HARFORD COUNTY, MARYLAND
Office of the County Auditor

October 25, 2013

Honorable Members of the County Council
Harford County, Maryland
212 S. Bond St., 2nd Floor
Bel Air, MD 21014

County Executive David Craig
Harford County, Maryland
220 S. Main St.
Bel Air, MD 21014

Dear Council Members and Mr. Craig:

In accordance with Section 214 of the Harford County Charter, we have performed an audit of the accounts under the direction of the former Director of Human Resources, Scott Gibson. The results of that audit, our findings and recommendations for improvement are detailed in the attached report. We would like to thank the members of management for their cooperation during the audit.

We found that Mr. Gibson has some indebtedness to the County; however, he has signed an agreement to repay the amount requested by the County.

The audit team is available to respond to any questions you have regarding the attached report.

Sincerely,

Chrystal Brooks, CPA

Chrystal Brooks, CPA, CGFM, CIA, CISA, CGAP, CRMA
County Auditor

cc: Ms. Kathryn Hewitt, Treasurer
Ms. Deborah Duvall, Acting Director of Human Resources

HARFORD COUNTY, MARYLAND
Office of the County Auditor

SECTION 214 REVIEW –
DIRECTOR OF HUMAN RESOURCES

Period Covered:
10/01/2011 through 10/18/2013

Report Number: 2013-A-08

Date Issued:
10/25/2013

Audit Team:

Chrystal Brooks, CPA, CIA, CGAP, CISA, CGFM, CRMA
County Auditor

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Auditor

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BACKGROUND INFORMATION

INTRODUCTION AND KEY STATISTICS

Scott Gibson served as Harford County's Director of Human Resources from January 2007 until his resignation on September 27, 2013. As the Director of Human Resources, he was responsible for oversight of employee relations including hiring, separations, and employee benefits. The Director of Human Resources is also responsible for oversight of the Personnel Matters accounts which pay for employee leave payouts, service awards, and training and educational assistance programs.

REVIEW OBJECTIVE, SCOPE AND METHODOLOGY

In accordance with Harford County Charter section 214, upon death, resignation or removal of any county officer, the County Auditor shall cause an audit and investigation to be made of any accounts maintained by the officer and by his agency. The objective of this review was to satisfy the requirements of Charter Section 214, with regard to Scott Gibson, Director of Human Resources, who resigned effective September 27, 2013. The scope was limited to accounts and resources under the control of the Director of Human Resources.

The audit focused on activity during the period of 10/01/2011 through 10/18/2013. Our audit procedures included interviewing personnel, observation and testing. Specifically, we sought to confirm that the accounts under Mr. Gibson's control did not have unusual or inappropriate costs; Mr. Gibson's physical and financial access to County resources had been revoked and that his final paycheck and leave payout were correct.

The audit was performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient 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.

REVIEW RESULTS

Harford County management is responsible for establishing and maintaining effective internal controls. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets and compliance with applicable laws, rules and regulations are achieved. Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected.

With regard to transactions that were approved or initiated by Mr. Gibson, we found that the accounting system controls limited him to approving transactions for the Human Resources Department and the Personnel Matters accounts. This appeared reasonable. We reviewed relevant documentation and confirmed that purchase card charges, travel, meals and miscellaneous expenses during the review period were reasonable and appropriate.

However, among the charges approved by Mr. Gibson were tuition expenses for a program that he attended in July 2013. While these expenses are allowable, the County's educational assistance policy requires these expenses to be repaid if the employee leaves County service within two years. We additionally noted that Mr. Gibson should have used paid leave while he was out of the office for this program, but did not.

Our review of Mr. Gibson's pay history showed that he received a payment for accrued leave and compensatory leave while still employed by the County. This payment was approved by the County Executive. Although the payment does not change the amount due to or from the County, it represents a management override of the County's standards.

As expected, we were advised that Mr. Gibson did not have signatory access to any County bank accounts. We additionally confirmed that Mr. Gibson's purchase card was returned and destroyed in a timely fashion and confirmed that the purchase card account has been disabled.

We confirmed that Mr. Gibson's logical access to County resources, including network and computer systems, has been revoked. We additionally confirmed that Mr. Gibson's County ID card and facility keys have been returned to County officials. We also confirmed that he returned all County property assigned to him.

We confirmed that Mr. Gibson's final paycheck was correct and his leave payment agreed to the system calculated balances. Additionally, the leave payment included a $2,000 reduction for the program tuition, but did not include a reduction for leave used.

Our conclusion, based on the evidence obtained, is that Mr. Gibson should repay to Harford County $16,455.97 for tuition expenses paid on his behalf and time off that was paid as worked time.

Areas for improvement are described in the Findings and Recommendations section of this report. Management has been provided an opportunity to respond to this report.

MANAGEMENT RESPONSE

While management appreciates the opportunity to respond to this report, it finds the presentation of a draft report to the County Council in a public meeting inappropriate. Management has an obligation to resolve any potential outstanding issues with a departing director and was in the process of doing just that when the presentation was made. Management also has an obligation to carefully consider the legal ramifications of withholding any unauthorized amount from a final paycheck which must be delivered at the time of the next scheduled payroll. While management disagrees with the legal conclusion reached by the Auditor that any reimbursement must be made, management feels that it is beyond the scope of the County Auditor to recommend or attempt to influence the manner and timing in which any payment should be made or funds withheld without authorization from the final paycheck of an official of the executive branch.

FINDINGS AND RECOMMENDATIONS

Finding Number: 2013-A-08.01 Tuition and Leave Repayment

Tuition expenses were paid by the County that should be repaid.

Analysis: Mr. Gibson attended the Senior Executives State and Local Government Program. This was a 3 week long, competitive admission Executive Education program offered by Harvard University's Kennedy School. In FY2013, Harford County paid $11,800 for Program Tuition on behalf of Mr. Gibson.

Harford County has policies for Training (#08-20-22) and Educational Assistance/ Tuition Reimbursement (#08-20-03). Per the County's Training Program Policy, "Funds may be available through the Department of Human Resources to pay for employees to attend seminars, training conferences and certificate programs in order to further develop their skill set." The County's Educational Assistance/ Tuition Reimbursement Policy states, "Employees may pursue a degree or take individual courses at approved and accredited educational institutions under this program, provided the course of study is related to the employee's current position or a probable future assignment."

Both programs require completed request forms and supervisor pre-approval. The County Executive has advised that this was a work assignment to benefit the County. However, we were unable to obtain request forms or documentation of pre-approval from management for either program. As a matter of professional skepticism, we carefully considered how to best categorize this expense and determined that this program appears to more closely fit the criteria for Educational Assistance. The determination was made primarily because of the program's invoice description ("Program Tuition") and its being offered by an accredited educational institution. We also considered the program's cost, admissions process, and length of continuous time away from the office.

Following the Educational Assistance policy, the annual educational expense reimbursement limit is $3,000 per fiscal year per employee, which means Mr. Gibson should have been responsible for at least $8,800 of the Tuition cost. Additionally, the policy provides, "If the employee is terminated, or leaves County service, for any reason, within two years of any tuition reimbursement, it will be the employee's obligation to repay the County for any reimbursement for tuition, books and fees."

Further, the policy allows employees "to use their accrued annual, compensatory, or personal leave to take courses during their scheduled workday." Mr. Gibson did not use leave while he was out of the office between July 8 and July 26, 2013, although he delegated his authority to the Deputy Director of Human Resources during this time.

Mr. Gibson's final leave payment included a deduction of $2,000 towards repayment of these costs. A final agreement has been signed between the County and Mr. Gibson for the remaining tuition amount.

Recommendation: We recommend the County initiate procedures to collect $9,800 and the equivalent of 120 hours of leave from Mr. Gibson.

Management Response: Management disagrees that the attendance at the program comes within the purview of the County policies for Training and for Tuition Reimbursement. The County has entered into an agreement with Mr. Gibson for the reimbursement of the entire cost of the program at Harvard. This professional development expense was not incurred pursuant to the terms of the Tuition Reimbursement policy for several reasons. First, there has been no tuition reimbursement program that has been funded for many years. Second, there was no application to be approved. Third, there was no agreement to repay signed by the employee. Fourth, there was no grade given by the institution. Lastly, there was no way to request reimbursement based on a grade not received. Since there was no clear legal obligation to repay this amount, there was no bona fide dispute which would have justified the withholding of the amounts claimed in the draft audit report without exposing the County to potential liability for treble damages under Maryland's Wage and Hour Law. Management is well aware that accrued leave is considered wages by the Maryland courts and generally has an employee provide a written consent to any amount being withheld from wages. Such consent would have been signed if this had been an actual tuition reimbursement situation. The presence of the words; "Program Tuition" on an invoice from a university is not determinative of whether a professional development opportunity where no grades were earned should be appropriately considered under a County reimbursement program based on grades that has not been funded for years. The amount of the County reimbursement under the policy would have been pro-rated depending upon the letter grade earned.

The terms of the repayment are consistent with the terms that were offered by the County Council to the Council Administrator for the amount of the salary increase that was approved by the Council without proper authorization. That overpayment was permitted to be repaid over the course of eight pay periods, or four months.

Management disagrees that there is a claim for any leave time that was not used by Mr. Gibson while attending the program from 7a.m. to 5p.m. each weekday. If the policy concerning the County Training Program applied, that policy clearly states that, "…time engaged in training activities established through this policy is considered compensable time." Even though that policy, designed primarily to cover training provided by the County, does not apply, the County does not require employees attending training or professional development to take leave time.

This is the case whether they are in attendance or participating in presenting at the program. The fact that Mr. Gibson designated an acting director is consistent with County practice to designate someone to attend to issues which may arise in a department when the Director is out of the area. According to guidance issued by the U.S. Department of Labor, for purposes of determining hours worked under the Fair Labor Standards Act, attendance at lectures and training time may be considered as working time if during normal working hours, job-related, and other work is performed. Mr. Gibson attended the program related to public administration during normal work hours and was also available to communicate by phone and e-mail and in fact handled several County matters from the program site. The designation of an acting director is insufficient to justify a demand for a director to utilize his own leave for attending a training or professional development opportunity.

Expected Completion Date: Completed October 21, 2013.

County Auditor's Note: I have reviewed the agreement between Mr. Gibson and the County, dated October 21, 2013. Although the signed agreement does not include repayment of paid leave, the method and degree of implementation of Audit Recommendations are at the discretion of Management. Given that steps have been taken to address the Finding, I do not feel that this matter requires further escalation at this time.

Finding Number: 2013-A-08.02 Leave Payout During Employment

Annual and Compensatory Leave were paid to a current employee, overriding the standard practice and policy.

Analysis: In our review, we found that in 2011, Mr. Gibson was paid in current wages for 119.5 hours of annual leave and 40.5 hours of compensatory time. We noted that this payment was the only instance of a current employee being paid in current wages for their leave balances. The payment was approved by the County Executive.

County employees are allowed to carryover 320 hours of accrued annual leave from one calendar year to the next. However, as a benefit to the employees, instead of losing the leave, balances in excess of 40 days [320 hours] will be deposited into tax advantaged accounts in the employees' individual names. These accounts are intended to help fund employees' post-employment healthcare costs. As eligible contributions under Internal Revenue Code section 106, these funds are not taxable income to the employee in the current year or in the year withdrawn, if after retirement. We noted that the amount paid was approximately the amount that would have been transferred to Mr. Gibson's §106 account.

County employees are allowed to accrue compensatory leave for hours worked in excess of 40 each week. According to the related County policy (#08-20-04), for exempt employees, "Overtime shall only be provided once an employee has accumulated the maximum allowance of compensatory time which is one hundred twenty (120) hours." Payments must be approved by the Directors of Administration and Human Resources. We noted that Mr. Gibson had not accumulated and was not nearing accumulation of 120 hours of compensatory hours when the request for payment was approved.

While this transaction does not result in any indebtedness of Mr. Gibson to the County, it is an instance of management's override of standards. If this practice is allowed, employees who are planning to leave County service could request a current payment of leave balances to avoid losing leave that would not be paid out upon their separation.

Recommendation: We recommend management clarify the policies and procedures related to payment of excess leave balances for current employees. We further recommend that management deny this type of request unless specific criteria for approval have been enumerated.

Management Response: Management disagrees that the policies and procedures related to the payment of leave balances earned by cabinet members are in need of clarification.

Expected Completion Date: None