



Testimony of

The Hon. Kathy Patterson

D.C. Auditor

Before the

Council of the District of Columbia
Committee of the Whole

Performance Oversight Hearing

February 27, 2020
10 a.m.

Room 412
The John A. Wilson Building
1350 Pennsylvania Avenue N.W.
Washington, DC 20004

Good morning, Mr. Chairman and members of the Committee of the Whole. I am Kathy Patterson, and I serve as the District of Columbia Auditor. I am joined today by the Office of the D.C. Auditor (ODCA) General Counsel Amy Bellanca.

I appreciate the opportunity to appear before you to discuss the performance of the Office of the D.C. Auditor. I attach our performance report for FY 2019, including our performance goals for FY 2020, and will review our accomplishments and initiatives as well as the challenges we have faced over the past year.

2018 COW Recommendation

In its FY 2019 budget report section on ODCA a year ago the Committee of the Whole asked that we work with you to identify space in the John A. Wilson Building in anticipation of our lease expiration in 2021. While we would very much like to be housed in this building, it does not appear likely that we will be able to do so. We have begun working with the Department of General Services (DGS) to identify alternative space either in commercial leased space or in D.C. government space. We have made clear to our DGS colleagues that proximity to the Wilson Building is a priority. We are not considering remaining in our current space in part for reasons noted by the Committee—that we have been paying above market without receiving commensurate services. I will keep the Committee posted on the status of our lease.

Performance Report & Recommendation Compliance

As shown on the FY 2019 performance report attached to my testimony, we made modest gains on our Key Performance Indicators over the past year. The report indicates we made gains from FY 2017 to FY 2018 in our performance reporting for recommendations adopted and implemented and there is a lag of a year because the metric we use is the number of recommendations adopted within a year after the recommendations were made. We also report to the D.C. Council on recommendations implemented within a three-year time frame of issuance of our reports. The report published in January said 20% of our recommendations were implemented and another 49% were in progress. While those numbers are moving in the right direction it is not a good record, and one of my goals for the coming year—and the remainder of my term—will be to improve the level of collaboration we have with the agencies we audit such that they mostly agree with our findings and recommendations and move ahead to implement the policies and practices that we identify. .

The January report includes a chart on page three that lists the District agencies with outstanding open recommendations—those not implemented. Leading the list is the D.C. Council with 33 open recommendations. It is not happy news for a legislative audit shop to report that the first-ranked agency for non-compliance with ODCA recommendations is the legislature! I would be happy to review those recommendations with you.

Another performance metric I am more sanguine about is the improvement in our timeliness. I often joke that we work at two paces at ODCA—slow and VERY slow. We have a goal of

completing audits in 10 months, and the proportion that meet that metric has gone to nearly 60%. That is a productivity gain and another performance indicator that we continue to seek to improve.

2019 Peer Review

As you know, Mr. Chairman, we follow the Generally Accepted Government Auditing Standards promulgated by the U.S. Government Accountability Office which provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence. The standards require audit organizations to receive an external peer review every three years, and 2019 was the year for our triennial peer review. A major objective of a peer review is to determine whether an audit organization's quality control system is suitably designed, in place, and operating effectively.

Previously our peer reviews have been conducted by the Association of Local Government Auditors but since we are a legislative audit organization, we invited the National Legislative Program Evaluation Society, an affiliate of the National Conference of State Legislatures (NCSL) to conduct our 2019 peer review. At the conclusion of a week-long on-site review in June 2019 the Peer Review Team informed ODCA staff that we were receiving the highest rating of "pass," noting that ODCA "has a quality control system that is suitably designed and followed, providing reasonable assurance that the office is performing and reporting performance audit engagements in conformity with applicable *Government Auditing Standards* for the period reviewed."

We also received a management letter from the NCSL team noting strengths of the agency including staff diversity, well-written reports, and a commitment to improving procedures to increase the effectiveness and efficiency of operations. Specifically, they identified these positive aspects of ODCA's work:

- The diverse backgrounds and skills of ODCA staff are beneficial to the office.
- Staff are dedicated to their work.
- The office's management and staff exhibit openness and commitment to improving and changing processes to increase efficiency and effectiveness of audit operations.
- The office is developing processes for training and pathways for staff improvement, which are excellent.
- The office has strong processes for determining and documenting independence.
- Reports are well written.

The NCSL peer review is posted to our website.

Major Initiatives: DHCD Whistleblower

If public visibility is a legitimate performance metric, ODCA had its greatest success over the last year in issuing two reports prompted by information provided by a whistleblower who formerly worked at the Department of Housing and Community Development (DHCD). The whistleblower contacted us in February 2019 after failing to secure an appropriate response from the Board of Ethics and Government Accountability (BEGA) Office of Ethics. His allegation: that DHCD officials succumbed to political pressure in awarding Housing Production Trust Fund grants in 2018 to projects that did not receive the highest rankings in competitive evaluations. We pursued the allegations and issued a report documenting that, in fact, the grants issued in spring 2018 included two that got the lowest scores according to the careful and objective rubric developed by DHCD staff.

After issuing that report we turned our attention to the underlying ethics concerns and the failure of the BEGA Office of Ethics to investigate the allegations when they were brought to the agency's attention in 2018. We issued a second report detailing the agency's failures, which became a subject of an oversight hearing held by the D.C. Council's Committee on Public Safety and the Judiciary. There was a change in leadership subsequently at the ethics office and according to online lists of ongoing investigations, BEGA is now investigating the initial complaint made by the DHCD whistleblower.

ODCA was the third District oversight agency to which the government whistleblower turned. He lodged a complaint with BEGA and lodged the same complaint with the Office of the Inspector General (OIG). The OIG promptly referred the matter to BEGA, which, given the nature of the complaint, was the appropriate venue. With no action taken eight months later, the whistleblower came to ODCA. I am proud of the work undertaken by the ODCA team in producing the report on the DHCD procurement and the report on the BEGA failures. And I am glad that with those reports we were able to demonstrate that District of Columbia accountability agencies do respond to the legitimate concerns of those we entrust to work on behalf of District residents.

Major Initiatives: Revenue Forecast

As you know, Mr. Chairman, the D.C. Auditor's signature is required each time the District of Columbia goes to the bond market to borrow money. The D.C. Official Code, Section 1-206.03 (b)(1) states that the D.C. Auditor must certify the accuracy of the Chief Financial Officer's (OCFO) revenue estimate as a part of the borrowing process. Each year we typically issue two to three revenue reports certifying that the OCFO revenue estimate, at the time of certification, appeared to be sufficiently supported and achievable. Each report included staff research on the District's revenues and interviews with representatives of the Stephen S. Fuller Institute at George Mason University.

It is typically the case that the OCFO's own team of economists also consulted with Professor Fuller and his team. To acknowledge and underscore the importance of the D.C. Auditor's

responsibility in revenue certifications, we decided this past year to seek our own independent economic analysis. ODCA contracted with the [District Economics Group](#) (DEG) to design and build a revenue forecasting model to serve as an independent assessment for future certifications. DEG founder Michael Udell and consultant economist Diane Lim led the firm's work in producing a forecasting model which we issued as a separate report, [Modeling the DC Economy, Revenues and Debt Service Obligations](#), including the methodology and assumptions used to develop the model. The model was then used for the first time late last year in conjunction with the issuance of Income Tax Secured Revenue Bonds (ITSBs). The team of economists at DEG will update the model with new information on a regular basis so that when it comes time to issue another certification, they will be prepared to undertake the analysis and permit us to issue the required certification. That is in process again now with another ITSB issuance that is underway.

We appreciated the cooperation and assistance of Chief Financial Officer (CFO) Jeffrey S. DeWitt and Deputy CFO and Chief Economist Fitzroy Lee in providing DEG with current and historical revenue data. And we expect that the ongoing independent assessment of the District's revenues will be of value to the D.C. Council as well as to the CFO and others in the executive branch.

Major Initiatives: Education Data Audit

We are nearing the completion of a major initiative undertaken at the D.C. Council's request, a **Study of Education Data Governance, Management, Use, and Accuracy**. You will recall the D.C. Council appropriated \$500,000 to ODCA in the FY 2019 budget to support the creation of an education Research-Practice Partnership and then, in the *District of Columbia Research Partnership Establishment and Audit Act of 2018* mandated that we study the "data-management and data-collection practices of public local education agencies."

In response we hired Education Research Director Erin Roth and contracted with the consulting firm [Data Ethics LLC](#) of Rochester, New York, to produce the data audit. The Data Ethics team has significant experience working with and for education agencies at the state and local level on issues of data governance, analytics, and privacy. At this point we are close to having a first draft of the data report and hope to submit the draft for agency review by early April. The report will be a comprehensive review of what education information the District government collects and reports, and how the data are managed. It will build upon the earlier findings in the 2015 report, [An Evaluation of the Public Schools of the District of Columbia](#) by the National Academy of Sciences, that the District of Columbia had not developed a comprehensive data warehouse with accessible education data available online to parents, the community, and researchers. That report's Appendix A was dedicated to data that was not received and the poor quality of the little data that was shared.

The current data audit has been similarly challenging. It has taken an extraordinary amount of time to receive the necessary information and data to complete the audit.

In this audit, we have experienced protracted data sharing negotiations. We were asked by the Office of the State Superintendent of Education to sign a Data Sharing Agreement, as was the case with our earlier enrollment study, since in both instances we received data covered by the federal *Family Educational Rights and Privacy Act of 1974* (FERPA) to protect individual student privacy. We readily enter into such agreements while also acknowledging that our authority entitles us to any information held by a District agency and that there is an explicit carve-out in federal law and regulations that entitles state auditors to student data covered by FERPA. We are bound by federal and District privacy laws with or without such agreements. With the collaboration of the Deputy Mayor for Education and the Mayor's Office of General Counsel, we have secured repeated short extensions of the data audit agreement but have been required to spend an inordinate amount of time in protracted negotiations. I am concerned that the collaboration to date may have come to an end.

We have retained outside counsel to assist us in any FERPA-related issues that arise in negotiating these data sharing agreements. We have developed a standard template for data-sharing agreements and are hopeful that the Executive will adopt our template for future use, to help us limit the amount of staff time we have had to devote to renegotiating the data sharing agreements and extensions. All of that said, Mr. Chairman, I believe the education data audit will be a major contribution to improving education policy and practice going forward. We are committed to making certain it provides a clear path forward including helping the D.C. Council set out what legislators expect in the collection and use of data to help ensure the continuous improvement of our public schools.

Use of Outside Counsel

When we retained outside counsel for our education work it was not the first instance in the last two years when we have sought legal advice. In 2018 we were challenged in securing budget data for a report on the conditions of confinement at the D.C. Jail and Correctional Treatment Facility. To be certain that we were able to make the strongest possible argument in support of our statutory authority we contracted with Reed Smith LLP and received guidance in working with the Executive. We again sought counsel in 2019 in producing the housing procurement report mentioned earlier. We issued the first subpoena for information in my tenure as D.C. Auditor. We ultimately did not seek enforcement of the subpoena, but again made use of outside legal expertise in order to protect against any infringement on our authority.

In FY 2019 we spent a total of \$43,000 for legal counsel and anticipate spending a similar amount or more in FY 2020. The other significant cost has been staff time, particularly the time that the General Counsel and I have spent negotiating with representatives of the Mayor, principally from the Office of General Counsel, the Deputy Mayor, and the Office of the State Superintendent of Education.

FY 2019 Reports

We issued 20 reports in FY 2019. Among the major reports in addition to those already mentioned were:

- A white paper following up on our school modernization audits that suggested that the District needs government-wide internal control standards. Released January 8, 2019, **The Case for District-Wide Internal Control Standards** described previous audits showing that many of the District’s agencies and programs conduct their business without verifiable policies, procedures, or structured processes, which can lead to operational ineffectiveness and inefficiency. We shared ideas on how agencies can develop internal control standards to improve how their programs are administered.
- An audit of the conditions of confinement at the D.C. Jail, designed to assist in planning for construction of a new correctional facility. Our February 28, 2019, report **Poor Conditions Persist at Aging D.C. Jail; New Facility Needed to Mitigate Risks** found that the D.C. Department of Corrections (DOC) was repeatedly cited by the Department of Health for violations of industry standards related to environmental conditions, and that the Mayor and D.C. Council did not appropriate the full amounts in capital funding DOC requested to make necessary facility improvements.
- A comprehensive report on the special funds created by the Mayor and the D.C. Council—a total of 75 new such funds in the five years scope of the audit—titled **Elected Officials Create Special Funds But “Sweep” Dollars for Other Purposes**. We found 72 instances when fund were swept into the General Fund despite statutory requirements that the funding be available for the specific purposes initially identified.
- **D.C. Schools Shortchange At-Risk Students**, a report following up on a 2017 study of elementary school staffing, found that D.C. Public Schools with high concentrations of at-risk students often received reduced base funding, a violation of the D.C. Code; that schools with low concentrations of at-risk students often received base funds that either matched or exceeded their staffing formula requirements; that schools with more at-risk students received less base funding for related arts teachers and the majority of at-risk funds budgeted for these staff were misused; and that the District has spent more than \$450 million in at-risk funds without a measurable and consistent strategy.

In addition to the reports issued in FY 2019 we provided testimony to the D.C. Council on several occasions including:

- On February 15, 2019, a written statement for the record of the February 1, 2019, Joint Oversight Roundtable on At-Risk Funding Transparency held by the Committee of the Whole and the Committee on Education.

- On June 5, 2019, written testimony for the record for the COW and Committee on Education joint roundtable on PR 23-0193, the Master Facilities Plan Approval Resolution of 2019.
- On June 17, 2019, testimony before the Committee on Housing and Neighborhood Revitalization hearing on Bill 23-0123, the Housing Production Trust Fund Transparency Amendment Act of 2019.
- On June 26, 2019 testimony by Erin Roth, ODCA Director of Education Research, also before the COW and Committee on Education on Bills 23-0046 and 23-0239 on at-risk funding, budgeting, and transparency.

This concludes my statement Mr. Chairman, and I am happy to respond to questions. Thank you.

Office of the District of Columbia Auditor

Fiscal Year (FY) 2019 Performance Report

The Office of the District of Columbia Auditor’s (ODCA) mission is to support the Council of the District of Columbia by making sound recommendations to improve the economy, efficiency, and accountability of the District government.

To evaluate how well we are meeting our mission, we use the following Key Performance Indicators (KPIs). These metrics are designed to track our annual progress in meeting our goals to be responsive to the Council, craft implementable recommendations, conduct work that is valuable to our stakeholders, and complete work products in a timely fashion.

ODCA Key Performance Indicators (KPIs)	FY 2017 Actual	FY 2018 Actual	FY 2019 Actual	FY 2020 Target
KPI #1: Number of times the Council has acted based on ODCA reports or other ODCA information	13	12	13	15
KPI #2: Percentage of recommendations implemented within one year	32%	42%	Not Available*	60%
KPI #3: Percentage of engagements completed within 10 months	53%	54%	59%	65%

* The data for FY 2019 is not available until the close of FY 2020.

KPI #1

We created KPI #1 to measure how effectively our work meets the needs of the D.C. Council and provides a basis for Council actions.

Key Efforts

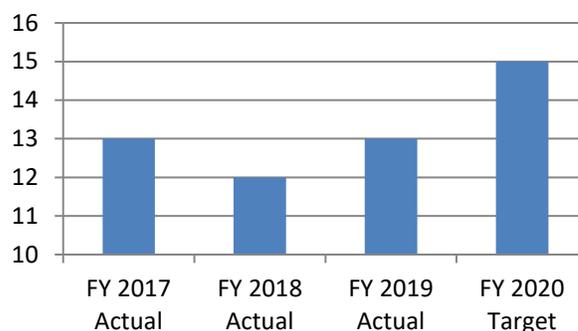
- ◆ Ensure there is a strong and steady flow of communication not just to Councilmembers but also to their staff.
- ◆ Track D.C. Council actions to record the impact and relevance of our work.
- ◆ Track contacts (meetings, phone calls, emails, etc.) with Councilmembers and their staff members on Council audit requests and audits conducted or being conducted by ODCA.

Definitions

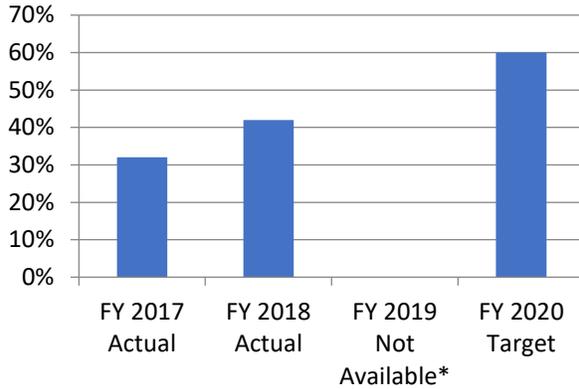
“Acted” may refer to D.C. Councilmembers citing ODCA’s work in a hearing, roundtable, briefing, report, or press conference. It also includes issuing a letter, requesting information, or introducing or enacting a law or resolution in response to ODCA’s work.

“ODCA information” may include testimony, meetings, briefings, and letters, etc.

KPI #1: Number of Times the D.C. Council Has Acted Based on ODCA Reports or Other ODCA Information



KPI #2: Percentage of Recommendations Implemented Within One Year



*The data for FY 2019 is not available until the close of FY 2020.

KPI #2

We created KPI #2 to quantify the relevance and usefulness of our recommendations to agency management and the overall impact of our proposals.

Key Efforts

- ◆ Improve our ability to write recommendations that are clear, focused, and measurable.
- ◆ Engage more directly with agency management throughout audits and evaluations.
- ◆ Improve our skills at uncovering root causes for findings.
- ◆ Create opportunities for others, including members of the D.C. Council, to advocate in support of our recommendations.

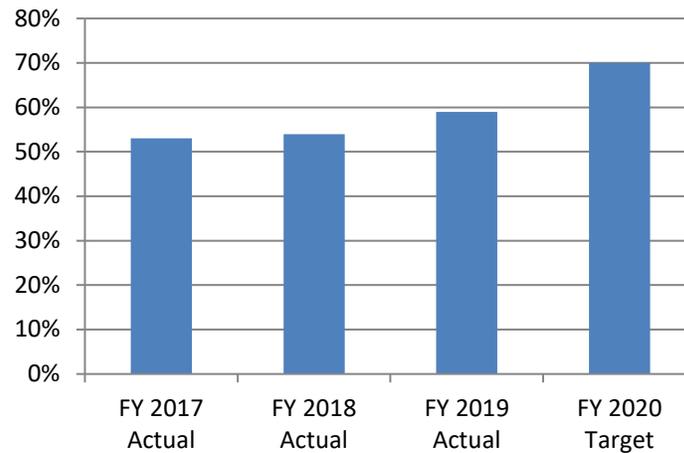
Definitions

Recommendations deemed no longer applicable are not counted.

A recommendation is deemed implemented if the auditee provides proof of implementation within 12 months of report issuance.

Previously, only “Yellow Book” audit recommendations were tracked—those contained in reports meeting requirements of Generally Accepted Government Auditing Standards. Beginning in FY 2016, recommendations made in program evaluation reports and other non-GAGAS audit work products will be tracked in this KPI.

KPI #3: Percentage of Engagements Completed within 10 Months



KPI #3

We created KPI #3 to increase ODCA's productivity by measuring the ability of our office to produce timely work products.

Key Efforts

- ◆ Create appropriate and well-defined scope and objectives.
- ◆ Dedicate sufficient resources (staff members) to the engagement.
- ◆ Where issues of interest arise that are outside the engagement scope during the project, initiate a separate engagement if warranted, but avoid major revisions or expansions in scope.
- ◆ Ensure continued communication and engagement with the auditee throughout the audit so that the auditee is aware of findings and recommendations as issues arise during the audit.
- ◆ Maintain appropriately updated TeamMate file throughout the engagement (for example, records should be uploaded to TeamMate within two business days of receipt and be properly placed in a procedure step and include complete Source, Purpose, Conclusion annotation).
- ◆ Accurately estimate length of time to completion of engagement at initiation, including appropriate time for internal reviews, creating graphs, etc.
- ◆ Enhance individual staff productivity, improve use of time and improve supervision.

Definitions

Start Date refers to the date that appears on the engagement letter to the auditee. In the case that there is no engagement letter, the start date is the date that appears on an internal workpaper completed at the initiation of the project. End Date refers to the date we issue the report.