



ERIE COUNTY CLERK'S OFFICE

RESPONSE TO FEBRUARY 2024 AUDIT BY THE ERIE COUNTY COMPTROLLER'S OFFICE

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SUMMARY OF THE AUDIT RESPONSE OF THE ERIE COUNTY CLERK'S OFFICE

Introduction

The following report contains the response of the Erie County Clerk's Office ("Response") to the audit by the Erie County Comptroller's Office titled "Mortgage Tax Revenue Collection and Distribution for the Erie County Clerk's Office, Registrar Division for the period January 1, 2022 through December 31, 2022".

For context, this Audit is in fact the *second* audit of the Registrar Division of the Clerk's Office in the past year (and will be referred to herein as the "Second Audit"). The first audit of the Registrar Division ("First Audit") was announced on February 13, 2023 and, as was well-publicized, resulted in a report being released on June 30, 2023, nearly five months after commencement. A supplemental "Analysis of the Concentration Account and Deposit Activity in the Erie County Clerk's Office, Registrar's Division, January 1, 2022 – June 30, 2023" ("Analysis") was released on August 24, 2023, over six months after commencement of the First Audit. The response by the Clerk's Office to the First Audit was released on September 25, 2023.

This Second Audit was announced on May 4, 2023 under the justification that the scope of the First Audit needed to be expanded to include mortgage tax distributions. A copy of the May 4, 2023 letter from the Comptroller's Office to the Clerk's Office is attached hereto as **Exhibit A**.

The fieldwork for the Second Audit ended on October 12, 2023. However, the findings of the Second Audit were not released to the Clerk's Office (in draft form) until January 22, 2024, over eight months after commencement and, incredulously, nearly one year after the announcement of the First Audit. A full timeline of the auditing process is attached hereto as **Exhibit B**.

The Second Audit Is Duplicative Of The First Audit As Evidenced By The Findings And Recommendations.

As before, the Comptroller's Office alternates throughout the Second Audit between phrases like "Finding", "Significant Finding", "Material Weakness," and "Comment" without explanation. However, it is clear that the majority of critiques and recommendations are duplicative of those found in the First Audit and the Analysis. As such, the majority of the critiques and recommendations were already provided to the Clerk's Office over six (6) months ago. These duplicative critiques and recommendations are indicated in the Responses accordingly and respectfully considered moot.

The Clerk's Office Has Already Implemented Policies And Procedures For Increased Oversight And Financial Controls.

Since the release of the First Audit on June 30, 2023, and as noted in the response from the Clerk's Office on September 25, 2023, many changes recommended by the Comptroller's Office have already been implemented regarding oversight and financial controls. A summary of the most important improvements is below:

- The Deputy County Clerk – Finance is no longer the sole individual who prepares monthly payments and reports.
- At least two individuals in management must verify all payments that are sent out.
- Copies of all checks received by the Clerk's Office are made by cashiers and included in the daily deposit reporting.
- Fees collected for recording documents and other services offered by the Clerk's Office have been verified with statutory authority, including the New York Civil Practice Law and Rules ("CPLR") and assembled in the Clerk's Office Schedule of Fees.
- Refunds for Court filings have been streamlined and given increased oversight with the use of the Converge software system.
- Escrow agreements are in the process of being dismantled in favor of a cart-based online image-purchasing system.
- Updated written procedures for financial duties and payment distribution.

Perhaps most significantly, and based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, the Clerk's Office has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and the Clerk's Office is grateful to the Comptroller's Office for its assistance in that regard.

The Process Has Already Begun To Improve Software Used By The Clerk's Office.

As with the First Audit, several "Findings" relate to legacy software and agreements that long predate the current administration of the Clerk's Office. NewVision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already been meeting with potential software vendors on improving current systems and potentially purchasing new ones. In addition, Clerk's Office staff has met with other County Clerk offices to compare financial software and operations. It was anticipated that this Second Audit would be completed in the Fall of 2023 so that a Request for

Proposals (“RFP”) could be released. Given the delayed release of the Second Audit, it is expected that the RFP will issue sometime in the spring of 2024.

This Second Audit Of The Clerk’s Office Revealed Multiple Issues With The Comptroller’s Office.

This Second Audit is notably critical of both the Clerk’s Office *and* the Comptroller’s Office. Alleged issues that were found in the Clerk’s Office in the First Audit and reiterated in the Analysis and now the Second Audit have now been found in the Comptroller’s Office, including lack of managerial oversight, comingling of funds, flaws in tax revenue distribution, and errors in accounting. In total, 4 of the 30 Findings in this Second Audit are critical of the Comptroller’s Office, as highlighted on pages 24, 25, 26, and 27 of the Second Audit. The Findings against the Comptroller are summarized here:

- There is a lack of communication between the Cash Management and Trust Units of the Comptroller’s Office causing delayed and incomplete interest payments to the tax districts and resulting in flawed distribution totals.
- The practices of the Controller’s Accounting Division have resulted in interest posting errors in the County’s accounting system and requires managerial oversight per Erie County policy.
- The Comptroller’s Office comingled mortgage tax funds with other County trust funds.
- The Comptroller’s Accounting Division lacks managerial review over ACH and check disbursements prior to the Semi-Annual distribution.

While the Clerk’s Office is grateful for the constructive criticism and recommendations, it is simply hypocritical to expect perfection of the Clerk’s Office and keep it under audit for over a year when the Comptroller’s Office itself has multiple financial and accounting issues. Clearly, the financial structure of Erie County is problematic where there are multiple issues at the office of the Chief Fiscal Officer.

The Clerk’s Office Looks Forward To Continued Cooperation With The Comptroller’s Office.

One Finding in the Second Audit encourages a reallocation of duties between the Clerk’s Office and Comptroller’s Office to “cooperatively ensure the accuracy and reliability of mortgage tax distribution.” The same finding stipulates that both Offices to this point have “executed the process in good faith.” The Clerk’s Office is grateful for this acknowledgment and looks forward to working with the Comptroller in the future. It is noted that a letter was sent to the Comptroller by the Clerk on November 16, 2023 seeking to hold weekly meetings which, to date, has not been responded to. A copy of the November 16, 2023 correspondence is attached hereto as **Exhibit C**.

Exit Conference

An Exit Conference was held on January 31, 2024 between the Clerk’s Office and the Comptroller’s Office. At the Exit Conference, the Clerk’s Office renewed its request for

supporting documentation that was made upon receipt of the draft report, pursuant to Section 8.133 of the Generally Accepted Government Auditing Standards, and was told that such documentation was not ordinarily provided, and would not be provided prior to the release of the report. The Clerk's Office also discussed the stolen check referenced in the Second Audit, and objected to any attempted weaponization of the Clerk's Office being a victim of check fraud.

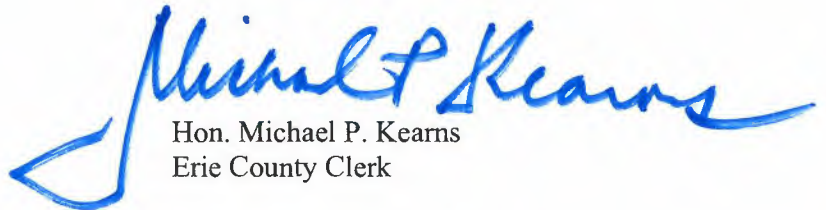
Conclusion

The Clerk's Office has been welcoming of the Auditors since the first Audit began, and was accommodating and fully cooperative for the Second Audit, including complying with all document requests and answering questions even after fieldwork was completed. However, and as the timeline in **Exhibit B** shows, the Clerk's Office was not afforded enough time to sufficiently review the draft report before the Exit Conference, nor provided all of the requested supporting documentation as previously mentioned. Trying to fully comprehend and analyze a report that took over eight months in *days* is simply unreasonable.

Many Findings lack the exact reports used such that they are impossible to analyze. Similarly, data lumped together in months and years summarizing information makes it impossible to know the exact transactions in question. In addition, there is not one specific NewVision transaction number referenced in the Second Audit for the Clerk's Office to review.

Those issues notwithstanding, we thank the Comptroller's Office for this opportunity to improve the Clerk's Office and look forward to the continued strengthening of the finances of Erie County.

Respectfully Submitted,



Hon. Michael P. Kearns
Erie County Clerk

Audit Response Team Lead:

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RESPONSES TO FINDINGS

A. Internal Controls

- *Material Weakness #1: Control Deficiencies exist due to the lack of established internal controls within the Clerk's Office mortgage tax revenue collection and distribution process and procedures.*

CLERK RESPONSE:

The Clerk's Office thanks the Comptroller's Office for making recommendation but respectfully considers it as moot.

Since the release of the First Audit on June 30, 2023, and as noted in the response from the Clerk's Office on September 25, 2023, many changes recommended by the Comptroller's Office have already been implemented regarding oversight and financial controls. A summary of the more significant improvements is below:

- The Deputy County Clerk – Finance is no longer the sole individual who prepares monthly payments and reports.
- At least two individuals in management must verify all payments that are sent out.
- Copies of all checks received by the Clerk's Office are made by cashiers and included in the daily deposit reporting.
- Fees collected for recording documents and other services offered by the Clerk's Office have been verified with statutory authority, including the New York Civil Practice Law and Rules ("CPLR") and assembled in the Clerk's Office Schedule of Fees.
- Refunds for Court filings have been streamlined and given increased oversight with the use of the Converge software system.
- Escrow agreements are in the process of being dismantled in favor of a cart-based online image-purchasing system.
- Updated written procedures for financial duties and payment distribution.

Perhaps most significantly, and based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, the Clerk's Office has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and the Clerk's Office is grateful to the Comptroller's Office for its assistance in that regard.

- *Significant Finding #1: The Clerk's Office did not sign a Management Representation Letter.*

CLERK RESPONSE:

For the reasons set forth below, the Clerk was unable to ethically sign a Management Representation Letter for this Second Audit, and objects to this fact being labeled a "significant finding".

Among the statements by the Comptroller's Office in its Management Representation Letter sent to the Clerk's Office for signature by the Clerk over three months before the draft report and findings, are the following:

"I confirm, on behalf of the Clerk's Office, that the following initial representations are true and correct to the best of my knowledge and that of my staff, as of October 12, 2023."

"All violations or possible violations of laws or regulations that would be relevant for the purposes of the audit have been heretofore disclosed to the Auditor."

As the Comptroller's Office is well aware, there is an ongoing criminal investigation being conducted into the allegations of the First Audit. To request that the Clerk personally sign a statement that the representations made during the Second Audit are true and correct on behalf of the staff of the Clerk's Office, when there is an ongoing investigation, is to essentially entrap the Clerk if any staff member is eventually arrested and prosecuted (which to date has not occurred).

Similarly, the Clerk would also be entrapped by signing off on the statement that "all violations or possible violations of laws or regulations" have been disclosed to the Auditor, should the law enforcement investigation prove that any violation occurred (again, this has yet to occur).

The Clerk's Office also objects to the Management Representation Letter being sent for signature over three (3) months before the draft report and findings were provided. It is simply unreasonable to demand the Clerk sign off on the statements above in the midst of a law enforcement investigation that could very well result in an arrest or prove that a violation of a law occurred.

- ***Finding #1: A counterfeit check in the amount \$326,456.16 was paid out of the Erie County Clerk's Concentration Account.***

CLERK RESPONSE:

A check to SONYMA was issued and mailed from the Clerk's Office Concentration Checking Account, Check No. 6951, dated April 27, 2022, in the amount of \$326,456.16 (the "Check"). As part of the check verification process of the Clerk's Office in place at the time, the Check was verified by two individuals before being placed in the mail. Historically, SONYMA has a required a physical check from Erie County sent to a P.O. Box.

The Clerk's Office is responsible for collecting and distributing millions of dollars of funds resulting from the recording of mortgages by customers each month. The Clerk's Office acts as an intermediary, temporarily taking custody of these funds and submitting the proper amounts to various government agencies and municipalities. One of these government agencies is the State of New York Mortgage Agency ("SONYMA"), which is due a monthly payment out of the mortgage taxes collected by the Clerk's Office, known as the Special Additional Tax. The Check in question was for the Special Additional Tax due to SONYMA for March 2022.

Once the Check was placed in the mail, it was out of the Clerk's Office's hands and control. The Check was in fact intercepted by an unknown third party, and was either altered or used to create a new, fraudulent check to the entity "Get Mobile LLC". It appears the Check could have been diverted at any time once it left the Clerk's Office, including at the County mail room or any of the other United States Postal Service locations on route to SONYMA (or even at SONYMA itself). This theft was sophisticated enough to avoid detection by the bank of Erie County and the bank where the fraudulent check was Cashed. Specifically, the fraudulent check was cashed on May 26, 2022, and featured the same Check No. (6951) and amount (\$326,456.16) as the original Check, along with appearing substantially similar on its face.

In reviewing the bank statements of the Clerk's Office, a person would see only that Check No. 6951 was cashed on May 26, 2022 for \$326,456.16, all of which would have been the correct information for the original Check. The data reconciled within the Concentration Account perfectly. Reasonable steps were taken to verify the Check, but due to human error and the sophistication of the theft, it was missed. Only by closely looking at the image of the cashed check on the online bank statement would an individual have been able to see that the check was fraudulent.

The Clerk's Office has no records of any communication from SONYMA that the March 2022 amount of \$326,456.16 was not received. No voicemails, no emails, no letters, nothing. In fact, the Clerk's Office was not notified of this check interception until October 12, 2023, during the final fieldwork meeting of this Audit by the Comptroller's Office. The Comptroller had mentioned in passing to the Clerk that a check "may" have been stolen back in the summer of 2023, but provided no other clarification or confirmation, nor any

other information to allow the Clerk's Office to investigate, until the October 12, 2023 meeting.

Upon learning of the intercepted check (almost a year-and-a-half after the original Check was mailed), the Clerk's Office immediately contacted SONYMA to inquire. An Associate Accountant for SONYMA confirmed that SONYMA had no record of Check No. 6951 being deposited into SONYMA's Lockbox account. In addition, SONYMA informed the Clerk's Office that the reason that there was no communication about the stolen Check was that the New York State Department of Taxation and Finance is severely backlogged, and as such has not reconciled amounts due to SONYMA from the various counties in some time. A copy of the letter to SONYMA memorializing this inquiry, dated October 17, 2023, is attached as Exhibit D.

The Clerk's Office then met with the District Attorney's Office and learned that the Comptroller's Office was the agency that provided the information about the forged check to them. The District Attorney's Office confirmed that the check was in fact intercepted in the mail, outside of the control of the Clerk's Office, and that the funds were cashed by an unrelated third-party. The District Attorney's Office also confirmed the conclusion of the Legal Deputy Clerk that the only way this theft could have been discovered sooner would have been to view the image of the check on the online bank statement. As the Auditor correctly states, the Positive Pay feature on the bank account would not have caught the intercepted check.

The Clerk's Office next met with the County's banking entity on October 19, 2023 to inquire how this forgery could have occurred and why the Clerk's Office was not alerted. The government liaison for the bank confirmed that the bank was not made aware of the Check by the Comptroller's Office, the District Attorney's Office, SONYMA, or even the State Comptroller's Office. Nevertheless, the Clerk's Office duly submitted an Affidavit of Forgery to the bank the same day, a copy of which is attached as Exhibit E. Unfortunately, the Clerk's Office was made aware that check fraud is a serious threat for every organization, as highlighted in a 2023 report by the Association for Financial Professionals attached hereto as Exhibit J:

2022 saw a large increase in brazen and successful attempts at stealing mail from post office boxes: i.e., the blue boxes typically found on street corners. Perpetrators of these crimes replicated keys to mailboxes and stole mail. Mail was then opened, and payments containing checks (government, business, personal, etc.) were washed and check amounts and names of payees altered. These checks were then endorsed and deposited into accounts with a short life.

In December 2023, the liaison informed the Clerk's Office that the bank's Financial Crimes team learned, from the bank where the forged check was cashed, that there were no funds left to recover, as is common with check fraud situations like this. Often, a fraudulent check will be cashed or deposited and the funds taken immediately. Final conclusion of fraud

claims can take up to 270 days, but due to the date of the fraud, recovery of the funds is unlikely.

In summary, the Clerk's Office received zero notice or information to investigate an intercepted check from:

- SONYMA- the intended recipient;
- The bank of Erie County;
- The District Attorney's Office; and
- The Comptroller's Office.

The Clerk's Office is grateful to the Comptroller's Office for discovering this intercepted check. However, it is troubling that the Comptroller's Office would share information of a financial theft with the District Attorney's Office and not the Clerk's Office at the same time. Equally troubling is the statement by the Comptroller's Office on page 5 of the Second Audit that the District Attorney's Office asked them to keep this issue "confidential" (the District Attorney's Office made no such claim when the Clerk's Office met to discuss the Check). Had the Clerk's Office been made aware sooner, it is possible that the stolen funds could have been recovered, as indicated by the governmental liaison to the bank. It is important to note that the funds stolen from this check interception were owed to a New York State government agency- they were not funds entitled to County taxpayers.

As a result of this Finding, the Clerk's Office has instituted additional verification processes on all checks cut, including:

- viewing images of all checks paid out of Clerk's Office bank accounts;
- requiring "return receipts" on large checks sent through the mail when possible;
- requesting the ability to perform wire transfers in lieu of sending paper checks; and
- reviewing the images of all cashed checks in the online bank statements.

B. Reconciliation

- **Finding #1: Mortgage Tax bank account has carried an undistributed balance of \$24,340.32.**

CLERK RESPONSE:

The Clerk's Office objects to this Finding as speculative and unfounded in claiming the presence of these funds is an indicator that "the current Administration has never reconciled this account". As the Comptroller's Office admits, "it is possible that this balance pre-dates the current Administration", which is to say that it is also possible that it does not. It is impossible to admit or deny to such a speculative finding, especially in the absence of any supporting documentation which was requested before the Exit Conference.

Regardless, the Clerk's Office notes that, based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, it has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and anticipates that all bank accounts will be properly reconciled going forward.

- **Finding #2: Transfer to Mortgage Tax account exceeded the amount of the distribution by \$1,816.70.**

CLERK RESPONSE:

Due to the failure of the Comptroller's Office to provide any requested supporting documentation for this Finding, the Clerk's Office is unable to accurately verify or refute this Finding.

It is noted that the Clerk's Office processed \$156 million in transactions in 2022. This Finding deals with \$1,816.70, or 0.001%, a clear outlier.

To the extent that the Comptroller's Office recommends increased financial procedures, the Clerk's Office appreciates the recommendation but respectfully considers it as moot.

The Clerk's Office notes that, based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, it has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and anticipates that all bank accounts will be properly reconciled going forward.

- **Finding #3: M&T Imprest account has carried an undistributed balance of \$69,962.34 since 2021.**

CLERK RESPONSE:

Due to the failure of the Comptroller's Office to provide any requested supporting documentation for this Finding, the Clerk's Office is unable to accurately verify or refute this Finding.

The Clerk's Office also submits that this Finding exceeds the scope of the Second Audit as the Imprest Account is unrelated to mortgage tax distributions and deals with the 2021 year, not 2022.

To the extent that the Comptroller's Office recommends increased financial procedures, the Clerk's Office appreciates the recommendation but respectfully considers it as moot.

The Clerk's Office notes that, based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, it has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and anticipates that all bank accounts will be properly reconciled going forward.

- **Finding #4: Monthly escrow reports do not reconcile to daily escrow reports.**

CLERK RESPONSE:

Due to the failure of the Comptroller's Office to provide any requested supporting documentation for this Finding, the Clerk's Office is unable to accurately verify or refute this Finding.

The Clerk's Office also submits that this Finding exceeds the scope of the Second Audit as monthly escrow accounts are unrelated to mortgage tax distributions.

Regarding the management of escrow accounts, the Clerk's Office appreciates the recommendation but respectfully considers it as moot.

The Clerk's Office notes that escrow agreements are already in the process of being dismantled in favor of a cart-based online image-purchasing system, as part of the larger effort to streamline and strengthen financial procedures at the Clerk's Office.

Regarding the existing legacy software (NewVision) the Clerk's Office has already been meeting with potential software vendors on improving current systems and potentially purchasing new ones. In addition, Clerk's Office staff has met with other County Clerk offices to compare financial software and operations. It was anticipated that this Second Audit would be completed in the Fall of 2023 so that a Request for Proposals ("RFP") could be released. Given the delayed release of the Second Audit, it is expected that the RFP will issue sometime in the spring of 2024.

- **Finding #5: The Mortgage Tax Revenue reported as the amount collected on the MT-4 does not reconcile to the amount reported on the Cash Code Summary.**

CLERK RESPONSE:

Due to the failure of the Comptroller's Office to provide any requested supporting documentation for this Finding, the Clerk's Office is unable to accurately verify or refute this Finding.

The Clerk's Office objects to the statement that "the Auditee has no written procedures" as patently false. The Clerk's Office follows the rules and regulations of New York State in handling mortgage tax reconciliation, distribution, and reporting.

It is noted that the Cash Code Summary report and the MT-4, as currently designed, will not reconcile due to State-ordered apportionments going to other counties.

With regard to the recommendations regarding existing legacy software (NewVision), the Clerk's Office appreciates but respectfully considers them as moot.

The Clerk's Office has already been meeting with potential software vendors on improving current systems and potentially purchasing new ones. In addition, Clerk's Office staff has met with other County Clerk offices to compare financial software and operations. It was anticipated that this Second Audit would be completed in the Fall of 2023 so that a Request for Proposals ("RFP") could be released. Given the delayed release of the Second Audit, it is expected that the RFP will issue sometime in the spring of 2024.

- **Finding #6a: Seven mortgages on hold were never released in NewVision between 2019 and 2022.**

CLERK RESPONSE:

The Clerk's Office objects to the names of the seven mortgagors being included in the Second Audit as unnecessary.

The Erie County Clerk's Office processed 196,466 transactions in 2022. This Finding concerns seven (7) transactions with a possible mortgage hold issue- less than half of 0.01 percent. While the Clerk's Office strives for perfection, this small amount of transactions is a clear outlier.

After consultation with the New York State Department of Taxation, it was confirmed that 4 of the 7 mortgages should not have been placed on hold, and were only there due to technical and human error. The issue has been corrected in NewVision, and those mortgages were released prior to the Second Audit report.

Nevertheless, the Clerk's Office has already taken steps to strengthen its financial department. Based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, it has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and the Clerk's Office will continue to work with the Tax Commission to ensure all mortgages are properly and timely released.

- **Finding #6b: One mortgage on hold from Finding #6a was reported on the MT-4 but never taken off hold.**

CLERK RESPONSE:

The Erie County Clerk's Office processed 196,466 transactions in 2022. This Finding concerns one (1) transaction with a possible mortgage hold issue- less than half of 0.001 percent. While the Clerk's Office strives for perfection, this lone transaction is a clear outlier.

It was confirmed that, due to clerical error, this mortgage was not released. The Clerk's Office is currently working with the State on how best to effectuate the delayed release.

C. Collection

- **Finding #1: Mortgage Tax revenue calculated on five transactions did not reconcile to the fees established in NewVision.**

CLERK RESPONSE:

This Finding is inconclusive and speculative in light of the Comptroller's Office's own admission that the Tax Commission verified the correct amounts were collected. In addition, the attached Exhibit I shows the amount received by Erie County as determined by New York State.

In addition, the "Summary of Mortgage Tax Calculations" on page 13 of the Second Audit is inaccurate. The mortgages listed were closed in other counties, not Erie. The "Calculated" column is actually the amount that the other counties collected for mortgage tax, while the "Collected" column is Erie County's portion sent to us by other counties. Below is a corrected table:

ERIE COUNTY CLERK'S OFFICE RECORDED RECEIPTS

2022	Tax Type	Consideration Amount(1) (A)	MT Collected by Recording County (2) (B)	Apportioned MT to Erie County (3) (C')	Erie Co. Received (3) (D)	Variance (C - D)
MTDN2022002505 James Renaldo Case #317936	Concideration Amount (1)	500,000.00				
	Basic:		2,500.00	657.38	657.38	-
	SONYMA:		1,250.00	328.69	328.69	-
	Additional:		1,250.00	328.69	328.69	-
	Total:		\$ 5,000.00	\$ 1,314.76	\$ 1,314.76	\$0.00
MTDN2022009736 Jennifer Zeitler Case# 318634	Concideration Amount (1)	70,000.00				
	Basic:		350.00	282.11	282.11	-
	SONYMA:		175.00	141.06	141.06	-
	Additional:		175.00	141.06	141.06	-
	Total:		\$ 700.00	\$ 564.23	\$ 564.23	\$0.00
MTDN2022011976 Lineage AFS Masters RE LLC Case# 318670	Concideration Amount (1)	12,973,740.00				
	Basic:		64,868.50	20,887.30	20,887.30	-
	SONYMA:		32,434.25	10,443.65	10,443.65	-
	Additional:		32,434.25	10,443.65	10,443.65	-
	Total:		\$ 129,737.00	\$ 41,774.60	\$ 41,774.60	\$0.00
MTDN2022015664 E21 Lockport Properties LLC Case# 318964*	Concideration Amount (1)	1,103,845.54				
	Basic:		5,519.00	2,484.90	2,484.90	-
	SONYMA:		2,759.50	1,242.50	1,242.50	-
	Additional:		2,759.50	1,242.50	1,242.50	-
	Total:		\$ 11,038.00	\$ 4,969.90	\$ 4,969.90	\$0.00
MTDN2022018314 Peter Todenhagen, Jr Case# 318535	Concideration Amount (1)	316,000.00				
	Basic:		1,580.00	622.71	622.71	-
	SONYMA:		790.00	311.36	311.36	-
	Additional:		790.00	311.36	311.36	-
	Total:		\$ 3,160.00	\$ 1,245.43	\$ 1,245.43	\$0.00

As the corrected table shows, there were no variances.

Nevertheless, the Clerk's Office has already taken steps to strengthen its financial department. Based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, it has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and the Clerk's Office will continue to ensure that all mortgage tax revenue is properly reconciled and distributed.

With regard to the recommendations regarding existing legacy software (NewVision), the Clerk's Office appreciates but respectfully considers them as moot.

The Clerk's Office has already been meeting with potential software vendors on improving current systems and potentially purchasing new ones. In addition, Clerk's Office staff has met with other County Clerk offices to compare financial software and operations. It was anticipated that this Second Audit would be completed in the Fall of 2023 so that a Request for Proposals ("RFP") could be released. Given the delayed release of the Second Audit, it is expected that the RFP will issue sometime in the spring of 2024.

- **Comment #1: Documents suggest that only recording fees were collected.**

CLERK RESPONSE:

Despite the failure of the Comptroller's Office to provide any requested supporting documentation for this Comment, the Clerk's Office was able to locate the mortgage and question and confirmed that it was filed in a different county, which means that the other county would have been the one to collect all taxes. The Clerk's Office only records certified copies of such mortgages.

The Clerk's Office also objects to the statement that the Auditor had "limited opportunity" to review and ask questions regarding the test samples pulled. The Second Audit began in May 2023 and fieldwork did not conclude until October 12, 2023, with the report not being provided until January 22, 2024. Clearly, there was more than enough time and opportunity to conduct all testing.

Nevertheless, the Clerk's Office has already taken steps to strengthen its financial department. Based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, it has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and the Clerk's Office will continue to ensure that all mortgage tax revenue is properly reconciled and distributed.

D. Distribution

- **Finding #1: The MT-4 reported incorrect amounts totaling \$156,340.04.**

CLERK RESPONSE:

The Clerk's Office stands by its calculations and distributions which are approved twice a year by the New York State Department of Taxation and Finance. Copies of letters for the first half of 2022, dated May 27, 2022, and the second half dated November 16, 2022 are attached hereto as Exhibits F and G, respectively.

Regardless, it was confirmed that the 14 releases for April 2022 and 4 for May 2022 were included with the MT-4. Due to the number of releases for each month, these releases were placed on a supplemental form that, due to technical error, did not get sent to the Comptroller's Office.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

As to the question of distribution to the tax districts, the Clerk's Office is working with its current software provider to ensure proper reconciliation and distribution.

- **Finding #2: A variance of \$17,660.79 between the Hold Report and Release Report indicates that the Variance Amount was not distributed.**

CLERK RESPONSE:

The Clerk's Office stands by its calculations and distributions which are approved twice a year by the New York State Department of Taxation and Finance. Copies of letters for the first half of 2022, dated May 27, 2022, and the second half dated November 16, 2022 are attached hereto as Exhibits F and G, respectively.

As to this Finding, there is no explanation as to why this table labeled "Summary of Variances" was generated or why the calculations were performed in this manner. The Clerk's Office's Audit Response Team analyzed this Finding and believes the calculations are inaccurate. As the Clerk's Office requested additional time to review the draft report and were given a firm deadline without explanation, and as such no further explanation can be given.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

Nevertheless, the Clerk's Office has already taken steps to strengthen its financial department. Based on the recommendation of the Comptroller's Office and approval by the Erie County Legislature, it has hired a CPA with extensive experience in forensic accounting as its new Deputy County Clerk – Finance. In addition, the two new financial positions allocated by the Legislature have been filled by competent and experienced individuals including one with a degree in Information Systems & Business. The financial management team of the Clerk's Office is easily the strongest and most supported it has been in decades, and the Clerk's Office will continue to ensure that all mortgage tax revenue is properly reconciled and distributed.

- **Finding #3: Seven mortgages that received state determinations were incorrectly reported on the MT-4 and not distributed to tax districts, SONYMA or NFTA.**

CLERK RESPONSE:

This Finding appears to suggest that the apportionment documents received from the Tax Commission and the “false sense of confidence” provided by the MT-4, which is a State form signed off by the Comptroller’s Office and the New York State Department of Taxation and Finance, are somehow inaccurate.

The Clerk’s Office stands by its calculations and distributions which are approved twice a year by the New York State Department of Taxation and Finance. Copies of letters for the first half of 2022, dated May 27, 2022, and the second half dated November 16, 2022 are attached hereto as Exhibits F and G, respectively.

As to this Finding, the table labeled “Summary of Missing Cases” is misleading. This Finding concerns mortgages releases highlighted in previous Findings of the Second Audit and is therefore duplicative.

Regardless, the Clerk’s Office is in the process of reviewing each case with our current software provider and ensuring they are properly reconciled and distributed.

- **Finding #4: Five mortgages apportioned by New York State were released and distributed incorrectly.**

CLERK RESPONSE:

Due to the failure of the Comptroller's Office to provide any requested supporting documentation for this Finding, the Clerk's Office is unable to accurately verify or refute this Finding.

The Clerk's Office stands by its calculations and distributions which are approved twice a year by the New York State Department of Taxation and Finance. Copies of letters for the first half of 2022, dated May 27, 2022, and the second half dated November 16, 2022 are attached hereto as Exhibits F and G, respectively.

Nevertheless, the Clerk's Office will endeavor to verify the mortgage tax revenue on hold was released properly and accurately to the tax districts and outside agencies as recommended.

- **Finding #5: One apportioned mortgage was never distributed.**

CLERK RESPONSE:

Due to the failure of the Comptroller's Office to provide any requested supporting documentation for this Finding, the Clerk's Office is unable to accurately verify or refute this Finding.

The Erie County Clerk's Office processed 196,466 transactions in 2022. This Finding concerns one (1) transaction with a possible mortgage tax distribution issue- less than half of 0.001 percent. While the Clerk's Office strives for perfection, this lone transaction is a clear outlier.

Nevertheless, the Clerk's Office appreciates the recommendation and will endeavor to perform monthly reconciliations of mortgage tax revenue received to complete the MT-4.

- **Finding #6: Mortgage tax revenue in the amount of \$29,654.00 was unaccounted for.**

CLERK RESPONSE:

Despite the failure of the Comptroller's Office to provide any requested supporting documentation for this Finding, the Clerk's Office was able to review the transaction in question and confirm it was on the January 2023 MT-4 (signed off by the Comptroller's Office) and that the mortgage tax was distributed properly to the appropriate tax districts and state agencies. A copy of the January 2023 MT-4 is attached hereto as Exhibit H.

This Finding is critical of the timeframe of the apportionment from the State. It is not uncommon to receive an apportionment determination from the State over 2-3 months after the date of the transaction, if not longer. The release occurred less than one (1) week after the determination letter was received by the State. To infer that this period was in any way unreasonable is misleading.

- **Finding #7: Five mortgages apportioned by New York State were not placed on hold in NewVision.**

CLERK RESPONSE:

The Comptroller's Office rightly admits that all five mortgages were properly released and distributed, so all funds were properly reconciled. While the five mortgages may not have appeared on the particular Hold Report the Comptroller's Office presumably looked at (which was not provided in their report), there was no issue with the release and distribution of these mortgages.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

- Finding #8a: Posted interest amounts were incomplete.

CLERK RESPONSE:

The Clerk's Office concurs with this Finding and recommendation to the extent it is directed to the Comptroller's Office. It is troubling that the Comptroller's Office would include multiple Findings *against itself* on the issue of mortgage tax, the very issue that apparently required this Second Audit and over eight months to provide a report to the Clerk's Office on.

There has not been a full audit of the Clerk's Office by the Comptroller's Office in the last twenty (20) years, and the second that one is performed, issues are found with the Comptroller's Office that certainly calls into question the objectivity of that office on this issue.

In pertinent part, Chapter 3 of the Generally Accepted Government Auditing Standards ("GAGAS"), which the Comptroller states was followed in conducting the Audit, reads as follows:

Objectivity (3.11)

Auditors' objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. Objectivity includes independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest.

The Comptroller is the "chief fiscal, accounting, reporting and auditing officer of the County" pursuant to Article 18 of the Erie County Charter. It is questionable how the Clerk's Office can be expected to be without error in every transaction (averaging close to 200,000 per year) when the practices of the Comptroller's Office, by its own admission in this Finding, are "guaranteed to result in flawed distribution totals."

- **Finding #8b: Money Market Interest was not distributed on time.**

CLERK RESPONSE:

The Clerk's Office concurs with this Finding and recommendation to the extent it is directed to the Comptroller's Office. It is troubling that the Comptroller's Office would include multiple Findings *against itself* on the issue of mortgage tax, the very issue that apparently required this Second Audit and over eight months to provide a report to the Clerk's Office on.

There has not been a full audit of the Clerk's Office by the Comptroller's Office in the last twenty (20) years, and the second that one is performed, issues are found with the Comptroller's Office that certainly calls into question the objectivity of that office on this issue.

In pertinent part, Chapter 3 of the Generally Accepted Government Auditing Standards ("GAGAS"), which the Comptroller states was followed in conducting the Audit, reads as follows:

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The Comptroller is the "chief fiscal, accounting, reporting and auditing officer of the County" pursuant to Article 18 of the Erie County Charter. It is questionable how the Clerk's Office can be expected to be without error in every transaction (averaging close to 200,000 per year) when the practices of the Comptroller's Office, by its own admission in this Finding, resulted in "errors in the County's accounting system."

- **Comment #1: Comptroller's Office comingled mortgage tax funds with other County trust funds.**

CLERK RESPONSE:

The Clerk's Office concurs with this Comment and recommendation to the extent it is directed to the Comptroller's Office. It is troubling that the Comptroller's Office would include multiple Findings *against itself* on the issue of mortgage tax, the very issue that apparently required this Second Audit and over eight months to provide a report to the Clerk's Office on.

There has not been a full audit of the Clerk's Office by the Comptroller's Office in the last twenty (20) years, and the second that one is performed, issues are found with the Comptroller's Office that certainly calls into question the objectivity of that office on this issue.

In pertinent part, Chapter 3 of the Generally Accepted Government Auditing Standards ("GAGAS"), which the Comptroller states was followed in conducting the Audit, reads as follows:

Objectivity (3.11)

Auditors' objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. Objectivity includes independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest.

The Comptroller is the "chief fiscal, accounting, reporting and auditing officer of the County" pursuant to Article 18 of the Erie County Charter. It is questionable how the Clerk's Office can be expected to be without error in its accounting and financial practices when the Chief Fiscal Officer of the County, by its own admission in this Finding, comingled Basic Tax funds with other funds in the Comptroller's Trust Account.

- **Finding #9: The Comptroller's Accounting Division lacks managerial review over ACH and check disbursements prior to the Semi-Annual Distribution.**

CLERK RESPONSE:

The Clerk's Office concurs with this Finding and recommendation to the extent it is directed to the Comptroller's Office. It is troubling that the Comptroller's Office would include multiple Findings *against itself* on the issue of mortgage tax, the very issue that apparently required this Second Audit and over eight months to provide a report to the Clerk's Office on.

There has not been a full audit of the Clerk's Office by the Comptroller's Office in the last twenty (20) years, and the second that one is performed, issues are found with the Comptroller's Office that certainly calls into question the objectivity of that office on this issue.

In pertinent part, Chapter 3 of the Generally Accepted Government Auditing Standards ("GAGAS"), which the Comptroller states was followed in conducting the Audit, reads as follows:

Objectivity (3.11)

Auditors' objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. Objectivity includes independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest.

The Comptroller is the "chief fiscal, accounting, reporting and auditing officer of the County" pursuant to Article 18 of the Erie County Charter. It is questionable how the Clerk's Office can be expected to be without error in its accounting and financial practices when the Chief Fiscal Officer of the County, by its own admission in this Finding, "lacks managerial review over ACH and Check Disbursements".

- **Comment #2: Semi-Annual Distribution process.**

CLERK RESPONSE:

The Clerk's Office concurs with this Comment and recommendation for a reallocation of duties between the Clerk's Office and Comptroller's Office to "cooperatively ensure the accuracy and reliability of mortgage tax distribution." The same finding stipulates that both Offices to this point have "executed the process in good faith." The Clerk's Office is grateful for this acknowledgment and looks forward to working with the Comptroller in the future. It is noted that a letter was sent to the Comptroller by the Clerk on November 16, 2023 seeking to hold weekly meetings which, to date, has not been responded to.

The Clerk's Office notes that, while it appears contradictory to express a desire work cooperatively on this issue when the Comptroller's Office distributed an internal memo to essentially absolve itself of responsibility for the MT-4, it is expected that both sides will work to distribute responsibility as fairly as possible.

- **Comment #3: The Basic Tax Summary Report incorrectly labeled mortgage tax revenue categories.**

CLERK RESPONSE:

The Clerk's Office considers this Comment moot as the Auditor admits that "the correct amounts were ultimately paid to the correct recipients" despite any alleged misunderstanding or mislabeling in NewVision. The Clerk's Office will review all labels and descriptions on reports to confirm accuracy, in accordance with the labels and terms used by the State.

- **Comment #4: Five apportioned amounts were released late on the MT-4.**

CLERK RESPONSE:

Due to the failure of the Comptroller's Office to provide any requested supporting documentation or data for this Comment, the Clerk's Office is unable to accurately verify or refute this Comment.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

It is further noted that funds cannot be distributed until they are actually received from the other county that recorded the mortgage. This can necessarily delay the release date of funds.

Regarding the existing legacy software (NewVision) the Clerk's Office has already been meeting with potential software vendors on improving current systems and potentially purchasing new ones. In addition, Clerk's Office staff has met with other County Clerk offices to compare financial software and operations. It was anticipated that this Second Audit would be completed in the Fall of 2023 so that a Request for Proposals ("RFP") could be released. Given the delayed release of the Second Audit, it is expected that the RFP will issue sometime in the spring of 2024.

- **Comment #5: The Clerk's Office did not have written procedures for Mortgage Tax revenue distribution.**

CLERK RESPONSE:

The Clerk's Office objects to the statement that "the Auditee has no written procedures" as patently false. The Clerk's Office follows the rules and regulations of New York State in handling mortgage tax reconciliation, distribution, and reporting. The Clerk's Office encourages the Comptroller's Office to contact New York State if it has an issue with State procedures.

Regardless, the Clerk's Office has already been working on updated written procedures for financial duties and payment distribution, and therefore considers this Comment moot.

E. Other Findings, Comments & Recommendations:

- **Finding #1: Eight of twelve monthly distributions to SONYMA were late in 2022.**

CLERK RESPONSE:

The Clerk's Office will continue to endeavor to make all payments to SONYMA in a timely fashion, and notes that there has never been any communication from SONYMA complaining of receipt of a late distribution (nor any communication of a missed payment, which would have been helpful on the issue of the intercepted check that the Clerk's Office was completely unaware of until October 2023).

- **Finding #2: Four of twelve monthly mortgage tax distributions to the NFTA were late in 2022.**

CLERK RESPONSE:

The Clerk's Office will continue to endeavor to make all payments to the NFTA in a timely fashion, and notes that both offices regularly communicate with each other to ensure timely payments are made, or that notice is provided that a payment is taking longer than expected.

- **Comment #1: The Comptroller's Office should consider deducting its expenses.**

CLERK RESPONSE:

The Clerk's Office declines to comment on this Comment except to state it agrees with the statement that "the Comptroller's role in the mortgage tax distribution process has been leaner than it should have been during the audit period." As the chief fiscal officer of Erie County, the Comptroller's Office should absolutely be more involved, and the Clerk's Office looks forward to further cooperation and collaboration between the two offices.

EXHIBIT "A":
May 4, 2023 Letter from Comptroller Commencing Second Audit



ERIE COUNTY COMPTROLLER
KEVIN R. HARDWICK

RECEIVED

MAY 05 2023

Erie County Clerk's Office

May 4, 2023

Honorable Michael P. Kearns
Erie County Clerk
92 Franklin Street
Buffalo, NY 14202

Re: Erie County Comptroller's Office Audit of the Erie County Clerk's Office – notification of expanded scope and separation into two audits

Dear Mr. Kearns:

This letter is notification that the audit scope for the Erie County Clerk's Office as documented in the February 13, 2023 announcement letter for testing and evaluating the revenue accounts for pistol permits, court fees and mortgage tax is being expanded and separated into two audits.

As outlined in the original scope, the current objectives will remain the same as previously indicated for the revenue accounts, however, we are expanding the scope of our original audit to include mortgage tax distributions. Mortgage tax distributions along with mortgage tax revenues will be treated as a separate audit.

In addition, the internal controls will be evaluated and tested to determine if they are adequate as it relates to the preparation and submission of mortgage tax distribution amounts, including proper recording of revenues, interest and distributions.

The expanded scope will perform a one (1) year review of mortgage tax revenue and distributions for the period of January 1, 2022 to December 31, 2022.

We would like to schedule a meeting for next week to discuss the expansion and to address any questions or concerns. Please contact our Auditor, Amy Barlow, at 716.858.1338 or by email at Amy.Barlow@erie.gov with your availability for next week.

Thank you in advance for your assistance and cooperation.


Mary K. Nytz-Hosler
Deputy Comptroller of Audit

cc: Hon. Mark C. Poloncarz, Erie County Executive
Hon. Erie County Legislature
Hon. Kevin Hardwick, Erie County Comptroller
Robert W. Keating, Director, Division of Budget and Management
Erie County Fiscal Stability Authority

95 FRANKLIN STREET • ROOM 1100 • BUFFALO, N.Y. • 14202
PHONE: (716) 858-8400 • FAX: (716) 858-6195 • www.erie.gov/comptroller

EXHIBIT “B”

TIMELINE OF AUDIT PROCESS

February 13, 2023:	Audit of Registrar Division of Clerk’s Office (“First Audit”) announced by Comptroller’s Office.
May 4, 2023:	Comptroller’s Office announces audit of mortgage tax distributions of the Clerk’s Office (“Second Audit”).
June 30, 2023:	First Audit report released.
August 24, 2023:	“Analysis of the Concentration Account and Deposit Activity in the Erie County Clerk’s Office, Registrar’s Division” released, an alleged supplement of the First Audit.
September 25, 2023:	Clerk’s Office releases Response to First Audit.
October 12, 2023:	Fieldwork ends for Second Audit. Auditor discloses existence of intercepted check from 2022 for the first time.
October 16, 2023:	Management Representation Letter requested by Auditor before draft report is provided.
October 17, 2023:	Clerk’s Office speaks with SONYMA and the District Attorney’s Office about intercepted check.
October 19, 2023:	Clerk’s Office speaks with M&T Bank and files Affidavit of Forgery for intercepted check.
November 16, 2023:	Clerk sends Comptroller letter seeking weekly meetings.
November 29, 2023:	Clerk’s Office requests timeframe for draft report and Exit Conference. Auditor replies “soon”.
December 19, 2023:	Second request by Clerk’s Office for timeframe for draft report and Exit Conference. Auditor replies that it will contact Clerk’s Office as soon as it is complete to set up exit interview.
January 11, 2024:	Auditor requests to schedule Exit Conference but does not provide draft report. Exit Conference scheduled for January 18, 2024.
January 16, 2024:	Auditor requests postponement of Exit Conference to January 23.
January 22, 2024:	Auditor sends 32-page draft report, without exhibits, appendices, or supporting documentation, to Clerk’s Office to review before Exit Conference the following day. Clerk’s Office requests postponement of Exit Conference due to just receiving the report. Auditor responds that the Exit Conference needs to be scheduled “this week”, without any justification.
January 23, 2024:	Clerk’s Office requests all exhibits, appendices, and supporting documentation for draft report. Auditor sends appendices but no supporting documentation and notes all referenced accounting policies can be found online, rather than providing them.
January 24, 2024:	Auditor emails Clerk’s Office to inform that the final audit report will be released on February 2, 2024, and that regardless of whether or not an exit conference occurs, “the release date will not change.” Again, no explanation is provided for the release date.
January 31, 2024:	Exit Conference takes place.
February 5, 2024:	Comptroller’s Office sends final copy of Second Audit to Clerk.

EXHIBIT "C":
November 16, 2023 Letter to Comptroller



COUNTY OF ERIE

MICHAEL P. KEARNS
COUNTY CLERK

November 16, 2023

Hon. Kevin R. Hardwick
Erie County Comptroller
Edward A. Rath County Office Building
95 Franklin Street, Room 1100
Buffalo, New York 14202

Re: Comptroller/Clerk Meetings

Dear Comptroller Hardwick: *Kevin,*

I would like to thank you on behalf of myself and the staff of the Erie County Clerk's Office for your support of our request to the Legislature for the expedited creation of the two (2) accountant positions in our office.

I look forward to the continued cooperation and teamwork between our offices in the form of weekly meetings. Please have a representative from your office contact Kelly Krug at (716) 858-6985 or kelly.krug@erie.gov to discuss scheduling.

Very truly yours,


MICHAEL P. KEARNS
Erie County Clerk

MPK/wal

EXHIBIT "D":
October 17, 2023 Letter to SONYMA



COUNTY OF ERIE

MICHAEL P. KEARNS
COUNTY CLERK

October 17, 2023

[REDACTED]
Associate Accountant
New York HCR
[REDACTED]
[REDACTED]

Re: Erie County SONYMA Tax Transmittal

Dear [REDACTED]

This letter memorializes our conversations via phone and email on October 17, 2023 concerning a possible intercepted check to SONYMA originally sent by the Erie County Clerk's Office.

As you know, New York State imposes a tax on recording a mortgage on real property within the State ("mortgage tax"). The mortgage tax is collected by recording offices such as the Erie County Clerk's Office and transmitted accordingly to the appropriate entities. SONYMA- the State of New York Mortgage Agency- receives what is known as the Special Additional Tax.

On October 12, 2023, the Erie County Clerk's Office was made aware, by another Erie County agency, that a check for the March 2022 Special Additional Tax was possibly intercepted and did not make it to SONYMA.

Our records show that the Special Additional Tax due to SONYMA for March 2022, as reported on the Statement of Mortgages Recorded, was \$326,456.16.

Our records show that a check was cut from the Erie County Clerk's Office Concentration Checking Account to SONYMA on April 27, 2022 for the \$326,456.16 amount, on Check No. 6951. That check was addressed to: SONYMA Surtax, General Post Office, P.O. Box 29116, New York, NY 10087-9116.

Our records also show that a Check No. 6951 was cashed on May 26, 2022 for \$326,456.16. However, the Check No. 6951 that was cashed was not addressed to SONYMA, but another unrelated company, which was verified by looking at the image of the cashed check. This Check No. 6951 appears to have been a counterfeit check.

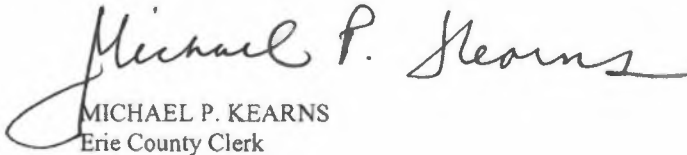
October 17, 2023
Page 2

You have confirmed that SONMYA does not have a record of Check No. 6951 being deposited into SONMYA's Lockbox account.

Based on our conversations, it is understood that the New York State Department of Taxation and Finance is responsible for issuing a reconciliation for amounts due to SONMYA, which has not occurred due to backlog, and that is why the Erie County Clerk's Office received no communication from SONMYA that the March 2022 amount of \$326,456.16 was not received.

Thank you again for your time in investigating this issue. We will not hesitate to contact you further if and when we have any further information.

Very truly yours,



MICHAEL P. KEARNS
Erie County Clerk

MPK/wal

EXHIBIT "E":
October 19, 2023 M&T Bank Affidavit of Forgery

M&T Bank

Affidavit of Forgery, Forged, Counterfeit, Altered, or Unauthorized Items

Customer Address: 92 Franklin Street, Buffalo, NY 14202	Phone Number: (716) 858-6636
Business Entity Name (if applicable): Erie County Clerk	
New Account Number (if applicable for receiving credit): N/A	

Check one box ONLY. Claims with more than one type may be rejected.

<input type="checkbox"/> Maker Signature Forged	<input type="checkbox"/> Payee Endorsement Forged	<input checked="" type="checkbox"/> Counterfeit	<input type="checkbox"/> Altered	<input type="checkbox"/> Missing Endorsement	<input type="checkbox"/> Universal Withdrawal Ticket (UWT)/ Remotely Created Draft (RCD)
The signature on the face of the check(s) listed below is a forgery. No authorized signer signed or authorized the signature.	The signature on the reverse side of the check(s) listed below is a forgery or otherwise incorrectly endorsed. No authorized signer signed or authorized the signature(s).	The check(s) are an imitation of the check(s) drawn on my account. I did not create, sign, or authorize the creation or signature of the check(s) listed below.	The check(s) listed below have unauthorized alterations. I did not alter the payee or the amount, nor have I directly or indirectly authorized anyone to make alterations to the check(s).	The check(s) were paid with a missing endorsement.	UWT - Teller Transaction not authorized RCD - Telephone transaction not authorized

List forged, counterfeit, altered, or unauthorized items below:

* If more than 6 checks, use additional form

Check Number	Date Check Paid	Amount \$	Payee
6951	May 26, 2022	\$326,456.16	Get Mobile LLC

Do you know who forged your signature? ☐ Yes ☒ No ☐ N/A (If yes, please provide additional details on a separate page)

Description of Claim

The above check number was cut on April 27, 2022 to SONYMA. The original check was intercepted and a counterfeit check to "Get Mobile LLC" was cashed using the same check number and amount. We did not issue the above items as presented.

• I did not receive any proceeds of the check(s) or item(s) listed above. This affidavit is made voluntarily for the purpose of establishing the fact that my check(s) or item(s) were forged, unauthorized, altered, or missing an endorsement.

• I agree to assist M&T Bank and if necessary, law enforcement authorities in any investigation, and if needed be a witness at any hearing, proceeding, or action.

Signature of individual or duly authorized representative duly authorized to execute on behalf of the individual or entity:

Signature: Michael P. Kears



Date: 10/19/2023

This Affidavit is being submitted to M&T Bank in connection with a claim as set forth herein. M&T Bank has not yet determined the validity of the claim or whether M&T Bank will reimburse any party in connection with the Instrument. M&T Bank may rely on the representations made in this Affidavit in connection with its investigation concerning this claim and any decision regarding reimbursement.

Page 2 of 2

TO BE USED BY A NOTARY PUBLIC	
State/Commonwealth of <u>New York</u> County of <u>Erie</u>	
Subscribed and sworn to before me this <u>19th</u> day of <u>October</u> , 20 <u>23</u> .	
Notary Signature <u>William Arcona Lorenz, Jr.</u>	
William Arcona Lorenz Jr Notary Public, State of New York Qualified in Erie County Lic. # 02LO6285770 Commission Expires July 15, 2025	

BR-968 6/2022

	COUNTY OF ERIE ERIE COUNTY CLERK'S OFFICE Concentration Account 92 Franklin Street, 1st Floor Buffalo, NY 14202-3992	6951
	PAY TO THE ORDER OF <u>Get Mobile LLC</u>	04/27/2022
Three Hundred Twenty Six Thousand Four Hundred Fifty Six and 16/100		\$**326,456.16
DOLLARS		
Get Mobile LLC 416 Pacific Ave Cambridge MD 21613		VOID AFTER 180 DAYS 
MEMO March 2022		

Posting Date 2022 May 26

[REDACTED]

Check/Store # 6951

[REDACTED]

Dollar Amount \$326,456.16

Bank # 096

Branch # 00000

Deposit Acct # 0

Record Type # 01

EXHIBIT "F":
May 27, 2022 Approval Letter from NYS Tax & Finance



**Department of
Taxation and Finance**

May 27, 2022

Michael P. Kearns
Erie County Clerk
92 Franklin Street
Buffalo, NY 14202

Re: Semi-Annual Report for the period October 1, 2021, through March 31, 2022.

Dear Mr. Kearns,

Your joint Semi-Annual Report, NY Form AU-202, which we received on May 26, 2022 is approved. The net amount of \$15,643,594.00 due to the respective tax districts is recognized. The report may be submitted to your County Legislative Body for their action, pursuant to Section 261 of the Tax Law.

Sincerely yours,

Joseph Mayer

Joseph Mayer
Excise Tax Technician 2
Telephone: (518) 862-6074

EXHIBIT "G":
November 16, 2022 Approval Letter from NYS Tax & Finance



November 16, 2022

Michael P. Kearns
Erie County Clerk
92 Franklin Street
Buffalo, NY 14202

Re: Semi-Annual Report for the period April 1, 2022 through September 30, 2022.

Dear Mr. Kearns,

Your joint Semi-Annual Report, NY Form AU-202, which we received on November 10, 2022 is approved. The net amount of \$14,196,311.94 due to the respective tax districts is recognized. The report may be submitted to your County Legislative Body for their action, pursuant to Section 261 of the Tax Law.

Sincerely yours,

Joseph Mayer

Joseph Mayer
Excise Tax Technician 2
Telephone: (518) 862-6074

January 2023

To The Commissioner of Taxation & Finance
and the Erie County Director of Finance

I hereby transmit this statement of mortgages
recorded, together with the receipts under the
mortgage tax law and disbursements approved for
the month shown, except taxes to be apportioned
by the Commissioner of Taxation and Finance
which I have listed on the back of this statement

Signature of recording officer

[Signature]

County: **ERIE**

Number of mortgages recorded

1611

Office of the Erie County Director of Finance

Date: 2/3 2023

Received from the recording officer of
Erie County:

\$ 1,564,298.16

vouchers in the form of approved expense
statement and certified copies of refund and
adjustment orders covering above disbursements
were also duly received.

Signature of Finance Director

[Signature]

MT-4

Statement of Mortgages Recorded

		Receipts					
		A	B	C	D	E	F
		Basic tax	Local	Additional tax	Transportation Authority Special Assistance Fund	Special additional tax to SONYMA	County tax
Interest received on bank deposits: _____							
Interest to be retained by county: _____							
Total interest to be distributed in columns A through F							
Taxes collected on mortgages covering property in one tax district only:		\$ 1,517,823.00		\$ 728,375.75	\$ 505,515.25	\$ 199,468.50	
Reference	Case No.						
1/4/2023	320040	14,827.00		7,413.50	0.00	7,413.50	
1/18/2023	320005	4,929.15		2,464.57	0.00	2,464.57	
1/18/2023	320006	1,985.81		992.90	0.00	992.90	
1/20/2023	319415	3,752.00		1,876.00	0.00	1,876.00	
1/20/2023	320007	4,385.96		2,192.98	0.00	2,196.98	
1/20/2023	320091	1,778.72		889.36	0.00	889.38	
1/20/2023	320094	13,950.00		6,975.00	0.00	6,975.00	
1/20/2023	320095	1,875.00		937.50	0.00	937.50	
1/23/2023	320163	17,625.00		8,812.50	0.00	8,812.50	
1/26/2023	320115	3,712.50		1,856.25	0.00	1,856.25	
1/26/2023	320116	470.00		210.00	235.00	0.00	
1/31/2023	320146	1,352.00		651.00	676.00	0.00	
1/9/2023	319369	765.84		392.92		382.92	
subtotal		\$ 1,589,231.98		\$ 764,030.23	\$ 506,426.25	\$ 234,265.98	
Reference	Case No.	Disbursements					
1/11/2023	320069	\$ 445.00		\$ 213.75	\$ 238.75		
Refunds and adjustments ordered by the Commissioner of Taxation and Finance (per case numbers shown)							
Expenses previously approved		\$ 24,488.82		\$ 11,773.11	\$ 7,803.63	\$ 3,609.86	
Total disbursements		\$ 1,564,298.16	\$ -	\$ 752,043.37	\$ 498,383.87	\$ 230,656.12	\$ -
Amount of basic and local tax paid to Erie County Director of Finance (add columns A and B)						\$ 1,564,298.16	
Amount of additional tax paid to CDTA (add columns C and D)						\$ 1,250,427.24	
Amount of special additional tax paid to State of New York Mortgage Agency (SONYMA) (enter amount from column E)						\$ 230,656.12	
Amount paid to County General Fund (enter amount from column F)						\$ -	

EXHIBIT "H":
January 2023 MT-4

EXHIBIT “I”:
July 15, 2022 Determination and Apportionment from NYS Tax & Finance
(Attached Separately)

8/22/22
CFN # 2022 159808
Receipt # 2212 9457

Case Number 318670

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BEFORE THE COMMISSIONER OF TAXATION AND FINANCE

In the Matter of the Mortgage executed by:

DETERMINATION

AND

APPORTIONMENT

Lineae AFS Master RE LLC And Lineage Dr Master RE LLC

To

Goldman Sachs Bank USA

STATEMENT OF FACTS

Serial Number: DL-20078

Date of Mortgage: October 21, 2020

Date Recorded: November 13, 2020

Mortgagor: Lineae AFS Master RE LLC And Lineage Dr Master RE LLC

Mortgagee: Goldman Sachs Bank USA

Amount of Mortgage:\$ 12,973,740.00

Tax Paid:\$ 129,737.00

Aggregate assessed value of real property covered by the mortgage: ...\$ 29,276,900.00

Real property covered by the mortgage is situated in Monroe County, Erie County and Broome County

DETERMINED BY THE COMMISSIONER OF TAXATION AND FINANCE

1. That the amount of tax to be apportioned is \$ 129,737.00

Now, therefore, it is:

ORDERED

- (1) That the amount of tax apportioned to the respective counties named herein shall be transmitted to the Recording Officers thereof, by the Recording Officer of Monroe County

<u>County</u>	<u>Assessed Value</u>	<u>Portion of Tax</u>
Monroe	\$17,649,900.00	\$78,213.37
Erie	9,427,000.00	41,774.60
Broome	2,200,000.00	9,749.03

- (2) Recording Officers shall enter this and give it a serial number on the mortgage tax record book, and credit the respective tax districts, transportation authority and special assistance fund with the amount of tax herein apportioned as follows:

<u>County of Monroe</u>	<u>Assessed Value</u>	<u>Tax</u>
Town of Sweden	\$17,649,900.00	\$39,106.69
Special Additional Tax		19,553.34
Additional Tax		19,553.34

<u>County of Erie</u>	<u>Assessed Value</u>	<u>Tax</u>
Town of Cheektowaga	\$ 9,427,000.00	\$20,887.30
Special Additional Tax		10,443.65
Additional Tax		10,443.65

<u>County of Broome</u>	<u>Assessed Value</u>	<u>Tax</u>
Town of Conklin	\$ 2,200,000.00	\$ 4,874.51
Special Additional Tax		2,437.26
County Tax		2,437.26

Dated: July 15, 2022



Commissioner of Taxation and Finance

By Donna Chiera

Donna Chiera
Office Assistant 2

EXHIBIT “J”:
2023 AFP Payments Fraud and Control Survey Report (Attached Separately)



ASSOCIATION FOR
FINANCIAL
PROFESSIONALS

2023 AFP®

PAYMENTS FRAUD AND CONTROL SURVEY REPORT

KEY HIGHLIGHTS

Underwritten by: **J.P.Morgan**



We're proud to share the results from the 2023 AFP Payments Fraud and Control survey. As a sponsor of the survey for the last 15 years, J.P. Morgan is committed to helping organizations protect themselves from payments fraud.

The latest survey shows that payments fraud is still a serious threat for every organization. Instances of digital fraud are frequent across various fronts, with multiple schemes aimed at relaxed controls.

Here are some highlights from the survey:

- The share of businesses that reported commercial card fraud has increased by 10 percentage points since 2021.
- The share of businesses that reported ACH Credit fraud has increased by six percentage points over the same time frame.
- Fraudsters continue to impersonate employees and vendors through sophisticated business email compromise schemes that are the root cause of most reported fraud cases.
- Checks are the payment method most vulnerable to fraud—a trend that has remained consistent since the first AFP survey.
- Still, three out of four organizations that use checks plan to keep using checks.

J.P. Morgan offers products and services that can help you manage your fraud risk in connection with checks, wires, and ACH. We hope this report keeps you informed on the latest challenges and encourages you to remain vigilant as ever.

With best regards,



Sue Dean
Head of Solutions,
Commercial Banking
J.P. Morgan



Max Neukirchen
Global Head of
Payments & Commerce
Solutions
J.P. Morgan



Alec Grant
Head of Client Fraud
Prevention, & Recoveries,
Commercial Banking,
J.P. Morgan



Ryan Schmiedl
Global Head of
Trust & Safety,
Payments,
J.P. Morgan

J.P.Morgan



2023 AFP®

PAYMENTS FRAUD AND CONTROL SURVEY REPORT

KEY HIGHLIGHTS

This summary report includes highlights from the comprehensive 2023 AFP® Payments Fraud and Control Survey Report. The complete report comprising all findings and detailed analysis is exclusively available to AFP members.

Learn more about AFP membership.

Underwritten by:

J.P.Morgan

TOPICS COVERED IN THE COMPREHENSIVE 2023 AFP® PAYMENTS FRAUD AND CONTROL SURVEY REPORT

PAYMENTS FRAUD ACTIVITY

- Payments Fraud Trends
- Payment Methods Impacted by Payments Fraud
- Corporate/Commercial Card Fraud
- Losses Incurred Due to Payments Fraud Attempts/Attacks
- Detecting Payments Fraud Activity
- Recouping of Funds
- Origination of Attempted/Actual Payments Fraud

BUSINESS EMAIL COMPROMISE (BEC)

- About Business Email Compromise
- Business Email Compromise Trends
- Financial Impact of Business Email Compromise
- Financial Losses Incurred Due to Business Email Compromise
- Targets of Business Email Compromise Scams
- Departments Most Susceptible to Business Email Compromise Fraud

PAYMENTS FRAUD CONTROLS

- Business Email Compromise Controls
- Check Fraud Controls
- ACH Fraud Controls
- Implementing Risks to curb Fraud via Faster Payments
- Beneficiary Validation
- Fraud Review
- Measures to Improve Controls

INTRODUCTION

As 2021 came to a close, organizations were slowly returning to some level of normalcy as the severity of the impact of COVID-19 began to diminish. However, the spread of the highly contagious Omicron variant upended those plans during the first few months of 2022. Once that threat subsided, business leaders were quick to focus on ramping up operations. But there were challenges, including a sudden and severe shortage of personnel in the workforce and a tight job market. Organizations found it difficult to fill open positions. Employees had the upper hand, and they were being swayed by higher compensation and benefits from other employers. A consequence was that people were resigning from their jobs in droves, resulting in a global phenomenon known as the “Great Resignation.”

In February of 2022, Russia attacked Ukraine. Sanctions imposed on Russia by many western countries resulted in a very tense global situation. This created instability and fuel prices rose precipitously. Inflation rates rose to the highest levels in decades, and the cost of groceries, rent, fuel and other household

items were skyrocketing. As a consequence, the Federal Reserve took action to control the rising inflation by increasing interest rates 7 times in 2022; it is anticipated there will be more rate increases in 2023.

With rising interest rates, the fear of a recession loomed over the economy. Tech companies began mass layoffs creating a sense of uncertainty and fear that organizations in other industries might follow suit. To address challenges in the work environment, many companies offered employees hybrid work arrangements, requiring that employees come into their offices only a few times a week or month. Some organizations mandated that employees return to offices, but that was – and continues to be – met with resistance. Other organizations chose to remain “virtual” permanently.

With the major threat of COVID-19 now abated, many businesses are functioning at pre-pandemic levels. During COVID-19, payment systems were put to the test of operating in an all-virtual environment. With minimal preparation, companies had to make

and receive payments while operating in an environment drastically different from the usual norm. 2022 saw a large increase in brazen and successful attempts at stealing mail from post office boxes: i.e., the blue boxes typically found on street corners. Perpetrators of these crimes replicated keys to mailboxes and stole mail. Mail was then opened, and payments containing checks (government, business, personal, etc.) were washed and check amounts and names of payees altered. These checks were then endorsed and deposited into accounts with a short life. FinCen recently issued a warning to financial institutions about this type of fraud¹. This type of fraud is low-tech (being paper based) and low cost, and so is an attractive method for fraudsters. Postal Inspectors are overworked with cases of this type of fraud, and perpetrators are able to get away with few repercussions. To address this trend, treasury and finance professionals worked on equipping their organizations to tackle the risk of fraud in this new scenario. Stringent controls were put in place to curb fraud attacks on payment systems. This appears to have been effective in curbing instances of widespread payments

¹FinCEN Alert on Nationwide Surge in Mail Theft-Related Check Fraud Schemes Targeting the U.S. Mail | FinCEN.gov

INTRODUCTION (Continued)

fraud. Additionally, the use of checks, a common target of perpetrators, has declined considerably, preventing fraudsters from doing further harm using checks as a means to perpetrate fraud.

Every year since 2005, the Association for Financial Professionals* (AFP) has conducted its *Payments Fraud Survey*. The surveys examine the nature of fraud attacks on business-to-business transactions, the payment methods impacted, and the strategies organizations are adopting to protect themselves from those committing payments fraud. Continuing this research, AFP conducted the 19th Annual *Payments Fraud and Control Survey* in January 2023. The survey generated 471 responses from corporate practitioners from organizations of varying sizes representing a broad range of industries. Results presented in this report reflect data for 2022. Survey respondent demographics are available at the end of this report.

AFP thanks J.P. Morgan for its continued underwriting support of the *AFP Payments Fraud and Control Survey* series. Both questionnaire design and the final report, along with its content and conclusions, are the sole responsibility of AFP's Research Department.

“Attempted fraud was discovered by our supplier setup team calling an established vendor and confirming they had not changed banks, as per the email we received.”



KEY FINDINGS

Overall, attempted or actual payments fraud in 2022 was lower compared to that in recent years.

Sixty-five percent of respondents indicate that their organizations were victims of either attempted or actual fraud activity in 2022 – the smallest percentage since 2014.



Instances of fraud via digital payment methods have risen since 2021.

Commercial card fraud increased by 10 percentage points in 2022, fraud via ACH credits was up by 6 percentage points and fraud via virtual cards also increased by 6 percentage points during the same time frame.



Twenty-seven percent of organizations were able to successfully recover at least 75 percent of funds lost due to payments fraud in 2022, while 44 percent were unsuccessful in doing so.

Over half of organizations with annual revenue of less than \$1 billion were unable to recover funds lost due to payments fraud attacks.



Business Email Compromise (BEC) scams are still highly prevalent and are the root cause of payments fraud at a majority of organizations. Seventy-one percent of companies were victims of payments fraud via email in 2022.



Larger organizations with annual revenue of at least \$1 billion were more susceptible to BEC scams, while those companies with less than \$1 billion in annual revenue were more susceptible to fraud committed by individuals outside their organizations.

Payment methods used during BEC attempts included wires, cited by 45 percent of respondents (the highest percentage in the past five years) and ACH debits.

Fraudsters are increasingly targeting ACH debits when attempting scams via email.

Nearly 80 percent of organizations are most likely to seek assistance from their banking partners for guidance regarding the steps to take to minimize the impact of payments fraud.

Sixty-nine percent inform the security/compliance team at their organizations.



Checks continue to be the payment method most vulnerable to fraud.

Sixty-three percent of respondents report that their organizations faced fraud activity via checks. Three-fourths of organizations currently using checks do not plan to discontinue issuing checks.





PAYMENTS FRAUD ACTIVITY IN 2022

Fewer Organizations Report Being Targets of a Payments Fraud Attack in 2022

From 2009-2013, organizations experienced a decline in payments fraud activity. Sixty percent of respondents reported instances of fraud at their organizations in 2013. Then the pendulum swung the other way and there was an uptick in fraud activity between 2014-2018. In 2018 and 2019 payments fraud activity was widespread with over 80 percent of organizations falling prey to the tactics of fraudsters.

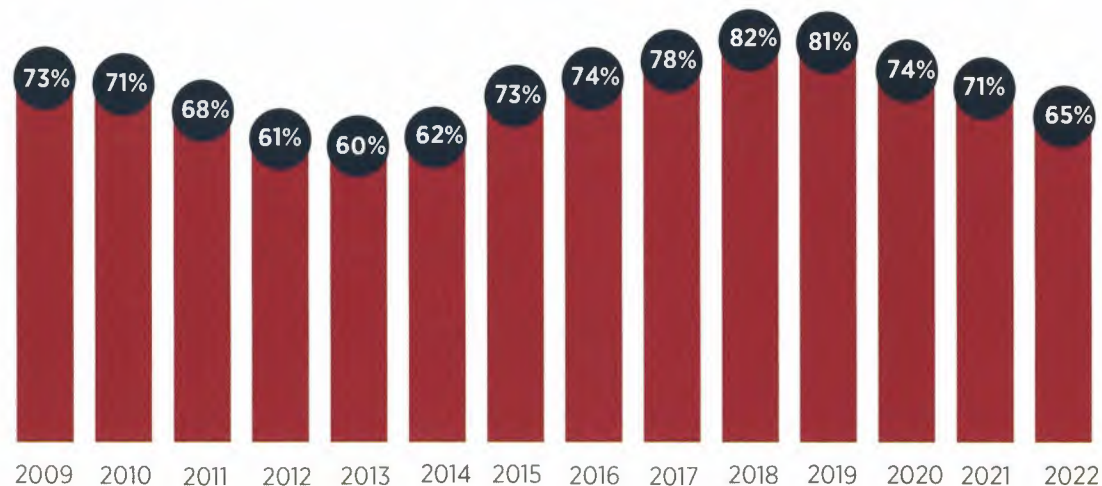
Since then, there has been a decrease in the percentage of treasury professionals reporting that their organizations had been targets of a fraud attack. Fortunately, this

downward trend activity continued in 2022; 65 percent of organizations were victims of either attempted or actual fraud activity – the smallest percentage since 2014. Although this figure is lower than fraud reported in recent years, it is still a significant share with two out of three companies continuing to be victims of fraud attacks.

A greater share of survey respondents from larger organizations and those with more payment accounts – i.e., those with annual revenue of at least \$1 billion and with more than 100 payment accounts – reports their

firms experienced payments fraud in 2022 compared with the share of respondents from other organizations. Eighty-four percent of these organizations were targets of payments fraud. Fewer smaller organizations – those with annual revenue less than \$1 billion – were targets of payments fraud in 2022 than were larger organizations (with annual revenue of at least \$1 billion). 60 percent compared to 78 percent, respectively. Fraudsters were more inclined to target larger organizations, exposing deficiencies around process controls using social engineering.

Percent of Organizations That Were Victims of Payments Fraud Attacks/Attempts





PAYMENTS FRAUD ACTIVITY IN 2022

Prevalence of Attempted/Actual Payments Fraud in 2022
(Percentage Distribution of Organizations)





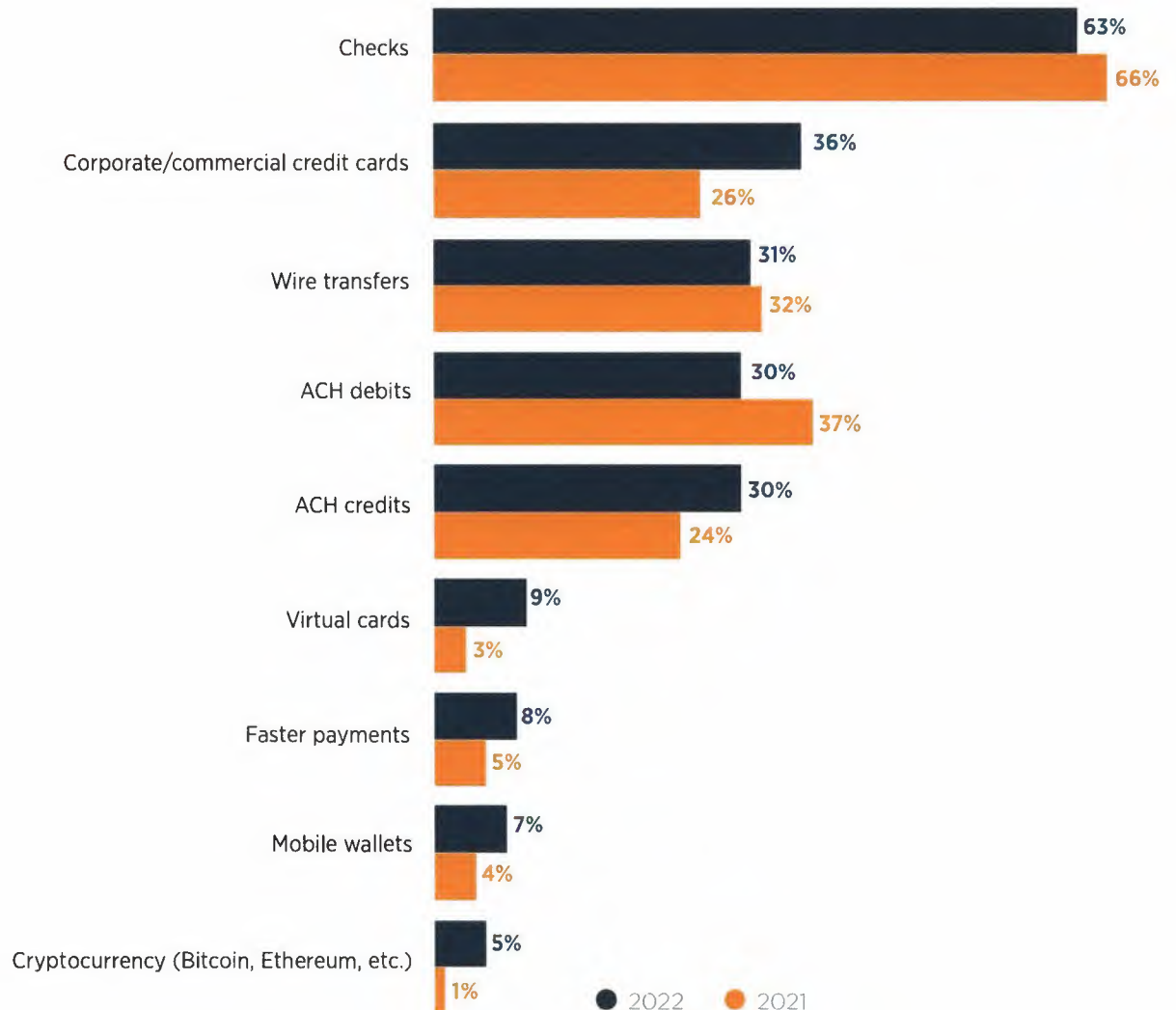
PAYMENT METHODS MOST VULNERABLE TO FRAUD

Checks Continue to be Most Vulnerable to Payments Fraud

In 2022, checks continued to be the payment method impacted most often by fraud activity; 63 percent of respondents report that their organizations faced some kind of check fraud activity, attempted or actual. Payments fraud via checks had been on the decline since 2010, with some intermittent upticks in between. Seventy percent of financial professionals reported that their organizations' check payments were subject to fraud attempts/attacks in 2018, while 74 percent reported the same for 2019. We then saw a decrease to 66 percent in 2020 and it remained unchanged in 2021.

“We had a washed check and relied on our bank to track down the errant payee.”

Payment Methods Subject to Fraud by Type
(Percent of Organizations)





PAYMENT METHODS MOST VULNERABLE TO FRAUD

Contributing to the decline in check fraud is the fact that organizations are using fewer checks in their business-to-business (B2B) transactions and an increase in digital payments. According to the *2022 AFP® Electronic Payments Report*, 33 percent of organizations used checks for B2B payments in 2022, while in 2004 over 80 percent of companies used checks for similar transactions.

The share of organizations that were victims of fraud attacks via wire transfers has also been decreasing – from 48 percent in 2017 to 32 percent in 2021 and 31 percent in 2022. Companies are more efficient in detecting potential fraud and mitigating it appropriately. Results suggest a clear downward trend in wire fraud activity, indicating that the controls companies are putting in place to prevent wire fraud are effective. Fraudsters often use wires to infiltrate an organization's payment systems using email, and because in recent years companies have bolstered their efforts to control fraud via email – i.e., Business Email Compromise (BEC) – those efforts have contributed to a decrease in instances of wire fraud.

The share of respondents reporting fraud via ACH debits decreased from 37 percent in 2021 to 30 percent in 2022. The percentage of fraud activity via ACH debits had been increasing gradually – from 33 percent in 2019 to 34 percent in 2020 and to 37 percent in 2021. Time will tell whether the recent decline is the beginning of a trend or not. Potential reasons for the decline possibly include businesses having stronger procedures and tools in place, including the use of debit filters, debit blocks, etc. Also, as more payments move to digital channels, the stronger processes around ACH debits might have helped to reduce the incidence of fraud.

Fraud via ACH credits rose 6 percentage points from 2021 to 30 percent in 2022. In 2019 fraud via ACH credits accounted for 22 percent of fraud activity, then decreased slightly to 19 percent in 2020 before rising again to 24 percent in 2021 and to 30 percent in 2022. As companies move from paper to digital payment methods, the origination point of ACH credits needs further review around processes, controls and procedures. Dual approvals and proper payment backup/detail protocols should

parallel those for other payment channels such as wires, Real Time Payments and Same Day ACH. In addition, organizations should continually educate their employees on how to protect their payment systems from fraudsters.

Apart from fraud via checks, wire transfers and ACH credits, attacks via corporate/commercial credit cards, faster payments, virtual cards, cryptocurrency and mobile wallets have increased from 2021 to 2022. The percentage of organization that were victims of fraud attacks via corporate/commercial credit cards rose from 26 percent to 36 percent in 2022, fraud attacks via faster payments increased from 5 percent to 8 percent and fraud attacks via cryptocurrency rose from one percent to five percent.



ASSISTANCE SOUGHT WHEN REPORTING PAYMENTS FRAUD

Banking Partners Often Sought Out for Assistance in Process to Report Payments Fraud

When looking to report payments fraud, 79 percent of respondents indicate their organizations are most likely to seek assistance from their banking partners to receive guidance about the steps to take to minimize the impact from such fraud. Since banking partners are increasingly being sought out for guidance, practitioners should ensure that when selecting banking partners those partners have experience in dealing with payments fraud and so will be able to help organizations when the need arises. If changing banks, it is a good practice for a company to incorporate a “fraud checkup” into the RFP as a requirement including requesting demos of fraud solutions for each payment type, how exceptions are handled, timing to action exceptions, and setting defaults to “not pay” if deadlines are missed. Sixty-nine percent of respondents report they would

inform the security/compliance team at their organizations; this action is taken more frequently at larger organizations with annual revenue of at least \$1 billion (74 percent) than at those firms with annual revenue of less than \$1 billion (59 percent). Other steps being taken when reporting fraud are:

- File report with police (local, state, or federal) (cited by 38 percent of respondents)
- Inform law enforcement agencies (e.g., FBI) (35 percent)
- Inform the Federal Trade Commission (FTC) (6 percent)





ASSISTANCE SOUGHT WHEN REPORTING PAYMENTS FRAUD

Process Used to Report Payments Fraud in 2022

(Percent of Organizations)

	All	Annual Revenue Less Than \$1 Billion	Annual Revenue At Least \$1 Billion	Annual Revenue At Least \$1 Billion and Fewer Than 26 Payment Accounts	Annual Revenue At Least \$1 Billion and More Than 100 Payment Accounts
Seek assistance from our banking partner	79%	73%	84%	87%	78%
Inform internal security/compliance team	69%	59%	74%	72%	78%
File report with police (local, state or federal)	38%	30%	45%	44%	41%
Inform law enforcement agencies (e.g., FBI)	35%	30%	43%	44%	41%
Inform the Federal Trade Commission (FTC)	6%	6%	6%	7%	7%
Other	4%	6%	3%	1%	4%
<ul style="list-style-type: none"> • File police report in targeted country (when outside of the U.S.) • File a claim with Postmaster General's office • Depends on the fraud • File a Suspicious Activity Report (SAR) 					

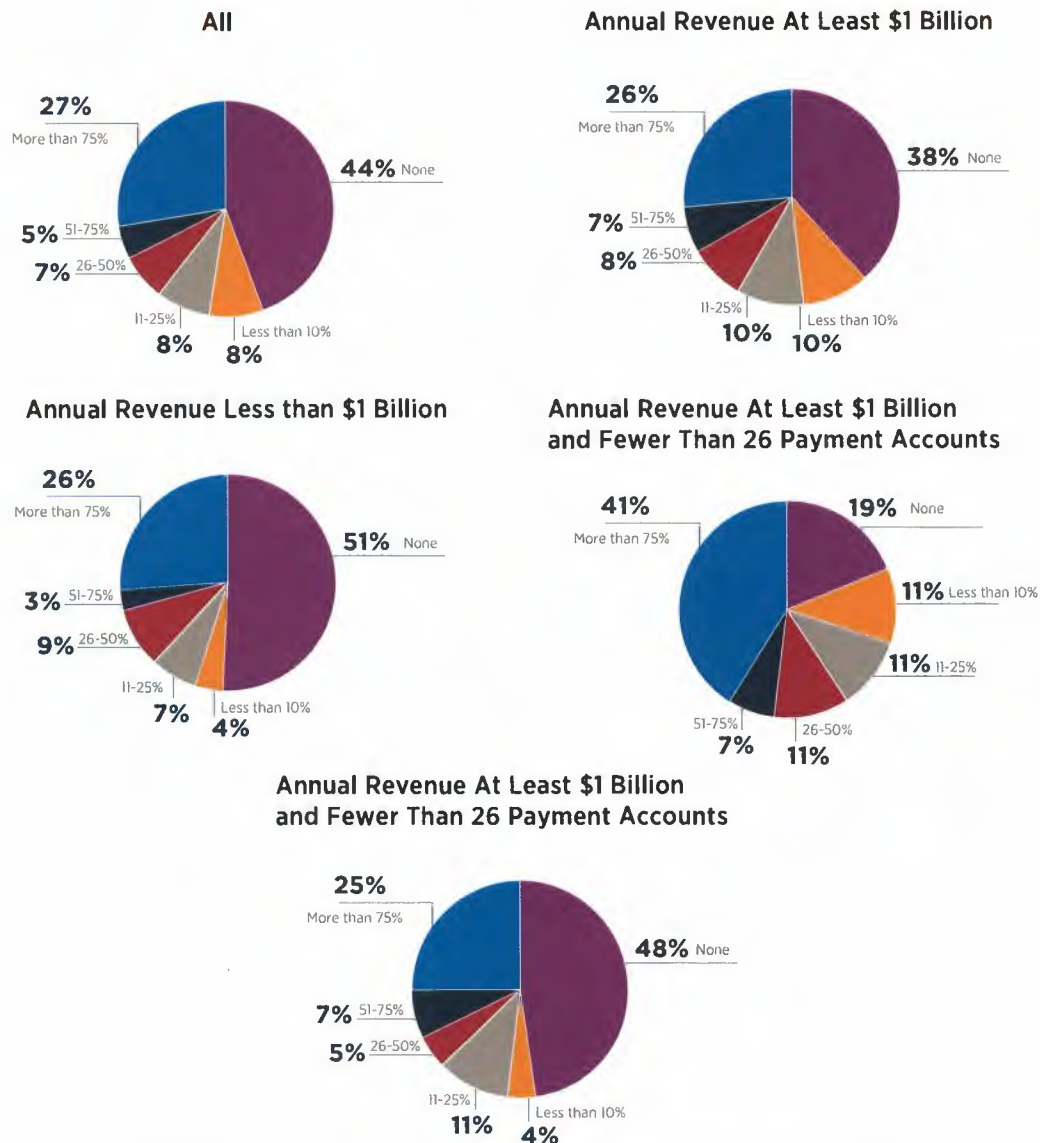


RECOUPING OF FUNDS

A Majority of Organizations Recoup Less than 10 percent of Funds Stolen Due to Fraud

Forty-four percent of respondents indicate that after a successful fraud attempt, their organizations were unable to recover the funds lost due to the fraud. At the other end of the spectrum, 27 percent were able to recoup 75 percent of the funds lost. Larger organizations with annual revenue of at least \$1 billion and more than 100 payment accounts have greater success in recovering funds lost; 41 percent of these companies were successful in regaining more than 75 percent of the funds lost due to a fraud attack and only 19 percent were unsuccessful in recouping funds. Organizations with greater revenue and with a larger volume of payment accounts are better equipped to detect fraud early. They implement systems that allow for uncovering the origins of the fraud and thus minimize the financial impact of a fraud attack.

Recoup of Funds After a Successful Fraud Attempt
(Percentage Distribution of Organizations that Experienced Fraud)





ORIGINATION OF PAYMENTS FRAUD

Majority of Payments Fraud Originate from an Individual (External to Organization) and Business Email Compromise

The most-common source of payments fraud in 2022 was an external source or individual (e.g., forged check, stolen card); 54 percent of financial professionals report that payments fraud at their companies was the result of actions by an individual outside the organization. This is a slight uptick from the 51 percent reported last year (for 2021).

Fifty-three percent of fraud was a result of Business Email Compromise (BEC). In 2019, 61 percent of respondents cited BEC as a source of fraud; in 2020 the share inched upward to 62 percent. Although BEC continued to be the chief reason organizations were experiencing fraud in 2021, the share of respondents that cited BEC as a reason for payments fraud at their companies that year decreased slightly from previous years (55 percent). The percentage also decreased slightly to 53 percent in 2022, and BEC was the second most cited source of payments fraud. Larger organizations with annual revenue of at least \$1 billion and with more than 100 payments accounts were more susceptible to BEC scams in 2022, while companies with less than \$1 billion in annual revenue were more susceptible to fraud committed by outside individuals.

Other sources of payments fraud included vendor imposter (37 percent) and bad actor who takes over an account (20 percent) – i.e., account takeovers via hacked system, phishing, spyware or malware.

A larger share of companies with annual revenue of less than \$1 billion were targeted by an outside individual (58 percent) than were those organizations with annual revenue of at least \$1 billion (52 percent).

Those respondents indicating that note that an insider committed fraud at their organizations (3 percent) suggest that these individuals worked in Accounts Payable, Retail, Sales or Bookkeeping departments.

Sources of Attempted/Actual Payments Fraud Attempts in 2022

(Percent of Organizations)

2022		Annual Revenue Less Than \$1 Billion	Annual Revenue At Least \$1 Billion	Annual Revenue At Least \$1 Billion and Fewer Than 26 Payment Accounts	Annual Revenue At Least \$1 Billion and More Than 100 Payment Accounts	2021
Outside individual (e.g., check forged, stolen card, fraudster)	54%	58%	52%	49%	44%	51%
Business Email Compromise (BEC Fraud)	53%	48%	58%	62%	63%	55%
Vendor imposter	37%	29%	46%	49%	48%	—
Bad actor takes over an account, i.e., Account takeover (e.g., hacking a system, adding malicious code – spyware or malware from social network)	20%	19%	23%	17%	30%	16%
Invoice fraud	15%	9%	13%	14%	33%	—
Imposter to client posing as representative from our company	14%	6%	3%	1%	—	—
Third-party or outsourcer (e.g., vendor, professional services provider, business trading partner)	13%	12%	15%	17%	11%	18%
U.S. Postal Service Office interference	11%	7%	13%	9%	22%	—
Organized crime ring (e.g., crime spree that targets other organizations in addition to your own, either in a single city or across the country)	8%	2%	12%	12%	11%	10%
Ransomware	5%	1%	9%	8%	7%	—
Internal party (e.g., malicious insider)	3%	2%	3%	—	7%	2%
Compromised mobile device	3%	2%	2%	3%	4%	3%
Deepfake attempt (e.g., voice and/or video swapping, “deep voice” technology, vishing)	1%	—	—	—	—	—

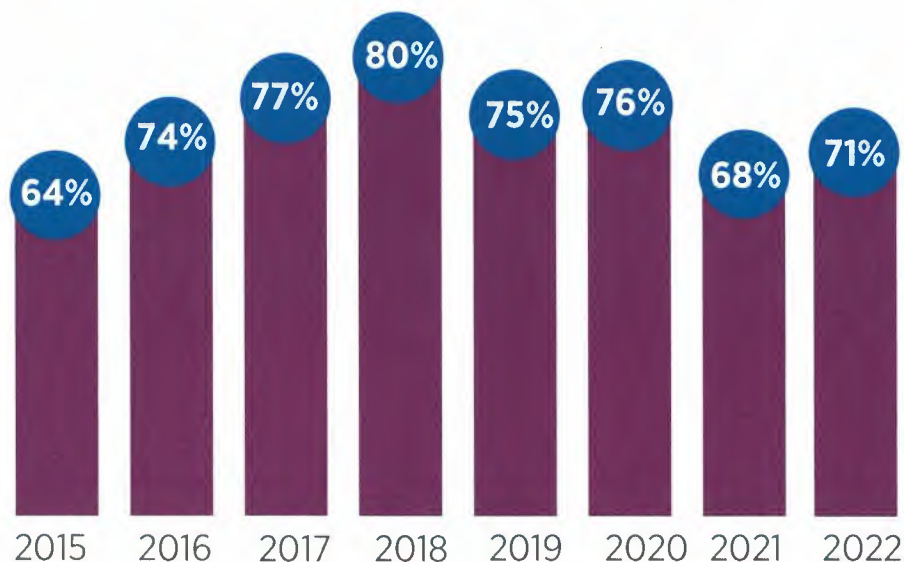


ABOUT BUSINESS EMAIL COMPROMISE

Business Email Compromise (BEC) Events Increase Slightly

Seventy-one percent of organizations experienced attempted or actual BEC in 2022. This is a three-percentage point increase from 2021, but still a significant drop from the 80 percent reported in 2018. As has been the trend, fewer smaller organizations (with annual revenue less than \$1 billion) were targets of BEC fraud than were larger organizations (with annual revenue of at least \$1 billion): 63 percent compared to 82 percent. This gap has widened since 2020 when those figures were 67 percent and 78 percent, respectively.

Percent of Organizations that Experienced Business Email Compromise (2015-2022)



“We received a fraudulent email impersonating an executive officer of the company.”



HOW CRIMINALS CARRY OUT BUSINESS EMAIL COMPROMISE SCAMS

“Fictitious email was sent by an imposter pretending to be a vendor requesting change in Banking information. Procurement staff changed the banking information not realizing it was fraud. The fraud was quickly detected and our Bank, the local Police and the FBI were notified. Funds were recovered.”

BEC Methods

Fraudsters' approaches to BEC in 2022 were similar to those observed in previous years. Criminals carry out BEC scams in the following ways.

- Spoof an email account or website (experienced by 73 percent of organizations). Senders forge email header elements to trick users into thinking they are interacting with a trusted source.
- Use a domain lookalike (experienced by 57 percent of organizations). Bad actors register look-alike domains to confuse users into believing that they have reached a legitimate site. Visiting these sites may lead to web traffic diversion and/or malware delivery.
- Access a compromised email account (experienced by 54 percent of organizations). Fraudsters will sometimes use compromised email accounts to send fraudulent “change of payment” instructions to potential victims.

Fraudulent emails may contain attachments or links that send users to illegitimate websites or payment portals. Respondents report their firms receive these messages through texts as well as apps, including WhatsApp.

Most Prevalent Types of Business Email Compromise Fraud in 2022

(Percent of Organizations)



73%

Spoof email



57%

Domain lookalike



54%

Legitimate email that was taken over by a fraudster



BENEFICIARY VALIDATION

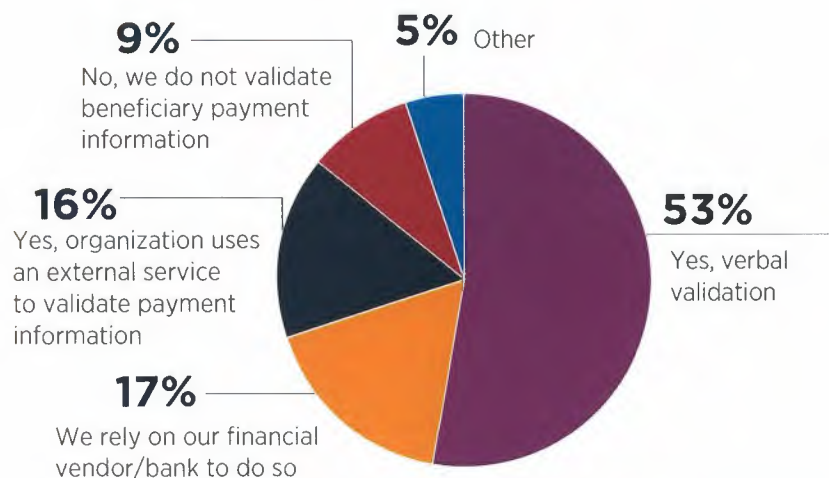
Beneficiary Validation a Common Practice at Most Organizations

Beneficiary payment validation is an important step in ensuring accurate and secure payments. When asked about the validation process for their organizations, 53 percent of respondents report that their organizations validate payments verbally. Some organizations choose to outsource validation:

- Rely on financial vendor/bank (cited by 17 percent of respondents)
- Use of an external service to validate payment information (16 percent)

Nine percent of organizations do not validate beneficiary payment. Some organizations rely on a combination of validation procedures. Verbal validation is often used in conjunction with bank letters and/or written instructions.

Validating Beneficiary Payment Details
(Percentage Distribution of Organizations)





FRAUD REVIEW

Fraud Review Process

Over 60 percent of organizations conduct fraud reviews: 36 percent conduct reviews internally while 25 percent seek the assistance of their bank/vendor. Another 12 percent have plans to conduct a review within the next year. Organizations with annual revenue of less than \$1 billion are more prone to conduct reviews internally (42 percent) than are organizations with annual revenue of at least \$1 billion (33 percent). In comparison, organizations with annual revenue of at least \$1 billion (30 percent) are more likely to seek the assistance of their bank/vendor than are organizations with less annual revenue (21 percent).

At a majority of organizations, Treasury is responsible for the oversight of the fraud review process (cited by 56 percent of respondents). Other departments that have oversight of the fraud review process are:

- Risk (cited by 42 percent of respondents)
- Accounts Payable (37 percent)
- IT (35 percent)

A greater percentage of Risk departments at organizations with annual revenue of at least \$1 billion and more than 100 payment accounts are responsible for fraud review than are similar sized companies with fewer payment accounts (64 percent versus 42 percent).

“Attempted fraud was discovered by our supplier setup team calling an established vendor and confirming they had not changed banks, per the email we received.”

Fraud Review Process
(Percentage Distribution of Organizations)

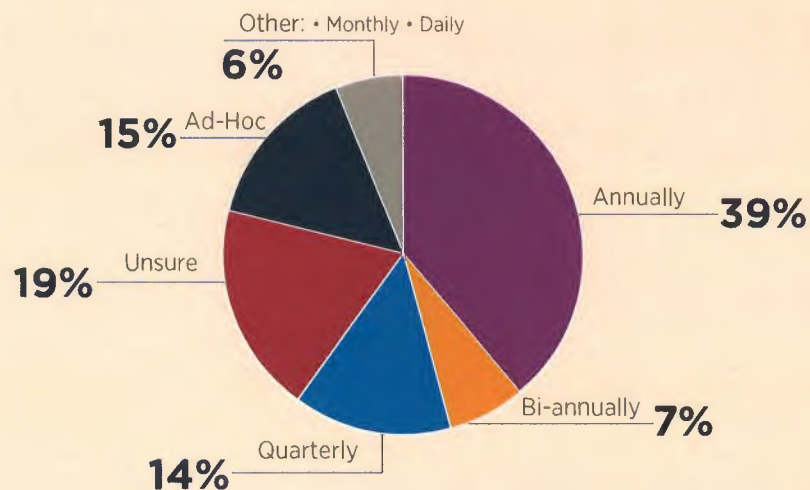
	All	Annual Revenue Less Than \$1 Billion	Annual Revenue At Least \$1 Billion
Conduct an internal independent review	36%	42%	33%
Conduct review with the assistance of bank/vendor	25%	21%	30%
Planning to conduct a review within the next year	12%	10%	14%
Do not conduct fraud reviews	27%	27%	24%



FRAUD REVIEW

Fraud review is conducted annually at 39 percent of organizations and conducted more frequently at 21 percent of organizations, either once a quarter or twice a year. Some respondents indicate that these reviews are conducted on an ad-hoc basis at their organizations, and 19 percent are unsure about the frequency that fraud reviews are conducted at their companies.

Frequency of Fraud Review
(Percentage Distribution of Organizations)



CONCLUSION

There are clear signs that payments fraud is abating. After record levels of fraud in both 2018 and 2019 – peaking at over 80 percent – the share of organizations that were targets of attempted/actual payments fraud has been on the decline since. Checks continue to be a prime target for criminals, but with the declining use of checks – and very effective tools to stop check fraud – fraudsters have been having less success. According to the *2022 AFP® Electronic Payments Report*, 33 percent of organizations used checks for business-to-business payments in 2022, while in 2019, 43 percent of companies did so. Because many organizations are unable to eliminate the use of checks completely, fraudsters continue to be able to use checks to target organizations, although perhaps to a lesser extent. Unfortunately, criminals are not easily discouraged; advanced software and social engineering enables them to attempt payments fraud through other payment methods such as wires and ACH payments.

Emails are frequently used to infiltrate company networks. In the current business environment, employees are likely physically distanced; consequently, verbal verification of payment requests become more challenging. Unless formal systems are in place and ingrained in employees, fraud can often occur. Business leaders have made training and education focused on detecting phishing attempts a priority for employees. Indeed,

many organizations do not restrict training to just the finance teams, but instead require that employees throughout the entire organization be cognizant about fraud attempts via email and be able to identify them. Employees who inadvertently open emails multiple times which are either actual fraud attacks or simulated phishing attempts are reprimanded, and in some extreme cases may be terminated from their jobs. Despite extensive measures implemented to prevent Business Email Compromise, it continues to be one of the primary sources of fraud at organizations.

The share of organizations experiencing corporate/commercial credit card fraud increased 10 percentage points, from 26 percent in 2021 to 36 percent in 2022. This uptick is similar to the incidence of credit card fraud reported prior to the COVID-19 pandemic in 2019 – 34 percent. As a consequence of the pandemic, organizations reduced workforce, furloughed employees and trimmed discretionary spending by restricting travel. The use of corporate/commercial credit cards also decreased, resulting in fewer card transactions and, therefore, less fraud via that payment method than was reported in 2020 and 2021. As employers are recruiting again and organizations have eased restrictions on travel and other discretionary spending, corporate/commercial credit cards are being used more extensively, resulting in greater incidence of fraud being reported via those payment methods.

Call backs, daily reconciliations and verbal verifications are methods many organizations are using in their efforts to minimize the occurrence of fraud via payment methods. Treasury and finance leaders are increasingly reaching out to banking partners for guidance in reporting and managing fraud. Depending on the extent of the fraud, practitioners are also reporting fraud to police and other law enforcement agencies.

In the past, actual financial losses from payments fraud attacks were not damaging; that continued to be the case in 2022. However, this is not a reason for companies to lose focus on preventing fraud. While loss of confidential and personnel information does not directly impact an organization's bottom line, extensive effort and resources are required to resolve such situations.

It is evident that the steps business leaders are taking to prevent fraud are having success. However, historical payments fraud survey data show different types of fraud emerge in the wake of such success. Fraudsters are relentless and will continue to target organizations and any vulnerable payment networks. Therefore, treasury leaders will want to ensure that they are prepared for the next type of fraud that is in the works. It is vital that treasury and finance professionals stay ahead of the perpetrators so that fraud attacks do not interrupt business operations and organizations' financial losses remain at a minimum.

ABOUT SURVEY RESPONDENTS

In January 2023, the Research Department of the Association for Financial Professionals® (AFP) surveyed treasury practitioner members and prospects. The survey was sent to treasury professionals with the following job titles: Vice President of Treasury, Treasurer, Assistant Treasurer, Director of Treasury, Treasury Manager,

Director of Treasury and Finance, Senior Treasury Analyst, and Cash Manager. A total of 471 responses were received from practitioners, which form the basis of the report.

AFP thanks J.P. Morgan for underwriting the 2023 AFP® Payments Fraud and Control Survey.

Both the questionnaire design and the final report, along with its content and conclusions, are the sole responsibilities of the AFP Research Department. The following tables provide a profile of the survey respondents, including payment types used and accepted.

Type of Organization’s Payment Transactions
(Percentage Distribution of Organizations)

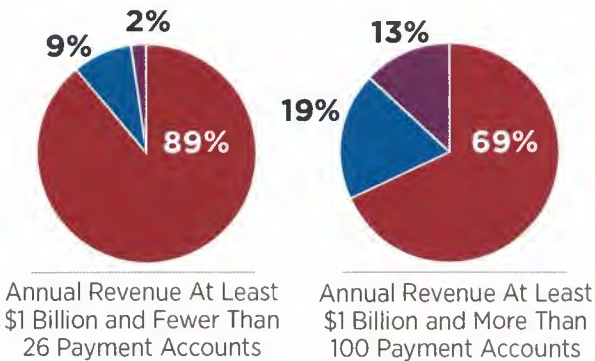
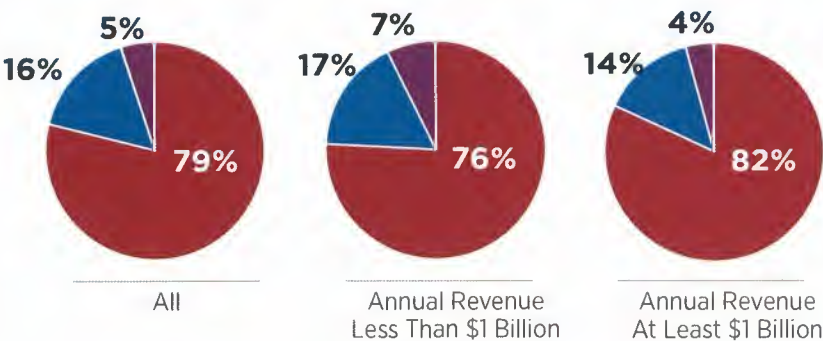
	Primarily consumers	Split between consumers and businesses	Primarily businesses
When making payments	9%	27%	64%
When receiving payments	21%	29%	50%

Number of Payment Accounts Maintained
(Percentage Distribution of Organizations)

	All	Annual Revenue Less Than \$1 Billion	Annual Revenue At Least \$1 Billion	Annual Revenue At Least \$1 Billion and Fewer Than 26 Payment Accounts	Annual Revenue At Least \$1 Billion and More Than 100 PaymentAccounts
Fewer than 5	24%	32%	17%	28%	—
5-9	23%	24%	23%	38%	—
10-25	19%	18%	21%	34%	—
26-50	9%	10%	8%	—	—
51-100	10%	6%	12%	—	—
More than 100	15%	9%	19%	—	100%

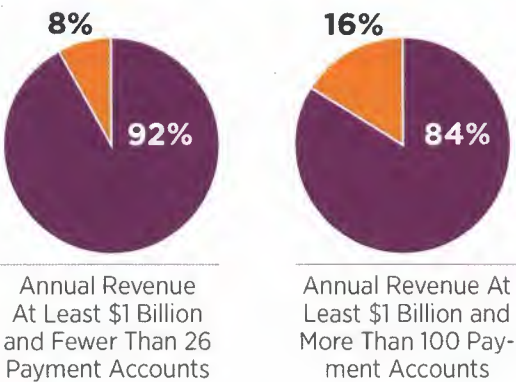
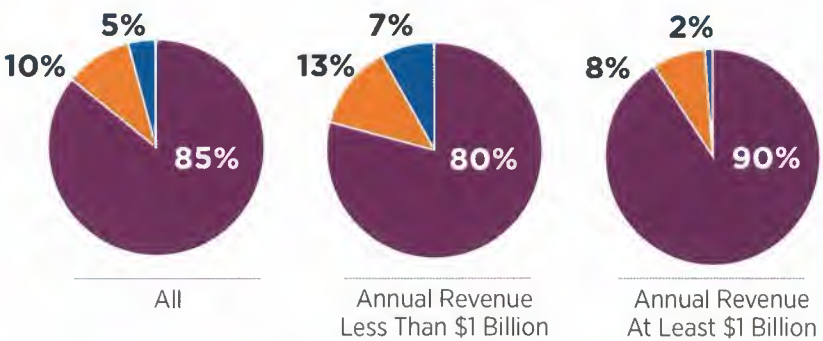
ABOUT SURVEY RESPONDENTS

Methods to Maintain Payments Accounts
(Percentage Distribution of Organizations)



- Centralized
- Decentralized
- Other

Application of Accounts Controls
(Percentage Distribution of Organizations)

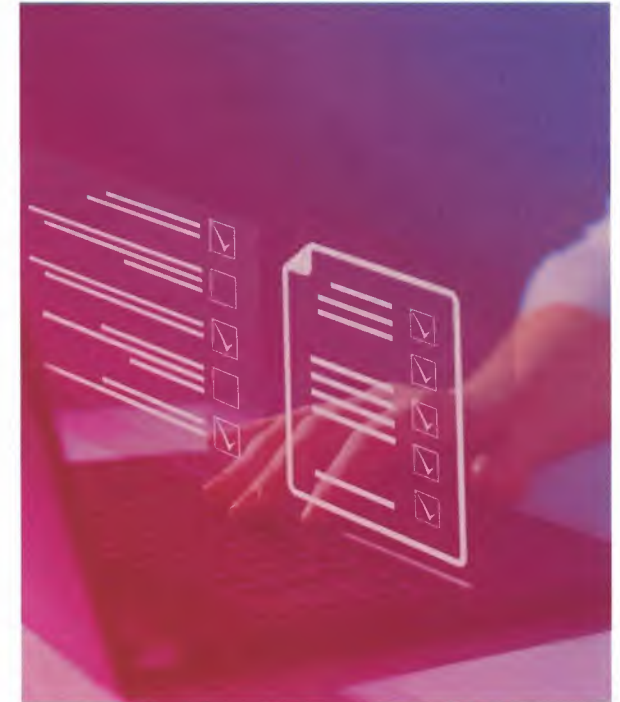
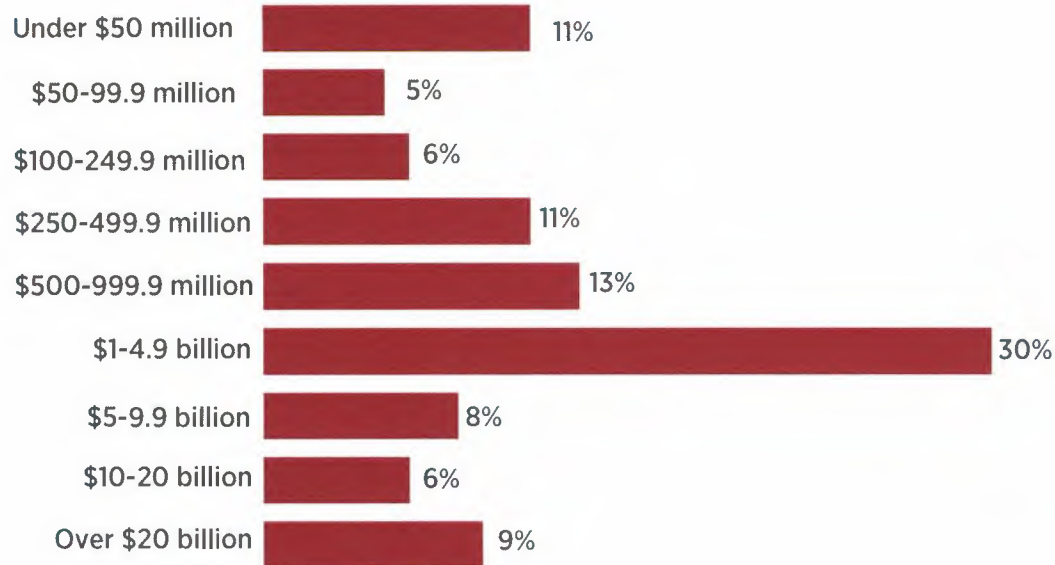


- Yes, applied to all accounts in all areas
- Not applied to all accounts
- Yes, applied to all accounts but in select areas

ABOUT SURVEY RESPONDENTS

Annual Revenue (USD)

(Percentage Distribution of Organizations)



Organization's Ownership Type

(Percentage Distribution of Organizations)

	All	Annual Revenue Less Than \$1 Billion	Annual Revenue At Least \$1 Billion	Annual Revenue At Least \$1 Billion and Fewer Than 26 Payment Accounts	Annual Revenue At Least \$1 Billion and More Than 100 PaymentAccounts
Publicly owned	35%	15%	51%	49%	59%
Privately held	41%	53%	30%	33%	28%
Non-profit (not-for-profit)	16%	22%	11%	8%	6%
Government (or government owned entity)	9%	10%	8%	10%	6%

ABOUT SURVEY RESPONDENTS

Industry Classification

(Percentage Distribution of Organizations)

	ALL
Agricultural, Forestry, Fishing & Hunting	—
Administrative Support/Business services/Consulting	1%
Banking/Financial services	14%
Construction	4%
E-Commerce	2%
Education (K-12, public or private institution)	2%
University or other Higher Education	4%
Energy	5%
Government	6%
Health Care and Social Assistance	9%
Hospitality/Travel/Food Services	2%
Insurance	5%
Manufacturing	17%
Mining	—
Non-profit	5%
Petroleum	1%
Professional/Scientific/Technical Services	3%
Real estate/Rental/Leasing	4%
Retail Trade	4%
Wholesale Distribution	5%
Software/Technology	2%
Telecommunications/Media	1%
Transportation and Warehousing	3%
Utilities	2%



AFP® 2023 Payments Fraud and Control Report

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About AFP®

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