D.C. Lacked Unified System to Track, Reduce Settlements & Judgments

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A report by the Office of the District of Columbia Auditor

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Office of the District of Columbia Auditor

Why ODCA Did this Audit

We did this audit to determine whether the District's processes for settlements and judgments (S&Js) were consistent with statutory and procedural requirements, whether they were reported publicly and completely, and whether steps had been taken to reduce future risks. In response to the #MeToo movement, we also wanted to confirm whether the District had a system to identify and mitigate risks of future sexual harassment settlements.

What ODCA Found

- The District did not have an effective and efficient system to record, monitor, report, and mitigate the risks represented by settlements and judgments.
- Settlements and judgments totaled $72.4 million during the audit's 18-month scope.
- Although improvement efforts are underway now, ORM had not fulfilled its statutory mandate to analyze agency risks so they can be mitigated to reduce the future monetary and human costs of settlements and judgments.
- OAG and the Executive were proactive in identifying certain risks including sexual harassment but should improve compliance with relevant requirements.

What ODCA Recommends

1. The Executive should ensure that ORM has the support, resources, and data system(s) needed to identify, analyze, and prioritize S&Js and risks.
2. OCFO should work with OCTO and other agency partners to facilitate the classification and reporting of personnel-related settlements and judgments (i.e. backpay).
3. The D.C. Council should standardize its requests for settlement and judgment information in the performance hearing questions.
4. The OCFO should amend its Policies and Procedures Manual to address the need for consistency in recording settlement and judgment payments.
5. ORM should collect and assess comprehensive S&J information for risk mitigation by agencies and present the annual risk report to the D.C. Council.
6. ORM, OCFO, and OAG should jointly implement SOPs with clear agency responsibilities as needed to govern the processing, handling, and reporting of S&Js from the S&J Fund.
7. OCA should communicate the relevant guidelines as to when and how a personnel related settlement should be submitted for OCA approval.
8. OAG should add a checklist to its internal processes or otherwise improve its oversight of agencies to ensure Mayoral approval was obtained for all settlements greater than $500,000.

Background

Settlements take place when parties to a claim or lawsuit settle the case without going forward to a final judgment of a court or administrative body.[1] They can be financial or non-financial. A judgment is the final decision when a court rules on a case.

In this report, when we refer to Settlements and Judgments (S&Js) we mean the fiscal resources that are used to settle claims and lawsuits and pay judgments in civil cases filed against the District government.[2]

These types of cases can represent harm, or alleged harm, to people or property, such as a slip and fall on a District sidewalk, or damage to a car by a District government vehicle, or harm to individuals in the custody of the District, such as inmates. It can involve District residents or visitors and personnel cases such as wrongful termination of a District employee.

Settlements and Judgments Are Paid from Agency Budgets and the S&J Fund

There are two main ways S&Js are paid in the District. Smaller S&Js, under $10,000 and which are filed less than two years prior to the settlement or judgment, are to be paid from an individual agency's budget.[3] Larger S&Js, and those older than two years, can be paid from the Settlements and Judgments Fund (S&J Fund) which is a separate line item in the District's budget. Although the Fund does not represent all the S&J payments for the District, Figure 1 shows that the S&J Fund's budget has increased during fiscal years (FY) 2018 through 2021.

Figure 1: S&J Fund Budget Has Increased from FY18 Through FY21

FY 2018 Actual Budget	FY 2019 Actual Budget	FY 2020 Approved Budget	FY 2021 Proposed Budget
$15,959,493	$21,824,759	$28,024,759	$28,024,759

Source: D.C. FY 2021 Budget

When a settlement involves a District government employee, it may include backpay or retirement contributions, which are recorded in PeopleSoft, the District's payroll system, and are reflected in the District's System of Accounting and Reporting (SOAR), as salary costs, which means there is no clear way to indicate they are related to an S&J. In some cases, there also may be lump sum payments or attorney fees paid for these personnel-related cases, and they are permitted to be paid and sometimes were paid from an agency's budget or from the S&J Fund.

1 Hereinafter, we will use the word "court" to refer to both judicial courts and administrative bodies.
2 The District of Columbia (D.C.) government can both pay settlements and judgments related to litigation against the District government and receive payments from settlements and judgments related to litigation initiated by the District. For example, the Office of the Attorney General (OAG) routinely secures settlements on behalf of D.C. residents (i.e. a $2.75 million wage theft dispute settled in January 2020). These, however, were not included in this audit because they do not reflect costs to the District.
3 D.C. Code § 2-402(a)(3).

The budget also includes funds for agencies with the name "Section 101" or "Section 103"[4]. These are not actual agencies. They are paper agencies, rather than real functioning agencies, that allow S&Js to be paid when the S&J Fund does not have available funds. They were established by the Office of the Chief Financial Officer's (OCFO) Office of Budget and Policy and are categorized by agency clusters (e.g. Section 103 Judgements and Settlements – Public Safety and Justice, Section 103 Judgements and Settlements – Public Education System). There is a process that agencies, the OCFO, and the Executive must follow when the budget for the S&J Fund is exceeded or faces spending pressure.

Multiple District Agencies Involved in Management and Oversight of S&Js

The Office of Risk Management (ORM), the Office of the City Administrator (OCA), and the Office of the Attorney General for the District of Columbia (OAG) all have roles in the management and oversight of S&Js and we engaged each of those agencies for this audit. While we did not engage the OCFO and the D.C. Council for this audit, they also comprise an important part of the management and oversight of S&Js.

The S&J Fund is managed and administered by ORM, which has several duties related to S&Js. ORM's mission is to reduce the probability, occurrence, and cost of risk to the District through the establishment of risk identification programs and insurance analyses; provide support to District agencies, and efficiently and fairly administer the District's public workers compensation and tort liability programs.

ORM's Tort Liability Program manages pre-litigation claims against the District for all executive branch agencies. ORM's Chief Risk Officer is delegated as the Mayor's authority to settle pre-litigation claims either against or, under limited circumstances, on behalf of, the District.[5] For example, if a member of the public's car is damaged by a District pothole, the owner could submit a claim via ORM's website or by mail, and ORM's procedure is to send an acknowledgement letter and seek to resolve the matter within 45 days.

The other agency with a key role in making settlements is OAG, which, by statute, shall have charge and conduct of all lawsuits instituted by and against the government[6] except for some agencies that have the authority to settle their own claims.[7] OAG attorneys work with the involved District agency to obtain documentation about the case and then to advise the best strategy for the case (settle or litigate) to attempt to minimize costs to the District.

OCA's mission is to oversee the day-to-day management of the District government, set operational goals, and have direct oversight over all agencies under the direct authority of the Mayor. For example, as detailed below, there is an OCA order requiring agencies to obtain OCA approval for personnel-related S&Js.

4 According to the OCFO, Section 103 refers to a section in the General Provisions of the District's federal appropriations act. But the appropriations acts have changed over time, so the section number has changed through the years and became Section 101 at one point. When the District's appropriations act was folded into a larger federal appropriations act, instead of being a standalone bill, the District's General Provisions became Title VIII of the Financial Services and General Government appropriations act, and the provision has been Section 801 for many years.

5 Mayor's Order 2013-054 (Issued March 7, 2013).

6 D.C. Code § 1-301.81(a)

7 Sometimes agencies hire outside counsel for representation.

OCFO also plays a role in S&Js as its staff ensures District expenditures are classified clearly and consistently in SOAR. Early in this audit, we found that not all agencies used the same accounting code to record S&J payments and failed to use the "Judgments and Indemnities" accounting code (Comp Object 0415), consistently, as required. On December 31, 2019, ODCA issued a Management Alert Report to the OCFO recommending that it amend its policies and procedures to clarify the correct S&J accounting codes to be used, and to train staff in these policies. The Management Alert Report and the OCFO's response are included as Appendix A.

In addition, as part of its oversight role, the D.C. Council regularly asks agencies in preparation for and during annual performance hearings to report on the settlements that they paid in the current and previous fiscal year. When reviewing this information for the 2019 Performance Oversight session, ODCA found that the D.C. Council committees asked agencies different S&J questions and some committees did not ask any S&J questions. On November 12, 2019, ODCA issued a Management Alert Report to the D.C. Council Chair recommending the standardization of its S&Js information requests in time for the 2020 Performance Oversight session. The Management Alert Report is included as Appendix B. ODCA did not receive a response as requested from the D.C. Council.

Settlements in the #MeToo Era

The topic of sexual harassment settlements is one of global interest due to the rise of the #MeToo movement which brought public attention to the use of confidential settlements and non-disclosure agreements. These documents have had the effect of keeping victims of sexual harassment silent about their experiences, possibly impeding holding perpetrators accountable.[8]

As an example of increased public scrutiny, spurred by the #MeToo movement and recent reports of inappropriate employee conduct, the Philadelphia Office of the Controller completed a "Report on the Effectiveness and Compliance with Sexual Harassment Policies and Procedures."[9] The report identified that Philadelphia's system for tracking settlements and judgments was inadequate.

> Of the cases that escalated to a lawsuit, we requested that the Law Department provide our office with a summary of settlement and punitive litigation costs. This presented a problem for the Law Department and an unintended finding for this audit – the Law Department's internal system for tracking litigation is inadequate for identifying and reporting on specific types of cases and the settlement costs paid by the city. The system could not identify sexual harassment from the more widely defined gender discrimination lawsuits. Additionally, the Law Department failed to identify other cases that should have been included in information provided to us.[10]

8 Elizabeth Tippett, "Non-Disclosure Agreements and the #MeToo Movement," Dispute Resolution Magazine - Winter 2019. See: https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2019/winter-2019-me-too/non-disclosure-agreements-and-the-metoo-movement/.

9 Philadelphia Office of the Controller, "Report on the Effectiveness and Compliance with Sexual Harassment Policies and Procedures," July 19, 2018. See: https://controller.phila.gov/philadelphia-audits/report-on-the-effectiveness-of-and-compliance-with-sexual-harassment-policies-and-procedures-july-2012-to-april-2018/.

10 Philadelphia Office of the Controller, "Report on the Effectiveness and Compliance with Sexual Harassment Policies and Procedures," Page 5 of 46, Executive Summary.

Press coverage of the #MeToo movement in the District brought a question to ODCA: does the District have a system to identify and handle sexual harassment settlements? ODCA determined that a broader review of the District's handling of cases brought against the District government was merited. While ODCA staff discussed including sexual harassment settlements in our audit, Denise Krepp, Advisory Neighborhood Commissioner (ANC) 6B10, raised concerns regarding how sexual assault and harassment allegations were addressed in the District government. Additionally, ANC 6B10 requested from OAG a list of settlements and judgments, as well as other agreements, regarding cases alleging sexual harassment and assaults by District government employees.

How Other Jurisdictions Define, Audit, and Budget for Settlement and Judgment Claims

We researched how other jurisdictions, cities, states, and the federal government, deal with settlements and judgments. Our research shows that other jurisdictions have problems and challenges similar to those facing D.C. Some have found ways to resolve certain issues and/or use better systems to track and analyze their settlements and judgments, and others have not. It is difficult to do detailed comparisons, though, because different jurisdictions identify their populations of such cases differently, and D.C. does not define its population at all. In addition, the audit reports we found in our research audited different aspects and populations of their jurisdictions' settlements and judgments.

In terms of defining and auditing different populations, the State of Missouri, for example, uses its State Legal Expense Fund to make payments to resolve "judgments or claims for damages from injured parties arising out of the actions of state employees, agencies, contracted physicians, and the condition of state property."[11] New York City tracks and analyzes an extremely wide variety of claims, including Torts, Medical Malpractice, Civil Rights, Police Department, Department of Sanitation, Labor and Employment, Son of Sam, Legacy, Contract, Alternative Dispute Resolution, Special Education, and Refund claims, as well as many others.[12] The Commonwealth of Massachusetts posts on its website a dataset of all payments for settlements and judgments.[13] And a recent San Diego Office of the City Auditor audit focused on sidewalk trip and fall liabilities and city vehicle accident claims.[14]

Estimating the costs of settlements and judgments for budget purposes and dealing with the drain on budgets also are difficult tasks. Missouri, for example, notes that expenditures are volatile and mostly stem from large case settlements of a variety of types from different state agencies. The Missouri audit reported that expenditures for these S&Js exceeded estimated appropriation amounts largely because the responsible agencies had inadequate tracking systems and the legislature had not followed the budget recommendations of the risk management agency. The Missouri audit concluded that the "volatility and case variability necessitate good tracking and monitoring systems."[15]

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11 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017. https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, Summary on second page.
12 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report/.
13 https://cthru.data.socrata.com/stories/s/tq8s-u87j.
14 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf, Report Highlights Page.
15 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, p. 8

In a 2018 article, the Los Angeles Times reported that in one budget year Los Angeles had "paid out more than $200 million in legal settlements and court judgments—a record amount that was more than the city spent on its libraries or fixing its streets."[16] The article notes that the cost of these payouts was a "drain" on the city's budget.[17] City officials stated that the increase was "tied to a few cases with extraordinarily large payouts,"[18] including a "class-action lawsuit over a telephone tax" that resulted in a $45 million payout.[19]

16 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.
17 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.
18 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.
19 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.

Objective, Scope, and Methodology

Objective

The objectives of this audit were to determine whether the District's processes for S&Js were consistent with statutory and procedural requirements, whether S&Js were reported publicly and completely, and whether steps had been taken to reduce future risks.

This audit did not review the appropriateness of any settlements or the circumstances involved in individual cases. Also, this audit did not examine settlement or judgment payments to the District. Further, this audit did not review the S&J payments of independent agencies that do not use SOAR. These excluded agencies include the D.C. Housing Authority, D.C. Water, and the University of the District of Columbia.

As we began the audit and confirmed that there was not a comprehensive system to track S&J trends and mitigate risks, we determined that this audit would not delve into any specific claim type such as sexual harassment or include a trend analysis. Instead we determined we would try to build a comprehensive list of S&Js as a baseline for future analysis and mitigation by ORM and executive leadership.

Scope

This audit reviewed the period of October 1, 2017, through March 31, 2019, or FY 2018 and the first two quarters of FY 2019. Our review included only settlements and judgments paid within our scope. Therefore, while claims may have been initiated during this scope, they were not included in our database if they were paid outside of our scope.

Methodology

To address our objective, we:

- Assessed OCA, OAG, and ORM data for compliance with legal and statutory requirements.
- Examined all 39 payments from the S&J Fund that were under $10,000 to determine compliance with the requirement that S&Js under $10,000 and cases that were not filed more than two years before the S&J were paid from the agency's budget.
- Interviewed staff from ORM, OCA, OAG, and OCFO.
- Reviewed ORM, OCA, OAG, and OCFO policies and procedures and internal controls related to the management of S&Js.
- Created a database of all S&J payments made during our scope, including claim type, agency, and SOAR accounting code used.
- Examined the D.C. Council 2019 Performance Oversight session relating to S&J payments.
- Assessed the reliability of ORM's data system, OAG's list of civil litigation cases, and OPRS's list of personnel-related settlements.
- Requested that ORM, OAG, and OCA provide information about how they sought to reduce risk in the future (training, etc.).

A more detailed methodology can be found in Appendix C.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

We found that the District's payment of settlements and judgments was difficult to analyze. There were gaps in all of the mechanisms that the District government had established to record this data. This means there was no way to obtain a comprehensive view of the District's settlements, judgments, risks, causes, and impacts. Such a comprehensive view, though, would allow the District to identify what may cause harm to residents, personnel, and visitors, and what could have been addressed by management before it was resolved with taxpayer dollars in the form of S&Js.

The good news is that prior to the start of our audit, ORM, OCA, and OAG had efforts underway to address several of these gaps and to integrate S&J information so that it can be better analyzed. To support these efforts, and to provide a baseline for the District's S&Js spending for an 18-month period, we used information from OAG, ORM, OCFO, and the D.C. Council to compile S&Js payments, including backpay and leave restoration payments related to personnel settlements, the agency responsible, and the claim type. We also compiled a list of S&Js for which we could not verify payment. The bad news is that due to many of the gaps that we explore in the following sections, it is possible that our database and list is missing some S&Js payments. We hope our recommendations fill the gaps so that future efforts to report on S&Js are comprehensive, effective, and efficient.

Finding 1: The District did not have an effective and efficient system to record, monitor, report, and mitigate the risks represented by settlements and judgments related to government actions.

The Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* state that: "Management should design the entity's information system and related control activities to achieve objectives and respond to risks."[20] D.C. Code requires that on an annual basis, the District government presents to Congress a brief statement of all settlements entered into by the Mayor, including the nature of the claim, the amount claimed, the amount settled, and a summary of evidence and circumstances under which the settlement was made.[21]

We found that within the executive, independent, and legislative branches of the District government, there was no information system that produced a complete list of S&Js that could be analyzed to identify which government actions (programs, policies, etc.) were high risk in terms of costs and harm. Once trends can be analyzed and risks prioritized, control activities can be put into place to respond to the specific risks, such as staff training, repairs to a sidewalk, and so on.

We found that no District agency—not OCA, ORM, OAG, or OCFO—presented to Congress the required annual report of settlements paid.

20 Government Accountability Office, *Standards for Internal Control in the Federal Government*, Section 11.01, See: https://www.gao.gov/assets/670/665712.pdf.
21 D.C. Code § 2-404.

In creating ORM, the District of Columbia government authorized it to gather, analyze, and manage all District government S&Js, as spelled out in ORM's establishing statute:

> The purpose of the Office is to provide risk management direction, guidance and support to District government agencies so that they can minimize the total cost of risk, resulting in improved government operations and enhanced service delivery. This will be accomplished by integrating agency programs of systematic risk identification and analysis, selecting and implementing appropriate risk control strategies, and prudently financing anticipated and incurred losses, into a District government integrated risk management program. The result will be to minimize the probability, occurrence and impact of accidental losses in the District government and to support the effective and efficient achievement of the District government's strategic risk management objectives.[22]

ORM was not able to carry out the risk identification and control function during the audit scope as it related to S&Js District-wide. In interviews, ORM officials stated that if they saw a pattern on the tort liability claims they would discuss the issues with agency officials in an effort to mitigate this risk, yet they did not consistently document these efforts. While tort liabilities made up a large number of S&J payments, 38%, they represented only a small amount—$1,981,795—of the S&Js' cost to the District. S&Js that represented the highest cost to the District—more than $49 million—were the result of litigation against the District and were handled by OAG, and District personnel claims—more than $20 million—which also were not managed or analyzed by ORM.

Even though ORM had good working relationships with OCA, OAG, and OCFO, and were having regular meetings to improve coordination of the S&J Fund as well as discussions of high-dollar S&Js with executive branch leadership, ORM did not yet have a systematic method to identify and analyze District-wide and agency-specific exposures to risk, nor did it maintain a government-wide system to prioritize risks during the audit scope.

ORM reported a significant coordination problem with OAG in connection with a court order on one case to make salary payments offset by workers' compensation benefits that were to be put into escrow to avoid making duplicated payments.

In the S&J arena, coordination is key, as is made clear in the June 2020, San Diego Office of the City Auditor audit report, "A More Proactive, Enterprise Risk Management Approach is Needed to Effectively Reduce Public Liability Costs, and Will Also Help Mitigate Risks to the City's Major Strategic Initiatives."[23] That report states that using an Enterprise Risk Management (ERM) framework, which San Diego was not doing, "seeks to break down organizational silos and ensures that risk-incurring areas are not just responding to strategic and operational risks but are actively anticipating and mitigating such events."[24]

During the audit, we repeatedly asked ORM and OCA officials whether either agency performed risk analysis and mitigation even though neither agency presented to Congress an annual report of

22 D.C. Code § 1-1518.01 Reorganization Plan No. 1 of 2003 for the Office of Risk Management. See Section 4 for Purpose statement.
23 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf.
24 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf, p.1

settlements paid. In an email ORM declined to provide ODCA with data related to its "fact-finding risk identification and assessment process." The January 24, 2020, email from Michael Krainak, ORM General Counsel, said to do so "would undermine ORM's purpose, function and role in the Executive's decision-making process" by violating the privacy of a deliberative process.

He explained:

> ORM's advisory work and communications are among the inputs in a broader deliberative, decision-making process. If ORM is to be effective in its role as the District's Risk Management Office, these communications must remain confidential. Otherwise, ORM will not have a seat at the table in the formulation of "laws, regulations, rules, policies and procedures" that are responsive to the risks ORM identifies and assesses.

In an interview, OCA noted its recent efforts to better track personnel-related settlements, ORM's efforts to establish an ERM framework, and quarterly meetings with OAG, OCFO, and ORM to discuss what's in the pipeline, to address large settlements, and to talk about bigger picture items. OCA did not provide documentation to support its efforts to identify and target particular risk areas. In addition, when ODCA followed up with OCA to ask how it or ORM has identified District-wide risks and engaged in efforts to mitigate them, OCA did not provide a response or any supporting documentation.

Prior to the start of the audit, ORM, with the support of OCA, was in the process of implementing ERisk, an ERM system that will have an S&J component. ORM had begun using ERisk for its Tort Liability Program to produce a Tort Monthly Dashboard internally to capture trend analysis, but this did not capture S&Js District-wide.

OAG, which handles litigation on behalf of the District, was unaware of the total number of cases litigated or the amount of S&Js paid District-wide because individual agencies often settle cases on their own without involving or even notifying any of the three lead agencies (OCA, ORM, OAG). For example, neither a $100,000 settlement that the Department of Consumer and Regulatory Affairs paid out, nor an $80,000 settlement that the Department of Energy and the Environment paid out, was on OAG's list of settlements that it provided to the audit team.

OCFO policies and procedures were not capturing all S&Js or always attributing them to the agency responsible. OCFO policies directed the use of an accounting code (Comp Object 0415) in SOAR to record non-personnel S&Js. OCFO had not, however, created a similar mechanism to record personnel-related S&Js, which at $20 million accounted for 30% of the District's S&J spending.

In addition, OCFO states that the establishment of the Section 101 and 103 paper agencies was to avoid the payment of large S&Js that could distort an individual agency's expenditures in a given year. For example, large settlements have been paid out for wrongful imprisonment by the Department of Corrections and First Amendment violations by the Metropolitan Police Department. OCFO states that having such payout expenditures hit an agency's budget could distort a historical spending pattern making year-to-year comparisons difficult. At the same time, we note that failing to include such a cost in an individual agency's budget could mask the need for action to address the policy or practice that made the payment necessary.

When asked by ODCA what authority the OCFO has to report S&Js using paper agencies, Jim Spaulding, Associate Deputy CFO for Budget and Planning, explained, "We are comfortable that this accounting treatment is consistent with the legal authority and responsibilities of the OCFO."

The D.C. Council's process for overseeing S&Js District-wide during its 2019 Performance Oversight session was inconsistent and did not provide a comprehensive picture of all S&Js paid by the District. For example:

- D.C. Council committees did not ask 36 agencies to report settlements at all. For example, the Department of Health, the Department of Youth and Rehabilitation Services, and the Department of Employment Services were not asked to report any settlements and so no such information was provided by those agencies. We found more than $734,000 paid in total on S&Js just by those three agencies.
- In addition, when a settlement question was asked of 80 agencies,[25] the D.C. Council committees used five different versions of a question seeking information on settlements, including one question that only inquired about settlements under $10,000, as presented in Figure 2.

Figure 2: Types of D.C. Council Committees Settlement Questions

Settlement Question/Statement in the Performance Hearing Questions (emphasis added by ODCA)	Number of Agencies Asked This Question
D.C. Law requires the Mayor to pay certain settlements from agency operating budgets if the settlement is **less than $10,000** or results from an incident within the last two years (see D.C. Code § 2-402(a)(3)). Please itemize each charge-back to your agency for a settlement or judgment pursuant to D.C. Code § 2-402.	7
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY18 or FY19, to date, and provide the parties' names, the amount of the settlement, and if related to litigation, the case name and a brief description of the case. If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. administrative complaint, etc.).	53

25 While 80 agencies were asked, we could not identify the question asked of 1 agency. Therefore, we compiled the questions asked of 79 agencies.

Settlement Question/Statement in the Performance Hearing Questions (emphasis added by ODCA)	Number of Agencies Asked This Question
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY18 or FY19, to date, including any covered by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than $10,000 or results from an incident within the last two years. For each, provide a. The parties' names; b. The amount of the settlement; and c. If related to litigation, the case name, court where claim was filed, case docket number, and a brief description of the case, or d. If unrelated to litigation, please describe the underlying issue or reason for the settlement **(e.g. Administrative complaint, etc.).**	13
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY18 or FY19, to date, including any covered by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than $10,000 or results from an incident within the last two years.	2
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY2017, FY2018 or FY2019[26], to date, including any covered by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than $10,000 or results from an incident within the last two years. For each, provide a. The parties' names; b. The date the settlement was entered into; c. The amount of the settlement; d. If related to litigation, the case name, court where claim was filed, case docket number, and a description of the case; and e. If unrelated to litigation, please describe the underlying claim, liability, or reason for the settlement **(e.g. sexual harassment claim).**	4

Source: ODCA analysis

These questions also are inconsistent in asking whether the agency paid directly from its own budget or the cost was paid by the S&J Fund. For example, the first question only asks about "settlements from agency operating budgets," while the other questions also request settlement information for those paid "by the District on behalf of the agency."

Part of this inconsistency derives from D.C. Council committees operating independently and asking their own questions. There is no requirement that D.C. Council committees coordinate and ask uniform questions. Another possible explanation for these different questions lies in the statutory requirements.

26 Two of the four agencies that were asked this question by the D.C. Council were asked about only two fiscal years, not three.

D.C. Code § 2-402[27] requires the Mayor to pay settlements or judgments from agency operating budgets if the settlement or judgement is less than $10,000 and results from a case originally filed not more than two years prior to the settlement or judgment, and (in brief summary) if the settlement arises out of the negligence or wrongful act of an officer or employee of the District of Columbia or from facts and circumstances that place the claim within the doctrines and principles of law decided by the courts. Therefore, the D.C. Council committees may have been focused on settlements of less than $10,000 because of the statutory requirement to pay for these from agency budgets. Further, as noted in Figure 2, the D.C. Council often requested information from agencies on settlements made within two years of the *incident*, rather than within two years of *filing the case*, which is the statutory requirement.

The Settlements and Judgments Fund itself, as a distinct budget line, is under the oversight jurisdiction of the D.C. Council's Committee on the Judiciary and Public Safety even though the Government Operations Committee has oversight for the Office of Risk Management. This poses a challenge for effective oversight of S&Js and should be examined by the D.C. Council.

In addition to the District's lack of a central information system for S&Js, there also was no shared definition, District-wide, of what is encompassed in the term "settlement." During conversations with agency staff and reviews of agency responses to the D.C. Council, the audit team noticed that some agencies classified backpay, leave restoration, and other costs related to settlements of personnel matters as "nonmonetary," even though they represent a cost to the District. For example, a list provided by OAG noted a nonmonetary settlement, but the settlement was for 10 hours of leave restoration, which is a cost to the District. Similarly, the Office of Contracting and Procurement and the Child and Family Services Agency reported leave restoration settlements as nonmonetary but ODCA considers leave restoration as having a monetary cost.

In a similar twist, we found different interpretations of the actual cost of backpay from some agencies, as they would sometimes refer to the net amount actually paid to the employee, while ODCA considered the gross amount (including taxes and interest) to be the actual cost incurred by the District. For example, the Department of Behavioral Health reported a $97,721.32 backpay settlement. But based on our review of the settlement agreement, the total amount really was $102,607.38 because it included $4,886.06 in defined contributions as well. Similarly, a Department of Forensic Sciences settlement for wrongful termination was reported as $167,143.52 for backpay but based on our review of the supporting documentation actually totaled $184,375.18 because the settlement included leave as well as backpay.

If there had been a system to capture all the District's S&Js by agency and claim types:

- District government leadership and ORM could have analyzed the data to identify trends and risks and make recommendations for future risk mitigation.
- OAG could have used the District-wide information to guide how it handles future cases and

27 D.C. Code § 2-402(a)(3) In any case, claim, or suit, either at law or in equity, which the Mayor of the District of Columbia is empowered to settle, the payment for such settlement or judgment shall come from the current fiscal year operating budget of the agency or office named in the suit; provided that: (i) The settlement or judgment is less than $10,000; and (ii) The case was originally filed not more than two years before the settlement or judgment. (B) The Mayor may waive this requirement on a case-by-case basis for good cause shown.

potentially develop strategies to reduce settlement amounts or the repeat of similar cases.

- District taxpayers would not have had to pay for S&Js that could have been prevented or face services that could harm them or their property.
- The D.C. Council and its committees could more effectively provide oversight of the agencies under their purview and identify District-wide trends that may require legislative changes.

The lack of a District-wide system also prevented the District government from meeting its statutory requirement to present a settlements report to Congress. Without this annual settlement report the public and other stakeholders did not have a comprehensive list of the District's settlements, including claim types and amounts.

We noted above the efforts by ORM and OCA to implement a new information system, ERisk, to capture all of the District's S&Js. OAG also was implementing a new information system, Abacus, which is expected to be able to better share data with ERisk. At the same time and on behalf of the entire District government, the OCFO is in the process of developing the new accounting platform, the District Integrated Financial System (DIFS), which will replace SOAR.

With these new information systems not operational during the audit scope, the audit team built a database of S&J payments to provide the public with key information about which agencies and claim types had the highest amount of S&J spending during our scope, an 18-month period. See Figures 3-5 below to see the agencies with the highest S&J spending, the largest spending per claim type, and agencies with the highest amount of spending on personnel-related S&Js.

Figure 3: Top 10 Agencies with Highest 18-Month* S&J Spending Compared to Agency Operating Budget

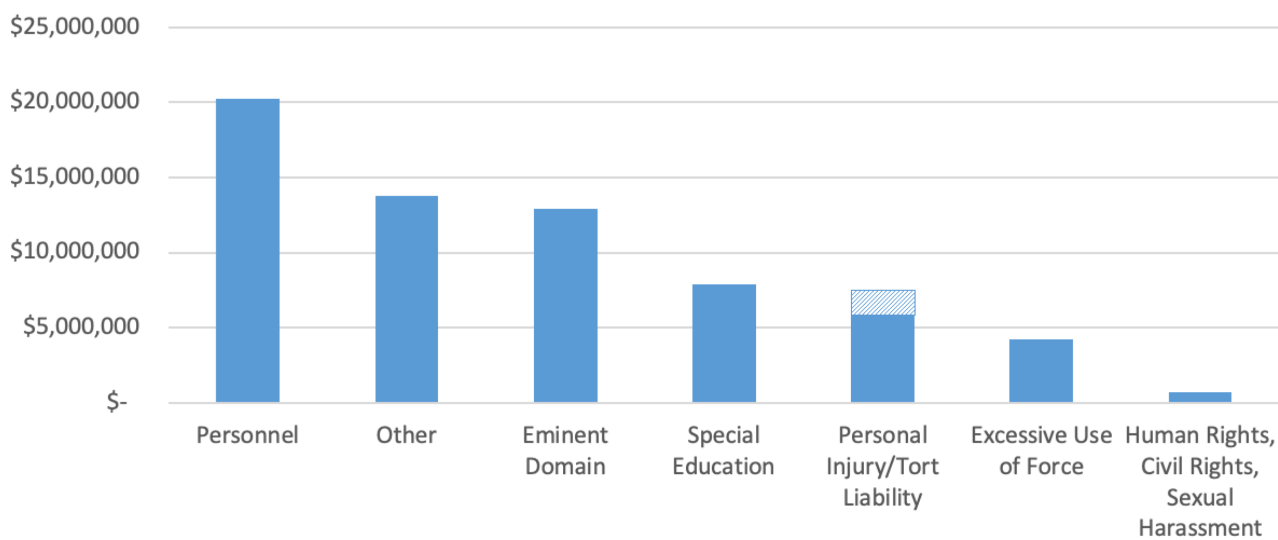
Agency	Total 18-Month S&J Spending	Agency Actual Operating Budget, 18-Months	S&Js per Operating Budget
Metropolitan Police Department	$14,929,945	$865,743,900	1.7%
District of Columbia Public Schools	$13,423,704	$1,508,157,177	0.9%
Office of the Deputy Mayor for Planning and Economic Development	$13,027,510**	$72,144,172	18.1%
District Department of Transportation	$ 4,566,435	$170,392,057	2.7%
Department on Disability Services	$4,093,569	$261,202,214	1.6%
Department of Parks and Recreation	$2,401,106	$83,072,742	2.9%

Agency	Total 18-Month S&J Spending	Agency Actual Operating Budget, 18-Months	S&Js per Operating Budget
Office of the State Superintendent of Education	$ 2,047,323	$661,868,749	0.3%
Department of Human Services	$1,876,782	$797,334,449	0.2%
D.C. Department of Human Resources***	$1,463,447	$30,950,999	4.7%
Fire and Emergency Medical Services Department	$1,263,422	$435,033,921	0.3%

*** October 1, 2017 - March 31, 2019**
**** This includes a $12,916,510 eminent domain payment**
*****This spending includes payments related to a personnel matter that DCHR handled on behalf of another agency**

Source: ODCA Analysis

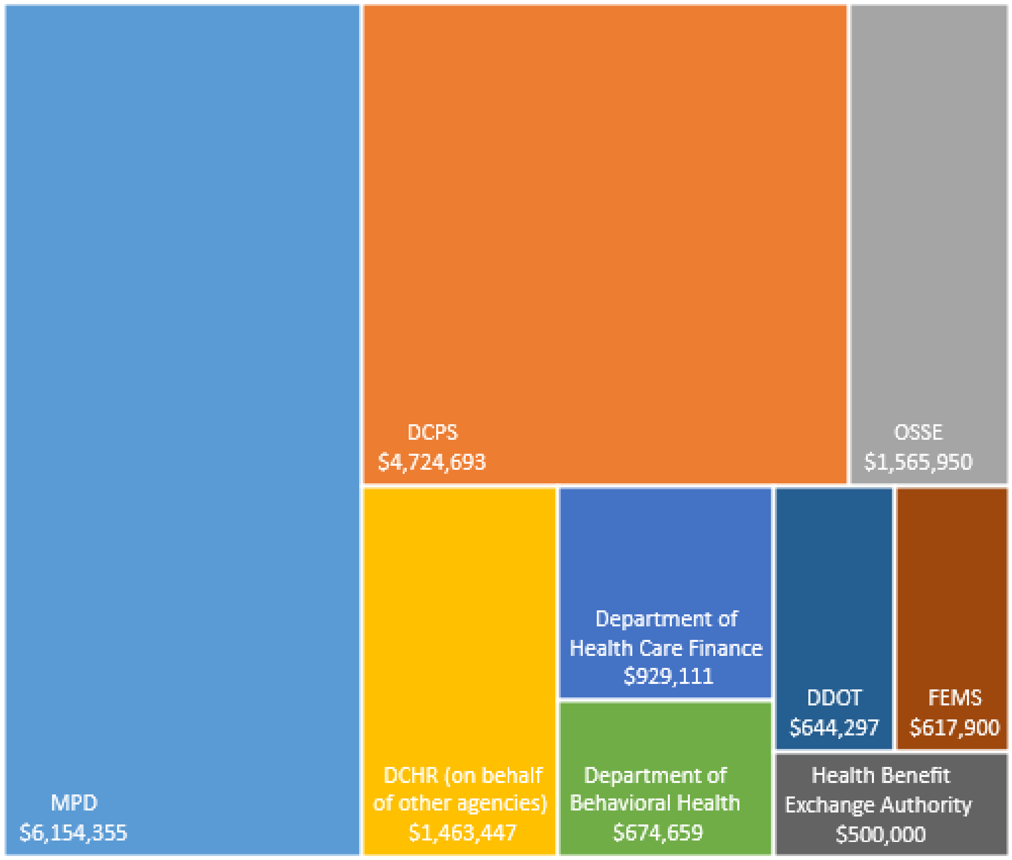
Figure 4: Largest District S&J Spending by Claim Type During 18-Month Scope



Source: ODCA Analysis

Notes: 1. "Personnel" includes Attorney Fees. 2. "Other" includes contract, police case, etc. 3. "Eminent Domain" represents one case paid by DMPED. 4. The cross-hatched area represents "Tort Liability" payments, which includes bodily injury, property damage, general liability, and other claim types managed by ORM's Tort Liability Program. The solid blue represents "Personal injury," which is the term used by OAG in cases that it litigated. The two categories are combined here because they can represent similar case types.

Figure 5: Agency Spending of $500K or More on Personnel-Related S&Js During 18-Month Scope



Source: ODCA Analysis

These charts show which agencies may need additional scrutiny to identify problematic practices, as S&Js represent a sizable chunk of overall spending. They also show a very high level of personnel settlements, which highlights the need for analyzing trends and causes. Settlements and judgments on certain types of cases, such as excessive force, sexual harassment, and some personnel actions also have an obvious human cost. These additional costs of government S&Js were noted in the City of San Diego Office of the City Auditor's recent report on public liability claims: "[i]n addition to the financial costs to the City government and taxpayers, public liabilities also frequently cause physical or emotional harm to affected residents and visitors, reducing their quality of life and damaging the City's reputation in the eyes of the public."[28]

Other cities have more comprehensive systems that allow for better data information storage and analysis of claims filed against the city. New York City, for example, has two systems that further these purposes: the Omnibus Automated Image Storage and Information System, known as (OAISIS), and ClaimStat.[29]

28 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf, p. 1.

29 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report OASIS on p. 1 and ClaimStat on p. 5.

OAISIS is used to record claims data[30] and ClaimStat is "a data-driven analysis of claims filed against the City. ClaimStat was conceived as a way for City agencies to review claims data in real time, identify claim filing trends that are costly to the city, and implement policies and best practices to mitigate risk or avoid filing of claims altogether."[31]

The New York City Comptroller's Fiscal Year 2019 Claims Report[32] includes detailed analysis of claims by many claim types,[33] differentiates between pre-litigation and litigation settlements for certain claim types,[34] and analyzes claim trends by agency, borough[35], and overall.[36]

In its report, the New York City Comptroller states that both the number and dollar amount of claims and lawsuits against New York City decreased from FY 2018 to FY 2019. The number of claims went down 678 from 14,390 to 13,712, and the total dollar amount of claims decreased a total of $125 million from $1.1 billion to $975 million.[37]

The Office of the Comptroller of the Commonwealth of Massachusetts, which processes payments for S&Js but does not negotiate or approve them, has a robust dataset of S&J payments on its website.[38] The dataset includes information such as payment date, amount, payee name, department paid on behalf of, and other information. In addition, the dataset allows for filtering, exporting, and searching, as well as different types of visualization configurations.[39]

In an appendix to its June 2020 audit report,[40] the Office of the City Auditor for the City of San Diego discusses the approach taken by the City of Edmonton in Alberta, Canada.[41] The audit report states that Edmonton "developed and implemented a robust, entity-wide ERM [Enterprise Risk Management] framework that requires organizational stakeholder to consistently and systematically identify, assess, and mitigate strategic and operational risks." It codified its ERM framework and "requires both executive-level and operational-level management to complete annual risk assessments identifying and mitigating risks

30 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report, p. 1.
31 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report, p. 5.
32 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report.
33 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report, pp. 7-16.
34 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report/,Personal Injury Police Action on p. 14, and Wrongful Conviction Settlements on p. 16.
35 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report, pp. 25-26.
36 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report, Claim Trends by Agency on pp. 17-24, Claim Trends by Borough on pp. 25-26, and Overall Claim Trends on pp. 27-32.
37 Office of the New York City Comptroller, Bureau of Law Adjustment, "Claims Report: Fiscal Year 2019," June 12, 2020, https://comptroller.nyc.gov/reports/annual-claims-report, p. 1.
38 https://cthru.data.socrata.com/stories/s/tq8s-u87j.
39 https://cthru.data.socrata.com/stories/s/tq8s-u87j.
40 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf.
41 The appendix is entitled, "Appendix E: The City of Edmonton Has Successfully Utilized ERM to Limit Its Strategic Risk Exposure" https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf, p. 94.

that could prevent the city from achieving its strategic and operational objectives."[42]

Further, Edmonton holds its operational departments accountable by having its ERM manager review each "departments' previous year of risk mitigations and tracking their progress."[43] As explained in the San Diego audit report, "[t]he monitoring process seeks to determine the effectiveness of departments' risk mitigations by asking departments to show the city how their risk mitigations are working, their risk scoring methodology, and how a department's mitigations are incorporated into its operational work plan."[44]

In an article about Los Angeles, the Los Angeles Times noted that city officials reported using risk management and accountability strategies to track "legal liability to detect trends and come up with solutions."[45] Specifically, city departments are "required to report on 'risk management'"[46] every quarter and also were asked, during budget planning, to focus on investments that could help address legal risks, according to the mayor's office."[47] The City Attorney also told the Los Angeles Times that it had "hired its first risk manager to analyze and eliminate problems that cause payouts."[48]

These examples show that there are tools and technology in place to help the District develop the necessary controls, complete its annual report to Congress, and enable ORM to fulfill its 2003 statutory mandate.

Recommendations

1. The Executive should ensure that ORM has the support, resources, and data system(s) needed to identify, analyze, and prioritize S&Js and risks throughout District government including policies and procedures requiring all executive branch agencies to timely report their settlements and judgments to ORM and to use standard terms to describe claim types. This also will allow the Executive to meet the statutory requirement to present a settlements report to Congress.
2. OCFO should work with OCTO and other agency partners (such as ORM) to facilitate the classification and reporting of personnel-related settlements and judgments (i.e. backpay, leave restoration) within the payroll system and the District's accounting system so that all of the personnel-related settlements and judgments are captured to strengthen the District's ability to monitor, report on, and reduce future risks. OCFO should ensure this functionality is built into the District Integrated Financial System (DIFS), its new accounting platform, which will replace the System of Accounting and Reporting (SOAR).

42 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf, p. 94.
43 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf, p. 96.
44 https://www.sandiego.gov/sites/default/files/20-015_public_liability.pdf, p. 96.
45 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.
46 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.
47 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.
48 Los Angeles Times, "L.A. is slammed with record costs for legal payouts" June 27, 2018, https://www.latimes.com/local/lanow/la-me-ln-city-payouts-20180627-story.html.

3. The D.C. Council should standardize its requests for settlement and judgment information in the performance hearing questions so that all agencies, boards, and commissions disclose all settlements for which the entity is responsible, regardless of amount and whether the agency paid directly or the cost was paid by the Settlements and Judgments Fund.

Finding 2: This audit revealed settlements and judgments totaling $72.4 million during the audit's 18-month scope, which gathered S&J data that had been fragmented across various District agencies.

Because there was no comprehensive system that captured all District government S&Js, agencies were able to report only on the S&Js for which they were responsible for either monitoring or negotiating. For example, OAG was aware of the S&Js that it handled on behalf of District agencies, including some personnel-related settlements, and compiled a list for the audit team. But OAG was not aware of the S&Js made by other agencies and, therefore, could not systematically examine settlements District-wide or provide information on those settlements to ODCA. ORM tracked the payment of tort liability claims that it handled on behalf of other agencies. The Office of Pay and Retirement Services (OPRS) compiled a spreadsheet of the personnel-related settlements that came to its office for processing. These different lists and spreadsheets of S&Js are captured by Figure 6 below.

Figure 6: Lists of S&Js by Reporting Agencies

Source	Data Description	Amount of S&Js
OAG	Civil Litigation cases and personnel-settlements compiled for the audit that were handled by OAG	$49,808,857
SOAR	District's accounting software, SOAR, Comp Object 0415 report of non-personnel S&Js (includes amounts paid by agencies and amounts paid from the S&J Fund)	$42,791,180
D.C. Council	Agency-reported settlements during the D.C. Council 2019 Performance Oversight session[49]	$15,542,375
OCFO/ OPRS	Office of Pay and Retirement Service (OPRS) compilation of backpay settlements that were sent to them for approval	$10,496,208
ORM	List of Tort Claims paid by agencies and the S&J Fund that were handled by ORM	$1,981,795
D.C. Auditor	S&Js (personnel and non-personnel) with payments verified ($67,266,028) and unverified ($5,133,459)	$72,399,487

Source: OAG, SOAR, OCFO, ORM, and ODCA Analysis

49 The 2019 Performance Oversight session ended in February 2019 and our scope continued through March 2019, so some settlements paid in March may not have been reported to the D.C. Council because they had not happened yet.

There also were gaps in some of the systems that should have captured all District government S&Js. For example, we found many ways in which SOAR was limited in reporting the total amount spent on S&Js:

- Not all agencies used the S&Js accounting code, "Judgments and Indemnities" Comp Object 0415, to record their non-personnel settlements in SOAR. We found agencies recorded $7 million in non-personnel S&J payments outside of Comp Object 0415 in SOAR. This happened because OCFO's policies and procedures were not detailed about S&Js. Also, Agency Fiscal Officers (AFOs) expressed confusion regarding the different ways that budget authority is loaded into the 0040 budget category, "Other Services and Charges," which includes Comp Object 0415, so that it can appear that no funds were available in Comp Object 0415. This is an issue that OCFO's Office of Integrity and Oversight could have detected.[50]
- There was no accounting code in SOAR to identify personnel-related settlements, which totaled more than $20 million during our scope.
- Because the total amount of S&Js exceeded the total amount of funds allocated to the S&J Fund, some large S&Js were paid from different sources than agency budgets and the S&J Fund, which made them not easily identifiable as S&Js in SOAR. For example, a $3.75 million S&J was recorded as "Transfer to Other Funds," Comp Object 0510, because it needed to be paid quickly, but it was never reclassified to the appropriate accounting code (Comp Object 0415). While there have been improvements, budgeting for S&Js can be a challenge because District officials cannot predict the settlement amounts that will be agreed upon or what a court may order.

As discussed in the previous finding, the D.C. Council did not ask all agencies to report their S&Js and did not ask agencies to report all of their S&Js. As seen in Figure 7, we found a nearly $29.7 million difference between the amount of S&Js 26 agencies reported to the Council and the total amount of S&Js for those 26 agencies, as compiled by our S&J database.

Figure 7: Total S&Js Reported to the D.C. Council and Compiled by the Audit Team

Amount of S&Js 26 agencies reported to the D.C. Council during 2019 D.C. Council Performance Oversight session	$ 15,542,375
Amount of S&Js compiled by ODCA's S&Js database for these 26 agencies	$ 45,193,342
Difference between amount agencies reported to the D.C. Council and amount of S&Js compiled by ODCA's S&Js database	$ 29,650,967

Source: ODCA Analysis

50 OCFO employees are assigned to District agencies that are subordinate to the Mayor and serve as the Agency Fiscal Officers. See: https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/OCFO%20Org%20Chart%202.21.20.pdf They use SOAR to record financial transactions under appropriate budget categories. S&Js should be recorded under the budget category 0040, "Other Services and Charges." Budget category 0040 includes a number of Comp Object codes, including Comp Object 0415, which is "Judgments and Indemnities." This is where S&Js should have been recorded in SOAR.

As a result, only nine agencies accurately reported all of their S&Js to the D.C. Council. Fourteen agencies did not accurately report all of their S&Js as requested by the D.C. Council and for three agencies, we could not determine whether they accurately reported all S&Js. In addition, one agency, which did report accurately—DCRA—was asked only to report settlements of $10,000 or under. Our S&J database, however, includes an additional $135,000 in S&Js, which illustrates that by asking a limited question, the D.C. Council did not obtain a complete picture of agency risk.

In contrast, when we examined the 40 agencies that reported no S&Js to the D.C. Council, we found that 6 agencies (15%) reported that they had no settlements but ODCA found nearly $14 million in S&Js paid by those six agencies in our database.

Because D.C. Council committees operate independently, the D.C. Council had inconsistent S&J performance oversight questions, the responses to which did not give them a comprehensive picture of all S&Js paid by the District. The questions also were unclear as to what should be reported. We saw that some agencies reported personnel settlements, judgments, cases handled by OAG, and/or tort liability claims that were handled by ORM, and others did not.

D.C. is not the only jurisdiction in which the legislature needs to make a special request for comprehensive information on settlements and judgments. Missouri, for example, has similar problems with readily available data and transparency, as discussed in a September 2017 Office of the Missouri State Auditor report. In the report, auditors explained that the Missouri Office of Administration's Risk Management Unit (OARM) "was able to generate data on these high cost cases in response to a special legislative request, such information is not readily available to the agencies administering the fund."[51] The system used by OARM, the State Legal Expense Fund (LES) "cannot easily produce special reports with selected data elements queried or sorted in designated ways or time periods."[52] Auditors noted that "[s]uch data is necessary to report, and analyze the cases being processed, and to effectively monitor [State Legal Expense] fund activity."[53]

The Missouri report also points out that the inadequacy of the systems used by OARM and the Office of the Attorney General (AGO), both of which have a role in resolving judgments and claims. (OARM is primarily responsible for making payments from the Legal Expense Fund (LEF) and the AGO approves such payments and adjudicates the claims).[54] The report states that the systems used "are insufficient to effectively monitor trends and activity of the fund."[55] Specifically, the audit report states that the LEF "does not capture some case data information for analysis and tracking purposes"[56] and "only tracks

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51 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 10.

52 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 11.

53 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 10.

54 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 4.

55 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, pp. 10-11.

56 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 11.

payouts in two categories: medical malpractice and all others."[57] The AGO's case tracking system, "does not designate which cases are eligible for LEF, does not include all cases, and does not track the status of LEF cases."[58] The audit report concludes that "[w]ithout the ability to track and query LEF claims by detailed type, OARM and AGO cannot effectively monitor fund activity."[59]

In contrast, the Office of the Comptroller of the Commonwealth of Massachusetts has a full dataset of S&J payments on its website, as mentioned above, but also reports quarterly on S&Js to the House and Senate Committees on Ways and Means.[60]

Recommendation

4. The OCFO should amend its Policies and Procedures Manual to address the need for consistency in recording settlement and judgment payments in SOAR and train current OCFO staff, including AFOs, on the requirements.

Finding 3: Although improvement efforts are underway now, ORM had not fulfilled its statutory mandate to analyze agency risks so they can be mitigated to reduce the future monetary and human costs of settlements and judgments.

In addition to being tasked with creating a system to identify and analyze District-wide and agency-specific risks and maintaining a government-wide system to prioritize risks,[61] ORM also is required to:

1. Provide the D.C. Council with an annual report detailing savings realized by the District as a result of implementing risk management plans and strategies.[62] The report should be prepared on an agency-by-agency basis and include all data reported by each individual agency to control costs through risk management strategies.[63]
2. Administer the S&J Fund in coordination with the OCFO.[64] This includes ensuring that claims originally filed not more than two years before the settlement or judgment and settled or adjudicated for less than $10,000 shall be paid from the current fiscal year operating budget of the agency or office named in the suit, unless the Mayor waives the requirement for good cause shown.[65]

57 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 11.
58 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, pp. 10-11.
59 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 12.
60 https://cthru.data.socrata.com/stories/s/tq8s-u87j.
61 D.C. Code § 1-1518.01 Reorganization Plan No. 1 of 2003 for the Office of Risk Management. See sections(6)(a) and (d)
62 The OCA is required by statute to deliver the report, but informed ODCA in July 2019, that ORM would file this report in February of 2020.
63 D.C. Code § 2-431(b).
64 D.C. Code § 1-1518.01 Reorganization Plan No. 1 of 2003 for the Office of Risk Management. See Section 4 for Purpose statement.
65 D.C. Code § 2-402(a)(3)(A).

As discussed in previous findings, ORM had not yet established a government-wide system to prioritize risks. ORM also had not provided the D.C. Council with its required report, detailing savings realized by the District as a result of implementing risk management plans and strategies.

In terms of ORM's management of the S&J Fund, OAG's AFO managed the day-to-day operations of the Fund without involvement by ORM's AFO. Therefore, ORM did not have full information about the Fund in real time and could not independently produce its own reports. Prior to the creation of ORM through a reorganization plan submitted to the D.C. Council in 2003, the S&J Fund had been managed by the Office of the Attorney General.

Additionally, when we reviewed all 39 claims paid from the S&J Fund that were under $10,000, we found that seven (18%) should have been paid from the budgets of the responsible agencies but instead had been paid in error from the S&J Fund. Specifically, ORM authorized the OCFO to pay three claims from the S&J Fund in error and OAG authorized the payment of four claims from the S&J Fund in error.

We also found that ORM was not aware that some agencies were failing to use Comp Object 0415 to classify their S&Js in SOAR. Additionally, we found that ORM used the S&J Fund to pay more than $345,000 in workers' comp claims when the fund designated for those claims, the Employee Compensation Fund, had insufficient funds to pay all such claims. ORM then failed to request and the OCFO failed to later reprogram or reclassify the expenditures to the appropriate fund source to ensure the accuracy of the S&J Fund spending data. Such accuracy is critical for ORM's risk analysis and is required by OCFO policy.

We already have noted that ORM lacked an information system that appropriately captured and reported on the savings across District agencies. ORM's information system did not communicate with OAG's information system. Further, as the District's payroll system was not set up to identify personnel-related settlements, ORM's information system could not readily obtain a full accounting of personnel settlements and had no way to systematically obtain the information outside of its information system. In addition, ORM did not have policies, procedures, and data-sharing agreements in place to obtain the information it needed to produce the required annual reports to the D.C. Council and the information needed for the report to Congress.

In addition, ORM did not have an adequate data-sharing agreement in place with OAG and OCFO about payments from the Fund, nor clear roles and responsibilities for each agency as it relates to S&J Fund management and oversight. While they had a good working relationship and OAG sent ORM monthly reports, ORM commented that more information sharing could be helpful to them. In addition, SOAR could not communicate payment information with either ORM's old information system or the new one, ERisk, so ORM could not easily track Comp Object 0415 payments or ensure that agencies were using the correct accounting code.

ORM's lack of a robust data system and policies, procedures, and practices to identify and analyze S&Js District-wide meant that ORM could not carry out a key part of its job outlined in 2003: "to minimize the probability, occurrence, and impact of accidental losses in the District."[66] It also prevented ORM from meeting its statutory requirements to produce a risk mitigation report to the D.C. Council. As a result, the D.C. Council had insufficient data to analyze the District's risk mitigation strategies or conduct its oversight of agency activities/risks. It also meant that ORM could not measure its own performance on an annual basis in mitigating high-risk, high-cost areas of the District government.

Unclear S&J Fund responsibilities between OAG and ORM have resulted in lower compliance with the S&J Fund requirements and inaccurate reports of agency-paid and S&J Fund-paid S&Js. It also could lead to confusion among agencies about how S&Js are paid and who administers the S&J Fund, which could lead to inefficiencies and inconsistencies. If the S&J Fund is used to pay for workers comp claims, for which there is a designated fund and a reclassification does not follow, the S&J Fund activity report will not be accurate and will impede ORM risk analysis and mitigation.

Recommendations

5. ORM should collect and assess comprehensive S&J information for risk mitigation by agencies and present the annual risk report to the D.C. Council. ORM should use existing information systems to support risk assessments until its new enterprise risk management system (ERisk) S&J component is online. As ORM implements ERisk, it should ensure that all agencies are reporting all S&Js within ERisk regularly by conducting reconciliations to the District's financial system and other monitoring activities.
6. ORM, OCFO, and OAG should jointly implement SOPs with clear agency responsibilities as needed to govern the processing, handling, and reporting of S&Js from the S&J Fund to facilitate compliance with the statutory requirements of D.C. Code § 2-402 and strengthen critical information sharing. This includes procedures for reclassifying expenditures when the S&J Fund is used for unanticipated expenditures.

Finding 4: OAG and the Executive were proactive in identifying certain risks, including sexual harassment, but should improve compliance with relevant requirements to enable them to support ORM's effort to fully analyze and mitigate those risks.

Despite the lack of a District-wide system to mitigate the risks represented by S&Js, we saw evidence that the District government previously had identified potential risks and developed some controls to mitigate them. In an effort to better manage personnel settlements District-wide and get a better sense of claims against the District for personnel misconduct, the City Administrator initiated Order CAO 2018-2 on October 16, 2018, which required that all employee- and/or personnel-related monetary settlements of any litigation or legal claim needed to be approved by the City Administrator and go to the Mayor's Office of Legal Counsel for payment approval. Also, per Mayor's Order 2013-054, OAG must obtain Mayoral approval for settlements over $500,000.

66 D.C. Code § 1-1518.01 Reorganization Plan No. 1 of 2003 for the Office of Risk Management. See Section 4 for Purpose statement.

Additionally, Mayor Bowser responded to the #MeToo movement by issuing Mayor's Order 2017-13 on sexual harassment, so that starting in December 2017, all executive branch agencies were required to report all sexual harassment allegations to the Mayor's Office of Legal Counsel (MOLC), which should also receive the results of the investigation into the allegation within 60 days, among other requirements.

We found four of the six personnel/District employee-related settlements (67%) that were signed after the City Administrator's (CA) Order went into effect on October 16, 2018, did not have evidence of the CA's approval. The settlements for those four personnel cases totaled $390,030.

Specifically, the Order requires that:

> No director, officer, or employee of an agency of the District of Columbia government...shall enter into, or agree to enter into, the settlement of any litigation or legal claim involving an employee- or personnel-related matters, where such settlement includes the payment of a monetary sum, without the prior approval of the City Administrator.

OCA's explanations for the four cases, as detailed below, generally states that settlement negotiations concluded prior to the Order, but provided ODCA with evidence that all settlement agreements were signed after the Order, with no evidence of CA approval:

- In the case of a $250,000 settlement, OCA reported to ODCA that the settlement negotiations had concluded in February 2018, which is prior to issuance of the Order. The settlement agreement, however, was signed on January 4, 2019, after the Order, but did not have a record of CA approval.
- OCA reported to ODCA that in the second case, a $100,000 settlement, the court

As noted during our scope, the District paid five settlements related to sexual harassment. These totaled $681,133. Two cases involved the Department of Corrections; the D.C. Public Library (DCPL), the Department of Employment Services (DOES), and the Department of Youth Rehabilitation Services (DYRS) each had one case.

Although we did not conduct an analysis specific to individual sexual harassment cases, our review of agency responses to Council performance hearing questions revealed that a few agencies reported other sexual harassment matters involving contractors rather than employees and involving nonmonetary resolutions. For example, the Office of Unified Communications (OUC) reported two sexual harassment matters involving contractors. One involved two contractor employees and OUC referred its findings to the contracting entity. For the second, involving contractors of another agency, OUC referred its findings to the contracting agency for action.

DCPL reported three sexual harassment cases involving DCPL employees in its response to D.C. Council performance hearing questions for FY 2018 and part of FY 2019 (included October 2018 through February 2019). The resolutions reported for two of the three cases involved a proposed five-day suspension and the issuance of a written reprimand for sending two sexually oriented emails. For the third matter, DCPL reported that an employee was on administrative leave pending the outcome of two complaints, one of which accused the employee of making inappropriate comments and gestures to a contract employee.

awarded attorney's fees and the plaintiff filed a fee petition on December 7, 2017. The settlement agreement pertaining to the attorney's fees, however, was signed on March 4, 2019, without a record of CA approval even though it involved the payment of a monetary sum.

- The third case involved a $895 settlement payment that was signed October 18, 2018. OCA responded that the CA did not approve the settlement because the settlement negotiations concluded on September 19, 2018, before the Order was issued.
- Last, there was a $39,135 settlement signed December 3, 2018, in which the arbitrator provided his opinion to OAG on July 11, 2018, before the CA's Order was issued.

This analysis also identified information sharing gaps between OAG and OCA about personnel cases. For example, in two of the six cases, OAG was not aware of the cases because it did not handle them, but it would be an advantage to the District for OAG to be aware of the nature of the cases and agencies involved for its future handling of similar personnel cases.

We found OAG mostly was compliant with obtaining Mayoral approval prior to making settlement payments above $500,000. Of the nine settlement payments over $500,000 that OAG settled on behalf of the District, two did not receive Mayoral approval prior to payment (22%).[67]

With regard to sexual harassment cases, the audit team determined that MOLC was tracking allegations per the Mayor's Order from its effective date forward. We did not conduct any additional analysis on agency compliance with the sexual harassment order. ODCA identified five sexual harassment settlements paid during our scope, but, because of the timing of the Order and the timing of the payments, agencies were not required to have reported the sexual harassment allegations to MOLC. ODCA, however, compared the list of sexual harassment cases that OAG provided to ANC 6B to the list that OAG provided to ODCA and found that the lists were the same, that is, there were no additional cases.

OCA also reported, but provided no supporting documentation in response to our request, that each District agency had designated a sexual harassment officer, disseminated Mayor's Order 2017-13 to respective staff, and displayed notices of the District's policy prohibiting sexual harassment and advising that a sexual harassment complaint and any subsequent investigation is confidential. OCA also reported, again with no supporting documentation, that agency staff attended sexual harassment trainings and will do so every two years.

One reason for the lack of full compliance with the City Administrator Order was that it went into effect on October 18, 2018, but OCA did not enforce the approval requirement for settlements that had been negotiated prior to the effective date of the Order.

OAG explained that the cause for OAG's lack of full compliance in obtaining Mayoral approval was that for one case, an $892,500 settlement, approval was not obtained due to internal oversight and because OAG's finance team did not recognize the need for approval because the individual payments did not exceed $500,000, even though the total settlement exceeded $500,000. In the second case, an $850,000 settlement, OAG believed that Mayoral approval existed because the OAG believed the agency where the settlement came from had handled the matter.

67 Mayor's Order 2013-054 (Issued March 7, 2013).

Without the prior approval of OCA, District agencies could be settling employee or personnel-related matters inconsistently or inappropriately, which can lead to unintended legal ramifications and/or increased legal costs for the District government. A District-wide policy can create uniformity and potentially reduce costs if it is implemented consistently. Also, without complete information about agency personnel settlements, OCA and other agencies involved in risk management (ORM and OAG) cannot fully identify patterns or trends (i.e. agency, case type) so that the risks can be mitigated.

The lack of required Mayoral approval for settlements greater than $500,000 in two cases totaled $1,742,500, and reduced controls, increased risk, and limited information flow regarding high value settlements and judgments within the District government.

Other jurisdictions have tackled the issue of internal controls in different ways. As mentioned above, Missouri, has an approval system set up whereby its risk management agency, OARM, makes the payments from the State Legal Expense Fund after receiving approval from the Office of the Attorney General.[68] In another example, the federal government also has a judgment fund.[69] As explained by Timothy Furin in a 2018 paper to the American Bar Association's Fiscal Law and Contract Administration Panel, "[t]he Judgment Fund was established by Congress in 1956 to alleviate the need for specific legislation following every successful claim against the United States."[70] Over time, it became clear that although this legislation allowed for prompt payment of judgments and reduced some costs such as interest for the period between award and payment, "it also had the unintended consequence of incentivizing procuring agencies to avoid settling meritorious claims in favor of prolonged litigation. Specifically, an agency could avoid making payment from its own appropriated funds if it refused to settle a case and instead sought a decision from a court, subsequently providing it access to the Judgment Fund which draws money straight from the Treasury."[71] Congress, therefore, passed legislation that "requires agencies to reimburse the Judgment Fund with appropriated funds . . . " thereby, eliminating the problem.[72] Attorney's fees, however, must be paid by the agency using appropriated funds and may not be paid from the Judgment Fund.[73]

These controls may be considered as the District implements our recommendations and assesses if S&Js could benefit from further controls.

68 Office of the Missouri State Auditor Report No. 2018-098, "State Legal Expense Fund," September 2017, https://app.auditor.mo.gov/Repository/Press/2017098793156.pdf, p. 4.

69 Furin, Timothy, A., An Overview of the Judgment Fund and How Its Availability Can Impact a Contracting Officer's Decision to Settle a Claim, American Bar Association's Fiscal Law and Contract Administration Panel, August 3, 2018, https://www.cohenseglias.com/library/files/an_overview_of_the_judgment_fund_tim_furin.pdf, p. 2.

70 Furin, Timothy, A., An Overview of the Judgment Fund and How Its Availability Can Impact a Contracting Officer's Decision to Settle a Claim, American Bar Association's Fiscal Law and Contract Administration Panel, August 3, 2018, https://www.cohenseglias.com/library/files/an_overview_of_the_judgment_fund_tim_furin.pdf, p. 2.

71 Furin, Timothy, A., An Overview of the Judgment Fund and How Its Availability Can Impact a Contracting Officer's Decision to Settle a Claim, American Bar Association's Fiscal Law and Contract Administration Panel, August 3, 2018, https://www.cohenseglias.com/library/files/an_overview_of_the_judgment_fund_tim_furin.pdf, p. 2.

72 Furin, Timothy, A., An Overview of the Judgment Fund and How Its Availability Can Impact a Contracting Officer's Decision to Settle a Claim, American Bar Associations Fiscal Law and Contract Administration Panel, August 3, 2018, https://www.cohenseglias.com/library/files/an_overview_of_the_judgment_fund_tim_furin.pdf, p. 2.

73 Furin, Timothy, A., An Overview of the Judgment Fund and How Its Availability Can Impact a Contracting Officer's Decision to Settle a Claim, American Bar Associations Fiscal Law and Contract Administration Panel, August 3, 2018, https://www.cohenseglias.com/library/files/an_overview_of_the_judgment_fund_tim_furin.pdf, p. 9.

Recommendations

7. OCA should communicate the relevant guidelines as to when and how a personnel-related settlement should be submitted for OCA approval.
8. OAG should add a checklist to its internal processes or otherwise improve its oversight of agencies to ensure Mayoral approval was obtained for all settlements greater than $500,000 so that the District government does not pay unauthorized settlements.

Conclusion

In creating ORM in 2003, the Mayor and D.C. Council recognized the need for:

> [I]ntegrating agency programs of systematic risk identification and analysis, selecting and implementing appropriate risk control strategies, and prudently financing anticipated and incurred losses, into a District government integrated risk management program.[74]

Seventeen years later across four administrations, we found that such a system was not yet in place, which poses risks to the District government in terms of dollars, trust, and reputation, and to District residents, visitors, and employees in terms of harm to persons and property. We also found District government efforts underway to build this system and agency efforts to control risk where agencies were able to do so with limited, fragmented data.

We will transfer to ORM, OCA, OAG, and the OCFO the data we compiled of S&J payments for an 18-month period and hope this assists their efforts to standardize data collection and analyze agencies and areas of high-risk so they can be mitigated.

Assessing risk is a key pillar of a government's internal controls and helps a government meet its objectives, as described in GAO's *Standards for Internal Control in the Federal Government:*

> Management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks.[75]

Our recommendations have been crafted to address the root causes of our findings. Given the productive and proactive tone that the agencies with whom we worked during the course of this audit, we are confident that our recommendations will be implemented timely and in full and that the District can then serve as a national model.

74 D.C. Code § 1-1518.01 Reorganization Plan No. 1 of 2003 for the Office of Risk Management. See Section 4 for Purpose statement.

75 *Government Accountability Office, Standards for Internal Control in the Federal Government*, Section 10.02, See: https://www.gao.gov/assets/670/665712.pdf.

Summary of Report Recommendations

Most of the recommendations in this report can be implemented without any additional costs to the agency/entity, and/or help to advance the goals of ORM, OAG, OCA, OCFO, and the D.C. Council, as seen below.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
1. The Executive should ensure that ORM has the support, resources, and data system(s) needed to identify, analyze, and prioritize S&Js and risks throughout District government including policies and procedures requiring all executive branch agencies to timely report their settlements and judgments to ORM and to use standard terms to describe claim types. This also will allow the Executive to meet the statutory requirement to present a settlements report to Congress.	Yes	Yes	FY20 ORM Performance Plan, Strategic Objective 1: Identify, measure, analyze and mitigate the District government's exposure to risk and liability.[76]
2. OCFO should work with OCTO and other agency partners (such as ORM) to facilitate the classification and reporting of personnel-related settlements and judgments (i.e. backpay, leave restoration) within the payroll system and the District's accounting system so that all personnel-related settlements and judgments are captured to strengthen the District's ability to monitor, report on, and reduce future risks. OCFO should ensure this functionality is built into the District Integrated Financial System (DIFS), its new accounting platform, which will replace the System of Accounting and Reporting (SOAR).	No	Yes	OCFO 2017-2021 Strategic Plan, Strategic Objective 5: Implement Quality Financial Systems OCFO 2017-2021 Strategic Plan, Strategic Initiative 7: Implement a new enterprise-wide accounting and financial reporting system and enhance the availability of information to the public.

76 D.C. Office of Risk Management FY 2020, Performance Plan, See: https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/ORM20.pdf.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
3. The D.C. Council should standardize its requests for settlement and judgment information in the performance hearing questions so that all agencies, boards, and commissions disclose all settlements for which the entity is responsible, regardless of amount and whether the agency paid directly or the cost was paid by the Settlements and Judgments Fund.	No	No	D.C. Council website, About the Council: The D.C. Council has instituted several measures to ensure that the city government works. D.C. Council committees review the performance of government programs and agencies to ensure they are serving their established purposes and operating under pertinent regulations and budget targets.[77]
4. The OCFO should amend its Policies and Procedures Manual to address the need for consistency in recording settlement and judgment payments in SOAR and train current OCFO staff, including AFOs, on the requirements.	No	No	OCFO 2017-2021 Strategic Plan, Culture of Continuous Improvement: An improvement-focused culture requires that we constantly review our organizational processes, procedures and systems to increase their overall efficiency, with the goal of continually increasing our effectiveness as an agency and the satisfaction levels of both our customers and employees.

77 About the Council, See: https://dccouncil.us/about-the-council

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
5. ORM should collect and assess comprehensive S&J information for risk mitigation by agencies and present the annual risk report to the D.C. Council. ORM should use existing information systems to support risk assessments until its new enterprise risk management system (ERisk) S&J component is online. As ORM implements ERisk, it should ensure that all agencies are reporting all S&Js within ERisk regularly by conducting reconciliations to the District's financial system and other monitoring activities.	Yes	Yes	FY20 ORM Performance Plan, Key Project: ORM will be integrating functionality within the Enterprise Risk Management System (ERMS) to manage daily operations for each agency.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
6. ORM, OCFO, and OAG should jointly implement SOPs with clear agency responsibilities as needed to govern the processing, handling, and reporting of S&Js from the S&J Fund to facilitate compliance with the statutory requirements of D.C. Code § 2-402 and strengthen critical information sharing. This includes procedures for reclassifying expenditures when the S&J Fund is used for unanticipated expenditures.	No	No	FY20 ORM Performance Plan, Operations 3: ORM continues to improve its analysis and review of payments from the settlement and judgement fund. OCFO 2017-2021 Strategic Plan, Strategic Objective 1: Improve Customer Service: This strategic objective is intended to improve the quality, timeliness, and accuracy of services provided by the OCFO to the public, District agencies, and elected officials. This may include improvements in technology such as telephony and financial systems, ongoing customer service training, monitoring customer satisfaction, and improving employee morale as a means to enhance customer service.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
7. OCA should communicate the relevant guidelines as to when and how a personnel-related settlement should be submitted for OCA approval.	No	No	OCA FY20 Performance Plan, Objective 1: Coordinate multi-agency projects, implement District-wide initiatives, and provide agencies with guidance and support to achieve progress on the Mayor's priorities.[78]
8. OAG should add a checklist to its internal processes or otherwise improve its oversight of agencies to ensure Mayoral approval was obtained for all settlements greater than $500,000 so that the District government does not pay unauthorized settlements.	No	No	OAG website: What We Do: The Office of the Attorney General (OAG) enforces the laws of the District, provides legal advice to the District's government agencies, and promotes the interests of the District's citizens. OAG's goal is to be the nation's most effective and respected public law office.[79]

78 Office of the City Administrator FY 2020, Performance Plan, See: https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OCA20.pdf
79 Office of the Attorney General for the District of Columbia, What We Do, See: https://oag.dc.gov/about-oag/what-we-do

Appendix A

Additional Policies and Procedures Needed Across District Agencies Concerning the Proper Recording of Settlement and Judgment Payments Through SOAR

December 31, 2019 | A management alert from the Office of the D.C. Auditor

Office of the District of Columbia Auditor

Kathleen Patterson, District of Columbia Auditor
www.dcauditor.org

December 31, 2019

Jeffrey DeWitt
Chief Financial Officer
Office of the Chief Financial Officer
The John A. Wilson Building
1350 Pennsylvania Avenue N.W., Suite 203
Washington, DC 20004

Management Alert: Additional Policies and Procedures Needed Across District Agencies Concerning the Proper Recording of Settlement and Judgment Payments through SOAR

Dear Mr. DeWitt:

The Office of the D.C. Auditor (ODCA) is conducting an audit of settlements and judgments paid by the District of Columbia government. ODCA has engaged the Office of the Attorney General for the District of Columbia (OAG), the Office of the City Administrator (OCA), and the Office of Risk Management (ORM) for this audit engagement. As part of this audit, ODCA reviewed settlement and judgment payment data from the System of Accounting and Reporting (SOAR) for our scope, which covers fiscal years (FYs) 2018 and 2019 (through March 31, 2019). Our staff then reconciled the SOAR data to agency-provided reports itemizing settlements and judgments paid by the District.

ODCA writes this Management Alert to inform you that while most agencies properly recorded their settlements and judgments in SOAR under Comp Object 0415 (Judgments and Indemnities), as identified in the OCFO's Policies and Procedures Manual, Volume I – District-Wide, there were some agencies that did not.

Specifically, we found two agencies that frequently used Comp Object 0408 (Professional Service Fees and Contracting) and in some instances 0409 (Contractual Services-Other). One of these two agencies, the District Department of Transportation (DDOT), did not record any of their settlements in 0415. For example, in FY 2018, for all 140 claims ORM reported that DDOT paid out, we found that DDOT used Comp Objects 0408 and 0409 instead of 0415. DDOT similarly used Comp Objects 0408 and 0409 to record its 2019 settlements as well. In another example, in FY 2018, the second agency OAG used Comp Object 0408 for six different settlement claim payments within our scope period and used Comp Object 0111 for one other settlement payment. See Figure 1 on the following page to show the total dollar amounts of settlements that were not recorded in 0415.

Figure 1: DDOT and OAG Use of Alternate Comp Objects

FY 2018		
Agency	**Amount of Settlements not Classified as 0415**	**Comp Objects Used Instead of 0415**
DDOT	$154,625	0408/ 0409
OAG	$180,668	0408/ 0111

FY 2019 (through 03/31/2019)		
Agency	**Amount of Settlements not Classified as 0415**	**Comp Objects Used Instead of 0415**
DDOT	$66,097	0408/ 0409

In addition, some other agencies that generally used 0415 to record their settlements and judgments used other Comp Objects (0408/0409/0507) on occasion, according to them, in error. Similarly, five agencies that only had one or two settlements or judgments in our scope, used another Comp Object for reasons unknown. It is important that all settlements and judgments are properly entered into SOAR under the correct Comp Object, 0415.

From our discussions with OCFO staff working with DDOT, OAG, and other agencies, we were told that in some cases the way the budget is loaded into Comp Source Group 0040, makes it appear to some Agency Fiscal Officers (AFOs) that they do not have sufficient budget authority within the 0415 Comp Object. As a result, these AFOs use other Comp Objects that have excess budget authority. In addition, some AFOs appear to believe that if a settlement is with a contractor it can be recorded as 0408 (Contractual Services). Based on conversations with OCFO staff, this is a challenge that could be adjusted by the Office of Budget and Planning providing additional guidance to the AFOs. Another contributing factor is that while the OCFO's Policies and Procedures Manual identifies 0415 as Judgments and Indemnities, the manual does not contain specific, uniform policies and procedures governing the recording of settlements in SOAR.

Developing, communicating, and disseminating consistent policies and procedures addressing the reporting of settlements and judgments could allow for more reliable reporting of settlements and judgments across the District government. If settlements and judgments were classified consistently across District agencies, the public and the D.C. Council would be better informed on the total dollar amount and number of settlements and judgments attributable to each agency and this would reduce future reporting errors or discrepancies. Today, however, if a Comp Object 0415 report was retrieved in its current form from SOAR, that report would be incomplete given the variety of Comp Objects District agencies use.

Recommendation

1. The OCFO should amend the Policies and Procedures Manual to address the need for consistency in recording settlement and judgment payments in SOAR and train current OCFO staff on the requirements.

Please let me know by January 20, 2020, whether the OCFO concurs and plans to implement this recommendation. If you have any questions about this Management Alert, please feel free to contact me. Also, when the final report on this audit is issued, this Management Alert and your response will be made public.

Thank you for your consideration. I look forward to continuing to work with you to improve the District government.

Sincerely yours,

Kathy Patterson

Kathleen Patterson
District of Columbia Auditor

cc: Karl Racine, Attorney General
Rashad Young, City Administrator
Jed Ross, Chief Risk Officer

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER

Jeffrey S. DeWitt
Chief Financial Officer

January 21, 2020

Ms. Kathleen Patterson
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, DC 20005

Re: Management Alert: Additional Policies and Procedures Needed Across District Agencies Concerning the Proper Recording of Settlement and Judgement Payments through SOAR

Dear Ms. Patterson:

Thank you for the opportunity to respond to the management alert issued by the Office of the DC Auditor on December 31, 2019, regarding an audit of the settlements and judgements paid by the District of Columbia government. The response of the Office of the Chief Financial Officer is below.

Recommendation:

The OCFO should amend the Policies and Procedures Manual to address the need for consistency in recording settlement and judgement payments in SOAR and train current OCFO staff on the requirements.

OCFO Response:

We concur that the policies and procedures manual should be amended and additional training of OCFO staff is required to ensure consistency in recording settlement and judgement payments. While the current policy manual provides guidance, more specificity is required in recording procedures for certain transactions related to settlements and judgements.

We will develop and implement measures to ensure that staff better understand the relevant guidance and the associated required procedures. These measures will include offering additional staff training by no later than June 30, 2020.

If you have any questions or require additional information, please feel free to contact Timothy Barry, Executive Director, Office of the Integrity and Oversight, at 202-442-6433.

Sincerely,

Jeffrey S. DeWitt

Jeffrey S. DeWitt

cc: Rashad Young, City Administrator
Karl Racine, Attorney General
Angell Jacobs, Deputy CFO and Chief of Staff, OCFO
Jeff Ross, Chief Risk Officer
Timothy Barry, Executive Director, Office of Integrity and Oversight
Tisha Edwards, Internal Audit Director, Office of Integrity and Oversight

Appendix B

Council Committees Are Not Seeking or Receiving Complete Answers on Agency Settlements

November 12, 2019 A Management Alert Report from the Office of the D.C. Auditor

Office of the District of Columbia Auditor

Kathleen Patterson, District of Columbia Auditor
www.dcauditor.org

November 12, 2019

The Hon. Phil Mendelson
Chairman
Council of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue N.W., Suite 504
Washington, DC 20004

Management Alert: Council Committees Are Not Seeking or Receiving Complete Answers on Agency Settlements

Dear Chairman Mendelson:

The Office of the D.C. Auditor (ODCA) is conducting an audit of settlements and judgments paid by the District of Columbia government. As part of this audit, ODCA gathered data on the 2019 performance oversight written responses for 125 agencies, boards and commissions, covering fiscal year (FY) 2018 through February 2019.[1] ODCA writes this Management Alert to inform you that because not all agencies were asked for settlement information and some of those agencies that were asked for settlement information were not asked to report **all** settlements, the Council did not receive information regarding all settlements.

Specifically, our review of the performance hearing questions and answers revealed that the Council did not ask 36 agencies to report any settlements. For example, the Department of Health, the Department of Youth and Rehabilitation Services, and the Department of Employment Services were not asked to report any settlements and so, no such information was provided by those agencies.

In addition, when the settlement question was asked, we found that the Council committees used five different versions of the question seeking information on settlements from 80 agencies, as presented in Figure 1 on the following page. Seven agencies were asked only to report settlements under $10,000, while 73 were asked to report all settlements.

[1] For nine agencies, there was insufficient data for our analysis.

Figure 1: Settlement Questions Asked by Council Committees

Settlement question/statement in the performance hearing questions (emphasis added by ODCA)	How many agencies were asked this question
D.C. Law requires the Mayor to pay certain settlements from agency operating budgets if the settlement is **less than $10,000** or results from an incident within the last two years (see D.C. Code § 2-402(a)(3)). Please itemize each charge-back to your agency for a settlement or judgment pursuant to D.C. Code § 2-402.	7
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY18 or FY19, to date, and provide the parties' names, the amount of the settlement, and if related to litigation, the case name and a brief description of the case. If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. administrative complaint, etc.).	53
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY18 or FY19, to date, including any covered by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than $10,000 or results from an incident within the last two years. For each, provide a. The parties' names; b. The amount of the settlement; and c. If related to litigation, the case name, court where claim was filed, case docket number, and a brief description of the case, or d. If unrelated to litigation, please describe the underlying issue or reason for the settlement **(e.g. Administrative complaint, etc.).**	13
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY18 or FY19, to date, including any covered by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than $10,000 or results from an incident within the last two years.	2
Please list **all settlements entered into** by the agency or by the District on behalf of the agency in FY2017, FY2018 or FY2019, to date, including any covered by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than $10,000 or results from an incident within the last two years. For each, provide a. The parties' names; b. The date the settlement was entered into; c. The amount of the settlement; d. If related to litigation, the case name, court where claim was filed, case docket number, and a description of the case; and e. If unrelated to litigation, please describe the underlying claim, liability, or reason for the settlement **(e.g. sexual harassment claim).**	5

A possible explanation for this inconsistency lies in the statutory requirements. D.C. Code § 2-402[2] requires the Mayor to pay settlements or judgments from agency operating budgets if the settlement or judgment is less than $10,000 and results from a case originally filed not more than two years prior to the settlement or judgment, and (in brief summary) if the settlement arises out of the negligence or wrongful act of an officer or employee of the District of Columbia or from facts and circumstances that place the claim within the doctrines and principles of law decided by the courts. We believe that it is important for the legislature to know the total liability each agency causes the District, regardless of whether it is paid directly from the agency's budget or from the Settlements & Judgments Fund. Asking **all** agencies to report **all** settlements, regardless of amount, would likely give the Council a complete and accurate picture of costs to the District from settlements and judgments.

Further, D.C. Code § 2-404 requires that all settlements entered into by the Mayor be presented to Congress, together with a brief statement of the nature of the claim or suit, the amount claimed, and the amount of the settlement, with a summary of the evidence and the circumstances under which the settlement was made. Our preliminary review did not find such reports on D.C. government websites and neither the Office of the City Administrator (OCA) nor the Office of the Attorney General (OAG) are aware of this report having been issued.

In addition, D.C. Code § 2-431(b) requires that OCA, or a successor agency that performs a risk management function, provide the Council with an annual report delineating savings realized by the District as a result of implementing risk management plans and strategies. The report should be prepared on an agency-by-agency basis and include all data reported by each individual agency in relation to addressing risks and plans to control those risks. Such reporting may provide the Council with useful information regarding settlements and judgments paid by the District. To date, this report has not been submitted to the Council, but the Office of the City Administrator has informed ODCA that the Office of Risk Management plans to submit it in February 2020.

We found that the inconsistencies in the questions led to agencies not listing all settlements in their written performance hearing responses. For example, the Department of Consumer and Regulatory Affairs (DCRA) was asked, in the context of the legal requirement that the Mayor pay settlements under $10,000 and within the last two years from agency operating budgets, to itemize each charge-back to the agency for a settlement or judgment. DCRA reported two settlements ($2,600 and $6,000). When ODCA reviewed SOAR data, however, we found that DCRA made two additional settlement payments during the performance period. One settlement totaled $38,050 and the other $100,000.

With increasing public attention on the issue of settlements and judgments paid by the District, the Council may wish to be fully informed on all of the payments made. We also assume Council committees want a full, rather than a partial, picture of costs incurred by each agency under their purview and the basis for all such payments. To receive a full picture of costs incurred by each agency, we recommend that each Committee seek this information in a consistent manner making clear that all, rather than only a portion, of the settlements are to be described.

[2] D.C. Code § 2-402(a)(3) In any case, claim, or suit, either at law or in equity, which the Mayor of the District of Columbia is empowered to settle, the payment for such settlement or judgment shall come from the current fiscal year operating budget of the agency or office named in the suit; provided that: (i) The settlement or judgment is less than $10,000; and (ii) The case was originally filed not more than two years before the settlement or judgment. (B) The Mayor may waive this requirement on a case-by-case basis for good cause shown.

We bring these issues to your attention in advance of the next series of performance oversight hearings. We believe that asking each agency for all settlements will help the Council gain a better understanding of the type of settlements the District enters into and the total amount of all settlements paid.

Recommendation

1. The Council should standardize the request for settlement and judgment information in the performance hearing questions so that all agencies, boards, and commissions disclose all settlements for which the entity is responsible regardless of amount and whether the agency paid directly, or the cost was paid by the Settlements and Judgments Fund.

Please let me know by Monday, January 6, 2020, whether the Council concurs and plans to implement this recommendation. If you have any questions about this Management Alert, please feel free to contact me. Also, when the final report on this audit is issued, this Management Alert and your response will be made public.

Thank you for your consideration. I look forward to continuing to work with you to improve the District government.

Sincerely yours,

Kathy Patterson

Kathleen Patterson
District of Columbia Auditor

cc: Karl Racine, Attorney General
Rashad Young, City Administrator
Jed Ross, Chief Risk Officer
D.C. Councilmembers

Appendix C

Detailed Methodology

To determine whether the District's processes for settlements and judgments were consistent with statutory and procedural requirements, we:

- Assessed whether OCA received and reviewed all 26 of the OAG-reported personnel- or employee-related matters within our scope to determine compliance with the OCA order on proposed settlements in employee- or personnel-related matters.
- Examined all 39 payments from the S&J Fund that were under $10,000 to determine compliance with the requirement that S&Js under $10,000 and under two years were paid from the agency's budget.
- Reviewed supporting documentation for all nine civil litigation settlements greater than $500,000 to determine if OAG obtained Mayoral approval for all settlements over $500,000 prior to making payment.
- Reviewed all five sexual harassment settlements within our scope reported by OAG and sought to compare that to the list the Mayor's Office of Legal Counsel had compiled of sexual harassment claims and settlements to determine compliance with the Mayor's Order on sexual harassment.
- Interviewed staff from ORM, OCA, OAG, and OCFO.
- Reviewed policies and procedures from ORM, OCA, OAG, and OCFO.

To determine whether the District's processes for settlements and judgments were reported publicly and completely, we:

- Created a database of all S&J payments made during our scope, including claim type, agency, and SOAR accounting code used, by reconciling the following sources:
    - SOAR report of Judgments and Indemnities accounting code (Comp Object 0415).
    - ORM's tort liability list.
    - 124 agency responses to the D.C. Council during the 2019 Performance Oversight session.
    - OAG compilation for ODCA of civil litigation cases.
    - OAG compilation for ODCA of personnel settlements.
    - OPRS list of backpay settlements.
    - NOTE: There are some cases in which the date of a S&J was during our scope, but it was paid outside of our scope, therefore it was not included in the database.
    - NOTE: Our database tracks payments related to S&Js and in many cases there are multiple payments for one judgment or settlement. Therefore, our database may count one settlement multiple times for an agency or claim type.
- Compiled the questions of all D.C. Council committees regarding S&Js during the 2019 Performance Oversight session and all 124 agency responses.
- Compared the S&Js that 26 agencies reported to the D.C. Council during the 2019 Performance Oversight session to ODCA's database of S&J payments. NOTE: The 2019 Performance Oversight session ended in February 2019 and our scope continued through March 2019, so some settlements paid in March may not have been reported to the D.C. Council because they had not happened yet.
- Compared the 40 agencies that reported no S&Js to the D.C. Council during the 2019 Performance Oversight session to ODCA's database of S&J payments. NOTE: The 2019 Performance Oversight session ended in February 2019 and our scope continued through March 2019, so some settlements

paid in March may not have been reported to the D.C. Council because they had not happened yet.

- Compared the list of sexual harassment cases/settlements that OAG provided to ODCA to the list that OAG provided to Advisory Neighborhood Commissioner Krepp to determine if OAG reported sexual harassment-related S&J information completely.
- Examined ORM, OAG, and OCA's internal controls related to the management of S&Js.
- Assessed the reliability of ORM's data system, OAG's list of civil litigation cases, and OPRS's list of personnel-related settlements.
- NOTE: While ODCA sought multiple sources of S&Js, due to reporting and accounting inconsistencies it is possible that ODCA did not obtain all S&Js payments during our scope.

To determine whether steps had been taken to reduce future risks, we requested that ORM, OAG, and OCA provide information about how they sought to reduce risk in the future (training, etc.) based on the sample of costly and high frequency (case type or agency) settlements.

Agency Comments

On October 28, 2020 we sent a copy of this report to the Office of Risk Management (ORM), Office of the City Administrator (OCA), Office of the Attorney General (OAG), and the Office of the Chief Financial Officer (OCFO) for review and written comment. OAG and OCFO responded with comments on November 10, 2020. ORM responded with comments on November 17, 2020 and OCA responded on November 23, 2020. Agency comments are included here in their entirety, followed by ODCA's response.

November 17, 2020

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, DC 20005

Dear Auditor Patterson,

Thank you for providing your office's draft audit report entitled *D.C. Lacked Unified System to Track, Reduce Settlements & Judgments* for my review and comment.

We appreciate you and your agency's effort to highlight the important role all partners play in the management of Settlements and Judgments. We also were pleased to see your acknowledgement that our new system, ERisk, is working to tackle many of the concerns your office raised regarding this much-needed unified system for the District.

ORM's responses to the specific recommendations made to the Office of Risk Management in the draft audit are provided below.

> ***ODCA Recommendation #5***: ORM should collect and assess comprehensive S&J information for risk mitigation by agencies and present the annual risk report to the Council.
>
> *ORM agrees with this recommendation. ORM is already making significant investments to collect and assess comprehensive settlement- and judgement-related information through the acquisition and implementation of a District-wide enterprise risk management system, ERisk. ORM is currently in the process of building a module within ERisk to: (1) track all contingent liabilities resulting from claims and litigation against the District; (2) process settlement requests to ensure settlements are properly authorized; (3) monitor settlements and judgments to ensure abidance, including with respect to non-monetary relief; (4) authorize and record payment of settlement and judgments; and (5) ensure compliance with applicable tax treatment for settlement and judgments paid.*
>
> *This District-wide enterprise risk management system can resolve the issues related to this finding, and ORM will work with District agencies to utilize ERisk to process and report settlements and judgments. In order for the ERisk system to be fully effective, however, it is important for OAG to implement a litigation management system that can effectively capture data and provide visibility into current litigation against the District and integrate that system with ERisk so that contingent liabilities can be visible to ORM and EOM. It*

will also be important for OAG to utilize ERisk—either directly or via integration through its new system with ERisk—to document or obtain necessary approvals for settlement and judgments and report them. Similarly, it will be important for OCFO to utilize ERisk to ensure that payment of settlements and judgments is authorized and to comply with tax requirements associated with the payment.

ORM is working with OAG, OCFO, the Mayor's Office of Legal Counsel, OCA, and District agencies to make this a reality. Once ERisk is capturing this data, contingent liabilities stemming from litigation, as well as settlements and judgments paid, will be transparent on a District-wide basis.

ORM intends to submit an annual report on risk management activities to the Council in accordance with D.C. Code § 2-431.

ODCA Recommendation #6: ORM, OCFO, and OAG should jointly implement SOPs with clear agency responsibilities as needed to govern the processing, handling, and reporting of S&Js from the S&J Fund.

ORM agrees with this recommendation. ORM will work with OAG and OCFO to implement standard operating procedures to govern the processing, handling, and reporting of settlements and judgments paid through the S&J Fund.

We thank you for your continued commitment to protect District taxpayers and constituents.

Sincerely,

Jed Ross
Chief Risk Officer

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the City Administrator

November 23, 2020

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, DC 20005

Dear Ms. Patterson,

Thank you for providing your office's draft audit report entitled *D.C. Lacked Unified System to Track, Reduce Settlements & Judgments* for my review and comment.

I agree that it is important to closely track litigation risks in the District, monitor and record settlements and judgments, and mitigate future risks. However, it is important to note that any audit or inquiry that focuses on settlements and judgments in the District will not capture the full range of actions the District takes to reduce risks and address issues so that litigation—and associated settlements and judgments—are unnecessary. For example, agencies have processes through which employees report issues that are then resolved with training or other management action, rather than by litigation. Agency staff also take proactive action to identify potential risks so that they can be mitigated before an injury occurs. For example, staff of the Mayor's Office of Community Relations and Services report sidewalk defects for repair so that the defects may be corrected before problems occur. In addition, agencies have implemented personnel accountability measures as well as operational and administrative improvements after errors have led to litigation.

Nevertheless, as we continue to improve how we track and mitigate risks going forward, we will use the recommendations provided in the report as part of the foundation for those improvements.

My responses to the specific recommendations made to the Office of the City Administrator in the draft audit are provided below.

> ***ODCA Recommendation #1***: The Executive should ensure that ORM has the support, resources, and data system(s) needed to identify, analyze, and prioritize S&Js and risks.
>
> ***OCA Response****: OCA agrees with this recommendation. The Executive has provided ORM with the necessary support and resources to acquire and configure the ERisk data system which will allow Executive agencies to track, monitor, and analyze settlements and judgments, as well as other losses and contingent liabilities arising from incidents, claims, and litigation.*

***ODCA Recommendation** #7*: OCA should communicate the relevant guidelines as to when and how a personnel related settlement should be submitted for OCA approval.

***OCA Response**: OCA agrees with this recommendation. OCA previously emailed each subordinate agency with information regarding the approval process for personnel-related settlements and included a copy of the relevant City Administrator's Order. In addition, the Mayor's Office of Legal Counsel ("MOLC") separately communicated with agency general counsels. OCA and MOLC also distributed a template memorandum for agencies to use to request settlement approval so that the necessary information and terms of the proposed settlement are included in the materials reviewed by OCA. To respond to the audit's recommendation, OCA will transmit a memorandum to subordinate agencies reminding them of the requirements related to the approval process for personnel-related settlements, including when and how a request should be submitted to OCA for review and approval, and will ask that MOLC again communicate with agency general counsels. These actions will be taken within the next 90 days.*

Sincerely,

Kevin Donahue
Interim City Administrator

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
KARL A. RACINE

November 10, 2020

By Email to: kathy.patterson@dc.gov

Kathy Patterson, District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Patterson:

Thank you for your draft report regarding the recently completed Settlement and Judgement audit. OAG was mentioned in two recommendations. We agree with both of them and have provided our comments below:

ODCA Recommendation #6: ORM, OCFO, and OAG should jointly implement SOPs with clear agency responsibilities as needed to govern the processing, handling, and reporting of S&Js from the S&J Fund. OAG Response to Recommendation Number 6: OAG concurs with the recommendation that OAG, OCFO, and ORM collaborate within a year to implement procedures that govern the processing, handling, and reporting of settlements and judgments from the settlement and judgment fund to ensure compliance with applicable law.

ODCA Recommendation #8: OAG should add a checklist to its internal processes or otherwise improve its oversight of agencies to ensure Mayoral approval was obtained for all settlements greater than $500,000. OAG Response to Recommendation Number 8: OAG created a settlement and judgment checklist form, for matters handled by OAG attorneys, which attorneys will attach to settlement and judgment payment request packets submitted to the Finance Section for payment. The form ensures that attorneys include all required documents and submit only those payments authorized for payment from the District's Settlement and Judgment Fund. The Finance Section will use the form to confirm proper use of the fund before processing payment requests and has already been implemented.

Please let us know if you need any additional information from us at this time. Thank you for the professionalism of your audit team and the opportunity to respond to your recommendations.

Sincerely,

Karl A. Racine/by JD

Karl A. Racine
Attorney General for the District of Columbia

cc: Diane Shinn, Office of the D.C. Auditor

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER

Jeffrey S. DeWitt
Chief Financial Officer

November 10, 2020

Ms. Kathleen Patterson
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, DC 20005

Dear Ms. Patterson:

Thank you for the opportunity to respond to the draft report issued by the Office of the DC Auditor on October 28, 2020, entitled "D.C. Lacked Unified System to Track, Reduce Settlements & Judgements**."** The responses of the Office of the Chief Financial Officer (OCFO) are below.

2. OCFO should work with OCTO and other agency partners (such as ORM) to facilitate the classification and reporting of personnel-related settlements and judgments (i.e. backpay, leave restoration) within the payroll system and the District's accounting system so that all of the personnel-related settlements and judgments are captured to strengthen the District's ability to monitor, report on, and reduce future risks. OCFO should ensure this functionality is built into the District Integrated Financial System (DIFS), its new accounting.

   Response: The OCFO concurs with the recommendations made by the D.C. Auditor. We will establish, within the System of Accounting and Reporting (SOAR), an expenditure object code for personnel-related settlement and judgment (S&J) transactions. Measures will also be taken to ensure that relevant parties are informed of the classification requirements. More specifically, the Office of Financial Operations and Systems (OFOS) will communicate with ORM and OCTO to introduce and discuss the settlement and judgment payroll transaction flow. This will allow them to more quickly and efficiently retrieve information related to S&J transactions, when needed and will facilitate timely reporting of S&J transactions, including those related to personnel matters.

   We will ensure that the functionality needed to accurately report S&J transactions using the appropriate accounting codes will be available in the District's new enterprise-wide financial system, the District Integrated Financial System (DIFS).

Expected Dates(s) for Completion: The expenditure object code for personnel-related S&J transactions will be established in SOAR by the end of November 2020. Upon its establishment, system users will be able to immediately utilize the code to account for such transactions. As the DIFS implementation project progresses, we will ensure that a similar code is set up in the new system's Chart of Accounts (COA). The timeframe for ensuring that the needed functionality is built in DIFS depends upon the project's projected timeline for finalizing the COA.

4. The OCFO should amend its Policies and Procedures Manual to address the need for consistency in recording settlement and judgment payments in SOAR and train current OCFO staff, including AFOs, on the requirements.

   Response: The OCFO concurs with the recommendations made by the D.C. Auditor. We will review the current financial policies and procedures for Settlements and Judgments to identify changes that are potentially needed to enhance consistency in payment processing practices among District agencies. We will revise existing policies and procedures to incorporate any changes in required accounting practices (such as the use of a new expenditure object code for personnel-related S&Js) and will make revisions that are necessary to strengthen internal controls. Upon completion of all revisions, we will distribute the updated policies and procedures to the appropriate staff and take measures to ensure that they understand the associated requirements.

   Expected Date(s) for Completion: Our goal is to complete a comprehensive review of the practices currently in place to process and pay settlements and judgments (both personnel- and non-personnel- related transactions.) This will require collaboration and discussion among staff in several offices, including the District's Office of Risk Management, Office of the Attorney General, and the Office of the Chief Financial Officer (Office of Pay and Retirement Services and others within the Office of Financial Operations and Systems.) Our targeted date of completion for this comprehensive review is February 15, 2021. The expected date for completing necessary updates and revisions to the relevant financial policies and procedures is March 31, 2021.

6. ORM, OCFO, and OAG should jointly implement SOPs with clear agency responsibilities as needed to govern the processing, handling, and reporting of S&Js from the S&J Fund to facilitate compliance with the statutory requirements of D.C. Code § 2-402 and strengthen critical information sharing. This includes procedures for reclassifying expenditures when the S&J Fund is used for unanticipated expenditures.

   Response: The OCFO currently has policies and procedures in place to govern expenditure re-classification and reporting. The OCFO facilitated a joint meeting between OAG and ORM management to jointly review the S&J process. The OCFO will continue to partner with OAG and ORM to support joint process improvements and implement process and procedure adjustments specific to OCFO, if any based on the outcome of the joint decisions by OAG and ORM.

Once OAG and ORM jointly decide on processing improvements, the OCFO will make the necessary process adjustments to ensure compliance and accuracy in S&J expenditure tracking, coding, and reporting in SOAR.

If you have any questions regarding this response, please feel free to contact Tisha Edwards, OCFO Internal Audit Director, Office of Integrity and Oversight at (202) 442-6446.

Sincerely,

Jeffrey S. DeWitt

Jeffrey S. DeWitt

cc: Timothy Barry, Executive Director, Office of Integrity and Oversight
Tisha Edwards, Internal Audit Director, Office of Integrity and Oversight

ODCA Response to Agency Comments

We appreciate the responses to the draft report provided by ORM, OCA, OAG, and the OCFO, especially their agreement with all our recommendations. It is encouraging that these agencies already have taken steps to implement our recommendations. Additionally, we are encouraged that these agencies are working collaboratively to implement our recommendations as well as to strengthen and modernize their systems to address many of the risks we identified in the report.

While we did not engage the OCFO in this audit, it is a key player in ensuring the accurate and consistent reporting of expenditures, and its staff was very helpful during the audit.

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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