

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 11, 2018

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

Re: Protection of Child Performers
Report 2018-F-24

Dear Commissioner Reardon:

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, we have followed up on the actions taken by officials of the Department of Labor to implement the recommendations contained in our audit report, *Protection of Child Performers* (Report 2016-S-70), issued July 27, 2017.

Background, Scope, and Objective

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 whose interests and well-being during employment may be vulnerable to exploitation.

The Law and NYCRR establish certain responsibilities and requirements for parents/guardians and employers to protect child performers' safety, well-being, and educational rights. The Law and NYCRR also require that a portion of each child's earnings be protected. Article 7, Part 7, of the Estates, Powers and Trusts Law requires that 15 percent of a child performer's earnings be placed in trust on behalf of the child. Parents/guardians are required to provide employers with trust account documentation. If an employer or payroll company does not have valid trust account information, it is required to deposit the funds with the State Comptroller. As of October 2018, the Comptroller was holding in trust approximately \$491,000 for 4,900 child performers.

The Department's Child Performers Unit (Unit) facilitates compliance of the Law through the use of an electronic permit application system (System) and comprehensive permit requirements for child performers and certification of employers. System records indicate that, from July 2017 through September 2018, the Department issued about 19,000 child performer permits, including 5,000 temporary permits, 7,500 new annual permits, and 6,500 annual permit

renewals. For the same period, the Department issued approximately 400 employer certificates.

Our initial audit report, covering the period April 1, 2014 through March 16, 2017, examined whether the Department adequately ensured that employers and parents/guardians complied with the legal requirements that protect the welfare of child performers. The audit report concluded that the Department had not created a sound and effective system of internal controls for the Unit. Several systemic weaknesses undermined the Department's ability to adequately monitor the child performers program, detect violations, and prevent non-compliance with legal and regulatory requirements. In addition, the Department did not have the necessary controls to monitor and enforce compliance with regulations designed to protect child performers' earnings.

The prior audit report also concluded that the System had significant data entry, maintenance, and functionality deficiencies that limited its effectiveness and reliability as a monitoring tool. The Unit did not have an adequate process to validate information entered in the database, nor did it properly use data analysis or System data reports to identify and correct potential System flaws.

The objective of our follow-up was to assess the extent of implementation, as of October 29, 2018, of the two recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials have not made progress in addressing the issues identified in our initial report. The Department has not implemented either of the two recommendations in our initial report.

Follow-Up Observations

Recommendation 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.*

Status - Not Implemented

Agency Action - Department officials have not taken significant steps toward designing and implementing 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 NYCRR. The Department disagreed with our assessment of its internal control system.

In October 2017, Unit officials completed an internal control risk assessment, identifying a single risk: the issuance of a permit, license, or registration to someone who should not have it. Their assessment did not address several significant risks identified in our initial audit report, such as children likely working without permits or 15 percent of each child performer's earnings not being placed in trust on behalf of the child. Unit officials also assessed the impact and likelihood of occurrence of the single risk they identified as minor, despite our findings of many instances of parents or guardians circumventing the System to improperly obtain permits, and child permits and employer certifications being issued without all required documentation. Further, while the Unit's assessment concluded that internal controls were adequately designed and working as intended, it lacked sufficient details about test results and how controls were tested to support the Unit's conclusion.

Since our initial audit report, the Department has not strengthened its policies or procedures for processing permit and certification applications. It also continues to document procedures through a collection of general program guidance and more detailed miscellaneous emails and handwritten notes. Additionally, the Department has not established proactive communication and on-site monitoring strategies. The Unit continues only to investigate non-compliance in response to complaints, providing evidence of only one site visit since our initial report, made in response to a complaint.

According to Department officials, directing new customers to apply for temporary permits through the NY.Gov ID portal (Portal) is a step toward monitoring and enforcing requirements. However, according to Office of Information Technology Services (ITS) officials, temporary permit applications were migrated to the Portal because the System's host servers were being retired. The Portal does not include any new functionality to enforce compliance with permit requirements. The Department also is not using trust fund data to identify unpermitted child performers, with officials stating this is unnecessary because children would not be accounted for in that data if their parents/guardians did not apply for permits. However, using the trust fund data, our initial audit identified child performers who were likely unpermitted or improperly permitted at the time of employment.

Recommendation 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.

Status - Not Implemented

Agency Action - The Department is not working with ITS to develop and implement a system that can easily and readily store, access, and analyze required child performer and employer information, nor has it developed a process to identify and correct apparent System flaws.

While Department officials stated that directing new customers to apply for temporary permits through the Portal is a step toward implementing this recommendation, the Portal does not include any new functionality that makes it easier to store, access, or analyze child performer information. Also, system flaws – which would allow duplicate temporary permits to be issued should a parent/guardian alter a child performer’s Social Security number – still exist. Department officials stated they hope to implement a new system within the next six years, but have not yet taken any formal action toward developing the new system.

Major contributors to this report were Andrea LaBarge, Christopher Herald, and Brindetta Cook.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Heather Pratt
Audit Manager

cc: Michael Vaccaro, Audit Director