



**SUFFOLK COUNTY
OFFICE OF THE COMPTROLLER
AUDIT DIVISION**

**Joseph Sawicki, Jr.
Comptroller**

**Investigative Audit of the
Suffolk County Military Payback Program**
For the Period September 11, 2001 to September 30, 2013

**Audit Report No.: 2013-10
Date Issued: October 30, 2013**

**SUFFOLK COUNTY
OFFICE OF THE COMPTROLLER**

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LETTER OF TRANSMITTAL

October 30, 2013

Hon. Steven Bellone, Suffolk County Executive
Hon. Wayne R. Horsley, Presiding Officer of the
Suffolk County Legislature
Members of the Suffolk County Legislature

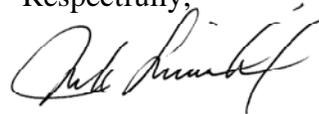
In accordance with the authority vested in the County Comptroller by Article V of the Suffolk County Charter, an investigative audit was conducted of the Suffolk County Military Payback Program (Program) authorized by Legislative Resolution No. 1152-2001 which was enacted subsequent to the events of September 11, 2001 to provide financial support to county employees ordered to active military duty as Reservists or National Guardsmen.

Our objectives were to: identify all extended military leaves with pay taken by employees under the Program; calculate the total amount of military pay required to be remitted to the County as a result of those leaves; determine the remittance status; secure delinquent payments; and evaluate the administration of the Program.

Our audit consisted primarily of inquiries of county employees and management involved in the Program and an examination of related laws and documentation.

We conducted our audit in order to satisfactorily complete our objectives. We believe that our procedures provided a reasonable basis for the findings contained herein.

Respectfully,



Joseph Sawicki, Jr.
Suffolk County Comptroller

EXECUTIVE SUMMARY

Purpose

To identify all extended military leaves with pay taken by employees under the Program; calculate the total amount of military pay required to be remitted to the County as a result of those leaves; determine the remittance status; secure delinquent payments; and evaluate the administration of the Program. Our audit covered the period September 11, 2001 through September 30, 2013.

Background

The Program was operated from September 11, 2001 through late 2012 pursuant to Legislative Resolution No. 1152-2001 and the related Memoranda of Agreement (MOAs) enacted between the County and its labor unions. The Program allowed employees ordered to military duty to choose to remain on the county payroll without the loss of pay or accruals provided they agreed in writing to remit their presumably lesser military pay to the County upon return to work. The Program was fraught with problems from the beginning. County departments, responsible for the administration of the Program, employed varying payback methods and experienced difficulties calculating and recouping amounts owed from participants.

This investigative audit was conducted with the assistance of the Office of Labor Relations, the County Attorney's Office and the District Attorney's Office. From the onset of the audit, the Audit Division was authorized by the Office of Labor Relations to assume an administrative role over the Program going forward. Through various audit procedures, we identified program participants, calculated amounts owed in accordance with the Program from official military pay records obtained from the Federal Departments of Defense and Homeland Security, secured settlement agreements with participants who owed payback to the County, processed the related payments and issued refunds to those who previously overpaid.

Key Findings

- From 2001 to 2012, eighty-six employees from 4 county departments chose to participate in the Program for 105 active duty service periods (some employees participated for more than one service period). We calculated that a total of \$5,825,157 of military pay was owed to the County by these participants under the terms of the 2001 military MOAs. We found that 42% of participants fully remitted their military pay to the County in accordance with the Program, 14% made partial payments and 44% made no payment at all.
- In 2012, in order to avoid continued litigation and to standardize the payback methodology for all Program participants, the Office of Labor Relations negotiated a new uniform military MOA with county labor unions which allowed for a reduced payback amount equal to military basic pay rather than total military pay as previously required by the original 2001 MOAs. This resulted in a \$2.4 million reduction of overall military pay owed to the County under the Program. The new MOAs also allowed for the use of

accruals and payroll deductions as payment methods for the outstanding debts and established a new uniform policy to govern future extended military leaves.

- Our audit determined that under the terms of the 2012 military MOAs, fifty-one employees still owed military pay in the amount of \$1,860,040. Of the 51 employees, we secured repayment agreements with 47, resulting in the recoupment of \$1,673,181 in military debt; two employees still owe \$157,639 and have been referred to the District Attorney's Office and \$29,220 owed by 2 employees was deemed uncollectable due to extenuating circumstances.

\$ 896,373	Forfeited Accruals
418,289	Future Payroll Deductions
358,519	Cash Payments
157,639	Amounts still due
<u>29,220</u>	Amounts uncollectable
\$ 1,860,040	Total Military Pay Owed Per New MOAs

- Refunds equaling \$234,526 were issued through a special payroll on June 20, 2013 to 29 employees who, by virtue of the reduced payback amount required by the new 2012 MOAs, previously overpaid their military debt.
- The original MOAs negotiated by the Office of Labor Relations in 2001 did not establish the Program on a salary differential basis as originally intended by the authorizing legislation. In addition, the Office of Labor Relations did not provide adequate oversight over county departments responsible for Program administration. Specifically, they did not provide written guidelines for departments to follow, they did not maintain an accurate accounting of Program participation and they were lax in handling a labor grievance filed that challenged the County's right under the Program to recoup the allowance component of military.
- Administration of the Program by the Police Department's Human Resources Bureau was comprehensive and provided a full accounting of the 56 departmental employees who participated in the Program. However, thirty-two of these participants did not satisfactorily pay their military debt and the former Police Commissioner did not enforce payment or impose departmental disciplinary actions against any of these individuals.
- Administration of the Program by the Sheriff's Office Human Resources Bureau was seriously inadequate and resulted in a multitude of problems. Among other things, our audit disclosed 12 participants that were never reported to the Office of Labor Relations or our auditors; 9 of them were never asked to submit their military pay in accordance with the Program.
- Administration of the Program by the Probation Department Payroll Office was inadequate. One Probation Officer received full county salary and accruals while on military leave for 19 months even though he did not execute an agreement to participate in the Program. The department did not take any action to secure repayment of the county wages that were overpaid to this employee and to date the employee has not complied

with repeated attempts by our office to correct the matter. The case has been referred to the District Attorney's Office for legal action.

Key Recommendation

- We recommend that the Office of Labor Relations develop a comprehensive policy in the form of a County Standard Operating Procedure and/or Payroll Directive(s) with regard to military leaves in general. The policy should implement the provisions set forth in the 2012 military MOAs and other applicable State and Federal laws and regulations.

SCOPE AND METHODOLOGY

To accomplish the objectives stated in the Letter of Transmittal (p. 1), the following procedures were performed:

- Researched County, State and Federal laws, legislative resolutions, labor agreements and departmental regulations applicable to the Program.
- Obtained and reviewed documentation regarding the Program from county departments including the Office of Labor Relations, County Attorney's Office, Police Department, Sheriff's Office, Probation Department and Department of Public Works.
- Obtained and reviewed military payback information maintained in the County's Personnel Payroll System (PPS) and Information Management System (IFMS).
- Interviewed county personnel involved in the administration of the Program.
- Canvassed all county payroll offices to determine the full scope of program participation.
- Sent confirmation letters requesting active duty information from Sheriff's Office employees whose county records indicated they were military veterans; responses were researched to determine if there were any unreported instances of extended military leave with pay during the audit period.
- Secured official military pay records entitled Military Leave and Earnings Statements (LES's) from the Department of Defense's Finance and Accounting Services and the Department of Homeland Security to calculate military pay. In addition, official military discharge records (DD Form 214) were obtained from the National Personnel Records Center to verify service dates.
- Calculated payback amounts owed by participants under the terms of the 2001 military MOAs and recalculated the amounts owed in accordance with the new military MOAs negotiated in 2012.
- Secured "Military Pay Repayment Settlement Agreements" from 47 employees who owed payback under the 2012 military MOAs and processed the resultant cash payments, accrual adjustments and ensured that payroll deductions were scheduled.
- Arranged for a special payroll to issue refunds to 29 employees who, by virtue of the reduced payback amount required by the 2012 military MOAs, previously overpaid their military debt.

BACKGROUND

On November 20, 2001, the County Legislature enacted Resolution No. 1152-2001¹ to provide a comprehensive policy of support for county employees ordered to active military duty as Reservists or National Guardsmen for military operations related to the September 11, 2001 terrorist attacks on the World Trade Center. The legislation called for employees, whose military service exceeded thirty consecutive days, to receive continuing health insurance coverage and fringe benefits at the expense of the County. The legislation also included the stipulation that employees could opt to receive a lump sum payout of accrued time in an amount not to exceed \$20,000; receive the transfer or donation of a lump sum payout of accrued time from other employees in an amount not to exceed \$20,000 or receive a bi-weekly salary differential payment equal to the difference between the employee's county salary and military pay for a period of one year. The intent of the legislation was to minimize the hardship that would be experienced by county employees called to active duty.

The legislation authorized the County Executive to enter into labor agreements to implement the policy resulting in various Memoranda of Agreement (MOAs) enacted between the Office of Labor Relations and county labor unions. The MOAs established that employees called to active duty in excess of 30 consecutive days in connection with the events of September 11, 2001 were entitled to certain benefits for the duration of their military service period, after the submission of valid military orders. The MOAs were retroactive to September 11, 2001 and authorized the following benefits:

- the continuation of health insurance coverage and Benefit Fund contributions;
- the option to receive payment for their accruals either in a lump sum distribution or as a bi-weekly sum in an amount not to exceed \$20,000;
- the option to receive the donation of accruals from other employees to be used to maintain active payroll status while on military leave in an amount not to exceed \$20,000;
- the option to remain on the county payroll in active pay status for the duration of the military service provided that the **total amount received in military pay for any days in excess of the NYS military entitlement of 30 (calendar) days or 22 working days² would be remitted to the County upon return to work.** Those who chose this option, referred to as the Military Payback Program (Program), were required to agree to the reimbursement obligation in writing before extended paychecks could be released.

The MOAs established that county departments were responsible for the administration of the above benefits to their employees including the monitoring of employees who chose to

¹ The resolution extended the provisions of Res. No. 1003-1996.

² NY Military Law §242 grants payment of municipal salary to those on active military leave for 30 (calendar) days or 22 working days, whichever is greater in any one calendar year or any period of continuous service.

participate in the Program and thereby obligated to remit their military pay to the County. The departments were also responsible for the calculation and collection of such amounts owed.

It should be noted that the Program as set forth by the MOAs allowed employees to retain the higher of their county salary or military pay.

By 2012, eighty-six employees from 4 departments chose to participate in the Program for 105 active duty service periods as follows:

	Participants	Service Periods
Police Department	56	66
Sheriff's Office	27	36
Probation Department	2	2
Department of Public Works	<u>1</u>	<u>1</u>
Total	86	105

Problems arose with the administration of the Program which was loosely monitored by the Office of Labor Relations. As set forth by the MOAs, employees were required to agree in writing to the terms of the Program; departments consequently developed their own individual agreement forms for employees to sign in order to participate. Eventually, several versions of an agreement were in use by departments. One agreement, approved by the Office of Labor Relations, required the payback of **all military pay**³ received as per the terms of the MOAs. A second agreement required the remittance of a reduced amount equal to all military monies received **less allowances** paid by the military for housing (BAH) and subsistence (BAS) which often comprised up to 40% of total military pay. A third agreement, only implemented by the Sheriff's Office, stated that employees were availing themselves of the terms of the MOAs and could remit their military leave and earnings statements (pay stubs) or their military W2 (IRS Wage and Earnings Statement) to facilitate the calculation of their military pay without specifically identifying the amount to be remitted to the County. This agreement resulted in the miscalculation of payback amounts by the Sheriff's Office and was the subject of a labor grievance filed by a participant (pp. 12 & 14).

Due to the varied agreements, many employees returned from active duty under the impression that they owed less money than their departments claimed causing dissention and refusals to pay. The Office of Labor Relations noted that some employees refused to remit the allowance component of their military pay while others paid nothing at all. In addition, some departments were not actively pursuing the amounts owed. Consequently, in 2008 the Office of Labor Relations changed their position on payback amounts and allowed newly activated employees who chose to participate in the Program to sign agreements requiring the remittance of all military monies received **exclusive of allowances**. This policy shift did not solve the prior non-payment problem because it was not implemented retroactively which caused further discord among employees whose service periods predated 2008 and were expected to pay back their full military pay.

³ The United States Department of Defense official policy guidance (Sec. 5519) defines "military pay" as including basic pay, basic allowance for housing (BAH), basic allowance for subsistence (BAS), an all other monthly military pay and allowances, excluding travel, transportation, and per diem allowances and one time annual payment such as clothing allowances and reenlistment bonuses.

In 2011, the County Attorney's Office filed legal actions against 6 employees who had not adequately remitted their military pay in accordance with the Program which prompted this investigation.

In 2012, in conjunction with our ongoing investigation and after recognizing that the problems pervasive throughout the Program were certain to result in costly litigation, the Office of Labor Relations sought to retroactively implement a uniform Program for all participants and successfully negotiated new military MOAs with county labor unions. The new MOAs allowed for a reduced payback amount equal to basic pay only rather than total military pay and allowed the use of accruals and payroll deductions as payback methods. The new MOA's were implemented retroactively to September 11, 2001 for all Program participants. Consequently, we recalculated amounts owed by each participant resulting in refunds to those who had paid in full under the original MOAs.

The new MOAs also changed the Program going forward in that employees ordered to military duty no longer have the option to receive full county pay; rather they are entitled to a bi-weekly salary differential payment equal to the difference between their county salary and their total military pay, including allowances, as originally set forth by the authorizing legislation. If it is determined that military pay would be greater than county salary the employee would have to take a military leave of absence without pay from the County. It should be noted that the new County Program is similar to the programs offered by the State and Federal governments.

This investigative audit was conducted with the assistance of the Office of Labor Relations, the County Attorney's Office and the District Attorney's Office. From the onset of the audit, the Audit Division was authorized by the Office of Labor Relations to assume administration of the Program on a going forward basis. Through various audit procedures, we identified program participants, calculated amounts owed by participants using official military pay records obtained from the Federal Departments of Defense and Homeland Security, secured settlement agreements with employees who according to our calculations owed payback to the County, processed the related payments and issued refunds to those who previously overpaid.

RESULTS OF REVIEW

Program Status at Onset of Audit

Our audit identified that from 2001 to 2012, eighty-six employees ordered to military duty chose to participate in the Program. We determined that only 42% of these participants made full payback in accordance with the agreement they signed, 14% made partial payments and 44% made no payment at all. Many of the non-payment cases resulted from service periods that occurred between 2002 and 2005; hence, some of these debts were owed and outstanding for up to ten years. The following is an accounting of participants by department and payback status at the beginning of the audit:

	Police	Sheriff	Probation	DPW	Totals
Paid in full per Agreement	22	13	0	1	36
Partially Paid	12	0	0	0	12
No Payment	<u>22</u>	<u>14</u>	<u>2</u>	<u>0</u>	<u>38</u>
Totals	56	27	2	1	86

Our audit revealed that no disciplinary actions were ever brought against non-compliant participants by their respective departments. The only legal effort to collect these debts was in 2011 when the County Attorney’s Office enacted lawsuits against 6 Police Department participants who had not made adequate payback; those lawsuits were settled out of court as a function of our audit under the terms of the new MOAs.

New Military MOAs

In 2012, in order to avoid continued litigation and create a uniform program for all participants, the Office of Labor Relations negotiated new military MOAs with county labor unions which allowed for a reduced payback amount equal to military basic pay rather than total military pay as previously required by the original 2001 MOAs. We calculated that total military pay due in accordance with the 2001 MOAs was \$5,825,157 and that basic pay owed in accordance with the 2012 MOAs was \$3,414,809, resulting in a \$2.4 million reduction of overall military pay owed to the County under the Program.

Additionally, the new MOAs allowed for the use of accruals and payroll deductions in the amount of 10% of the employee’s bi-weekly county salary as payment methods whereas the original MOAs called for a lump-sum payment upon return to work.

Amounts Owed Pursuant to New MOAs and Recouped by Audit

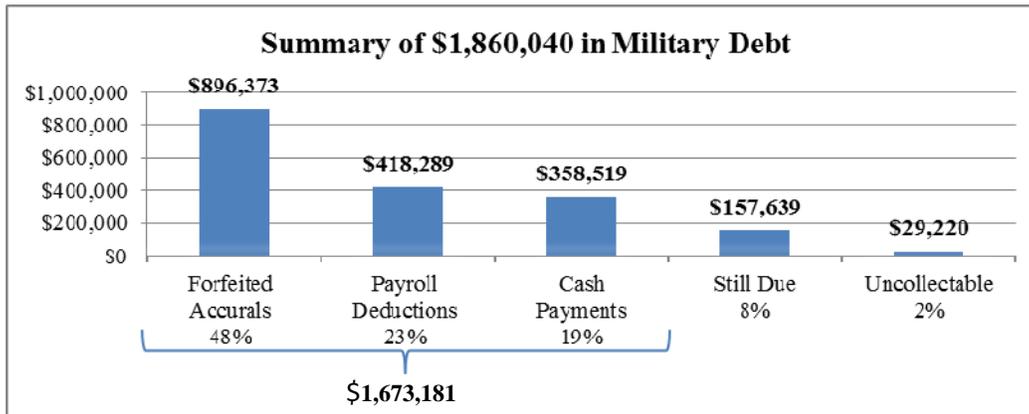
The total amount of basic pay owed in accordance with the new MOAs was equal to \$3,414,809. Our audit determined that of the 86 Program participants, fifty-one owed military payback in the amount of \$1,860,040, twenty-nine were due refunds of overpayments from prior years in the amount of \$234,526, and 6 previously paid in full; expressed as follows:

Amount Identified by Audit and Owed by 51 Participants	\$1,860,040
Amount Paid Prior to Audit	1,789,295
Amount Refunded to 29 Participants	<u>(234,526)</u>
Total Basic Pay Owed per 2012 MOA’s	\$3,414,809

We secured repayment agreements with 47 of the 51 participants totaling \$1,673,181, which consisted of the forfeiture of employee time accruals valued at \$896,373, payroll deductions equaling \$418,289 and cash payments in the amount of \$358,519 (see graph below). Payroll deductions were implemented in the amount of 10% of the employee's bi-weekly county salary therefore it will take approximately 8 years for all payroll deductions to be completed. Those who opted for payroll deductions were required to execute a confession of judgment⁴ to protect the County should they go off payroll for any reason before their debt is satisfied.

Two participants still owe military debt in the amount of \$157,639; one is a currently employed Probation Officer (p. 15) and the other is a terminated Police Officer. Both have been referred to the District Attorney's Office for legal action.

Furthermore, due to extenuating circumstances the military debt owed by 2 participants, in the amount of \$29,220, was deemed uncollectable.



Refunds equaling \$234,526 were issued through a special payroll on June 20, 2013 to 29 participants who by virtue of the new MOAs previously overpaid their military debt.

⁴ A written agreement or clause in which a party agrees to let the other party enter a judgment against him/her.

EVALUATION OF PROGRAM ADMINISTRATION

Our audit revealed the following issues noted by department with regard to the administration of the Program:

Office of Labor Relations

The Office of Labor Relations did not implement the Program as intended by the authorizing legislation and did not provide adequate oversight over county departments responsible for the administration of the Program. Our audit revealed the following weaknesses:

- The 2001 MOAs negotiated by the Office of Labor Relations with county labor unions did not establish the Program on a salary differential basis as intended by the authorizing legislation, but rather allowed employees to receive full county salary with no time constraints for the duration of their ordered military duty provided they remitted their military pay upon return to work. This required the complex task of calculating of military pay and the collection of substantial amounts of money from participants due to lengthy service periods. Our audit revealed that 41 participants (48%) served active duty periods longer than one year; thirteen of whom owed amounts over \$100,000. If the MOAs had followed the legislation which called for salary differential payments, amounts to be paid back would have been negligible and the non-compliance issues would have been prevented.
- The 2001 MOAs designated departments to be responsible for the administration of the Program; however, the Office of Labor Relations did not put forth a comprehensive policy for departments to follow nor did they provide adequate oversight. In addition, it did not appear as though the Office of Labor Relations provided uniform guidance to all departments when issues arose. A formal policy would have decreased the problems and errors that occurred.
- The MOAs and individual program agreements signed by participants were not comprehensive enough in that they did not allow for legal enforcement of payback amounts in the case of non-payment. They did not specify the necessary documentation to be submitted by participants for the calculation of payback amounts, nor did they provide specific remedies or consequences for instances of non-compliance such as the automatic imposition of garnishment or judgments if necessary. In addition, participants were not required to execute a confession of judgment as a security device for amounts to be remitted under the Program. If such protections were in place, the County would have been in a better position to effectively address participants who did not remit their military pay without the need for litigation. Furthermore, it would not have been necessary for the Office of Labor Relations to enact new military MOAs in 2012.
- The Office of Labor Relations did not maintain an accurate, up-to-date list of program participants nor did they request a payroll code to track participants on the payroll system during their military absence. We were unable to obtain a

comprehensive list of participants from either the payroll system, the Office of Labor Relations or the Sheriff's Office (Police Department maintained an accurate list). As a result of this inadequate record keeping, it was necessary to employ additional audit procedures to identify participants from the Sheriff's Office which resulted in the discovery of twelve participants who were previously unknown to the Office of Labor Relations and not properly tracked or reported by the Sheriff's Office, nine of whom were never asked to remit their military pay to the County. The County's Payroll Personnel System (PPS) is an exception-based payroll system and does not have the inherent capability to track leaves with pay without a special payroll code. When the Program was established in 2001, a payroll code should have been implemented to accurately verify and match program participants to departmental records; this would have provided an effective control and saved valuable audit time. Pursuant to our audit, a payroll code for military leaves with pay (LMP) was implemented in 2012.

- In 2008, in response to the increasing number of participants who had not paid their military debt, the Office of Labor Relations changed its policy and allowed newly activated employees to execute agreements requiring the remittance of all military monies exclusive of amounts received for allowances. Our audit revealed that military allowances could comprise up to 40% of a total military pay. This policy shift further complicated the non-payment issue because it was not implemented retroactively which caused discord among participants whose service periods predated 2008 and were still expected to remit their full military pay. The Office of Labor Relations should have enacted new MOAs to change the terms of the Program.
- The Office of Labor Relations was lax in handling a labor grievance filed in 2003 by the Correction Officers Association which challenged the County's right under the Program to recoup allowances paid by the military; their inaction caused the County to recoup less payback than it was entitled to under the Program. The individual Program agreements implemented by the Sheriff's Office stated that employees were availing themselves of the terms of the MOAs and that they could submit their military leave and earnings statements (pay stubs) or military W2 (IRS Wage and Earnings Statement) to facilitate the calculation of their payback amount without specifically identifying the amount to be remitted to the County. The grievance claimed that the County violated the agreement by trying to recover all military pays and challenged whether the definition of military pay includes the tax exempt food and subsistence allowances. The grievance was heard by an arbitrator who issued an interim award to provide an immediate remedy which directed the grievant to pay to the County the taxable military income, as reported in "Box 1" of his military W2, for the service period. In turn, the County was instructed to issue a duly amended County W2 to the grievant. It should be noted that military allowances are exempt from income tax as is basic pay if earned in a combat zone and these amounts are not included in "Box 1." The arbitrator expressed that the remedy was awarded without prejudice to the County's contention that it was entitled to other military pay not included in "Box 1" and directed both sides to submit arguments. Our audit revealed that the grievance was never pursued further by the Office of Labor Relations; they did not seek a formal arbitration hearing or a final decision from the arbitrator. Consequently, the Sheriff's Office unilaterally

implemented the “Box 1” method to calculate payback amounts for all Program participants which caused the County to recoup much less military pay than it was entitled to under the MOAs. As a result of our audit, a follow-up arbitration hearing was held 10 years later at which the same arbitrator reviewed his interim award and successfully compelled the Correction Officers Association to execute the new military MOA which retroactively implemented military basic pay as the payback amount rather than the lesser “Box 1” amounts. The underpayment situations were recalculated under the terms of the new MOA and recouped by our audit (pp. 7 & 14).

Police Department

Administration of the Program by the Police Department’s Human Resources Bureau was comprehensive and provided a full accounting of Program participation. We found that the Bureau’s Director accurately tracked the 56 police personnel who participated in the Program, properly reported them to the Office of Labor Relations, maintained adequate documentation in departmental personnel and payroll files, properly calculated payback amounts, informed participants of amounts owed in a timely manner, diligently pursued participants who were non-compliant, sought guidance and approvals from the Office of Labor Relations when necessary and generally employed sound controls over the Program.

The former Police Commissioner did not enforce payment of the outstanding military debt owed by Program participants. Our audit determined that of the 56 police personnel who participated in the Program, twelve paid back only a portion of their military debt and 22 paid back nothing at all until our audit ensued. Furthermore, three of these participants refused to submit the required documentation to calculate the amounts owed to the County under the Program. However, we found no instances of departmental disciplinary actions being imposed on the non-compliant police personnel.

Sheriff’s Office

Administration of the Program by the Sheriff’s Office Human Resources Bureau (Bureau) was seriously inadequate. Our audit revealed the following weaknesses with regard to the administration of 27 departmental employees who participated in the Program:

- The Bureau would not provide our auditors with a list of program participants stating they did not maintain such a list. Consequently, it was necessary to expand our audit procedures in order to identify the full scope of program participation. In addition to the 15 participants reported by the Office of Labor Relations, we found that 12 additional employees participated for a total of 27. Due to poor controls and lack of cooperation from the Bureau, we are not certain that we have identified all employees who may have participated in the Program.
- Our audit revealed that the Bureau never requested the payback of military pay from 12 of the 27 identified program participants. Several of these employees claimed to have informed the Bureau of their return from military leave and their

desire to make payback in accordance with their agreement but were never presented with a payback amount from the Bureau.

- Three program participants, who were released from military duty, continued to receive their county salary and accruals even though they did not return to work and did not request formal leaves to justify their absence which would have been granted without pay. Two of these participants received their county salary and accruals without working for three months. After their return to work, the Bureau did not secure the military pay owed by these participants for the service period or the county salary and accruals they incorrectly received. These amounts were recouped by our audit.
- The military orders for two participants were delayed by the military during which time the participants, who were still home awaiting new orders, collected their county pay for five weeks without serving military duty or working their county jobs. Our audit revealed that the Bureau Director was aware of the situation and did not inform the participants that they should return to work while awaiting new orders. The participants were eventually activated by the military and upon return from duty were never asked by the Bureau to remit the military pay owed for the service period or the county salary and accruals they incorrectly received prior to their military duty period. These amounts were recouped by our audit.
- The individual program agreement implemented by the Sheriff's Office was not approved by the Office of Labor Relations and misrepresented the terms of the Program as set forth by the MOAs. The agreement did not clearly specify the amount to be paid back by participants and incorrectly implied that the submission of a military W2 was sufficient information for the calculation of a payback amount. This agreement was the subject of a grievance and caused the County to recoup substantially less military pay than it was entitled to under the MOAs (pp. 7 & 12).
- Payback amounts were often miscalculated and resulted in underpayments. One participant who should have remitted \$49,391 for 11 months of military pay was asked to pay only \$156.80 because of a flawed methodology and mathematical errors that went undetected. In addition, the Bureau neglected to calculate one of the years of a multi-year service period for two participants which resulted in underpayments equaling \$19,371 that also went unnoticed. Our audit recouped these amounts.
- NYS Military Law §242, which grants the payment of municipal salary to those on active military duty for 30 (calendar) days or 22 working days, was often incorrectly applied by the Bureau. Our test of 40 payroll files revealed that 21 employees were collectively paid their county salary for 390 days over and above the amount allowable by law; this constitutes one and a half years of pay. We also noted that the extra military days were often approved by the Bureau Director. These errors were found in our test population and it is unknown how widespread this practice may have been. We informed the Bureau's payroll personnel of the correct application for military days in accordance with the law and ensured that

the correct method was properly programed into their newly implemented electronic time and accrual system (p. 6, footnote 2).

- The Bureau did not properly administer the donation of accruals feature allowable under the MOAs. We found evidence that one employee, who was not participating in the Program, received 80 hours of donated accruals from a “military pool” to offset a military leave without pay; however, we could not trace those accruals to an actual military pool and/or related donors. The Bureau Director claimed he had no knowledge of a military pool and could not provide documentation. This situation was discovered from our test population and it is unknown how widespread this practice may have been or if there ever was a “military pool” employed by the Bureau.
- Employee payroll and personnel files often did not contain adequate documentation to evidence program participation. Additionally, the Bureau informed us that they did not maintain a separate subject file for program documentation which would have been prudent under the circumstances.

Probation Department

Administration of the Program by the Probation Department was seriously inadequate. The department had two Probation Officers participate in the Program. Our audit revealed the following weaknesses with regard to the administration of the Program:

- One Probation Officer was maintained in active payroll status, receiving full county salary and accruals, while on military leave for 19 months (2008-09) even though he did not execute an agreement to participate in the Program. Upon return from leave, the Probation Officer was offered the opportunity to participate in the Program but refused. During the 19 month period the Probation Officer received \$182,368 military pay and \$109,896 in county salary. The department did not take any action to secure repayment of the county wages that were overpaid until the onset of our audit nearly two years later. To date, the Probation Officer has not complied with our repeated attempts to recoup the county salary and has been referred to the District Attorney’s Office for legal action (p. 10).
- NYS Military Law §242, which grants the payment of municipal salary to those on active military duty for 30 (calendar) days or 22 working days, was improperly applied in the case of one Probation Officer which would have resulted in an overpayment of county salary; however the situation was corrected by our audit (p. 6, footnote 2).

RECOMMENDATION

As a result of our audit and the aforementioned findings, we recommend that the Office of Labor Relations develop a comprehensive policy in the form of a County Standard Operating Procedure (SOP) and/or related Payroll Directive(s) with regard to military leaves in general. The policy should implement the provisions set forth in the 2012 military MOAs and other applicable State and Federal laws and regulations and include, but not be limited to, guidance in the following areas:

Military duty for routine training purposes:

- proper application of the entitlements of NYS Military Law §242;
- necessary documentation to be maintained in departmental personnel and payroll files (i.e., military orders).

Active military duty for periods in excess of 30 days:

- proper application of the entitlements of NYS Military Law §242;
- proper treatment of extended military leaves on the county's electronic payroll system; proper payroll codes and applicable notes for military leave without pay, military leave with differential payment, return from military leave, etc.;
- procedures for the differential pay program set forth by the 2012 Military MOAs that should include guidelines for the calculation of a differential payment and standardized forms and checklists (i.e., participant agreement, confession of judgment, release/consent forms to obtain military pay records for the calculation of military pay, differential calculation sheets, etc.);
- identification of the documentation to be maintained in departmental personnel and payroll files (military orders, DD214's, etc.);
- development of a county-wide mentor program for before, during and after extended military leave to help employees with issues they are facing (i.e., provide information, compliance with the differential program, returning to work, adjustment back to civilian life, family issues, etc.);
- procedures and documentation for the relinquishment of county issued equipment prior to military leave (ex: firearms, badges, vehicles, cell phones, etc.);
- information packet to advise employees of the benefits available to them from the County (applicable MOAs, rules and regulations for the differential pay program, forms to be executed, pension buy back information, USSERA rules, NYS Patriot Act, etc.);

We are providing assistance to the Office of Labor Relations in the development of a comprehensive military policy and will continue to do so.

We would like to express our appreciation for the cooperation and assistance of the County Executive's Office of Labor Relations, the County Attorney's Office and the District Attorney's Office; their assistance was essential to the success of this investigation.

SCHEDULE

**Investigative Audit of the Suffolk County Military Payback Program
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						Refunds	Cash Payment	Accrual Payment	Payroll Deduction		Write-Off
<u>POLICE DEPARTMENT:</u>											
1	PBA	02/03/03 - 04/14/04	76,429	36,672	-	36,672				36,672	-
2	PBA	03/08/03 - 01/05/04	35,966	17,839	-	17,839				17,839	-
3	PBA	02/11/02 - 02/26/03	83,973	44,117	53,001	(8,883)	(8,883)				-
4	PBA	06/01/09 - 08/08/09	7,167	6,256	7,167	(911)	(911)				-
5	SOA	01/28/02 - 01/21/03 03/08/03 - 10/18/03	54,781 43,027	27,664 20,367	- -	27,664 20,367			27,664 20,367		- -
6	PBA	05/07/10 - 05/14/11	39,479	31,484	36,491	(5,007)	(5,007)				-
7	SOA	11/01/02 - 01/22/03	8,873	8,127	8,127	-					-
8	PBA	01/21/03 - 09/03/03	23,931	11,795	13,147	(1,351)	(1,351)				-
9	PBA	02/10/03 - 05/25/04	62,697	25,942	-	25,942			25,942		-
10	PBA	10/26/01 - 06/29/02	39,882	25,051	25,993	(942)	(942)				-
11	PBA	10/26/01 - 06/19/02	29,042	14,473	16,312	(1,839)	(1,839)				-
12	PBA	10/04/02 - 09/17/03	39,543	21,449	35,968	(14,519)	(14,519)				-
13	PBA	12/16/01 - 12/29/02 03/08/03 - 11/01/03	48,162 35,191	26,614 17,548	- -	26,614 17,548			26,614 17,548		- -
14	PBA	02/18/02 - 10/03/02	25,560	13,650	15,333	(1,683)	(1,683)				-
15	PBA	01/25/03 - 05/19/03 10/01/09 - 04/07/10 06/30/10 - 11/17/10 03/12/12 - 09/20/12	16,411 33,178 33,331 43,600	12,427 33,178 29,433 38,964	14,862 32,276 33,331 -	33,533			33,533		-
16	SOA	02/21/03 - 02/20/05	89,005	76,156	-	76,156			76,156		-
17	PBA	02/10/03 - 05/23/04	69,394	35,211	-	35,211			35,211		-
18	PBA	07/06/09 - 07/15/10	51,257	45,155	59,978	(14,823)	(14,823)				-
19	SDA	01/16/03 - 01/15/04	72,296	39,510	30,795	8,714			8,714		-
20	PBA	02/10/03 - 05/10/04	84,964	47,743	-	47,743					47,743
21	PBA	05/10/09 - 11/01/09 03/19/10 - 03/03/11	33,458 65,996	30,231 58,777	33,458 41,266	14,284			14,284		-
22	PBA	12/5/11 - 08/30/12	35,109	32,723	-	32,723			6,329	26,394	-
23	PBA	02/18/02-11/27/02	41,729	23,305	25,247	(1,943)	(1,943)				-
24	PBA	01/24/03 - 08/17/03	43,821	25,671	43,963	(18,292)	(18,292)				-
25	PBA	01/29/03 - 07/03/03	17,285	6,551	17,285	(10,733)	(10,733)				-
26	PBA	05/01/11- 06/3/12	57,008	49,763	36,936	12,827			12,827		-
27	PBA	01/03/11 - 10/30/11	31,812	27,822	31,812	(3,990)	(3,990)				-
28	PBA	04/02/03 - 02/22/04	69,874	46,283	46,283 23,591	(23,591)	(23,591)				-

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						Refunds	Cash Payment	Accrual Payment	Payroll Deduction		Write-Off	
Police Department Cont'd:												
29	PBA	02/05/05 - 02/04/07	167,955	97,470	-	97,470			97,470	-		
30	PBA	10/26/01 - 04/21/02	21,033	10,207	10,921	(715)	(715)			-		
31	SOA	01/23/11 - 03/03/12	42,106	34,439	-	34,439		34,439		-		
32	PBA	02/10/03 - 06/10/04	71,607	33,893	-	33,893		33,893		-		
33	PBA	03/01/03 - 08/03/04	150,988	93,425	54,168	39,256		11,636	27,620	-		
34	PBA	10/26/01 - 06/29/02	36,087	19,557	19,557	-				-		
35	PBA	01/29/03 - 01/28/05	174,964	97,683	-	97,683		97,683		-		
36	PBA	10/20/10 - 07/29/11	37,725	34,403	37,725	(3,322)	(3,322)			-		
37	PBA	05/15/04 - 10/16/05	122,500	68,128	-	68,128		68,128		-		
38	PBA	01/26/02 - 04/28/02	4,820	3,669	4,820	(47,078)	(47,078)			-		
		05/15/04 - 10/16/05	108,182	55,450	101,378							
39	PBA	02/27/03 - 03/27/04	62,147	32,539	33,538	(999)	(999)			-		
40	PBA	02/14/03 - 10/23/04	132,885	74,191	-	74,191		74,191		-		
41	PBA	09/11/04 - 12/28/05	102,718	58,100	-	58,100		58,100		-		
42	PBA	04/01/12 - 09/30/12	38,674	38,674	-	38,674		38,674		-		
43	PBA	01/16/03 - 04/29/04	60,028	36,960	36,960	-				-		
44	PBA	12/01/01 - 04/22/02	17,475	13,030	14,929	(1,899)	(1,899)			-		
45	PBA	05/15/04 - 10/16/05	103,963	47,178	50,810	(3,631)	(3,631)			-		
46	PBA	10/26/01 - 10/26/02	46,763	22,752	26,087	(3,334)	(3,334)			-		
47	PBA	02/03/03 - 04/29/04	95,846	63,606	40,000	23,606		23,606		-		
48	PBA	05/20/02 - 09/07/02	16,842	8,960	8,930	29			29	-		
49	PBA	12/12/01 - 11/25/02	45,499	22,398	24,857	(2,157)	(2,157)			-		
		03/27/09 - 11/13/09	31,528	27,856	27,555							
50	PBA	02/15/03 - 02/14/05	187,022	126,807	-	126,807		79,993	46,814	-		
51	PBA	11/1/01 - 09/02/03	122,686	66,502	-	66,502		12,653	51,788	2,061		
52	PBA	06/06/08 - 06/20/09	49,915	38,175	49,915	(11,740)	(11,740)			-		
53	PBA	10/26/01 - 11/03/02	54,468	33,300	55,651	(19,969)	(19,969)			-		
		05/1/09 - 08/31/10	71,722	62,472	60,090							
54	PBA	01/16/03 - 04/29/04	55,445	44,177	32,926	11,251			11,251	-		
55	PBA	01/14/02 - 12/13/02	34,807	13,744	-	13,744		13,744		-		
		03/08/03 - 08/24/03	22,045	8,215	-	8,215		8,215		-		
56	PBA	02/18/02 - 09/29/02	28,487	13,787	15,893	(2,106)	(2,106)			-		
TOTAL:			\$ 3,862,163	\$ 2,409,700	\$ 1,389,330	\$ 1,020,370	\$ (205,459)	\$ 219,522	\$ 766,847	\$ 162,597	\$ 29,120	\$ 47,743

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						Refunds	Cash Payment	Accrual Payment	Payroll Deduction	Write-Off		
<u>SHERIFF'S OFFICE:</u>												
57	DSPBA	01/14/02 - 07/16/02 12/1/02 - 06/28/03	18,927 60,288	13,569 37,932	23,450 27,951						100	-
58	DSPBA	08/3/10 - 04/5/11	22,409	12,986	-	12,986				12,986		-
59	DSPBA	04/05/02 - 07/14/03	50,463	20,497	18,104	2,393			2,393			-
60	DSPBA	04/12/10 - 04/2/11	65,963	35,529	-	35,529		21,534	13,995			-
61	DSPBA	01/21/11 - 01/16/12	63,901	33,110	-	33,110				33,110		-
62	DSPBA	07/29/08-06/14/09	43,567	19,714	-	19,714			4,325	15,389		-
63	DSPBA	04/09/07 - 09/02/07	21,843	11,147	11,147	-						-
64	DSPBA	04/01/07 - 05/15/08	54,615	25,589	7,829 1,726	16,034			16,034			-
65	DSPBA	07/30/08 - 07/09/09	37,343	17,196	-	17,196			4,932	12,264		-
66	COA	08/30/05 - 02/9/06	21,739	8,779	-	8,779		8,444		335		-
67	COA	11/01/01 - 12/13/02	47,032	21,757	17,683	4,074			4,074			-
68	COA	05/12/04 - 11/20/05	73,572	30,946	15,680	15,266			15,266			-
69	COA	05/29/02 - 07/12/02 01/15/04 - 12/08/04	3,529 59,514	1,828 28,095	1,828 7,511	20,584			20,584			-
70	COA	04/24/09 - 02/20/10	51,014	23,289	-	23,289			6,319	16,970		-
71	COA	08/12/03 - 11/01/03 05/1/07 - 06/30/07 01/8/09 - 04/6/09	16,772 10,877 20,409	8,633 6,306 10,322	8,965 5,696 11,182	(582)	(582)					-
72	COA	02/10/03 - 05/25/04	56,425	40,459	-	40,459				40,459		-
73	COA	02/7/03 - 05/14/04	81,651	38,737	12,665	26,071			7,858	18,213		-
74	COA	10/22/05 - 12/24/06	83,795	52,996	-	52,996				52,996		-
75	COA	10/01/07 - 09/30/10	194,130	100,332	99,379	953			953			-
76	COA	02/18/02 - 09/20/02 08/19/03 - 11/1/03 04/9/07 -05/17/07	33,434 18,206 3,952	16,539 8,788 1,880	18,340 5,039 -	3,828			3,828			-
77	COA	12/26/01 - 03/31/02 05/29/02 - 07/28/02	11,708 7,310	5,956 3,817	- -	9,774			4,919	4,855		-
78	COA	02/12/03 - 08/16/03	17,539	9,059	11,224	(2,164)	(2,164)					-
79	COA	12/1/08 - 03/31/09	21,271	10,328	-	10,328		10,328				-
80	COA	10/5/10 - 11/10/10 01/3/11 - 10/30/11	5,852 48,660	3,038 24,831	- -	27,869			4,481	23,388		-

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						Refunds	Cash Payment	Accrual Payment	Payroll Deduction		Write-Off	
Sheriff's Office Cont'd:												
81	COA	01/20/04 - 02/15/05	53,473	28,563	11,224	19,567			19,567		-	
		07/06/06 - 09/30/06	15,712	9,158	6,930							
82	COA	03/31/11-03/31/12	61,706	24,725	-	24,725			24,725		-	
83	AME	05/15/04 - 04/27/09	34,304	13,600	-	13,600		13,600			-	
TOTAL:			\$ 1,492,902	\$ 760,032	\$ 323,554	\$ 436,478	\$ (2,746)	\$ 53,906	\$ 129,527	\$ 255,692	\$ 100	\$ -

PROBATION DEPARTMENT:

84	POA	11/17/08 - 11/16/11	202,804	85,091	13,135	71,956	(13,135)	85,091			-	
85	POA	05/12/08 - 12/15/09	182,218	109,896	-	109,896					109,896	
TOTAL:			\$ 385,022	\$ 194,987	\$ 13,135	\$ 181,852	\$ (13,135)	\$ 85,091	\$ -	\$ -	\$ -	\$ 109,896

DEPARTMENT OF PUBLIC WORKS:

86	AME	07/06/07 - 05/23/08	85,070	50,089	63,276	(13,186)	(13,186)				-
TOTAL:			\$ 85,070	\$ 50,089	\$ 63,276	\$ (13,186)	\$ (13,186)	\$ -	\$ -	\$ -	\$ -

TOTAL FOR ALL DEPTS: **\$ 5,825,157 \$ 3,414,809 \$ 1,789,295 \$ 1,625,514 \$ (234,527) \$ 358,519 \$ 896,373 \$ 418,289 \$ 29,220 \$ 157,639**

\$ 1,673,181

\$ 1,860,040

KEY

PBA	Police Benevolent Association	COA	Correction Officers Association
SOA	Superior Officers Association	AME	Association of Municipal Employees
SDA	Suffolk County Detectives Association	POA	Probation Officers Association
DSPBA	Deputy Sheriffs Police Benevolent Association		