
Audit of the Department of Human Services' Electronic Benefit Transfer (EBT) Program

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 03-11
August 2003



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
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5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds are existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

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THE AUDITOR STATE OF HAWAII

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OVERVIEW

Audit of the Department of Human Services' Electronic Benefit Transfer (EBT) Program

Report No. 03-11, August 2003

Summary

The State Auditor initiated this audit to assess the Department of Human Services' effectiveness in administering its Electronic Benefit Transfer (EBT) program and ensuring the adequate protection of state assets from loss and abuse. The audit was conducted pursuant to Section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, programs, and performance of the State and its political subdivisions.

An EBT system is an electronic means for a government agency to distribute needs-tested benefits. Recipients access their benefits through automated teller machines or point-of-sale terminals using magnetic striped cards similar to bank debit cards. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required all states to implement statewide EBT systems to distribute food stamp benefits by October 1, 2002. The Department of Human Services contracted with Citicorp and implemented its EBT system in August 1998. The EBT system distributes financial benefits associated with the department's Benefit, Employment and Support Services Division's programs, which include Food Stamp; Temporary Assistance to Needy Families; Temporary Assistance to Other Needy Families; General Assistance; Aid to the Aged, Blind, and Disabled; Child Care; First-To-Work; and Employment and Training.

Individuals must apply at the division's operational line units to participate in the department's public assistance programs. Eligibility workers interview and verify information provided by applicants, update the division's computer systems, authorize benefits, and issue EBT cards. As cardholders use benefits, the contractor's EBT system authorizes, monitors, and tracks each transaction and transfers necessary funds.

Previous audits found deficiencies in the department's management controls over its food stamp and financial assistance programs resulting in overpayments and inaccurate computerized data. Our current audit found that the department continues to struggle with implementing proper controls resulting in decreased payment accuracy ratings, loss of enhanced federal funding, increased risk of unauthorized benefits, and limits to the effectiveness of the EBT program.

We found that the department ineffectively uses its quality assurance programs, which consists of management evaluation and quality control reviews. Management evaluation reviews ensure that federal law and department policies are followed. Quality control reviews verify case accuracy and calculate error rates that affect the department's eligibility to receive enhanced federal funding. From 1998 to 2000, management evaluation reviewers visited 19 units and found only one unit supervisor in compliance with the department's policy for reviewing case files. The department's quality control review for federal fiscal year (FFY) 2001-02 showed several units



with error rates above 20 percent, which ultimately affects the department's eligibility to receive a share of millions in federal enhanced funding.

The department failed to hold managers accountable for not conducting case reviews as recommended by management evaluation reviews. From July 2002, the department conducted 22 supervisory reviews when there should have been 42 reviews. In addition, the department does not adequately follow up on review findings and recommendations.

We also found ineffective case management tools or tools that were ineffectively used. Eligibility workers were not properly maintaining the department's "alert" function. The alert system notifies workers to perform necessary case management activities. We examined a recent report and found many units with workers that averaged over 100 overdue alerts. In addition, the department has failed to develop an adequate checklist to manage cases.

We also found a lack of control over the EBT card inventory leaving the system vulnerable to potential fraud, waste, and abuse. Clerks have access to EBT cards and case files allowing them to use participants' benefits with minimal detection. The department also distributes EBT cards before confirming a participant's eligibility. This practice is wasteful and increases difficulties in inventorying cards.

The department also inadequately monitors the EBT contractor. The department does not regularly receive and review a list of authorized users and verify user access to the EBT system. We found 56 users who had not accessed the system for over nine months and should have been deleted. We also found 64 discrepancies between the department's security officer's list of users and the contractor's list of users.

Recommendations and Response

We recommended that the department improve its management controls by holding its managers accountable for complying with management review recommendations, developing follow-up procedures for quality assurance programs, ensuring that control and access to EBT cards are appropriate, and improving its monitoring of the EBT contractor.

The department agreed with our findings and recommendations to hold its supervisors accountable, develop follow-up procedures for quality assurance programs, and improve its monitoring of the EBT contractor. However, the department disagreed with our recommendations to improve its controls by using checklists and the HAWI-generated form letter, and implementing more procedures over EBT card access. The department also submitted clarifying information that, in some cases, fall outside the timeframe of our audit and were therefore presented to us only after-the-fact.

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 03-11
August 2003

Foreword

This is a report of our audit of the Department of Human Services' Electronic Benefit Transfer (EBT) program. This audit was conducted pursuant to Section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

We wish to express our appreciation for the cooperation and assistance extended by the officials and staff of the Department of Human Services and others who provided assistance during the course of the audit.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The federal government requires all states to implement and use Electronic Benefit Transfer (EBT) systems to distribute federal Food Stamp program benefits. The Department of Human Services, responsible for administering the state's Food Stamp program, implemented its EBT system in 1998. However, the department's decreasing food stamp payment accuracy rating and previously cited management control deficiencies raise concerns that these deficiencies may affect the EBT system's effectiveness.

The Auditor initiated this audit to assess the department's effectiveness in administering the EBT system and ensuring the adequate protection of state assets from loss and abuse. The audit was performed pursuant to Section 23-4, Hawaii Revised Statutes (HRS), which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State.

Background

An EBT system is an electronic scheme under which a government agency distributes needs-tested benefits electronically. Recipients access their benefits through automated teller machines or point-of-sale terminals using magnetic striped cards similar to bank debit cards. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or Welfare Reform Act, required all states to implement statewide EBT systems to distribute food stamp benefits by October 1, 2002. As of February 2003, 45 states, including Hawaii, have implemented such EBT systems.

The federal government advocated use of EBT systems to address fraud and abuse. The two primary types of fraud and abuse are "trafficking" and overpayments to program participants. Trafficking occurs when participants collaborate with retailers to exchange food stamp benefits for cash or non-food items. Overpayments occur when eligibility is determined incorrectly, resulting in ineligible persons receiving benefits or eligible persons receiving unwarranted benefits.

The federal government expected EBT systems to help reduce food stamp trafficking by eliminating paper coupons, the previous method of distributing food stamp benefits, which can be lost, stolen, or sold. The EBT system also creates an electronic transaction record that allows retailers and program participants to be monitored. However, as stated

in its rules, the federal government expects states to implement their own adequate management controls to address overpayment issues.

The purpose of the federal Food Stamp program is to help individuals and families obtain more nutritious diets by providing them with assistance to purchase food. Program participants use EBT cards to access benefits and purchase goods at retailers authorized by the federal Food and Nutrition Service. After a retailer runs the card through a point-of-sale terminal for authorization, the cost of the goods purchased is deducted from the participant's account and added to the retailer's account.

The State's role in the EBT Program

The U. S. Department of Agriculture's Food and Nutrition Service administers the Food Stamp program in partnership with the states. The Food and Nutrition Service funds 100 percent of food stamp benefits and about 50 percent of state administrative costs, develops policies and regulations, authorizes retailer participation, monitors retailer compliance, and oversees the implementation of statewide EBT systems. Individual states manage the program's day-to-day operation and management, which includes certifying the eligibility of individuals or households to participate in the program, delivering benefits to participants, and monitoring participants' compliance with program requirements.

Individual states have formed "alliances" to increase their bargaining power in procuring contractors to implement and service their EBT system. Hawaii joined the Western States EBT Alliance, which includes Alaska, Arizona, Colorado, Idaho, Nevada, Washington, and most recently, Guam. The alliance reviewed bids from potential contractors to meet "core" requirements of the allied states, and selected Citicorp as the contractor. In addition to the core requirements, each state can negotiate with Citicorp to customize its contract to meet the state's particular needs.

In July 1997, the Department of Human Services executed a five-year contract (ending June 30, 2003) with Citicorp to design, develop, implement, and operate an EBT system for the State of Hawaii. Hawaii's EBT system became operational statewide in August 1998. In December 2002, the alliance once again selected Citicorp to negotiate a seven-year contract; however, Hawaii's new contract has not been finalized.

The Electronic Benefit Transfer Section, located within the department's Benefit, Employment and Support Services Division, administers the State's EBT program. Exhibit 1.1 displays the department's organizational structure relevant to the division and the EBT program.

The section monitors the EBT contractor and coordinates with the division's public assistance programs, retailers, financial institutions, and the federal Food and Nutrition Service.

Benefits are distributed through EBT cards

Although the Welfare Reform Act requires states to implement EBT systems for the distribution of food stamp benefits, states may also use EBT systems to distribute payments for other forms of public assistance. Like most other states, Hawaii's EBT system provides both food stamp and public assistance benefits; it includes all public assistance programs within the department's Benefit, Employment and Support Services Division.

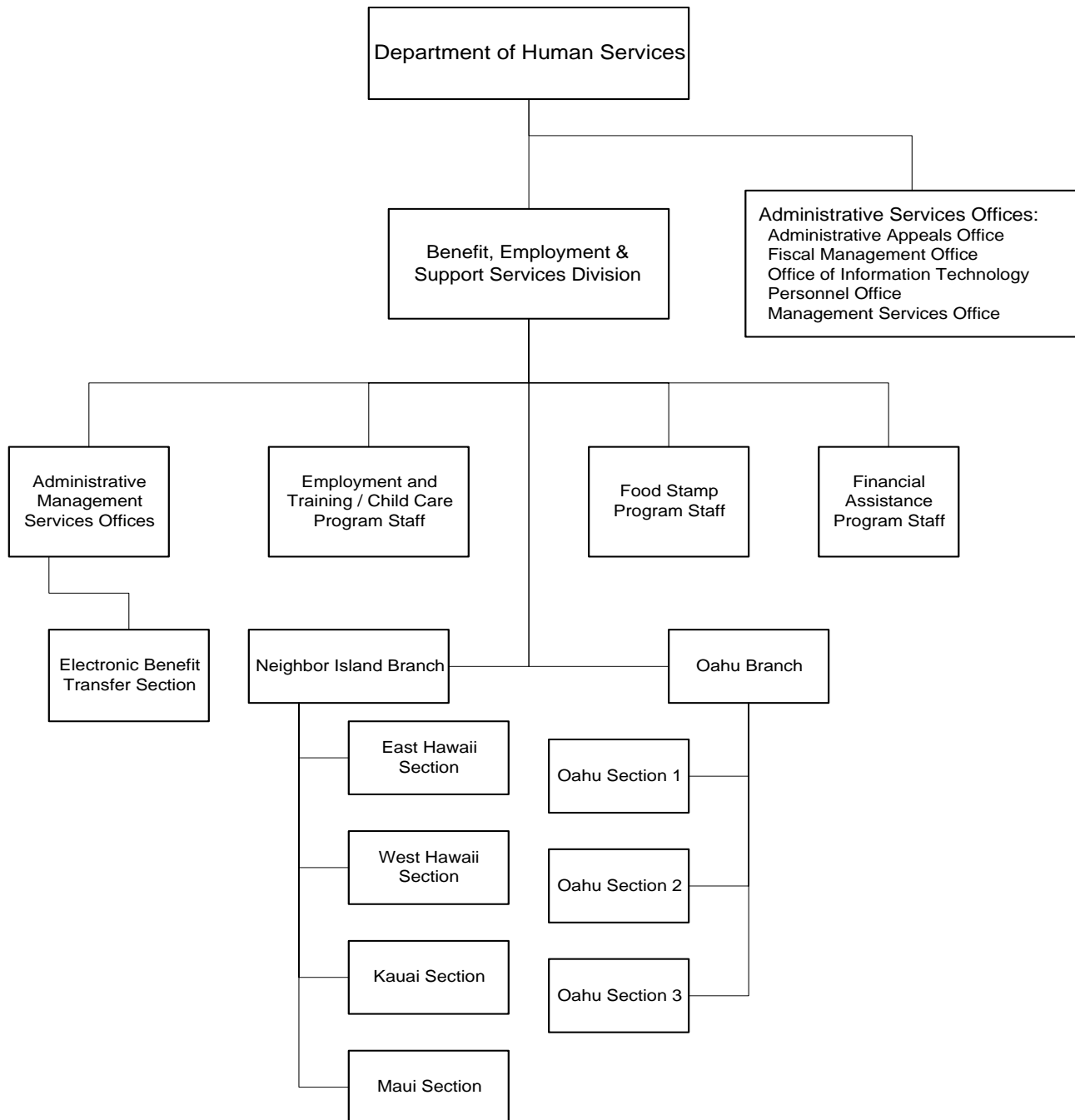
The Benefit, Employment and Support Services Division is the largest division in the Department of Human Services. The division provides services and financial assistance to help individuals obtain essentials, such as food, shelter, child care, employment support, and work-training. The division distributes benefits to participants via the Food Stamp; Temporary Assistance to Needy Families; Temporary Assistance to Other Needy Families; General Assistance; Aid to the Aged, Blind, and Disabled; Child Care; First-To-Work; and Employment and Training programs.

The division is comprised of numerous branches, support offices, and program offices. EBT program participants are served by staff from income maintenance and employment and training/childcare units, consisting of 56 units and four sub-units throughout the state. Income maintenance units are usually staffed with one supervisor and seven to nine eligibility workers; sub-units have fewer workers and serve smaller geographical areas.

Individuals must apply at an income maintenance unit or sub-unit to participate in any of the State's public assistance programs. Eligibility workers interview and verify information provided by applicants, enter their information into the division's computer system, assess their eligibility for benefits, and issue EBT cards.

Benefits for food stamp and financial assistance programs are distributed monthly. Participants submit required information to eligibility workers monthly for verification. Participants' benefits are then entered into the Hawaii Automated Welfare Information (HAWI) system. At month's end, the HAWI system transmits relevant information into the EBT computer system. Benefits are accessible to clients at the beginning of the following month. For financial assistance programs, the EBT system can also deposit cash directly into participants' bank accounts.

Exhibit 1.1
Department of Human Services' Organizational Structure



Source: Department of Human Services

Participants in the child care, First-To-Work, and employment and training programs submit receipts for childcare expenses paid or items purchased for work to workers at employment and training/childcare units. The workers review receipts, and eligible expenses are entered into the Hawaii Automated Network for Assistance (HANA) computer system. Information on authorized expenses is transmitted from HANA to the EBT computer system, and program participants' cash accounts are updated. Reimbursements for eligible expenses are usually available to the participant in three business days.

The contractor's role in the EBT program

Using information from the Department of Human Services' computer system, the contractor assists participants by creating individual accounts, updating benefit information, and responding to questions. Upon receiving their authorized benefit information, the contractor updates participants' cash or food stamp accounts. As cardholders use their benefits, the contractor's EBT system authorizes, monitors, and tracks each transaction and transfers necessary funds. Exhibit 1.2 illustrates the processes involved in the EBT program.

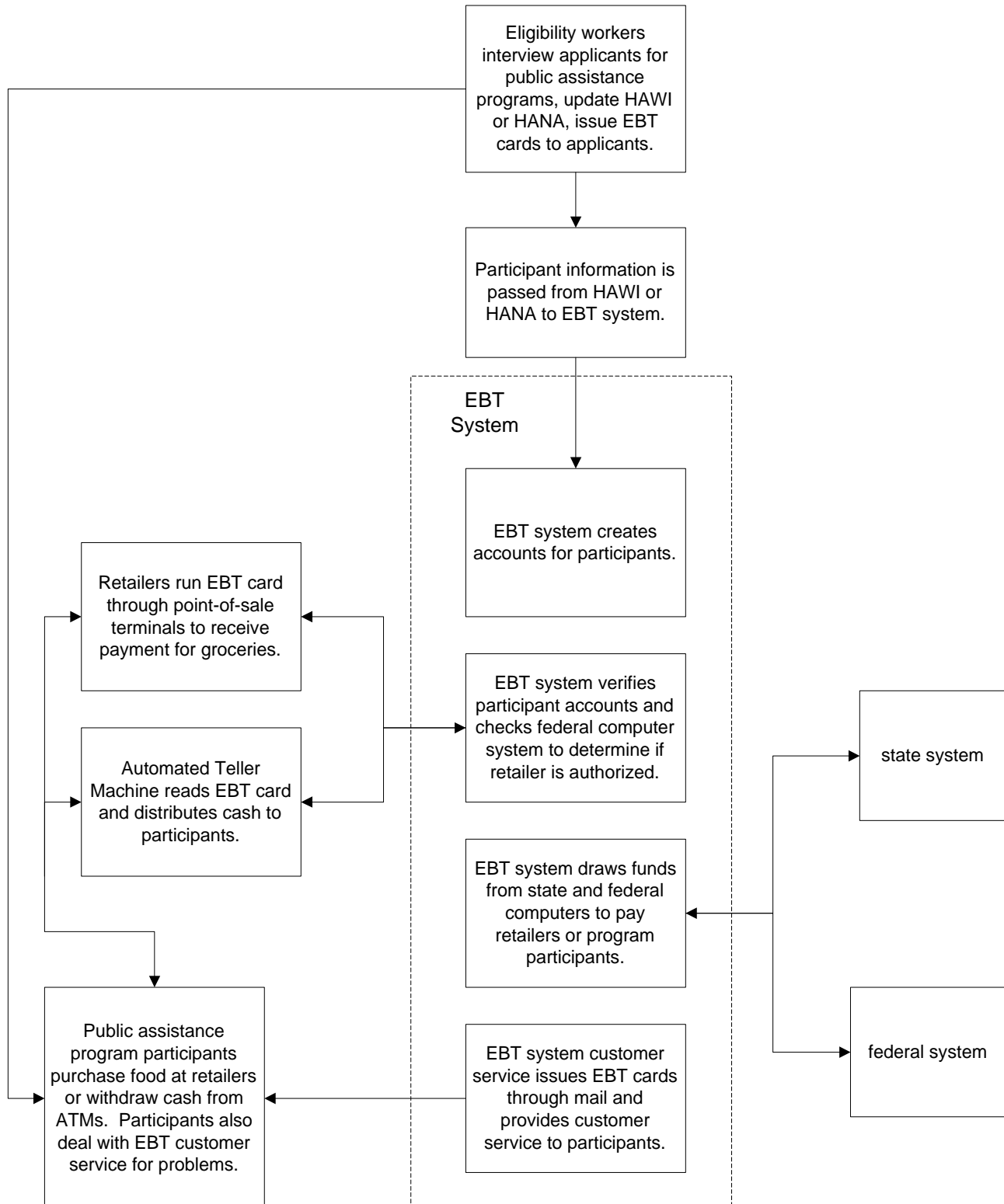
In addition to distributing benefits, the contractor provides other services, such as submitting various reports to the department to monitor the EBT program. The contractor also provides 24-hour customer service via a toll-free phone number listed on the EBT cards. The department reviews the contractor's reports to monitor the contractor and its system, reconcile financial transactions, and monitor card usage to reduce errors, fraud, and abuse.

The State reimburses the contractor on a monthly basis for services provided. The department's initial contract with the current contractor, Citicorp, was \$2,282,572, with a "per case" charge billed on a monthly basis. The contract separates payments by cash only, food stamp only, and cases with both cash and food stamp benefits. The State also reimburses the contractor for services required by the federal government, such as providing retailers with point-of-sale terminals. For the period FY1997-98 to FY2001-02, the department paid the contractor a total of \$7,633,021.

The department's management controls for the Food Stamp program

The federal government requires states to implement adequate management controls to ensure the Food Stamp program operates effectively and efficiently. Specifically, federal regulations require that states conduct management evaluation and quality control reviews. Management evaluation reviews assess eligibility operations in accordance with departmental policies and procedures, while quality control reviews check cases for completeness and verify accuracy of the department's eligibility determination and payment calculations.

Exhibit 1.2
Flowchart of EBT Processes



The department's management control structure also includes internal policies. These include permitting only authorized users to allocate benefits to participants on the HAWI computer system and requiring supervisors to conduct random case file reviews. Additionally, accountants in the department's Administrative Services' Fiscal Management Office reconcile participants' benefit accounts with Citicorp's withdrawals of federal and state funds on a daily basis.

Prior audits found significant problems in the department's management controls

Prior audits conducted by the Office of the Auditor identified weaknesses in the department's management controls. Of particular significance to this audit were findings concerning the department's inadequate verification of data entered into the HAWI system.

In our Report No. 94-5, *Financial Audit of the Department of Human Services*, we noted that inaccurate information entered into the HAWI system resulted in overpayments and that someone other than the eligibility worker should review entered data to ensure its completeness and accuracy. The report recommended that the department develop better controls for its income maintenance programs and data processing. The department disagreed with this finding and recommendation, stating that it uses several on-going periodic reviews for its financial assistance and food stamp programs. The department specifically noted that its management evaluation and quality control reviews include case reviews that check data entry. In addition, the department claimed it requires supervisors to review one case per worker per month.

We noted that the department's data entry accuracy remained unchecked in our Report No. 98-14, *Financial Audit of the Department of Human Services*. We also found that required supervisory reviews of client case files were not being performed. Report No. 98-14 cited these problems as material weaknesses—the worst possible reportable condition. A material weakness exists when management controls are such that misstatements in amounts that are material, or significant, to the financial statements being audited may occur.

Objectives of the Audit

1. Assess the adequacy of the department's procedures and safeguards to reduce unauthorized benefits and inaccurate data.
2. Assess the department's effectiveness in administering the Electronic Benefit Transfer program.
3. Make recommendations as appropriate.

Scope and Methodology

We reviewed policies and procedures, user and system manuals related to ensuring appropriate data entry, processing, output, and system security. We assessed policies and procedures of the Benefit, Employment and Support Services Division's management evaluation and quality control programs to determine their effectiveness and compliance with federal guidelines. We also reviewed project and case files, memoranda, correspondence, meeting minutes, and system documentation. We conducted follow-up work on relevant findings and recommendations from previous audits.

We interviewed staff, supervisors, and administrators at various application units and personnel at the department's Administrative Services Offices. We judgmentally selected and visited two eligibility units to assess compliance with management control policies and procedures over data accuracy. We reviewed application controls and observed data entry of the department's Hawaii Automated Welfare Information (HAWI) system and Hawaii Automated Network for Assistance Information system (HANA). We also reviewed the department's policies and procedures over the order, acquisition, control, and distribution of EBT cards and assessed the sufficiency of the department's management controls.

Our criteria included relevant laws, rules, and policies at both the state and federal levels. We also utilized the U. S. General Accounting Office (GAO) guidelines, *Assessing the Reliability of Computer-Processed Data and Standards for Internal Control*, and the U.S. Food and Nutrition Service's *Quality Control Review Handbook*.

The audit was conducted from October 2002 through March 2003 in accordance with generally accepted government auditing standards.

Chapter 2

Poor Management Controls Increase Risks of Unauthorized Benefits and Loss of Federal Funding, and Limit Effectiveness of the Electronic Benefit Transfer Program

Previous audits found deficiencies in the Department of Human Services' management controls over its food stamp and financial assistance programs, which resulted in overpayments and inaccurate computerized data. Our current audit found that the department continues to struggle with implementing proper controls. Decreased payment accuracy ratings, loss of enhanced federal funding, and increased risks of unauthorized benefits have compromised the effectiveness of the Electronic Benefit Transfer (EBT) program.

Summary of Findings

1. Inadequate use of quality assurance programs increases the risk of unauthorized benefits and loss of funding.
2. Management deficiencies diminish the effectiveness of the EBT program.

Inadequate Use of Quality Assurance Programs Jeopardizes Federal Funding and Increases the Risk of Unauthorized Benefits

Federal law requires states participating in the Food Stamp program to implement certain quality assurance programs to ensure accurate eligibility determination, precise benefit calculation, and diligent policy adherence. Extensive federal regulations dictate implementation of these programs. For example, a state's inability to meet the goals set by one of the federal quality assurance programs results in the loss of financial incentives and possible sanctions on the state's Food Stamp program.

We found that the department does not effectively use its quality assurance programs, which consist of management evaluation and quality control reviews. For several years, these review programs have revealed significant problems to the Department of Human Services' administration, but improvements have been slow or nonexistent. Consequently, the department has lost federal incentive funding, must undergo extensive corrective planning, and risks federal sanctions. We also found that the department's case management tools were ineffectively used or insufficient to be effective.

Management evaluation reviews reveal lack of supervisory review

Management evaluation reviews help to ensure that the State's Food Stamp program complies with federal law by monitoring operations and identifying and correcting deficiencies. We analyzed management evaluation reviews, for the period September 1998 to September 2000 conducted by Benefit, Employment and Support Services Division staff of 19 units responsible for the food stamp and financial assistance programs. Consisting of staff interviews and reviews of case files, the management reviews found only one supervisor (at the Waianae unit) in compliance with the department's policy requiring supervisors to review one case file per worker per month. Since most units have seven to nine eligibility workers, the policy adds fewer than ten case file reviews per month to each supervisor's responsibilities.

Adequate supervisory reviews could have prevented errors found at the eligibility units. At the Maui units, the management evaluation team reviewed 58 cases and found 18 errors, amounting to an error rate of 31 percent. At the Oahu units, the team reviewed 90 cases and found 25 errors, for an error rate of nearly 28 percent. The management evaluations recommended that supervisors review case findings, provide training or refresher classes in error-prone areas, and establish additional case file reviews by a "second set of eyes."

Increasing supervisory or second-party reviews to lower error rates was also a recommendation of the federal Food and Nutrition Service. In interpreting its May 2001 review of Hawaii's Food Stamp program, a federal government representative stated that the federal government believes more "eyes" reviewing a case file increases accuracy. Similarly, both our Report Nos. 94-5 and 98-14 found that someone other than the eligibility worker should review case files to help ensure the accuracy of data entered into the computer system.

Quality control reviews also expose management deficiencies

The other quality assurance program, called quality control reviews, also examines the work of eligibility units but has a more direct impact on funding. Quality control reviewers assess whether eligibility workers have correctly determined participant eligibility and benefit calculations by reviewing case files and visiting participants to verify information. Each review requires eligibility workers to respond to any findings or recommendations related to the case. Reviewers also report their results to the federal government for determination of the State's error rate, which affects qualification for federal funding incentives.

We examined the quality control review conducted during federal fiscal year (FFY) 2001-02 (October 1, 2001 to September 30, 2002) and identified several eligibility units with error rates above 20 percent and some with error rates close to 30 percent. The review identified 105 cases with errors out of 877 cases that were reviewed for an error rate of

11.97 percent. The presence of higher error rates indicates significant deficiencies at some units and directly impacts the department's ability to receive federal funds.

Rising food stamp error rate has resulted in lost federal funds

Prior to FFY1998-99, the department received federal incentive moneys because of its low error rate in administering the Food Stamp program. However, in the past three years its food stamp error rate has almost doubled, resulting in a loss of federal incentive funds. For FFY2000-01, \$51 million in enhanced funding was available to qualifying states—yet the department's high error rate disqualified the State from sharing in that funding. Exhibit 2.1 shows the error rate for the department's Food Stamp program and federal incentive moneys received over the past ten years.

Exhibit 2.1

Department of Human Services' Food Stamp Program Error Rate, Rank, and Enhanced Funding FFY1991-92 through 2000-01

FFY	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01
Error rate	3.85%	3.75%	4.75%	3.78%	3.99%	4.48%	4.82%	6.82%	7.74%	6.53%
National ranking	1	1	2	2	2	2	4	9	21	16
Enhanced federal funding received	\$1,411,896	\$1,438,228	\$0*	\$1,624,389	\$1,520,215	\$1,883,730	\$1,700,458	\$0	\$0	\$0

* Hawaii's negative case error rate exceeded the national weighted mean negative case rate for the prior federal fiscal year and therefore failed to qualify for enhanced funding.

Source: Department of Human Services

Error rates used to determine incentive funding are computed by dividing the amount of issuances in error by total issuances. For example, if \$100 were issued in error out of \$1,000 issued, the error rate is 10 percent. Errors that impact amounts paid to recipients result in payment error rates, while wrongful denials of applications result in negative case error rates. In deciding whether to provide incentives or impose sanctions, the federal government uses both payment error rates and negative case error rates. Only states with payment error rates equal to or less than 5.9 percent and an acceptable negative case rate according to the federal formula qualify for financial incentives.

The federal government sanctions states with error rates above the national average which has ranged from 10 to 8 percent from FFY1991-92 to FFY2000-01. These sanctions result in the loss of federal funding

for state administrative costs, which the federal government currently provides at approximately 50 percent. In FFY2000-01, the federal government provided over \$8.8 million in funding for the department's administrative costs. Any reduction or loss of federal funds requires the State's general fund to subsidize the Food Stamp program.

Corrective action to lower error rate is labor intensive

As a result of the department's Food Stamp program's error rate exceeding the acceptable 5.90 percent, federal law requires the department to implement a corrective action plan that addresses lowering the error rate. The corrective action plan is a labor-intensive endeavor requiring the participation of eligibility unit staff as well as section, branch, and program office administrators. At one point, the department's corrective action plan required teams of reviewers to review *all* case files from units with the highest error rates. The department's July 2002 updated corrective action plan requires a tiered system of case file reviews. Section administrators must also review files previously reviewed by eligibility unit supervisors.

The corrective action plan's tiered review system requires both supervisors and section administrators to review cases. For eligibility units with error rates below 3.99 percent, supervisors must review one case per worker per month. For units with error rates between 4.0 and 4.99 percent, supervisors must review two cases; and for units with error rates 5.0 percent or above, supervisors must review three cases. The section administrator must also review one of the cases reviewed by the supervisor and send to the program office, on a monthly basis, a summary of the cases reviewed.

Managers are not held accountable for not meeting corrective action plan requirements

The department has failed to hold its supervisors and administrators accountable for implementing the latest corrective action plan. We found that since establishment of the plan in July 2002, supervisors and administrators have not consistently submitted evidence of conducting case reviews. The Food Stamp Program Office received only 22 of the 42 summaries detailing cases reviewed by section administrators that should have been submitted in the seven months between July 2002 and January 2003.

Even prior to the corrective action plan's July 2002 update, the department failed to recognize or discipline supervisors' and section administrators' non-performance of departmental requirements. Prior to July 2002, a departmental policy required supervisors with eight workers or less to review 5 cases and supervisors with nine workers or more to

review 40 cases. Section administrators were not required to conduct case reviews, but were required to summarize reviews completed by the supervisors in their sections. However, we found scant evidence that section administrators complied with this requirement. The absence of a summary could also indicate the failure of supervisors to conduct case reviews.

Follow-up requirements for quality assurance recommendations are insufficient

The department does not require follow-up of its quality assurance review recommendations. Both the management evaluation and quality control reviews have minimal requirements to verify that eligibility units, supervisors, or section administrators have fully complied with review recommendations. For management evaluations, branch administrators must respond to the review's findings and recommendations within 90 days and describe corrective actions made. Likewise, quality control reviews cite particular errors and require the eligibility worker to correct the errors within ten days. However, the department does not require the unit to be revisited to ensure that problems identified were corrected.

Inadequate follow-up is a violation of federal law. Code of Federal Regulations, Section 275.19 requires states to monitor and evaluate their programs adequately. The department has failed to implement sufficient follow-up procedures to ensure its management evaluation and quality control review findings and recommendations are satisfactorily addressed. The Quality Control Section reported it does not verify that problems cited in their reviews are corrected. Management evaluation review members stated that, for particularly serious problems, they may informally ask branch or section administrators about their progress in correcting the problem.

The federal government recognized the importance of adequate follow-up on review findings and recommended that Hawaii research, and consider using, the State of Arizona's management evaluation program. In Arizona's program, the management review team revisits the same unit after four months, concentrating on the same problem area though not necessarily the same cases. If the same problems persist, the team revisits the unit again in four weeks. This type of follow-up is much more effective than merely requiring units to state how they intend to correct the problem.

The department also does not effectively use quality assurance program findings to determine common problems or develop solutions from a broader perspective. Supervisors are not required to identify underlying causes of problems, and most units' responses address only individual cases. We found similar problem areas repeated in different units' management evaluations. Furthermore, responses to quality control review errors are also done on a case-by-case basis.

Use of case management tools is lacking or ineffective

Inaccurate information on applications can result in unauthorized benefits – either overpayments or completely unwarranted payments. Various sources have recommended the use of case management tools to assist in improving data accuracy. However, eligibility workers ineffectively use available case management tools and have failed to develop an adequate checklist to manage their cases.

Inadequate worker maintenance renders ‘alert function’ ineffective as a case management tool

The Hawaii Automated Welfare Information (HAWI) system includes a case management tool called the Eligibility Worker Alert system, which eligibility workers have poorly used. The tool generates “alerts,” or messages, to remind users of future events that may affect a participant’s eligibility or level of benefits. For example, an alert will warn an eligibility worker that a case has not been authorized to receive benefits for a month. The worker can also set personal alerts as reminders, like a calendar function. We found that management evaluation reports regularly cited eligibility workers for improperly maintaining HAWI’s alert function.

Over a five-year period of management evaluations from 1995 to 2000, we found numerous instances where management evaluation reviews criticized the backlog of alerts in the HAWI system. Backlogs result when workers fail to address and delete overdue alerts. A 1999 West Hawaii management evaluation review revealed that although one unit lowered its overdue alerts from 7,451 in March 1995 to 4,894 in December 1998, a single worker at the unit had 608 overdue alerts, and five others had over 300 overdue alerts each. A Kauai unit was also cited for having 1,560 overdue alerts in a management evaluation review conducted in September 2000. The federal government did not require management evaluation reviews in 2001, and the 2002 management evaluation review report has not been finalized.

The high number of alerts remains a problem. We were unable to compare the department’s progress in reducing alerts because previous alert reports are not kept. However, we obtained a recent alert summary report and found many units where workers averaged over 100 overdue alerts. Exhibit 2.2 shows the total outstanding alerts for each section and a per unit average as of March 1, 2003.

While not all alerts are indicative of a critical event, the large number of alerts remains a concern. There are three basic types of alerts. “Auto-delete” is critical because the user must perform some action before the system automatically deletes the alert. For many “info” alerts, the system automatically deletes the alert 30 days after passing a scheduled event. The third category of alerts (“other”) covers many areas,

Exhibit 2.2

Overdue Alerts as of March 1, 2003

Name	Total Overdue Alerts for Section	Average Overdue Alerts per Unit
Oahu Section 1 (12 units)	12,174	1,015
Oahu Section 2 (13 units)	18,992	1,461
East Hawaii Section (6 units)	3,733	622
West Hawaii (6 units)	3,255	543
Mauai Section (6 units)	3,513	586
Kauai Section (3 units)	1,826	609

Source: Department of Human Services

including personal reminders. Although most alerts listed in the March 1, 2003 report were of the “other” category, we note that an overabundance of alerts causes confusion and reduces the function’s usefulness.

The mix of outdated and current alerts reduces the alert function’s effectiveness as a case management tool. Overloading the function’s screens and reports with overdue alerts causes confusion as to which messages still require action and ultimately reports become less useful. As alerts add up, workers find they have insufficient time to delete them, and the cycle continues. Clutter in workers’ alert logs conveys erroneous information to the supervisor regarding actual outstanding tasks.

Checklists facilitate more efficient case file review

Checklists are another effective case management tool. A prior audit, Report No. 94-5, recommended that case files include a checklist to help standardize and ensure completeness of file documentation. However, the only “checklist” kept in case files is an interview sheet, which we found inadequate as a documentation verification checklist. For example, a “verification” column in the section verifying participants’ assets and income is blank, allowing workers freedom in completing the column. One sheet contained the handwritten words “ATM receipt” to verify existence of a checking account. However, an ATM receipt merely lists an account number; it does not identify the account holder’s name. Furthermore, the worker did not include the receipt’s date or any transaction information.

The area of rental expense verification would also benefit from a document checklist. Specifying a higher rent allows participants a rent deduction to reduce their net income and therefore qualify for increased

benefits. Participants' rental expenses are thus more suspect and require adequate verification. Federal guidelines state that rental verification may consist of a rental agreement, rent receipts, or a letter from the landlord. However, if documentation consists of only a letter, the landlord's name, phone number, and address should be included for later verification. Verifying rental information helps ensure that participants do not falsely submit letters indicating a higher rent.

The HAWI system generates a form letter containing all relevant information needed to verify rental expense. The form requests that the landlord attest to the rental unit occupants, the monthly cost, and the landlord's name, address, and phone number. Most importantly, the letter informs the landlord that providing false information subjects the landlord to financial fines and imprisonment. The warning message helps convey the importance of the information being provided.

Case files we reviewed at two eligibility units did not include adequate and consistent rental expense verification. We reviewed 14 case files at South Hilo Unit 1 and found two cases with handwritten notes from landlords attesting to participants' rental of their premises for a certain period and rate. There was no evidence that the eligibility worker made any phone calls or conducted any follow-up to verify the rental information's validity. A specific checklist item such as "Verified by phone call to landlord __ (name) __, on __ (date) __" would prompt the eligibility worker to verify this information. This would be more effective in assuring that information submitted is valid. At the Punawai eligibility unit, we reviewed 14 cases and found eight which contained rental agreements or letters from landlords, including the landlord's name and address, in compliance with federal guidelines. However, we found a separate case where a family member wrote the letter attesting to the rental amount.

The checklist should also include an area for the supervisor to initial and date the review. This holds supervisors accountable for their review. Currently, although supervisors keep a list of case files they have reviewed, evidence is not included in case files to verify this work. Supervisors at the two units we visited told us that they do not include evidence of their review in case files.

Enhanced Security and Controls Are Needed to Reduce Fraud and Waste in the Electronic Benefit Transfer Program

Lack of control over EBT card inventory leaves the system vulnerable to potential fraud, waste, and abuse

The Department of Human Services must improve its controls over EBT cards and its capabilities of monitoring the EBT contractor.

Departmental controls over the EBT card inventory needs improvement to prevent abuse, and card issuance policies need re-evaluation to reduce waste and unnecessary costs. The department's use of reports to monitor the contractor also needs improvement to better support program integrity and prevent unauthorized access.

Inadequate segregation of duties at eligibility units allows workers to access participants' benefits, which could lead to fraud. Clerks not only control the EBT card inventory but also have access to participant information, including case numbers, and the device that links the cards to case numbers. To issue an EBT card, an eligibility unit worker completes a card issuance form requesting a clerk to retrieve a blank card from storage. The clerk retrieves a card, runs the card through the electronic device that ties the participant's case number to the EBT card's 16-digit number, and records the card number onto the card issuance form and log. The participant signs the form acknowledging receipt of the card and selects a personal identification number. The clerk returns the form to the eligibility worker, who retains it in the participant's case file. If an error occurs during the linking process, the clerk records the card as void on the card issuance log and retrieves another card.

These poorly devised procedures either allow clerks to obtain case numbers from files or the HAWI system and link them to EBT cards without detection, or, take an EBT card from storage, record the card as void on the issuance log, link the EBT card to a case without anyone knowing, and access a participant's benefits. Clerks would be able to access benefits until the participant reported a loss of benefits.

Clerks can minimize detection of EBT card theft by targeting cases where the participant has not accessed electronic benefits for an extended period of time. The EBT system is programmed to automatically inactivate accounts of participants who have not accessed benefits for a certain time period—90 days for cash benefits and 270 days for food stamp benefits. However, benefits remain accessible until the account is closed. If the system does not detect activity in a participant's account for the specified time period, benefits revert back to the State. Clerks are able to identify cases without activity and could take advantage of weaknesses in the department's control over EBT cards.

Although the card issuance log may limit a clerk's ability to access participants' benefits, the log does not prevent criminal activity by a supervisor. We found significant deficiencies regarding supervisors' access to EBT cards. At one unit, the supervisor stored EBT cards in the supervisor's locked cabinet and possessed the password to the linking device. At another unit, the supervisor was aware of the location of the keys to the EBT card's locked storage unit. Both situations represent weaknesses in controls. The supervisor has the power to authorize benefits, and therefore could easily tie EBT cards to case files without detection. The department must improve its controls over supervisors' access to EBT cards.

The department's card distribution practices are wasteful and need re-evaluation

The department encourages eligibility workers to promote participant convenience by issuing cards to applicants at the time of interview, even before determining eligibility. According to a unit supervisor and the EBT manager, this practice saves the participant a trip back to the unit and incurs little risk – although the card is linked to an account, benefits are not deposited until eligibility is verified. However, if eligibility is denied, the card becomes useless because it cannot be linked to a new account; it also increases the unit's work in maintaining its card inventory. To restock, the unit must identify the total number of cards issued, including cases where eligibility was denied.

Policies relating to EBT card replacements are wasteful, both in effort and cost. The department offers unlimited card replacements to participants for lost, stolen, or damaged cards without charge and does not centrally record reasons for replacements. Eligibility staff have expressed concerns that participants abuse the free replacement card practice by requesting new cards instead of retrieving existing cards at home; some participants continually lose cards. Although the State's contract with Citicorp includes replacement cards, the department fails to recognize the staff time and related cost involved in issuing new cards. In addition, it has not required units to distinguish replacement card issuances from new card issuances. The federal government estimates that cards cost \$1 to \$4 dollars each to replace. Without distinguishing new from replacement card issuances, the department cannot accurately analyze the cost incurred by its replacement policy.

The contractor, who keeps a record of replacements, reported for January 2003 that card replacements numbered 459 for lost cards, 124 for damaged cards, and 67 for stolen cards. Despite having most of the information on card replacement readily available, the department has failed to adequately evaluate the cost of card replacements. Other states charge participants for replacement cards, thereby generating some

income for the state. The federal government allows such charges as long as the replacement process is adequately described, and the charge does not exceed the cost of the replacement card, including staff time.

The department should consider charging participants for card replacements

Nine other states charge participants for card replacements. Hawaii's EBT manager claimed that those states have reported no decrease in replacement requests as a result of charging for replacement cards, but acknowledged this claim was based on anecdotal information.

Hawaii's EBT program also issues replacement cards on the same day as the request. This practice does not discourage participants from asking for replacement cards, and may even encourage it due to the ease in obtaining such replacements. Federal law only requires states to issue replacement cards within 48 hours of the request. One eligibility unit found that requiring participants to return the next day for their replacement cards decreased the number of replacement requests from 250 to 150 cards in the reporting period.

Monitoring procedures and management controls over the EBT system need improvement

The department's inadequate monitoring of access into the EBT system poses a security risk. The department neither maintains an accurate list of authorized EBT system users nor monitors system access. As a result, there is increased risk of unauthorized access to participants' electronic benefits even though no unauthorized access has been identified.

The department does not sufficiently use EBT data to preserve program integrity

The department insufficiently uses EBT data to identify fraudulent activity and fails to contribute to preserving the integrity of the Food Stamp program. The EBT manager requested the contractor to stop printing a report that lists all even-dollar transactions made with food stamp benefits during a month, which we believe could be useful in identifying potential fraudulent activity by participants. Because food purchases seldom end in whole dollar amounts, even-dollar transactions may indicate a retailer exchanging a participant's food stamp benefits for cash. The EBT manager stated that the report did not help identify suspicious activity because small amounts below \$10 were flooding the report, making it less useful.

An electronic version of the report would be an effective alternative to this problem, and the department has the capability of producing such a report. The contractor's detailed design document describes an electronic record that the contractor delivers to the department as a part

of its contract. We found that this electronic record contains daily transactions and has the same fields, or elements, that appear on the even-dollar amount report. The department's Office of Information Technology confirmed that the electronic record could be downloaded from the department's mainframe onto a user's personal computer so that data could be manipulated. The personal computer could filter out insignificant transactions, sort remaining data to identify participants with many even-dollar transactions, and thereby make the even-dollar report more effective.

The department also lacks written policies and procedures to describe the EBT section's responsibilities regarding identifying fraudulent activity by participants. Actions performed by the EBT manager's assistant may help identify fraudulent activity by participants, but the lack of written guidance is a limiting factor. The assistant identifies suspicious activities at certain retail stores and tracks transactions of participants suspected of conducting illegal activity. This tracking requires periodic checks into some participants' transactions.

According to the assistant, an example of suspicious retailer activity would be a large number of food stamp transactions at a small "mom and pop" grocery. An example of a participant's suspected illegal activity could be nearly duplicate transactions at the same store within a span of a few minutes. Such activity indicates the participant may have paid double the purchase price. However, the department has no written guidance on how often the EBT assistant should track participants' unauthorized activities or how this function should be prioritized among the assistant's other responsibilities.

The department should implement written policies and procedures guiding the identification of suspected illegal activity. The policy should provide guidance in identifying what is considered unusual activity, what information should be tracked and over what period of time, whom to report the information to, what information to report, and how often to report such information.

Other states have effectively analyzed EBT data to identify potential fraudulent activity. A 2000 report by the Government Accounting Office identifies Maryland and Texas as accounting for 87 percent of the nation's fraud prosecutions using EBT data. Texas analyzed data provided by their EBT contractor, identified potential fraudulent activity, and referred the participants involved to investigators. Maryland used EBT data analyzed by the federal Office of the Inspector General to investigate and take action against participants. The states conducted these investigative activities understanding the significant costs involved. However, the states found that regardless of cost, investigating

fraudulent activities increases deterrence of fraud and thereby upholds integrity of the program.

The department ineffectively monitors unauthorized access of the EBT system

The Department of Human Services fails to safeguard the EBT system from unauthorized access. Following termination or transfer to another division, an EBT system user's supervisor notifies the department's security officer to terminate the user's EBT access. The security officer updates his own user list and faxes notification to the contractor, who is responsible for removing the user's account. The EBT manager stated that the contractor automatically disables access of users who have not logged onto the system for 90 days, and purges their accounts after nine months. The contractor is supposed to notify the department when a user's account will be purged.

We found that the security officer's method of monitoring system security is flawed. The security officer relies on his own user list instead of obtaining the contractor's list of authorized users. Although all requests for removing users from the system pass through him, he is not notified of the contractor's automatic purges unless the EBT section forwards such notification. In addition, the security officer's fax to request user's removal does not ensure the contractor actually does so.

We found several discrepancies when we compared the security officer's user list with the EBT contractor's list of authorized users and with a list of users who had left the division since June 30, 2002. Out of 39 users who left the division, three still remained on the security officer's list. The security officer sends his list of authorized users to the eligibility units every six months to verify that individuals are still working at that unit. However, we note that since the system may automatically disable user accounts, the presence of the user on the security officer's list does not truly indicate continued user access.

We compared the security officer's list of authorized users to the contractor's list and found that the security officer's list contained 736 individuals. The contractor's list of authorized users contained only 672 individuals, a difference of 64 individuals that can be interpreted as 64 inaccuracies in the security officer's list. The security officer should use the user list generated by the system to ensure the list's accuracy.

The department does not ensure that only authorized users have access to the EBT system. The Electronic Benefit Transfer Section does not maintain a list of authorized users and does not receive or review reports of logon activity. We compared the EBT contractor's list of authorized users to a list of users who had left the division. The contractor's listing

consisted of user logons and did not clearly identify first and last names. However, we found that out of the 39 former workers, eight may still have active user accounts and the ability to access the system. We also noticed that more than 56 users were listed as not having used the system for more than nine months, so should be deleted. These irregularities are security risks and increase chances of compromising the system.

Conclusion

The responsibility of implementing adequate management controls to ensure program effectiveness should not be diminished by the Department of Human Services' role in delivering benefits with EBT technology. Although the federal government initiated and required that states implement EBT systems to distribute food stamp benefits, and a private business operates and manages the EBT system, these two conditions do not decrease the Department of Human Services' responsibility for ensuring assets are safeguarded. Adequate controls must be implemented, and the department must ensure that it effectively monitors the contractor.

Recommendations

The Department of Human Services should:

1. Hold managers accountable for compliance with management evaluation review recommendations by monitoring and disciplining supervisors who do not conduct required case reviews;
2. Consider system-wide causes and solutions when management evaluations and quality control reviews identify problems at more than one unit;
3. Develop formal follow-up procedures to ensure that management evaluation recommendations are properly implemented, which would require:
 - a. Supervisors to complete required reviews;
 - b. Eligibility workers to delete all unnecessary alerts;
 - c. Development of a plan and timeframe detailing how and when actions will be completed to address recommendations; and
 - d. The management evaluation team to revisit sites and assess implementation of recommendations.

4. Require supervisors to use checklists when reviewing case files and to include them in the case file as evidence of supervisory review;
5. Require eligibility units to use the HAWI-generated form letter to verify rental expenses;
6. Improve control over EBT card inventories, ensuring that:
 - a. Voiding cards requires necessary approvals; and
 - b. Supervisors' access to EBT cards is controlled.
7. Analyze costs incurred for replacement of EBT cards, including identifying:
 - a. Costs (cards and labor) incurred for replacing cards; and
 - b. Strategies or alternatives used by other states that charge for card replacements.
8. Require the EBT section to coordinate with the department's Office of Information Technology to increase the usefulness of transaction data provided by the contractor and reproduce the even-dollar report in a more useful format;
9. Preserve the federal Food Stamp program's integrity by issuing a policy to guide the EBT section in identifying participants suspected of using EBT cards for unauthorized activities; and
10. Regularly review the list of authorized EBT system users and last log-in activity report to ensure system security. The department should require the contractor to clearly identify the user's full name on the list.

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Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Human Services on May 7, 2003. A copy of the transmittal letter to the department is included as Attachment 1. On May 15, 2003, the department informed the Auditor by letter that the attorney general had “instructed [the department] to refrain from commenting on [the draft] report” and to request that we postpone release of our report and extend the department’s comment period. The response from the Department of Human Services, dated May 15, 2003, is included as Attachment 2. Although the department referred to “serious legal issues of [f]ederal law” as the reasoning for its request to postpone the report release, it did not specify what these substantive federal law issues were. We agreed to delay the release only so long as necessary to address the department’s concerns.

Thereafter, the attorney general commenced an investigation of the department’s staff and a letter writing campaign with our attorney in an effort to establish that our staff violated federal law. After several meetings and letters between the attorney general and our office, it became evident that the attorney general had not identified any restricted information in the draft report. Hence, there was no reason to further postpone the report’s release and no changes were made to the report draft.

The department was given an opportunity to provide its response to the report draft transmitted to it on May 7, 2003. The response from the department, dated July 28, 2003, is included as Attachment 3. Two days later on July 30, 2003, the department delivered attachments to its July 28, 2003 response that had been inadvertently omitted. The attachments are included as Attachment 4.

The department stated that its response delay was due to “the attorney general’s investigation of [the Auditor’s] staff’s actions while conducting this audit” To the contrary, we understood that the attorney general was concerned about the disclosure of information to our office that should have been kept confidential by the department. See Kerry Komatsubara’s attached letter dated July 9, 2003, page 2, which is included as Attachment 5. In fact, to date, the attorney general has not yet spoken with our staff and we continue to wait for the attorney general to contact our attorney. See Kerry Komatsubara’s attached letter dated August 4, 2003, page 2, which is included as Attachment 7.

The department asserts that our office “unquestionably obtained information from the Benefit, Employment and Support Services Division (“BESSD”) in violation of federal regulations relating to food stamps.” As pointed out by the attorney general in his July 18, 2003 letter, we agree that the department has the responsibility to prevent unauthorized access to food stamp information. Thus, as our attorney pointed out in his letter of August 4, 2003, “if there is any violation of federal law, it is the violation of [the department] and not the State Auditor.” See Kerry Komatsubara’s attached letter dated August 4, 2003, pp. 1-2. The federal compliance responsibility rests with the department, not our office.

In addition, we point out that the majority of staff identified in the attorney general’s letter of July 7, 2003, which the department refers to in its response, are not associated with the present audit. The attorney general mistakenly identified staff associated with the follow-up audit of the child protective services system.

The department further asserts that the attorney general’s investigation is still on-going and awaits the Auditor’s response to his request to interview a key staff member. The department is mistaken. As our attorney pointed out in his letter of August 4, 2003, we are awaiting a list of concerns from the attorney general. See Kerry Komatsubara’s attached letter dated August 4, 2003, p. 2. This course of action was mutually agreed upon by the attorney general and our attorney. Thus, the department’s suggestion that the attorney general is awaiting our response and that we may be holding up the investigation is in error.

The department’s reliance upon the attorney general’s statement that our lack of clarity in communicating audit objectives impeded the department’s right to safeguard restricted information is unfounded. This is not the case. Our attorney pointed out that the objectives must have been sufficiently clear to cause the department to redact some of the restricted information. See Kerry Komatsubara’s attached letter dated August 4, 2003, pp. 3-4. See also Kerry Komatsubara’s attached letter dated July 18, 2003, p. 1, which is included as Attachment 6. We do not know why only some and not all records were redacted and safeguarded by the department.

We find it curious that the concerns raised by the department and the attorney general, and the subsequent request to delay the report’s release occurred just prior to the issuance by the United States Department of Agriculture’s (USDA’s) of the notice of enhanced administrative funding. The coincidence in timing of the report’s delay and the USDA notification of enhanced funding causes us to question the department’s motivation in seeking the delay. We can only wonder what impact our

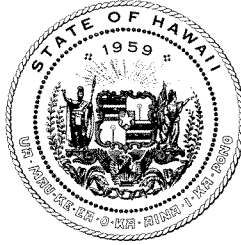
report may have had on the issuance of the enhanced administrative funding had it been released in May 2003.

The department concurred with our findings and recommendations to hold managers accountable for completing case reviews, to consider system-wide causes and solutions, to develop follow-up procedures ensuring the implementation of management evaluation recommendations, to develop a policy to guide monitoring of participants, and to regularly review system security lists. The department also submitted clarifying information, some of which were outside the audit's timeframe, and were therefore presented only after the draft report had been provided to the department.

The department disagreed with our findings and recommendations to use checklists for case file reviews, to improve safeguards over the control of EBT card inventory, to analyze the costs incurred for replacing cards, and to use a HAWI-generated form letter to verify rental expenses. The department claimed that its current form is adequate as a checklist, but may add an entry to indicate a review date. The department also claimed that it relies on the integrity of its staff and especially its managers and does not see the need to revise controls.

The department agreed that participants abuse free card replacements but stated that it is "service-oriented" and disinclined to charge fees for card replacements. The department further claimed that limitations in staff and computer resources prohibit the analysis of EBT data and refused to use the HAWI-generated form because federal law does not require the use of the form. We find that the department's defensiveness and faulty reasoning reflect its disregard for the implementation of proper controls to safeguard its resources. However, based on some of the department's comments, we have made some technical revisions.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor
(808) 587-0800
FAX: (808) 587-0830

May 7, 2003

C O P Y

The Honorable Lillian B. Koller
Director
Department of Human Services
Queen Liliuokalani Building
1390 Miller Street
Honolulu, Hawaii 96813

Dear Ms. Koller:

Enclosed for your information are three copies, numbered 6 to 8 of our confidential draft report, *Audit of the Department of Human Services' Electronic Benefit Transfer (EBT) Program*. We ask that you telephone us by Friday, May 9, 2003, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Thursday, May 15, 2003.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

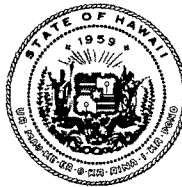
Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 968809-0339

May 15, 2003

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

RECEIVED
MAY 15 3 55 PM '03
OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

I am writing in regard to the draft "Audit of the Department of Human Services' Electronic Benefit Transfer (EBT) Program" report prepared by your office and transmitted to us for comment on May 7, 2003. This audit, as stated on page 1, was intended to: "Assess the Department's effectiveness in administering the EBT System and ensuring the adequate protection of state assets from loss and abuse."

We are very concerned about the direction that this audit ended up taking. While purporting to be a review of the EBT System used by the Department, this audit report ended up focusing predominantly on Food Stamp related issues, apparently based on your auditors accessing Federally protected information which they did not have authorization to review. This has raised serious legal issues of Federal law that must be addressed prior to publication of your report.

When these issues were brought to my attention today by my staff, I immediately contacted Attorney General Mark Bennett because these violations may be serious and I do not wish to exacerbate the situation by referring to these violations which we would have to do in order to properly provide comments to your audit report. Attorney General Bennett instructed me to refrain from commenting on your report at this time as it may compound the violations of Federal law that have already occurred.

Instead, Attorney General Bennett instructed me to write this letter to you to request that you postpone release of your audit report and extend the comment period to permit us to resolve these baseline issues of Federal law by the three of us meeting, at your earliest convenience, to discuss this matter before the report is released.

Ms. Marion Higa
May 15, 2003
Page 2

Please be assured that I am committed to cooperating with you and your office in this and all other audits to the fullest extent that the law will allow. Please contact me immediately so that this matter can be addressed. I am confident that a meeting with you, me and the Attorney General will bring this issue to resolution quickly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lillian B. Koller', with a stylized flourish at the end.

Lillian B. Koller, Esq.
Director

cc : Mark J. Bennett, Attorney General

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

July 28, 2003

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

RECEIVED

JUL 28 4 21 PM '03

OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

Thank you for this opportunity to respond to your draft "*Audit of the Department of Human Services' Electronic Benefit Transfer (EBT) Program*" transmitted to us for comment on May 7, 2003. Our delay in responding is due to the Attorney General's investigation of your staff's actions while conducting this audit with respect to federally protected Food Stamp information.

The Attorney General's preliminary investigation revealed that your office "unquestionably obtained information from the Benefit, Employment and Support Services Division ("BESSD") in violation of federal regulations relating to food stamps." See Attorney General's attached letter dated July 7, 2003, incorporated herein by reference, page 1. Further, the Attorney General advised you that pursuant to federal law, "failure to comply with the food stamp regulations could result in a suspension or disallowance of federal reimbursement for the state agency's administrative costs." See Attorney General's attached letter dated July 14, 2003, incorporated herein by reference, page 4.

The Attorney General's investigation is still on-going and awaiting your response to his request to interview a key staff member from your office to determine the reasons why this violation of federal regulations occurred. The Attorney General advises that "it is important for us to determine what happened in this instance so that we can avoid similar problems in the future." See Attorney General's attached letter dated July 18, 2003, incorporated herein by reference, page 2.

We assume that your office does not wish to cause any suspension or disallowance of federal reimbursement due to the manner in which your staff conducts program audits. As the Attorney General noted "the Auditor's lack of clarity in communicating her objectives impeded DHS' right (which the Auditor acknowledges) to properly safeguard restricted information." See AG's July 18th letter, pages 1-2. We respectfully concur with the Attorney General's recommendation that "the Auditor [should] develop an approach to audits that would avoid these difficulties. Early and specific identification of the

Ms. Marion M. Higa
State Auditor
July 28, 2003
Page 2

information required for the audit would be essential. Our client programs may then contact us to identify and explain any legal barriers that could restrict free access to information." See AG's July 18th letter, pages 3-4.

Regarding the audit's findings of deficiencies in the administration of our Food Stamp Program, we are well aware of these matters as we have been taking corrective action from 1999 to 2001 under the guidance of the Food, Nutrition, and Consumer Services Administration of the U. S. Department of Agriculture (USDA), to increase our accuracy rates. We developed a plan that gave our workers greater focus, leading to improved case management skills and more supervisory reviews. More than 600 DHS employees had a part in increasing our accuracy rate, including staff from the Benefit, Employment and Support Services Division (BESSD) and the Management Services Office/Quality Control (MSO/QC).

We are pleased to advise you that, shortly after your office completed its audit, the USDA notified us that we have earned a \$1,476,790 enhanced funding "bonus" award based on our low error rate for federal fiscal year 2002. See USDA's attached letter dated June 27, 2003, incorporated herein by reference. This award is in recognition of our Department's efforts to improve program integrity, program access and the overall administration of Hawai'i's Food Stamp Program.

Under the Food Stamp Act of 1977, if a state's error rate is 5.9 percent or lower, it is eligible to receive additional administrative reimbursement for program expenses. We earned this \$1,476,790 "bonus" award by lowering our error rate for administering nutrition assistance from 6.53 percent in fiscal year 2001 to only 5.03 percent in 2002. The result for the year was a 94.97 percent accuracy rate.

The USDA commended us for this achievement and encouraged us to continue our efforts to improve program integrity, program access and the overall administration of Hawai'i's Food Stamp Program. Our high accuracy rate ranks us 9th in the nation for 2002. The national allowance for error in 2002 was 5.9 percent and the average nationwide error rate was 8.26 percent while our error rate was only 5.03 percent.

In 2002, our Food Stamp Program served an average of 100,000 individuals each month and administered an estimated \$12.5 million monthly in benefits. Since 1982, DHS has brought over \$15.5 million dollars in enhanced funding "bonus" awards to our State coffers. From 1990 to 1993, through the fine efforts of our DHS staff, Hawai'i topped all 49 other states with the highest accuracy rate.

I am extremely proud of our workers and their day-to-day efforts in maintaining accurate payments to our clients. The diligence of our workers is truly the foundation of this Department and their hard work continues to ensure that Hawai'i's people will receive vital services in the most accurate, effective and timely way.

Ms. Marion M. Higa
State Auditor
July 28, 2003
Page 3

We expect that your office shares our pride in this great achievement by our dedicated DHS workers who have made ours one of the most accurate food stamp programs in the nation. The release of your audit report so close in time to the USDA "bonus" award is, I am sure, not intended to detract from the praise that our DHS workers surely deserve and the appreciation that we all feel for their hard work.

In closing, our Department includes some specific responses to the audit's findings. They are contained in Attachment "A" which is incorporated herein by reference.

Thank you again for this opportunity to comment on your draft audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Lillian B. Koller", with a stylized flourish at the end.

Lillian B. Koller, Esq.
Director

Attachment "A"

DHS RESPONSE TO FINDINGS OF EBT PROGRAM IN BESSD

With regard to the specific findings of the audit, we present comments of three types. First, incorrect statements contained within the report will be identified. Second, findings that the Department disagrees with will be identified. Finally, findings with which the Department concurs will be noted.

Major Inaccuracies

- On Page 10, it states "The average error rate for FFY 02 was 11.97%". This statement is completely inaccurate. At no time during the year of FY 2002 was the Food Stamp average error rate 11.97% for Hawaii. The error rate, as reported by Quality Control Staff to the federal Food Nutrition Service, was 4.485%. The U. S. Department of Agriculture (USDA) recently awarded a "bonus" of \$1,476,790 to our Department in food stamp enhanced funding based on the low payment error rate of our Food Stamp Program for federal fiscal year 2002. The USDA determined that Hawaii's error rate for federal fiscal year 2002 was only 5.03 percent, which was below the federal tolerance level of 5.9 percent or lower. The average nationwide error rate in 2002 was 8.26 percent. We earned this \$1,476,790 "bonus" by lowering the error rate in our Food Stamp Program from 6.53 percent in fiscal year 2001 to 5.03 percent in 2002. The result for the year 2002 was that we achieved a 94.97 percent accuracy rate. See USDA's attached letter dated June 27, 2003, incorporated herein by reference.
- On Page 11, first full paragraph, it states " For FFY 2001-2002, \$51 million in enhanced funding was available to qualifying states, yet the department's high error rate disqualified the State from sharing in that funding". This statement is untrue. Again, the USDA recently awarded a "bonus" of \$1,476,790 to our Department in food stamp enhanced funding based on our low payment error rate for federal fiscal year 2002. See USDA's June 27, 2003 letter.

Other Incorrect Statements

- Page 2, under *The State's role in the EBT Program* section, paragraph 3, last sentence states "In December 2002, the alliance once again selected Citicorp for another five-year contract;..." The WSEA agreed to negotiate for a minimum seven-year contract with Citicorp, not five years.
- Page 5, the last sentence in the first paragraph, which is part of the *Benefits are distributed through EBT cards* section, states, "Updated balances are usually available to the participant on the next business day." All cash benefits that are authorized as a daily issuance from the HAWI or the HANA systems are made available in the EBT system to the household three working days following the date of approval in the corresponding issuance system. Cash benefits that are authorized as a monthly issuance will be made available to the household at the beginning of the next issuance month. In no case are cash benefits available routinely on the next business day.

- Also on Page 11, in the chart, it states that Hawaii was ranked 17th for FFY 2001. The correct ranking back then was 16th for FFY 2001. The official error rate for that year was 6.53%.
- Page 17, under the *Lack of control over EBT card inventory leaves the system vulnerable to potential fraud, waste, and abuse* section, paragraph 3, second sentence states, “The EBT system is programmed to automatically close accounts of participants who have not accessed benefits for a certain time period – 90 days for cash benefits and 259 days for food stamp benefits.” Technically, the accounts are not closed but are classified as “inactive”. When the accounts are converted to an inactive status, the household does not have access to their benefits. If the household wishes to access their remaining benefits, the household simply needs to contact the department to re-activate the account. If the household fails to contact the department by 121 days for cash accounts and 270 days for the food stamp account, the remaining balance in the account will be expunged and returned to the appropriate governmental agency.
- Page 19, under *The department should consider charging participants for card replacements* section, 2nd paragraph, third sentence states, “Federal law only requires states to issue replacement cards within 48 hours of the request.” While this statement is true, Hawaii obtained a waiver from the USDA/Food and Nutrition Service/Food Stamp Program to allow for the issuance of replacement cards within three business days.

Findings With Which The Department Disagrees

- On Page 15, it states as a sub-section title that “checklists facilitate more efficient case file review”. We disagree with this statement. The Department uses the DHS 1241 form as a checklist. All appropriate areas to be checked are referenced on this form. This form meets federal requirements for verifying the presence of the necessary documentation in the file.
- Page 17, *Lack of control over EBT card inventory leaves the system vulnerable to potential fraud, waste, and abuse* section:

In the first 3 paragraphs of this section, the audit cites what it contends are the Department’s alleged inadequate procedures to separate the duties or the functions of the line staff. We believe that we have done this.

The primary objective of the line staff within the Benefit, Employment and Support Services Division (BESSD) is to determine the eligibility of the individual(s) who need financial and/or food stamp assistance. There are three types of functions in the line units – the individuals who determine the initial and continued eligibility of the clients needing assistance, who are known as Eligibility Workers (EWs); the support staff or clerks who assist the EWs; and the managers or supervisors who are responsible to ensure the operations of the line units are meeting all of the Department’s objectives.

In identifying the above individuals’ primary roles, specific security profiles were established in both the State’s eligibility and EBT systems. In the State’s eligibility system called the Hawaii Automated Welfare Information (HAWI) system, the clerical staff of the line units are given the responsibility to register new applications, while the EWs are

responsible to determine the applicant's/household's eligibility. The EWs authorize the benefits to be issued to the applicant/household.

While the clerical staff's profiles allow them to conduct queries and register applications in the HAWI system, it does not allow them to authorize or issue benefits. The reverse is true for the EWs where they are authorized to issue benefits but they cannot register applications or open new cases.

In keeping with one of the objectives of the Department to be "service-oriented", it was decided early on in the development of the EBT program to give our clients the opportunity to obtain replacement EBT cards from their respective line units. Since the Department and the State has had to continue to operate under budgetary constraints for the past 10 years, the logical conclusion was to assign the clerical staff the function to issue EBT cards. The Department did not have then, nor does it have now, the budget capacity to establish new positions dedicated simply to issuing EBT cards. The alternative option is to allow only the EBT contractor to mail replacement cards to the households. This option will surely be a detriment to clients who will need immediate access to their benefits.

It should be pointed out that the federal Food Stamp Program did not see this as a critical issue in their past audit reviews of the State's EBT Program.

In the fourth paragraph of this section, which runs onto page 18 of the auditor's findings, the auditor also cites what it contends are "deficiencies regarding supervisors' access to EBT cards." As managers of their respective offices, the line supervisors have the primary responsibility to ensure the integrity of not only the program operations but also the operations of their personnel for whom they are responsible. They not only monitor the unit's operations but also fill in wherever and whenever shortages in personnel occur in order to get the job done. For these reasons, the supervisors have a broader profile as back-up to their clerical staff and have been given authority to also issue EBT cards.

We count on the integrity of our staff, especially the managers of our line units. The audit's assessment that "(T)he department must improve its controls over supervisors' access to EBT cards" appears to question that integrity. We have no knowledge of any breaches of integrity for which our EBT system should be restructured.

- Page 18, under *The department's card distribution practices are wasteful and need re-evaluation* section:

We do not disagree with the assessment that "...participants abuse the free replacement card practice ..." because the argument whether the Department should charge for the replacement of the EBT cards has been repeatedly debated since the initial start up of Hawaii's EBT program. However, we disagree with the assessment that "... the department fails to recognize the staff time and related cost involved in issuing new cards." The actual process to issue a new or replacement card takes no more than 2 minutes by the card issuance staff. However, if the Department were to reconsider its practice of requiring the applicants to return to the office to obtain their EBT cards, it will require more time by the clerical staff as they will have to re-request an identification card from the applicant, do a query into the HAWI system to determine the status of the applicant, i.e., to

confirm the individual's application was approved, obtain the authorization form from the EW if it was not already completed, and then issue the card to the individual.

The Department decided against charging a replacement fee for cards lost, stolen or damaged because the reasons for free replacements far outweighed against the imposition of a fee. The reasons for not imposing a fee were:

Imposing a fee may cause a financial hardship on the clients who can least afford it;

Collections of the fee will cause another layer of "checks and balances" procedures that need to be established at the line units. Assigning the tasks to collect, record, store, reconcile and settle the funds received on a daily basis would be an added responsibility that the staff at the line units would have to deal with while they are already dealing with hectic schedules; and

Staff at the line units may have to deal with more irate clients who need their cards to access their benefits but are unable to pay for the replacement.

- Page 19, under *The department should consider charging participants for card replacements* section:

For the reasons cited in the above response, the Department is disinclined to impose a fee for card replacements.

- Page 19, under *The department does not sufficiently use EBT data to preserve program integrity* section:

The audit cited the failure of the EBT office to utilize the Even-Dollar Amount report to assist in the identification of fraudulent activities, and claimed the data could be downloaded onto a personal computer "so that the data could be manipulated." The Department does not dispute the contention that the data could be downloaded onto a personal computer; however, we wish to make the point that because the report is so voluminous, the downloading of the data may prove to be too impractical to consider. The sheer size of the report data will not only tie up the PC for an extended period of time, but the size of the report may be too large for the usual PC programs, i.e., Excel, Lotus, etc., for this to be considered practical.

- On page 23 it states, the Department should "require eligibility units to use the Hawi-generated form letter to verify rental expenses". We disagree with this statement. While such a letter would be sufficient to verify rental expense, it is not required under federal law. The Department's current method of verifying rental expense has been determined to be adequate by the federal Food Nutrition Service. We see no reason to spend additional staff time and resources changing a federally approved practice.

Findings With Which the Department Agrees

- On page 12 it states, "Managers are not held accountable for not meeting corrective action plan requirements". We agree with this statement and will review how best to address this issue in the interest of improving accountability and improving overall program performance.

- On page 14 it states, "Inadequate worker maintenance renders 'alert functions' ineffective as a case management tool". We agree with this statement. Management evaluations, conducted by the Department, have pointed this out in the past. The Department will follow-up to see that this issue is addressed.

- Page 20, under *The department does not sufficiently use EBT data to preserve program integrity* section:

The audit states, "The department also lacks written policies and procedures to describe the EBT section's responsibilities identifying fraudulent activity by participants." The Department does not refute this claim and the EBT office has been unable to perform in this area because the responsibilities to research and pursue fraudulent activities on an ongoing basis are supposed to fall under the purview of a third EBT position, which is currently vacant. The EBT manager's assistant identified in this report is primarily responsible for the monitoring of the EBT operations as it pertains to the retailers and financial institutions, and does fraud research as her time permits. The current vacant EBT position, which still needs to be established, was given to the EBT office to assist in the monitoring of the EBT operations as it pertains to the unit and client functions. The EBT office will seek to establish this position as expeditiously as possible. When this position is established, the EBT office can then develop the necessary procedures to deal with the fraud activities of the office.

- Page 21, under *The department ineffectively monitors unauthorized access of the EBT system* section:

Without giving the Department's security officer adequate time to conduct the research on the reported discrepancy in the number of authorized users, we cannot refute the claim relating to the "inaccuracies in the security officer's list." We are aware that the security officer does manually maintain the list of authorized users and the EBT office will work with the security officer to reconcile his list with the contractor's known authorized users. We will re-request the EBT contractor to provide an updated list of users with the State's known users and monitor the security officer to ensure the list is updated on a regular basis.

Audit Report Recommendations.

1. We agree with the recommendation that the Department should hold Department managers accountable for the completion of case reviews. This matter will be pursued.
2. We feel that the Department already considers system wide causes and solutions when management evaluations and quality control identify problems at more than one unit. Many system solutions have been implemented for the system.
3. Follow-up procedures will be considered as it relates to management evaluations. However, there are not adequate resources to follow-up in the way recommended in this report. Rather, proper infrastructure must be fine-tuned to produce quality results the first time.

4. We disagree with the recommendation for the supervisors to use checklists for case file reviews. The DHS 1241 form is used today and is adequate for that purpose, and an entry can be made to indicate the review date.
5. We disagree with the recommendation to use a HAWI-generated form letter to verify rental expense. As noted earlier, while this would be satisfactory, it is not necessary. Current Department practices are approved by the federal Food Nutrition Service.
6. We disagree with the issue of improving EBT Card Inventory Control. The Department has established its procedures and practices to facilitate delivery of services to our clients. The auditor's recommendation, to limit access to EBT cards by supervisors, would be onerous in many cases, and would create a poor environment for service delivery. The only other option would be to have the contractor issue the cards which would result in significant time delays.
7. This recommendation calls for a cost-analysis for EBT card replacement. We have already considered this and detailed, above, our reasons for not charging a fee for EBT replacement cards.
8. This recommendation to have the EBT coordinator work with the Office of Information Technology to improve transaction reports will be considered.
9. This recommendation will be considered once a 3rd EBT person is hired for the Unit.
10. This recommendation suggests regular reviews of authorized user lists to ensure system security. We have indicated that we will follow-up with the security officer and the contractor to ensure that an accurate user list is maintained.

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

July 30, 2003

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, HI 96813-2917

RECEIVED
JUL 30 9 20 AM '03
OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

My name is Lucille Caba, I am secretary to Lillian B. Koller, Esq., Director of the Department of Human Services. I am hand delivering the attachments for the DHS response to your draft "*Audit of the Department of Human Services' Electronic Benefit Transfer (EBT) Program.*" In my effort to hand deliver the response letter to meet the deadline of July 28, 4:30 p.m., I did not attach the attachments as requested by Ms. Koller. I realized this morning of my mistake and want to bring it to you attention and want the attachments as part of the official record. I am sorry for this inconvenience and hope that you can place the attachment with the response letter as part of the official record. I apologize for this and hope this will not affect the official response from DHS.

Should you need to speak to me, please call me at 586-4997.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lucille Caba".

Lucille Caba
Secretary

LINDA LINGLE
GOVERNOR
OFFICE OF DIRECTOR
DEPT OF HUMAN SERVICES
STATE OF HAWAII



Dir/Dir

MARK J. BENNETT
ATTORNEY GENERAL

RICHARD T. BISSEN, JR.
FIRST DEPUTY ATTORNEY GENERAL

2003 JUL -8 A 10:34

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

7/8 C. BISSD

July 7, 2003

VIA FACSIMILE # 587-0830 AND HAND-DELIVERY

The Honorable Marion M. Higa
State Auditor, State of Hawaii
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

At my request, Deputy Attorney Diane Kishimoto has concluded the first portion of her investigation concerning the manner in which your auditors obtained certain confidential food stamp information. Our preliminary investigation reveals that your office unquestionably obtained information from the Benefit, Employment and Support Services Division ("BESSD") in violation of federal regulations relating to food stamps. The reasons why this occurred are less clear, because the perspectives and recollections of members of your staff may be different than the perspectives and recollections of employees of the Department of Human Services.

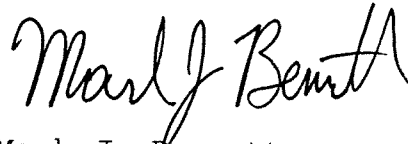
Ms. Kishimoto has concluded that in order to complete her investigation, it is imperative that she be able to interview Ganson Li, and that it would be helpful were she able to interview Carrie Nagai, Doug Chun, Tony Smalley, Jan Yamane, and possibly Melanie Chinen.

I would appreciate it if you would let me know as soon as possible your position with regard to these interviews. I would also be happy to meet with you to informally share some of what Ms. Kishimoto has learned in her investigation.

The Honorable Marion Higa
July 7, 2003
Page 2

I look forward to hearing from you or speaking with
you about this matter.

Very truly yours,

A handwritten signature in black ink, reading "Mark J. Bennett". The signature is written in a cursive, flowing style with a large, stylized "M" and "B".

Mark J. Bennett
Attorney General

MJB:jc

cc: Lillian B. Koller ✓
Director
Department of Human Services



03 0579

United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

JUN 27 2003

The Honorable Linda Lingle
Governor of Hawaii
State Capitol
Executive Chambers
Honolulu, Hawaii 96813


Dear Governor Lingle:

I am pleased to advise you that based on Hawaii's Food Stamp Program (FSP) payment error rate for fiscal year (FY) 2002, Hawaii will receive additional funding for its administration of the FSP.

Under the Food Stamp Act of 1977, if a State's error rate is 5.9 percent or lower, it is eligible to receive additional administrative reimbursement for FSP expenses. Hawaii's error rate for FY 2002 was 5.03 percent, which increases your enhanced administrative funding level to 59 percent for that year. The Department of Agriculture will transfer \$1,476,790 to you in the near future.

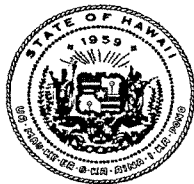
I personally want to commend you for this achievement and encourage you to continue your efforts to improve program integrity, program access and the overall administration of the FSP.

Sincerely,


Eric M. Bost
Under Secretary
Food, Nutrition, and Consumer Services

cc: Ms. Lillian B. Koller

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL
RICHARD T. BISSEN, JR.
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

Health & Human Services Division
465 South King Street, Room 200
Honolulu, Hawaii 96813
(808) 587-3050 Fax (808) 587-3077

C: BISSD
SSD
WIT

July 14, 2003

Lillian Koller, Director
Department of Human Services
1390 Miller Street, Room 209
Honolulu, Hawaii 96813

Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

Re: Office of the Auditor / Access to Department of Human Services' Databases

Dear Ms. Koller and Ms. Higa:

As you know, the Office of the Auditor ("Auditor") had requested unfettered access to the Department of Human Services' ("DHS") databases: the Hawaii Automated Welfare Information System (HAWI) and Child Protective Services System ("CPSS"), in order to conduct an audit of DHS. The Hawaii State Constitution places a duty upon the Auditor to conduct audits, and state law authorizes the Auditor to access the information necessary to perform such audits. However, federal and state laws clearly require DHS to maintain the confidentiality of information contained in HAWI and CPSS, and to limit the purposes for which such information may be disclosed. We have analyzed the laws authorizing the Auditor to access information and the laws that require DHS to keep information confidential. With respect to HAWI, because disclosure to the Auditor of information obtained from food stamp applicants and recipients is not authorized by federal law, and because the design of the HAWI program prevents DHS from separating protected food stamp information from other non-protected information, DHS cannot provide the Auditor unfettered access to HAWI. However, DHS may provide the necessary information to the Auditor in redacted form. With respect to CPSS, state law specifically requires that reports on child abuse remain confidential. Thus DHS may not permit the Auditor to have unfettered access to CPSS. However, DHS may provide the necessary information to the Auditor in redacted form.

I. ACCESS TO HAWI.

The HAWI database contains information on all DHS federal and state financial programs: Aid to the Aged, Blind and Disabled (AABD); General Assistance (GA); Temporary Assistance to Needy Families (TANF); Temporary Assistance to Other Needy Families (TAONF); Medicaid; Quest; Food Stamps; and Child Care. The federal programs, TANF, Medicaid, and Food Stamps, are governed by federal law, the state programs by state law. According to DHS, information in the HAWI database is organized by case only, not by program, and it is impossible to restrict access to only certain cases. Additionally, for each case, it is impossible to restrict access to only certain financial assistance programs. Therefore, once a person is provided access into the HAWI system, that person would be able to access all DHS financial assistance programs.

A. State Law.

1. Hawaii State Constitution. The Hawaii State Constitution provides that “[i]t shall be the duty of the auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions” Haw. Const. art. VII, § 10.

2. Section 23-5, HRS. Section 23-5, Hawaii Revised Statutes (“HRS”), provides that the Auditor “may examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office, agency, and political subdivision.” § 23-5, HRS (2002 Supp.).

3. Section 346-10, HRS. Section 346-10(a), HRS, provides that DHS maintain records and that all “records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:” § 346-10(a), HRS.

4. Section 346-11, HRS. Section 346-11, HRS, provides that

Any person, including any person acquiring information through inspection permitted the person or another under section 346-10, who, knowing the information to have been acquired from the confidential records or files of the department of human services, intentionally divulges the same other than as authorized by law, or who intentionally and knowingly aids or abets in the inspection of such applications or records by any person unauthorized to inspect the same under this chapter or other provisions of law, shall be guilty of a violation.

§ 346-11, HRS.

5. Section 17-601-3(c)(6), HAR. Hawaii Administrative Rules ("HAR") section 17-601-3(c)(6) authorizes disclosure of DHS financial assistance records for audit purposes.

Therefore, with respect to DHS state financial assistance programs, access to such information by the Auditor is permitted. However, HAWI contains information on both federal and state financial assistance programs, and DHS is required to operate in accordance with the applicable federal laws.

B. Federal Law.

1. TANF. The protection of TANF information is governed by 45 CFR section 205.50. Pursuant to this federal regulation,

A State plan for financial assistance under title IV-A of the Social Security Act, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with:

* * *

(E) Any audit or similar activity, e.g., review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity.

* * *

(iii) Disclosure of any information that identifies by name or address any applicant or recipient to any Federal, State, or local committee or legislative body other than in connection with any activity under paragraph (a)(1)(i)(E) of this section is prohibited.

45 CFR § 205.50(a). Federal law requires DHS to provide access to TANF records for audit purposes. Hawaii Administrative Rules section 17-601-3(c)(6) authorizes disclosure of DHS financial assistance records for audit purposes. Therefore, with respect to TANF, a DHS financial assistance program, access by the Auditor is permitted.

2. Medicaid. The disclosure of Medicaid information is governed by 42 CFR section 431.300, et seq. Pursuant to this federal regulation,

A State plan must provide, under a State statute that imposes legal sanctions, safeguards meeting the requirements of this subpart that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of this plan.

42 CFR § 431.301. Federal law does not prohibit access by the Auditor, but requires DHS to restrict access appropriately. Hawaii Administrative Rules section 17-1702-5(e) authorizes the disclosure of Medicaid records for audit purposes. Therefore, with respect to Medicaid, access by the Auditor is permitted.

3. Food Stamps. The protection of information regarding the Food Stamp program is governed by 7 CFR section 272.1(c), which requires that

[u]se or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to: . . .

7 CFR section 272.1(c). The regulation lists parties who are authorized to receive information regarding food stamp applicants and recipients. Disclosure to the "Comptroller General's Office of the United States for audit examination authorized by any other provision of law" is permitted. 7 CFR section 272.1(c)(v). However, disclosure to a state government office for audit examination is not specified as a permitted disclosure. Pursuant to 7 CFR section 276.1, failure to comply with the food stamp regulations could result in a suspension or disallowance of federal reimbursement for the state agency's administrative costs.

There appears to be a conflict between the federal law, 7 CFR section 272.1(c), which restricts disclosure of information regarding food stamp applicants and recipients, and (i) article VII, section 10 of the Hawaii State Constitution, which requires the Auditor to conduct audits, (ii) section 23-5, HRS, which authorizes the Auditor to access such information for the purpose of conducting such audits, and (iii) section 17-601-3(c)(6), HAR, which authorizes disclosure of DHS financial assistance records for audit purposes.

Here, despite the seeming conflict, 7 CFR section 272.1(c) does not prevent the Auditor from conducting audits, nor does it prevent the Auditor from accessing information necessary to prepare such audits. Rather, 7 CFR section 272.1(c) simply limits the manner in which the Auditor may access the necessary information. Because information in HAWI is organized by case, once access to HAWI is provided, it would be impossible for DHS to prevent access to the protected food stamp information. Therefore, in order to comply with federal law, DHS must prohibit the Auditor from having unfettered access to HAWI. DHS is not, however, prohibited from providing information to the Auditor after redacting references to the protected food stamp information, so that the Auditor may conduct her audit.

II. ACCESS to CPSS.

The CPSS database contains child abuse and neglect reports and records, as well as information on all child protective court proceedings.

A. Federal Law.

DHS' Child Welfare Services Branch is regulated in part by the U.S. Department of Health and Human Services. Specific to DHS' Child Welfare Services Branch are federal regulations found in subchapter E of Title 45, Administration for Children, Youth and Families:

Child Abuse and Neglect Prevention Treatment Program. Pursuant to 45 CFR section 1340.14(i), a state may, by statute, authorize disclosure to

[a]n appropriate State or local official responsible for administration of the child protective services or for oversight of the enabling appropriating legislation, carrying out his or her official functions.

45 CFR § 1340.14(i)(2)(x) (emphasis added). Thus, federal law permits disclosure to the Auditor if provided for by state statute. Federal law does not require disclosure to the Auditor.

B. State Law.

As stated above, article VII, section 10, of the Hawaii State Constitution and section 23-5, HRS, require the Auditor to conduct audits and authorizes access to necessary information, respectively. However, the respective constitutional and legislative history does not indicate that such duty and authority remain without limitation. There are several state statutes specific to DHS that limit access to DHS records, including sections 346-10(b), 350-1.4, and 587-81, HRS.

1. Section 346-10(b), HRS. Section 346-10(b), HRS, states

[d]isclosure to any committee or legislative body (federal, state, or local) of any information that identifies by name and address any such applicant or recipient; and publication of lists or names of applicants and recipients shall be prohibited.

§ 346-10(b), HRS. Chapter 346 does not define "legislative body," nor is it defined in Hawaii case law.¹ However, the term has been defined as a "body which declares policy and makes provisions for ways and means of accomplishing declared policy." 24A Words and Phrases "Legislative Body" (Supp. 2002). If the Auditor is a legislative body, then direct access by the Auditor to CPSS is prohibited, as direct access would allow the Auditor to have "information that identifies by name and address any such applicant or recipient;" clearly a violation of section 346-10(b), HRS.

¹ Chapter 89, HRS, Collective Bargaining in Public Employment, defines "legislative body" as "the legislature in the case of the State, including the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation; the city council, in the case of the city and county of Honolulu; and the respective county councils, in the case of the counties of Hawaii, Maui, and Kauai." § 89-2, HRS (Supp. 2002). This specific definition is likely applicable only to chapter 89, HRS.

Pursuant to article VII, section 10, of the Hawaii State Constitution, the Auditor is appointed by the Hawaii State Legislature and "shall also make such additional reports and conduct such other investigations as may be directed by the legislature." Additionally, "funds for the support of the auditor's office shall be provided for in the act providing for the expenses of the legislature." § 23-3, HRS. Thus, the Auditor is seemingly a part of the legislative branch of government. However, it is unlikely that the Auditor would be considered a "legislative body," as the Auditor is not a "body which declares policy." Therefore, although not entirely certain, it is unlikely that section 346-10(b), HRS, would prohibit access by the Auditor to CPSS.

2. Section 350-1.4, HRS. Pursuant to section 350-1.4, HRS,

(a) All reports to the department concerning child abuse or neglect made pursuant to this chapter, as well as all records of such reports, are confidential. The director may adopt rules, pursuant to chapter 91, to provide for the confidentiality of reports and records and for the authorized disclosure of reports and records. Any person who intentionally makes an unauthorized disclosure of a report or record of a report made to the department shall be guilty of a misdemeanor.

(b) Every reasonable good faith effort shall be made by the department to maintain the confidentiality of the name of a reporter who requests that the reporter's name be confidential.

(c) Notwithstanding subsection (a) and section 346-10, the director may adopt rules pursuant to chapter 91 to provide for the release of information required by federal statute or regulation.

§ 350-1.4, HRS. CPSS contains information on child abuse and neglect reports. Pursuant to section 350-1.4, HRS, such information is confidential and may only be released pursuant to rules adopted in accordance with chapter 91, HRS. There are no Hawaii administrative rules that permit disclosure of CPSS information to the auditor. Section 17-920.1-8(c)(9), HAR, authorizes disclosure to

State and local officials responsible for administration of child protective services programs, legislation or registration in order to carry out official functions.

§ 17-920.1-8(c)(9), HAR. However, the Auditor is not "responsible" for the "administration," "legislation," or "registration" of the child protective services program; therefore access to the Auditor is not provided for in the rules. As such, providing the auditor unfettered access to CPSS would violate section 350-1.4, HRS, until appropriate rules are adopted. However, section 350-1.4, HRS, does not prohibit DHS from providing the necessary information to the Auditor after the protected information has been redacted.

3. Section 587-81, HRS. Pursuant to section 587-81, HRS,

The court shall keep a record of all child protective proceedings under this chapter. The written reports, photographs, x-rays, or other information of any nature which are submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court after the court has determined that such access is in the best interests of the child or serves some other legitimate purpose; provided that the department may disclose, without order of the court, such information as is in the court record in the manner and to the extent as is set forth in departmental rules that have been legally promulgated and concern the confidentiality of records; provided that:

- (1) The department shall not disclose parties' names to researchers without prior order of the court; and;
- (2) The department shall report each disclosure to the court and all parties as part of its next report to the court after the department has disclosed information pursuant to this section.

§ 587-81, HRS. CPSS contains information on child protective proceedings. Pursuant to section 587-81, HRS, such information may be released by DHS only in accordance with rules adopted pursuant to chapter 91, HRS. There are currently no Hawaii administrative rules that permit disclosure of information regarding child protection proceedings. As indicated above, section 17-920.1-8(c)(9), HRS, does not authorize disclosure to the Auditor. Therefore, unless and until an appropriate rule is adopted, unfettered access to CPSS by the Auditor is prohibited. DHS is not, however, prohibited from providing information to the Auditor and may provide the necessary information after redacting all references to the protected information.

III. CONCLUSION.

With respect to HAWI, federal law prohibits the Auditor from accessing information regarding food stamp applicants and recipients. Access to the remaining financial assistance programs is permitted. However, if the Auditor were granted access to HAWI, there would be no way to prevent the Auditor from accessing information on food stamp recipients and applicants. Therefore, unfettered access to HAWI must be prohibited.

With respect to CPSS, state law expressly prohibits disclosure of information contained therein unless permitted by Hawaii administrative rules. There are no Hawaii administrative rules that provide for disclosure of such information to the Auditor. As such, unfettered access by the Auditor to CPSS is prohibited unless and until an appropriate rule is adopted.

The foregoing restrictions to providing the Auditor unfettered access to HAWI and CPSS do not bar the Auditor from carrying out her constitutional duty nor do they prevent the Auditor

Lillian Koller
Marion Higa
July 14, 2003
Page 8

from accessing the necessary information. DHS may provide the necessary information to the Auditor, albeit in redacted form.

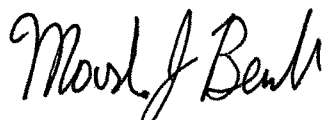
Very truly yours,



for

Candace J. Park
Deputy Attorney General

APPROVED:



MARK J. BENNETT
Attorney General

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

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July 18, 2003

VIA FACSIMILE

Kerry M. Komatsubara, Esq.
Furutani Sato & Komatsubara
Suite 600, Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813

Dear Mr. Komatsubara:

Re: State Auditor's Access to DHS Databases

Thank you for your letter of July 9, 2003. I understand that you met on July 16 with Deputy Attorneys General Diane Kishimoto and Heidi Rian and that your discussion with them covered many of the points you raise in your letter. I would like to confirm that discussion and address some issues that may not have been raised at the meeting.

1. Scope of audit. DHS personnel did not expect that an audit of the EBT system would entail a review of food stamp information. This expectation is reasonable and understandable. The EBT system is the means by which certain public assistance benefits, including food stamp benefits, are issued. It is not the process by which eligibility for food stamps and other public assistance benefits is determined. The Auditor's letter of January 13, 2003, to Patricia Murakami, then acting director of the Department of Human Services, says only that "[t]he objectives of the audit are to: 1. Assess the adequacy of the department's procedures and safeguards to reduce unauthorized benefits and inaccurate data; 2. Assess the department's effectiveness in administering the electronic benefit transfer program. 3. Make recommendations as appropriate." It would be difficult for anyone reading the January 13 letter to conclude that the Auditor would be reviewing the food stamp program itself.

Why does the scope of the audit matter? First, DHS was not able to raise its concerns about the propriety of the Auditor's review of the food stamp program early enough to affect the planning and preparation for the audit. Second, the Auditor's lack of clarity in communicating her

objectives impeded DHS' right (which the Auditor acknowledges) to properly safeguard restricted information. If line workers did not redact all restricted food stamp information, it was because they did not know that the Auditor's staff would be looking at records containing restricted information. Properly sanitizing records is very labor intensive but can be done with adequate staffing and advance notice.

2. Confidential information.

You are correct that our concern is the confidentiality of restricted information under federal law. For present purposes we are focusing on the EBT audit, which raises the issue of restricting access to information "obtained from food stamp applicant or recipient households" under 7 CFR section 272.1(c). We have not had the opportunity to look into the type of Child Protective Services system ("CPSS") information which the Auditor requested or to which her staff may have had access.

- a. Obligation to keep confidential. You are also correct that DHS has the responsibility to prevent unauthorized access to information "obtained from food stamp applicant or recipient households." However, we understand that there were extensive discussions at the supervisory level between DHS and the Auditor's office concerning access to food stamp information in connection with the CPSS audit. DHS informed the Auditor of the federal prohibition against providing her staff access to food stamp information. We do not know yet to what extent the staff member conducting the EBT audit was aware of this prohibition. We do know that he insisted on being given restricted information, such as food stamp program case files, after he had been told that he could not see it. But even if the Auditor is not charged directly with restricting access to food stamp information, we question whether it is proper for the Auditor's staff to insist on obtaining it after supervisory personnel in her office were informed of the regulation prohibiting access. We believe, as your letter implies, that this knowledge does require the Auditor's office to refrain from obtaining and using restricted information.

At your request, Ms. Kishimoto is sending you (separately) a list of the questions that we need answered by the staff member who conducted the audit. It will include the question of what he knew about the confidentiality of this information. As Ms. Kishimoto mentioned to you, it is important for us to determine what happened in this instance so that we can avoid similar problems in the future. I believe it is necessary for her to interview him in person and would appreciate your assistance in making him available.

- b. Redaction of records. As we explain in our July 14, 2003, letter to the Auditor and to the Director of the Department of Human Services, sent on July 16, protected records may be provided to the Auditor and her staff in redacted form. This was done in some DHS offices that the Auditor's staff visited for the EBT audit, but not

in others. To the extent that the Auditor's staff has any copies of documents, or personal notes, that include restricted information, we ask that those documents be returned to us. We will ask DHS staff to redact them and return them to you.

- c. No applicant or recipient information in report; DHS response to draft report. Like you, we did not identify any restricted information in the draft report itself. However, we cannot agree on DHS' behalf to the publication of the draft report in its current form. Because attention has been focused on the issue of access to restricted information, DHS has not yet had the opportunity to respond to the substance of the report. It should have that chance. We anticipate that the response will be ready by July 26 and are confirming that date with our client.
- d. No agreement regarding audit of food stamp program.
 1. You are correct that there is no executed agreement concerning the Auditor's access to food stamp program information.
 2. The Auditor's staff was advised about the federal restriction on access to food stamp program information. There were extensive discussions between the Auditor's office and DHS about access to food stamp program information in connection with the audit of the CPSS. DHS personnel made it very clear to the Auditor's staff that access to the database containing food stamp information could be allowed only if the focus of the audit was not the food stamp program, and that food stamp program information was restricted. The discussions were in connection with the CPSS audit and not the EBT audit, but this does not change the fact that the Auditor was on notice about the restriction. DHS personnel did not raise the issue with respect to the EBT audit at the time of the CPSS audit discussions because they did not know that the EBT audit would entail review of food stamp information.

Although we would still like to talk to the staff member who conducted the EBT audit, based on what we know now the problems in this case seem to have developed for two reasons. First, there was no clarity over what the EBT audit would include. Second, because of the lack of clarity, the issue of restricted access to food stamp information was not resolved early enough for the audit to proceed smoothly. We support your suggestion that the Auditor develop an approach to audits that would avoid these difficulties. Early and specific identification of the

Kerry M. Komatsubara

July 18, 2003

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information required for the audit would be essential. Our client programs may then contact us to identify and explain any legal barriers that could restrict free access to information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark J. Bennett", with a long horizontal stroke extending to the right.

Mark J. Bennett
Attorney General

c: Hon. Lillian Koller
Diane Kishimoto ✓
Heidi Rian

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July 9, 2003

Sent by telefax (587-3077)

The Honorable Mark J. Bennett
Attorney General
State of Hawaii
465 South King Street, Room 200
Honolulu, Hawaii 96913

Re: State Auditor's Access to DHS Databases

Dear General Bennett:

We represent the Office of the State Auditor ("Auditor") regarding the above-referenced matter and are responding to Lillian Koller's letter of May 15, 2003, and your letter of July 7, 2003, both addressed to the Auditor. We have reviewed your letter, Ms. Koller's letter and the February 3, 2003 Memorandum from Candace J. Park, Deputy Attorney General, to Melanie Chinen, Deputy Chief of Staff of the Office of the Governor and respond as follows¹:

RESPONSE TO KOLLER LETTER

1. Scope of Audit. Initially, we note that the Auditor initiated the audit of the State of Hawaii Department of Human Services ("SDHS") as part of its continuing obligation to audit the transactions, accounts, programs and performance of all departments, office, and agencies of the State. See, Section 23-4, Hawaii Revised Statutes. The purpose of this audit was to assess the "department's effectiveness in administering the EBT system."² As noted on Page 1 of the draft report, after auditing the SDHS's EBT system, the Auditor became concerned that "the department's decreasing food stamp payment accuracy rating and previously cited management control deficiencies raise concerns that these deficiencies may affect the EBT system's effectiveness." As such, this audit was, among other things, a follow up on two prior audits of SDHS which revealed significant problems in the SDHS's management controls in connection with the operation of its EBT system. See, Report No. 94-5, *Financial Audit of the Department of Human Services*, and Report No. 98-14, *Financial Audit of the Department of Human Services*. Thus, the Auditor feels that the scope of

¹ We apologize for the delay in responding to Ms. Koller's letter. The staff person most familiar with this audit was on extended family leave and only recently returned.

² "EBT" means the SDHS's Electronic Benefit Transfer system used to distribute Federal Food Stamp program benefits.

its current audit is appropriate since it builds upon prior audit reports concerning, among other things, SDHS's management of its programs.

2. Confidential Information Issue. Other than to note that the Auditor's draft report "has raised serious legal issues of Federal law that must be addressed prior to publication of [the] report," there is nothing in Ms. Koller's May 15, 2003 letter which attempts to outline the substantive federal law issues that concern the SDHS with respect to the report. Subsequently, we received a copy of Ms. Park's memorandum of February 3, 2003, and we concluded that Ms. Park was concerned about the disclosure of information to the Auditor which should have been kept confidential by the SDHS.³ Please advise us immediately if we are incorrect in our assumption that these confidentiality concerns are the "serious issues of Federal law that must be addressed" prior to the issuance of the Auditor's report.

Based on the assumption that your only concern is the preservation of the confidentiality of applicant or recipient provided information, we advise you of the following in connection with the audit of the EBT Program of which the Hawaii Automated Information System (HAWI") is a part thereof:⁴

a. Obligation to Keep Confidential. We understand that pursuant to 7 C.F.R. 272.1(c), it is the obligation of the SDHS to keep certain information "obtained from food stamp applicant or recipient households" confidential and to restrict access to the same to certain specific parties, which may not include the Auditor. Thus, the Auditor is not the person or entity that is charged with restricting access to information on HAWI or EBT – it is the SDHS.⁵ In fact, the Auditor, in conducting its audit and obtaining information necessary for it to complete its audit, assumes that all information (unless it is specifically advised that it is confidential) is not confidential to the Auditor and can be used by the Auditor for audit purposes.⁶ Therefore, the Auditor has not violated any federal law to which it may be subject and

³ Ms. Park outlined two areas of concern. The first was with respect to the Federal Food Stamp program, which was the subject of your letter. The second was the CPSS (Child Protective Services System) EBT system. The CPSS matter was not raised in your letter so we and the Auditor assume that the CPSS matter need not be addressed in this letter.

⁴ HAWI is, among other things, the SDHS's food stamp system.

⁵ We understand that 7 U.S.C. Section 2020(e)(8) requires that each State plan of operation provide for "safeguards which limit the use or disclosure of information obtained from applicant households." Since this duty is particular to the SDHS, the Auditor, unless specifically advised by the SDHS, has no knowledge of the same.

⁶ The Auditor keeps its work papers confidential and, to the extent that information is provided but is not used as part of its audit report, any information provided to the Auditor would be kept confidential subject to applicable law.

has no "serious issues of Federal law that must be addressed" prior to the issuance of its report.

b. SDHS Personnel Redacted Records. We have been informed by the audit staff responsible for this audit that the Auditor did not object to the the SDHS staff's redacting of its records which contained information provided by individual applicants or recipients. In other words, the SDHS, apparently in an attempt to comply with its obligations under federal law, provided information and documents to the Auditor with all information obtained from applicants or recipients (such as name, address and social security number) removed or blacked out. The Auditor then justifiably assumed that all remaining portions of the documents or information could be used as part of its audit of the SDHS' EBT system without limitation pursuant to Chapter 23, Hawaii Revised Statutes. Therefore, to the extent that the SDHS inadvertently violated federal law, the Auditor is willing to cooperate with the SDHS in ameliorating the effect of any such violation so long as it does not delay the finalization and issuance of its audit report.

c. No Applicant or Recipient Information. After receipt of Ms. Koller's letter and upon review of the draft report, it is apparent that no information "obtained from food stamp applicants or recipient households" was disclosed in the draft report provided to you. As we read 7 C.F.R. 272.1(c), not all information concerning food stamps is confidential -- it is only information provided by either an applicant for or recipient of food stamp benefits that is deemed confidential and restricted as to use or disclosure. Much, if not all, of the information used in the audit and the report concern the management and financial performance of the SDHS. In fact, much of the information (such as error rate, rank and enhanced funding for prior years) are readily available to the public and published by the United States Department of Human Services ("DHS"). Therefore, unless you can point out specifically what confidential information was obtained, used and would be published by the Auditor in its audit report, the Auditor will, in accordance with the Auditor's schedule, release the report in its present form.

d. No Agreement Regarding Audit of Food Stamp Program. In her memorandum, Ms. Park in Footnote 1 on Page 2, states that the U.S. Department of Agriculture authorized the SDHS to allow the Auditor to "access HAWI, with the understanding that the State Auditor is not going to be viewing the food stamp program information and would not make any findings with respect to the food stamp program." She goes on to state that "the proposed agreement between [SDHS] and the State Auditor would serve to assure [SDHS] that the State Auditor would not view or utilize the food stamp records contrary to the U.S. Department of Agriculture's request." In connection with Ms. Park's statement, we note:

(1) No agreement regarding the production of information and documents by the SDHS was finalized. The Auditor's staff advised that no such

agreement was ever executed by the Auditor. However, if such an agreement was, in fact executed, we would appreciate your sending a copy to us.

(2) The draft agreement provided to us by the Auditor's staff does not refer to or outline the nature and extent of the U.S. Department of Agriculture's authorization to allow access to HAWI by the Auditor's staff. In fact, there is no mention in the draft agreement that the Auditor would have no access to food stamp program information and would not be making any findings regarding the food stamp program.⁷ If there was, the Auditor would have objected to the same.

(3) Finally, the Auditor's staff could not recall being advised by any SDHS personnel, either at the initiation of the audit or during the State Auditor's field work, that the Auditor and its staff would not be allowed access to food stamp information and would not be allowed to report its findings on the EBT program, including the food stamp program portion of the EBT program. This is consistent with the Auditor's prior experience with its 1994 and 1998 audits of the SDHS where the food stamp program was one of the programs audited and in which management problems surfaced. It would be inconceivable for the Auditor to audit the EBT system without focusing on the management and other issues raised in its prior reports. Thus, at no time did anyone at SDHS advise the Auditor or its staff that it could not review or report on the EBT program, including the food stamp program portion of the EBT program.

RESPONSE TO BENNETT LETTER

With respect to the matters addressed in your letter of July 7, 2003, I note that the Auditor, as noted above, disagrees with your statement that the Auditor "unquestionably obtained information from the Benefit, Employment and Support Services Division ("BESSD") in violation of federal regulations relating to food stamps." To the extent that any information was provided by BESSD to the Auditor, the Auditor and its staff assumed that such information could be provided to the Auditor and to the extent that information could not be provided the BESSD personnel would either redact the information (as was done in several instances) or would refuse to provide the same. Thus, any intimation that the Auditor or its staff violated any federal regulations is unfounded. This is simply because it is the obligation of the BESSD to protect the confidentiality of information that must be protected.

In any event, I have been authorized to meet with Ms. Kishimoto to discuss her preliminary findings. I note, however, that the meeting must be scheduled prior to close

⁷ The draft agreement only cites to 7 C.F.R. 272.1(c) without explanation. However, as noted above, 7 C.F.R. 272.1(c) refers to the SDHS's obligation to keep certain information provided by applicants or recipients confidential. There is no general provision regarding keeping all food stamp information and documents confidential.

The Honorable Mark J. Bennett
July 9, 2003
Page 5

FURUTANI SATO & KOMATSUBARA
ATTORNEYS AT LAW

of business on July 14 if you wish the meeting to occur prior to the release of the report in final form.

Given the foregoing, the Auditor, unless further information or clarification is received immediately or a meeting with Ms. Kishimoto is scheduled, will finalize and issue its report. Thus, unless we hear from you by the close of business (4:30 p.m.) on July 14, 2003, we will assume that the foregoing adequately responds to the concerns raised in Ms. Koller's May 15, 2003 letter and your letter of July 7.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Furutani Sato & Komatsubara
Attorneys at Law

By 
Kerry M. Komatsubara

cc: Diane Kishimoto, Esq. (sent by telefax 587-3077)

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July 18, 2003

Sent by telefax (586-1239)

The Honorable Mark J. Bennett
Attorney General
State of Hawaii
465 South King Street, Room 200
Honolulu, Hawaii 96913

Re: State Auditor's Access to DHS Databases

Dear General Bennett:

We represent the Office of the State Auditor ("Auditor") regarding the above-referenced matter and are responding to your letter of July 14, 2003, addressed to Ms. Lillian Koller and the Auditor.

I met with Diane Kishimoto and Heidi Rian yesterday morning to discuss the issues relating to the Auditor's access to DHS databases. The focus of our discussion was on the Federal Food Stamp program since it seemed that your concern was with the Federal Food Stamp information that was disclosed to the Auditor and not the information regarding CPSS. Thus, we are responding to the Federal Food Stamp aspect of your July 14, 2003, letter.

First, we wish to clarify the meaning of "protected" information. It is my understanding after my meeting with Diane Kishimoto and Heidi Rian that the "protected" or "confidential" information is limited to the information regarding the eligibility of applicants for food stamp benefits. Thus, the information within the HAWI program that identifies the food stamp applicant (e.g., name, address, social security number and any other information that may identify the applicant) and the applicant's financial status (e.g., income, assets, liabilities and dependents) is the information which you seek to have redacted. Please be advised that the Auditor does not disagree with this procedure.

Second, we wish to correct the mistaken belief that the Auditor "requested unfettered access to the Department of Human Services' ("DHS") databases" As stated in my letter of July 9, 2003, we have been informed by the audit staff responsible for this audit that the Auditor did not object to the DHS staff's redacting of its records which contained information provided by individual applicants or recipients.

The Honorable Mark J. Bennett
July 18, 2003
Page 2

FURUTANI SATO & KOMATSUBARA
ATTORNEYS AT LAW

Thank you very much and please feel free to contact me if you have any questions or further comment.

Very truly yours,

Furutani Sato & Komatsubara
Attorneys at Law

By 
Kerry M. Komatsubara

cc: Diane Kishimoto, Esq. (sent by telefax 586-1239)
Heidi Rian, Esq. (sent by telefax, 587-3077)

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August 4, 2003

Sent by Telefax, 587-3077

Heidi M. Rian, Esq.
Supervising Deputy Attorney General
456 South King Street, Room 200
Honolulu, Hawaii 96813

**Re: Audit of the Department of Human
Services' EBT Program**

Dear Ms. Rian:

I am writing to you to respond to portions of Ms. Lillian Koller's letter of July 28, 2003, to Ms. Marion Higa ("State Auditor").

Regarding Ms. Koller's statement in the first sentence of the second paragraph that "the Attorney General's preliminary investigation revealed that your office 'unquestionably obtained information from the Benefit, Employment and Support Services Division ('BESSD') in violation of federal regulations relating to food stamps,'" we wish to point out the following:

1. Although Ms. Koller's statement recognizes that the Attorney General's investigation is "preliminary," we would like to make known that the State Auditor has disputed from the very beginning many of the claims and intimations of the Attorney General's preliminary findings.
2. The Attorney General is still in the process of working with the State Auditor's staff to hear the State Auditor's "side of the story." Thus, the State Auditor believes that there was unjustified haste in making preliminary determinations on this matter by the Attorney General.
3. Although carefully worded, Ms. Koller's statement may give the wrong impression to others that the

State Auditor violated federal regulations and that this was revealed by the Attorney General's investigation. This is hardly the case here. As discussed below, if there is any violation of federal law, it is the violation of DHS and not the State Auditor.

With respect to Ms. Koller's point in the second sentence of the second paragraph that "failure to comply with the food stamp regulations could result in a suspension or disallowance of federal reimbursement for state agency's administrative costs," we would like to make clear that it is DHS's obligation to comply with the food stamp regulations and any intimation that the State Auditor has the responsibility to comply with the food stamp regulations is wrong. Of course, the State Auditor will cooperate with DHS in its efforts to comply with the food stamp regulations, but the compliance responsibility is with DHS and the State Auditor has been relying upon DHS to ensure compliance and provide guidance in order to avoid any compliance violation.

Ms. Koller is incorrect in her statement in the third paragraph of her letter that "[t]he Attorney General's investigation is still on-going and awaiting your [State Auditor's] response to his request to interview a key staff member from your office to determine the reasons why this violation of federal regulations occurred." As you know, Ms. Diane Kishimoto promised to provide me with a list of the specific concerns that the Attorney General has regarding the actions of the State Auditor's staff in performing the EBT Audit. After this list is provided to me, I will discuss the list with the State Auditor's staff and then determine the next course of action to be taken. Thus, at the present time the State Auditor and I are awaiting Ms. Kishimoto's list and any delay to the completion of the Attorney General's investigation is not due to the inaction of the State Auditor. Please advise Ms. Koller of her error.

Furthermore, we disagree with Ms. Koller's statement in the fourth paragraph of her letter of July 28, 2003, where she states, "As the Attorney General noted 'the Auditor's lack of clarity in communicating her objectives impeded DHS' right (which the Auditor acknowledges) to properly safeguard restricted information.'" It is disingenuous to claim that DHS' error, if any, in not properly safeguarding restricted information occurred as a result of "the Auditor's lack of clarity in communicating

Heidi M. Rian, Esq.
August 4, 2003
Page 3

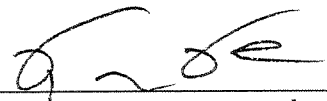
FURUTANI SATO & KOMATSUBARA
ATTORNEYS AT LAW

her objectives." It should be noted that some of the restricted information were redacted from the DHS records, and thus it becomes obvious that the State Auditor's objectives were sufficiently clear for this redaction to have taken place. Why all other restricted information were not redacted is something the State Auditor cannot answer; however we think that it is unfair and unwarranted to lay blame with the State Auditor in this case.

Finally, please be advised that I am not responding to any of the other statements in Ms. Koller's letter of July 28, 2003.

The State Auditor and I look forward to receiving Ms. Kishimoto's list and to bringing this matter to a final conclusion.

Very truly yours,
FURUTANI SATO & KOMATSUBARA

By 
Kerry M. Komatsubara

cc: Diane S. Kishimoto, Esq. (sent by telefax, 586-1372)

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