports, management is limited in its ability to effectively monitor permits, enforce laws to protect child performers’ well-being, and communicate valuable information to and among its various divisions and to parents/guardians and employers.

Department staff explained that the System was created quickly and with limited planning and design, and was intended to be used as an interim system while a better one was designed. As such, there are some deficiencies with both the System and the data maintained within it. While the Department submitted a request to the Office of Information Technology Services (ITS) for a new system, the project has yet to be completed and is not on ITS’s list to be completed in the near future. Consequently, it is unclear when the Department will have an adequate automated system to help ensure proper enforcement of laws and regulations to protect child performers.

## **Recommendations**

1. Design and implement a system of internal controls to ensure that the welfare of child performers is protected and that employers and parents/guardians comply with the requirements of the Law and the NYCRR, including (but not be limited to):
  - Assessing risks to the Unit and implementing controls to address them;
  - Creating formal procedures for processing permit and certification applications;
  - Establishing proactive communication and on-site monitoring strategies; and
  - Monitoring and enforcing parent/guardian and employer compliance with trust account and temporary permit requirements, and using available data and other Department resources to detect non-compliance.
2. In conjunction with ITS, develop and implement a system that can easily and readily store, access, and analyze required child performer and employer information and develop a process to identify and correct apparent System flaws. Also, establish a formal timetable for System development through full implementation.

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## Audit Scope, Objective, and Methodology

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This audit was conducted to determine if the Department adequately ensured that employers and parents/guardians complied with the legal requirements that protect the welfare of child performers. The scope of the audit was April 1, 2014 to March 16, 2017.

To achieve our audit objective, and determine whether the Department's monitoring and oversight of child performers and employers were adequate, we reviewed relevant laws and regulations, the Unit's manuals and procedures, Notices received from October 28, 2016 through January 12, 2017, and complaint files. We interviewed Unit staff and management as well as investigative staff. We became familiar with, and assessed the adequacy of, the Department's internal controls as they related to its performance and our audit objective.

We also assessed the data reliability of the Department's System and determined the information lacked sufficient reliability. As such, we limited our use of the data contained within the System. The data that was provided to us contained information for approximately 27,000 permits between April 1, 2014 and October 31, 2016; however, in its response to our preliminary findings, the Department stated it issued over 47,000 permits for a similar period. The discrepancy could not be explained, although officials stated their total came from reports generated from the System, which we previously found to be unreliable. We used the data we received from the System to select samples for testing and to provide background information. We verified the information against information contained in hard copy files. We used this hard copy information to form the basis for our findings instead of the information in the System.

We used both random and judgmental methodologies to select a sample of 73 of the 1,977 child performers with trusts maintained by the State Comptroller for the period April 1, 2014 through September 21, 2016. Those judgmentally selected were chosen based on several factors, including transaction volume and comparatively high-dollar transaction value. We randomly sampled 50 of 27,629 child performers from the System for the period April 1, 2014 to October 31, 2016. Using the hard copy files, we determined if they met all the requirements, including permits with appropriate supporting documentation and required trust accounts. Additionally, we randomly sampled 50 of 844 employers from the Department download and performed similar testing.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 threats to 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

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The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

## Reporting Requirements

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We provided a draft copy of this report to Department officials for their review and formal comment. We considered their comments in preparing this final report and attached them in their entirety to it. In general, officials agreed with our recommendations and indicated they have already begun implementing certain corrective actions. Nevertheless, several Department comments are misleading and/or incorrect. Our rejoinders to certain comments are embedded within the text of the Department's response.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Labor 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 recommendations contained herein, and where recommendations were not implemented, the reasons why.

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## Contributors to This Report

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### Vision

A team of accountability experts respected for providing information that decision makers value.

### Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

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## Agency Comments and State Comptroller's Comments

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Roberta Reardon  
Commissioner  
Department of Labor

**New York State Department of Labor**  
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May 15, 2017

Mr. John Buyce  
Audit Director of State Government Accountability  
Office of the State Comptroller  
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Albany, NY 12236

Dear Mr. Buyce:

Below, please find the Department of Labor's responses to your Draft Report of your audit of the Department's Child Performer permitting unit. (Report # 2016-S-70). The Draft Report contains serious factual errors and reaches conclusions that are erroneous.

### Clear Errors in Draft Report

On page 7 you state: "For many children, either a trust account had not been established to hold earnings or the trust information was not provided to the employer." (emphasis added)

At no time did the Department issue an annual permit without proof that a trust account had been established. The auditors seem to have a fundamental misunderstanding of the manner in which trust accounts are accessed. The law requires that parents and guardians, not the Department of Labor, provide employers with trust account information. The Department of Labor would have no way of obtaining information about the multiple and various employers a child might work for in a permit year. OSC offers the baseless assumption that "trust accounts had not been established" based solely on the number of deposits made into OSC trust accounts by employers of child performers. Employers who made such deposits either were never given trust account information by parents and guardians or they misplaced such information. Deposits into OSC accounts does not mean that permits were issued without trust account information. As there are no facts offered by OSC to support this conclusion, the Department requests that this finding be removed from the report.

**State Comptroller's Comment** - Department officials incorrectly interpreted the sentence in question, which does not state that the Department issued permits without proof that trusts were established. Rather, it clearly states that children were employed without a trust being established, or the employer was not provided with trust information. The series of deposits we examined indicated there was material risk that children were not properly permitted by the Department and/or the parents/guardians had not established a trust for their children, as otherwise required. Although parents/guardians are responsible for establishing trusts, it is the Department's responsibility to provide reasonable assurance that employers and parents/guardians comply with the Law. However, because the Department made no formal attempt to address this risk (i.e., by contacting the employers or parents/guardians to determine where the breakdown occurred), there was very limited assurance the children were properly permitted or their financial interests protected.

On page 8 you state: "Thirty (60 percent) of the [50] employer certificates [examined by OSC] were issued without all required documentation and information and generally omitting requires [sic] contact information

This finding of the number of incomplete files is altogether misleading. 20 of the files cited were missing only fax numbers. Fax numbers are not required pieces of information under the law. Indeed, fax machines are an outmoded and rarely used technology. Citing lack of fax machine numbers in a statistic that purports to demonstrate that a large number of employer certificate files were incomplete is misleading. These 20 files were in all ways complete with regards to required information. We can only assume that OSC auditors observed employer applications that contained blanks next to the word "fax" and counted such files as incomplete. Despite the fact that *all* of the 20 cited files contained the following required and vital information, they were labeled incomplete:

- (1) the applicant's name, federal tax identification number, business and email addresses, telephone number, names of corporate officers, if any, and type (e.g. movie, play, commercial, etc.) and location of employment of child performers for which the certificate is requested;
- (2) proof of the applicant's compliance with the mandatory coverage requirements of the workers' compensation and disability benefits laws on forms approved by the Chair of the New York State Workers' Compensation Board;
- (3) completion of the due diligence questionnaire required by the Department including, but not limited to, disclosure of any prior violations of this Part, of federal or state labor laws, or of other state or federal laws governing the employment of child performers and disposition thereof;
- (4) a signed acknowledgement that the applicant has read, understands, and agrees to abide by the laws, rules, and regulations applicable to the employment of child performers and understands that the failure to do so may result in the suspension or revocation of the certificate or a denial of a renewal of such certificate; and

On page 8 you state that "thirty-four (68 percent) of the [50] annual permits [examined by OSC] were issued without all the required documentation and information (e.g., Social Security number [SSN], trust information, health forms).

**State Comptroller's Comment** - Department officials are incorrect. In fact, our audit testing did not include verification of fax numbers for the issuance of employer certificates. We provided Department officials with the results of our audit testing, including testing for data reliability. However, it appears that officials reviewed the wrong information in formulating this portion of its response. Moreover, this issue could have been easily resolved if officials brought it to our attention earlier in the audit process, as they otherwise should have.

Also, the most notable information missing from the 50 selected employer application files included:

- 3 applications with missing federal employer identification numbers;
- 28 applications where the employer address was either missing or too vague to identify the location of the employer (e.g., address was simply listed as "New York City");
- 10 applications that were missing insurance-related documentation; and
- 2 applications where the employer failed to answer the due diligence questionnaire.

This citation is completely erroneous. OSC did not provide the Department with any documentation to demonstrate which files they examined for which audit purpose. Nor did OSC provide any information as to how any of these files were allegedly deficient. Notably, the Draft Report reaches the general conclusion quoted above but does not provide any further evidence as to specific deficiencies. We note also that OSC pulled far more than 50 files for its audit and question the integrity of the sample. Because OSC did not offer any specifics as to file deficiencies, the Department reviewed every single file that OSC requested or examined to see if the vital information mentioned in OSC's finding (Social Security numbers, trust information and health forms) was missing. Here are the Department's conclusions:

- Not a single file was missing social security information. Permits were issued only to applicants with social security numbers or to foreign born applicants who provided alternative documentation such as passport information. Not a single file was missing a health form.
- Not a single file was missing trust account documentation. Of the 86 files examined in some way by OSC, 2 had an unanswered trust question but complete trust documentation and 1 file noted the change in branch location of the trust bank but did not have the branch's new address.

**State Comptroller's Comment** - The Department's assertion is completely baseless and false. In fact, auditors not only provided officials with support for their findings, but also afforded officials time to respond to each finding before inclusion in the draft report. In February 2017, auditors issued two preliminary findings to the Department, which included the information presented in the draft report. Additionally, at the Department's request, auditors provided officials with copies of audit fieldwork records, which identified the files that were selected and noted the information that was missing from those files. Further, auditors met with Department staff to review matters and answer any questions. Department officials were then provided the opportunity to respond to the preliminary findings. However, the Department did not address any of our findings relating to missing documentation in their response to the preliminary findings or at the audit's exit conference. We cannot be certain which files Department officials examined. However, all 50 files we reviewed were missing at least one or more forms (pieces of information) required by the NYCRR. The most notable deficiencies included:

- 20 files with no evidence that a trust was established;
- 4 files with no Social Security number listed for the child;
- 14 files with no birth certificate or other form of identification (e.g., passport);
- 14 files with no parent identification documentation;
- 4 files with missing medical health forms or forms certifying that the child's education requirements had been met; and
- 5 files where the parent and/or child information listed on the application and subsequent permit did not agree with the identification provided.

In addition, a single file did not note the eye color of the child and a single file did not have proof of age documentation. We are completely at a loss to understand how OSC arrived at the conclusion that 68 percent of its audit sample were missing required documentation like social security numbers, trust information and health forms. We note that OSC did not interview permit issuance staff or the unit's Principal Clerk. They only interviewed managers, supervisors and ITS staff. Had OSC conducted interviews, it would have discovered that in all files containing a renewal permit, the Department retains original documentation for the original permit and supporting documentation for the most recent permit year. Under a previous policy vital, private and sensitive information for permits issued in between the original and most recent permit year was destroyed. Since OSC began to question the validity of our permit issuance we began to retain all documents for each permit issued. We are speculating as to how OSC made such an egregious calculation and we offer the above as a possible reason. In any event, we request that OSC eliminate this erroneous finding from its official report.

**State Comptroller's Comment** - Department officials directed the auditors to specific individuals responsible for overseeing the program and told us these parties had the requisite knowledge to answer questions and provide accurate information. Additionally, the division overseeing the permitting process consisted of only six people, including the Supervisor, whom we met with frequently. Therefore, we reasonably expected, and were led to believe, the individuals we spoke with had intimate and complete knowledge of the permitting process. Further, while we did not schedule a formal meeting with the clerks referenced by the Department, we did obtain pertinent information from these individuals. We were repeatedly told (by the clerks and their supervisors) that all the Department's pertinent documentation was maintained in the files provided, which should have included all the required documents. Also, Department staff gave conflicting reasons why and when information in the files was purged. Because officials could not definitively determine whether documents had been purged or if they were never received, we had to rely on the information maintained in the files to make our observations and conclusions.

### Areas of Agreement

On page 7 you also state that "At least 133 children were issued multiple temporary permits, which the system and the Department failed to identify". The Department agrees that multiple temporary permits are a problem that needs attention. 1.2% of the 4500 temporary permits involve situations where multiple temporary permits are issued when parents, guardians or others fraudulently enter altered social security numbers so that the system does not recognize that a temporary permit had previously been issued. The Department will consider requiring a sworn certification and placing a message on the on-line system that warns applicants of the penalties of perjury.

Further, the Department agrees that deposits into OSC accounts have increased due to the improved economy and major upswing in the number of child performers. From 2015 to 2016 the total number of Child Performer Permits issued increased by 25%. As noted above, it is the responsibility of parents and guardians to communicate trust information with the employer and to make sure deposits are made into the proper accounts. The Department agrees however to add language to employer certificates to assist in keeping the number of OSC deposits low.

**State Comptroller's Comment** - We note that the 133 temporary permits we brought to the Department's attention represent only part of those we identified as improperly issued. Our testing indicated that there were likely more improperly issued temporary permits (than the aforementioned 133), and therefore, this problem affected more than just 1.2 percent of the population.

Currently, the Department has the following language printed on the performer's temporary permit;

*This is a one-time-only permit that allows the named child performer to work during the 15-day period shown. The parent/guardian must attach trust account documentation, and information needed to make transfers to this permit for it to be valid for paid employment.*

And this message is displayed on the one-year permit;

*The parent/guardian must attach trust account documentation, and information needed to make transfers to this permit for it to be valid for paid employment.*

The Department will add this text to the Employer Certificate of Eligibility in the near future.

#### **Additional Responses to Draft Report Recommendations:**

##### **Comptroller's Finding**

The Department has not designed or implemented proactive monitoring activities to verify that permits, certifications, and education, safety, and work conditions fully comply with the Law and the NYCRR.

##### **Department's Response**

The Department disagrees. We urge the OSC to contact advocates and other organizations who work with child performers to obtain a complete picture of the Department's presence in the industry. The Department responds to almost 10,000 inquiries each year from employers, parents, agents, industry groups, and educators. The Department conducted 8 investigations during the audit period based on formal complaints, one of which will result in issuance of a penalty. These do not include informal complaints the Department proactively resolved through contact with employers, unions, or educators. Protecting children is a coordinated effort that brings the Department together with schools, employers, and health officials to ensure child performers are protected.

**State Comptroller's Comment** - The Department provided us with virtually no documentary evidence of a proactive presence in the child performer industry. In fact, our review of complaint file information revealed Department staff's reluctance to go into the field and investigate complaints fully, even in cases where they found evidence to support the complaint. Further, it is unclear from the Department's response whether the eight investigations include (or are in addition to) the six complaints we reviewed. In either case, for the audit period, we were provided with only six complaint files, and officials stated they had not issued any violations or penalties as a result of those complaints. Additionally, the Department did not maintain a log of complaints. Only those complaints that were filed had supporting documentation. When questioned why the Department did not maintain a log of complaints, officials told us there were too few complaints to justify logging them.

### Comptroller's Finding

The System has significant deficiencies – with data entry, maintenance, and functionality – that limit its effectiveness and reliability as a monitoring tool. The Unit does not have an adequate process to validate information entered in the database, nor does it properly use data analysis or System data reports to identify and correct potential System flaws. Further, the System does not have edit checks requiring all fields to be completed, and reports generated from the System contain errors.

### Department's Response

The Department agrees. Our system is primarily used to generate permits. While all the corresponding paper files are complete, the system may not necessarily reflect all the data that is collected in order to issue a permit. The Department will work with ITS to develop a more comprehensive system.

### Comptroller's Recommendation

On page 1 you state: "System records indicate that, from April 1, 2014 to October 31, 2016, the Department issued about 27,000 child performer permits..."

In fact, the Department issued over 47,000 permits during this period. We examined the data source we believe the Comptroller used. For example, the report clearly did not include renewed annual permits. This inaccuracy was found easily by observing permit numbers were not repeated. Child performer permit numbers are unique to each performer. If the report had captured renewal permits, performer unique numbers would have been displayed twice.

**State Comptroller's Comment** - In February 2017, after reviewing the Department's response to our preliminary findings, auditors made officials aware of the discrepancy between the data contained in the file officials provided to us and the 47,000 permits the Department cited. We provided the Department with the data totals we used to arrive at our numbers, including the types of permits – all generated from the data file provided by the Department. However, officials provided no explanation for the discrepancy, nor did they request any further information until May 2017, when they began preparing their response to our draft report. At that time, we again provided officials with our totals and directed them to the data file that they provided us (and which auditors returned to the Department). In this comment, which marks the Department's first and only acknowledgment of the discrepancy we identified, officials contend that the data did not include renewals.

However, our data included about 4,500 renewals. Therefore, we question the reason officials cited for the discrepancy. We returned the data file that officials used to prepare their response (to the draft report) to the Department unchanged from its original form. If that file was incomplete, the Department never provided auditors with the information that was missing from it, thus raising additional questions and concerns.

### **Comptroller's Recommendation**

Design and implement a system of internal controls to ensure that the welfare of child performers is protected and that parents/guardians and employers comply with the requirements of the Law and the NYCRR.

### **Department's Response**

Internal Controls were established by the Child Performer Regulations enacted in 2013, and the Department implements these controls. It monitors compliance, investigates complaints, diligently follows up on any suspicious issue affecting the welfare of child performers. Supervision has established internal controls such as visual check of the permit application documents methods to identify which staff member data enters the permit information into the system. In addition, the permit issuance system will not generate a child performer permit without capturing required elements. For example, unless staff selects "not of school age" the system will require a school form. If the school form is not present or an adequate explanation choice is not selected, the permit will not be generated. The Department has recently added a new checklist tool to ensure data entry staff do not miss any steps in the review process for employer requirements. It is important to realize Child Performers who live in New York, who may exclusively work outside New York State must obtain a permit. Therefore, the Department, parent/guardians, school officials, and health officials all play a critical role in ensuring New York Child Performers' welfare is protected.

### **Comptroller's Recommendation**

In conjunction with the Office of Information Technology Services, develop a System that can easily and readily store, access, and analyze required child performer and employer information and develop a process to identify and correct apparent System flaws.

### **Department's Response**

The Department agrees. A fully automated on-line permit issuance system would improve customer service and analytics. The Child Performer population living or working in New York continues to grow. The Department hopes to have such a system in place within the next six years.

If you have any comments, please contact Maura McCann, Director of Labor Standards. (518) 457-1378.

Sincerely,



Roberta Reardon

Cc: Jim Rogers  
Milan Bhatt  
Lori Roberts  
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