

Testimony of

The Hon. Kathy Patterson  
District of Columbia Auditor

before the

Council of the District of Columbia  
Committee on Business and Economic Development

Public Hearing on

PR24-0754 Chief Financial Officer of the District of Columbia Glen M. Lee  
Confirmation Resolution of 2022

June 16, 2022

*Virtual via Zoom*  
The John A. Wilson Building  
1350 Pennsylvania Ave., N.W.  
Washington, DC 20004

Good morning, Councilmember McDuffie and members of the Committee on Business and Economic Development. I am Kathy Patterson, the District of Columbia Auditor. I greatly appreciate the opportunity to share information with the Council on the performance of the Office of the Chief Financial Officer (OCFO) as reflected in recent publications of the Office of the D.C. Auditor (ODCA). It is my hope that this context will provide legislators with areas for discussion with the nominee, Mr. Glen M. Lee, and also provide Mr. Lee with background on issues he may wish to address assuming he is confirmed as the District's next independent Chief Financial Officer.

Topics I will cover include the independence of the Chief Financial Officer, the new enterprise financial system and statutory budget provisions that govern its use, and the District's budget and financial outlook. My comments reflect long-standing issues that I would not expect an interim CFO to address. I would like to publicly thank Dr. Fitzroy Lee for his contribution over the past year and am pleased that he plans to continue in the role of deputy CFO and chief economist.

### **CFO Independence**

The CFO position was created by the U.S. Congress in 1995 when it also created the D.C. Financial Responsibility and Management Assistance Authority (the control board) in the wake of the District's financial crisis. That amendment to the Home Rule Act gave the CFO statutory authorities, responsibilities, and independence to provide direct control over day-to-day financial operations of each District agency. Pursuant to DC Code **§ 1-204.24d**, the CFO is required to maintain systems of accounting and internal control designed to provide effective control over, and accountability for, all funds, property, and other assets of the District of Columbia.

In the December 2021 letter report, [A Summary of Findings and Recommendations for OCFO Oversight](#), we described specific financial management challenges faced by District agencies and programs that had been documented in ODCA audits and wrote: "the Office of the Chief Financial Officer (OCFO) is in a unique position to assert its independence and authority and leverage its expertise...to improve the quality of financial management, transparency, and accountability in District agencies' operations and programs."

The District's OCFO is an unusual if not unique public entity, tantamount to a separate branch of government designed to be a check on both the Executive and Legislative branches through exercising its separate and independent authority. Recent ODCA reports raised a broad concern that the OCFO was failing to serve as an effective check by failing to operate independently of the Executive Branch. I shared this concern on several occasions directly with the former CFO, Mr. Jeffrey DeWitt. While acknowledging my perspective he disagreed and countered that his office is pushed and pulled from both directions – by members of both the Executive and Legislative branches of D.C. government.

Nevertheless, ODCA concerns with OCFO independence were noted most directly in a series of audits on the Housing Production Trust Fund (HPTF) which is managed by the Department of Housing and Community Development (DHCD) and provides loans and grants to developers seeking to build or preserve existing affordable housing for targeted populations in the District. Between June 2016 and March 2018, we published three reports that focused on the administration of the HPTF. The reports include:

- **The District of Columbia Housing Production Trust Fund: Revenues and Expenditures and 5-City Comparison** (June 30, 2016).
- **DHCD Should Improve Management of the Housing Production Trust Fund to Better Meet Affordable Housing Goals** (March 17, 2017).
- **Stronger Management of the Housing Production Trust Fund Could Build More Affordable Housing** (March 20, 2018).

The audits identified weaknesses in the HPTF program that were preventing the District from maximizing the creation and maintenance of affordable housing units for low-income residents. We detailed lack of internal controls and poor financial management, and failure to comply with reporting requirements, which resulted in overspending on administrative costs, as well as improper repayments of federal grant money. We documented why these events occurred and made recommendations on how to prevent them. In the March 2018 report ODCA found that OCFO failure to require adherence to the intent and letter of the law and provide rigorous oversight led to inefficiency and resulted in less funding available to create and preserve affordable housing for District residents.

D.C. Code § 1-204.24d outlines the duties of the CFO which include:

(6) Supervising and assuming responsibility for financial transactions to ensure adequate control of revenues and resources.

and

(16) Certifying and approving prior to payment of all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government, and determining the regularity, legality, and correctness of such bills, invoices, payrolls, claims, demands, or charges.

The report also found that neither DHCD nor the OCFO could provide loan or grant documentation to support \$13 million in HPTF spending, 2% of total HPTF spending within the audit scope. Perhaps most concerning, we documented that the OCFO supported DHCD in a decision to spend \$16.6 million from the HPTF to repay the U.S. Department of Housing and Urban Development (HUD) for funds owed due to DHCD's ineffective management of federal grants. The OCFO failed to reprogram the funds prior to repayment, which obscured HPTF spending for the D.C. Council and other oversight bodies. While not illegal, the action

represented poor cash management and a failure to adhere to the goals and purposes of the HPTF.

We also found evidence that existing controls were overridden by financial staff, which means that we were unable to rule out the possibility of fraud during the scope of the audit. ODCA concluded that it is and has been the responsibility of the District's independent OCFO to detect, prevent, and correct the practices and issues relating to HPTF expenditures we documented. To address the breakdown in controls, ODCA recommended that the OCFO review and put in writing how it would reassert its independence from the Executive Branch agencies it serves by instituting new safeguards. We suggested that such safeguards include a rotation of key OCFO officials between agencies and/or clusters to reduce entrenchment and potential bias. Such a step would mirror what has become a professional best practice in auditing and is required in some instances by the 2002 federal Sarbanes-Oxley law. It would also be consistent with the District's own practice of rotating auditors for the District's Annual Comprehensive Financial Report managed jointly by the OCFO and the Office of the Inspector General.

We also recommended more effective training staff on existing laws, regulations, and standard operating procedures relating to financial transactions, and disciplining personnel when they do not follow laws, regulations, and SOPs. While the OCFO accepted other recommendations in our HPTF reports, the agency declined to accept these recommendations related to independence, indicating that they would accept any risks inherent in their failure to do so.

### **Budget law, budget execution, and DIFS**

I was privileged to serve on the D.C. Council when the District's System of Accounting and Reporting (SOAR) was brought online some 25 years ago. Under the leadership of then-Mayor Anthony Williams and CFO Natwar Gandhi, the OCFO Office of Budget and Planning led the development of performance-based budgeting in alignment with SOAR and implemented over several years. When I returned to D.C. government as the D.C. Auditor at the end of 2014, I was sorry to learn that while SOAR was still in use—attempts to replace it having failed—the city had essentially dispensed with most of the elements of performance-based budgeting, even though the statutory requirements have remained in place.

ODCA issued a management alert in February 2019, **Management Alert: District Government Not in Compliance with Statutory Performance Budget Requirement** to more formally bring to the attention of elected and appointed officials the lack of compliance with the District's performance-based budget (PBB) requirements. D.C. Code §47-308.01 sets out the timetable and requirements for the District's annual budget and states: "each agency that has transitioned to the performance-based budget format shall submit a copy of its strategic business plan to the Council prior to January 31 of each year." All major agencies transitioned to a "performance-based budget" between 2003 and 2007. Further, §47-308.01(g)(2) states that, "The Office of the City Administrator, *in conjunction with the Office of the Chief Financial Officer*, shall make available in electronic format copies of agency strategic business plans to

the public and shall display the strategic business plans on the District government’s internet site” (emphasis added). We specifically noted in the alert that strategic business plans had not been provided to the Council as of the January 31, 2019, deadline, nor have they been posted to the dc.gov website. The most current business plan I have found dates to 2007.

In addition, under the PBB structure, the Office of Budget and Planning within the OCFO is tasked with taking the lead on reviewing expenditures, program definitions, performance measures, and benchmarks as outlined under D.C. Code §47-308.01(f). We noted in the management alert that both the Administration and the OCFO had shifted away from the vision of performance-based budgeting. The original vision of the PBB was built around the actual costs of services and activities to be able to calibrate increases or reductions in budget allocations based on the efficiencies of current service delivery. We urged that there either be compliance with the provisions of the D.C. Code §47-308.01 or consideration given to amending the budget sections of the D.C. Code. I would make that same point today: the OCFO today is not ensuring that these provisions of the Code are complied with and officials have deferred to the Office of the City Administrator despite the statutory language vesting a shared responsibility with the OCFO.

As you know Mr. Chairman, the District is finally embarked on replacing SOAR with the new enterprise financial system, known as the District Integrated Financial System, or DIFS. I have raised this issue with the previous CFO, Mr. DeWitt, and with the Chairman of the Council and with those tasked with DIFS implementation: is it the current intention to amend the D.C. Code or to ensure that DIFS itself complies with the current language around a performance-based budget? These issues are neither hypothetical nor academic but real-world concerns that I share in my role as D.C. Auditor. We would be in a far better position to assess the efficiency and effectiveness of District programs and services if the government followed the requirements of the performance-based budget law, and the annual strategic business plans would provide auditors with a roadmap on what is expected of agencies at a sufficiently granular level to permit auditing against written and approved agency expectations.

### **Access, transparency and financial reporting**

A major feature and goal in the joint implementation of SOAR and PBB was transparency and access. I can assure you that the millennial year marked a brave new world at the Wilson Building: each Council office would have read-only access to the financial system and members of the Council staff had training on use of SOAR to better enable budget oversight. It was even envisioned that our ultimate bosses—residents of the District of Columbia—would have direct access to the financial system on a read-only basis. And budget oversight meant not simply drafting a budget each spring but monitoring budget execution throughout the fiscal year. Again, on my return to D.C. government I was shocked to learn that not only were most members of my audit team untrained in the use of the financial system, but so, too, were Council staff, apart from the Office of the Budget Director.

Further, not only were new Council staff not trained to be able to pull data from the financial system, but the OCFO effectively discouraged such access and transparency on the part of Council and Auditor staff. Permission has been required for anyone wanting to access the system, including the staff of elected Councilmembers. Training was also required but not training on how to run reports that would be of use in Council oversight. Rather, training on data entry has been required on the part of policy staff. I am pleased to report that when ODCA sought to have staff trained on use of the financial system, Mr. DeWitt and his team were accommodating, and OCFO staff worked with ODCA to develop training on SOAR reports. Even so, during my tenure at ODCA that has not been the normal course of doing business. Rather, access and transparency have been the exceptions. I hope that will change with new leadership and a new financial system.

Related to the independence of the OCFO and access and transparency is the robust system of financial reporting established 25 years ago in the wake of the District's financial crisis. The OCFO produces monthly and quarterly Financial Review Process (FRP) reports on District agencies, reflecting each agency's spending against its budget. Each agency is required to indicate when there is a spending pressure and to provide the agency's plan for addressing that spending pressure. These reports are available to the Council, but only through a burdensome process that requires application for an access code and downloading. This contrasts with hard copy documents having circulated to Council offices in the past. I would recommend that the new OCFO initiate an electronic circulation system, possibly through the Secretary's office, so that these critical documents are much more readily available and made use of by the Council, its staff, and any other interested party—including being posted on the OCFO website in an easy-to-access location. It would be a welcome contribution to financial literacy across the government.

I also recommend that the Committee's oversight of the OCFO make certain that the FRP reports are complete. What I mean by that: there is a section of the report where an agency reporting a spending pressure is asked to describe in writing the plan to address the overspending. Each time I have reviewed such a report in recent years the action plan was not provided. The OCFO asks me as an agency director to submit my agency's FRP on a regular schedule. It should also be the OCFO's responsibility to ensure the reports are complete. Permitting agencies to avoid explaining how they will address overspending renders the reporting system ineffective. I hope that will change with new leadership. The regular FRP reporting was a part of the checks and balances built into the financial system in the 1990s and tracking budget execution is no less important today.

There may be additional budget information that the Council would like to have to better provide critical oversight of agency spending. I recommend you engage the new CFO and the team now developing DIFS, the replacement system for SOAR. You might want to be specific about the information you want to see on a regular basis provided automatically by the new enterprise financial system.

## **Additional compliance challenge**

Another compliance issue the Council may wish to raise with the CFO nominee is the failure to publish the multi-year financial plan when the Executive submits the annual budget to the Council. The CFO's transmittal letter accompanying the FY 2023 proposed budget says "I am pleased to transmit the Fiscal Year (FY) 2023 Proposed Budget and Financial Plan," and "I certify that the FY 2023-2026 Budget and Financial Plan is balanced." The submission, however, does not include detail about the multiyear financial plan.

The D.C. Code § 1–204.43. *Multiyear plan* states that "the mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding 3 fiscal years, on the approved current fiscal year budget, and on estimates for at least the 4 succeeding fiscal years."

The Code lists elements of the multiyear plan that are to be included in the budget transmitted to the Council, including the cost implications in subsequent years of proposed programs and services as well as revenues that are anticipated to be required and each subsequent year's anticipated debt payments. The statutory requirements are important for any legislator concerned with how this year's budget decisions will impact subsequent years. It is my understanding from OCFO staff that the multiyear plan for each agency is available—but only on request. Having each agency's 4-year spending plan was more critical than normal this year given that the Council was asked to approve a \$19 billion budget with nearly \$5 billion in federal funds, including a significant amount of COVID-19 mitigation funds that are authorized only through the end of FY 2024. The multi-year plan declared to be balanced includes FY 2025 and FY 2026 and the impact of the drop-off in federal funds should be reflected in that multiyear plan, agency by agency. Yet neither the overall spending estimates nor the agency-by-agency budgets for the out-years was included in the submission to the Council as the Code requires.

## **District financial outlook**

Two years ago, testifying before the Committee of the Whole, I raised concerns with the rate of growth in District government spending. I referred to the FY 2021 budget then before the Council as a "calculated risk" that assumed the District would bounce back financially from the COVID-19 pandemic much as the District did after the 2008-2009 financial crisis. In this year's budget submission, the CFO certified the budget was balanced but also advised caution. He wrote that employment continues to lag "largely due to the pandemic's impact on jobs in the hospitality and business services sectors" and that commercial real property tax collections were projected to decline in FY 2022 and "not return to their FY 2021 peak" until FY 2026 or later. Risk factors, he said, include geopolitical instability, inflation, population decline, and remote work arrangements that may become permanent.

A team of economists hired by ODCA to review the OCFO's revenue projections as a basis for the D.C. Auditor to certify revenue sufficiency for the District to increase its debt without hitting the statutory debt ceiling, shared similar concerns. According to The District Economic Group (DEG), "The pace and extent to which employees return to the workplace will continue to impact the demand for office space and therefore property tax revenues, as well as other revenue streams such as parking tickets which may be dependent on worker traffic as well as enforcement levels." DEG also said that "new and more resistant variants of COVID-19 could pose greater economic consequences" and "the magnitude and persistence of inflation is a key source of uncertainty."

I mention these cautionary notes in the hope that the Council will discuss with the CFO nominee his own views on the economy, broadly, as well as how he expects to approach the unique financial challenges of the nation's capital and how he envisions his role in providing guidance to the legislature in making budget and policy decisions going forward.

That concludes my prepared remarks, Mr. Chairman, and I thank you again for the opportunity to share these views. I am happy to answer any questions.