

STATUTORY REPORT

DISTRICT ATTORNEY DISTRICT 11 BOGUS CHECK RESTITUTION PROGRAM SUPERVISION PROGRAM PROPERTY FORFEITURE PROGRAM

For the period July 1, 2009 through June 30, 2013

A photograph of the Oklahoma State Capitol building, focusing on its iconic white dome and the surrounding clouds.

*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

**KEVIN BUCHANAN, DISTRICT ATTORNEY
DISTRICT 11**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
PROPERTY FORFEITURE PROGRAM**

**FOR THE PERIOD OF
JULY 1, 2009 THROUGH JUNE 30, 2013**

This publication, issued by the Oklahoma State Auditor and Inspector's Office as authorized by 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, and 63 O.S. § 2-506 has not been printed, but is available on the agency's website (www.sai.ok.gov) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to 74 O.S. § 3105.B.



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

March 11, 2014

Kevin Buchanan, District Attorney
District 11
Washington County Courthouse
Bartlesville, Oklahoma 74003

Transmitted herewith is the statutory report for the District Attorney of District 11, Washington and Nowata Counties, Oklahoma (the District) for the period of July 1, 2009 through June 30, 2013.

A report of this type is critical in nature; however, we do not intend to imply that there were not commendable features in the present accounting and operating procedures of the District.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

Sincerely,

A handwritten signature in blue ink that appears to read "Gary A. Jones".

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

**KEVIN BUCHANAN, DISTRICT ATTORNEY
DISTRICT 11
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INTRODUCTORY INFORMATION

BOGUS CHECK PROGRAM

The bogus check program was created by the Oklahoma Legislature in 1982 as a special type of deferred prosecution program and every district attorney is required to operate a bogus check program. The program provides an alternative way to handle bogus check cases without any additional cost to courts, prosecutors, or the state prison system. The primary emphasis of the program is collecting restitution for the victim of the crime, rather than punishing the offender.

Bogus checks are a significant cost to business, a cost that is passed on to the consumer and paid by all citizens and taxpayers in the state. The bogus check program has been an effective way to address the economic problem caused by bogus checks. The program offers a way to address criminal conduct without sending a large number of offenders to state correctional facilities.

DISTRICT ATTORNEY SUPERVISION PROGRAM

The district attorney supervision program was created by the Oklahoma Legislature in 2005 as an alternative from supervision by the Department of Corrections. When the court imposes a deferred or a suspended sentence for any offense and does not order supervision by the Department of Corrections, the offender shall be required to pay the district attorney a monthly supervision fee. However, the legislation provides that in hardship cases, the district attorney shall expressly waive all or part of the fee.

DISTRICT ATTORNEY PROPERTY FORFEITURE PROGRAM

Most district attorneys in the state have a Property Forfeiture Fund. The fund is not subject to fiscal year limitations and is to be used for enforcement of controlled dangerous substance laws, drug abuse prevention and education, and is maintained by the District Attorney to be used at his or her discretion for those purposes. The revenues for said fund come from the proceeds of forfeited assets.

Any cash, vehicles, real property, or other assets used in the commission of or acquired as a result of a crime as described in the Uniform Controlled Dangerous Substances Act is presumed to be forfeitable.

Asset forfeiture is an effective law enforcement tool used by local district attorneys to deprive criminals of their ill-gotten gains by seizing the proceeds of criminal activity and property used to facilitate crime. The proceeds of seized, forfeited assets make a substantial contribution to the investigation and prosecution of drug related offenses.



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Statutory Report

Kevin Buchanan, District Attorney
District 11
Washington County Courthouse
Bartlesville, Oklahoma 74003

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, and 63 O.S. § 2-506, we have performed the following procedures as they relate to the records of the District Attorney's programs for the period of July 1, 2009 through June 30, 2013.

Bogus Check and Supervision Programs:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Examine fees to determine that the correct fees are assessed, receipted, and deposited in compliance with 28 O.S. § 153, 22 O.S. §§ 114, 991d, 991f-1.1, and 19 O.S. § 215.11.
- Determine whether expenditures are used to defray the expenses of the District Attorney's office in accordance with 22 O.S. §§ 114 and 991f-1.1, and whether expenditures are supported by approved claims, invoices, and verification that goods or services paid for were received.
- Determine whether the District Attorney reconciles all accounts with the County Treasurer's ledgers.
- Determine whether the District Attorney prepares and submits an annual report to the District Attorneys Council that shows total deposits and total expenditures for the Bogus Check Restitution Program and the Supervision Program.

Property Forfeiture Program:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Determine that the District Attorney maintains a true and accurate inventory of all property seized in accordance with 63 O.S. § 2-506.K.
- Review sale documentation for selected cases to determine whether forfeited assets were sold after due notice at public auction to the highest bidder in accordance with 63 O.S. §§ 2-506 and 2-508.
- Review the distribution of proceeds to determine the distribution was in accordance with court orders pursuant to 63 O.S. §§ 2-506.K and 2-508.
- Test expenditures to determine they are supported by approved claims, invoices, and independent verification that goods or services paid for were received.

- Determine if the District Attorney prepared and submitted an annual report to the District Attorneys Council showing the total deposits, total expenditures, beginning and ending balances in accordance with 63 O.S. § 2-506.L.3.
- Determine if the District Attorney reconciles account balances with the County Treasurer.

All information included in the financial records of the bogus check restitution program, supervision program, restitution and diversion program, and the property forfeiture program are the representation of the District Attorney for their respective district.

Our engagement was limited to the procedures performed above and was less in scope than an audit performed in accordance with auditing standards generally accepted in the United States of America. Accordingly, we do not express an opinion on any basic financial statement of Washington or Nowata Counties.

Based on our procedures performed, we have presented our findings in the accompanying schedule.

This report is intended for the information and use of the District Attorney and the County Officials. However, this report is a matter of public record and its distribution is not limited.



GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

January 21, 2014

**KEVIN BUCHANAN, DISTRICT ATTORNEY
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FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

SCHEDULE OF FINDINGS AND RESPONSES

Finding 1 – Segregation of Duties – Bogus Check, Supervision, and DA Property Forfeiture Accounts

Condition: The following are instances of the lack of segregation of duties in personnel within District Attorney accounts:

Washington County

A lack of segregation of duties exists in the procedural process of the Bogus Check Restitution Program (Merchant and DA Fees). One employee receives payments, prepares and delivers the deposit, prepares expenditures, signs and registers vouchers, maintains subsidiary ledgers, performs monthly reconciliations, and prepares the annual report. No one other than the preparer reviews the deposits or reconciliations to ensure accuracy of the amounts reconciled.

A lack of segregation of duties exists in the procedural process of the Supervision Fee Program. One employee receives payments, and prepares and delivers the deposit. No one other than the employee reviews the deposit to ensure accuracy of the amounts received for the day.

Nowata County

A lack of segregation of duties exists in the procedural process of the Property Forfeiture and Supervision Fee programs. One employee receives payments, prepares and delivers the deposit, prepares expenditures, signs and registers vouchers, maintains subsidiary ledgers, performs monthly reconciliations, and prepares the annual report. No one other than the preparer reviews the deposits or reconciliations to ensure accuracy of the amounts reconciled.

Cause of Condition: Procedures have not been designed to properly segregate key accounting functions.

Effect of Condition: A single person having responsibility for more than one area of recording, authorization, custody of assets, and execution of transactions could result in unrecorded transactions, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

Recommendation: The Oklahoma State Auditor & Inspector's Office (OSAI) recommends management be aware of these conditions and realize that concentration of duties and responsibilities in a limited number of individuals is not desired from a control point of view. The most effective controls lie in management's overseeing of office operations and a periodic review of operations. OSAI recommends management provide segregation of duties so that no one employee is able to perform all accounting functions. In the event that segregation of duties is not possible due to limited personnel, OSAI recommends implementing compensating controls to mitigate the risks involved with a concentration of duties. Compensating controls would include separating key processes and /or critical functions of the office, and having management review and approval of accounting functions.

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Management Response: District Attorney acknowledges the lack of segregation of duties as outlined in the findings. In the case of Nowata County, the office personnel consists of one assistant and an attorney. Given the attorney's responsibility in the courtroom it is not feasible to require him to receive payments for the various accounts or to write receipts for same. In Washington County, all money is now received in the Bogus Check and Supervision office by two assistants. District Attorney has now implemented a policy change such that Pam Bland, who is in charge of the Bogus Check division, will receive all payments for the District Attorney's Supervision program and provide the payor a receipt for same. All monies received for the Supervision program will be turned over to Patricia Phelps who is in charge of the DA Supervision program for deposits and preparation of any reports regarding income from Supervision. Ms. Phelps will begin receiving all payments for the Bogus Check program providing receipts to the payor, and then providing all monies to Pam Bland who will make the deposits and provide reports on the Bogus Check program. Because these are the only two assistants involved in these programs, any day that one is gone for vacation, sick, or any other reason, necessity will require that the remaining person will take all payments for all programs regardless of the foregoing policy.

The Property Forfeiture account is a different matter. Law enforcement officers seize and submit requests for forfeiture cash or properties. Legal pleading include cash amounts in the title of proceedings to forfeit same. Officers then testify regarding the amounts of cash or other types of properties that they seize in order to obtain an order of forfeiture. Once an order of forfeiture is obtained, past practice has been that a different employee than the one processing the forfeiture then obtains the money from the law enforcement agency. The monies forfeited or other properties, when sold, are then divided equally between the District Attorney's office and the law enforcement agency seizing the property. Up through this process, multiple employees in the District Attorney's office and the seizing agency all have eyes on the money and the amount which should be deposited or available for division. Distribution from the funds from within the property forfeiture account is then made from a separate employee from the assistant who maintains and reports the account balance.

Auditor Response: Although it is difficult to adequately segregate duties with limited employees, mitigating controls should be implemented to adequately safeguard assets. An example of a mitigating control would include having someone review the receipts and deposit ticket for accuracy and leaving initials and date as evidence of the review.

Criteria: Demonstration of accountability and stewardship are goals used in evaluating management's accounting for funds. A basic component of adequate internal controls is the segregation of duties so that one individual cannot perpetuate and conceal errors and irregularities in the normal course of his/her duties. To help ensure a proper accounting of funds and strong internal controls, the duties of receiving, receipting, recording, and depositing cash and checks should be separated among employees.

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Finding 2 – Internal Control Environment - Written Policies and Procedures for Bogus Check Restitution and Supervision Fee Programs

Condition: As part of our review of District Attorney accounts and records, we tested receipts, disbursements and cash balances. The District Attorney does not have written policies and procedures and/or has not designed and implemented internal controls for the safeguarding and reporting of program funds. As a result, deficiencies were noted in certain areas, which include the following:

Washington and Nowata Counties

Information Technology

- Employees are not required to log out of the system when leaving their workstation.
- Override or write-off reports are not reviewed periodically for unusual activity.
- A time out security measure has not been assigned in the system.
- IT software audit reports are not reviewed for voided, altered, or deleted receipts.
- Employees receiving payments are able to delete payments without prior approval.

Bogus Check Restitution Program

Washington County

- Deposits are made weekly and not on a daily basis.
- 2 of the 20 of the expenditures tested did not have an itemized invoice attached to support the transaction.
- We could not locate supporting documentation for 4 of the 20 expenditures tested.

Supervision Fee Program

Washington County

- Daily deposits are not prepared. We noted instances where Supervision payments were not deposited until 18-22 days after the initial payment was received.
- Subsidiary ledgers are not maintained for this account. Therefore, monthly reconciliations with the County Treasurer are not performed.
- 1 of the 16 expenditures tested did not have an itemized invoice attached to support the transaction.
- 16 of 16 expenditures tested were not verified ensuring that goods and/or services had been received (i.e., receiving report).

Nowata County

- Receipts are not written for all payments received.
- Daily deposits are not prepared. We noted instances where Supervision payments were not deposited until 17-29 days after the initial payment was received.

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- We could not determine the Supervision fees assessed for 7 of the 20 defendants tested. Payment schedules in defendant files did not clearly indicate the original amount of the Supervision fees owed.

Cause of Condition: The District Attorney's office does not have formal policies in place establishing procedures for collections, disbursements, and financial reporting for the Bogus Check Restitution and Supervision Fee accounts.

Effect of Condition: These conditions could result in employee error for the reporting and documentation of the collection of payments, defendant file maintenance, restitution payments, expenditure transactions, and the accounting of funds. In addition, these conditions could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

Recommendation: OSAI recommends that management adopt written policies and procedures for the accounting of program funds and the maintenance of client files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that each program is properly accounted for and is in compliance with applicable laws and regulations. Such policies should include the following:

- Guidelines for applying restitution payments to District Attorney fees and remitting restitution payments to merchants/victims. (i.e., merchants/victims are paid restitution before District Attorney fees are collected, etc.)
- Guidelines for the disposition of monies in an account when a merchant cannot be located.
- Guidelines for the oversight of the daily collection process and the deposit of funds.
- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for the process of approval and documentation of account expenditures.
- Guidelines for the assignment of IT software administrative rights to an individual not directly associated with the day to day accounting processes.
- Guidelines for the administrative approval and review of IT software deletions, voids, and write-off activity.

Furthermore, we recommend management identify, analyze, and manage risks. Management should also assess the quality and effectiveness of the organization's internal control process over time and implement appropriate controls and oversight of each program's daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

Management Response: District Attorney acknowledges the shortcomings in the areas reported and policies and procedures are being implemented to address these issues such as the one noted in response to number one above.

Both the Bogus Check and Restitution programs in Washington County were noted that supporting documentation (invoices or receipts) were not included with expenditures. Numerous expenditures are

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not invoiced. All attorneys and some support staff in the office are required to attend continuing education seminars yearly. These are simply paid for when office personnel attend them. Some investigatory expenditures are made when needed, such as paying for an outside polygraph which is paid for at the time the services are rendered and not invoiced. Other investigatory expenditures are made when necessary, but vendors do not provide the services except when paid for when the service is requested.

As for Nowata, since being advised of the audit findings, utilization of the computer program to provide receipts and document payments in the Supervision program has been explained and will be used in all instances, and receipts will be deposited in a timely manner.

Auditor Response: All expenditures should be properly documented with invoices, agendas for training classes, etc.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

Finding 3 – Internal Control Environment - Written Policies and Procedures for District Attorney Drug Fund (Property Forfeiture)

Condition: As part of our review of District Attorney accounts and records, we tested receipts, disbursements, and cash balances. The District Attorney does not have written policies and procedures and/or has not designed and implemented internal controls for the safeguarding and reporting of program funds. As a result, deficiencies were noted in certain areas, which include the following:

Washington County

- Receipts are not issued for all funds received.
- 1 of the 18 expenditures tested did not have a purchase order claim attached to the expenditure to verify approval of the expenditure.
- 13 of the 18 expenditures tested were not verified ensuring that goods and/or services had been received (i.e., receiving report)
- 7 of the 18 expenditures tested did not have an itemized invoice attached to support the transaction.
- During our review of property forfeiture cases, it was noted that once seized monies had been forfeited by the Court, several months and/or years would lapse before the forfeited funds are received from the seizing agency and deposited with the County Treasurer.

Nowata County

- Property Forfeiture inventory is not maintained.
- 7 of the 12 expenditures tested did not have an itemized invoice attached to support the transaction.

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- 9 of the 12 expenditures tested were not verified ensuring that goods and/or services had been received (i.e., receiving report).
- We could not locate supporting documentation for 1 of the 12 expenditures tested.

Cause of Condition: The District Attorney's office does not have formal policies in place establishing procedures for collections, disbursements, and the financial reporting for the Drug Fund (Property Forfeiture) Program accounts.

Effect of Condition: These conditions resulted in employee error for the reporting and documentation of the collection of payments, defendant file maintenance, restitution payments, expenditure transactions, and the accounting of funds. In addition, these conditions could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

Recommendation: OSAI recommends that management adopt written policies and procedures for the accounting of program funds and the maintenance of files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that the program is properly accounted for and is in compliance with applicable laws and regulations. Such policies should include the following:

- Guidelines with local seizing agencies (i.e., 50/50 split, disposition of property, etc.) for the seizure of funds/property.
- Guidelines for the oversight and documentation of case file maintenance and status of forfeited inventory.
- Guidelines for the oversight of the receipting process and the deposit of funds.
- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for the process of approval and documentation of account expenditures.

Furthermore, we recommend management identify, analyze, and manage risks. Management should also assess the quality and effectiveness of the organization's internal control process over time and implement appropriate controls and oversight of each program's daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

Management Response: District Attorney has adopted a new policy for Washington County forfeiture of cash. A "trust" account has been created at the County Treasurer's office. All agencies desiring to have cash forfeited must bring the cash with the forfeiture request. One of two staff will proceed with the requesting agency to the County Treasurer's office to deposit the cash and receive a receipt for same. The property forfeiture process will then begin and once completed, the County Treasurer will issue a check to the requesting agency for their portion of the forfeited property and the District Attorney's portion will be transferred to the Forfeiture account. The past practice of leaving cash in the evidence lockers will be ending.

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Auditor Response: All expenditures should be properly documented with invoices, agendas for training classes, and evidence of goods/services received.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

Finding 4—Property Forfeiture Expenditures

Condition: During our review of Property Forfeiture expenditures, we noted \$5,000.00 was disbursed to reduce an Assistant District Attorney's student loan. While this expenditure is allowable by the "Financial Reimbursement for Educational Expenses Act of 2007" of the Oklahoma Statutes (74 O.S. §1731-§1734), it should not have been expended through the Property Forfeiture account which has a restricted purpose (cited below).

Cause of Condition: The District Attorney approved this expense because the Assistant District Attorney prosecuted drug related cases.

Effect of Condition: This condition resulted in Property Forfeiture funds not being expended for the purposes intended by state statute.

Recommendation: OSAI recommends that management research and determine that applicable laws and regulations are complied with when a transaction occurs within a restricted fund.

Management Response: District Attorney disagrees with the finding that the expenditure complained of in this finding was not appropriate. The expenditure is clearly authorized by law as noted in the finding. The dispute is that it should not come from the Forfeiture funds. District Attorney believes that as the Assistant prepares and prosecutes a minimum of half of the misdemeanor drug cases and all juvenile delinquent drug cases that this is an appropriate expenditure.

Regardless of District Attorney's position, the process for making the payment in question was not properly followed, and District Attorney Counsel replaced the money and made the eventual expenditure from other funds.

Criteria: Title 63 O.S. § 2-506 (L.3) states in part, "The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education, and maintained by the district attorney in his or her discretion.."

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Finding 5 – Annual Reports

Condition: As part of our review of District Attorney Programs, we ensure that amounts on annual reports reconcile with the County Treasurer's balances, and are accurately reflected in the amounts submitted to the District Attorneys Council (DAC). From our review, the following discrepancies were noted:

Washington County

- Beginning and ending balances for the Bogus Check Restitution and Fee accounts annual report do not reconcile with the County Treasurer.

Cause of Condition: When preparing the annual report, program ledger balances were not reconciled to the County Treasurer's balances to ensure accuracy.

Effect of Condition: This condition resulted in inaccurate annual reporting of expenditure, income, and account balances submitted to the District Attorney's Council (DAC) for program fund activity.

Recommendation: OSAI recommends that management adopt written policies and procedures for the accounting and reporting of program funds. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that the program is properly accounted for and is in compliance with applicable laws and regulations. Such policies should include the following:

- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for accurate reporting of annual reports and the review process.

Management Response: District Attorney anticipates resolving this issue at the end of the current fiscal year and beginning of the next.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

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Finding 6 – Unclaimed Bogus Check Restitution

Condition: Balances for the Bogus Check Restitution (Merchant) account had outstanding balances at June 30, 2013. This is a cumulative amount as a result of vouchers not cashed by merchants and subsequently cancelled. They are as follows:

Washington County

- At June 30, 2013, an unknown amount in merchant restitution is held in the District Attorney's Bogus Check DA Fee fund.

Nowata County

- At June 30, 2013, an amount totaling \$14,843.73 in merchant restitution was held in the District Attorney's Bogus Check Restitution fund.

Cause of Condition: The District Attorney's office does not have formal policies establishing procedures to ensure that returned or unpaid vouchers are examined to determine the current status of the merchant for the re-issuance of the restitution.

Effect of Condition: These conditions resulted in the restitution fund not being properly cleared.

Recommendation: OSAI recommends that management research and determine the location of the merchants so that restitution can be properly remitted. Management should then contact the proper agency for further direction to determine the manner in which the remaining unidentified balance should be distributed.

Management Response: District Attorney plans on resolving this issue at the end of the current fiscal year and beginning of the next.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.



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