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February 2, 2015

Honorable Toni Preckwinkle
President, Board of Commissioners of Cook County
118 North Clark Street
Chicago, Illinois 60602

Re: OIIG Joint Summary Report No. IIG14-0266 (FLSA and the Cook County Employment Plan, Supplemental Policy 2013-2.7, regarding Overtime and Compensatory Time)

Dear President Preckwinkle:

This letter is written in accordance with Section 2-288 of the Independent Inspector General Ordinance, Cook County, Ill., Ordinances No. 07-0-52 (2007) (OIIG Ordinance) in connection with a self-initiated joint review of the departments under the Office of the President by this office, the Office of the County Auditor and the Compliance Officer. The purpose of the review was to assess the manner in which the departments under the Office of the President interpret and apply the Fair Labor Standards Act (FLSA) and the Cook County Supplemental Policy regarding Overtime and Compensatory Time.[1] The following is a summary of our findings along with recommendations:

## Summary

The Cook County Office of the Independent Inspector General, Office of the Auditor and the Compliance Officer (together the survey team) initiated a review and assessment of the manner in which the FLSA and the Cook County Supplemental Policy, issued on August 1, 2013, were being interpreted and applied in each department under the Offices of the President. Specifically, the focus of the project was to determine whether County employees who are exempt from the provisions of the FLSA have been granted overtime or compensatory time.

[1] The Fair Labor Standards Act of 1938 (also referred to as the Wages and Hours Bill) is a federal statute of the United States. The FLSA introduced the forty-hour workweek, established a national minimum wage, and guaranteed "time-and-a-half" compensation for overtime hours in certain job classifications.

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Cook County does not have a policy allowing for the provision of overtime or compensatory time to FLSA exempt employees.[2] This review initially involved interviews of select Directors and Bureau Chiefs (hereafter referred to as Directors) and several department timekeepers while other Directors who were not interviewed were sent a survey questionnaire. In total, interviews were conducted of 21 departmental timekeepers and 6 directors. Twenty seven directors of offices under the Office of the President received questionnaires.[3] The following is an overview of the results of both the interviews and the completed survey questionnaires.

**Timekeeper Interviews**

The survey team initially planned to interview all of the department timekeepers. Upon completion of approximately 40% of the interviews, the survey team reassessed the methodology employed. The reassessment revealed that the responses to the standard list of questions posed to each of the timekeepers were fairly consistent. Based upon the reoccurring nature of the responses, the survey team concluded that a sufficient study sample (50% in total) existed from which to draw conclusions and issue recommendations. It should be noted that the study sample included timekeeper interviews from departments that we identified from a payroll report that listed names of FLSA exempt employees who had received overtime or compensation time.

The interviews of the timekeepers focused on their understanding of the FLSA and the Supplemental Policy. Notably, we determined that timekeeping responsibilities are being performed by employees whose job titles ranged from deputy director, program manager, stenographer, administrative assistant to clerk. The training they received was essentially focused on the mechanics of entering data rather than to establish an understanding of relevant policies. They described their timekeeping training as "on the job training." Several of the timekeepers mentioned attending formal training that was offered by the Comptroller's Office though the emphasis focused upon the mechanics of entering data.

In connection with the timekeepers seeking guidance on time and attendance issues they encountered, several timekeepers mentioned they consulted with their assigned Comptroller's

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[2] In conjunction with the issuance of the Supplemental Policy an overtime policy was issued separately. There is a distinction between the overtime policy issued on August 1, 2013 and the Supplemental Policy issued on the same date. The overtime policy sets forth the process for requesting and approving overtime and compensatory time while the Supplemental Policy for overtime governs the process for assigning overtime and compensatory time in an equitable manner for non-FLSA exempt personnel.

[3] The number of Directors who did not respond to the survey questionnaire equated to 14.8%. The fact that some Directors did not provide a response supports our findings and recommendations for uniform policies and training. In addition, however, anecdotal evidence suggests that the Directors who did not respond would not have statistically affected our findings and recommendations in a material way.

Office liaison. However, many of the timekeepers commented that on the occasions when a time and attendance issue was raised with the Comptroller's Office liaison, they were provided a different answer for the same question that had also been raised with representatives of the Bureau of Human Resources and with other timekeepers. Consequently, these timekeepers reported confusion and an inability to confidently resolve time and attendance issues.

The majority of the timekeepers interviewed did not attend or did not recall attending the training offered by Human Resources when the Supplemental Policy went into effect in August 2013. Only a few reported receiving any training or information from their department directors or their representatives on the Supplemental Policy. Similarly very few described an understanding of the FLSA while most confused the FLSA with the Family and Medical Leave Act of 1993 (FMLA) or the *Shakman* Decrees. As a result, we determined that timekeepers should not be considered knowledgeable with the FLSA or possess the ability to apply the FLSA and the Supplemental Policy to FLSA exempt employees within their respective departments.

Finally, several of the timekeepers revealed that they maintained a "shadow system" of payroll data for those FLSA exempt employees who earned compensation time and overtime. This "shadow system" of record keeping was maintained separate and apart from the official payroll system. They maintained this separate system for purposes of tracking how much compensation time and overtime was earned and used by both exempt and non-exempt FLSA employees.

## Department Directors

The survey team interviewed 6 Directors. The decision to interview these Directors was based upon data from the Payroll System that contained the names of FLSA exempt employees from their respective departments that earned compensation time and overtime. The remaining Directors were provided a survey questionnaire which was mailed to them on October 17, 2014.

The results of the interview and questionnaire responses revealed that the majority of the Directors, or their designee, attended training offered by Human Resources on the Supplemental Policy with the exception of two directors. As noted earlier, the majority of the timekeepers interviewed did not report attending training on the Supplemental Policy.[4]

A review of the survey responses reflected that the Directors were generally informed and able to articulate the legal distinction between FLSA covered employees and those who are exempt from its provisions. The majority of the Directors acknowledged receiving a list of employees' names in their respective departments who were classified as FLSA exempt

[4] Human Resources provided 7 separate Supplemental Policy training sessions.

employees.[5] However, there were a few newly appointed Directors who had not received the list while 2 departments had been created after the list was issued in November 2013.

In connection with the issue of FLSA exempt employees earning compensatory and overtime subsequent to August 1, 2013, the majority of Directors indicated that was not an issue either because they did not permit it or their department did not have a budget to allow for compensation and overtime for these employees. However, there were several Directors who related that some FLSA exempt employees who earned compensatory time prior to the issuance of the Supplemental Policy on August 1, 2013 continued to have this accrued and unused time. Some of them were uncertain if the FLSA exempt employee should be permitted to use the time accrued prior to August 2013 or whether it would not be permissible. Other Directors permitted exempt employees to use the time they had earned prior to August 2013. For those Directors with exempt staff holding accrued compensatory time, there was a clear lack of understanding regarding the appropriate resolution of this issue.

The payroll data reflected that one Director had earned compensation time (code 320) subsequent to August 2013. When questioned regarding the accrual of compensatory time, the timekeeper emphasized that it "really was not compensation time" but, as explained by the timekeeper, was actually time earned "in lieu of." The timekeeper explained that because there was no payroll code for "in lieu of" time, the timekeeper used the code 320. She further explained that "in lieu of" time was accrued in those occasions when her Director worked in excess of a 40 hour work week that resulted in her recording the excess hours worked forward to the next work week or pay period resulting in the Director receiving a day off for those hours worked in prior pay periods.[6] Despite this explanation, the timekeeper stated that she recognized that FLSA exempt employees were not entitled compensation time; however, absent a payroll code that accurately reflected the extra hours worked, she substituted the code 320. We have determined that most Directors understood that FLSA exempt employees were not entitled to overtime or compensatory time under current County policy, while only one Director described a lack of understanding that exempt employees are not eligible to earn overtime or compensatory time.

## Emergence of Other Issues

During the course of conducting interviews with the department timekeepers, other time and attendance related issues arose that are incorporated in this report. Those issues include the occurrence of and different methods of addressing tardiness, flex time, "dock time" and advances for leave time.

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[5] Department Heads and Directors were provided lists of all FLSA exempt employees in their respective departments by the Bureau of Human Resources on November 4, 2013.
[6] The timekeeper's practice represents compensatory time.

During the course of this review, we determined that there is a considerable variance in both the working definition of tardiness and approaches to addressing tardiness issues among the Directors and timekeepers. For example, one department permitted the use of the "honor system" to self-report tardiness. Other departments allowed a grace period that ranged from 5 to 30 minutes after an employee's scheduled start time before the employee is officially tardy while other departments permitted employees to use benefit time – accrued sick, personal or vacation time. One timekeeper commented that the department Director tolerated tardiness and did not enforce start times. Other Directors permitted late employees to work after hours to make-up for the time rather than "docking" (loss of wages) the tardy employees. Some Directors and timekeepers referred to this practice as "flex time."

In regards to the use of flex time, some Directors granted requests for flex time if the employee required a different work schedule for reasons ranging from child care, health care and/or to attend school. Several Directors did not permit the use of flex time in any circumstance.[7]

In connection with the practice of imposing dock time and advancing personal leave to an employee without accrued leave, there were Directors who did not use docked time when an employee is tardy but permitted them to use other available forms of leave such as vacation, personal or sick time. Only one department Director claimed that if the employee was tardy and did not have accrued time available, the employee's time would be docked nonetheless. The majority of the Directors did not permit advancing personal leave to their employees without sufficient accrued leave. Several Directors acknowledged they would consider advancing leave to a newly hired employee if he/she had leave time planned prior to their employment.

In summary, various customs exist in the departments to address tardiness. Employees almost never are docked for being late. While Cook County does not have a uniform policy for flex time, it was often used for the convenience of both the employee and department. In reference to departmental policies, only one department had a written policy addressing tardiness while the majority had no written policies addressing tardiness, flex time, dock time and advancing benefit time.

## Survey Team Conclusions

The review revealed that the offices under the Office of the President were generally in compliance with the FLSA and the Supplemental Policy. However, it should be noted that payroll information revealed there were 32 FLSA exempt employees within nine departments who had earned compensation time and/or overtime either before or after August 2013. Additionally, we determined that the departmental timekeepers are not knowledgeable

[7] Cook County does not have a uniform policy addressing flex time.

concerning the FLSA and the Supplemental Policy since their primary responsibility is ensuring employees time is correctly entered into the timekeeping system. Several other issues pertaining to time and attendance (tardiness, docked time, flex time and advance leave) were identified and include varied treatment among the departments.

## Survey Team Recommendations

Based upon the findings and conclusions of the review, the survey team makes the following recommendations:

### FLSA/Supplemental Policy

1. Cook County should consider issuing a clear statement reinforcing that FLSA exempt employees are not entitled to compensation time, overtime and days off in lieu of time worked over 40 hours per work week.

2. Cook County must ensure that relevant staff receive annual training regarding the FLSA and Supplemental Policy. Training should also include coding instruction because numerous timekeepers were unaware of the existence of a payroll code to record the amount of compensation time an employee has earned but not used. This will eliminate the need for departments to maintain separate tracking systems for payroll data. The training should be on-line computer based;

3. Cook County should issue guidance regarding those FLSA exempt employees who earned compensation time and overtime prior to August 1, 2013.

### Time & Attendance Issues

4. Cook County should consider establishing uniform policies to guide Directors in managing tardiness issues absent specific requirements contained in the Collective Bargaining Agreements;

5. Cook County should consider developing a flex time policy. If a flex time policy is adopted, we recommend that the policy be operationally defined to ensure uniformity among the departments. We also recommend that the policy require that flex time use be documented and approved by the respective department Directors in advance.

6. The Comptroller's Office along with Human Resources should coordinate their efforts to establish standard payroll and time keeping policies and procedures to ensure there are uniform answers to time and attendance issues; and

7. Cook County should address the practice of advancing leave and consider eliminating the practice entirely due to the potential liability if an employee leaves County service prior to accruing sufficient time to pay back the advanced leave.

Finally, in accordance with section 2-285(e) of the OIIG Ordinance, this office respectfully requests notification within 30 days of any action taken in response to the aforementioned recommendations. Please do not hesitate to contact the undersigned members of the survey team if you have questions or would like to discuss this review further. Thank you for your consideration with this matter.

Very truly yours,

Shelly Banks

Shelly A. Banks
Cook County Auditor

Patrick M. Blanchard
Independent Inspector General

Letitia Dominici

Letitia Dominici
Cook County Compliance Officer

cc: Honorable Members of the Board of Commissioners of Cook County
Ms. Kimberly Foxx, Chief of Staff, Office of the President
Ms. Tasha Cruzat, Deputy Chief of Staff
Ms. Laura Lechowicz Felicione, Special Assistant to the President
Mr. Ivan Samstein, Chief Financial Officer
Mr. Lawrence L. Wilson, Cook County Comptroller
Ms. Rebecca L. Strisko, Interim Chief, Bureau of Human Resources