

Review Report

**Office of Inspector General**

Montgomery County Government Tuition Assistance Program

March 2010



Office of Inspector General  
Montgomery County, Maryland

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**Contents**

Background Information and Conclusions.....	1
Findings and Recommendations.....	3
Ideas to Explore.....	10
Scope, Objectives and Methodology.....	11
Field Work.....	11
Appendix A.....	12
Firearm Illustrations.....	18
Appendix B (Ethics Commission Response).....	19
Appendix C (Management Response).....	20
Office of Inspector General Staff.....	21

## Background Information and Conclusions

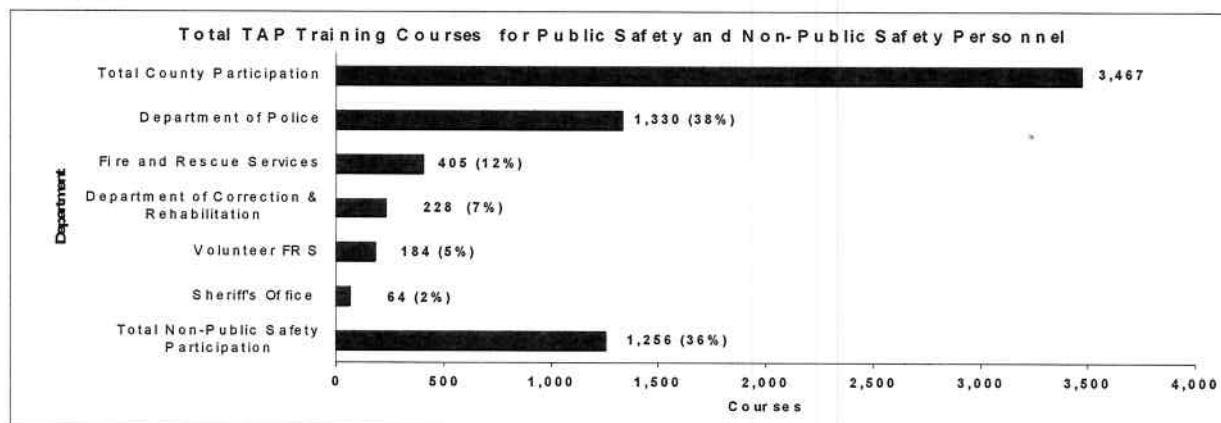
The primary goals of the Office of Inspector General (OIG) include: reviewing the effectiveness and efficiency of County government; preventing and detecting fraud, waste and abuse; and ensuring legal, fiscal, and ethical accountability by those responsible for managing resources and programs funded by Council appropriations. In this regard, our review of Montgomery County Government's (MCG) Tuition Assistance Program (TAP) focused on TAP policies, procedures and processes. As an additional consideration, processes related to the application for secondary employment<sup>1</sup> by MCG employees and the handling of these applications by the County Ethics Commission for TAP participants were also examined during our review. Our review did not include an evaluation of specific training courses paid with TAP funds.

TAP provides monetary assistance for County employees to attend classes/training for degree and non-degree educational objectives that relate to the employee's current job or career objective. The Program has two components: the Employee Training Assistance Program (ETAP) and the Job Improvement Tuition Assistance Program (JITAP). ETAP funds education or training to obtain a certificate, an associate's degree, a baccalaureate degree, or a graduate degree. JITAP funds credit courses, non-credit courses, or seminars, and only covers the cost of tuition and other direct or compulsory costs such as matriculation and registration.

In July 2009, the OIG began receiving allegations from MCG employees and others that TAP funds, administered by the Executive Branch Office of Human Resources (OHR), were being wasted, and policies and procedures governing TAP were being abused.

From fiscal year 2007 through September 4, 2009, the County spent approximately \$2,396,414 on 3,467 training courses for approximately 1,465 employees. During that period, 959 public safety<sup>2</sup> employees were approved for approximately 2,211 training courses, and 506 non-public safety personnel were approved for approximately 1,256 training courses. (See Exhibit 1).

### Exhibit 1

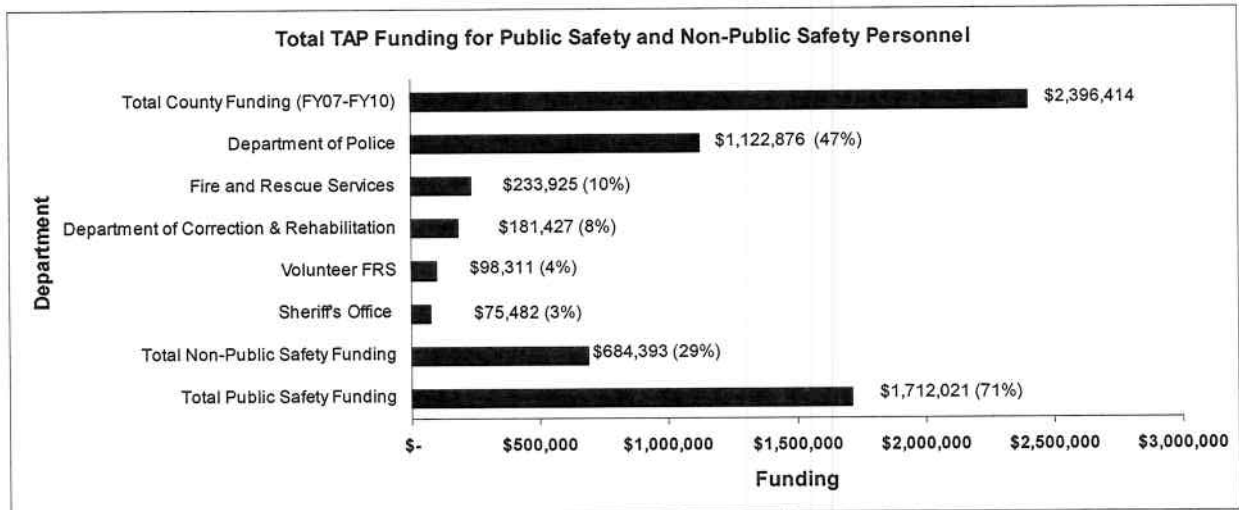


<sup>1</sup> The County Ethics Commission administers the application, approval and disapproval of all employment outside of County service by employees (known as secondary employment).

<sup>2</sup> Public Safety departments include: Department of Police; Fire and Rescue Services; Department of Correction & Rehabilitation; Volunteer Fire and Rescue Services; and Sheriff's Office.

The OIG identified approximately 596 Department of Police employees who participated in TAP (41 percent of the total County employees who utilized tuition assistance) at a cost of \$1,122,876, or 47 percent of the total TAP dollars spent during this time period. (See Exhibit 2).

**Exhibit 2**



**Conclusions**

MCG management is responsible for establishing and maintaining effective oversight and internal controls for TAP. The results of our review include three findings and recommendations that address deficiencies with management oversight, inadequate internal controls and insufficient action by County departments and the Ethics Commission to ensure employees and vendors participating in TAP were in compliance with County ethics, personnel and procurement regulations. This report also includes “Ideas to Explore” that are TAP and ethics-related practices of other local governments. The practices are included for Montgomery County officials to consider in their responsibilities for taking appropriate steps to protect TAP dollars from fraud, waste, and abuse.

In addition to corrective actions needed by management, we believe the Council should consider the results of our TAP review to determine if the County’s ethics law should be amended or additional legislative oversight is needed to help establish and maintain fiscal, legal, and ethical accountability in TAP-related activities.

**Prior Audit or Review Activity**

During our review, management advised us that County policies, procedures and internal controls related to TAP and related secondary employment processes have never been audited or independently reviewed.

## Findings and Recommendations

### Finding 1

The lack of management oversight of TAP and inadequate internal controls enabled 216 County employees to purchase semi-automatic pistols and semi-automatic rifles for personal use which appears to have been subsidized with County funds.

#### Analysis

From fiscal year 2007 through September 4, 2009, the County spent approximately \$2,396,414 on 3,467 training courses for approximately 1,465 employees. As a result of the County's use of different processes for employees to utilize TAP funds and the absence of audits and independent reviews, TAP lacked the internal controls needed to ensure the propriety of all expenditures.

For example, in fiscal year 2009, the County budgeted \$775,350 for TAP, and spent approximately \$1,017,772. The Department of Police (DOP) spent \$499,187 (49 percent) of the County's training dollars funded through TAP. DOP employees accessed TAP funds throughout the fiscal year while non-DOP employees were limited to TAP funds on a first-come, first-served basis until the total budgeted TAP funds were depleted. According to OHR staff, the County was obligated to approve and fund tuition assistance requests on behalf of DOP employees throughout the fiscal year regardless of available funding in the TAP budget. In addition, as a result of the collective bargaining process, DOP employees were authorized to submit TAP applications directly to OHR without the knowledge and approval of each employee's supervisor. As a result, DOP applications were approved by OHR staff that did not always have sufficient subject matter knowledge or expertise to properly assess and approve training courses.

During fiscal year 2007 through September 4, 2009, two County vendors, Applied Sciences for Public Safety, LLC (ASPS) and Global Law Enforcement Advisory Group, LLC (Global) provided training classes to public safety employees through JITAP and were paid approximately \$482,584 with TAP funds. ASPS and Global provided County employees who attended certain firearms training classes the opportunity to purchase semi-automatic pistols (pistol) and semi-automatic rifles (rifle) at significantly reduced prices at the completion of the training courses. The County paid approximately \$326,752 to ASPS and Global for these firearm training classes. A local federally-licensed firearms dealer handled the registration and transfer of ownership of the pistols and rifles that were purchased.

As an example of the firearms training courses funded by TAP, ASPS provided a "Corrections Officer Carrying Concealed" course that was restricted to correctional officers on August 21-22, 2008 and November 8-10, 2008 in Laytonsville and Frederick, Maryland. The course advertisement stated that, upon successful completion of the course, each participant would qualify to purchase a Glock 9mm pistol for "only \$99." The course advertisement stated "tuition reimbursement paid by your agency" and "5 hours of in-service MPTC credit<sup>3</sup>." Approximately

<sup>3</sup> The Maryland Department of Police and Correctional Training Commission (PCTC) is the governing body for the certification of in-service training courses for Maryland correctional and police personnel and authorizes the number of credit hours for certified training classes for continued professional development and training. The

35 County correctional officers attended these training classes at a cost of \$1,495 per employee. Approximately 34 correctional officers who attended the classes purchased a pistol. The firearms dealer purchased the pistols at an average cost of approximately \$425 per pistol.<sup>4</sup> The dealer charged ASPS an average retail price of approximately \$522 per pistol. The OIG determined through discussions with Department of Correction and Rehabilitation management that County correctional officers are not authorized to carry a pistol as part of their duties and responsibilities.

The OIG found there were approximately 172 County public safety employees who attended ASPS and Global training classes and purchased a pistol for personal use (see Firearms Illustration 1 on page 18).<sup>5</sup> These employees submitted a “Handgun Application/Purchase” to the Maryland State Police for the registration of a pistol within approximately two days of completing the training courses. The County paid approximately \$256,352 in tuition for these classes with TAP funds that resulted in the purchase of the pistols for personal use. The total retail cost for the pistols purchased was approximately \$89,345 or 35 percent of the costs of tuition paid with TAP funds.

In addition, ASPS offered a “Police Shootout” training class on October 1-3, 2008 and October 8-10, 2008 that was attended by 41 County police officers and three deputy sheriffs. The OIG determined that each individual who participated in this course was eligible to purchase a rifle for \$350 at the end of this course for personal use (see Firearm Illustration 2 on page 18).<sup>6</sup> The wholesale price for each rifle was \$645 and the retail price was \$715. All 41 police officers and three deputy sheriffs who participated in this course purchased a rifle. The tuition cost for each employee was \$1,600 and was paid with TAP funds. The County paid approximately \$70,400 in tuition for these classes with TAP funds that resulted in the purchase of rifles for personal use. The total retail cost for these rifles was approximately \$31,460 or 45 percent of the costs of tuition paid with TAP funds.

The OIG also determined that, of the 216 County employees who purchased firearms, seven employees purchased both a pistol and a rifle by attending ASPS training classes.

The OIG did not identify any pistols or rifles purchased by Fire and Rescue Services (FRS) employees. However, information was provided to the OIG that ASPS was planning to offer a Fire Rescue Threat Awareness and Police Weapons familiarization training course to FRS employees through TAP where attendees could purchase a Glock pistol for \$99.

According to OHR representatives, an audit or independent review of TAP internal controls had never been conducted. In addition, we were advised OHR did not have defined performance measures for TAP.

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“Corrections Officer Carrying Concealed” training course offered by ASPS was not a PCTC-approved course. The ASPS declaration of “in-service MPTC credit” for this course was misleading. Additionally, the OIG was advised that no courses offered by ASPS were PCTC-approved for in-service credit.

<sup>4</sup> There were several different makes, models and calibers of pistols available for purchase. As such, the wholesale and retail prices for each pistol varied.

<sup>5</sup> Individuals who purchased pistols were from the DOP, Department of Correction and Rehabilitation, and Sheriff’s Office.

<sup>6</sup> The OIG identified the rifle as a Rock River Arms, model LAR-15, semi-automatic rifle, caliber .223 or 5.56mm.



## **Recommendation**

We recommend the Chief Administrative Officer (CAO) and the Director of Human Resources (Director) review TAP policies and procedures to identify methods to strengthen management oversight and internal controls to ensure that all County funds are protected from fraud, waste and abuse. We also recommend that the CAO and Director satisfy management's regulatory requirements by retroactively identifying and reporting to the County Attorney and Council's Audit Committee all significant abuse that occurred or is likely to have occurred with taxpayer dollars associated with TAP.

## **Finding 2**

Proper management oversight and controls for police officer timesheets had not been established to ensure that police officers recorded work hours on their timesheets in accordance with TAP requirements and overall County policies.

## **Analysis**

Montgomery County Personnel Regulations, Section 14-1 (c) paragraph 11, entitled "Employee Development," states: *"An employee receiving tuition assistance must participate in the educational activity during the employee's off duty hours, on a flexible work schedule or on approved leave, other than administrative or professional improvement leave."* In addition, when an employee submits a tuition assistance application, either manually or electronically, employees certify on their applications that TAP course work/training will be taken during off-duty hours.

From a total of 3,467 applications, the OIG reviewed 75 randomly selected TAP files (which included 60 police officer files) and compared employee timesheet entries to the date(s) of TAP training. Our analysis determined that 30 of the 60 police officers (50 percent) were not in compliance with existing County policies and procedures governing leave associated with TAP. During the date(s) and times the 30 officers attended training, the time recorded on their timesheets was "regular work schedule," "administrative-uncontested temporary disability leave" or "professional improvement leave." Based on our analysis and discussions with DOP staff, we found that police officers frequently recorded TAP training time as regular work hours or other pay codes on their timesheets. However, the 30 police officers certified on the tuition assistance application(s) submitted to OHR that the coursework/training classes would be taken during off-duty hours. In addition, all timesheets reviewed for these police officers contained an employee signature that affirmed that their timesheets were true and accurate to the best of their knowledge and were approved by a supervisor.

Based on our analysis of 75 TAP files and related employee timesheet entries for the date(s) of training, approximately \$21,115 in questioned payroll costs representing 637 work hours were paid to TAP participants.



## Recommendation

We recommend that the CAO, working with the Chief of Police and Director of Finance (Director), conduct a comprehensive review of timesheets for police officers who attended approximately 1,330 TAP courses at a cost of approximately \$1.1 million in fiscal years 2007 through 2009 to identify and reconcile all inaccurate TAP-related work hour and timesheet entries. We also recommend that the CAO and Director review a sample of other TAP files and employee timesheets to determine the significance of any other inaccurate work hour and timesheet entries that may exist for approximately 2,137 other TAP courses at a cost of approximately \$1.2 million in fiscal years 2007 through 2009. Further, we recommend that the preliminary results of each review be reported to the Council and Executive no later than April 30, 2010.

## Finding 3

County departments and the Ethics Commission had not taken sufficient action to ensure employees and vendors participating in TAP were in compliance with County ethics, personnel and procurement regulations and that the County obtained TAP services at competitive prices.

## Analysis

From fiscal year 2007 through September 4, 2009, approximately 432 vendors provided County employees with various forms of training that were funded through OHR's TAP. Based on a review of Maryland's Department of Assessments and Taxation public documents, the OIG identified 10 County police officers and one County deputy sheriff<sup>7</sup> who had an economic interest<sup>8</sup> in one or more of nine JITAP vendors included in our review (See Appendix A). The County paid these vendors approximately \$638,884 (27 percent of total TAP dollars) during this time period (see Exhibit 4).

During our review, we identified three County processes that were vulnerable to potential conflicts of interest or other ethical breaches involving TAP activities and funding.

- The approval of TAP applications by employee departments or, depending on an employee's collective bargaining agreement, by OHR did not always have sufficient internal controls to protect County funds from waste and abuse. For example, as detailed in Finding 1, TAP applications for 34 correctional officers were approved to attend specific JITAP-funded training classes at a tuition cost of \$1,495 per officer. The process used to approve these TAP applications and the \$1,495 cost allowed each officer to purchase a pistol for personal use at a significantly reduced price (i.e. "only \$99") and appears to have enabled the TAP vendor to subsidize with County funds the \$522 average retail cost paid to the firearms dealer.

<sup>7</sup> Maryland Department of Assessments and Taxation records disclosed that the deputy sheriff had an economic interest in two of the vendors; the deputy sheriff is referred to as Employee B in Appendix A. Sheriff's Office employees are State employees who are funded by the County.

<sup>8</sup> According to the County Public Ethics Law, Section 19A-4 (j) which states: "*Interest or economic interest means any source of income or any other legal or equitable economic interest, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly, severally, directly or indirectly.*"

- The Ethics Commission had processes in place to fulfill its major responsibilities as required by the current ethics law. However, we found that the Commission’s approval processes for employee secondary employment were not designed to effectively guard against improper influence, or the appearance of improper influence, regarding County TAP business administered by OHR. For example, three employees included in Appendix A disclosed on their secondary employment application approved by the Commission that they were the owners of their respective companies (Apex Security, LLC; I Drive Smart, Inc.; and Signal 13 Law Enforcement Training, LLC). County ethics regulations prohibit employees from having an economic interest in any business subject to the authority of, or doing business with the County agency or department for which they work (COMCOR 19A.06.02.04). The ethics law also prohibits employees from being employed by, or owning more than one percent of any business that negotiates or contracts with the County agency with which the public employee is affiliated (19A-12, Restrictions on other employment and business ownership).

When we discussed these issues with the Ethics Commission and other County officials, we were advised that the employees identified did not have an economic interest in an outside employer that was doing business with the MCG Police Department (in contrast to OHR, the personnel agency for all MCG employees). Therefore, the Commission concluded that no violation of the ethics law existed. We believe this situation has and will continue to expose County taxpayer dollars to waste and abuse until more comprehensive guidelines and monitoring are put in place.

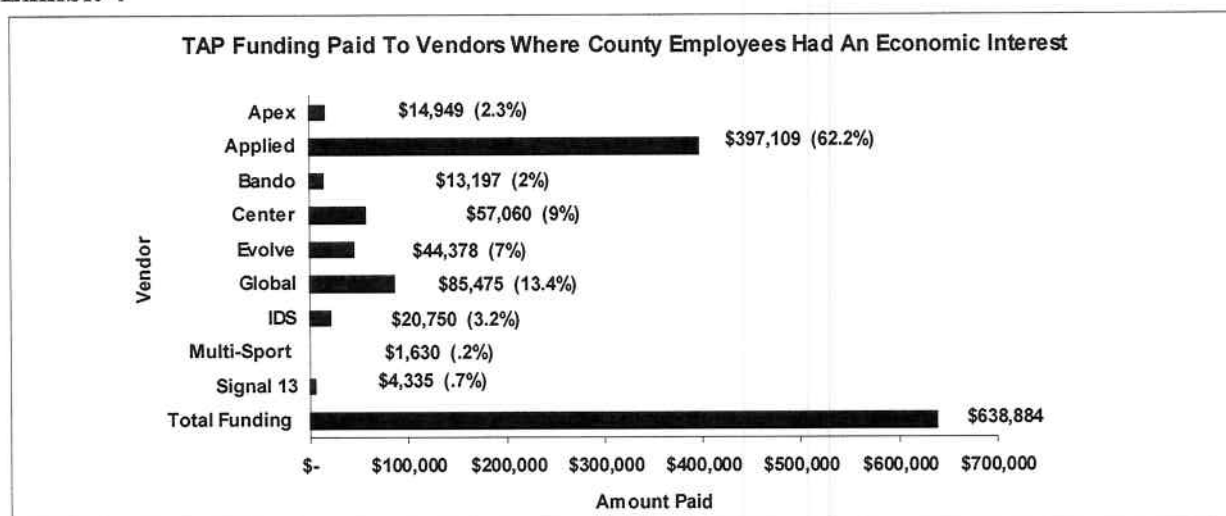
- County payments made by the Department of Finance to JITAP vendors were based on invoices submitted to and approved by OHR. However, for the JITAP vendors included in our review, we found that their approval by OHR as a County vendor was not based on the County’s informal or formal solicitation processes to ensure the efficient use of taxpayer dollars. For example, Exhibit 3 lists all County payments approved by OHR to ASPS, a JITAP vendor, from June 2008 through June 2009.

**Exhibit 3 - MCG Payments to ASPS – June 2008 through June 2009**

<b>Fiscal Year</b>	<b>Payment Date</b>	<b>Amount Paid</b>
2008	6/10/2008	\$31,100
2008	6/25/2008	\$35,134
2009	8/22/2008	\$28,405
2009	9/4/2008	\$13,455
2009	10/9/2008	\$22,425
2009	10/27/2008	\$35,200
2009	10/27/2008	\$38,400
2009	11/19/2008	\$59,800
2009	12/5/2008	\$41,860
2009	4/8/2009	\$25,185
2009	6/16/2009	\$37,400
2009	6/22/2009	\$35,880
<b>Total</b>		<b>\$404,244</b>

Although ASPS was approved by OHR as a JITAP vendor and received approximately \$404,244 in County funds<sup>9</sup>, we were advised that ASPS was never required to comply with Procurement’s informal or formal solicitation procedures for goods or services of \$5,000 or more. According to Procurement, all tuition payments were listed in Procurement’s PMMD-148, “Payment Method for Selected Procurements,” dated September 28, 2009, as purchases that were not subject to County procurement regulations. We were advised that this long-standing practice was based on a County decision to classify all tuition payments as an “employee benefit.” Procurement staff indicated that they did not have any records directly related to procuring TAP-related services, nor had Procurement assisted OHR in procuring services provided by ASPS or any other TAP vendors.

**Exhibit 4**



Source: Department of Human Resources<sup>10</sup>

With regard to the prevention of potential conflicts of interest or other ethical breaches, we were advised that OHR and Procurement had no processes in place to determine if a JITAP vendor who received County funds was owned or operated by a County employee, or whether a County employee who owned a JITAP vendor company had been approved by the Ethics Commission for secondary employment. Further, we were advised that when Procurement staff had a question about a contract possibly involving a County employee, they were advised to contact the Ethics Commission. When we discussed these issues with the Ethics Commission, we found that there was little or no collaboration and communication between OHR, County departments, and the Ethics Commission to prevent or detect potential conflicts of interest by TAP participants and vendors.

In other situations, it appeared the County paid JITAP vendors significant tuition differences for employees who attended the same training class, depending on whether an employee had already used a portion of their fiscal year training dollar allotment by attending other training. For

<sup>9</sup> The Department of Finance provided this information to the OIG as a part of a County vendor expenditure data request.

<sup>10</sup> The Director of Human Resources provided this information and data to the OIG.

example, Apex Security, LLC (Apex) submitted an invoice dated June 4, 2009 to OHR for \$8,589 that contained the names of 14 employees who attended executive protection training on May 28, 2009. On the vendor invoice approved by OHR for payment, Apex charged the County \$650 for 11 employees, \$452 for two employees, and \$535 for one employee.

For TAP to be an effective program for County employees and to protect County funds from potential fraud, waste and abuse, detailed guidance on the roles and responsibilities of OHR, Procurement, Finance, and the Ethics Commission is needed. In our discussions with County personnel, it became apparent that individual County agencies were focused on their respective administrative TAP duties with limited cross-agency collaboration on fiscal, legal, and ethical matters.

**Recommendation**

We recommend that the CAO take the actions necessary to improve TAP oversight by working with County departments and the Ethics Commission to ensure TAP participants and vendors are in compliance with County ethics, personnel and procurement regulations, and that the County obtains TAP training services at competitive prices in accordance with Procurement regulations. In addition, we recommend increased collaboration and communication between OHR, County departments and the Ethics Commission to protect County funds from waste and abuse.

## Ideas to Explore

As part of our research to identify best practices, the OIG reviewed TAP and ethics program practices of other local governments. We recommend the Council and Executive consider the practices of other local governments, including those described below<sup>11</sup>, to help strengthen management oversight and internal controls for TAP and ensure TAP funds are protected from fraud, waste and abuse.

Anne Arundel County, Maryland requires an “Educational Planning Statement” which is a statement of the applicant's educational goal; the number of courses remaining to achieve the goal, and an approximate time frame within which the employee expects to complete the required classes. This form is required to be resubmitted if there is a significant change in educational goals. Additionally, Anne Arundel County requires that all TAP applicants: “read and agree to the TAP policy prior to receiving a financial benefit and provide evidence of satisfactory completion of the class(es) by submitting a copy of the grade report within thirty (30) days of course completion or upon immediate receipt of this information.”

Fairfax County, Virginia requires that all coursework be administered by an institution accredited by the Southern Association of Colleges and Schools, the State Board of Education, or a similarly recognized accrediting agency. Fairfax County also requires an employee to provide evidence of satisfactory completion of the class(es) by submitting a copy of the grade report within ninety (90) days of course completion or upon immediate receipt of this information.

With regard to practices that focus on ethics, conflicts of interest, and secondary employment, the following examples were noted.

Frederick County, Maryland prohibits employees from holding or acquiring an interest in, or being employed by, a business entity that has or is negotiating a contract of \$1,000 or more with the county or is regulated by the employee’s agency except as exempted by its Ethics Commission.

Carroll County, Maryland prohibits County officials and employees from holding or acquiring a financial interest in, or being employed by, a business entity that has or is negotiating a contract with the county or is regulated by the employee’s agency, except as otherwise exempted by the Ethics Commission.

Fairfax County, Virginia, prohibits employees from having a personal interest in any contract with the county.

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<sup>11</sup> This information was obtained through research conducted primarily on the Internet. We recommend the requirements, prohibitions, and other practices be studied in greater detail by contacting the appropriate local government representative.



## **Scope, Objectives, and Methodology**

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Under the authority of Montgomery County Code §2-151, we conducted a review of the MCG TAP. We performed the review in accordance with the principles and standards for offices of inspectors general published by the Association of Inspectors General (AIG), the President's Council on Integrity and Efficiency, and other professional organizations. AIG general standards include staff qualifications, independence, and due professional care. AIG qualitative standards include quality control, planning, data collection and analysis, evidence, timeliness, fraud and other illegal acts, and confidentiality.

In July 2009, the OIG began examining TAP policies and procedures, including how OHR processed and approved TAP applications from MCG employees. Our four broad objectives were to determine if: 1) TAP policies and procedures were adequately and effectively managed, and whether processes and key controls were aligned and operating accordingly; 2) certain service providers of TAP were properly organized, licensed, and registered, if appropriate, for their knowledge and expertise; 3) TAP participant documentation was accurate, timely, and supported the disbursement of County funds, and whether County payments to service providers were accurate and in accordance with contractual terms, if appropriate; and, 4) internal controls for TAP were adequate to safeguard against the potential for fraud, waste and abuse.

To accomplish our objectives, we met with representatives of the County Attorney, OHR, Ethics Commission, Department of Police, County Sheriff, and others as deemed necessary. In addition, we requested from the CAO and subsequently reviewed all MCG policies and procedures relevant to TAP. We also assessed the adequacy of the County Ethics Commission's administration of the secondary employment application and approval process with respect to TAP activities and expenditures. The OIG took into consideration investigations that were being conducted by the County Attorney and other County departments. During our field work, we were advised of an audit of TAP by the Executive Branch's Office of Internal Audit. As of February 15, 2010, no information regarding the results of the investigations or audit had been publicly released.

### **Field Work and Management Response**

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We conducted our fieldwork from July 2009 through February 2010. On January 19, 2010, preliminary results were discussed with Executive management and County Attorney office representatives at an exit conference. At this conference, we advised management that additional findings regarding the use of TAP funds to purchase firearms for personal use were likely. On January 22, 2010, certain preliminary results were discussed with members of the County Ethics Commission. On February 4, 2010, we discussed the additional information regarding firearm purchases with an Assistant Chief Administrative Officer. In addition, the review results were discussed with the County Sheriff. A final draft report was sent to the CAO on February 18 requesting a response no later than March 5. We also provided a copy of the final draft report to the Chair of the Ethics Commission and the County Sheriff. On March 4, management advised that a written response may be delayed until the week of March 8. Upon receipt of the management response, it will be incorporated into the final report. The written response from the Chair, Ethics Commission, dated March 1, 2010, is included in Appendix B.



**Appendix A**  
**Tuition Assistance Program Review**  
**Summary of Montgomery County Employees with an Economic Interest in TAP Vendors**  
**FY 2007 through FY 2010 (September 4, 2009)**

Employee	Name of Vendor	Amount Paid to Vendor by County	Number of Participants	Description of Findings
1	Apex Security, LLC	\$14,949	16	<ul style="list-style-type: none"> <li>• 16 County police officers submitted a total of 20 TAP applications for funding for training courses offered by Apex.</li> <li>• The Articles of Organization filed by Apex on May 17, 2008, with the State of Maryland (referred to as the State hereafter), listed Employee A, a County police officer, as the resident agent<sup>12</sup>.</li> <li>• On the renewal application for secondary employment with the Ethics Commission dated July 25, 2008, Employee A answered “yes” to the question, “Is the employer, owner, manager, or immediate supervisor a Montgomery County Police Department employee?” He stated the duties to be performed included “Manage Company. Act as a surveillance officer – surveillance activity (notify proper authorities if necessary).” Additionally, he listed his position with Apex as “owner.” There was no indication that the Ethics Commission performed any follow-up inquiries to ensure Employee A was in compliance with Montgomery County ethics regulations.</li> <li>• On August 20, 2008, a Trade Name Application was filed by Apex with the State and listed Employee A as the owner. The application listed the description of the business as “security consulting, executive protection.”</li> </ul>

<sup>12</sup> Resident agent, as defined by the Maryland Department of Assessments and Taxation, is another entity or individual designated to accept service of process for the business.

Employee	Name of Vendor	Amount Paid to Vendor by County	Number of Participants	Description of Findings
2	Employee B Applied Sciences for Public Safety, LLC	\$397,109 <sup>13</sup>	267	<ul style="list-style-type: none"> <li>• 203 County police officers, 35 employees from the Department of Correction and Rehabilitation and 29 deputy sheriffs submitted a total of 279 TAP applications for training courses offered by Applied.</li> <li>• The Articles of Organization filed by Applied with the State on February 25, 2008, listed the address of the principal office of the company as being co-owned by Employee B, a deputy sheriff. The principal use of this property was listed as residential.</li> <li>• On October 3, 2008, Employee B submitted a secondary employment request to the Chief Deputy Sheriff and was approved to work for Applied as an instructor, range safety, role player and demonstrator.</li> </ul>
3	Employee C Bando Systems, LLC	\$13,197	9	<ul style="list-style-type: none"> <li>• Nine County police officers submitted one TAP application each for training courses offered by Bando.</li> <li>• On April 16, 2007, Employee C, a County police officer, filed a secondary employment application with the Ethics Commission stating that he would be a “teacher of Bando (Burmese self-defense system), to law enforcement, military, security and other interested groups/individuals. Teach principles of armed and unarmed combat as well as nutrition and sports conditioning.”</li> <li>• The Articles of Amendment filed by Bando with the State on February 12, 2009, listed Employee C as being an equal partner for Bando with two other individuals, who were not Montgomery County employees.</li> <li>• All nine police officers received their training after February 12, 2009.</li> </ul>
4	Employee B The Center for Public Safety and Research, LLC	\$57,060	42	<ul style="list-style-type: none"> <li>• 41 County police officers and one deputy sheriff submitted one TAP application each for training courses offered by Center.</li> <li>• Employee B, a deputy sheriff, did not file a secondary employment application for Center with the Sheriff’s Department.</li> <li>• The Articles of Organization filed by Center with the State on May 21, 2007 listed a resident agent who is not a County employee.</li> </ul>

<sup>13</sup> The source of this data was provided by the Director of Human Resources for TAP payments to this vendor.

Employee	Name of Vendor	Amount Paid to Vendor by County	Number of Participants	Description of Findings
5	Employee D Evolve Academy of Martial Arts, LLC	\$44,378	21	<ul style="list-style-type: none"> <li>State records identified the post office address of Center as the same address as the principal office location for Applied Sciences for Public Safety, LLC. This property is co-owned by Employee B. The principle use of this property was listed as residential.</li> <li>16 County police officers, four employees from the Department of Correction and Rehabilitation and one deputy sheriff submitted a total of 33 TAP applications for training courses offered by Evolve.</li> <li>The Articles of Organization filed by Evolve with the State listed a resident agent who is not a County employee.</li> <li>According to the Internet web page for Evolve, Employee D, a County police officer, is listed as an instructor for Evolve.</li> <li>Employee D did not file a secondary employment application with the Ethics Commission to work for Evolve.</li> </ul>
6	Employee E Global Law Enforcement Advisory Group, LLC	\$85,475	80	<ul style="list-style-type: none"> <li>69 County police officers and 11 deputy sheriffs submitted a total of 87 TAP applications for training courses offered by Global.</li> <li>The Articles of Organization filed by Global with the State on November 24, 2003, identified Employee E and Employee F, both County police officers, as two of the four "members" of Global.</li> <li>State records identified the post office address for Global as being owned by Employee E. The principal use of this property was listed as residential.</li> <li>Employee E disclosed on his application for secondary employment with the Ethics Commission dated January 28, 2004 that the duties he would perform for Global would include "Training/writing – general consulting services."</li> <li>Employee E answered "no" on the secondary employment application to the question, "Is the employer, owner, manager, or immediate supervisor a Montgomery County Police Department employee?"</li> <li>Employee F disclosed on his application for secondary employment with the Ethics Commission dated February 12, 2005 that the duties he would perform for Global would be "Training/writing – general consulting services."</li> </ul>
Employee F				

Employee	Name of Vendor	Amount Paid to Vendor by County	Number of Participants	Description of Findings
				<p>Employee F answered “no” on the secondary employment application to the question, “Is the employer, owner, manager, or immediate supervisor a Montgomery County Police Department employee?”</p> <ul style="list-style-type: none"> <li>• An Article of Cancellation<sup>14</sup> was filed with the State on August 20, 2009. It identified Employee F as the “member who was designated to wind up the affairs of the company.”</li> </ul>
7	I Drive Smart, Inc.	\$20,750	17	<ul style="list-style-type: none"> <li>• 15 County police officers and two deputy sheriffs submitted one TAP application each for training courses offered by IDS.</li> <li>• The Articles of Incorporation for a Stock Corporation filed on February 11, 2004 with the State listed Employee G and Employee H, both County police officers, as “directors” and “incorporators” of IDS.</li> <li>• Employee G stated on his application for secondary employment dated May 11, 2004 that the duties he would perform would be “Driver instruction and administrative duties.” Employee G answered “no” on the application to the question, “Is the employer, owner, manager, or immediate supervisor a Montgomery County Police Department employee?”</li> <li>• Employee G was listed on the Articles of Incorporation as the IDS resident agent.</li> <li>• Employee H stated on his application for secondary employment dated May 10, 2004 that the duties he would perform would be “Basic driver instruction and administrative duties.” Employee H answered “no” on the application to the question, “Is the employer, owner, manager, or immediate supervisor a Montgomery County Police Department employee?” Employee H described his position/title as “instructor/owner.” There was no indication that the Ethics Commission performed any follow-up inquiries to ensure Employee H was in compliance with Montgomery County ethics regulations.</li> </ul>

<sup>14</sup> Maryland Department of Assessments and Taxation requires that to terminate a Maryland Limited Liability Company (LLC) an originally executed Article of Cancellation must be submitted to the Department.

Employee	Name of Vendor	Amount Paid to Vendor by County	Number of Participants	Description of Findings
8	Employee I Multi-Sport/Brigadoon Group, LLC	\$1,630	1	<ul style="list-style-type: none"> <li>• State records identified the owner of the principal office of the corporation as Employee G. The principal use of this property was listed as residential.</li> <li>• One County police officer submitted one TAP application for a training course offered by Multi-Sport.</li> <li>• The Articles of Organization filed by Multi-Sport on January 27, 2003 with the State identified Employee I, a County police officer, as the resident agent.</li> <li>• An Articles of Amendment was filed by Multi-Sport on April 5, 2005 and listed Employee I as the “authorized person” to execute the amendment.</li> <li>• State records identified Employee I as the owner of the “mail to address” for Multi-Sport. The principal use of this property was listed as residential.</li> <li>• Employee I did not file a secondary employment application with the Ethics Commission for Multi-Sport.</li> </ul>
9	Employee J  Employee K Signal 13 Law Enforcement Training, LLC	\$4,335	22	<ul style="list-style-type: none"> <li>• 22 County police officers submitted a total of 49 TAP applications for courses offered by Signal 13.</li> <li>• The Articles of Organization filed by Signal 13 on October 27, 2008 with the State listed Employee J, a County police officer, as the resident agent and authorized person of Signal 13.</li> <li>• State records identified the owner of Signal 13’s address as Employee J. The principal use of this property was listed as residential.</li> <li>• Employee J submitted a Signal 13 invoice, under his signature, to the TAP coordinator for payment.</li> <li>• Employee J and Employee K, both County police officers, are identified as “co-owner/instructor” of Signal 13 on a County training attendance certificate, under their signatures. The certificate was issued to a police officer who attended a training course offered by Signal 13.</li> <li>• Employee K filed a secondary employment application with the Ethics Commission in 2008 where he listed himself as an owner of Signal 13. There was no indication that the Ethics Commission performed any follow-up</li> </ul>

Employee	Name of Vendor	Amount Paid to Vendor by County	Number of Participants	Description of Findings
				inquiries to ensure Employee K was in compliance with Montgomery County ethics regulations. <ul style="list-style-type: none"> <li>• Employee J and Employee K are listed as “co-founders” for Signal 13 on their Internet website.</li> </ul>
<b>Totals</b>		<b>\$638,884</b>	<b>537</b>	



## Firearm Illustrations<sup>15</sup>



**Illustration 1:** Glock model 30; 45 caliber, semi-automatic pistol<sup>16</sup>.



**Illustration 2:** Rock River Arms, model LAR-15, semi-automatic rifle; caliber .223 or 5.56mm<sup>17</sup>.

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<sup>15</sup> Per the Bureau of Alcohol, Tobacco, Firearms and Explosives, a semi-automatic pistol/rifle is defined as: *“Any repeating pistol/rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.”*

<sup>16</sup> The Glock model 30, 45 caliber model was the most popular pistol purchased by County employees who attended TAP funded training courses.

<sup>17</sup> The Rock River Arms, model LAR-15 .223 and 5.56 caliber rifles were the only rifles purchased by County employees who attended TAP funded training courses.



## MONTGOMERY COUNTY ETHICS COMMISSION

Stuart D. Rick  
Chair

Nina A. Weisbroth  
Vice Chair

March 1, 2010

Mr. Thomas Dagley  
Inspector General  
51 Monroe Street, Suite 802  
Rockville, MD 20850

Dear Mr. Dagley:

Thank you for affording the Montgomery County Ethics Commission this opportunity to provide a formal response to the findings and recommendations in the draft report of your office's review of the Montgomery County Government's Tuition Assistance Program (TAP). The report concludes that in administering the secondary employment approval process, the Commission was deficient in ensuring that employees and vendors participating in TAP were in compliance with County ethics regulations. For the reasons that follow, the Commission respectfully disagrees with that conclusion.

As noted in the report, TAP provides monetary assistance for county employees to attend training classes. The TAP is administered by the County Executive Branch Office of Human Resources (OHR). The TAP connection to the secondary employment approval process administered by the Commission is, at most, tangential. The connection drawn in the report is that some county police officers may have owned companies that provided training paid for under TAP. The report cites a lack of follow-up by the Commission to these police officers' answers to the question, "Is the employer, owner, manager, or immediate supervisor a Montgomery County Police Department employee," which was in their original or renewal applications for secondary employment with those companies.

The application question at issue collects information pertinent to the provisions in County directives that generally prohibit a public employee (1) from having an economic interest in any business subject to the authority of, or doing business with, that employee's agency,<sup>1</sup> and (2) from working for a person or entity in which an economic

<sup>1</sup> Montgomery County Code § 19A-12(b)(1); COMCOR 19A.06.02.04.4 (ethics commission outside employment regulation); COMCOR 19A.06.01.05(J) (police department executive regulation); MCPD Function Code 355 § V(J); and FOP contract art. 27(D)(10).

interest is held by that employee's supervisor or subordinate.<sup>2</sup> The police officers did not have an economic interest in an outside employer that was subject to the authority of, or doing business with, the Montgomery County Police Department (MCPD) because the MCPD does not administer TAP. Furthermore, there is not any finding in the report that in their secondary employment, these police officers were employing other county employees who supervised them or who were their supervisors in the MCPD. Thus, the report cites no actual violation of regulations administered by the Ethics Commission.

It is hard to understand, therefore, how any follow-up by the Commission would have ensured compliance with the County ethics regulations and why the Office of Inspector General found this to be a deficiency that warranted inclusion in a report about TAP. Despite our best efforts to obtain an explanation from the Office of Inspector General as to why it is holding the Ethics Commission accountable for TAP, the Office of Inspector General has not provided one to us.

The Commission certainly shares the Inspector General office's concerns about the apparent use of TAP funds to subsidize the purchase of firearms for personal use and the recording of TAP training time as regular work hours, as detailed in the report. However, those issues are not related to the secondary employment approval process administered by the Commission.

Thank you again for this opportunity to provide a formal response.

For the Commission:



Stuart D. Rick  
Chairman

cc: Timothy Firestine, CAO  
Raymond Kight, County Sheriff  
Kathleen Boucher, ACAO

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<sup>2</sup> COMCOR 19A.06.02.04.3 (ethics commission outside employment regulation); COMCOR 19A.06.01.05(R) (police department executive regulation); MCPD Function Code 355 § V(R); and FOP contract art. 27(D)(18).




## OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett  
County Executive

Timothy L. Firestine  
Chief Administrative Officer

March 8, 2010

TO: Thomas J. Dagley, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer 

SUBJECT: Inspector General's Final Draft Report: Montgomery County Government Tuition Assistance Program

This memorandum is the management response to the Final Draft Report issued by the Office of Inspector General entitled *Montgomery County Government Tuition Assistance Program*. We appreciate the opportunity to comment on this report and note that it supplements extensive work that we initiated last fall immediately upon learning from Sheriff Raymond Kight about his concerns that Tuition Assistance Program (TAP) funds were being used to subsidize the purchase of discounted firearms, including:

- (i) The hiring of an independent investigator by the County Attorney's Office which resulted in the filing of a lawsuit against Applied Sciences for Public Safety, LLC (ASPS) and Aaron Kenneth Bailey (Bailey) on March 3, 2010 to recover \$400,800 in TAP funds that were obtained fraudulently by ASPS and Bailey by claiming to provide County employees with training related to their public safety positions when, in fact, they used a portion of that public money to subsidize the employees' purchase of firearms and related equipment for personal use;
- (ii) An internal investigation by the Police Department to review timesheets for all police officers who attended TAP training courses in fiscal years 2007, 2008, and 2009. When the internal investigation is complete, appropriate measures will be taken, in collaboration with the Office of Human Resources (OHR), the County Attorney, and the Finance Department to address any violations of law or policy. Where employees have violated timesheet rules, OHR will make a payroll adjustment to deduct leave. OHR and the Finance Department are also working together to review a sample of non-police County employee timesheets in order to determine if there were any similar payroll errors for employees who were approved for TAP training;

- (iii) A review by OHR of policies and procedures governing the TAP program which has resulted in a number of changes (discussed below) that will make it more difficult for this type of fraud to occur in the future; and
- (iv) An audit of the TAP program conducted by the County's internal auditor which is still underway.

### **1. OIG Report process violates County Law**

In a memorandum to me dated February 18, 2010, you requested that I provide a response to this Final Draft Report by Friday, March 5<sup>th</sup>. Although an Assistant Chief Administrative Officer asked you on Thursday, March 4<sup>th</sup> if the management response could be delayed until Monday, March 8<sup>th</sup>, you never answered that question and preemptively issued your report on the morning of Friday, March 5<sup>th</sup> – *i.e.*, before the deadline you had given for a management response -- to all Councilmembers, the Council Staff Director, the Chairman of the Ethics Commission, the County Sheriff, and me. Not only does your early release of the report indicate a common lack of courtesy, it is inconsistent with the law under which you operate.

Section 2-151(k)(2) of the County Code provides a chronological process that the Inspector General must follow when issuing a report. Before releasing a report to anyone, each "affected agency" must first be given "a reasonable opportunity to respond to the Inspector General's final draft." Before releasing a report to the public, the Inspector General must then give the County's elected officials a "reasonable opportunity to review the report." The law clearly contemplates that a management response for each affected agency will be included in the report that is given to the County's elected officials. The purpose of this process is clear. The Executive and Councilmembers need an opportunity to understand the full nature of the matters raised in a report in order to respond to public inquiry after the report is made public. These elected officials cannot be fully informed without also having an opportunity to review the management response of each affected agency.

Your preemptive early release of a report to the individuals listed above without our management response was a violation of the requirement set out in §2-151(k)(2) that management be provided a reasonable opportunity to respond to the "final draft" of a report before it is issued to anyone. And unless you intend to provide additional time for Executive and Council review of the report you have already issued after appending this response, the Executive and Council will not be afforded "a reasonable opportunity to review the report" as was intended by §2-151(k)(2).

### **2. OIG Report – Finding 1/Recommendation 1**

*The lack of management oversight of TAP and inadequate internal controls enabled 216 County employees to purchase semi-automatic pistols and semi-automatic rifles for personal use which appears to have been subsidized with County funds.*

*We recommend the Chief Administrative Officer (CAO) and the Director of Human Resources (Director) review TAP policies and procedures to identify methods to strengthen management oversight and internal controls to ensure that all County funds are protected from fraud, waste and abuse. We also recommend that the CAO and Director satisfy management's regulatory requirements by retroactively identifying and reporting to the County Attorney and Council's Audit Committee all significant abuse that occurred or is likely to have occurred with taxpayer dollars associated with TAP.*

### **Management Response**

The County believes that Applied Sciences for Public Safety, LLC (ASPS) and Aaron Kenneth Bailey (Bailey) defrauded the County out of tuition assistance funds by claiming to provide County employees with training related to their public safety positions when, in fact, they used a portion of that public money to subsidize the employees' purchase of firearms and related equipment for personal use. The County filed a lawsuit against ASPS and Bailey on March 3, 2010, seeking \$400,800 in compensatory damages and \$500,000 in punitive damages. Lack of management oversight did not cause this alleged fraud. It was caused by deceitful actions of ASPS and Bailey. The OIG report fails to acknowledge this fact in any way.

However, the County has taken steps to make it more difficult for this type of fraud to occur in the future. In FY10, the Office of Human Resources (OHR) strengthened its internal controls and management oversight of the tuition assistance program by establishing a second level of management review for all applications and creating an annual internal review process for all FY10 applications. In addition, the County's internal auditor is in the process of conducting an internal audit of the tuition assistance program files for FY06-FY10. OHR management is currently working with the CountyStat Office to develop an evaluation strategy and performance measures for TAP to implement in FY11. OHR has also negotiated changes in the MCGEO collective bargaining agreement, which serves as a template for the other bargaining units to ensure tighter program controls and accountability. The Office of the County Attorney conducted an investigation of the tuition assistance program focusing on recovering funds which have been obtained in a fraudulent manner.

### **3. OIG Report - Finding 1 - Analysis**

*Department of Police (DOP) employees accessed TAP funds throughout the fiscal year while non-DOP employees were limited to TAP funds on a first-come, first-served basis until the total budgeted TAP funds were depleted. According to OHR staff, the County was obligated to approve and fund tuition assistance requests on behalf of DOP employees throughout the fiscal year regardless of available funding in the TAP budget.*

### **Management Response**

Under the collective bargaining agreement with the Fraternal Order of Police (FOP), the County is obligated to approve and fund, regardless of available funding in the TAP



budget, all tuition assistance requests submitted by FOP members based on an arbitration decision issued by Joseph M. Sharnoff on June 15, 1992. Mr. Sharnoff opined that all FOP members were entitled, under the FOP's collective bargaining agreement, to a specific amount of tuition assistance funds whether or not there are sufficient funds available to meet the requests of police officers in the bargaining unit. The Arbitrator ruled that County's refusal to reimburse FOP members for tuition assistance funds violated Article 39 of the collective bargaining agreement.<sup>1</sup> This arbitration ruling does not apply to civilian or management employees in the Department of Police (DOP) who are not FOP members.

#### **4.     **OIG Report – Finding 2/Recommendation 2****

*Proper management oversight and controls for police officer time sheets had not been established to ensure that police officers recorded work hours on their time sheets in accordance with TAP requirements and overall County policies.*

*We recommend that the CAO, working with the Chief of Police and Director of Finance (Director), conduct a comprehensive review of time sheets for police officers who attended approximately 1,330 TAP courses at a cost of approximately \$1.1 million in fiscal years 2007 through 2009 to identify and reconcile all inaccurate TAP-related work hour and timesheet entries. We also recommend that the CAO and Director review a sample of other TAP files and employee timesheets to determine the significance of any other inaccurate work hour and timesheet entries that may exist for approximately 2,137 other TAP courses at a cost of approximately \$1.2 million in fiscal years 2007 through 2009. Further, we recommend that the preliminary results of each review be reported to the Council and Executive no later than April 30, 2010.*

#### **Management Response**

The Police Department is conducting a review of timesheets for all police officers who attended TAP training in fiscal years 2007, 2008, and 2009. This review has been a part of the administrative investigation being conducted by the Department's Internal Affairs Division, begun last year. Once the administrative investigation is completed, appropriate measures will be taken, in collaboration with OHR, the County Attorney, and the Finance Department to address any violations of law or policy. Where employees have violated timesheet rules, OHR will make a payroll adjustment to deduct leave. OHR and the Finance Department will also work together to review a sample of non-police County employee timesheets for those employees who were approved for TAP training during the period noted, in order to identify any similar payroll errors. We will keep the OIG apprised of the progress of that review. Any payroll errors will also be addressed in coordination with the County Attorney.

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<sup>1</sup> The Office of the County Attorney advises that, notwithstanding Sharnoff's 1992 Opinion, tuition assistance available to members of the FOP under Article 39 would be limited to the amount of OHR's operating budget or any specific limitation imposed by the Council in OHR's budget.

**5. OIG Report – Finding 3/Recommendation 3**

*County departments and the Ethics Commission had not taken sufficient action to ensure employees and vendors participating in TAP were in compliance with County ethics, personnel and procurement regulations and that the County obtained TAP services at competitive prices.*

*We recommend that the CAO take the actions necessary to improve TAP oversight by working with County departments and the Ethics Commission to ensure TAP participants and vendors are in compliance with County ethics, personnel and procurement regulations, and that the County obtains TAP training services at competitive prices in accordance with Procurement regulations. In addition, we recommend increased collaboration and communication between OHR, County departments and the Ethics Commission to protect County funds from waste and abuse.*

**Management Response**

With regard to the report's conclusion that County employees did not comply with County ethics laws, we concur with the comments of Ethics Commission Chair Stuart Rick. The police officers referenced in the report did not have an economic interest in an outside employer that was subject to the authority, or doing business with, the Police Department because the Police Department does not administer TAP. Furthermore, there is no finding in the report that, in their secondary employment, these police officers were employing other County employees who supervised them or who were their supervisors in the Police Department. Thus, the report, despite its implication to the contrary, cites no violation of regulations administered by the Ethics Commission.

With regard to the report's conclusion that the County did not comply with County procurement law, we disagree. TAP is an *employee-initiated* County program, which OHR has administered for over thirty years and has always been considered an employee benefit. TAP vendors are individually selected by each employee who submits a TAP application, depending on their current job or career educational goals. The TAP is available to help pay the costs of education and training selected by County employees to take during their off-duty hours. In essence, TAP is a type of compensation to employees and the employee decides whether to access this fringe benefit. TAP funds that are used for a degree program are taxable income to the employee. TAP funds that are used for non-degree programs that are job-related are a non-taxable fringe benefit to the employee. Hence, the TAP Program is far removed from the County's Procurement system, which governs the acquisition of service, goods, and construction, by the County.

**6. OIG Report Finding 3 – Analysis**

*In other situations, it appeared the County paid JITAP vendors significant tuition differences for employees who attended the same training class, depending on whether an*

*employee had already used a portion of their fiscal year training dollar allotment by attending other training. For example, Apex Security, LLC (Apex) submitted an invoice dated June 4, 2009 to OHR for \$8,589 that contained the names of 14 employees who attended executive protection training on May 28, 2009. On the vendor invoice approved by OHR for payment, Apex charged the County \$650 for 11 employees, \$452 for two employees, and \$535 for one employee.*

### **Management Response**

OHR systematically reviews all invoices against the employee's Tuition Assistance Application and the OHR Tuition Assistance Access Database (maintained electronically) to verify the accuracy of the invoice prior to payment. In the Apex Security, LLC example, the invoices were cross checked against approved applications and the TAP Access database to ensure proper distribution of funds. In the Apex Security, LLC example, the invoice charged different dollar amounts to three different employees because those three employees had previously been authorized tuition assistance funds in the same fiscal year and were authorized for a lower dollar amount than the other 11 individuals who had not received tuition assistance funds in the same fiscal year. Many times, employees submit multiple applications for different classes in the same fiscal year and that is the reason why some employees receive different amounts of tuition assistance funding for the same courses identified by the Office of the Inspector General's Report. The TAP funds disbursed did not exceed the annual limit for each employee.

### **7. OIG Report – Ideas to Explore**

Page 10 of the OIG report outlines a number of ideas regarding tuition assistance programs in other jurisdictions that the OIG believes the County should explore.

### **Management Response**

We look forward to participating in any discussions relating to ways in which the TAP program can be improved. However, it is important to keep in mind that some of the ideas identified in the OIG report would require changes to County law or collective bargaining agreements.

TLF:kb

**Office of Inspector General Staff**  
(March 2010)

Thomas J. Dagley, Inspector General  
Christopher Giusti, Deputy Inspector General  
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