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January 24, 2013

Mayor Robert Palmieri  
Members of the Common Council  
City of Utica  
One Kennedy Plaza  
Utica, New York 13502

Report Number: S9-12-13

Dear Mayor Palmieri and Members of the Common Council:

A top priority of the Office of the State Comptroller is to help officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Common Council governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of eight units comprising four cities and four towns throughout New York State. The objective of our audit was to determine if these units have conducted background checks for individuals involved in the municipalities' youth programs. We included the City of Utica (City) in this audit. Within the scope of this audit, we examined the policies and procedures of the City. We also examined various records including employment records, volunteer records, and youth program documentation for the period January 1, 2010 to May 10, 2012.

This report of examination letter contains our findings and recommendations specific to the City of Utica. We discussed the findings and recommendations with City officials and considered their comments, which appear in Appendix A, in preparing this report. City officials agreed with our findings and recommendations, and indicated they planned to initiate corrective action. At the completion of our audit of the eight units, we prepared a global report that summarizes the significant issues we identified at all the units audited.

### **Summary of Findings**

The City has not adopted a policy or developed written procedures for background screening of individuals providing services to City youth programs. The City does have an unwritten procedure that all individuals, employees, and volunteers, prior to working for the Youth Bureau

will have their names checked against the New York State Sex Offender Registry. However, the City was unable to provide documentation to support the claim that the names were checked.

The City does not have an entity-wide monitoring system to ensure that the checks are completed for individuals involved in any City youth programs. We tested 291 names of individuals identified as providing services for youth programs to determine if there was any public record documenting either a sex offense or criminal history. The service providers included full- and part-time City employees and volunteers. Our tests of the names disclosed no findings.

Even though the law does not mandate that municipalities perform background checks on all individuals who provide services for youth programs, such screenings – whether for sex offenses, criminal history, or both – are essential to safeguard the participants in those programs, and can help reduce the municipality’s potential liability in the event of legal action.

### **Background and Methodology**

The City of Utica is located in Oneida County, with a population of approximately 61,000 people. The City provides youth program services to its residents. The City’s 2010 actual expenditures for youth programs were approximately \$517,000. Budgeted youth program expenditures for 2011 were \$504,000 and the revised 2012 budget was approximately \$417,000.

The City is governed by a ten member Common Council, which comprises seven elected members and three appointed Council at Large members. The Common Council is responsible for the general management and oversight of the City’s financial and operational affairs. These responsibilities include setting policies and establishing effective controls over operations. The Mayor is the City’s chief executive officer and is responsible, along with other administrative staff, for the City’s day-to-day management. The City offers a multitude of youth programs through the Youth Bureau. The Director of the Youth Bureau is responsible for organizing the programs offered to the community, which includes screening prospective staff and contracted individuals needed for specialty services. There were about 3,700 participants enrolled in approximately 25 City youth programs during our scope period.

Youth programs, which are often offered as a response to community interest, encompass a wide variety of activities. These include sports camps, sports lessons, swim lessons, summer reading and tutoring, and a running exercise camp. With these youth programs, parents are entrusting their children’s learning experience and safety to the adults (full- or part-time employees or volunteers) that the City engages to administer the programs. A municipality can help create a safe environment for community youth through background checks in the hiring and screening of all individuals associated with the municipality’s youth programs. During the employee hiring process, two types of background checks can be conducted and documented: a criminal history background check, which is done with the consent of the individual, and a search of the New York State Sex Offender Registry, which is public information.

New Federal legislation that has been introduced but not yet enacted, the Child Protection Improvements Act of 2011,<sup>1</sup> focuses on several aspects of criminal history investigations for

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<sup>1</sup> The Child Protection Improvements Act of 2011 would amend the National Child Protection Act of 1993 to direct the Attorney General to: (1) establish policies and procedures for a program for national criminal history background checks for child-serving organizations, (2) assist such organizations in obtaining access to nationwide background checks, (3) establish procedures for ensuring the accuracy of criminal history records, (4) identify

child service organizations. However, while on the State level the Education Department has requirements<sup>2</sup> for school districts for background checks on individuals dealing with students, there is no one law or regulation that provides overall guidance for youth programs found in municipalities. Instead, depending on the type of program offered, specific legislation guides the level of background check screening required. For instance, Article 13-B of Public Health Law requires children's camp<sup>3</sup> operators to determine whether an employee or volunteer is listed on the New York State Sex Offender Registry. This check, which DCJS conducts on names submitted by the City, must be completed prior to the day the individual starts work at the camp and annually thereafter. Additionally, national youth sports groups recognize the need to provide general guidance for youth program administration, including a criminal history background check for all volunteers.

To complete our objective, we interviewed City officials and staff, and reviewed policies and procedures to identify the controls established. We reviewed supporting documentation of the hiring process to determine if there were background checks completed prior to hiring. We also tested individual names against public records to determine if the safety of the youth participating in programs was jeopardized.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

## **Audit Results**

The City has not adopted a policy or developed written procedures to provide guidance for background screening processes for youth programs, but has an unwritten procedure used by the Youth Bureau. The City's Youth Bureau required that all names of employees and volunteers providing services to youth programs be checked against the New York State Sex Offender Registry website.<sup>4</sup> City officials told us that a member of the Youth Bureau staff enters the name in the New York State Sex Offender Registry website for matching. City officials stated that a check mark is normally placed by the names on the application once the New York State Sex Offender Registry has been reviewed. City officials stated that the criminal history background checks for individuals in the youth programs (full- or part-time employees and volunteers, whether year-round or seasonal) are not required for employment or participation.

The Youth Bureau hires part-time year-round, seasonal help and volunteers after completion of an application, a New York State Sex Offender Registry check, interview, and reference checks. The City bases its hiring, in part, on being familiar with individuals whom the City employs from year to year, referrals from known community residents, and knowledge of individuals with school district affiliations. However, this information is not consistently documented.

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individuals convicted of serious misdemeanors or felonies involving children, and (5) collect demographic data relating to individuals and organizations covered by this Act and make reports to Congress on such data. The 2011 proposed legislation limits the liability of a child-serving organization for failure to conduct criminal background checks or to take adverse action against employees with a criminal history; imposes limitations on the disclosure or use of criminal history records; and amends the PROTECT Act [of 2004] to extend the Child Safety Pilot Program.

<sup>2</sup> Part 87 of the Regulations of the Commissioner of Education and the Safe Schools Against Violence in Education (SAVE) legislation (Chapter 180 of the Laws of 2001)

<sup>3</sup> The law applies to all children's camps (day, traveling day, and overnight) and to all prospective employees and volunteers at the camp regardless of their job title/responsibility or employment status.

<sup>4</sup> Website includes most names of moderate-risk (Level 2) and high-risk (Level 3) offenders

Additionally, the Youth Bureau does not have a monitoring process to ensure that all Youth Bureau employee and volunteer names have been checked against the New York State Sex Offender Registry. We reviewed 261 applications for employment and 100 applications for volunteers and found no documentation showing that the name was matched to the New York State Sex Offender Registry website. Only clean copies of the application were available, so we were unable to verify the claim that this process was completed. Further, there is a section on the volunteer application form where background check completions can be recorded by the Youth Bureau to document when the check was performed and by whom; however, the Youth Bureau staff has not been using this tool.

We also tested 291 individuals identified as providing service to the youth programs to determine if there was a public record<sup>5</sup> documenting either a sex offense or a criminal history. These individuals included full- and part-time City employees, and volunteers. Our tests of the names disclosed no findings. Nonetheless, background checks of all individuals who provide services to the City's youth programs are not only in the City's best interest in protecting its children against unsafe individuals, but can also help protect the City against liability from possible legal action.

## **Recommendations**

1. The Common Council and City officials should develop and implement written policies and procedures for a background check of all individuals who are providing, or are expected to provide, services for youth programs.
2. City officials should institute a monitoring process to ensure background checks are performed for all individuals that provide services for youth programs.

The Common Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Common Council to make this plan available for public review in the Clerk's office.

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<sup>5</sup> Public information available for New York State includes the Sex Offender Registry from the DCJS and state prison records from the Department of Corrections.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief of Statewide Audits, at (607) 721-8306.

Sincerely,

Steven J. Hancox  
Deputy Comptroller  
Office of the State Comptroller  
Division of Local Government  
and School Accountability

## **APPENDIX A**

### **RESPONSE FROM CITY OFFICIALS**

The City officials' response to this audit can be found on the following pages.



# THE CITY OF UTICA

OFFICE OF THE MAYOR  
1 KENNEDY PLAZA • UTICA, NEW YORK 13502

ROBERT M. PALMIERI  
Mayor

Phone: 315-792-0100  
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July 19, 2012

Ms. Ann Singer, Chief Examiner  
Office of the State Comptroller  
State Office Building, Room 1702  
44 Hawley Street  
Binghamton, New York 13901-4417

Dear Ms. Singer:

This letter is being submitted to you in response to the findings associated with the Youth Program Background Check Screening Process Audit recently conducted on the City of Utica, by the Office of the State Comptroller.

I understand that the objective of this audit was to determine if the City has conducted background checks for individuals involved in our municipality's youth programs, and that this determination was made based upon the examination of the City's policies and procedures.

Contained, herein, you will find the City's responses to the recommendations outlined in Report number S9-12-13, dated June 20, 2012.

**Finding:** *"The City has not adopted a policy or developed written procedures for background screening of individuals providing services to City youth programs."*

**Recommendation:** *"The Common Council and City officials should develop and implement written policies and procedures for a background check of all individuals who are providing, or are expected to provide, services for youth programs."*

The City concurs with this finding and sets forth the following corrective action: The City's youth Bureau Director is currently working with his staff to develop a policy and written procedures that will be used to provide guidance to all Youth Bureau personnel. The policy will then be brought before the Common Council's Recreation, Youth, Parks, Seniors and Veteran's committee to be ratified and incorporated into the policies and procedures of the City's Youth Bureau.

**Finding:** *“The City does not otherwise have an entity-wide monitoring system to ensure that checks are completed for individuals involved in any City youth programs.”*

**Recommendation:** *“City officials should institute a monitoring process to ensure background checks are performed for all individuals that provide services for youth programs.”*

The City concurs with this finding and is implementing the following corrective action: As part of the discussion of the policy being developed in the aforementioned response, it is the intention of the Youth Bureau to work cooperatively with the departments of the Comptroller, Human Resources and Police to ensure that background checks are performed entity-wide, for all individuals that provide services for the City’s youth programs. The Department of Human Resources will be the department of record for documentation verifying the completion of background checks, and for notifying all other City departments of such procedures, and policy updates.

In conclusion, it should be noted that the City is appreciative of the efforts put forth by the Office of the State Comptroller, in offering guidance on the background check screening for employees of its Youth Bureau program. The administration takes very seriously, the safety and welfare of the children who participate in such, and is therefore committed to taking the proactive approach outlined in this response.

Very truly yours,

Mayor Robert M. Palmieri



## **APPENDIX B**

### **AUDIT METHODOLOGY AND STANDARDS**

We reviewed the City's policies and procedures to gain an understanding of the controls in place for the screening process of individuals involved in youth programs and to determine if the background checks are part of the process. Youth program records, background investigation reports, and employee records were reviewed to identify names for testing.

We reviewed available records that identified youth programs offered, the types of individuals providing services for each program, and personnel file documents for City employees, looking for background check documentation. We listed all individuals by youth program, if the individuals could be identified. We then compiled the individual names into a list of those that did not have a completed background check documented. We then tested all identified names using software<sup>6</sup> that accesses public records to determine if the individual has either a criminal history or a registered sex offense.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>6</sup> The software accesses public records only if the records are reported in electronic format.