

PERFORMANCE AUDIT REPORT

Pennsylvania Department of Transportation

April 2019



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General

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EUGENE A. DePASQUALE
AUDITOR GENERAL

April 19, 2019

The Honorable Tom Wolf
Governor
Commonwealth of Pennsylvania
Room 225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Wolf:

This report contains the results of the Department of the Auditor General's performance audit of the Pennsylvania Department of Transportation (PennDOT). This audit was conducted under the authority of Sections 402 and 403 of The Fiscal Code, 72 P.S. § 402, 403, and in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our performance audit of PennDOT included six objectives: (1) Evaluate the extent to which PennDOT properly manages and monitors the distribution and sharing of personal information it collects; (2) Determine whether PennDOT's procurement procedures are in accordance with the Commonwealth Procurement Code, the Department of General Services' *Procurement Handbook*, and other related policies; (3) Evaluate the appropriateness of PennDOT's procedures to manage and monitor the execution of contracts throughout the life of the contract; (4) Determine whether PennDOT properly received funds specified by the Comprehensive Transportation Funding Plan (Act 89 of 2013) and the Omnibus Amendments to the Vehicle Code (Act 44 of 2007) and whether PennDOT spent these funds in accordance with the acts; (5) Evaluate the process by which projects were selected for funding through the Transportation Infrastructure Investment Fund; and (6) Evaluate the method by which PennDOT commits funds within the Multi-Modal Fund and determine the Fund's available fund balance.

For the first five objectives, our performance audit covered the period January 1, 2014 through June 30, 2017. The sixth objective covered the period July 1, 2016 through June 30, 2018.

We found that PennDOT's failure to adequately evaluate and monitor the internal controls of its wholesale providers potentially jeopardizes customers' personally identifiable information.

We also found that due to increased transfers from the Motor License Fund to the Pennsylvania State Police, PennDOT's ability to use the Act 89 of 2013 funding to improve highways and bridges has been delayed. Act 44 of 2007 funds transferred from PennDOT have helped transit agencies, but they also have resulted in the PA Turnpike Commission amassing billions of dollars of debt. Further, we found that PennDOT's method to commit grant monies within the Multimodal Transportation Fund appears reasonable; however, a shorter grant cycle could reduce misunderstandings of the fund balance.

We found that the Transportation Infrastructure Improvement Fund monies are awarded at the Governor's discretion, in close discussions with the Secretary of Transportation, with no accountability or transparency.

Regarding PennDOT's construction contract procurement and monitoring, we found PennDOT's policies and procedures are in accordance with applicable laws and regulations and being followed; however, its Central Office oversight of construction cost increases should be strengthened. Finally, PennDOT's purchasing card process is generally in compliance with the Commonwealth's Procurement Code; however, its agency-specific Quality Assurance Review process should be improved.

We offer 28 recommendations, including 26 to PennDOT and two to the Pennsylvania General Assembly, to improve PennDOT's operations.

We also conducted procedures to determine whether PennDOT implemented our prior performance audit's findings and recommendations from the report issued in January 2013. We found that only one of the six prior audit findings was resolved and the other five were partially resolved. We offer an additional 13 recommendations to improve PennDOT's Issuing Agent Program.

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PennDOT is in general agreement with three of our six findings and either has already begun to implement or will consider implementing the majority of recommendations to strengthen its operations. We will follow up at the appropriate time to determine whether and to what extent all recommendations have been implemented.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eugene A. DePasquale
Auditor General

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Executive Summary

PennDOT was established by Act 120 of 1970 from the former Department of Highways and oversees programs and policies affecting public transportation, including highways, ports, railways, airports, and waterways. PennDOT is responsible for developing and maintaining a coordinated transportation system that fosters efficient and economical public transportation services. Currently, PennDOT is responsible for administering over 40,000 miles of highway, and has a complement of 11,375 employees. PennDOT's Highway Administration is divided into 11 engineering districts which are responsible for highways in each region. A district manager oversees each region and reports directly to the Deputy Secretary for Highway Administration.

The first five objectives of this performance audit covered the period of January 1, 2014 through June 30, 2017. A sixth objective was added during the audit and covered the period July 1, 2016 through June 30, 2018. Further, we conducted procedures to determine the status of the implementation of our prior audit findings and recommendations related to PennDOT's Issuing Agent Program as presented in the audit report released in January 2013. Additional information on the audit scope, as well as the audit objectives and methodology, can be found in *Appendix A*.

Our performance audit results are contained in six findings with 28 recommendations, 26 directed to PennDOT and two to the Pennsylvania General Assembly. PennDOT is in general agreement with three of our six findings and either has already begun to implement or will consider implementing the majority of recommendations to strengthen its operations.

Finding 1 – PennDOT's failure to adequately evaluate and monitor the internal controls of its wholesale providers potentially jeopardizes customers' personally identifiable information.

Based on our interviews and our review of PennDOT's written wholesale provider contracting procedures, we found that PennDOT failed to perform and document adequate due diligence when vetting wholesale providers. PennDOT has written procedures that are used to approve wholesale providers; however, the procedures are insufficient in describing the detailed steps to be performed and how to document what was performed and the results/conclusions. For the seven wholesale providers that had contracts during the audit period, PennDOT management indicated that PennDOT program staff conducted a review of prospective wholesale providers prior to contracting in accordance with its procedures, but PennDOT management was unable to locate documentation to substantiate its claim. Therefore, we could not verify these procedures were performed.

We also found that PennDOT failed to monitor the internal controls of its wholesale providers related to data security and timely audit the wholesale providers. According to PennDOT officials, it informally requested the Pennsylvania Office of the Budget's Bureau of Audits to

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perform performance audits of each wholesale provider in November 2010; the first audit was not completed until January 2016. According to PennDOT management, it relied on these audits to verify the wholesale providers were complying with the contractual provisions related to the privacy and security of customer personally identifiable information. This reliance makes it imperative that PennDOT audit the wholesale providers timely and on a regular basis, as well as document all procedures performed to ensure any identified deficiencies are resolved expeditiously by the wholesale provider.

Further, we found that PennDOT failed to ensure that the wholesale providers' annual Affidavits of Intended Use were complete, properly notarized, and received in a timely manner. We requested to review the affidavits submitted to PennDOT from each of the seven wholesale providers for the four fiscal years ended June 30, 2014 through 2017. PennDOT management could not locate one of the 28 affidavits and indicated that it was never received from the wholesale provider. We compared the notary date on the affidavit to the due date within the contract to determine timely submissions. Based on our audit procedures, we found that affidavits were not submitted to PennDOT within the contractually required time frame, properly notarized, and did not indicate the intended use of the data.

Finding 2 – Transfers from the Motor License Fund to the Pennsylvania State Police have caused PennDOT to fall behind on its planned use of Act 89 of 2013 funds to improve highway and bridges. Act 44 of 2007 funds transferred from PennDOT have helped transit agencies, but they also have resulted in the PA Turnpike Commission amassing billions of dollars of debt.

With the passage of Act 89 of 2013, sweeping reforms to Pennsylvania's transportation-related activities and responsibilities were expected to generate as much as \$331 million in the first year and up to \$2.3 to \$2.4 billion when the Act's many fiscal changes were fully realized in fiscal year 2017-2018. The majority of this money was expected to significantly increase funding for road and bridge construction/maintenance throughout Pennsylvania.

The majority of funds derived from Act 89 are deposited into the Motor License Fund (MLF). The MLF revenues, along with funds provided from an annual appropriation from the Municipal Officers' Education and Training Commission, also finance the Pennsylvania State Police's (PSP) highway patrol operations. We found that increasing transfers from the Motor License Fund to the PSP have caused PennDOT to fall behind on its planned use of Act 89 funds to improve highways and bridges. At the time of enactment, an allocation in the amount of \$500 million was made to the PSP from the MLF each year. By the fiscal year 2016-2017, however, the allocation had increased to \$802.9 million. PennDOT provided a list of 9,001 projects that were completed or planned to be completed through the use of Act 89 monies. However, we found that as of calendar year 2017, PennDOT had only completed 2,412 of the 9,001 projects, or 27 percent within those four years.

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In July of 2016, the General Assembly amended the state's Fiscal Code, as part of its general budget implementation provisions, and placed a cap on the PSP's annual MLF appropriation. This reduction in funding from the MLF to the PSP will infuse an estimated \$2.1 billion into PennDOT's resources over the course of 10 years. We recommend that the General Assembly improve PSP's ensuing lack of adequate funding through having municipalities that rely on the State Police for full-time coverage pay a per-resident fee for those services.

Additionally, the Public Transportation Trust Fund (PTTF) was created by Act 44 of 2007 to provide dedicated funding for public transportation. These funds are disbursed to public transit agencies for operating costs, capital and asset improvements, and programs of statewide significance. Programs of statewide significance support affordable access to demographic groups whose mobility would otherwise be more limited.

While we acknowledge that Act 44 funding dedicated to transit operations appears to have made some improvements, we found that it has left the PA Turnpike Commission (Commission) in a poor financial position. In order to make the \$450 million annual payments to PennDOT to assist in funding transit agencies, the Commission was forced to assume a significant amount of debt and implement a schedule of regular toll increases for the turnpike. The Commission's Act 44 Financial Plan projects that between fiscal years 2019-2057, the Commission's debt issuance is expected to total \$8.2 billion. The Commission's obligation to PennDOT decreases to \$50 million annually beginning in the 2022-2023 fiscal year.

Finding 3 – PennDOT's method to commit grant monies within the Multimodal Transportation Fund appears reasonable; however, a shorter grant cycle could reduce misunderstandings of the fund balance.

Act 89 of 2013 established the Multimodal Transportation Fund (MTF), with the goal to create a dedicated source of funding so all Commonwealth citizens would have access to a safe and reliable system of transportation. The Pennsylvania Turnpike Commission is required to deposit \$450 million annually into the Public Transportation Trust Fund (PTTF) in accordance with Act 44 of 2007 and Act 89 of 2013. Out of this deposit, \$30 million is transferred from the PTTF to the MTF. Additionally, a total of \$35 million from the revenue collected through the Oil Company Franchise Tax (OCFT) is deposited into the MTF annually. The MTF also receives funds from the Share the Road fee and certain unprotected fees. Any interest earned by the MTF is also deposited into the fund. Monies in the MTF are appropriated to PennDOT and do not lapse.

With the passage of Act 89 of 2013 and the creation of the MTF, PennDOT created policies and procedures for the implementation of the new multimodal program and corresponding grants. We found that PennDOT's methodology to commit monies in the MTF appears reasonable. However, given that the time between the application period and an executed grant agreement can take up to two years, this time lag delays the recording of commitments into the

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Commonwealth's SAP accounting system (SAP), which gives the appearance of available funds that are most likely not available. By shortening the grant cycle and getting the grant agreements executed sooner, PennDOT's commitments to grantees would be officially recorded in SAP instead of only being tracked internally, which would add more transparency to the process. The amount of monies available for MTF projects as of July 20, 2018, was \$28.5 million.

Finding 4 – Transportation Infrastructure Improvement Fund monies are awarded at the Governor's discretion, in close discussions with the Secretary of Transportation, with no accountability or transparency.

PennDOT, in collaboration with its federal and local planning partners, has determined the distribution of anticipated state and federal funds every two years since the 1999 Twelve Year Program development process. Since that time, transportation funding has been dedicated for improvements associated with economic development through the Transportation Infrastructure Investment Fund (TIIF), formerly the Economic Development Fund. According to Pennsylvania's *Transportation Program Financial Guidance (Financial Guidance)*, a reserve of \$25 million per year in state funds is available to be awarded at the discretion of the Secretary of Transportation (Secretary), in consultation with the Governor, for transportation improvements associated with economic development opportunities.

According to PennDOT management, it does not maintain any formal policies or procedures for the selection of projects that receive TIIF monies, since the selection is generally influenced by the Pennsylvania Department of Community and Economic Development (DCED) and the Governor's Action Team (GAT). After the projects are selected to receive TIIF monies, the projects are evaluated and overseen through PennDOT's standard policies and procedures.

Although the mention of the TIIF monies in the *Financial Guidance* is only brief, we found that it misrepresents how the projects are ultimately selected for funding. According to PennDOT management, both the Secretary and the Governor are involved in the approval process. The Governor has ultimate approval authority and must concur with the utilization of these funds; the Secretary must be involved to ensure that the appropriate actions take place. Therefore, the *Financial Guidance* would be more accurate to state that the TIIF monies are allocated at the discretion of the Governor, in consultation with the Secretary. Also, the *Financial Guidance* does not mention the involvement of DCED and GAT in the selection process or the fact that the funding is flexible and more than \$25 million could possibly be allocated within one year, so long as the total monies allocated does not exceed \$100 million for the four-year term of the Governor.

Between January 1, 2014 and June 30, 2017, PennDOT management indicated the Governor approved a total of \$65.2 million of TIIF monies for 27 projects.

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Finding 5 – PennDOT’s construction contract procurement and monitoring policies and procedures are in accordance with applicable laws and regulations and being followed; however, its Central Office oversight of construction cost increases should be strengthened.

Annually, our Department and an independent CPA firm, contracted by the Governor’s Office, Office of the Budget, jointly conduct the Commonwealth’s Comprehensive Annual Financial Report (CAFR) audit as well as the Commonwealth’s Single Audit. As part of the Single Audit, the joint auditors audit the federally-funded Highway Planning and Construction Program. As part of these audits, the joint auditors test a selection of construction and consultant/engineering procurements and expenditure transactions, review the corresponding monitoring compliance and controls in areas such as project extensions, materials quality assurance, and PennDOT’s value engineering program, and verify that PennDOT’s policies and procedures comply with federal laws and regulations.

We reviewed the joint auditors’ working papers, including results and conclusions related to PennDOT’s construction procurement for the period of January 1, 2014 through June 30, 2017, in order to place reliance upon their work. Based on these procedures, nothing came to our attention that would warrant additional audit procedures to satisfy our audit objective and we have placed reliance on the scope, quality, and timing of the audit work performed by the joint auditors. Therefore, we conclude that PennDOT’s construction procurement procedures are in accordance with federal laws and regulations, the Commonwealth Procurement Code, the Department of General Services’ *Procurement Handbook*, and other related policies. Additionally, we conclude that PennDOT adequately monitored its construction contracts in accordance with its policies and procedures.

We also found that PennDOT performed its cost increase oversight in accordance with its policies and procedures; however, it did not adequately monitor high-percentage, low-dollar cost increases which did not meet its Central Office approval thresholds. PennDOT completed 369 projects with a final cost ranging between \$70,450 and \$201.7 million between July 1, 2016 and June 30, 2017. We selected 40 of the 369 projects to review and found that 8 of the 40 projects reviewed exceeded PennDOT’s cost increase monitoring thresholds requiring Central Office approval. For these eight projects, PennDOT provided sufficient documentation evidencing Central Office approval in accordance with its policies and procedures.

Based on our review of the dollar and percent difference between the original bid award amount and the final cost of the project, we found that 213 of the 369 projects, or 58 percent, were completed at or less than the original bid amount. The actual costs of the remaining 156 projects exceeded the original bid award amount. Only 15 of the 156 projects had increased costs over \$1 million and were brought to the attention of the Program Center. We found that for those projects under \$1 million, thresholds were not met and PennDOT’s Central Office did not require justification for a large percent increases. We recommend that PennDOT consider revising its Central Office approval thresholds to encompass low dollar projects with high percent increases, or otherwise strengthen its monitoring of this high risk area.

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Finding 6 – PennDOT’s purchasing card process is generally in compliance with the Commonwealth’s Procurement Code; however, its agency-specific Quality Assurance Review process should be improved.

We judgmentally selected and reviewed 60 of the 256,681 PennDOT purchasing card transactions for the period of August 17, 2015 to June 30, 2017. We determined whether the transaction was in compliance with the law and applicable policies, was approved by a supervisor prior to purchase, and that a reconciliation checklist was completed/signed by the cardholder and reviewed/signed by the reviewer for the month in which the transaction occurred. We found that the 60 purchasing card transactions and related approvals were proper with minor exceptions.

PennDOT’s agency purchasing card coordinator (agency coordinator) oversees its purchasing card program. The agency coordinator conducts a quality assurance review (QAR) to determine compliance with policies and procedures. Once the QAR has been completed, the agency coordinator prepares a final written report that identifies any deficiencies noted and whether any purchasing cards were suspended or cancelled. If any deficiencies are identified, the district/deputate is required to prepare a corrective action plan and report the resolution of the issues to the agency coordinator.

Based on our discussions with PennDOT management and our review of related documentation, we found several weaknesses with the design of PennDOT’s QAR process, including the lack of: (1) written procedures that explain in detail what the agency coordinator is responsible for reviewing while on-site; (2) a tracking sheet of previously visited districts/deputates to ensure all sites were visited in a timely manner and the QAR process was completed through the resolution of the corrective action plans; (3) a standard checklist or other monitoring tool used to formally document what procedures were performed; (4) documentation showing that the corrective action plan was reviewed and accepted by PennDOT; and (5) documentation showing the status of any issues that were identified.

PennDOT compiled a list of 32 QARs the agency coordinator completed January 1, 2014 and June 30, 2017. Based on this self-reported list, we found that there were no QARs performed within Districts 10 and 11. Management indicated that the reviews performed by the districts/deputates during this time period were relied upon to provide adequate assurance of compliance. PennDOT’s decision to solely rely on district reviews for these districts is concerning considering the discovered fraud in District 6 was perpetrated at the district level.

We judgmentally selected 6 of the 32 QARs listed to review, including 3 districts and 3 deputates. We requested to review the QAR scheduling letter, final report, and corrective action plans. We found that two of the six corrective action plans were not submitted in the prescribed timeframe. The remaining four corrective action plans were submitted timely. We conclude that if PennDOT’s QAR process was more clearly defined in its policies and procedures, including what documentation should be maintained for each QAR, these errors could have been prevented

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or at least identified and corrected. The QAR process should be strengthened to minimize errors and mitigate the risks of abuse or fraud at the district/deputate level.

Status of Prior Audit Findings

Our prior audit of PennDOT, dated January 10, 2013, covered the period of July 1, 2007 through June 30, 2010, and contained a total of six findings and 16 recommendations related to its Issuing Agent Program. We conducted procedures to determine the status of the implementation of these recommendations and found that only one of the six prior audit findings was resolved and the other five were partially resolved. Of most concern, we found that PennDOT's log of completed issuing agent audits continues to be incomplete and inaccurate and its auditing process, results, and conclusions are inadequately documented. Additionally, its written policies and procedures related to this area need to be more detailed and comprehensive. We offer an additional 13 recommendations to improve the Issuing Agent Program.

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Introduction and Background

This report presents the results of our performance audit of the Pennsylvania Department of Transportation (PennDOT). This audit was conducted under the authority of Sections 402 and 403 of The Fiscal Code and covers six audit objectives over various periods, which are fully described within *Appendix A* of this report.¹

In the sections that follow, we provide background information about PennDOT, its organization and responsibilities, recent transportation funding legislation, the transportation planning process, the transportation funding and spending processes, and the distribution and sharing of driver and vehicle information.

Organization and Responsibilities of PennDOT

PennDOT was established by Act 120 of 1970 from the former Department of Highways, which was founded in 1903 as the first highway department in the country.² PennDOT oversees programs and policies affecting public transportation, including highways, ports, railways, airports, and waterways.³ PennDOT is responsible for developing and maintaining a coordinated transportation system that fosters efficient and economical public transportation services. PennDOT also builds and maintains state-designated highways, bridges, and other transportation facilities.⁴ Currently, PennDOT is responsible for administering over 40,000 miles of highway, making it the fifth largest state-controlled highway system in the nation. Surrounding states administer approximately 3,000 to 35,000 miles as seen in the following table.

¹ 72 P.S. §§ 402 and 403.

² 71 P.S. § 511 (Adm. Code § 2001) and 71 P.S. § 512 (Adm. Code § 2002) pertaining Powers and duties in general, and those of the department. *See also* <<https://archon.klnpa.org/psa/?p=collections/classifications&id=174>> and <<http://www.pahighways.com/history.html>> (accessed October 18, 2018).

³ *PennDOT Fact Book, 2018*, page 1, <<http://www.dot.state.pa.us/public/Bureaus/press/Factbook/PUB410/PUB%20410.html>> (accessed March 7, 2019).

⁴ The Pennsylvania Manual, Volume 123, page 4-100, <<https://www.dgs.pa.gov/State%20Government/Print.%20Design%20and%20Mail%20Services/Documents/Vol%20123%20-%20Section%204.pdf>> (accessed May 23, 2018).

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State-Controlled Highway Mileage			
	State	Rank	Mileage ^{a/}
Top 5 States	Texas	1 st	80,794
	North Carolina	2 nd	80,597
	Virginia	3 rd	58,687
	South Carolina	4 th	41,554
	Pennsylvania	5 th	41,105
Other Surrounding States	West Virginia	6 th	34,685
	Ohio	9 th	20,363
	New York	13 th	16,527
	Delaware	40 th	5,481
	Maryland	42 nd	5,443
	New Jersey	47 th	3,352

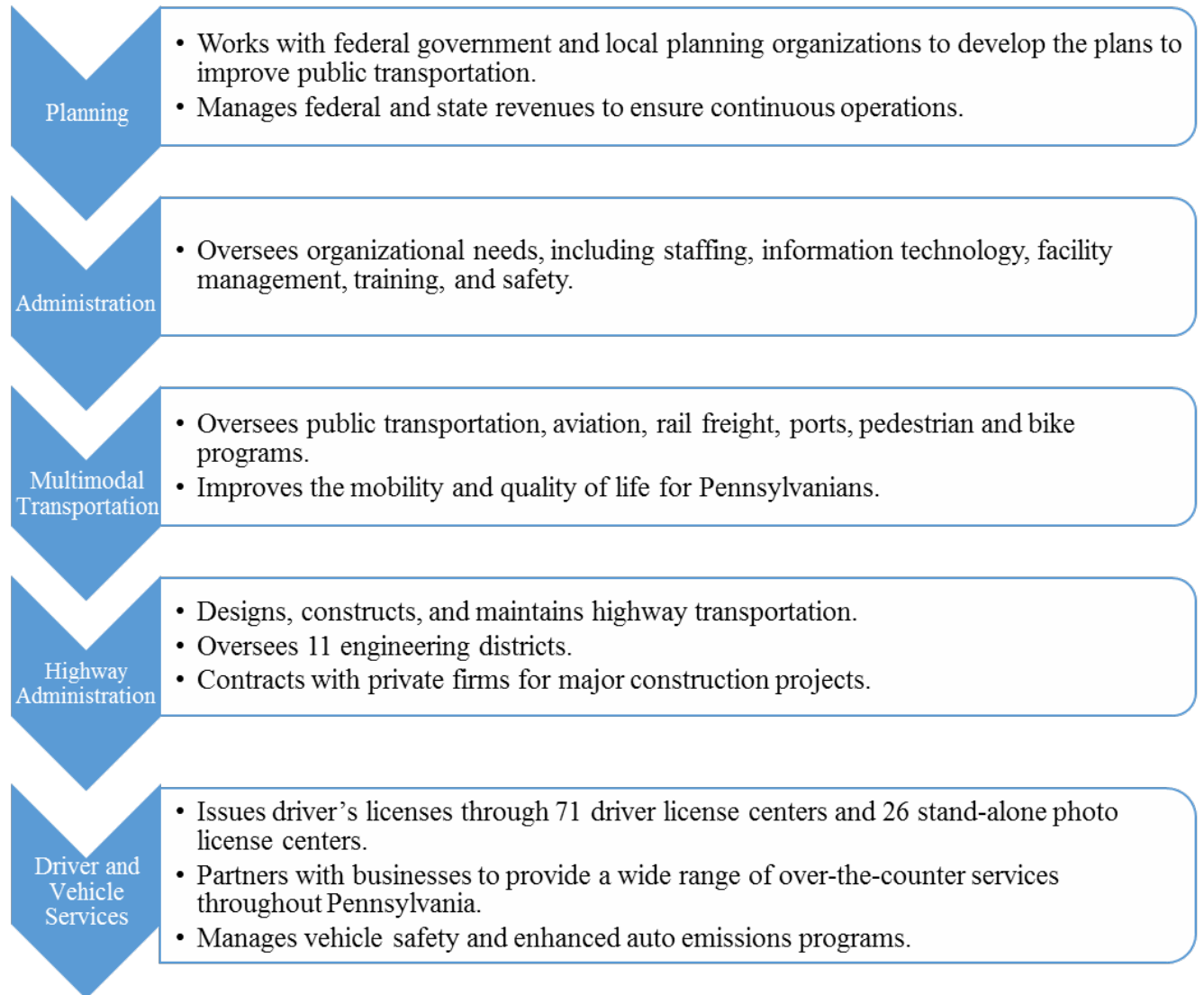
^{a/} State-controlled mileage includes the state highway systems, state-agency toll roads, some ferry services, and smaller systems serving universities and state-owned properties. It includes the Interstate System, the National Highway System, and most federal aid system roads.

Source: Compiled from the "23rd Annual Highway Report on the Performance of State Highway Systems," February 2018, page 9, <https://reason.org/wp-content/uploads/2018/01/23rd_annual_highway_report.pdf> (accessed February 23, 2018).

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PennDOT consists of five main areas and each area has authority over several transportation functions as described in the below chart.



Source: Created by the Department of the Auditor General staff based on information compiled from the PennDOT Fact Book, September 2018.

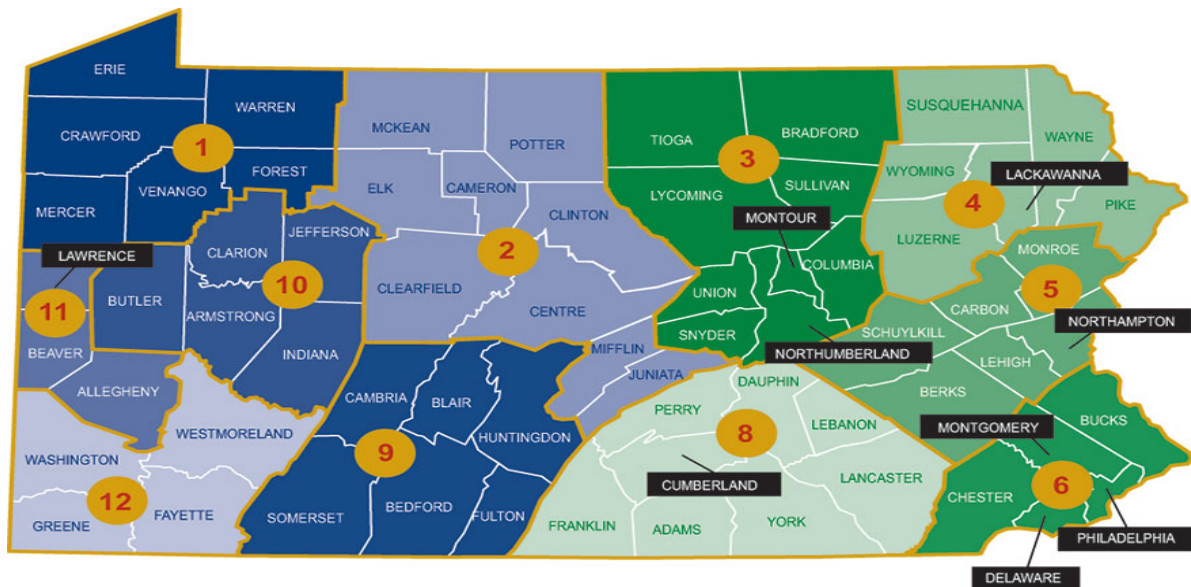
With a complement of 11,375 employees, PennDOT has one of the largest complements of state employees in Pennsylvania. Over 63 percent of PennDOT employees are engaged in the maintenance, restoration, and expansion of the state highway system.⁵

⁵ PennDOT Fact Book 2018, page 1.

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PennDOT’s Highway Administration divides the state into 11 engineering districts (see map below) which are responsible for highways in each region. These districts are assigned numbers 1 through 12, with 7 not being utilized.⁶ A District Executive oversees each region and reports directly to the Deputy Secretary for Highway Administration.



Source: Pennsylvania Department of Transportation, 2017 Annual Report, page 16, <<http://www.dot.state.pa.us/public/PubsForms/Publications/PUB%20409.pdf>> (accessed July 24, 2018).

Transportation Funding Legislation

As the fifth largest state-controlled highway system, the level of PennDOT’s transportation funding must keep up with deteriorating roads, deficient bridges, and the damage caused by Pennsylvania’s harsh winters. In 2006, the Pennsylvania Transportation Funding and Reform Commission determined that “Pennsylvania’s public transportation and highway and bridge systems are in crisis, both in terms of inadequate funding for operations, capital improvements, and maintenance, as well as decaying physical conditions.”⁷

The Pennsylvania General Assembly enacted Act 44 of 2007, which established a long-term funding stream to help address the transportation funding crisis by providing for minimum

⁶ These areas have been reorganized throughout Pennsylvania’s history. The area previously considered “District 7” is incorporated into the current District 8.

⁷ Pennsylvania Transportation Funding and Reform Commission, *Investing in Our Future: Addressing Pennsylvania’s Transportation Funding Crisis*, November 2006, page ES-2, <http://pahighwayinfo.org/wp-content/uploads/2010/07/PTFRC_FULLREORT.pdf> (accessed February 23, 2018). The purpose of the commission was to study and make recommendations regarding the operations, structure, and funding of public transportation, highways, and bridges in Pennsylvania.

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payments to PennDOT from the Pennsylvania Turnpike Commission (Commission) over a 50-year period.⁸ The enacted legislation authorized the Commission to convert Interstate-80 (I-80) to a toll road in order to provide increased funding to PennDOT. However, the Federal Highway Administration rejected Pennsylvania's application to toll I-80 in April 2010, which created a funding gap for PennDOT. If the tolling was approved, the Commission would have been required to transfer \$900 million annually to PennDOT.⁹ Instead, the Commission was only required to transfer \$450 million annually, or half the originally planned amount. The passage of Act 44 provided new revenues for highways and transit but ultimately it was not enough to maintain and upgrade the state transportation system.¹⁰

The General Assembly enacted Act 89 of 2013, commonly referred to as the Transportation Bill, expecting to generate as much as \$331 million by June 30, 2014, and \$2.3 billion within five years. Part of that funding was derived from an increase in the Oil Company Franchise Tax (OCFT), a wholesale tax on gas and diesel distributors. This increase in the OCFT replaced the flat 12-cents per gallon state retail gas tax. Act 89 reduced the transfer from the Commission to PennDOT to \$50 million annually beginning in fiscal year 2022-2023. Act 89 also increased vehicle registration fees, driver licensing fees, and traffic violation fines, surcharges, and permits.¹¹

Further, Act 89 created the Multimodal Transportation Fund as a dedicated fund to provide more stable funding for transportation projects including freight rail, passenger rail, ports/waterways, aviation, pedestrian, and bicycle facilities.¹²

Transportation Planning Process

PennDOT is required to prepare a program of transportation improvements planned for a twelve-year period and to update the program every two years.¹³ The Commonwealth's Twelve Year

⁸ 75 Pa.C.S. § 8915.3(1).

⁹ The \$900 million was to be paid in fiscal year 2009-2010 and was to increase by 2.5 percent each year if the conversion had been approved. The \$900 million would have grown to over \$2.8 billion in fiscal year 2056-2057. Without the conversion, PennDOT will not receive approximately \$59.7 billion of funding over the fifty year period as was originally intended by Act 44. See 75 Pa.C.S. § 8901 definition of "Scheduled annual commission contribution."

¹⁰ Pennsylvania State Transportation Advisory Committee, Transportation Funding Study, May 2010, page 1, <<http://www.talkpatransportation.com/assets/TAC/Transportation%20Funding%20Study%20-%20May%202010%20-%20Final%20Report.pdf>> (accessed May 7, 2018).

¹¹ Pennsylvania Highway Information Association, Pennsylvania's New Transportation Funding Law, pages 1-3, <<http://pahighwayinfo.org/wp-content/uploads/2014/12/Detailed-Summary-of-Act-89-of-2013.pdf>> (accessed May 23, 2018).

¹² 74 Pa.C.S. § 2102.

¹³ 71 P.S. § 512(a)(13) (Adm. Code § 2002(a)(13)). This section states, in part: "(a) The Department of Transportation...shall have the power, and its duty shall be:***(13) To prepare and submit every even-numbered year prior to the first day of September, to the State Transportation Commission for its consideration, a program which it recommends to be undertaken by the Department...during the twelve fiscal years next ensuing. Each

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Program (TYP) is an adaptable schedule of agreed upon priority transportation projects that PennDOT and its partners will work to accomplish over a twelve-year period. In Pennsylvania, the demand for transportation improvements far exceeds available resources. The TYP process is designed to help Pennsylvania prioritize its many transportation projects within its available funding. The TYP contains plans for improvements for all travel modes, including highways, bridges, public transit, aviation, rail, freight, and bicycle and pedestrian facilities.¹⁴

Generally, the process of the TYP begins with Pennsylvania's Planning Partners, which include Metropolitan Planning Organizations (MPOs) and Rural Planning Organizations (RPOs), requesting input from local stakeholders and the public on transportation needs in order to identify projects that reflect community and regional goals. Pennsylvania has 19 MPOs, 4 RPOs, and one county is represented independently.¹⁵ The Planning Partners analyze the identified needs and the available funding to develop a draft Transportation Improvement Program (TIP), which is submitted to PennDOT for review. PennDOT ensures the projects on each regional draft TIP are consistent with statewide transportation priorities, fit within the planned budget projections, and conform to air quality standards. PennDOT adds the regional draft TIPs to the Statewide Transportation Improvement Program (STIP), which coincides with the first four years of the TYP. The State Transportation Commission reviews and approves the TYP every two years and when finalized, adopts the program.¹⁶ The TYP is then submitted to the Governor, Federal Highway Administration, and Federal Transit Administration for review and approval prior to the start of the federal fiscal year (October 1).¹⁷

In May of 1998, the federal Transportation Equity Act for the 21st Century was passed, which expanded the core federal highway programs and gave states and localities greater flexibility in the use of these federal funds. It also streamlined the regional and statewide transportation planning processes and strengthened the role of local officials and the public in the planning process.¹⁸ These federal changes prompted PennDOT to reengineer its TYP development process.

(Continued) two years thereafter, the Department...taking into consideration the recommendations of the State Transportation Commission, and other relevant information, shall review, revise, adjust and extend its construction program for two years.”

¹⁴ <https://www.dot.state.pa.us/typ/index_files/TIP.htm> (accessed July 23, 2018).

¹⁵ Wayne County is a non-affiliated independent county for which PennDOT assumes responsibility for the transportation planning and programming duties. State Transportation Commission, 2017 Twelve Year Program, August 2016, <<http://www.talkpatransportation.com/assets/docs/2017/2017TYP.pdf>> (accessed August 8, 2018).

¹⁶ According to Administrative Code of 1929, the State Transportation Commission (STC) “...shall consist of fifteen members, one of whom shall be the Secretary of Transportation, who shall be the chairman of the commission.” See 71 P.S. § 178(a) (Adm. Code § 468(a)). PennDOT's website indicates that: “[t]he STC determines and evaluates the condition and performance of Pennsylvania's transportation system in order to effectively assess the resources required to preserve, restore, extend and expand transportation facilities and services.” See <<http://www.talkpatransportation.com/about-stc>> (accessed September 20, 2018).

¹⁷ <<http://pasenategop.com/transportation/wp-content/uploads/sites/32/2017/04/4-24-17-TYP-Presentation.pdf>> (accessed July 23, 2018).

¹⁸ Transportation Equity Act for the 21st Century, Public Law 105-178, 23 U.S.C. § 101 *et seq.* (enacted June 9, 1998). See also, <<https://www.fhwa.dot.gov/tea21/summary.htm>> (accessed July 23, 2018).

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Transportation Funding and Spending Processes

PennDOT's revenues have been increasing over the last several years, as seen in the below table. The majority of transportation funding flows into the Motor License Fund. The Motor License Fund is a special revenue fund comprised of monies received from liquid fuels taxes, licenses and fees on motor vehicles, and federal aid for highway and aviation purposes.¹⁹ In the 2017-18 fiscal year, the Motor License Fund received \$5.32 billion of the total \$6.94 billion of PennDOT's revenue, or nearly 77 percent. The revenue collected from the sale of driver and vehicle information is also deposited into the Motor License Fund, as discussed in the next section.

PennDOT Actual Revenue	
Fiscal Year	Total Revenue
2013 - 2014	\$5.21 billion
2014 - 2015	\$5.94 billion
2015 - 2016	\$6.48 billion
2016 - 2017	\$6.48 billion
2017 - 2018	\$6.94 billion

Source: Created by Department of the Auditor General staff from data in the Commonwealth's SAP accounting system.

Funding for PennDOT is directed into five main program areas: Highways and Bridges, Local Highway and Bridge Assistance, Multimodal Transportation, Driver and Vehicle Services, and Support Services.

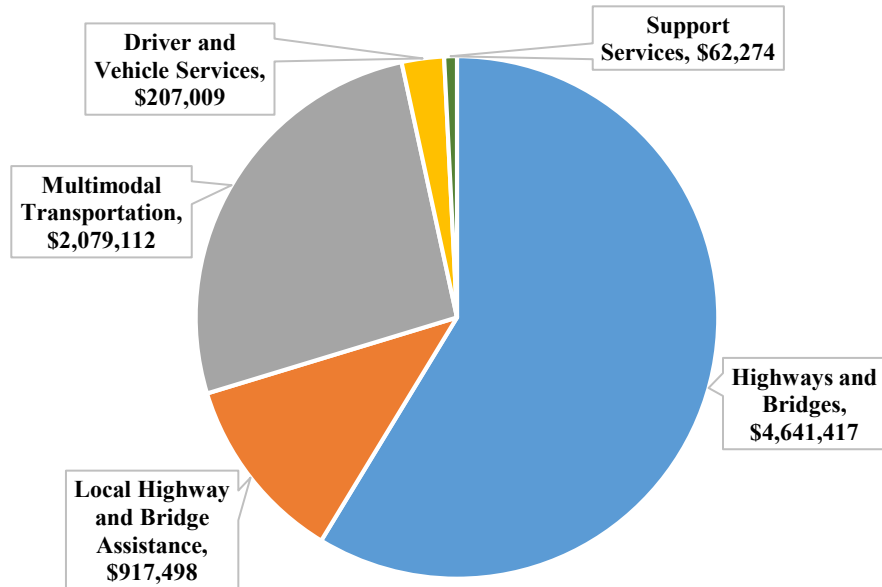
¹⁹ 2018-2019 Governor's Executive Budget, page C2-1.

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2016-2017 Actual Transportation Funding by Program Area

(Dollar amounts in thousands)



Source: Created by Department of the Auditor General staff from the 2018-2019 Governor's Executive Budget, page E39-7.

As seen in the previous chart, nearly 60 percent of PennDOT's funding is directed towards highways and bridges. A small portion of these monies totaling \$25 million, known as Transportation Infrastructure Investment Funds, are reserved for transportation improvements associated with economic development opportunities.²⁰ According to PennDOT management, the decision on how to utilize the funding is at the discretion of the Secretary of Transportation in consultation with the Governor.

PennDOT generally contracts with consultants for the engineering and related services leading to the construction or rehabilitation of transportation infrastructure. PennDOT's Bureau of Project Delivery, Bureau of Maintenance and Operations, and its 11 engineering districts work together to determine the need for consultant services in their area of responsibility.²¹ The scope of work for the planned projects are published on the Engineering and Construction Management System (ECMS). ECMS provides background information on the types of work planned and advertised, as well as a platform for businesses to register with PennDOT and submit bid documents and proposals. It also is used by PennDOT to process invoices and conduct performance reports.

²⁰ Pennsylvania's 2019 Transportation Program Financial Guidance, page 3.

²¹ Conducting Business with the Pennsylvania Department of Transportation, page 15.

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Pursuant to PennDOT regulations, construction contractors and subcontractors must be prequalified and become a Registered Business Partner prior to performing highway and bridge construction. Each quarter PennDOT publishes a six-month schedule of future contracts to bid on ECMS.²² These contracts are awarded to the lowest prequalified bidder.

One noteworthy aspect of the smallest funding program area reviewed in this audit report, overseen by the Transportation Support Services, is the use of purchasing cards. A purchasing card is a credit card issued in the name of a Commonwealth employee or entity to pay for supplies and services.²³ PennDOT uses purchasing cards to allow more convenience when making purchases, and vendors are paid faster than if using an invoicing process. Additionally, the Commonwealth receives a rebate from the card issuer based on card activity.²⁴ Purchasing cards may be used to make authorized purchases up to \$10,000 for supplies and services with appropriate monitoring.²⁵ The large portion of PennDOT's purchasing cards are used in program funding areas such as Highways and Bridges, Multimodal Transportation, and Driver and Vehicle Services.

Use of Driver and Vehicle Information by PennDOT and its Business Partners

PennDOT's Driver and Vehicle Services (DVS) collects confidential and personal information from the public to administer various programs. One of the main services of the DVS is the issuance of driver's licenses and photo identification cards and the issuance of vehicle titles and license plates/registration cards.²⁶ In 2017, the DVS licensed nearly nine million drivers and 850,000 motorcyclists and registered nearly 12 million vehicles and almost 400,000 motorcycles.²⁷ PennDOT has the responsibility to protect customer information from unauthorized access, use, or disclosure.

Customer information may be accessed by PennDOT employees, its Customer Call Center, law enforcement, external government agencies, and other state's Department of Motor Vehicles.²⁸ Additionally, PennDOT has an array of business partners that have access to customer information on a limited basis to conduct business transactions, as outlined in the following table.

²² Ibid., pages 17-18.

²³ Commonwealth of Pennsylvania, Department of Transportation, Bureau of Office Services, *Purchasing Card Manual*, page 8-2.

²⁴ Ibid., page 1-1.

²⁵ Ibid., page 4-1.

²⁶ Pennsylvania Department of Transportation, *Driver and Vehicle Services Privacy Procedures Document*, February 2017, pages 4-6.

²⁷ Pennsylvania Department of Transportation, 2017 Annual Report, page 5.

²⁸ *Driver and Vehicle Services Privacy Procedures Document*, pages 10-12.

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Business Partner	Description
Online Messengers	Private businesses contracted to provide driver licensing and vehicle registration services for customers via an online connection with PennDOT. ²⁹
On-Line Registration Program	Business contracted to provide specific, online motor vehicle titling and registration transactions to customers. ³⁰
Agents	Authorized agents of PennDOT to complete titling and registration applications. ³¹
Card Agents	Authorized agents of PennDOT to complete limited titling and registration applications. A card agent may transfer an existing registration plate, but cannot issue new registration plates. ³²
Wholesale Provider	Large third-party company that obtains driver and vehicle information electronically on behalf of its customers. ³³

PennDOT partners with these businesses to offer additional convenience to customers such as hours of operation or location. These businesses, along with other entities, are required to pay a fee per record when accessing or requesting this information. According to PennDOT management, the current fee is \$10 per record and \$34 per certified record for individuals and business partners. Wholesalers are charged \$10 per record unless requesting a record for purposes of safety recalls, voluntary service campaigns, or any other purpose deemed by PennDOT to be in the public interest. In those cases, the fee per record is five cents instead of ten dollars.

PennDOT management indicated the selling of driver and vehicle information to individuals began approximately in 1977 and to business partners and wholesalers approximately in 1994. This information may include name, address, driver's license number, zip code, date of birth, accident information, and driver violations. The majority of the revenue earned from selling driver information is from wholesalers, which paid more than \$131 million to PennDOT over a four-year period as seen in the table below.

²⁹ <<http://www.dmv.pa.gov/Information-Centers/Business-Partner/Pages/Online-Messengers.aspx>> (accessed May 23, 2018).

³⁰ <<http://www.dmv.pa.gov/Information-Centers/Business-Partner/Pages/OLRP.aspx>> (accessed May 23, 2018).

³¹ <<http://www.dmv.pa.gov/Information-Centers/Business-Partner/Pages/Authorized-Agents-Messengers.aspx>> (accessed May 23, 2018).

³² <<http://www.dmv.pa.gov/Information-Centers/Business-Partner/Pages/Authorized-Agents-Messengers.aspx>> (accessed May 23, 2018).

³³ Driver & Vehicle Information, How To Guides, Process to Approve a Wholesale Account.

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Fiscal Year Ended June 30	Revenue Earned from Selling Driver Information to Wholesalers
2014	\$27,355,291
2015	\$34,936,904
2016	\$36,964,613
2017	\$31,782,979

Source: Compiled from information provided by PennDOT management.

The revenue collected from the sale of driver and vehicle information is deposited into the Motor License Fund.³⁴ For the fiscal years beginning after June 30, 2017, 77 percent of the fees collected related to driver and vehicle information are then transferred to the Public Transportation Trust Fund and 23 percent to the Multimodal Transportation Fund.³⁵

³⁴ 75 Pa.C.S. § 1904(a).

³⁵ 75 Pa.C.S. § 1904(b)(3).

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Finding 1 – PennDOT’s failure to adequately evaluate and monitor the internal controls of its wholesale providers potentially jeopardizes customers’ personally identifiable information.

The Pennsylvania Department of Transportation (PennDOT) issues more than 8.9 million driver licenses, 1.4 million photo identification cards, and 12 million motor vehicle registrations per year. As part of these services, PennDOT collects personal information from its customers, such as name, address, date of birth, and driver’s license number. This information is considered to be Personally Identifiable Information (PII), which is defined by the Pennsylvania Office of Administration in its Information Technology Policy as any information about an individual maintained by a state agency, including any information that can be used to distinguish or trace an individual’s identity.³⁶

More importantly, PennDOT’s collection, use, and release of this information is governed by several federal and state laws. The Federal Privacy Act requires agencies to:

[E]stablish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.³⁷

The Pennsylvania Breach of Personal Information Notification Act assists in protecting PII by providing requirements for any entity (including a state agency, a political subdivision of the Commonwealth or an individual or a business doing business in this Commonwealth) to manage “the discovery or notification of a breach in the security of personal information data.”³⁸

³⁶ Pennsylvania Office of Administration, Information Technology Policy (ITP-SEC025), *Proper Use and Disclosure of Personally Identifiable Information*, March 2010. The ITP applies to all departments, boards, commissions and councils under the Governor’s jurisdiction.

³⁷ 5 U.S.C. § 552a(e)(10). For information, see <<https://www.justice.gov/opcl/privacy-act-1974>> (accessed March 5, 2019).

³⁸ 73 P.S. § 2301 *et seq.*; particular 73 P.S. § 2329. The act requires that any entity that maintains, stores, or manages computerized data that includes personal information shall provide notice to any resident of the Commonwealth whose unencrypted and non-redacted personal information was or is believed to have been accessed and acquired by an unauthorized person. *See* 73 P.S. § 2303. Further, the act defines “personal information” as follows other than publically information: “(1) An individual’s first name or first initial and last name in combination with and linked to any one or more of the following data elements when the data elements are not encrypted or redacted: (i) Social Security number. (ii) Driver’s license number or a State identification card number issued in lieu of a driver’s license. (iii) Financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual’s financial account....” *See* 73 P.S. § 2302.

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With regard to our audit objective to evaluate the extent to which PennDOT properly manages and monitors the distribution and sharing of PII it collects, we concentrated our efforts on PennDOT's contracts with wholesale providers.³⁹ Wholesale providers are large third-party companies that obtain driver information electronically on behalf of other entities like employers, insurance companies, and vehicle leasing companies (known as business customers) solely when authorized by said driver/individual. Wholesale providers access driver information via centralized databases, system-to-system access, or electronic file transfers. During our audit period, PennDOT contracted with seven wholesale providers that had nearly 15,000 business customers.

Allowing PennDOT customer driver information to be accessed by these wholesale providers exposes PennDOT to significant risk regarding data security. This risk must be mitigated through effective due diligence on prospective wholesale providers prior to contracting with them. Furthermore, PennDOT should seek to maintain oversight/monitoring over wholesale providers, including appropriate monitoring of their business customers, after the contract is executed.⁴⁰

Although PennDOT may legally distribute driver information to wholesale providers, the responsibility to keep that information confidential and secure cannot be delegated. According to Management Directive 325.13, PennDOT is responsible for all processes assigned to its wholesale providers, including oversight of the wholesale provider's controls over data privacy and security.⁴¹ PennDOT then requires its business customers to "take all necessary steps to prevent the divulgence or use of such information in any form or manner not expressly permitted" by the agreement.⁴²

PennDOT's contracts with wholesale providers also contain a security provision, which requires wholesale providers of driver license information, including its business customers, agents, and subcontractors, to maintain safeguards and procedures to ensure the security and protection of information provided by PennDOT. These contracts also contain a provision that PennDOT may audit the performance of both the wholesale provider and any business customers that may have access to the driver information records. Additionally, PennDOT requires the wholesale provider to sign an annual affidavit (Affidavit of Intended Use) that outlines specific rules by which the wholesale provider must abide. These contracts also state that the wholesale provider is liable for any damage to PennDOT's network, database, or software in the event a computer virus or other malicious programming that is discovered to have originated from the wholesale provider.

³⁹ Our audit focused on wholesale providers based on it being a higher risk area due to deficiencies noted in previous audits others have conducted and the large amount of business customers. Additionally, we addressed PennDOT's oversight of some of its other business partners that have restricted access to driver information, including agents and online messengers, in the Status of Prior Audit Findings section of this report.

⁴⁰ Prior to entering into a contract with a vendor, PennDOT personnel must investigate the potential vendor with a certain standard of care, which is known as due diligence.

⁴¹ *Service Organization Controls*, last updated November 22, 2017, <https://www.oa.pa.gov/Policies/md/Documents/325_13.pdf> (accessed November 1, 2018).

⁴² Wholesaler Driver Record Provider Agreement, paragraph 11(a).

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Additionally, if the wholesale provider does not comply with the provisions of the contract, the contract may be terminated and the performance bond forfeited.

Based on our interviews and our review of PennDOT's written wholesale provider contracting procedures, we found that PennDOT:

- Failed to perform and document adequate due diligence when vetting wholesale providers.
- Failed to monitor the internal controls of its wholesale providers related to data security and the privacy of its customers' personal information.
- Failed to timely audit wholesale providers (with a delay of, at minimum, more than five years) and adequately document resolution of the identified deficiencies.
- Failed to ensure that the wholesale providers' annual Affidavits of Intended Use were complete, properly notarized, and received in a timely manner.

The following sections provide further details describing these areas and identifies where improvements should be made by PennDOT.

PennDOT failed to perform and document adequate due diligence when vetting wholesale providers.

A well-designed system of internal controls should incorporate sound and consistent oversight of service organization controls.⁴³ In relation to the data privacy and security of PennDOT customer information provided to wholesale providers, this includes:

- Establishing minimum data protection qualifications that a wholesale provider would need in order to be considered as part of a contract.
- Conducting privacy and security due diligence when evaluating prospective wholesale providers.
- Maintaining documentation demonstrating PennDOT's due diligence.

The American Institute of Certified Public Accountants (AICPA) has established standards for the evaluation of internal controls at service organizations and the reporting of the results of evaluations via System and Organization Controls (SOC) reports to assist user entities

⁴³ Internal controls are processes used by management to help achieve its objectives, run its operations efficiently and effectively, report reliable information, and comply with applicable laws and regulations. An organization that provides services to other organizations or entities is referred to as a service organization.

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(PennDOT) in obtaining assurance over their service organizations' (wholesale providers) internal controls.

SOC reports are issued by an independent Certified Public Accounting firm and provide assurance on the internal controls of a service organization. Currently, there are four reporting options that a vendor may choose to provide assurance over its internal control structure. The reporting option most relevant to PennDOT and its wholesale providers is the SOC 2 Type 2 report.⁴⁴

PennDOT has written procedures that are used to approve wholesale providers; however, the procedures are insufficient in describing the detailed steps to be performed and how to document what was performed and the results/conclusions. The written procedures simply state that the company must meet with or provide a written request to PennDOT and describe its business need, anticipated volume of business, and its business practices for vetting and auditing its customers. The written procedures also state that PennDOT will review this application package, which includes validating information by searching Dunn & Bradstreet, the Federal Motor Carrier Safety Administration's Safety and Fitness Electronic Records System and other databases, as well as contacting business references and validating the applicant's financial information. But the written procedures do not:

- Require obtaining and reviewing any previous audits performed on the wholesale provider, including a SOC 2 Type 2 report. (PennDOT management acknowledged that it does not require the review of audit reports prior to approving a wholesale provider.)
- Identify who is responsible to review and approve new wholesale providers, including assurances that adequate controls are in place regarding the providers' business customers.
- Require maintaining documentation to demonstrate procedures performed and conclusions reached.

For the seven wholesale providers that had contracts during the audit period, PennDOT management indicated that PennDOT program staff conducted a review of prospective wholesale providers prior to contracting in accordance with its procedures, but PennDOT management was unable to locate documentation to substantiate its claim.⁴⁵ Therefore, we could not verify these procedures were performed.

⁴⁴ A SOC 2 report provides assurance about the service organization's relevant security, availability, and processing integrity of the computer systems the service organization uses to process the user's data and the confidentiality and privacy of the information processed by these systems. The service organization writes a description of its system and controls, and the CPA firm opines on whether those controls are adequately designed and operating effectively during the specified time period. AICPA and ISACA, SOC 2 User Guide, page 19, <<https://www.isaca.org/Groups/Professional-English/isac-3402/Documents/SOC2.pdf>> (accessed November 1, 2018).

⁴⁵ All of the seven wholesale providers were originally procured prior to our audit period.

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It is PennDOT's responsibility to ensure its customer PII remains confidential and secure. The risk of unsecured data, or even a security breach, needs to be considered during the evaluation of a prospective wholesale provider. Without performing and documenting thorough due diligence procedures prior to contracting with wholesale providers, PennDOT cannot ensure that wholesale providers will have adequate controls in place to keep its customer information safe. By failing to accurately understand the control environment that is implemented and maintained by the wholesale providers, PennDOT is placing its customer information at risk of being compromised.⁴⁶

PennDOT failed to monitor the internal controls of its wholesale providers related to data security and the privacy of its customers' personal information.

PennDOT's executed contracts with wholesale providers contain provisions for the security and privacy of PennDOT customer information by incorporating provisions for compliance with applicable laws, regulations, and the Pennsylvania Office of Administration's Information Technology Policies. Additionally, PennDOT's Driver and Vehicle Services "Privacy Procedures Document" provides details about the safeguard mechanisms PennDOT uses to ensure customers that their personal and confidential information is protected. This document covers topics such as collection and storage of customer information, channels of service, connectivity, controls, communication of privacy procedures, and PennDOT's policies regarding consequences/responses to privacy breaches.⁴⁷

Based on our review of the seven wholesale provider contracts, it appears that PennDOT incorporated the key provisions from its "Privacy Procedures Document" into the wholesale provider contracts. However, simple contractual clauses are not sufficient to mitigate risk of data breaches, and PennDOT should be continuously monitoring to verify that wholesale providers comply with their privacy and security obligations throughout the life of the contract.

As mentioned in the previous section, a SOC 2 Type 2 report is a useful tool in evaluating a wholesale provider's controls that may affect data security, confidentiality, or privacy. For the period January 1, 2014 through June 30, 2017, PennDOT had executed contracts with seven wholesale providers. Based on our review of the original contracts that were in place at the beginning of our audit period, none of the seven required the wholesale providers to submit SOC 2 Type 2 reports to PennDOT.

⁴⁶ The control environment is the foundation for an internal control system and influences how control activities are structured. The oversight body and management establish and maintain an environment throughout the entity that sets a positive attitude toward internal control.

⁴⁷ Pennsylvania Department of Transportation, *Driver and Vehicle Services Privacy Procedures Document*, page 3, Revision Date: February 2017.

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In addition to not requiring SOC 2 Type 2 reports, PennDOT also failed to adequately utilize its ability to perform audits of its wholesale providers and their business customers. In November 2010, PennDOT requested that the Pennsylvania Office of the Budget's Bureau of Audits (BOA) conduct performance audits of its seven wholesale providers. (These audits are discussed in more detail in the following section.) As a result of BOA's first audit of a PennDOT wholesale provider, which was not issued until January 2016 (more than five years later), PennDOT amended its wholesale provider contract template to require SOC 2 Type 2 reports going forward. Additionally, in November 2017, the Pennsylvania Governor's Office issued a management directive that established policy, responsibilities, and procedures for the oversight and evaluation of a service organization's internal controls, which includes obtaining applicable SOC reports.⁴⁸

The revised contract language states that within a year after the contract is executed, the wholesale provider is required to have an independent auditor annually perform an examination in the form of a SOC 2 Type 2 report and provide it to PennDOT within 30 days of the report being issued.⁴⁹ Since this time, PennDOT has renewed two contracts with wholesale providers (one in June 2016 and one in April 2018) that we verified as containing the provision requiring SOC reports.

Along with the wholesale provider that was required to submit a SOC 2, Type 2 report within its June 2016 contract, another wholesale provider submitted a SOC 2, Type 2 report to PennDOT, although they were not contractually required to do so.⁵⁰ According to PennDOT management, the reports were reviewed for adequate controls and to identify any security gaps which would create potential risk of data security breaches. However, PennDOT could not provide documentation to substantiate its claim that a review was performed. Management stated a more formalized and documented SOC report review process has not yet been implemented due to time and resource constraints.

It is integral for management to review the SOC reports to identify areas of concerns and work with the wholesale provider to mitigate any unacceptable risks that may exist. Going into the review process, management should know its objectives and scrutinize the contents with its long

⁴⁸ Commonwealth of Pennsylvania Governor's Office, Management Directive 325.13, Service Organization Controls, November 2017.

⁴⁹ PennDOT management stated that this language has been modified to require the initial SOC report to cover a period between 6 to 17 months in order to have the annual cycle run from July 1 through June 30, with the report due to PennDOT within 90 days of the period end date. We did not verify this statement because no new contracts were issued with this language as of the end of our audit procedures.

⁵⁰ One wholesale provider (based on a revised contract, dated June 2016) submitted three SOC 2, Type 2 reports to PennDOT for different services, interconnection and colocation services, network and hosting services, and data center services, covering various periods between April 2014 and October 2016. A second wholesale provider submitted one SOC 2, Type 2 report covering the period January 2016 through March 2016. Additionally, one wholesale provider submitted a SOC 2, Type 1 report, which does not include test of controls and the results of the tests; therefore, this report did not ensure that the controls that are in place are working effectively to secure protected personal information that is being distributed and shared.

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term goals in mind. PennDOT simply requesting the report without fully understanding and evaluating its components does not serve as an effective form of oversight. Strengthening its review process will improve PennDOT's comprehension of the effectiveness of wholesale providers' internal controls (including of its business customers) and assist in properly managing the risks (including preparation for any potential security breaches) associated with sharing information with these third-party wholesale providers.

The SOC 2 Type 2 reports received by PennDOT during the audit period indicated that, in all material respects, the service organization's description fairly presents the system that was designed and implemented, the controls were suitably designed to meet the criteria, and the controls operated effectively during the specified period of time. However, several test exceptions were identified that could contribute to inadequate security over PennDOT's customer PII that PennDOT distributed and shared with the wholesalers.

PennDOT's failure to require regular SOC 2 Type 2 reporting for all wholesale providers, as well as its failure to formally document any review or follow up it performed for the four SOC 2 Type 2 reports they received, created significant risks that its wholesale providers were not utilizing proper and sufficient internal and security controls. PennDOT is responsible for ensuring proper oversight of its service organization's controls, and this oversight needs to be greatly strengthened.

PennDOT failed to ensure the timely audits of its wholesale providers (with a delay of, at minimum, more than five years) and adequately document resolution of the identified deficiencies.

PennDOT's contracts with its wholesale providers state that PennDOT may audit the performance of the wholesaler, its business customers, and subcontractors. The contract states, "the degree and conduct of any such audit, and the frequency of such audits, will be at the sole discretion" of PennDOT, and will be conducted at the expense of the wholesaler (within certain limitations).⁵¹

According to PennDOT officials, it informally requested the Pennsylvania Office of the Budget's Bureau of Audits (BOA) to perform performance audits of each wholesale provider in November 2010; however, the first audit was not completed until January 2016.⁵² This delay of more than five years is very concerning to our Department. PennDOT was not able to provide the reason for the delay between the time the audits were requested by PennDOT and the time that BOA actually performed the audits. The audits covered various time periods and were released as follows:

⁵¹ Wholesaler Driver Record Provider Agreement, paragraph 19.

⁵² According to PennDOT and BOA officials, there was no written agreement. Therefore, we could not verify the accuracy of the timeframe.

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Wholesale Provider	Audit Period	Audit Release Date
1	March 2011 to December 2015	June 2017
2	January 2016 to December 2016	February 2018
3	January 2016 to December 2016	April 2018
4	January 2016 to December 2016	March 2018
5	June 2007 to January 2016	June 2017
6	May 2016 to April 2017	December 2017
7	September 2011 to January 2016	January 2016

BOA's audit objective for each of the seven audits was to determine whether the wholesale provider was working within the terms of the contract with PennDOT and focused on areas assessed as being higher risk, including to ensure that the wholesale provider:

- Communicated the proper restrictions on the sale and usage of data to each of its customers.
- Properly filed annual affidavits with PennDOT and adhered to all affirmations.
- Provided PennDOT with an updated customer list on an annual basis.
- Properly authorized customers receiving PennDOT information.
- Provided PennDOT with copies of all required performance bonds.
- Properly authorized subcontractors that were provided PennDOT driver/vehicle information.

We reviewed these performance audit reports and found that all seven audits identified deficiencies that were reported in findings. These findings related to incomplete documentation provided to PennDOT, incomplete and/or inaccurate affidavits, missing or incomplete customer lists, and/or receiving system-related services from third-party administrators prior to PennDOT's approval. PennDOT management indicated that any wholesale provider compliance deficiencies noted in the reports were addressed directly with the wholesale provider. However, PennDOT could not provide documentation to support its claim beyond one wholesale provider whose access to data was temporarily suspended due to non-compliance with their contractual agreement.⁵³

According to PennDOT management, it relied on these audits to verify the wholesale providers were complying with the contractual provisions related to the privacy and security of customer PII. This makes it imperative that PennDOT audit the wholesale providers timely and on a regular basis, as well as document all procedures performed to ensure any identified deficiencies are resolved expeditiously by the wholesale provider. Without adequate oversight of the

⁵³ PennDOT management stated that after our audit period, it developed a tracking system to track the various due dates for their receipt of all contractually required documentation from the wholesale providers. The tracking system includes sending automated email reminders to wholesalers to inform them when information is due. We did not evaluate the adequacy or effectiveness of this tracking system.

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wholesale providers, PennDOT cannot ensure customer PII remains safe from misuse or data breaches.

PennDOT failed to ensure that the wholesale providers' annual Affidavits of Intended Use were complete, properly notarized, and received in a timely manner.

Pursuant to its contract, each wholesale provider is required to submit an Affidavit of Intended Use (affidavit) to PennDOT upon approval of the contract and annually thereafter by January 31. Although the contracts do not require it, the affidavit instructions state that new affidavits must also be filed immediately whenever information about the company changes, such as name, address, ownership, telephone number, or website.

These affidavits are written statements providing affirmation that the wholesale provider agrees to abide by the following eight statements when acquiring PennDOT driver-related information:

1. Requested information will be used for: employment, verification, insurance, or training/rental/leasing purposes only.
2. The driver record is confidential and restricted information, and procedures will be established to protect the confidentiality of the records.
3. No requests for driver information from PennDOT for personal reasons.
4. The information obtained from PennDOT will not be sold, assigned, or otherwise transferred to any other party.
5. PennDOT retains exclusive ownership of all driver information provided, and no other information will be used/reused, combined, tanked, stored, retained, and/or linked with any other data or any database for any reason or purpose.
6. The information obtained from PennDOT will not be used for direct mail advertising or any other type or types of mail or mailings.
7. Driver information obtained from PennDOT will not be disseminated or published on the Internet without the express written permission from PennDOT.
8. Comply with the Technical Specifications and/or the Information Technology Policies, ITP-SEC019, ITP-SEC020 and ITP-SEC031.⁵⁴

According to the affidavit instructions, the wholesale provider's responsible party must initial each of the eight statements to indicate their agreement to abide by the terms. The instructions also require the wholesale provider to check a box indicating the intended use of the information they will obtain, which should agree with the intentions stated in the executed contract. The wholesale provider's responsible party must then sign the affidavit in front of a notary.

⁵⁴ ITP-SEC019 (Policy and procedures for protecting Commonwealth electronic data), ITP-SEC020 (Encryption standards for data at rest), ITP-SEC031 (Encryption standards for data in transit), and other information technology policies can be found at <<https://www.oa.pa.gov/Policies/Pages/itp.aspx>>.

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We found that PennDOT lacked formal written procedures for this review process during our audit period; however, management provided a brief written summary of the procedures performed. According to this summary, each affidavit was reviewed to ensure it was complete and all required initials, signatures, and the notarization were present. Management acknowledged that its review of the affidavits was not documented, so we could not verify whether the reviews were performed, who performed them, or when they were performed. Additionally, PennDOT did not track the receipt of the affidavits to ensure the wholesale provider complied with this provision in the contract.⁵⁵

We requested to review the affidavits submitted to PennDOT from each of the seven wholesale providers for the four fiscal years ended June 30, 2014 through 2017. PennDOT management could not locate one of the 28 affidavits and indicated that it was never received from the wholesale provider. We compared the notary date on the affidavit to the due date within the contract to determine if it was submitted timely. Based on our audit procedures, we found the following:

- One affidavit was not submitted to PennDOT within the contractually required timeframe.
- Two affidavits were not properly notarized.
- Four affidavits did not indicate the intended use of the data (such as employment verification or insurance purposes).
- One affidavit was not submitted to PennDOT within the contractually required timeframe and did not include the intended purpose for use.
- The remaining 19 affidavits were submitted to PennDOT within the proper timeframe, were complete, and properly notarized.

The intent of the affidavits is to gain affirmation and provide proof that the wholesaler has agreed to abide by the eight statements governing the use of PennDOT driver information. PennDOT considers wholesale providers filing of the affidavits to be a control which helps them deter misuse of its customer information.⁵⁶ Failing to collect required affidavits on a timely basis, or collecting inaccurate or incomplete affidavits, makes this control ineffective. In addition, PennDOT's lack of enforcement in this area could lead its wholesale providers to believe that it does not take the affidavits seriously and place less importance on their adherence to the affirmations.

⁵⁵ PennDOT management stated that after our audit period, it developed a tracking system to track the various due dates for their receipt of all contractually required documentation from the wholesale providers. The tracking system includes sending automated email reminders to wholesalers to inform them when information is due. We did not evaluate the adequacy or effectiveness of this tracking system.

⁵⁶ Pennsylvania Department of Transportation, Driver and Vehicle Services Privacy Procedures Document (Revised February 2017), Channels of Service, page 10.

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In conclusion, PennDOT failed to adequately vet potential wholesale providers prior to contracting with them. Further, it failed to adequately monitor the internal controls of its contracted wholesale providers (and its business customers) related to data security and privacy of its customers' PII through the use of audits and a review of annual Affidavits of Intended Use. Although, according to PennDOT officials, the audits completed of wholesale providers did not identify any customer information that was jeopardized or shared for reasons outside of authorized purposes, we conclude that its procedures and oversight still need improvement.

Recommendations for Finding 1

We recommend that PennDOT:

1. Develop written policies and procedures for the due diligence performed prior to contracting with a wholesale provider, in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel, that include:
 - a. Minimum data protection qualifications that a wholesale provider would need in order to be considered for a contract.
 - b. A detailed description of what privacy and security due diligence procedures must be performed when evaluating prospective wholesale providers in accordance with all requirements of law and directives, including how the procedures are to be performed and by whom.
 - c. Comprehensive assurances that the wholesale provider is well prepared to handle any possible discovery or needed notification of a breach in the security of personal information data under the state Breach of Personal Information Notification Act.
 - d. Required documentation that must be maintained to evidence adequate due diligence was performed for both its wholesale providers and their business customers.
2. Obtain and review all System and Organization Controls (SOC) 2 Type 2 reports and other applicable previous audit reports from all prospective wholesale providers prior to contracting.
3. Ensure documentation is maintained to evidence the research and due diligence that was performed for each prospective wholesale provider.
4. Implement and document in policy the tracking procedures used to ensure all SOC 2 Type 2 reports are obtained from each wholesale provider and reviewed pursuant to Management Directive 325.13 Amended.
5. Develop procedures to review SOC 2 Type 2 reports to ensure adequate controls are in place and are operating effectively for its wholesale providers. This includes

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documenting the review, including, at a minimum, the type of report, services/systems covered by the report, service auditor's opinion, control exceptions identified by the service auditor, and the complementary user entity controls.

6. Ensure any areas of weaknesses identified by the SOC 2 Type 2 reports are immediately resolved with the wholesale provider and adequately documented.
7. Update existing wholesale provider contracts to include its new SOC 2 Type 2 annual audit reporting requirements.
8. Ensure all new and renewed wholesale provider contracts include the new SOC 2 Type 2 annual audit reporting requirements.
9. Develop, implement, and document formal procedures, in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel, used to monitor and enforce wholesale providers' (and its business customers) compliance with contract and reporting requirements on a regular basis, such as having audits performed.
10. Ensure any identified monitoring/audit deficiencies are resolved within a timely manner and the resolution is documented.
11. Develop, implement, and document formal procedures, in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel, to timely review the Affidavits of Intended Use received annually from the wholesale providers and ensure they are complete, in agreement with contractual provisions, and properly notarized.
12. Consider adding a provision in the wholesale provider contracts that new affidavits must be filed immediately whenever information about the company changes, such as name, address, ownership, telephone number, or website.

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Finding 2 – Transfers from the Motor License Fund to the Pennsylvania State Police have caused PennDOT to fall behind on its planned use of Act 89 of 2013 funds to improve highways and bridges. Act 44 of 2007 funds transferred from PennDOT have helped transit agencies, but they also have resulted in the PA Turnpike Commission amassing billions of dollars of debt.

Act 89 of 2013 brought sweeping reforms to Pennsylvania’s transportation-related activities and responsibilities.⁵⁷ In terms of new revenue, Act 89 was expected to generate as much as \$331 million in the first year and up to a total of \$2.3 to \$2.4 billion when the Act’s many fiscal changes were fully realized in fiscal year 2017-2018. Most of this money was projected to be spent on a “decade of investment” (DOI) which was intended to significantly increase funding for road and bridge construction/maintenance throughout the Commonwealth.

The majority of funds derived from Act 89 are deposited into the Motor License Fund (MLF).⁵⁸ The MLF revenues, along with funds provided from an annual appropriation from the Municipal Police Officers' Education and Training Commission, also finance the Pennsylvania State Police’s (PSP) highway patrol operations.⁵⁹ In the years since Act 89’s enactment, transfers from the MLF to the PSP have significantly increased. While these transfers are permitted under the state constitution and the applicable Act 89 provision, the transfers have cut into available funding for projects, which has delayed the Pennsylvania Department of Transportation’s (PennDOT) planned improvements to highways and bridges.⁶⁰ Act 89 did not include a cap on the funds transferred to the PSP, which caused less funding to be available to PennDOT to improve transportation infrastructure throughout the state.

Further, the earlier enacted Act 44 of 2007 created a “public-public partnership” between the Pennsylvania Turnpike Commission (Commission) and PennDOT to provide funding for roads, bridges, and transit throughout the Commonwealth.⁶¹ Act 44 required the Commission to make substantial annual payments to PennDOT for a period that will amount to a total of 50 years. Currently, the Commission is required to provide PennDOT with \$450 million in funding annually, which is all used as transit funding. (Previous funding amounts and uses are detailed in *Appendix B* of this report.) In order to make those payments, the Commission has been obligated

⁵⁷ Act 89 provisions took effect on varying dates.

⁵⁸ 75 Pa.C.S. § 9511(a).

⁵⁹ 75 Pa.C.S. § 9511(b) and 75 Pa.C.S. § 6118. A sizeable portion of PSP’s annual budget comes from the Commonwealth’s Motor License Fund based on the logic that its constitutional purpose includes the safety of public roads and bridges.

⁶⁰ The Pennsylvania Constitution, Article VIII, § 11 and the applicable provisions of Act 89.

⁶¹ 74 Pa.C.S. § 1506(b)(1)(ii). The deposits made into the fund decrease to \$50 million annually in the fiscal year 2022-2023 until the obligations end in 2057-2058. *See* 74 Pa.C.S. § 1506(b)(1)(iii).

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to amass a significant amount of debt.⁶² Further, the Commission is concerned that the funds will continue to support transit capital, operating, multi-modal, and other non-highway programs rather than highways and bridges, which was touted as the intent of the initial legislation.⁶³ In both of these circumstances, one state agency benefits while the sustainability of another state agency is sacrificed. Although the legislation did increase revenues to a degree, it is unclear whether this legislation is truly resolving Pennsylvania's lack of transportation funding.

We compared the source of revenues and uses of funds mandated by these acts to the categories of actual revenues and expenditures within the Motor License Fund, Public Transportation Trust Fund, and Multimodal Transportation Fund. We performed our review at the fund level and did not perform detailed testing of individual revenue and expenditure transactions. It appears PennDOT properly received funds from the revenue funding sources specified in Act 44 of 2007 and Act 89 of 2013 and spent the funds within the expenditure categories outlined in these acts.

The following sections discuss PennDOT's receipt and spending of funds in the Motor License Fund and the Public Transportation Trust Fund as it relates to Act 44 and Act 89. See *Finding 3* for our discussion of the Multimodal Transportation Fund.

Transfers from the Motor License Fund to the Pennsylvania State Police have caused PennDOT to fall behind on its planned use of Act 89 funds to improve highways and bridges.

The MLF is a special revenue fund composed of monies received from liquid fuel taxes, aviation fuel taxes, licenses and fees on motor vehicles, federal aid, local contributions for highway projects, and other miscellaneous highway revenues.⁶⁴ The total state revenues for the MLF for the fiscal years ended June 30, 2014 through 2017, are outlined in the table below.

⁶² See our most recent performance audit report on the PTC for further information regarding the sustainability of the PTC.

⁶³ <https://www.paturnpike.com/business/act44_plan.aspx> (accessed December 4, 2018).

⁶⁴ 2018-2019 Governor's Executive Budget, page C2-1.

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Motor License Fund Actual Revenues (in thousands)				
Fiscal Year	2013-2014	2014-2015	2015-2016	2016-2017
Liquid Fuels Taxes	\$ 1,294,432	\$ 1,562,431	\$ 1,659,197	\$ 1,732,660
Motor Licenses and Fees	\$ 893,886	\$ 950,807	\$ 962,678	\$ 1,000,528
Other Motor License Fund Revenues	\$ 258,447	\$ 98,274	\$ 35,673	\$ 25,341
Aviation Revenues (R)	\$ 8,699	\$ 9,756	\$ 7,582	\$ 7,254
Highway Bridge Improvement Revenues (R)	\$ 124,088	\$ 168,274	\$ 191,096	\$ 198,184
State Highway Transfer Revenues (R)	\$ 28,110	\$ 39,339	\$ 45,888	\$ 49,420
Oil Company Franchise Tax Revenues (R)	\$ 515,346	\$ 721,220	\$ 841,279	\$ 906,042
Supplemental Maintenance Revenues (R)	\$ 360,743	\$ 504,854	\$ 588,896	\$ 634,229
Total	\$ 3,483,751	\$ 4,054,955	\$ 4,332,289	\$ 4,553,658

(R) = Restricted Revenue

Source: Created by the Department of the Auditor General staff from the 2018-2019 Governor's Executive Budgets.

PennDOT uses its portion of the MLF monies mainly for highway and bridge improvements, design, and maintenance. PennDOT's initial listing of highway and bridge projects to be completed with MLF revenues generated from Act 89 was originally derived from the Transportation Funding Advisory Commission's (TFAC) final report, dated November 2013. This report highlighted a 10-year vision of strategic investment and was expanded with additional projects identified by PennDOT. The listing also outlined other investments in public transit, local government, and rail freight, but the majority of the funds, more than two-thirds of new funding required by Act 89, was intended to be spent on roads and bridges.

PennDOT provided a list of 9,001 projects, which were completed or planned to be completed, that generally resulted from the DOI strategic vision. As of the end of calendar year 2017, PennDOT had only completed 2,412 of the 9,001 projects, or 27 percent, that were planned to be completed.⁶⁵

According to PennDOT management, the passage of Act 89 was significant; however, it did not address all the funding issues. At the time of enactment, an allocation in the amount of \$500 million was made to the PSP from the MLF.⁶⁶ PennDOT management hoped the allocation would remain constant each year; however, the amount of dollars required by PSP increased each year up to \$802.9 million in fiscal year 2016-2017. As a result, PennDOT has not been able to complete the projects as quickly as planned.

⁶⁵ For the current status of projects, see PennDOT's searchable *Road and Bridge Project Construction* website at <<http://www.projects.penndot.gov/projects/Construction.aspx>>.

⁶⁶ 75 Pa.C.S. § 6118.

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The Constitution of Pennsylvania requires that all proceeds from fuel taxes and license and registration fees, which are deposited into the MLF, be used “solely for construction, reconstruction, maintenance and repair of and safety on public highways and bridges” and associated costs.⁶⁷ The General Assembly appropriates these funds to state agencies, or other political subdivisions, each year.

The PSP receives appropriations from the MLF to support its patrol responsibilities because the General Assembly decided that the troopers’ highway patrol duties meet the constitutional definition of safety on public highways. The below table shows the dollars the PSP has received since the 2012-2013 fiscal year.

Total PSP State and Federal Funding from the Motor License Fund (in thousands)	
Fiscal Year	Total Funding
2012-2013	\$585,288
2013-2014	\$623,039
2014-2015	\$685,810
2015-2016	\$764,478
2016-2017	\$802,936

Source: Created by the Department of the Auditor General staff from the 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2018-2019 Governor’s Executive Budgets.

Other state agencies also receive funding from the MLF. For example, the Department of Agriculture and the Department of Conservation and Natural Resources receive appropriations for dirt, gravel, and low volume roads. Also, the Department of Education receives an appropriation for its safe driving course. However, these amounts are significantly less than the PSP’s appropriation. For example, in the 2016-2017 fiscal year, the PSP received \$793 million in state funding. The other eight state agencies receiving funding, besides PennDOT and the PSP, received a combined total of \$180 million in state funding.⁶⁸

In 2011, prior to the passage of Act 89, Governor Corbett’s TFAC had already concluded that the PSP costs were “consuming a bigger slice of the Motor License Fund.”⁶⁹ In fact, the TFAC had outlined that during the period from fiscal year 2001-2002 through 2011-2012, PennDOT’s operations had grown by 20 percent, but the PSP appropriations had grown by a staggering 66 percent.⁷⁰

The TFAC recommended either entirely removing the PSP funding from MLF, or alternatively, capping the PSP costs and moving up to \$300 million in the PSP patrol-related costs to the General Fund. Neither recommendation was included in Act 89’s final passage. Subsequently,

⁶⁷ The Pennsylvania Constitution, Article VIII, Section 11(a).

⁶⁸ 2018-19 Governor’s Executive Budget, pages C2-3 to C2-5.

⁶⁹ TFAC, Final Report, page 12.

⁷⁰ Ibid.

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without this cap, to meet the PSP’s ever-growing funding needs, transfers from the MLF continued to grow.

In March 2017, the Pennsylvania Legislative Budget and Finance Committee (LBFC) released a report on the PSP costs to provide safety on public highways.⁷¹ For fiscal year 2015-2016, the LBFC found the “appropriate and justifiable” level of MLF support for the PSP should have been \$532.8 million. Had the PSP been allocated only \$532.8 million, rather than \$755 million, an additional \$222.2 million would have been available to PennDOT for roadway projects. This equates to being able to resurface more than 1,000 miles of roadways or to design, replace, and maintain 138 bridges for the next 25 years.⁷²

In July of 2016, the General Assembly amended the state’s Fiscal Code, as part of its general budget implementation provisions, and placed a cap on the PSP’s annual MLF appropriation.⁷³ This cap initially froze the fiscal year 2017-2018 PSP appropriation at the 2016-2017 level, and then beginning in the 2018-2019 budget year, annually reduces that amount by 4 percent. These annual reductions of 4 percent continue until fiscal year 2027-2028 when the PSP total appropriation shall not exceed \$500 million or 60 percent of the total appropriated in fiscal year 2016-2017.⁷⁴ Although this gradual reduction appears reasonable, this situation could have been avoided had the TFAC’s recommendation from its 2011 report been included within Act 89.

The following table shows the amount of funds PennDOT lost over a four-year period due to not capping the MLF Appropriation to the PSP at \$500 million as part of Act 89 of 2013.

Fiscal Year Ended June 30	Transfer to PSP With Cap (in millions)	Actual Transfer to PSP Without Cap (in millions)	Funds PennDOT Lost (in millions)
2013-2014	\$ 500.0	\$ 623.0	\$ 123.0
2014-2015	\$ 500.0	\$ 685.8	\$ 185.8
2015-2016	\$ 500.0	\$ 764.5	\$ 264.5
2016-2017	\$ 500.0	\$ 802.9	\$ 302.9
Total	\$ 2,000.0	\$ 2,876.2	\$ 876.2

Source: Created by the Department of the Auditor General staff. The “Actual Transfer to PSP Without Cap” column data is from the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 Governor’s Executive Budgets.

The reduction in funding from the MLF to the PSP will infuse an estimated \$2.1 billion into PennDOT’s resources over the course of 10 years. The annual four percent reduction in the MLF transfers to the PSP will allow for \$1 billion to be allocated to county maintenance to support

⁷¹ This study was conducted by LBFC staff pursuant to House Resolution 2015-622 and was not a financial or performance audit of the PSP. We did not verify the accuracy of the information within this report.

⁷² Ibid. at page 60.

⁷³ 72 P.S. § 1798.2-E (Act 85 of 2016, enacted July 13, 2016, immediately effective).

⁷⁴ 72 P.S. § 1798.2-E(11).

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basic system needs across Pennsylvania. An additional \$1.1 billion over the same ten-year period will go towards highway and bridge projects. Out of the \$1.1 billion, \$500 million will be allocated to an interstate preservation and reconstruction program and \$600 million will be directed to highway and bridge capital projects, prioritizing rehabilitation and reconstruction needs.⁷⁵

When passed, Act 89 was intended to focus on the creation of a steady stream of money to be spent on repairing our neglected roads and bridges. However, a higher than expected amount of the funds were given to the PSP for highway safety purposes, which has delayed PennDOT's ability to complete its projects. While steps have been taken to redirect funds back to PennDOT from the PSP, a portion of four years of funding meant to help rebuild Pennsylvania's highways and bridges has been used for other purposes, and thousands of PennDOT projects have yet to be completed.

Act 44 transit funding has helped PennDOT to stabilize and improve mass transit operations while causing the PA Turnpike Commission to accumulate billions of dollars in debt.

The Public Transportation Trust Fund (PTTF) was created by Act 44 of 2007 to provide dedicated funding for public transportation. Act 89 of 2013 increased the funding and revenue sources for the PTTF. The following table shows the PTTF cash receipts for the fiscal years 2013-2014 through 2016-2017.

⁷⁵ Road Maintenance and Preservation, page 1, < <https://www.penndot.gov/about-us/Documents/PennDOT%20Road%20MaP%20Initiative.pdf>> (accessed September 7, 2018).

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Public Transportation Trust Fund Cash Receipts (in thousands)				
Fiscal Year	2013-2014	2014-2015	2015-2016	2016-2017
Sales and Use Tax	\$ 420,508	\$ 439,486	\$ 455,796	\$ 465,944
PA Turnpike Commission ^{a/}	\$ 250,000	\$ 420,000	\$ 420,000	\$ 420,000
Transfer from Lottery Fund	\$ 92,956	\$ 94,443	\$ 95,907	\$ 0
Transfer from Public Transportation Assistance Fund	\$ 18,020	\$ 19,059	\$ 20,134	\$ 21,091
Motor Vehicle Fees	\$ 30,692	\$ 127,257	\$ 210,166	\$ 215,903
Vehicle Code Fines	\$ 6,302	\$ 31,216	\$ 35,401	\$ 33,110
Interest	\$ 2,117	\$ 2,686	\$ 4,594	\$ 7,285
Total	\$ 820,595	\$ 1,134,147	\$ 1,241,998	\$ 1,163,333

^{a/} The \$450 million from the PA Turnpike Commission for the fiscal years beginning 2014-2015 was deposited as follows: \$420 million into the PTTF and \$30 million into the Multimodal Transportation Fund. See *Finding 3* for discussion of the Multimodal Transportation Fund.

Source: Created by the Department of the Auditor General staff from the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 Governor's Executive Budgets.

Monies in the PTTF are disbursed to public transit agencies for operating costs, capital and asset improvements, and programs of statewide significance. Programs of statewide significance support affordable access to demographic groups whose mobility would otherwise be more limited. The capital and asset improvements help to maintain and improve the vehicles, communication equipment, technology, and transit facilities. The following table shows the appropriated PTTF monies for these purposes for the fiscal years 2013-2014 through 2016-2017.

Public Transportation Trust Fund Appropriations (in thousands)				
Fiscal Year	2013-2014	2014-2015	2015-2016	2016-2017
Mass Transit Operating	\$ 745,361	\$ 797,426	\$ 837,000	\$ 862,000
Capital Improvement	\$ 22,035	\$ 19,500	\$ 37,000	\$ 56,250
Asset Improvement	\$ 73,000	\$ 309,300	\$ 353,156	\$ 421,000
Programs of Statewide Significance	\$ 92,268	\$ 82,717	\$ 79,000	\$ 80,000
Transit Administration and Oversight	\$ 4,488	\$ 4,488	\$ 4,488	\$ 4,488
Total	\$ 937,152	\$ 1,213,431	\$ 1,310,644	\$ 1,423,738

Source: Created by the Department of the Auditor General staff from the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 Governor's Executive Budgets.

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In the Pennsylvania Public Transportation Annual Performance Report for the fiscal year 2016-2017, PennDOT highlights some of the significant statewide projects that it is undertaking in partnership with transit agencies as a result of its increased funding, including:

- Purchasing Intelligent Transportation System technologies that provide real-time bus information for customers.
- Implementing statewide transportation scheduling software.
- Constructing compressed natural gas fueling stations to provide transit agencies access to more cost-effective, cleaner energy sources.
- Constructing or upgrading maintenance and passenger facilities in several cities across the Commonwealth.⁷⁶

Further, the State Transportation Committee's 2017 performance report stated that mass transit operation assistance has increased substantially over the past decade, which allowed for a stabilization of services. Also, the Act 89 funding continues to provide "a significant increase in capital funding that has allowed transit agencies to make investments in their fleet, infrastructure, and technology to bring them into a state of good repair."⁷⁷

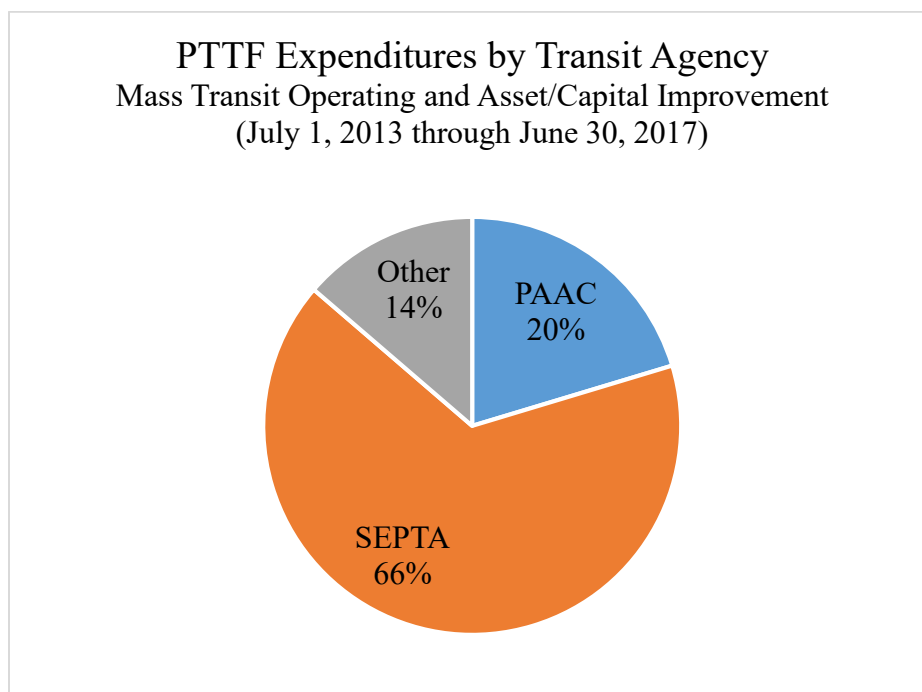
The two transit agencies that benefited most from this increase in funding was the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Port Authority of Allegheny County (PAAC). For the period July 1, 2013 through June 30, 2017, SEPTA received \$2.55 billion, or 66 percent, and PAAC received \$786 million, or 20 percent, of the PTTF expenditures of \$3.86 billion. In total, SEPTA and PAAC received 86 percent of the PTTF expenditures during this time period as seen in the chart below.

⁷⁶ <<https://www.penndot.gov/Doing-Business/Transit/InformationandReports/Documents/BPT%20Annual%20Report%202016-17.pdf>> (accessed August 21, 2018).

⁷⁷ State Transportation Commission, Pennsylvania 2017 Transportation Performance Report, February 2017, <<http://www.talkpatransportation.com/2017TPR/default.html>> (accessed October 10, 2017).

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Source: Created by the Department of the Auditor General staff based on information provided by PennDOT management.

While the Act 44 funding dedicated to transit operations appears to have made some improvements, it has left the PA Turnpike Commission (Commission) in a poor financial position. In order to make the \$450 million annual payments to PennDOT to assist in funding transit agencies, the Commission was forced to assume a significant amount of debt and implement a schedule of regular toll increases for the turnpike.⁷⁸ According to the Commission's Act 44 Financial Plan, between fiscal years 2019 and 2022, \$50 million of the obligation is projected to be funded with turnpike cash and the remaining \$400 million will be borrowed. It projects that between the fiscal years 2019-2057, the Commission's debt issuance is expected to total \$8.2 billion.⁷⁹ The Commission's obligation to PennDOT decreases to \$50 million annually

⁷⁸ In March 2018, the Owner-Operator Independent Drivers Association and the National Motorists Association filed a federal civil rights lawsuit against the Commission in U.S. District Court for the Middle District of Pennsylvania. The lawsuit challenged the Commission's payment to PennDOT and claimed that it is a violation of federal law to impose tolls and use turnpike toll revenue for purposes other than the operation and maintenance of the Turnpike. On April 4, 2019, the federal district court **dismissed** the lawsuit but the plaintiffs, Owner-Operator Independent Drivers Association and the National Motorists Association, have filed a notice of appeal on April 8, 2019 from the dismissal in U.S. Court of Appeals for the Third Circuit. *See Owner Operator Independent Drivers Association, Inc. et al. v. Pennsylvania Turnpike Commission et al.*, CIVIL DOCKET #: 0:19-cv-01775. As a result of the lawsuit at the lower court level, the Commission (in agreement with PennDOT) had delayed its quarterly payments to PennDOT for the first two quarters in fiscal year 2018-2019.

⁷⁹ Pennsylvania Turnpike Commission Act 44 Financial Plan Fiscal Year 2019, <https://www.paturnpike.com/pdfs/business/finance/PTC_Fiscal_2019_Act_44_Financial_Plan_FINAL.pdf> (accessed October 12, 2018).

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beginning in the 2022-2023 fiscal year.⁸⁰ See our performance audit report on the PTC for further information regarding the sustainability of the PTC.

In conclusion, it is unclear if these two pieces of legislation, Acts 44/89, that were enacted to help fix Pennsylvania's lack of transportation funding are truly resolving the problem. It appears that PennDOT properly received funds from the revenue funding sources specified in Acts 44/89, and spent the funds within the expenditure categories outlined in these acts.⁸¹

Yet, PennDOT's improvements for highways and bridges is lagging due to the diversion of funding to the PSP. The legislature's cap on this transfer of funds should help PennDOT in meeting its planned project goals; however, this will ultimately impair the State Police budget. Similarly, PennDOT currently has dedicated funding to assist transit agencies but this funding is to the detriment of the PA Turnpike Commission. Subsequently, once the Commission's obligation to PennDOT is decreased, the Commission will begin to repay its amassed debt.

Recommendations for Finding 2

We recommend that PennDOT:

1. Expedite projects as funds are available to ensure that the roads and bridges in the Commonwealth receive the repairs that they need.

We recommend that the General Assembly:

2. Improve Pennsylvania State Police's lack of adequate funding through having municipalities that rely on the State Police for full-time coverage pay a per-resident fee for those services.
3. Re-evaluate Acts 44/89 and consider drafting and enacting new legislation to find reasonable alternative revenue sources to provide adequate transportation funding. See the recommendations in our PTC performance audit report regarding the sustainability of the PTC.

⁸⁰ 74 Pa.C.S. § 1506(b)(1)(iii).

⁸¹ We performed our review at the fund level and did not perform detail testing of individual revenue and expenditure transactions.

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Finding 3 – PennDOT’s method to commit grant monies within the Multimodal Transportation Fund appears reasonable; however, a shorter grant cycle could reduce misunderstandings of the fund balance.

Act 89 of 2013 established the Multimodal Transportation Fund (MTF).⁸² The goal of establishing the MTF was to create a dedicated source of funding so all Commonwealth citizens would have access to a safe and reliable system of transportation. The MTF “is intended to provide financial assistance to the municipalities, councils of governments, businesses, economic development organizations, public transportation agencies, rail freight, passenger rail, and ports in order to improve transportation assets that enhance communities, pedestrian safety, and transit revitalization.”⁸³ Eligible projects include:

- Bus stops, park and ride facilities, sidewalk/crosswalk safety improvements, bicycle lanes/route designations, development of local highways and bridges, and greenways
- Sidewalk connections, crosswalks, pedestrian and traffic signals, pedestrian signs, and lighting
- Improved signage, access roads, development or support of an integrated transportation corridor, port upgrades, and bicycle parking at transit stops
- Projects related to transit-oriented development⁸⁴

The Pennsylvania Turnpike Commission is required to deposit \$450 million annually into the Public Transportation Trust Fund (PTTF) in accordance with Act 44 of 2007 and Act 89 of 2013.⁸⁵ Out of this deposit, \$30 million is transferred from the PTTF to the MTF.⁸⁶ Additionally, \$35 million from the revenue collected through the Oil Company Franchise Tax (OCFT) is deposited into the MTF annually.⁸⁷ The MTF also receives funds from the Share the Road fee and certain unprotected fees.⁸⁸ Any interest earned by the MTF is also deposited into the fund. Monies in the MTF are appropriated to PennDOT and do not lapse.⁸⁹ The following table shows the revenues received by the MTF for the fiscal years ended June 30, 2017 (FY 2016-2017) and 2018 (FY 2017-2018).

⁸² See 74 Pa.C.S. § 2102, effective November 25, 2013.

⁸³ Pennsylvania Department of Transportation Guidelines, Multimodal Transportation Fund, dated January 30, 2018, <<https://www.penndot.gov/ProjectAndPrograms/MultimodalProgram/Documents/MTF%20Guidelines%20for%20PennDOT%20Discretionary%2001.30.2018.pdf>> (accessed June 5, 2018).

⁸⁴ Ibid.

⁸⁵ 74 Pa.C.S. § 1506(b)(1)(ii). The deposits made into the fund decreases to \$50 million annually in the fiscal year 2022-2023.

⁸⁶ 74 Pa.C.S. § 1506(e)(6).

⁸⁷ 75 Pa.C.S. § 9502(a)(1).

⁸⁸ Unprotected fees include those for identification cards, certificates of title, certificates of inspection, certified copies of records, and the fee for the Share the Road license plate that promotes bicycle safety.

⁸⁹ 74 Pa.C.S. § 2102.

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Multimodal Transportation Fund (in thousands)		
Revenue	FY 2016-2017	FY 2017-2018
Transfer from the PTTF	\$ 30,000	\$ 30,000
OCFT	\$ 35,000	\$ 35,000
Unprotected Fees	\$ 74,561	\$ 72,461
Share the Road Fee	\$ 13	\$ 5
Interest	\$ 1,236	\$ 2,845
Total	\$ 140,810	\$ 140,311

Source: This table was created by the Department of the Auditor General staff based on data from the Commonwealth's SAP accounting system (Revenue 601 – FM Based Report).

MTF monies are used for statewide grant programs, PennPORTS grants to the Philadelphia Regional Port Authority (PRPA), PennDOT operational costs, and specific dedicated grants for aviation, rail freight, rail passenger, ports and waterways, and bicycle and pedestrian facilities.⁹⁰ The statewide programs consist of \$35 million of OCFT revenues used for highway and bridge construction and maintenance grants and \$5 million for grants for other transportation modes.

Any MTF monies not allocated by these provisions in the law are transferred annually to the Commonwealth Financing Authority (CFA) for its MTF program.⁹¹ The Commonwealth Financing Authority, established in 2004, is an independent agency of the Pennsylvania Department of Community and Economic Development.⁹² The CFA MTF program provides grants to municipalities, councils of governments, businesses, public transportation agencies, and ports to encourage economic development.⁹³ The following table shows the MTF expenditures for the fiscal years ended June 30, 2017 and 2018.

⁹⁰ 74 Pa.C.S. § 2104(a)(1)(i)-(v).

⁹¹ 74 Pa.C.S. § 2104(a)(4).

⁹² <<https://dced.pa.gov/programs-funding/commonwealth-financing-authority-cfa/>> (accessed December 3, 2018).

⁹³ <<https://dced.pa.gov/programs/multimodal-transportation-fund/>> (accessed September 28, 2018).

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Multimodal Transportation Fund (in thousands)		
Expenditures	FY 2016-2017	FY 2017-2018
Aviation Grants	\$ 2,368	\$ 5,003
Rail Freight Grants	\$ 4,622	\$ 3,277
Passenger Rail Grants	\$ 8,004	\$ 5,032
Ports/Waterways Grants	\$ 7,626	\$ 8,017
Bicycle/Pedestrian Facility Grants	\$ 2,441	\$ 2,022
Statewide Program Grants	\$ 5,610	\$ 14,041
PennPORTS – PRPA	\$ 4,607	\$ 4,605
Multimodal Administration and Oversight	\$ 3,572	\$ 2,755
Transfer to CFA	\$ 51,476	\$ 50,496
Total	\$ 90,326	\$ 95,248

Source: This table was created by the Department of the Auditor General staff based on data from the Commonwealth's SAP accounting system (FM Commitments and Actual Expenditures Report).

In this finding, we present how PennDOT internally accounts for the MTF monies and how it differs from what was reported by the PA Treasury Department on its Transparency Portal and the Independent Fiscal Office in its report on special funds dated February 12, 2018.

Establishing the new Multimodal Program coupled with an inherently long grant process has caused delays in spending funds.

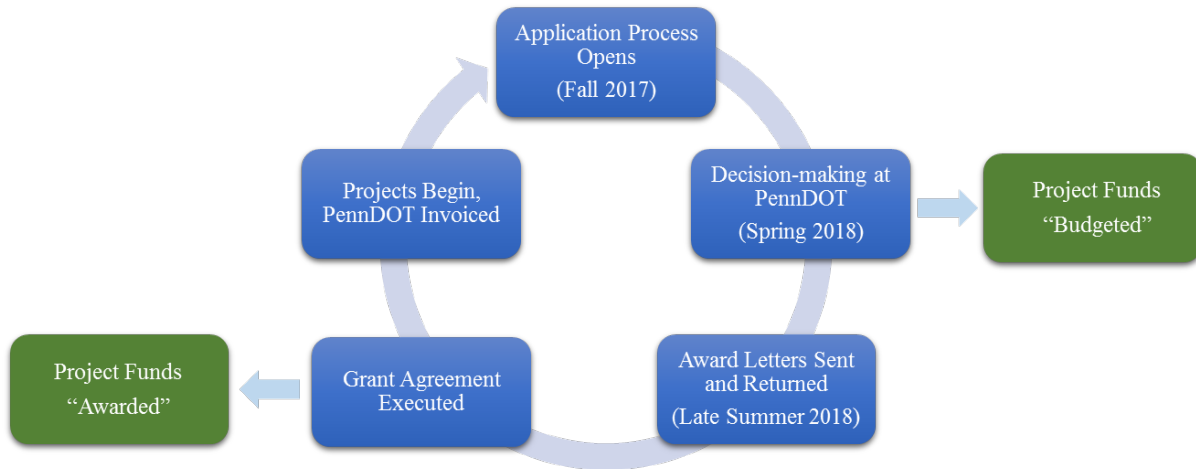
To obtain an understanding of the available funds remaining in the Multimodal Transportation Fund at the end of each year, it is important to first understand PennDOT's process of accounting for these funds. With the passage of Act 89 of 2013 and the creation of the MTF, PennDOT created policies and procedures for the implementation of the new multimodal program and corresponding grants. Depending on the mode of transportation, the grant application processes differ slightly; however, the following process generally applies for all of the Act 89 Multimodal categories.⁹⁴

⁹⁴ All of the MTF's Act 89 allocation for passenger rail goes towards Pennsylvania's mandate under the Federal Passenger Rail Investment and Improvement Act of 2008, which requires Pennsylvania to make significant contributions for operating and capital costs of the Amtrak's Pennsylvanian and Keystone Corridor services.

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Fiscal Year June 2018 – July 2019 Multimodal Project Cycle



Source: This chart was created by the Department of the Auditor General staff based on interviews with PennDOT management.

Businesses can apply for these grants between October and December for the next state fiscal year. In the following spring, PennDOT reviews applications and selects projects for each grant. The MTF monies are now considered to be “budgeted” or “planned.” After a project is selected, PennDOT sends an award letter to the grantee. This generally occurs around August or September. The grantee has 45 days to return the signed letter, which indicates that there is still interest in the multimodal grant.

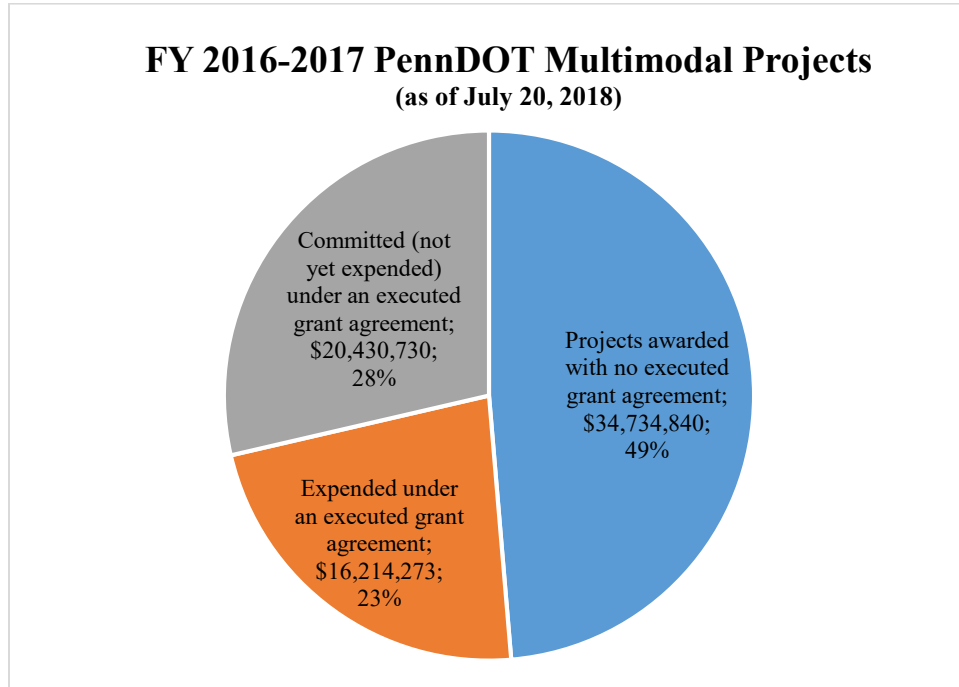
PennDOT will then draft the grant agreement. The timeframe to complete drafting the grant agreement varies by project. According to PennDOT officials, some grantees are familiar with state grant requirements and an agreement is quickly reached. For grantees that are less familiar with PennDOT’s processes, reaching the finalized grant agreement takes more time, possibly up to one year. Once the grant agreement has been signed by the grantee and approved by PennDOT’s Office of Chief Counsel and the Comptroller’s Office, the commitment is posted in the Commonwealth’s SAP accounting system (SAP). Prior to the commitment being posted in SAP, the money would appear to be available in SAP. The grant agreement is then approved by the Governor’s Office of General Counsel and the Office of Attorney General and is considered fully executed. Once the grant agreement is executed, PennDOT considers these funds to be “awarded.” After the grant agreement is fully executed, the grantee can begin the project. The grantee sends monthly invoices to PennDOT for reimbursement which are tracked as expenditures in SAP.

If the grant applicant was no longer interested in the grant after receiving the award letter, the monies would remain available in the MTF for future projects. The funds within the MTF do not expire, meaning they can be used in future fiscal years. The chart below reflects the amount of

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fiscal year 2016-2017 MTF monies awarded to projects and how many of those projects have executed grant agreements as of July 20, 2018. Though there were 71 projects awarded grants totaling \$71.4 million, only 45 grant agreements have been executed totaling \$36.6 million. Out of the total \$71.4 million in projects awarded, only \$16.2 million, or 23 percent, has been expended.

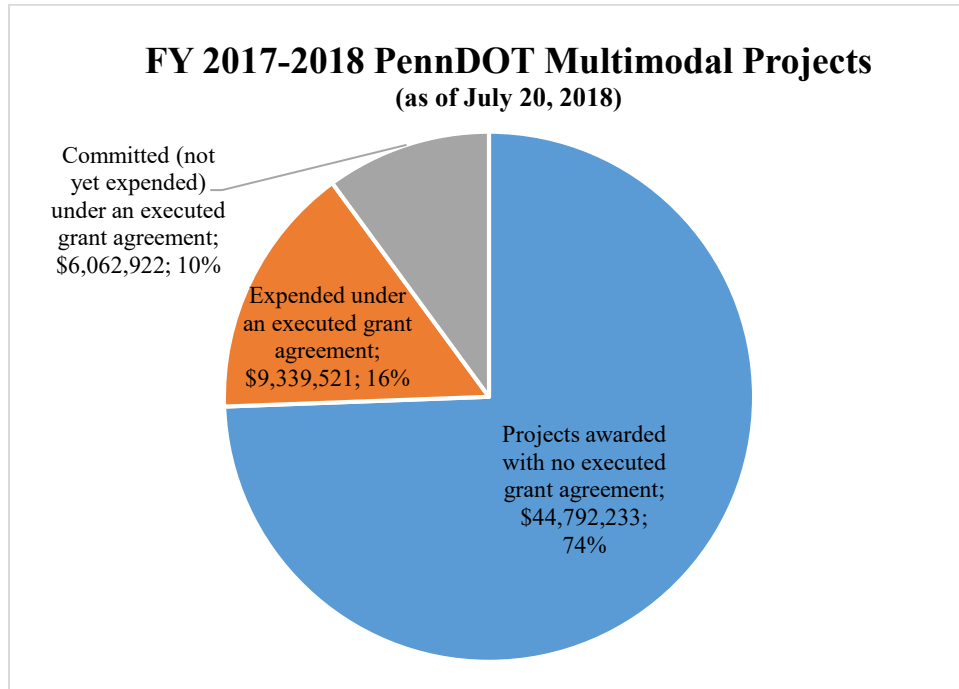


Source: This chart was created by the Department of the Auditor General staff from data provided by PennDOT management as of July 20, 2018.

The long grant process is more apparent for those projects awarded in the fiscal year ended June 30, 2018, as seen in the below chart. PennDOT awarded grants to 61 projects totaling \$60.2 million; however, only 8 grant agreements have been executed totaling \$15.4 million. Out of the total \$60.2 million in projects awarded, only \$9.3 million, or 16 percent, has been expended.

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Source: This chart was created by the Department of the Auditor General staff from data provided by PennDOT management as of July 20, 2018.

We found that PennDOT’s methodology to commit monies in the MTF appears reasonable. However, given that the time between the application period and an executed grant agreement can take up to two years, this time lag delays the recording of commitments into SAP, which gives the appearance of available funds that are most likely not available. By shortening the grant cycle and getting the grant agreements executed sooner, PennDOT’s commitments to grantees would be officially recorded in SAP instead of only being tracked internally, which would add more transparency to the process and allow for a better understanding of the fund balance of the MTF.

Treasury’s Transparency Portal vs. PennDOT’s Internal Records

The Pennsylvania Office of the State Treasurer (Treasury) “serves as the custodian of more than \$100 billion in Commonwealth funds, and is responsible for the receipt and deposit of state monies, investment management and oversight of all withdrawals and deposits from state agencies.”⁹⁵

The PA Treasury’s Transparency Portal (accessible at <http://www.patreasury.gov/transparency>) offers a daily glimpse into fund balances, revenue and expenditures to date, bond debt, and

⁹⁵ <<https://www.patreasury.gov/>> (accessed September 4, 2018).

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investment data of the Commonwealth's General Fund and other special funds.⁹⁶ Through this website, it is possible to see the cash balance of the General Fund and special funds, such as the MTF, on any given day.

In order to compare PennDOT's accounting records to the PA Treasury's Transparency Portal, we must include all the activity since the inception of the MTF. The table below shows the total budget for the multimodal grants and in which stages the projects are for the fiscal years ended June 30, 2014 through 2018, as of July 20, 2018.

Multimodal Grants (in thousands)	
Funding Stage	Amount
Total Budget	\$ 312,260
Not Awarded	\$ 28,532
Awarded with no executed grant agreement	\$ 96,521
Committed (not yet expended) under an executed grant agreement	\$ 69,364
<i>Subtotal (Not Expended)</i>	<i>\$ 194,417</i>
Expended under an executed grant agreement	\$ 117,843

→ Available Funds as of July 20, 2018.

Source: This table was created by the Department of the Auditor General staff from data provided by PennDOT management as of July 20, 2018. This data is of undetermined reliability as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our finding and conclusions.

As seen in the above chart, PennDOT's records show that the multimodal grants were budgeted \$312.3 million and expended \$117.8 million, leaving \$194.4 million in the MTF. The PA Treasury's Transparency Portal showed the fund had a cash balance of \$198.7 million on July 20, 2018. The difference of \$4.3 million is the unspent funds budgeted for PennDOT's administration and oversight for the fund, which is not included in the chart of grants above.

In summary, the PA Treasury's Transparency Portal provides the daily cash balance of the MTF and does not show the entire picture of the fund balance. As seen in the above table, all but \$28.5 million of the MTF monies have been awarded for specific projects to receive grants. Therefore, according to PennDOT's methodology of committing monies in the MTF, the amount of monies available as of July 20, 2018, was \$28.5 million.

⁹⁶ The General Fund is the Commonwealth's largest operating fund. All tax revenue, non-tax revenue and federal grants and entitlements not specified by law to be deposited elsewhere are deposited in the General Fund. Source: 2018-2019 Governor's Executive Budget, page A1-28, <<https://www.budget.pa.gov/PublicationsAndReports/CommonwealthBudget/Documents/2018-19%20Proposed%20Budget/2018-19%20Governor%27s%20Executive%20Budget%20-%20Web.pdf>> (accessed September 4, 2018).

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Independent Fiscal Office Report

According to its website, the Pennsylvania Independent Fiscal Office (IFO) was established to provide a nonpartisan “analysis of fiscal, economic and budgetary issues” to assist the Pennsylvania General Assembly.⁹⁷ At the request of Pennsylvania House and Senate members, the IFO released a report on February 12, 2018, entitled *Special Fund Receipts and Disbursements*. The purpose of this report was to give legislators an overview of fund balances of special Commonwealth funds, because members of the General Assembly were considering moving these funds to the General Fund due to the appearance of growing surpluses in the funds. Additionally, the IFO provided a compilation of budgetary and financial data from the Governor’s Executive Budget, along with explanations of the budgetary and accounting basis used by the Commonwealth for Special Funds. The IFO presented the following information specific to the MTF:

Excerpt from Table 2 – Receipt and Disbursement History for Selected Special Funds Multimodal Transportation Fund (in thousands)					
Fiscal Year Ended June 30	13-14 <u>Actual</u>	14-15 <u>Actual</u>	15-16 <u>Actual</u>	16-17 <u>Actual</u>	17-18 <u>Available</u>
Receipts	\$27,798	\$97,382	\$137,925	\$140,811	\$145,428
Disbursements	\$10,067	\$45,685	\$ 69,102	\$ 90,327	\$334,163
Difference	\$17,731	\$51,697	\$ 68,823	\$ 50,484	-\$188,735

Source: This table is from the Independent Fiscal Office report dated February 12, 2018.

When interpreting this data, it is important to note that the actual and available numbers were calculated differently. Also, the way the IFO presented the data omitted any balance remaining in the fund at the end of each fiscal year. We present the following table and explanation to show the data reported by IFO in a different light.

Multimodal Transportation Fund (in thousands)					
Fiscal Year Ended June 30	Actual				Budget
	13-14	14-15	15-16	16-17	17-18
Beginning Balance	\$ 0	\$ 17,731	\$ 69,428	\$ 138,251	\$188,735
Receipts	\$ 27,798	\$ 97,382	\$ 137,925	\$ 140,811	\$145,428
Disbursements	\$ 10,067	\$ 45,685	\$ 69,102	\$ 90,327	\$334,163
Ending Balance	\$ 17,731	\$ 69,428	\$ 138,251	\$ 188,735	\$ 0

Source: This table was created by the Department of the Auditor General staff from data provided by the Independent Fiscal Office on February 12, 2018.

⁹⁷<<http://www.ifo.state.pa.us/about.cfm>> (accessed September 4, 2018).

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The actual numbers in both tables above are the cash receipts and disbursements of the MTF based on the past fiscal years. By including the beginning and ending balance in the fund as shown in the second table, one can see the balance has been growing each year. The ending balance for FY 2016-2017 of \$188.7 million agrees with the PA Treasury's Transparency Portal that reported a \$189.8 million cash balance as of June 30, 2017. The discrepancy is generally due to timing differences between when transactions are recorded by PennDOT and when the cash actually enters or leaves the Treasury.⁹⁸ These timing differences are the same as any individual may find when balancing his or her checkbook. For example, you may have written a check to pay the electrical bill and recorded this in your checkbook. However, the actual cash may not be removed from your bank account for several days. Although the PA Treasury operates on a much larger scale, the concept is similar and these timing differences appear reasonable.

The available numbers were budgeted estimates that included what was budgeted for the 2017-18 fiscal year, plus all unspent funds that were committed in prior fiscal years.⁹⁹ The actual disbursements will most likely be lower than the estimates because the some of the funds will ultimately be disbursed in subsequent fiscal years.

In conclusion, the balances within the MTF vary depending on whether it is a cash balance, budgetary balance, or accounting balance. We found the method by which PennDOT commits funds within the MTF to be reasonable. The funds available within the MTF that have not been planned for or awarded by PennDOT was \$28.5 million as of July 20, 2018.

Recommendation for Finding 3

We recommend that PennDOT:

1. Evaluate what efficiencies can be made in the grant process to minimize the amount of time between when PennDOT receives funds and when PennDOT is able to commit funds in the SAP accounting system. This would make the process more transparent and allow for a better understanding of the fund balance of the MTF.

⁹⁸ The cash beginning and ending balances reported through this format may differ from the actual cash balance in the PA Treasury and/or the cash general ledger account in the Commonwealth's accounting system due to timing differences, but the calculated cash balances reported provide an accurate reflection of the true cash position of the fund. Source: 2018-2019 Governor's Executive Budget, page H3.

⁹⁹ Independent Fiscal Office Report, page 2, <<http://www.ifo.state.pa.us/releases.cfm?page=3>> (accessed September 4, 2018).

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Finding 4 – Transportation Infrastructure Improvement Fund monies are awarded at the Governor’s discretion, in close discussions with the Secretary of Transportation, with no accountability or transparency.

PennDOT, in collaboration with the Federal Highway Administration, Federal Transit Administration, and its local planning partners, has been determining the distribution of anticipated state and federal funds every two years since the 1999 Twelve Year Program development process. Since that time, transportation funding has been dedicated for improvements associated with economic development through the Transportation Infrastructure Investment Fund (TIIF), formerly the Economic Development Fund. According to Pennsylvania’s *Transportation Program Financial Guidance (Financial Guidance)*, a reserve of \$25 million per year in state funds is available to be awarded at the discretion of the Secretary of Transportation (Secretary), in consultation with the Governor, for transportation improvements associated with economic development opportunities.

According to PennDOT management, it does not maintain any formal policies or procedures for the selection of projects that receive TIIF monies, since the selection is generally influenced by the Pennsylvania Department of Community and Economic Development (DCED) and the Governor’s Action Team (GAT).¹⁰⁰ After the projects are selected to receive TIIF monies, the projects follow PennDOT’s standard policies and procedures, which are further explained in *Finding 5* and *Appendix C*.

Although the mention of the TIIF monies in the *Financial Guidance* is brief, we found that it misrepresents how the projects are ultimately selected for funding. According to PennDOT management, both the Secretary and the Governor are involved in the approval process. The Governor has ultimate approval authority and must concur with the utilization of these funds; the Secretary must be involved to ensure that the appropriate actions take place. Therefore, the *Financial Guidance* would be more accurate to state that the TIIF monies are allocated at the discretion of the Governor, in consultation with the Secretary. Also, the *Financial Guidance* does not mention the involvement of DCED and GAT in the selection process or the fact that the funding is flexible and more than \$25 million could possibly be allocated within one year, so long as the total monies allocated does not exceed \$100 million for the four-year term of the Governor. It is management’s responsibility to determine how the process works, therefore, and

¹⁰⁰ The Governor’s Action Team (GAT) provides its clients with the information they need to make an informed assessment of Pennsylvania and its communities as a business location. Some of the services offered by GAT include: (1) Identifying suitable sites and buildings for client companies by utilizing an internal property database and relationships with local partners; (2) Providing information on available workforce, infrastructure (utilities and transportation) and PA taxes; (3) Coordinating and hosting site tours with client companies; and (4) Making appropriate introductions to local economic development groups and elected officials. Source: <<https://teampa.com/impact/business-growth/programs/governors-action-team/>> (accessed March 26, 2019).

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its written policies and procedures should be consistent, complete, and accurate in depicting the process.

The PennDOT Deputy Secretary for Planning (Deputy Secretary) is responsible for tracking the approved projects and the amount of TIF funds allocated. The Deputy Secretary becomes aware of the Governor's approval to use TIF funds through various methods, including phone calls, emails, and letters. PennDOT management stated that due to the nature of TIF monies being discretionary, the notification process to PennDOT is generally informal. Based on our discussions with PennDOT management and the review of documents, we found that:

- PennDOT is responsible to ensure the project is eligible for transportation funding in general. Although these funds are to be utilized for transportation improvements specifically related to economic development, there are no formal processes in place to ensure that this objective is achieved.
- PennDOT did not have standardized documentation that demonstrated the Governor's approval of projects to receive TIF monies and the justification for why the project was allocated these funds.

According to PennDOT management, due to the inherent nature of the discretionary funds, requiring the Governor to have a standardized form or letter stating a project was selected could be viewed as an unnecessary step. We *unreservedly disagree*. Failing to formally document the Governor's approval creates a risk that a project could be communicated to the Deputy Secretary as being approved when it in fact was not actually authorized by the Governor. Further, without documenting why the project was selected to receive TIF monies, the process is not transparent and could be susceptible to political influence or the appearance of political influence.

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Between January 1, 2014, and June 30, 2017, PennDOT management indicated the Governor approved TIF monies for 27 projects totaling \$65.2 million as shown in the following table:

Governor Approved TIF Projects for January 1, 2014 through June 30, 2017				
Region	Type of Planning Organization	Number of Projects	Location of Projects (Counties)	Total Approved
Adams County	MPO	1	Adams	\$ 700,000
Southwestern Pennsylvania Commission	MPO	12	Allegheny, Beaver, Butler, Westmoreland	\$21,932,000
Delaware Valley Regional Planning Commission	MPO	6	Delaware, Philadelphia, Montgomery	\$14,900,000
Erie Area Transportation Study	MPO	1	Erie	\$ 2,350,000
Lebanon County	MPO	1	Lebanon	\$ 460,000
Lehigh Valley Transportation Study	MPO	3	Lehigh, Northampton	\$16,350,000
Northeastern Pennsylvania Alliance	MPO	3	Monroe, Schuylkill	\$ 8,500,000
Total		27		\$65,192,000

Source: This data was compiled by Department of the Auditor General staff from information received from PennDOT management and is of undetermined reliability as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our finding and conclusions.

Out of these 27 projects, we judgmentally selected 5 projects to review, totaling \$7.55 million in TIF monies. We selected these particular projects to ensure coverage of different locations throughout the Commonwealth. We obtained documentation evidencing how the Deputy Secretary was informed of the Governor's approval of TIF monies for these projects. For one of the five projects, the documentation consisted of a letter from the Secretary of Transportation to the project sponsor stating the project will receive monies from the Governor's TIF. For another project, PennDOT provided an email from the Special Assistant to the Governor to the Deputy Secretary stating the Governor approved the project. For the remaining three projects reviewed, PennDOT produced an email from the Secretary of Transportation to the Deputy Secretary that contained a PennDOT press release announcing the twelve projects that were allocated monies from the Governor's TIF. PennDOT did not maintain other documentation to support why these projects were selected and there was no consistency in how the Deputy Secretary was informed of the approvals.

We also traced four of the five projects to the corresponding regional Transportation Improvement Program (TIP) which serves as the first step in PennDOT's oversight of

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transportation project planning. See the *Introduction and Background* section of this report for more information on transportation project planning. PennDOT management confirmed the remaining project has not been included on a regional TIP to date and explained that projects must be fully funded before being added to the regional TIP. For instance, TIIF monies could only be a portion of the project funding with additional funding coming from other state or local programs. Therefore, even if the Governor approves TIIF monies for a project, it may take a few years for the project to appear on the regional TIP. Management stated this particular project is not planned to be open to bids until March 2022.

Recommendations for Finding 4

We recommend that PennDOT, in consultation with the Governor's Office:

1. Develop, implement, and document formal policies and procedures used to select and approve projects that receive TIIF monies as a Statement of Policy to be published in the *Pennsylvania Bulletin* as defined in Commonwealth Documents Law in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel.
2. Initiate a routine practice of utilizing a standardized form or letter from the Governor (or designee) that includes the amount of TIIF monies that were approved, the project the monies were approved for, the justification as to why the project was selected (including how the project promotes economic development), and the date the Governor approved the monies.
3. Consider reporting the projects that were approved by the Governor to receive TIIF monies within a single schedule in a publicly available document, such as the Pennsylvania's Statewide Transportation Improvement Program, to make the awarding of the TIIF monies more transparent to the local planning organizations and the public.

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Finding 5 – PennDOT’s construction contract procurement and monitoring policies and procedures are in accordance with applicable laws and regulations and being followed; however, its Central Office oversight of construction cost increases should be strengthened.

The Pennsylvania Department of Transportation (PennDOT) is responsible for about 40,000 miles of roadway and 25,000 bridges across the Commonwealth, as well as transportation in other areas such as aviation, transit, and rail facilities.¹⁰¹ Projects receiving federal and state funding must adhere to the requirements of Title 23 of the United States Code, Title 23 of the Code of Federal Regulations, and the Commonwealth Procurement Code, respectively. PennDOT works closely with federal and local governments and other planning partners to maintain its transportation network. PennDOT manages every aspect of project delivery, from prequalification and requalification of business partners to the finalization close-out process of projects, through its Engineering and Construction Management System (ECMS).¹⁰² Further information regarding PennDOT’s procurement process for construction and engineering projects can be found in *Appendix C* of this audit report. Based on our interviews with PennDOT management and related audit procedures, we found the following:

- PennDOT’s construction procurement procedures are in accordance with federal laws and regulations, the Commonwealth Procurement Code, the Department of General Services’ Procurement Handbook, and other related policies. PennDOT also monitored its construction contracts in accordance with its policies.
- PennDOT performed its construction contract cost oversight procedures in accordance with its policies; however, its oversight should be expanded.

The following sections provide further detail in these areas and identify where PennDOT should make improvements to its construction contract cost monitoring process.

¹⁰¹ <<http://www.projects.penndot.gov/projects/PAProjects.aspx>> (accessed December 17, 2018).

¹⁰² PennDOT Publication 51 (04-16) *Plans, Specifications and Estimate Package Delivery Process Policies & Preparation Manual*, 2014 Edition, Change 2, page 12.

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PennDOT’s construction procurement procedures are in accordance with federal laws and regulations, the Commonwealth Procurement Code, the Department of General Services’ *Procurement Handbook*, and other related policies. PennDOT also monitored its construction contracts in accordance with its policies.

All consultants, contractors, and subcontractors interested in performing transportation project work for PennDOT must be prequalified for assurance of integrity, responsibility, and competence.¹⁰³ Prequalification of business partners enables the processing and evaluation of the capacity and qualifications of the contractors and the subcontractors to perform highway project work in the Commonwealth.¹⁰⁴ Additionally, the Contractor Responsibility Program (CRP) is a state-wide program to ensure all state agencies under the Governor’s jurisdiction are contracting with responsible vendors as well as providing for the centralized collection and dissemination of information concerning non-responsible contractors.¹⁰⁵ Construction contract execution is completed by PennDOT’s Central Office.

PennDOT’s policy for construction project oversight states that once the project successfully advances through the research, planning, and procurement stages and moves into construction status, oversight for the project is transferred from the PennDOT’s Central Office to the appropriate PennDOT engineering district office.¹⁰⁶ PennDOT’s Central Office oversees certain aspects of construction contract costs increases (discussed in the following section) and project close-out.

Annually, our Department and an independent CPA firm, contracted by the Governor’s Office, Office of the Budget, jointly conduct the Commonwealth’s Comprehensive Annual Financial Report (CAFR) audit as well as the Commonwealth’s Single Audit.¹⁰⁷ As part of the Single

¹⁰³ *U.S. Code, Title 23, Highways, Code of Federal Regulations*, Part 634-Construction and Maintenance, Subpart G-Engineering and Traffic Operations, §635.110-Licensing and qualification of contractors.

¹⁰⁴ *PA Code Title 67, Chapter 457, Prequalification of Bidders*, Section 457.2 Purpose, page 457-22.

¹⁰⁵ Commonwealth of Pennsylvania Governor’s Office Management Directive 215.9 Amended, Contractor Responsibility Program.

¹⁰⁶ Pennsylvania Department of Transportation PUB 637 (12-07) *ECMS Construction Contractor Manual*, page 10-8.

¹⁰⁷ The Comprehensive Annual Financial Report (CAFR) is a set of government financial statements that complies with accounting requirements prescribed by the Governmental Accounting Standards Board (GASB) and provides information about the financial condition of the Commonwealth. It is prepared primarily by accounting staff in the Office of Comptroller Operations and audited by independent auditors. See <https://www.budget.pa.gov/PublicationsAndReports/AnnualFinancialReport/Pages/default.aspx>. The **Single Audit**, previously known as the OMB Circular A-133 audit, is an organization-wide financial statement and federal awards’ audit of a non-federal entity that expends \$750,000 or more in federal funds in one year. It is intended to provide assurance to the federal government that the Commonwealth has adequate internal controls in place, and is generally in compliance with program requirements. See <https://www.budget.pa.gov/PublicationsAndReports/Pages/State-LevelSingleAudit.aspx>.

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Audit, the joint auditors audit the federally-funded Highway Planning and Construction Program. As part of these audits, the joint auditors:

- Test a selection of construction and consultant/engineering procurements by reviewing whether the corresponding:
 - Invitation for Bid was properly prepared and advertised
 - Bids were adequately reviewed and evaluated
 - Lowest bidder was awarded the contract
 - Winning contractor was certified under the Contractor Responsibility Program
- Test a selection of construction and consultant/engineering expenditure transactions by reviewing whether the corresponding:
 - Procurement was properly advertised
 - Lowest bidder was awarded the contract
 - Contractor responsibility file was adequately reviewed
 - Contractor Responsibility Program certification was completed
 - Activities and costs complied with applicable laws and agreements
 - Internal controls were adequately designed and effectively operating
- Review the corresponding monitoring compliance and controls in areas such as project extensions, materials quality assurance, and PennDOT's value engineering program.
- Verify that PennDOT's policies and procedures comply with federal laws and regulations.

We reviewed the joint auditors' working papers, including results and conclusions related to PennDOT's construction procurement for the period of January 1, 2014 through June 30, 2017, in order to place reliance upon their work.¹⁰⁸ The CAFR and Single Audit Reports that were issued for the fiscal years ended June 30, 2014, 2015, 2016, and 2017, contained no findings related to PennDOT construction procurement.¹⁰⁹ Based on these procedures, nothing came to our attention that would warrant additional audit procedures to satisfy our audit objective and we have placed reliance on the scope, quality, and timing of the audit work performed by the joint auditors. Therefore, we conclude that PennDOT's construction procurement procedures are in accordance with federal laws and regulations, the Commonwealth Procurement Code, the Department of General Services' *Procurement Handbook*, and other related policies. Additionally, we conclude that PennDOT adequately monitored its construction contracts in accordance with its policies and procedures.

¹⁰⁸ We verified the joint auditors were independent and qualified to perform the audit.

¹⁰⁹ The joint auditors issued a finding within the Single Audit of the Highway Planning and Construction Cluster for the fiscal year ended June 30, 2018, which was outside of our audit period. The joint auditors found that there was a significant deficiency and noncompliance related to the supporting documentation of conflict of interest statements for the procurement of consultant agreements.

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PennDOT performed its construction contract cost oversight procedures in accordance with its policies; however, its oversight should be expanded.

During the planning phase of a construction project, PennDOT establishes an estimate of how much each project is expected to cost. This estimate is then used to evaluate each prospective contractor's bid. The contractor awarded the project creates a budget based on the bid award amount. Despite comprehensive planning efforts, construction projects commonly go over the budget for many reasons such as unforeseen challenges, design errors, or underestimations of costs needed to complete projects. Although all construction contracts are executed at its Central Office, PennDOT has delegated the responsibility of fiscal control of the projects to its eleven engineering districts.¹¹⁰ When changes in the planned quantities of materials or alterations of the nature of the work occur, the contractors must submit work orders within the ECMS system that are reviewed and approved by the District Executive.¹¹¹ The work orders are categorized as major or minor based on the amount of the cost increase. The District Executive has approval authority for all major and minor work orders for all projects.¹¹² If the project has federal oversight, any major work orders are also transmitted to the FHWA for approval concurrence.

Additionally, PennDOT's Office of Planning, Center for Program Development and Management (Program Center) and the Program Management Committee (PMC) approve cumulative increases in project costs that exceed its established thresholds. The Program Center is the conduit for all program development and management activities, and serves as the clearinghouse for all program actions brought before the PMC.¹¹³ The PMC is the central decision-making body for transportation improvement projects within PennDOT and was structured to cover impacts of changes to the capital funds program. The PMC is comprised of executive staff, including the Secretary of Transportation, Deputy Secretaries, Fiscal Officer, Chief Counsel, and Federal Highway Administration representatives.

If a construction project has an accumulative change greater than \$1 million above the original bid award amount (regardless of the percentage increase) due to additional work orders, the

¹¹⁰ PennDOT's Central Office is located in the Keystone Building in Harrisburg, Pennsylvania and consists of multiple bureaus, centers, and offices. We use this term to differentiate it from the eleven engineering districts.

¹¹¹ Construction project cost adjustments include: price adjustments, such as asphalt and diesel fuel cost differences from bidding to construction; assessments, such as overweight truck assessments; and deficiency adjustments.

¹¹² This is for "additional/extra work" work orders. Work orders related to legal issues are handled differently. Further, PennDOT's Bureau of Project Delivery (BOPD) is responsible for conducting a quality assurance review of a designated percentage of those work orders approved by the District Executive or an authorized delegate, including minor contract changes. The BOPD records and tracks the results of the quality assurance reviews with the ECMS. Quality assurance review results are used to identify future training needs for each District. *Source: Pennsylvania Department of Transportation Project Office Manual, April 2017, Part B, Section 3, pages 1-5, 1-7, 1-31, and 1-32.* We did not perform audit procedures on the quality assurance reviews of work orders. We focused our audit procedures on work orders resulting in dollar and/or percent changes that require Program Center and PMC approval.

¹¹³ Pennsylvania Department of Transportation, *Transportation Planning & Research Program SPR_PL (51)*, July 1, 2014-June 30, 2016, page 147.

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district is required to email the Program Center summarizing the cause of the increase and the status of the project for approval. Also, districts are required to obtain PMC approval under the following two circumstances:

- Any accumulative contract change exceeding 25 percent of the bid price AND exceeding the bid price by \$1 million.
- Any accumulative change greater than \$2.5 million above the bid price requires, regardless of the percentage of the bid price.¹¹⁴

PennDOT completed 369 construction projects with a final cost ranging between \$70,450 to \$201.7 million between July 1, 2016 and June 30, 2017. Out of those 369 projects, we judgmentally selected 40 projects ensuring coverage of all engineering districts. Out of those 40, 8 projects exceeded the thresholds requiring Central Office approval. For these eight projects, we obtained the document submitted to the Central Office, ensured the description on the document was similar to the description on the work order in ECMS, and verified the document was approved by the Program Center. We also obtained the PMC meeting minutes that documented the PMC's approval of the cost increase for four of the eight projects that exceeded the PMC approval thresholds. Therefore, it appears PennDOT is performing its oversight in compliance with its written policies and procedures.

Additionally, in February 2016, PennDOT established an oversight procedure to ensure any project within ECMS with a cost increase over the thresholds were properly approved by the PMC. Each month the Bureau of Project Delivery (BOPD) generates a report listing any Maximum Change Amounts within ECMS that are greater than \$1 million and a subset report listing Maximum Change Amounts within ECMS that are greater than \$2.5 million. The Maximum Change Amount is the maximum amount of project cost increases that can be approved at the district level. BOPD provides the Program Center with data to inform them of potential PMC actions needed.

¹¹⁴ Once the Program Center approves an increase to a project above the bid amount, any accumulative change greater than \$1M over the bid price plus the PMC approved increase will require another PMC approval.

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We obtained the BOPD monthly reports for July 2016, October 2016, and June 2017. We reviewed the dollar and percent differences between the original bid award amount and the current cost (including additional work orders) on the monthly reports and identified the projects which met the established approval thresholds. We obtained the documents provided to the Central Office by the appropriate district, reviewed the justification documented to determine reasonableness, and verified those projects that met the PMC approval thresholds were identified by BOPD for referral to PMC.¹¹⁵ For all three months reviewed, it appears that PennDOT's monthly oversight of construction project cost increases was performed and that any projects on the report exceeding the thresholds were properly presented to the PMC.

Overall, we found that PennDOT followed its policies and procedures for oversight of increase costs. However, we noted that its Central Office approval thresholds should be strengthened. Based on our review of the dollar and percent difference between the original bid award amount and the final cost of the project, we found that 213 of the 369 projects, or 58 percent, were completed at or less than the original bid amount. The actual costs of the remaining 156 projects exceeded the original bid award amount. Only 15 of the 156 projects had increased costs over \$1 million and were brought to the attention of the Program Center. We found several projects where the percentage increase was much more significant than the dollar amount increase. Three examples are included in the following table.

Original Bid Award	Actual Cost	Dollar Difference	Percent Difference
\$1,934,146	\$2,593,457	\$659,311	34%
\$ 798,207	\$1,210,161	\$411,954	52%
\$ 503,498	\$ 812,369	\$308,871	61%

Source: This table was created by the Department of the Auditor General staff from data provided by PennDOT management. This data is of undetermined reliability as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our finding and conclusions.

Since the cost increase for these projects was under \$1 million, it did not meet the thresholds and PennDOT's Central Office did not require justification for a large percent increase. PennDOT management stated that it manages risks by applying more oversight to the higher profile projects. Additionally, management explained that the dollar threshold used to be \$500,000 and the PMC would have been inundated with requests for approximately 20 percent of all projects.¹¹⁶ Management revised its procedures to lower the amount of oversight it had over "nominal" increases. Nominal dollar increases can still be significant relative to the individual project and monitoring of these high percent increases could further detect problems. For instance, for smaller contracts, prospective contractors could underbid the estimate and then

¹¹⁵ Due to the ECMS system being real-time, we were unable to determine the completeness of the BOPD monthly reports.

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double the cost through work orders. Although all individual work orders are subject to review by the Central Office during its quality assurance reviews, it does not ensure adequate oversight.

Recommendation for Finding 5

We recommend that PennDOT:

1. Improve its Central Office oversight of construction cost increases below its established thresholds and/or consider revising the thresholds to encompass low dollar projects with high percent increases.

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Finding 6 – PennDOT’s purchasing card process is generally in compliance with the Commonwealth’s Procurement Code; however, its agency-specific Quality Assurance Review process should be improved.

A purchasing card is a credit card issued in the name of a Commonwealth employee (cardholder). Purchasing cards are used throughout state agencies to serve as a more convenient and efficient method of paying for goods and services. In addition to the standard purchasing cards, there are utility purchasing cards and agency lodging cards. Utility purchasing cards are designated for payments charged to specific utility vendors if the annual utility expenditure or any one utility invoice exceeds \$10,000. An agency lodging card is assigned to each state agency, specifically used for certain overnight lodging and tax charges totaling \$10,000 or less. Lodging costs that exceed \$10,000 must be competitively bid.

All purchasing card transactions must be made in accordance with the Department of General Services’ *Procurement Handbook* and Pennsylvania Governor’s Office Management Directive 310.23 Amended.¹¹⁷ Additionally, PennDOT has a Purchasing Card Manual and various directives that outline the policies, procedures, and processes that govern the usage of the purchasing cards. The following table shows examples of authorized and unauthorized uses for a standard purchasing card. These lists are not all inclusive.

Authorized Uses	Unauthorized Uses
<ul style="list-style-type: none">• Purchases up to \$10,000 for supplies and services, including purchases from the Department of General Services statewide contracts, when the contract language specifically allows for the use of the purchasing card• Out-Service Training costs that do not exceed the small no-bid procurement threshold, excluding travel expenses and academic credit courses• Monthly utility expenses under \$10,000	<ul style="list-style-type: none">• Travel and/or entertainment expenses• Gasoline at the pump• “Cash back” on any transaction• Cash advances, gift certificates, gift cards and/or bonus points towards any personal gains• Any purchase with a total cost exceeding \$10,000• Split purchases (artificially dividing a single procurement into multiple smaller purchases in order to circumvent the Procurement Code or transaction limits)

Source: Created by the Department of the Auditor General staff from PennDOT’s Purchasing Card Manual.

We reviewed individual purchasing card transactions and reconciliations as well as PennDOT’s agency oversight of its purchasing card program. The results of our audit procedures are presented in the following sections.

¹¹⁷ The Governor’s Office Management Directive 310.23 Amended was revised on April 5, 2013, and further established the policy, responsibilities, and procedures for the operation of the Commonwealth’s purchasing card program.

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Individual Purchasing Card Transactions and Reconciliations

Every purchasing card transaction must be approved by the cardholder's supervisor prior to making a purchase. On a monthly basis, the cardholder is responsible to reconcile the receipts/invoices from the purchases to the bank statement (known as the monthly memo statement).¹¹⁸ The cardholder then completes and signs a reconciliation checklist to document this process. Subsequently, a reviewer ensures that the cardholder's reconciliation checklist was accurately completed and signs it to indicate all purchases were in compliance with the governing law and policies.¹¹⁹

Each of PennDOT's eleven districts and five deputates has a purchasing card coordinator that is responsible to conduct a review of at least 20 purchasing card transactions for each of its cardholders every two years. Each district has county offices and a district office. The following table shows the number of cardholders within each district/deputate.

District/Deputate	Number of Cardholders
District 1	27
District 2	15
District 3	28
District 4	19
District 5	21
District 6	16
District 8	27
District 9	23
District 10	22
District 11	17
District 12	14
Administrative/Executive Office Deputate	12
Highway Administration Deputate	4
Planning Deputate	1
Multimodal Deputate	2
Driver and Vehicle Services Deputate	7
Total	255

Source: Created by the Department of the Auditor General staff from PennDOT's Purchasing Card Organization Chart.

¹¹⁸ The monthly memo statement is a summary of all transactions that have taken place during the prior billing cycle including transaction dates, posting dates, transaction descriptions, reference numbers and transaction amounts.

¹¹⁹ According to PennDOT, the cardholder's reviewer may or may not be the cardholder's supervisor. A reviewer is a PennDOT employee responsible for reviewing the cardholder's purchases to ensure that they are in compliance with PennDOT procedures and policies.

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We judgmentally selected and reviewed 60 of the 256,681 PennDOT purchasing card transactions for the period of August 17, 2015 to June 30, 2017.¹²⁰ We determined whether the transaction was in compliance with the law and applicable policies, was approved by a supervisor prior to purchase, and that a reconciliation checklist was completed/signed by the cardholder and reviewed/signed by the reviewer for the month in which the transaction occurred. We found that the 60 transactions and related approvals were proper with the following exceptions:

- One transaction did not have proper supervisor approval.
- One monthly reconciliation checklist could not be located.
- One transaction was for lodging for three weeks of training for maintenance foreman positions. The lodging was originally competitively bid and a purchase order was issued. Subsequently, the second and third weeks of classes were deferred due to the state budget impasse. When rescheduling, the lodging for the third week of make-up classes was included on the purchase order with the classes. However, the second week of lodging was incorrectly secured using the agency lodging card, which has a limit of \$10,000. The actual purchase was for \$10,337.12. The transaction was approved in an email by a supervisor prior to the purchase. PennDOT management stated it could not determine why the second week of rooms was not included on the same purchase order as the third week of rooms. PennDOT management stated that it was aware of this error immediately after the transaction occurred and took steps to ensure this would not happen again. However, PennDOT could not provide evidence to support this statement.

Therefore, it appears PennDOT's purchasing card transactions and reconciliations were generally in compliance with the Pennsylvania Procurement Code and the Governor's Office Management Directive 310.23 Amended, as well as PennDOT's internal policies, with few exceptions.

PennDOT Agency Oversight

PennDOT has an agency purchasing card coordinator (agency coordinator) that oversees the purchasing card program. The agency coordinator conducts a quality assurance review (QAR) to determine compliance with policies and procedures. PennDOT's QAR process is not specifically discussed in Management Directive 310.23 Amended. It is PennDOT's internal process used to satisfy the agency's purchasing card monitoring responsibilities.¹²¹

¹²⁰ This data was provided by PennDOT management and is of undetermined reliability as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our finding and conclusions.

¹²¹ Management Directive 310.23 Amended outlines the responsibilities of the agency coordinator, including monitoring the administration of the purchasing card program. Examples of these monitoring responsibilities include that the agency coordinator must: (1) Monitor cardholder purchases through sampling electronic data provided by the card issuer; (2) Certify quarterly that all purchasing card receipts have been reconciled each month to the memo statements provided by the card issuer; and (3) Ensure that the agency implements corrective action plans in cases of cardholder violations.

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According to PennDOT's Purchasing Card Manual, the agency coordinator is responsible to conduct on-site QARs in accordance with an established schedule ensuring all districts and deputates are reviewed at least once in a two-year cycle. This includes the review of reconciliation files for each cardholder within the county/district office/bureau to ensure that all purchasing card purchases are in compliance with applicable laws and regulations.¹²² PennDOT's Agency Purchasing Card Coordinator Quality Assurance Reviews policy (EUP PCARD 7) reiterates this requirement. Based on the way these policies are written, the agency coordinator should be reviewing all cardholder reconciliations in all districts/deputates. However, PennDOT management stated that, in practice, the agency coordinator chooses one to two months of transactions to review within a district or depute and within one district the agency coordinator chooses one or more counties or a county and the district office to review. This means that not all counties within a district are reviewed within the two-year cycle and not all purchasing card transactions are reviewed. While the selection approach and number of items to review is PennDOT management's decision, the extent of review work specified in the Purchasing Card Manual and policy and the extent of the review work that is actually performed should agree.

The agency coordinator begins the QAR process by sending a formal memo to the district/deputate to schedule a QAR. In preparation for the QAR, the agency coordinator reviews the past QAR, past district/deputate level QARs, listing of cardholders, and monthly reconciliation reviews. While on-site the agency coordinator reviews the reconciliation files for each cardholder within the county, district office, or depute being reviewed for a specified time period (usually about two months).

Once the QAR has been completed, the agency coordinator prepares a final written report that identifies any deficiencies noted and whether any purchasing cards were suspended or cancelled. The report is signed by PennDOT's Deputy Secretary for Administration. If any deficiencies were identified, the district/deputate is required to prepare a corrective action plan. The district/deputate personnel are responsible for reviewing the progress of implementing items in the corrective action plan and reporting the resolution of the issues to the agency coordinator.

Based on our discussions with PennDOT management and our review of related documentation, we found several weaknesses with the design of PennDOT's QAR process, including a lack of:

- Written procedures (such as a desk manual) that explain in detail what the agency coordinator is responsible for reviewing while on-site, including how the procedures are to be performed and documented, to ensure that the review is comprehensive. PennDOT management indicated that its current policy serves as its written procedures and adequately outlines the QAR process. However, PennDOT's policy only contains the general steps performed with little to no details. For instance, the policy vaguely states

¹²² Pennsylvania Department of Transportation Bureau of Office Services, Purchasing Card Manual, page 2-11.

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the agency coordinator conducts QARs “throughout the year” and “reviews the reconciliation files” for compliance.

- A tracking sheet of previously visited districts/deputates to ensure that all were visited in a timely manner and the QAR process was completed through the resolution of the corrective action plans. This tracking would also assist in planning the on-site visits for the upcoming two-year cycle of QARs. Management indicated that its planning process is performed throughout the year and they have undocumented conversations about which locations to visit based on need or risks. Without documenting the tracking of the QARs from planning through completion, there is no evidence PennDOT had oversight of the process throughout the year. Without proper oversight, the potential for errors, omissions, and untimely actions increases.
- A standard checklist or other monitoring tool used to formally document what procedures were performed. A standard checklist provides a basic outline of the work to be performed, including all or most of the important steps to be carried out, along with their sequence, which the user can modify if necessary. Management stated that the agency coordinator takes informal notes during the on-site visit that are referenced to write the final report. However, the agency coordinator during our audit period no longer works for PennDOT and these informal notes could not be provided.
- Documentation showing that the corrective action plan was reviewed and accepted by PennDOT.¹²³ PennDOT management stated that this may be done on occasion and it has had discussions about formally requiring it in the future.
- Documentation showing the status of any issues that were identified. Management stated this process is performed, but not formally documented.

Overall, PennDOT management indicated that its Purchasing Card Manual and corresponding directives/publications are sufficient and its processes were being followed. Additionally, PennDOT management stated that the purchasing card process is reviewed at an individual level and at the district/deputate level and therefore, a third level review is not as crucial as it would be if no other reviews were occurring. We *disagree*. These reviews are integral to overseeing the decentralized purchasing card program and whether the districts/deputates are operating in accordance with policies and procedures.

Although it has delegated certain purchasing card review procedures to districts, it remains PennDOT’s responsibility to ensure state funds are being spent in accordance with the Purchasing Card Manual. Purchasing card programs are inherently risky and, without properly

¹²³ During our review of QAR documentation, we did note one instance where approval of the corrective action plan was formally approved through a letter. However, PennDOT management acknowledged that this was not standard practice during our audit period.

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designed controls, the chance of error, abuse, and/or fraud is increased. According to the Standards for Internal Control in the Federal Government, commonly known as the Green Book:

[E]ffective documentation assists in management’s design of internal control by establishing and communicating the who, what, when, where, and why of internal control execution to personnel. Documentation also provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors.¹²⁴

Additionally, management should clearly document its control activities “in a manner that allows the documentation to be readily available for examination.”¹²⁵

Without adequately designed controls that are effectively implemented, PennDOT has little assurance that the process is being completed properly and sufficiently documented. The effect of these control weaknesses, including errors/oversights and inadequate documentation, were demonstrated in the results of our test procedures as follows.

In lieu of a formal schedule or tracking sheet, PennDOT compiled a list of the 32 QARs the agency coordinator completed between January 1, 2014 and June 30, 2017.¹²⁶ Based on this self-reported list, we found that there were no QARs performed within Districts 10 and 11, as these districts were not listed on the log. PennDOT management stated it made a decision to focus its resources to review fraud allegations within District 6 instead of performing QARs at every district as required by the Purchasing Card Manual. This means 2 of the 11 districts, or 18 percent, were not reviewed for at least three years. Management indicated that the reviews performed by the districts/deputates during this time period were relied upon to provide adequate assurance of compliance. Although it is reasonable for PennDOT to direct resources to an investigation of fraud allegations, PennDOT’s decision to solely rely on district reviews for these two districts for at least a three-year period is concerning considering the discovered fraud in District 6 was perpetrated at the district level.

We judgmentally selected 6 of the 32 QARs listed to review, including 3 districts and 3 deputates.¹²⁷ We requested to review the QAR scheduling letter, final report, and corrective

¹²⁴ United States Government Accountability Office Standards for the Internal Control in the Federal Government by the Comptroller General of the United States dated September 2014, page 29, <<https://www.gao.gov/assets/670/665712.pdf>> (accessed April 9, 2018). The Pennsylvania Governor’s Office issued Management Directive 325.12 Amended, effective May 15, 2018, which adopted these standards for implementing an effective internal control system for all Commonwealth agencies.

¹²⁵ Ibid. at page 48.

¹²⁶ QARs should be performed on each of the 67 counties, the 11 district offices, and the 5 deputates (totaling 83 areas).

¹²⁷ This data was provided by PennDOT management and is of undetermined reliability as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our finding and conclusions.

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action plans. We found two of the six corrective action plans were not submitted in the prescribed timeframe. The remaining four corrective action plans were submitted timely.

If PennDOT's QAR process was more clearly defined in its policies and procedures, including what documentation should be maintained for each QAR, these errors could have been prevented or at least identified and corrected. Additionally, PennDOT management should have oversight of the agency coordinator and the overall QAR process to ensure it is operating effectively. Although the vast majority of the purchasing card transactions we reviewed (95 percent) were authorized, reviewed, and documented in compliance with PennDOT's policies, there remain instances of errors/oversights and inadequate documentation. PennDOT's centralized QAR process serves as an important control over the districts'/deputates' purchasing card transactions and oversight duties. The QAR process should be strengthened to minimize errors and mitigate the risks of abuse or fraud at the district/deputate level.

Recommendations for Finding 6

We recommend that PennDOT:

1. Ensure all purchasing card transaction approvals are adequately reviewed and documented in accordance with policy.
2. Require that all documents and records relevant to the purchasing card transaction process are properly stored and maintained.
3. Redesign its policy and procedures for Quality Assurance Reviews performed by the Agency Purchasing Card Coordinator, to include management's oversight of the Agency Purchasing Card Coordinator and the overall Quality Assurance Review process, and update its written policy and procedures accordingly.
4. Implement the use of a tracking sheet (or other mechanism) to document completed Quality Assurance Reviews and assist in planning future Quality Assurance Reviews to ensure all counties within a district, all district offices, and all deputates are regularly reviewed.
5. Implement the use of a tracking sheet (or other mechanism) to track the progress of current Quality Assurance Reviews, including the resolution of all identified deficiencies.
6. Implement a standard checklist or other monitoring tool to formally document what procedures were performed during the Quality Assurance Review.

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7. Document PennDOT's review and acceptance of district/deputate corrective action plans.
8. Obtain and maintain documentation showing the status of identified deficiencies and whether the deficiencies were adequately resolved.

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Status of Prior Audit Findings

Our prior audit of the Pennsylvania Department of Transportation (PennDOT) dated January 10, 2013, covered the period July 1, 2007 through June 30, 2010, and contained a total of six findings and 16 recommendations related to its Issuing Agent Program. In the sections below, we provide the status of these findings and offer additional recommendations, when applicable, to eliminate the deficiencies identified.

Prior Finding One – PennDOT failed to successfully use its most important agent oversight tool – audits. Consequently, PennDOT did not audit a substantial majority of its agents and did not conduct effective audits on those agents who were audited. (Partially Resolved).

PennDOT's Bureau of Motor Vehicles (BMV) is responsible for the monitoring and oversight of full and card agents. Full agents are private contractors with PennDOT who provide driver licensing, vehicle registration, and titling services to the public. Card agents are also private contractors with PennDOT, but provide less services to the public, such as transferring driver's license plates from one owner to another. We found that PennDOT's audit unit, which PennDOT formally established in January 2009, was not sufficiently staffed, with only three auditors to conduct audits of more than 6,000 card and full agents. Each auditor covered a different region within Pennsylvania. We also found the following:

- PennDOT failed to provide an audit manual and failed to adequately train audit staff.
- Audit documentation was insufficient to ensure that the auditors properly completed the audit procedures.
- PennDOT auditors failed to ensure that audit deficiencies were corrected.
- PennDOT's process for selecting agents to be audited excluded several segments of the total population, including agents who are not open during normal business hours.
- PennDOT's listing of completed audits of agents was inaccurate; it contained duplicate entries.

We recommended that the BMV: (1) Increase the number of contracted agent auditors, require auditors to travel overnight as warranted, change auditor hours to allow audits in the evening, increase the number of audits performed, and include all card and full agents in the population from which it selects audits; (2) Develop a standard curriculum that, at a minimum, includes ongoing training in basic and bi-annual advanced agent training, fraud training, and training in agent contract provisions, and monitor auditor training to ensure that each auditor is receiving the required training; (3) Ensure that its contracted agent audit procedures are standardized in a comprehensive audit manual, include verification of all contract provisions, and include specific steps as to how auditors should follow up on contracted agent audit deficiencies; (4) Ensure that

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documentation of contracted agent audits include, at a minimum, all audit steps performed and the results of each step and any follow-up of audit deficiencies; and (5) Immediately institute procedures to ensure that its contracted agent audit lists are complete and accurate.

Status as of this audit

As of March 2017, PennDOT employs eight agent auditors, which is more than double what it had in the previous audit. As a result, the number of counties each agent auditor is responsible for has been reduced. Therefore, according to PennDOT management, overnight travel is rarely needed; however, it is permitted as necessary. To verify this statement, we obtained two examples of travel expense vouchers (TEV) that indicated the agent auditors travelled overnight during the fiscal year ended June 30, 2017. PennDOT management also stated that the working hours of the agent auditors are adjusted as needed to complete audits of agents with evening business hours. We reviewed two examples of audits that were noted as being completed in the evening during the fiscal year ended June 30, 2017.

According to PennDOT's audit listing (log), which is used to track agent audits, it completed more than 3,000 agent audits (including both card and full agents) during the 18-month period of January 2016 through June 2017. However, as explained in the following paragraph, this number is overstated. Additionally, PennDOT does not have adequate procedures in place to ensure all agents are being proactively audited through regular administrative audits.¹²⁸ According to PennDOT management, the administrative audits are not performed on a routine cyclical basis and auditors randomly select which agents to audit within their respective region each year.¹²⁹ Some agents may never have an administrative audit while under contract with PennDOT. Therefore, prior audit Recommendations 1 and 5 were **not fully implemented**.

With regard to the audit log, PennDOT management stated that enhancements to the Dealer Contract Database in 2014 enabled all audit reports to be tracked in one location to help eliminate the duplicate entry of audit reports. However, based on our audit procedures, we found that duplicate entries still exist. We sorted the list of audits by agent name, type of agent, type of audit, and date the audit was conducted in order to determine whether the audit log contained duplicate entries. We found 28 instances where there were two audit log entries containing the

¹²⁸ According to PennDOT's Publication 463, such administrative audits include "unannounced visits to audit, observe and inspect" agent service operations and "the inspection may be limited to examination of the records which are subject to the record keeping requirement of...[the] Agreement and Department regulations or, based on the initial findings, may be expanded to include investigation of violations of the terms of this agreement or Department regulations." *Source:*

<<http://www.dot.state.pa.us/Public/DVSPubsForms/BMV/BMV%20Publications/pub463.pdf>> (accessed December 17, 2018). In addition to administrative audits, PennDOT also conducts other reactive or demand-based audits including: (1) A 30-day audit is conducted on all new agents approximately 30 days after the agent has ordered PennDOT materials to ensure that the agent is in compliance with PennDOT requirements; (2) A requested audit or complaint-based audit; and (3) A re-audit which is performed to follow-up to a previous audit which had findings.

¹²⁹ PennDOT's use of the word randomly equates to haphazardly in auditing vernacular, or without using a random number generator.

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same information. We reviewed 24 of these 28 instances — 12 instances from 2016 and 12 instances from 2017. We found 11 of the 24 instances were under the same name but were performed at different locations with different Dealer Identification Numbers. The remaining 13 instances reviewed were true duplicate entries. Further, we reviewed all six of the card agent audits that the log indicated were completed between January 1, 2016 and June 30, 2017, and found only one was an actual completed audit with documented audit procedures and results. The other five simply had notes in the system indicating that nobody was there, there was a change in location, or they were just picking up/dropping off products. In response to our test results, PennDOT management stated that the duplicate entries were a result of the agent auditors either resubmitting audits, logging audits after a failed agent visit, incorrect address for that agent, confirmation errors, business hour rescheduling, incorrect addresses and locations for the agent, and auditor error. Therefore, the log of agent audits is not complete or accurate.

Since our prior audit, PennDOT created its Regulated Client Audit Manual (Audit Manual), which details the standardized agent audit procedures. We reviewed the most recent version of the Audit Manual, dated 2016, and found it was not comprehensive and lacked sufficient details regarding key procedures used in the agent audit process. Specifically, we found that the Audit Manual did not adequately address how auditors should document and follow-up on deficiencies identified during the audit and how the audit supervisor should conduct reviews of the audit results and document his/her review and approval.

PennDOT management indicated that it developed auditor training guidelines; however, they were not formally documented in policy. PennDOT management explained the courses available for auditor training, how it tracks the training courses completed in the Learning Support System (LSO), and that the LSO record is reviewed as part of the annual Employee Performance Review process. Our review of the PennDOT auditor training records revealed that all 8 of the auditors attended the training courses indicated as required per PennDOT management for the 2016 and 2017 calendar years.

PennDOT management explained the agent auditing process and indicated auditors use an audit checklist to document the procedures performed. We compared the audit procedures on the agent audit checklist to the provisions within the agent contracts and found that there is now a procedure to verify the agent complies with each of the provisions within the agent contracts.

The results of the audit checklist are summarized and documented in a separate audit results section at the bottom of the checklist. PennDOT management stated that specific procedures related to following up on identified agent deficiencies are now systematically tracked within PennDOT's Dealer Contract Database. Each month the auditors run a report in the database that indicates which agents have not resolved the identified deficiencies by the due date. If deficiencies continue to be unresolved, PennDOT may issue progressive sanctions.

We selected 40 of the 3,188 agent audits recorded as performed on the audit log between January 1, 2016 and June 30, 2017, to determine whether the audit procedures were being adequately

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performed and sufficiently documented. We found PennDOT's agent audit procedures to be inadequate and poorly documented. Out of the 40 agent audits reviewed, we found 8 were not true audits. Specifically, five "audits" were picking up documents/materials for agents which had closed or gone out of business and three simply recorded that the agent was not open for business and therefore the audit could not be conducted. In addition to the issues with duplicable entries discussed above, this is further evidence that the agent audit log maintained by PennDOT is inaccurate.¹³⁰

Out of the 32 actual audits, 11 audits had deficiencies noted within the audit checklist. However, these deficiencies were not included in the audit results section. According to PennDOT management, the deficiencies were resolved during the audit process. Once a manager approves the resolution of the deficiencies, only the final results stating that no further action is necessary are saved in the system. There is nothing that states the deficiencies were adequately resolved other than the evidence that the supervisor and manager approved the audit results. Without adequately documenting this within the system or through other audit documentation, it appears on the surface that the deficiencies were ignored. The remaining 21 had adequate documentation of the audit procedures, audit results, and supervisor review.

In summary, PennDOT did not have a comprehensive audit manual to document each step in the audit process and did not include documentation of the resolution of identified deficiencies or report the identified deficiencies. Additionally, PennDOT's supervisory review process of agent audits is inadequate. Although PennDOT ensured its auditors received training, it was clearly inadequate based on the amount of errors we found. Therefore, prior audit recommendations 2 through 4 were **not adequately implemented**.

Recommendations

We recommend that PennDOT:

1. Consider developing and implementing an agent audit selection methodology that ensures all agents are audited on a routine or cyclical basis.
2. Develop and implement procedures to ensure the audit log within the Dealer Contract Database is complete, accurate, and only contains entries for actual audits and not entries for other events/situations, such as picking up materials or the inability to complete an audit.

¹³⁰ The audit log provided by PennDOT management is not sufficiently reliable for completeness or accuracy. Our review of the audits are limited to the 46 audits reviewed (40 full agent audits and 6 card agent audits) and should not be projected to the entire population of audits.

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3. Redesign the agent audit process to ensure any deficiencies noted on the auditor checklists are included in the results of the audit and/or documented as adequately resolved.
4. Improve the audit supervisory review process to ensure the auditors are accurately completing the audit checklists and adequately documenting audit results.
5. Revise the Regulated Client Audit Manual to include all requirements and processes related to agent audits, including, but not limited to the follow-up and resolution of identified audit deficiencies by auditors and the review and approval of the results by the supervisors.
6. Continue to adequately train auditors and audit supervisors in their respective job duties and the audit process.

Prior Finding Two – PennDOT’s Bureau of Driver and Vehicle Program Services should improve its oversight of online messengers. (Partially Resolved).

In our prior audit, we found that PennDOT’s Bureau of Driver and Vehicle Program Services was understaffed, which caused some online messengers to go unaudited. Online messengers are private businesses that provide driver licensing and vehicle registration services through an online connection with PennDOT. Specifically, we reported that only one auditor was assigned to complete audits of over 200 online messenger businesses located in 56 of Pennsylvania’s 67 counties. However, as reported in our prior audit, the assigned online messenger auditor was completing approximately 60 audits annually during the period July 2007 through September 2010. Additionally, we found that the online messenger auditor did not receive annual training in fraud detection. Also, we reported that PennDOT failed to ensure that online messenger audit deficiencies were corrected. For example, PennDOT could not provide documentation to confirm that the cited online messengers had their uncertified employees subsequently take and pass the required certification exam. Finally, we found that PennDOT did not ensure that online messengers developed required ongoing employee training.

We recommended that PennDOT’s Bureau of Driver and Vehicle Program Services: (1) Consider increasing the number of online messenger auditors; (2) Increase the number of online messenger audits performed annually (3) Ensure that online messenger audit procedures include specific steps for auditors to follow up on all audit deficiencies with guidance on when and how to document the follow-up; and (4) When conducting onsite audits, ensure that each online messenger has an ongoing training plan in place and that each online messenger employee is completing not just initial training, but ongoing training.

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Status as of this audit

During this audit period, we found that PennDOT continued to have only one auditor perform online messenger audits. According to PennDOT management, there was a vacancy in the online messenger auditor position during that timeframe, which caused fewer online messenger audits to be completed. According to its audit log, PennDOT completed 51 online messenger audits in the 18-month period of January 1, 2016 through June 30, 2017. However, we determined that the audit logs are not reliable, as discussed previously. Therefore, prior audit recommendations 1 and 2 were **not implemented** by the end of our audit period. Management stated that beginning in 2018, the online messenger audits were performed by the eight field auditors. However, we did not verify this since it occurred after our audit period.

PennDOT management indicated that it implemented audit procedures on how and when to follow-up on identified deficiencies and verbally explained them to us; however, based on our review of the Audit Manual and the audit checklists, these procedures were not documented. Therefore, prior audit recommendation 3 was **not implemented**.

PennDOT revised its online messenger audit checklist to include verifying each online messenger has an adequate ongoing training plan in place for each of its employees. We reviewed the current online messenger audit checklist and found a procedure that requires auditors to verify a training certificate is on file for all employees employed for one or more years and the training was completed within the prior two years. Therefore, prior audit recommendation 4 **was implemented**.

Recommendations

We recommend that PennDOT:

1. Assign an adequate number of trained auditors to conduct online messenger audits to ensure each online messenger is audited within a timely manner.
2. Revise its Regulated Client Manual to include detailed procedures for online messenger audits, including specific steps to follow-up on all audit deficiencies, and to enhance the related supervisory review process.

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Prior Finding Three – PennDOT said that “market forces” would make agents charge reasonable fees to customers. Yet PennDOT neither defined reasonable nor found out what fees were actually charged, thus giving customers no means to judge the fees nor to comparison shop. (Resolved)

PennDOT customers have the option of going directly to PennDOT for services or to use one of PennDOT’s contracted agents for services. The contracted agents are located throughout the Commonwealth and may be more convenient for some customers. However, PennDOT allows the agents to charge an additional “reasonable” service fee. In our prior audit, we found that PennDOT did not define what amount is reasonable and was unaware of the amount of fees charged by each agent. According to PennDOT management, the additional service fee should be decided by the agent and would be market driven. However, customers may not realize agents charge more fees and PennDOT’s website did not include a listing of all agents if a customer wanted to comparison shop.

We recommended that PennDOT establish an upper limit to the fee that its contracted agents can charge for each PennDOT service that the agent provides.

Status as of this audit

PennDOT management maintains that agent fees for services should continue to be market driven and that PennDOT would not establish an upper limit to the fee agents can charge for services. PennDOT continues to claim that market forces will ensure that fees charged by its contracted agents will be reasonable. While we question this claim, we understand that it would be difficult to establish an upper limit to the fee that agents can charge, as some agents bundle their services while others do not.

We acknowledge that PennDOT took the extra step in alerting Pennsylvania consumers that contracted agents can and will charge an additional fee. In March 2015, PennDOT added this language to its website and agent service related fact sheets, encouraging consumers to compare prices of offered services by contracted agents by contacting the agents directly. Additionally, PennDOT has a listing of its agents on its website. We are satisfied with PennDOT’s actions regarding the education of consumers on agent fees. Therefore, this prior audit finding is considered resolved.

Prior Finding Four – PennDOT should make information pertaining to its contracted agents more easily accessible to the public. (Partially Resolved)

We found that there were no publicly accessible listings of all PennDOT agents. At the time, PennDOT’s website only had a listing of online messengers. Additionally, we reported that

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PennDOT could do more to make information available to the public, especially for those customers who want to comparison shop between multiple agents.

We recommended that PennDOT: (1) Make a comprehensive listing of all agents available to the public, which at a minimum, should include the agent's name, address, and the PennDOT services provided; and (2) Consider including a provision in its agent contract that all agents with a website must post current fee information on each PennDOT product offered.

Status as of this audit

We verified that PennDOT's website currently includes listings by county of all of its agents, including full agents, online agents, card agents, and online messengers.¹³¹ Each listing provides the agent's name (in alphabetical order), street address, and phone number. Additionally, the website lists services provided by each agent. For example, the services listed under agents include:

- Completion of Vehicle Title Applications
- Issuance of Temporary Registration Plates
- Issuance of In-transit Registration Plates
- Transfer of Vehicle Plates
- Completion of Duplicate Vehicle
- Title Applications

Therefore, prior audit recommendation 1 **was implemented**.

PennDOT management stated that it revised the agent contracts to require the agents to post a sign at its location listing the fees for the five most common transactions, but it did not require fee information to be posted on an agent's website. Management indicated that it plans to update this requirement in the future to require each agent to post on its website the fees for the five most common transactions. Therefore, prior audit recommendation 2 was **not implemented**.

Recommendation

We recommend that PennDOT:

1. Include a provision in its agent contracts explicitly requiring that all agents with a website must post current fee information on each PennDOT product offered.

¹³¹ <<http://dmv.pa.gov/Information-Centers/Business-Partner/Pages/Authorized-Agents-Messengers.aspx>> (accessed August 7, 2018).

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Prior Finding Five – PennDOT’s agent contracts should be strengthened so that required training is completed before any agent provides services. Furthermore, PennDOT needs to improve its oversight of its contracted agents’ training requirements. (Partially Resolved)

We found that as a result of lenient contract language, PennDOT did not require its agents to complete training prior to doing business with the public. The contract allowed agents and their employees to not complete training for up to one year after the agent provided services to customers. By not requiring completion of an approved training course before contracted agents and their employees start to process transactions, PennDOT cannot assure, either itself or its customers, that its agents and their employees have the knowledge to properly complete transactions. We also found the following:

- PennDOT failed to track agent training, so it was unaware if all of its agents received the required trainings. PennDOT indicated that it was the agents’ responsibility to comply with the contract training requirements, for both initial and ongoing training.
- When PennDOT identified cases during audits where the agents did not receive the required training, PennDOT did not impose sanctions or penalties or, in most cases, follow-up to ensure the agents ultimately completed the training requirements.
- PennDOT failed to provide adequate information to agents on all available training, including training provided by certified trainers.

We recommended that PennDOT: (1) Amend its agent contracts to: (a) Require contracted agents and their employees obtain basic agent training before they provide PennDOT services, (b) Include a sanction to prohibit agents and employees who do not obtain the required bi-annual training from performing PennDOT services until training documentation is provided, and (c) Require agents to provide PennDOT with documentation certifying that the agent and their employees received all basic and bi-annual training; (2) Establish a database of agent training in order to monitor all agents’ compliance with the training requirements; (3) Follow up with agents when noncompliance with training requirements is identified to ensure that the training is received, and if necessary impose sanctions on those agents who continue to violate the training provisions of the contract; and (4) Ensure that its contracted agents are informed of all available means of obtaining the required training, including the online option provided by the certified trainers.

Status as of this audit

We verified that PennDOT now maintains a list of certified agent trainers, including contact information and tentative training schedules, on its website for agents to access. Therefore, prior audit recommendation 4 **was implemented**.

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PennDOT revised its full agent contract to include a provision to require the agent and its employees to complete the Agent Services Basic Title and Registration training course prior to providing services and advanced training biannually thereafter. The contract also states that if the agent fails to meet these requirements, PennDOT would suspend the agent's Certificate of Authorization until the agent and/or employees complete the required training courses.

PennDOT management stated that the training providers submit their attendee rosters to PennDOT's Agent Services Training Coordinator (Coordinator) for full and card agents who take either a classroom or online training course. Based on these rosters, the Coordinator (and staff) updates the Dealer Contract Database. PennDOT then relies on its agent auditors to ensure the training requirements are being met. If the training requirements were not satisfied, the auditor indicates that follow-up is required.

We selected five full agents from PennDOT's listing of agents on its website. Three of those agents had current contracts with PennDOT. We verified that all three had adequate agent training information recorded in the Dealer Contract Database, including at least one advanced training within the past two years. The other two agents that did not have current contracts with PennDOT are discussed in the status of *Prior Finding Six*.

Although PennDOT has made improvements to its training requirements and its full agent contract, PennDOT acknowledged that it did not update its card agent contract because it focused on the contracts with full agents that maintain secure PennDOT products, such as temporary rear window permits. Management indicated that it intends to review the Card Agent Services Contract for future enhancements. Therefore, prior audit recommendation 1 **has not been fully implemented.**

Further, PennDOT is still relying on its audits to detect deficiencies in training. While we verified that auditors adequately followed up on two full agent audits identified by PennDOT management where a deficiency in training was found, as noted above, PennDOT's current agent audit process does not ensure that all agents are audited on a routine or cyclical basis. Until it improves its audit process, PennDOT does not have adequate procedures in place to ensure agents are properly trained. Therefore, prior audit recommendations 2 and 3 **have not been fully implemented.**

Recommendations

We recommend that PennDOT:

1. Amend its card agent contracts to require card agents and their employees to obtain basic training before providing PennDOT services and to specify sanctions to be applied for card agents that do not comply with training requirements.

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2. Design and implement adequate audit procedures to ensure full agents/employees and card agents/employees complete mandated training courses as required.

Prior Finding Six – PennDOT should improve its contract language with its contracted agents and further, PennDOT must ensure that it maintains current information on its contracted agents. (Partially Resolved)

During our prior audit, we found that PennDOT’s contracts with agents omitted sanctions for noncompliance with the contract. For example, PennDOT contracts required agents to obtain criminal history background checks from the Pennsylvania State Police for each employee who processed PennDOT transactions. The agent contract stated that these checks are to be available upon request. However, there is no language in the contract addressing the consequence if an agent does not obtain the required background check. Additionally, we found that PennDOT failed to keep accurate agent records. PennDOT’s lists of active agents included some terminated agents as well as agents who – unknown to PennDOT – no longer provided PennDOT services. These lists also contained errors in essential types of agent information such as business names and addresses.

We recommended that PennDOT: (1) Develop an effective and readily enforceable agent contract that includes language for some type of consequences or sanction for noncompliance with each contract requirement. Additionally, PennDOT should have all current agents sign the updated contract; (2) Maintain accurate and complete contracted agent records; and (3) Regularly monitor and update the agent information posted on its website to ensure the accuracy of its agent listings.

Status as of this audit

PennDOT updated its agent contracts to include language regarding sanctions for noncompliance with contract requirements. Specifically, we found that PennDOT’s full agent contract includes in excess of 75 prohibited acts or omissions in which the contracted agent can engage. Each prohibited act or omission carries a sanction of a period of suspension of the contracted agent’s certificate of authorization. Similarly, PennDOT’s card agent contracts now include 56 prohibited acts or omissions with corresponding sanctions. However, PennDOT did not require all agents to sign revised contracts with this new language. As the agents renew their five-year contracts with PennDOT, this language and the resulting consequences will become effective. Without having the agents sign the amended contracts immediately, the sanctions for noncompliance with contract requirements cannot be enforced.

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PennDOT maintains its agent records within the Dealer Contract Database. PennDOT management stated that after a contract is finalized and the contract information is entered into the system, the contract manager reviews the information for accuracy. An automated process then posts the information from the database to PennDOT's website. We judgmentally selected five full agents and five card agents from nine different counties that were listed on PennDOT's website. For each agent, we determined whether the information within PennDOT's Dealer Contract Database (and consequently PennDOT's website) agreed to the original contract.

Out of these ten agents listed on PennDOT's website, we found four had no contracts (current or expired) with PennDOT. For the remaining six agents, three had expired contracts with PennDOT and three had current PennDOT contracts. We also found that the information within the Dealer Contract Database agreed to the physical contract (current or expired). Although the Dealer Contract Database maintains historical records of agent contracts, PennDOT's website should only include agents under current contracts with PennDOT.

Therefore, based on the results of our limited procedures performed, it appears that PennDOT maintains accurate records in its database, but inaccurate records on its website. As a result, the prior audit recommendations were **not adequately implemented**.

Recommendations

We recommend that PennDOT:

1. Execute its revised contract language regarding sanctions with all agents instead of waiting for the current contracts to be renewed.
2. Design and implement procedures to ensure agent information on its public website is complete, accurate, and regularly updated.

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Agency's Response and Auditor's Conclusion

We provided copies of our draft audit findings and status of prior findings and related recommendations to the Pennsylvania Department of Transportation (PennDOT) for its review. On the pages that follow, we included PennDOT's response in its entirety. Following the agency's response is our auditor's conclusions.

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Audit Response from the Pennsylvania Department of Transportation

Performance Audit PennDOT Response

Finding 1 - PennDOT's failure to adequately evaluate and monitor the internal controls of its wholesale providers potentially jeopardizes customers' personally identifiable information:

Recommendations for Finding 1:

We recommend that PennDOT:

1. Develop written policies and procedures for the due diligence performed prior to contracting with a wholesale provider, in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel, that include:
 - a. Minimum data protection qualifications that a wholesale provider would need in order to be considered for a contract.
 - b. A detailed description of what privacy and security due diligence procedures must be performed when evaluating prospective wholesale providers in accordance with all requirements of law and directives, including how the procedures are to be performed and by whom.
 - c. Comprehensive assurances that the wholesale provider is well prepared to handle any possible discovery or needed notification of a breach in the security of personal information data under the state Breach of Personal Information Notification Act.
 - d. Required documentation that must be maintained to evidence adequate due diligence was performed for both its wholesale providers and their business customers.

Response:

PennDOT disagrees with finding number 1 and any suggestion that PennDOT failed to provide appropriate oversight. The audits referred to are defined in each contract and it was PennDOT that requested the audits be performed following Management Directive 325.13. The time to complete the audits was controlled by the auditing entity, not PennDOT. In addition, the completed audits did not identify any customers' information that was jeopardized or shared for reasons outside of authorized purposes as allowed by federal and state law. In point of fact, the audit findings only identified technical issues with the compliance of the contracts. As was demonstrated by PennDOT staff to the Auditor General's auditors, PennDOT has existing procedures. Based on the recommendations, PennDOT plans to review and enhance existing written policies and procedures with its Office of Chief Counsel.

2. Obtain and review all System and Organization Controls (SOC) 2 Type 2 reports and other applicable previous audit reports from all prospective wholesale providers prior to contracting.

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Response:

As a result of the audit performed by the Comptroller's Bureau of Audits, PennDOT made this a requirement for all prospective wholesale providers. Effective April 30, 2018, all SOC 2 Type 2 reports and other types of third-party audits received are sent to the Office of Administration's Enterprise Information Security Office (EISO) for review.

All SOC 2 Type 2 reports and other types of third-party audits must be approved by EISO before PennDOT begins the approval process to become a wholesale provider.

3. Ensure documentation is maintained to evidence the research and due diligence that was performed for each prospective wholesale provider.

Response:

Effective April 30, 2018, PennDOT maintains all documentation for all prospective wholesale providers. Along with the required documents, PennDOT is in the process of developing a checklist that documents the approval process for prospective wholesale providers.

4. Implement and document in policy the tracking procedures used to ensure all SOC 2 Type 2 reports are obtained from each wholesale provider and reviewed pursuant to Management Directive 325.13 Amended.

Response:

As a result of the audit performed by the Comptroller's Bureau of Audits for PennDOT, effective June of 2016, the revised Wholesaler Agreement requires each wholesaler to provide a copy of their SOC 2 Type 2 report to PennDOT within 30 days of the date the report is received from the auditing firm. All SOC 2 Type 2 reports received are sent to EISO for review and approval.

5. Develop procedures to review SOC 2 Type 2 reports to ensure adequate controls are in place and are operating effectively for its wholesale providers. This includes documenting the review, including, at a minimum, the type of report, services /systems covered by the report, service auditor's opinion, control exceptions identified by the service auditor, and the complementary user entity controls.

Response:

Upon receiving the SOC 2 Type 2 report, PennDOT reviews the report to ensure all applicable Trust Services Principles are covered in the report.

All SOC 2 Type 2 reports and other types of third-party audits received are sent to EISO for review. PennDOT maintains the assessment provided by EISO.

6. Ensure any areas of weaknesses identified by the SOC 2 Type 2 reports are immediately resolved with the wholesale provider and adequately documented.

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Response:

If there are any areas of concern with the SOC 2 Type 2 report, EISO will list the concern(s) in its assessment. Recommendations to address the concern(s) are also included in the assessment. PennDOT shares the concern(s) and recommendation(s) with the wholesaler. The wholesaler must provide a corrective action plan and/or more documentation regarding the concern(s) and recommendations to PennDOT within 48 hours. The follow-up information provided is forwarded to EISO for review.

7. Update existing wholesale provider contracts to include its new SOC2 Type 2 annual audit reporting requirements.

Response:

The revised Wholesale Agreement template does require the submission of a SOC 2 Type 2 report annually.

8. Ensure all new and renewed wholesale provider contracts include the new SOC 2 Type 2 annual audit reporting requirements.

Response:

The revised Wholesale Agreement template does include the submission of a SOC 2 Type 2 report annually. Effective June of 2016, the SOC 2 Type 2 requirement was included in contract renewals. The paragraph stating "*As mentioned in the previous section, a SOC 2 Type 2 report is a useful tool in evaluating a wholesale provider's controls that may affect data security, confidentiality, or privacy. For the period January 1, 2014 through June 30, 2017, PennDOT had executed contracts with seven wholesale providers. Based on our review of those contracts, none of the seven required wholesale providers to submit SOC 2 Type 2 reports to PennDOT.*" Agreement #7303263 with Sterling BackCheck, which was entered into in June of 2016, does contain the SOC 2 Type 2 report requirement.

9. Develop, implement, and document formal procedures, in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel, used to monitor and enforce wholesale providers' (and its business customers) compliance with contract and reporting requirements on a regular basis, such as having audits performed.

Response:

As a result of the audit performed by the Comptroller's Bureau of Audits for PennDOT, effective November 2018, PennDOT developed a checklist that is distributed to the wholesalers the beginning of each calendar year. PennDOT staff monitor each wholesaler's compliance with all items and takes action as appropriate.

10. Ensure any identified monitoring/audit deficiencies are resolved within a timely manner and the resolution is documented.

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Response:

Effective May 31, 2018, the resolution(s) to any deficiency is documented by the wholesaler and verified by PennDOT. Documentation of final resolution(s) is maintained in PennDOT's files.

11. Develop, implement, and document formal procedures, in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel, to timely review the Affidavits of Intended Use received annually from the wholesale providers and ensure they are complete in agreement with contractual provisions, and properly notarized.

Response:

Effective April 30, 2018, PennDOT's management staff reviews all Affidavits of Intended Use (AIU). The AIU is rejected if the form is incomplete.

12. Consider adding a provision in the wholesale provider contracts that new affidavits must be filed immediately whenever information about the company changes, such as name, address, ownership, telephone number, or website.

Response:

As a result of the audits requested by PennDOT, effective March 1, 2019, the provision is included in the revised Wholesale Agreement Template.

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Finding 2 - Transfers from the Motor License Fund to the Pennsylvania State Police have caused PennDOT to fall behind on its planned use of Act 89 of 2013 funds to improve highways and bridges. Act 44 of 2007 funds transferred from PennDOT have helped transit agencies, but they also have resulted in the PA Turnpike Commission amassing billions of dollars of debt.

Response:

The list of DoI projects was prepared before legislation was crafted and approved. The DoI, and the projects identified with it, was a vision describing how the additional revenues would enable ongoing transportation investments and unlock the benefits they bring. The vision of DoI was aimed at enlisting the General Assembly to subscribe to the principle of continuous transportation reinvestment. To the fullest extent that the General Assembly has subscribed to that vision and appropriated the necessary funding, PennDOT has delivered on its commitments upon which the Decade of Investment was premised.

Throughout the Act 89 preparations, the Secretary frequently talked about PennDOT being a factory. The more money that is available – the more transportation improvements that could be made. If legislation would provide more revenue, we could produce the improvements quicker. If legislation would provide less revenue, it would take longer for those improvements to occur. The purpose of developing a website was so PennDOT would be transparent in the delivery of our progress in achieving our Act 89 commitments – the DoI and the anticipated schedule for those projects not yet completed. The Deputy Secretary for Planning had this conversation several times with the Audit Team.

Recommendations for finding 2:

We recommend that PennDOT:

1. Expedite projects as funds are available to ensure that the roads and bridges in the Commonwealth receive the repairs that they need.

We recommend that the General Assembly:

2. Improve Pennsylvania State Police's lack of adequate funding through having municipalities that rely on the State Police for full-time coverage pay a per-resident fee for those services.
3. Re-evaluate Acts 44/89 and consider drafting and enacting new legislation to find reasonable alternative revenue sources to provide adequate transportation funding. See the recommendations in our PTC performance audit report regarding the sustainability of PTC.

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Finding 3 - PennDOT's method to commit grant monies within the Multimodal Transportation Fund appears reasonable; however, a shorter grant cycle could reduce misunderstandings of the fund balance.

Recommendations for finding 3:

We recommend that PennDOT:

1. Evaluate what efficiencies can be made in the grant process to minimize the amount of time between when PennDOT receives funds and when PennDOT is able to commit funds in the SAP accounting system. This would make the process more transparent and allow for a better understanding of the fund balance of the MTF.

Response:

In July 2018, a new Deputy Secretary was appointed to PennDOT's Multimodal Deputate, which oversees the Multimodal Transportation Fund. As a result of the change in leadership, several program refinements were initiated in the last several months prior to the recommendation issued by the Department of the Auditor General. We believe that these refinements will achieve the recommendation listed above.

To reduce the time from the announcement of the grant award to the commitment of funds in the SAP System (which requires an executed grant agreement), the Department has identified and already initiated two key items for refinement within the Program. These program refinements are as follows:

1. Refining the Grant Agreement.

The Multimodal Transportation Fund grant agreement had not been modified since it was drafted for initial use in 2014/2015. It became apparent upon further analysis that grant applicants would often struggle with various components, creating numerous "back-and-forth" revisions with the Department that ultimately led to delaying the execution of the grant and the award of the funding (ability to receive the funds). Through coordination among the various PennDOT Districts, Multimodal Deputate, and PennDOT's Office of Chief Counsel, we have developed an updated grant agreement that is currently being reviewed and finalized for implementation in future selections/awards. In addition, the Department will be requesting Legal Pre-Approval to form and legality from Chief Counsel in order to further expedite the processing of the grant.

2. Establishing Mandatory Response Deadlines.

Upon the announcement of the grant award, the applicants have 45 days to return the acceptance letter (this has not been modified). Upon receipt of a signed acceptance letter, the Department would distribute a package of materials for the applicant, including a draft grant agreement. The Department had not previously associated a deadline with achieving an executed grant agreement because it was assumed that the applicants would want to expedite all initiatives to complete their projects. However,

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that is not the case in all situations. While most applicants proceed immediately to work toward grant execution, there are still those applicants that do not. The Department now requires the Grant Agreement to be executed within 12 months from the date of the signed acceptance letter. If the grant is not executed within 12 months, the grant funds are at risk of being rescinded and re-awarded in the next competitive round.

Reference to Appendix A, indicating "information received from PennDOT management and is of undetermined reliability" was not included in draft. Department of the Auditor General responded that this Appendix A is never included with "draft" report. Therefore, PennDOT is unable to verify said data and the applicability on the finding.

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Finding 4 - Transportation Infrastructure Improvement Fund monies are awarded at the Governor's discretion, in close discussions with the Secretary of Transportation, with no accountability or transparency.

Response:

PennDOT takes very seriously our responsibility and commitment to collaborate and be transparent in the oversight of the Transportation Infrastructure Improvement Fund (TIIF). The basic transportation planning themes, principles, and requirements adhered to by the Department of Transportation in the oversight of the TIIF, as well as our other programs, are extremely complex and complicated.

The third paragraph of the audit ascertains that *Financial Guidance* misrepresents how projects are selected for funding. The Department disagrees with this determination. Both the Secretary of Transportation and the Governor collaborate on the TIIF. As this is a discretionary program, the Governor and/or Secretary of Transportation may choose to include others in the decision-making process. Those decisions frequently include DCED and GAT. They are not named in *Financial Guidance* as they are not required to be involved. For example (note that this is a recent example outside of the audit period that was provided to the audit team to help them better understand the importance of a discretionary program), last year the Governor and the Secretary of Transportation authorized the use of \$20 million from this fund to assist in PennDOT's response to extreme weather issues and associated slides and damage to roadway and bridge infrastructure. Having damaged roads/bridges reopened is vital to the economy of any region. The audit further asserts that the written policies and procedures should be consistent, complete and accurate. The Department agrees and is committed to continue operation of the TIIF in a manner that is consistent, complete, and accurate. In addition, the Department works with MPOs and RPOs to program these funds consistent with the statewide planning process which insures transparency to the public.

TIIF projects authorized by the Governor have been and continue to be included in the Pennsylvania Statewide Transportation Improvement Program. TIIF projects authorized by the Governor have been and continue to be included in regional Transportation Improvement Programs, as appropriate. The awarding of TIIF monies are already transparent to local planning organizations and the public. The processes followed for the programming of TIIF funds are the same as for other capital state motor license funded or federal highway funded projects.

Reference to Appendix A, indicating "information received from PennDOT management and is of undetermined reliability" was not included in draft. Department of the Auditor General responded that this Appendix A is never included with "draft" report. Therefore, PennDOT is unable to verify said data and the applicability on the finding.

Recommendations for finding 4:

We recommend that PennDOT, in consultation with the Governor's Office:

1. Develop, implement, and document formal policies and procedures used to select and approve projects that receive TIIF monies as a Statement of Policy to be published in the *Pennsylvania Bulletin* as defined in Commonwealth Documents Laws in consultation with PennDOT's Office of Chief Counsel/Office of General Counsel.

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2. Initiate a routine practice of utilizing a standardized form or letter from the Governor (or designee) that includes the amount of the (TIIF) monies that were approved, the project the monies were approved for, the justification as to why the project was selected (including how the project promotes economic development), and the date the Governor approved the monies.
3. Consider reporting the projects that were approved by the Governor to receive the TIIF monies within a single schedule in a publicly available document, such as the Pennsylvania's Statewide Transportation Improvement Program, to make the awarding of the TIIF monies more transparent to the local planning organizations and the public.

Response:

To that the findings, and this recommendation, envisions that the TIIF functions in the same manner as a competitive grant program, that is a misunderstanding of the program. The TIIF funding is motor license fund monies appropriated for transportation projects as implemented through including on the Statewide Transportation Improvement Program and the resulting MPO/RPO TIPS. It is not a grant program. The report requests that PennDOT establish "formal procedures" for the "award" of these monies, but this ignores that these projects and monies are programmed in accord with the standard statewide planning process, as noted above and below.

TIIF projects authorized by the Governor have been and continue to be included in regional Transportation Improvement Programs, as appropriate. The awarding of TIIF monies are already transparent to local planning organizations and the public. The processes followed for the programming of TIIF funds are the same as for other capital state motor license funded or federal highway funded projects.

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Finding 5 - PennDOT's construction contract procurement and monitoring policies and procedures are in accordance with applicable laws and regulations and being followed; however, its Central Office oversight of construction cost increases should be strengthened.

Response:

PennDOT agrees with the finding that PennDOT's construction contract procurement and monitoring policies and procedures are in accordance with applicable laws and regulations and the characterization that PennDOT's construction contract cost oversight procedures are in accordance with established policies. PennDOT disagrees, however, with the characterization of PennDOT's monitoring of cost increases below thresholds of \$1M. In the last paragraph before the "Recommendations for Finding 5" section, the text indicates "*For instance, for smaller contracts, prospective contractors could underbid the estimate and then double the cost through work orders. Although all individual work orders are subject to review by the Central Office during its quality assurance reviews, it does not ensure adequate oversight of these situations.*" Although total contract increases less than \$1 million do not require approval by Central Office and are not reviewed by PMC, each work order is individually reviewed and approved at the District level. Level of authority needed for approvals vary by the nature and category of the work order (minor vs. major). For federal oversight projects, the federal highway administration also reviews and approves individual work orders. Additionally, as indicated in the report, Central Office does conduct Quality Assurance Reviews on work orders every year, which we feel are appropriate and adequate. At the beginning of every month a crystal report (a dynamic reporting application) is used to determine the total number of work orders that have been approved by each district from the previous month. These work orders are put into two categories. They are either a Federal or Non-Federal type work order. These two categories include sub categories of Minor and Major work order based on their dollar value of the work order. We currently review 25% of the Federal Major work orders and 10% of the Federal Minor work orders. While reviewing these work orders, Central Office strives to have at least one work order reviewed per district at a minimum. For Non-Federal work orders, a minimum of 10% of all the work orders will be reviewed. There is an effort to have at least one work order review per district.

Reference to Appendix A, indicating "information received from PennDOT management and is of undetermined reliability" was not included in draft. Department of the Auditor General responded that this Appendix A is never included with "draft" report. Therefore, PennDOT is unable to verify said data and the applicability on the finding.

Recommendations for finding 5:

We recommend that PennDOT:

1. Improve its Central Office oversight of construction cost increases below its established thresholds and/or consider revising the thresholds to encompass low dollar projects with high percent increases.

Response:

PennDOT will review its current policy to determine appropriate levels of documentation for cost increases below current threshold requirements.

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Finding 6 - PennDOT's purchasing card process is generally in compliance with the Commonwealth's Procurement Code; however, its agency-specific Quality Assurance Review process should be improved.

Response:

Reference to Appendix A, indicating "information received from PennDOT management and is of undetermined reliability" was not included in draft. Department of the Auditor General responded that this Appendix A is never included with "draft" report. Therefore, PennDOT is unable to verify said data and the applicability on the finding.

Recommendations for Finding 6:

We recommend that PennDOT:

1. Ensure all purchasing card transaction approvals are adequately reviewed and documented in accordance with policy.

Response:

PennDOT's Purchasing Card Manual identifies policies and procedures to ensure that all purchasing needs have prior approval. The checklist that is used by the purchasing cardholder and the purchasing card reviewer for their monthly statement reconciliation requires verification that an approval was obtained for each purchase. PennDOT verified, and informed the auditors, that the one transaction identified in the Audit Report as not having a prior approval was for a business need and an after-the-fact approval was obtained.

2. Require that all documents and records relevant to the purchasing card transaction process are properly stored and maintained.

Response:

Consistent with Management Directive 310.23, PennDOT's Purchasing Card Manual, requires that purchasing card files, including Monthly Memo Statements, supporting documentation, reconciliations and other related information be retained for four (4) years. This requirement has been emphasized at regularly scheduled meetings with District/Deputate Purchasing Card Coordinators.

3. Redesign its policy and procedures for Quality Assurance Reviews performed by the Agency Purchasing Card Coordinator, to include management's oversight of the Agency Purchasing Card Coordinator and the overall Quality Assurance Review process, and update its written policy and procedures accordingly.

Response:

PennDOT considers its Agency Quality Assurance Review (QAR) program a best practice as the process provides an additional level of program oversight and review not specifically required by Management Directive. PennDOT QARs are

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conducted by the Agency Purchasing Card Coordinator at the county, district or bureau location to determine compliance with policies and procedures, and to recommend corrective actions or improvements to the organization's leadership, if necessary, to strengthen their program. The QAR process includes steps to ensure that all corrective actions are completed timely. The on-site review is also beneficial for identifying and recognizing best practices that can be shared across the agency. As with any program or process, there is always the opportunity for continuous improvement which is how PennDOT has approached its purchasing card program including the Agency Quality Assurance Review process. As stated in the Auditor General's Report under the subheading "*Individual Purchasing Card Transactions and Reconciliations*", "PennDOT's QAR process is not specifically discussed in Management Directive 310.23 Amended."

PennDOT provides management oversight of the Agency Purchasing Card Coordinator and the overall Quality Assurance process. PennDOT's Purchasing Card Manual clearly details the responsibilities of the Agency Purchasing Card Coordinator (Chapter 2, Roles and Responsibilities) including on-site Quality Assurance Reviews and the Agency Purchasing Card Coordinator's supervisor reviews performance. PennDOT's End User Procedure #7 also defines the Agency Purchasing Card Coordinator's responsibilities with respect to the Agency Purchasing Card Coordinator Quality Assurance Reviews.

PennDOT's QAR process includes the necessary components for a successful program to include rationale for selecting organizations for review, notifications to district/deputate leadership of upcoming reviews, methods for preparing for and conducting on-site reviews, preparation and communication of results to district/deputate leadership and completion/close-out of corrective action plans when needed.

As part of continuous improvement, PennDOT reviewed each of its QAR process steps and has documented more detailed procedures in the updated Purchasing Card Manual issued in December 2018 including End User Procedure #7, Agency Purchasing Card Coordinator Quality Assurance Review.

4. Implement the use of a tracking sheet (or other mechanism) to document completed Quality Assurance Reviews and assist in planning future Quality Assurance Reviews to ensure all counties within a district, all district offices, and all deputates are regularly reviewed.

Response:

PennDOT considers its Agency Quality Assurance Review (QAR) program a best practice. As with any program or process, there is always the opportunity for continuous improvement which is how PennDOT has approached its purchasing card program including the Agency Quality Assurance Review process. As stated in the Auditor General's Report under the subheading "*Individual Purchasing Card Transactions and Reconciliations*", "PennDOT's QAR process is not specifically discussed in Management Directive 310.23 Amended."

In PennDOT's response to Audit Request #14, PennDOT provided the dates and locations of agency quality assurance reviews conducted during the audit period evidencing that they are tracked.

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In PennDOT's response to Audit Request #67, PennDOT stated that the Agency Purchasing Card Coordinator plans for and conducts quality assurance reviews, allowing flexibility in the schedule to divert resources as deemed necessary. PennDOT's Purchasing Card Manual, in effect at the time of the audit, stated that every district and deputate is scheduled for review within a two-year cycle; however, it did not require that all counties within a district be reviewed and it did not prohibit management from diverting limited resources when needed, as occurred during the audit period.

PennDOT takes exception to the narrative "Although it is reasonable for PennDOT to direct resources to an investigation of fraud allegations, PennDOT's decision to solely rely on district reviews for these two districts for at least a three-year period is concerning considering the discovered fraud in District 6 was perpetrated as the district level." PennDOT made the appropriate and only decision that it could to divert Central Office procurement staff resources to District 6 given the breadth and depth of the allegations of fraud, criminal wrongdoing and improprieties in the District's purchasing processes and payment of vendors. PennDOT dispatched its procurement manager full-time to the District for seven months to evaluate and reestablish the District's procurement program, ensure mission-critical procurements were completed accurately and timely and to retrain their staff. The situation necessitated that agency purchasing card quality assurance reviews be conducted in the District 6 Office and each of its counties to ensure the integrity of the purchasing card program. The Director of the Bureau of Office Services and her Division Chief also served on an interdisciplinary team, convened by executive leadership, to remedy problems and establish a framework for continued safeguards and propriety in contracting. Changes in personnel resulted in reorganization and reclassification of numerous positions including setting up a centralized procurement unit. Several related legal actions, including the Board of Claims, suspension and debarment and procurement protests, ensued, resulting in monies recovered and several entities consenting to long-term debarments. PennDOT had no information to suggest fraud or any wrongdoing in any other district, including the two districts from which resources for QARs were diverted. It is noteworthy that the Audit Report does not include any findings within the two districts from which resources were diverted.

As part of continuous improvement, PennDOT's Purchasing Card Manual updated in December 2018, specifically emphasizes the need for management discretion. It states: "While the goal is to visit each District and Deputate every two (2) years, the primary focus of administering the program is to schedule reviews based on where assistance is most needed." Additionally, a new purchasing card database was implemented in December 2018 that provides electronic tracking and reporting capabilities for all quality assurance reviews conducted.

5. Implement the use of a tracking sheet (or other mechanism) to track the progress of current Quality Assurance Reviews, including the resolution of all identified deficiencies.

Response:

PennDOT considers its Agency Quality Assurance Review (QAR) program a best practice. As with any program or process, there is always the opportunity for continuous improvement which is how PennDOT has approached its purchasing

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card program including the Agency Quality Assurance Review process. As stated in the Auditor General's Report under the subheading "*Individual Purchasing Card Transactions and Reconciliations*", "PennDOT's QAR process is not specifically discussed in Management Directive 310.23 Amended."

In PennDOT's response to Audit Request #67, PennDOT stated and provided correspondence and documentation from specific QARs demonstrating that corrective action plans are tracked and monitored through resolution. It is important to emphasize that should a purchasing card be suspended during the review, the purchasing card is not restored until such time that all corrective actions required under the Deputy Secretary letter are completed by the Deputate/District. This includes mandatory re-training. Additionally, in these cases, the Deputate Coordinator/District Purchasing Card Coordinator is required to complete mandatory reviews for a specified period after the card is restored. Should the District/Deputate Coordinator find deficiencies during these mandatory reviews that warrant a card being suspended, the Agency Purchasing Card Coordinator is notified.

To continuously improve processes, a new purchasing card database was implemented in December 2018 that provides electronic tracking and reporting capabilities for all quality assurance reviews conducted.

6. Implements a standard checklist or other monitoring tool to formally document what procedures were performed during the Quality Assurance Review.

Response:

PennDOT considers its Agency Quality Assurance Review (QAR) program a best practice. As with any program or process, there is always the opportunity for continuous improvement which is how PennDOT has approached its purchasing card program including the Agency Quality Assurance Review process. As stated in the Auditor General's Report under the subheading "*Individual Purchasing Card Transactions and Reconciliations*", "PennDOT's QAR process is not specifically discussed in Management Directive 310.23 Amended."

In PennDOT's response to Audit Request #67, PennDOT's End User Procedure #7, Agency Purchasing Card Coordinator Quality Assurance Reviews explains what the Agency Purchasing Card Coordinator is responsible for reviewing while on-site, as well as the responsibilities of the District/Deputate Purchasing Card Coordinator, Purchasing Cardholder, Deputy Secretary/District Executive and Bureau of Office Services Director/Deputy for Administration.

As part of continuous improvement, PennDOT reviewed each of its QAR process steps and has documented more detailed procedures in the updated Purchasing Card Manual issued in December 2018 including End User Procedure #7, Agency Purchasing Card Coordinator Quality Assurance Review.

7. Document PennDOT's review and acceptance of district/deputate corrective action plans.

Response:

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PennDOT considers its Agency Quality Assurance Review (QAR) program a best practice. As with any program or process, there is always the opportunity for continuous improvement which is how PennDOT has approached its purchasing card program including the Agency Quality Assurance Review process. As stated in the Auditor General's Report under the PennDOT Agency Oversight subtitle, "PennDOT's QAR process is not specifically discussed in Management Directive 310.23 Amended."

In response to Audit Request #67, PennDOT stated that the District/Deputate clearly knows whether their corrective action plan was reviewed and when it is accepted by PennDOT. The District Executive/Deputy Secretary's response to the Deputy Secretary for Administration's quality assurance review letter is carefully reviewed by the Agency Purchasing Card Coordinator and their chain of command. Follow-up, if necessary, is addressed by the Agency Purchasing Card Coordinator with the respective District/Deputate Card Coordinator. Escalations occur as required.

As a process improvement, a letter will be routinely issued to the Deputy/District Executive by the Deputy Secretary for Administration that specifically states in writing the acceptance of the District/Deputate plan. End User Procedure #7, Agency Purchasing Coordinator Quality Assurance Reviews has been updated accordingly.

To continuously improve processes, a new purchasing card database was implemented in December 2018 that provides electronic tracking and reporting capabilities for all quality assurance reviews conducted including the ability to attach documents such as the letter issued from the Deputy Secretary for Administration accepting the corrective action plan and the letter closing out the corrective action plan once completed by the District/Deputate.

8. Obtain and maintain documentation showing the status of identified deficiencies and whether the deficiencies were adequately resolved.

Response:

PennDOT considers its Agency Quality Assurance Review (QAR) program a best practice. As with any program or process, there is always the opportunity for continuous improvement which is how PennDOT has approached its purchasing card program including the Agency Quality Assurance Review process. As stated in the Auditor General's Report under the subheading "*Individual Purchasing Card Transactions and Reconciliations*", "PennDOT's QAR process is not specifically discussed in Management Directive 310.23 Amended."

PennDOT does maintain documentation about identified deficiencies and whether the deficiencies were adequately resolved.

To continuously improve processes, a new purchasing card database was implemented in December 2018 that provides electronic tracking and reporting capabilities for all quality assurance reviews conducted including the ability to monitor and report on all active QARs and status of deficiencies.

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Performance Audit – Prior Year Findings PennDOT Response

Prior Finding 1 – PennDOT failed to successfully use its most important agent oversight tool – audits. Consequently, PennDOT did not audit a substantial majority of its agents and did not conduct effective audits on those agents who were audited. (Partially Resolved)

Recommendations

We recommend that PennDOT:

1. Consider developing and implementing an agent audit selection methodology that ensures all agents are audited on a routine or cyclical basis.

Response:

The department already requires all new agents to be audited.

2. Develop and implement procedures to ensure the audit log within the Dealer Contract Database is complete, accurate, and only contains entries for actual audits and not entries for other events/situations, such as picking up materials or the inability to complete an audit.

Response:

The department's new dealer agent services system (DAS) implemented in April of 2018 allows for the segregation of auditor actions ("actual" audits versus other auditor activities).

3. Redesign the agent audit process to ensure any deficiencies noted on the auditor checklists are included in the results of the audit and/or documented as adequately resolved.

Response:

The processes reflected in the new system (DAS) have been updated to include this activity in 2018.

4. Improve the audit supervisory review process to ensure the auditors are accurately completing the audit checklists and adequately documenting audit results.

Response:

The process reflected in the new system (DAS) have been updated to include this activity in 2018.

5. Revise the Regulated Client Audit Manual to include all requirements and processes related to agent audits, including, but no limited to the follow-up and resolution of

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identified audit deficiencies by auditors and the review and approval of the results by the supervisors.

Response:

The Regulated Client Services Auditor Manual has been updated as of September 2018.

6. Continue to adequately train auditors and audit supervisors in their respective job duties and the audit process.

Response:

Agreed.

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Prior Finding 2 – PennDOT’s Bureau of Driver and Vehicle Program Services should improve its oversight of online messengers. (Partially Resolved)

Recommendations

We recommend that PennDOT:

1. Assign an adequate number of trained auditors to conduct online messenger audits to ensure each online messenger is audited within a timely manner.

Response:

On-line messenger audits previously covered by one auditor are now covered by all department agent auditors.

2. Revise its Regulated Client Manual to include detailed procedures for online messenger audits, including specific steps to follow-up on all audit deficiencies, and to enhance the related supervisory review process.

Response:

The department’s detailed procedures for on-line messenger audits have now been included in the Regulated Client Services Auditor Manual as of September 2018.

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Prior Finding 3 – PennDOT said that “market forces” would make agents charge reasonable fees to customers. Yet PennDOT neither defined reasonable nor found out what fees were actually charged, thus giving customers no means to judge the fees not to comparison shop. (Resolved)

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Prior Finding 4 – PennDOT should make information pertaining to its contracted agents more easily accessible to the public. (Partially Resolved)

Recommendations

We recommend that PennDOT:

1. Include a provision in its agent contracts explicitly requiring that all agents with a website must post current fee information on each PennDOT product offered.

Response:

Agreed.

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Prior Finding 5 – PennDOT’s agent contracts should be strengthened so that required training is completed before any agent provides services. Furthermore, PennDOT needs to improve its oversight of its contracted agents’ training requirements. (Partially Resolved)

Recommendations

We recommend that PennDOT:

1. Amend its card agent contracts to require card agents and their employees to obtain basic training before providing PennDOT services and to specify sanctions to be applied for card agents that do not comply with training requirements.

Response:

The department intends to review the card agent contracts for enhancements as it did with the full agent contracts.

2. Design and implement adequate audit procedures to ensure full agents/employees and card agents/employees complete mandated training courses as required.

Response:

The department has audit procedures for oversight of the training program. The department is enhancing its training program and exploring enhancements to its agent audit selection methodology.

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Prior Finding 6 – PennDOT should improve its contract language with its contracted agents and further, PennDOT must ensure that it maintains current information on its contracted agents. ((Partially Resolved))

Recommendations

We recommend that PennDOT:

1. Execute its revised contract language regarding sanctions with all agents instead of waiting for the current contracts to be renewed.

Response:

All full agents are now on the revised contract.

2. Design and implement procedures to ensure agent information on its public website is complete, accurate, and regularly updated.

Response:

The department's new system (DAS) implemented in April of 2018 now systematically updates the agent's information on the department's website.

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Auditor's Conclusion to the Pennsylvania Department of Transportation's Response

Based on the Pennsylvania Department of Transportation's (PennDOT) response, it appears that PennDOT generally agreed with three of the six findings and the majority of our recommendations. Regarding the Status of Prior Audit Findings, PennDOT agreed with and is in various stages of implementing our recommendations to improve its issuing agent audits. For several recommendations, PennDOT's response contained broad statements that contradicted our findings, conclusions, and/or recommendations without providing specific details to refute them, and then, in many situations, discussed related actions that they have taken after the audit period. Because PennDOT did not specifically state disagreement with our conclusions, we did not repeat the detailed information in our findings to reiterate the basis for our findings, conclusions, and recommendations. On the matters in which PennDOT disagreed, we offer the following conclusions:

Finding 1

PennDOT management disagreed with this finding and asserts that it did not fail to provide appropriate oversight of its wholesale providers, citing to the delay for the completion of the provider audits as being controlled by the auditing entity. PennDOT, however, was well aware of the delay in the audits being performed and could have pursued other avenues in order to get these important audits completed sooner than five years after it initially requested them to be completed.

We concur that the wholesale provider audits did not identify that PennDOT's customer information was shared for reasons outside of the authorized purposes as allowed by federal and state law and that the audit findings only identified technical issues with contract compliance. However, wholesale provider noncompliance with their contracts with PennDOT is still very concerning. Further, PennDOT should be more proactive in identifying and correcting these deficiencies for the sake of protecting its customers' personal security and to avert any potential breach.

In its response, PennDOT management claims to have procedures regarding its oversight of wholesale providers, however, as noted in our audit, these procedures were not completely and adequately documented within formal policy and procedures. Although management generally disagreed with the finding, it has either already implemented or plans to implement our recommendations to strengthen its oversight of wholesale providers.

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Finding 4

PennDOT management disagreed with this finding, specifically claiming that its *Financial Guidance*, the only written formal policy regarding the selection of TIIF projects, which we found to be overly brief, is adequate and the selection of projects to receive TIIF monies is transparent. We fully understand that these funds are not grant funds and are not awarded through a competitive grant process. We also fully understand that *after* certain projects are selected to receive TIIF monies, the projects flow through PennDOT's established transportation processes. We are not taking exception to these facts.

In its response, PennDOT management states that TIIF funding is motor license fund monies appropriated for transportation projects and are in accord with the standard statewide planning process. PennDOT management continuously has made these broad statements instead of acknowledging our concerns and directly addressing our finding. The fact that PennDOT management refuses to acknowledge why having one or two individuals with total control over discretionary transportation funding without providing reasons for why some projects received funding and others did not could be problematic is concerning.

The selection of projects to receive TIIF monies is absolutely not transparent. PennDOT has various written formal policies and procedures regarding its transportation funding and processes; however, as noted earlier, the TIIF monies are only mentioned once in a brief section that does not fully and accurately explain the process. PennDOT management also claims that documentation to support the selection of these projects may exist at other state agencies, but it did not make any attempt to obtain this documentation in order to substantiate its claims. Additionally, management indicated that the projects given TIIF monies were clearly and distinctly included in the Statewide Transportation Improvement Program; however, after given additional time to provide this documentation to us, management was unable to do so. Therefore, our finding and recommendations remain as stated.

Finding 5

PennDOT management generally disagreed with our finding that its current thresholds that require certain Central Office approval should be strengthened, citing that every work order is individually reviewed and approved at the district level. We continue to assert that having significant percent increases in construction costs is an area of higher risk and PennDOT's Central Office should have stronger oversight in these situations. PennDOT management agreed with our recommendation to review and potentially revise its current policy.

Overall, it must be noted that the purpose of our Department's audits are to improve government accountability, transparency, and the effective use of taxpayer dollars by providing constructive recommendations. We are hopeful that PennDOT will begin to recognize our audit intentions in a positive vein.

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Appendix A

Objectives, Scope, and Methodology

The Department of the Auditor General conducted this performance audit of the Pennsylvania Department of Transportation (PennDOT) under the authority of Sections 402 and 403 of The Fiscal Code of the Commonwealth of Pennsylvania. We conducted this audit in accordance with applicable *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives

Our audit objectives were to:

- Evaluate the extent to which PennDOT properly manages and monitors the distribution and sharing of personal information it collects. [See Finding 1]
- Determine whether PennDOT's procurement procedures are in accordance with the Commonwealth Procurement Code, the Department of General Services' *Procurement Handbook*, and other related policies. [See Findings 5 and 6]
- Evaluate the appropriateness of PennDOT's procedures to manage and monitor the execution of contracts throughout the life of the contract. [See Finding 5]
- Determine whether PennDOT properly received funds specified by the Comprehensive Transportation Funding Plan (Act 89 of 2013) and the Omnibus Amendments to the Vehicle Code (Act 44 of 2007) and whether PennDOT spent these funds in accordance with the acts. [See Finding 2]
- Evaluate the process by which projects were selected for funding through the Transportation Infrastructure Investment Fund. [See Finding 4]
- Evaluate the method by which PennDOT commits funds within the Multi-Modal Fund and determine the Fund's available fund balance. [See Finding 3]

We also conducted procedures to determine the status of whether PennDOT implemented our prior performance audit's findings and recommendations from the report issued in January 2013 (see Status of Prior Audit Findings).

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Scope

The first five audit objectives covered the period January 1, 2014 through June 30, 2017. The final audit objective covered the period July 1, 2016 through June 30, 2018.

PennDOT management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance of compliance with applicable laws, regulations, contracts, grant agreements, and administrative policies and procedures.

In conducting our audit, we obtained an understanding of PennDOT's internal controls, including any system controls, if applicable, that we considered to be significant within the context of our audit objectives.

For those internal controls that we determined to be significant within the context of our audit objectives, we also assessed the effectiveness of the design and implementation of those controls as discussed in the *Methodology* section that follows. Any deficiencies in internal controls that were identified during the conduct of our audit and determined to be significant within the context of our audit objectives are included in this report.

Methodology

All of the items selected for testing within this audit were based on auditor's professional judgment. Consequently, the results of our testing cannot be projected to, and are not representative of, the corresponding populations.

To address our audit objectives, we performed the following procedures:

- Reviewed the U.S. Drivers Privacy Protection Act (18 USC § 2721-2725), Federal Privacy Act (5 U.S.C. § 552(e)(10)), PA Vehicle Code (Title 75 § 6114), Governor's Office Management Directive 325.13 (Service Organization Controls), Commonwealth Procurement Code, the Department of General Services' *Procurement Handbook*, Governor's Office Management Directive 310.23, Act 44 of 2007 (Omnibus Amendments to the Vehicle Code), Act 89 of 2013 (Comprehensive Transportation Funding Plan), and 72 P.S. § 1798.2-E (Restrictions on the Motor License Fund appropriation to the PA State Police) to determine legislative and regulatory requirements related to the audit objectives.
- Interviewed PennDOT management and staff from its Bureau of Driver Licensing, Risk Management Office, Bureau of Office Services, Bureau of Fiscal Management, Bureau of Project Delivery as well as the Deputy Secretary of Planning and the Deputy Secretary of Multimodal Transportation to gain an understanding of PennDOT's control environment

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and activities and to evaluate whether management controls considered to be significant within the context of the audit objectives were adequately designed.

- Interviewed the Deputy Director of Pennsylvania's Independent Fiscal Office and the Pennsylvania Treasury Comptroller and Assistant Comptroller to gain an understanding of reporting processes related to our audit objectives.
- Reviewed PennDOT's Driver and Vehicle Services (DVS) Privacy Procedures Document dated February 2017 and its written process to approve a wholesale provider account.
- Obtained a listing of all internal and external users with access to driver and vehicle information to determine the extent of PennDOT's distribution and sharing of personal information.
- Obtained a listing of wholesale providers that were under contract with PennDOT between January 1, 2014 and June 30, 2017. We reviewed all seven contracts and verified whether the contract was properly signed and contained the key provisions described in the DVS Privacy Procedures Document.
- Reviewed 27 of the 28 Affidavits of Intended Use submitted to PennDOT by the seven wholesale providers during the period January 1, 2014 through June 30, 2017. (Note: According to management, one affidavit was not provided to PennDOT.) We determined whether the submission was timely, properly notarized and properly signed, and that the business information on the affidavit agreed to the contract, all affirmations of use of information were initialed, and the categories of information indicated on the affidavit agreed to the allowable categories designated in the contract.
- Reviewed the Pennsylvania Office of Budget, Comptroller Operations, Bureau of Audits performance audit reports of the seven wholesale providers, classified the finding types, and summarized the potential risks identified in the reports. We also determined whether PennDOT took action to ensure timely and appropriate follow-up.
- Obtained and reviewed the four SOC 2 Type 2 reports covering two of the seven wholesale providers and determined whether the reports contained the contractually required information and PennDOT performed timely and adequate follow-up of the noted exceptions.
- Reviewed the audit documentation and conclusions of our Department and an independent CPA firm for the audit of the Commonwealth's Comprehensive Annual Financial Report (related to the Motor License Fund) and the Single Audit Report (related to the Highway Planning and Construction Cluster) for the fiscal years ended June 30, 2014, 2015, 2016, and 2017 to gain assurance that the results of the audit could

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be relied upon to satisfy our audit objectives regarding procurement and contract monitoring.

- Obtained a listing of the 369 construction projects completed between July 1, 2016 and June 30, 2017. We summarized the listing by district and compared the actual total project cost to the total contracted cost in order to analyze construction cost differences at the district level.
- Judgmentally selected 40 of the 369 construction projects completed, ensuring coverage of all engineering districts, and compared the percent increases of project costs to the corresponding dollar cost increases in order to evaluate whether PennDOT's cost overrun approval thresholds requiring Central Office approval appeared to be reasonable.
- Out of the 369 completed construction projects, 8 projects exceeded the approval thresholds requiring PennDOT Central Office approval. We obtained the document submitted to the Program Management Committee (PMC) and ensured the description on the document was similar to the description on the work order in the Engineering and Construction Management System (ECMS). We also obtained the PMC meeting minutes that documented the PMC's approval of the cost increases (where applicable).
- Reviewed the Bureau of Project Delivery's (BOPD) monthly cost reports for July 2016, October 2016, and June 2017, to determine whether its oversight of construction project cost increases was operating effectively. We identified the projects which met the established approval thresholds and obtained the documents provided to the Central Office by the appropriate district. We reviewed the justification documented to determine reasonableness, and verified those projects that met the PMC approval thresholds were identified by BOPD for referral to PMC.
- Reviewed the PennDOT Bureau of Office Services Purchasing Card Manual to determine PennDOT's agency-specific policies and procedures regarding purchasing cards.
- Obtained a listing of purchasing card transactions between August 17, 2015 and June 30, 2017. We judgmentally selected 60 of the 256,681 transactions based on suspicious or unusual entries related to the merchant name, merchant category, transaction amounts, and/or timing of transactions. We determined whether the supervisor approval of the transaction was obtained prior to the purchase as documented on the purchasing card order form or blanket approval form. We also reviewed the receipts/invoices, cardholder monthly reconciliation, and monthly memo statement which supported the transactions and review process.
- Obtained a listing of Quality Assurance Reviews performed between January 1, 2014 and June 30, 2017. We judgmentally selected 6 of the 32 reviews based on the type of entity (deputate or district/county) and reviewed the scheduling letters, final reports, corrective

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action plans, and documentation evidencing resolution of identified deficiencies to determine whether the reviews were adequately performed and documented.

- Reviewed the following reports: Pennsylvania Transportation Funding and Reform Commission Final Report, Investing in Our Future: Addressing Pennsylvania's Transportation Funding Crisis (November 2006), Pennsylvania State Transportation Advisory Committee Final Report, Transportation Funding Study (May 2010), Pennsylvania Governor's Transportation Funding Advisory Commission Final Report (August 2011), Legislative Budget and Finance Committee, PA State Police Cost to Provide Safety on Public Highways (March 2017), Pennsylvania Public Transportation Annual Performance Report Fiscal Year 2016-2017, State Transportation Commission, Pennsylvania 2017 Transportation Performance Report, Pennsylvania Department of the Auditor General Performance Audit of the Pennsylvania Turnpike Commission (March 2019), and Pennsylvania Turnpike Commission Act 44 Financial Plan (Fiscal Year 2019).
- Reviewed the Owner-Operator Independent Drivers Association and the National Motorists Association federal civil rights lawsuit against the Pennsylvania Turnpike Commission and related dismissal and appeal.
- Reviewed applicable segments of the Governor's Executive Budget for the fiscal years 2014-2015 through 2018-2019 for the Motor License Fund, Public Transportation Trust Fund, and the appropriation for highway safety to the Pennsylvania State Police.
- Obtained a listing of highway and bridge projects that were completed or planned to be complete between January 1, 2014 and June 30, 2017.
- Reviewed Pennsylvania's 2017 and 2019 Transportation Program Financial Guidance to identify the guidelines for the Transportation Infrastructure Improvement Fund (TIIF).
- Obtained a listing of TIIF monies allocated to projects between January 1, 2014 and June 30, 2017. We judgmentally selected 5 of the 27 projects approved to use TIIF monies based on location throughout the Commonwealth. We obtained evidence of how PennDOT became aware of the selection and traced the project to the regional Transportation Improvement Program from PennDOT's Multimodal Project Management System.
- Reviewed PennDOT's Guidelines for the Multimodal Transportation Fund (MTF) and gained an understanding of its project planning and funding commitment processes.
- Reviewed the Pennsylvania's Independent Fiscal Office February 2018 letter to the legislature that presented the budgetary fund balance for the MTF.

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- Obtained the MTF Historical Cash Balances from the Treasury Portal.
- Obtained and reviewed the summarized total activity of the MTF from fiscal years 2013-2014 through 2017-2018 and a listing of planned/awarded MTF funded projects for fiscal years 2016-2017 and 2017-2018.

To address the Status of Prior Audit Findings, we performed the following procedures:

- Interviewed PennDOT's Bureau of Motor Vehicles Director and Bureau of Support Services Director, and other management to gain an understanding of the status of the prior audit findings and to evaluate whether management controls considered to be significant were adequately designed.
- Reviewed the Regulated Client Audit Manual which served as the written policies and procedures for agent auditors.
- Reviewed the 2016 and 2017 position descriptions for all current PennDOT agent auditors to determine whether PennDOT increased the number of agent auditors and to ensure all regions (established in August 2016) and counties were covered by an agent auditor.
- Obtained two examples of travel expense vouchers that indicated the agent auditors travelled overnight during the fiscal year ended June 30, 2017.
- Obtained two examples of audits that were noted as being completed in the evening during the fiscal year ended June 30, 2017.
- Obtained a list of required training courses for PennDOT auditors and verified whether the training records indicated that each auditor completed those courses.
- Obtained the audit log that listed all audits (full agent, card agent, and online messenger) completed between January 1, 2016 through June 30, 2017, to determine if the number of audits performed increased. From the audit log, we judgmentally selected 40 agent audits ensuring all types of audits were included in the selection. We verified whether the supporting audit documentation included a description of all audit steps performed and the results of each step and the audit checklist agreed with the audit results. We also verified whether PennDOT adequately followed-up on identified deficiencies and the final audit results were reviewed by audit unit manager.
- Reviewed an example of the most current version of a full agent, card agent, and online messenger contract. We determined whether the audit checklists included proper procedures to ensure agent compliance with the applicable contract provisions. We also

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verified whether the new full and card agent contracts contained sanction language for noncompliance.

- Verified that PennDOT's website currently includes listings by county of all of its agents, including full agents, online agents, card agents, and online messengers and a statement encouraging consumers to compare prices of offered services by contacting the agents directly.
- Judgmentally selected five full agents and five card agents from nine different counties that were listed on PennDOT's website. For each agent, we determined whether the information within PennDOT's Dealer Contract Database (and consequently PennDOT's website) agreed to the original contract. We also verified whether the agent record within the database contained current training for agent and employees.
- We verified that PennDOT now maintains a list of certified agent trainers, including contact information and tentative training schedules, on its website for agents to access.

Data Reliability

In performing this audit, we used revenues and appropriation information for the Motor License Fund and Public Transportation Trust Fund (PTTF) from the 2014-2015 through 2018-2019 Governor's Executive Budget, PTTF monies paid to transit agencies between July 1, 2013 and June 30, 2017, a listing of highway and bridge projects that were completed or planned to be completed with Act 89 funds, the listing of the Multimodal Transportation Fund revenues and expenditures as reported in the Pennsylvania's Independent Fiscal Office February 2018 letter to the legislature, the Multimodal Transportation Fund Historical Cash Balance from the Treasury Portal, the listing of Multimodal Transportation Fund projects planned and awarded for 2016-2017 and 2017-2018, the listing of wholesale providers contracted with PennDOT between January 1, 2014 through June 30, 2017, a listing of the 369 construction projects completed between July 1, 2016 and June 30, 2017, a listing of purchasing card transactions between August 17, 2015 and June 30, 2017, a listing of Quality Assurance Reviews performed between January 1, 2014 and June 30, 2017, a listing of projects awarded Transportation Infrastructure Improvement Fund monies between January 1, 2014 and June 30, 2017, the summarized total activity within the Multimodal Transportation Fund from 2013-2014 through 2017-2018, and PennDOT's issuing agent audit log from January 1, 2016 through June 30, 2017.

Government Auditing Standards requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. The assessment of the sufficiency and appropriateness of computer-processed information includes considerations regarding the completeness and accuracy of the data for the intended purposes.

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- To assess the completeness and accuracy of the revenues and appropriations for the Motor License Fund and Public Transportation Trust Fund reported in the 2014-2015 through 2018-2019 Governor’s Executive Budgets and the PTTF monies paid to transit agencies, we reconciled totals to the Commonwealth’s SAP accounting system. The SAP accounting system is an independent source that is evaluated as part of the annual audit of the Commonwealth’s Comprehensive Annual Financial Report. These annual audits are conducted jointly by the Department of the Auditor General and a Certified Public Accounting firm. Based on the above procedures, we found no limitations with using the data for our intended purposes. In accordance with *Government Auditing Standards*, we concluded that the revenues and appropriations for the Motor License Fund and Public Transportation Trust Fund reported in the 2014-2015 through 2018-2019 Governor’s Executive Budgets were sufficiently reliable regarding completeness and accuracy for the purposes of this engagement.
- To assess the completeness and accuracy of the listing of highway and bridge projects that were completed or planned to be completed with Act 89 funds, we conducted audit procedures as follows:
 - Interviewed PennDOT management to gain an understanding of its tracking of highway and bridge construction projects.
 - Obtained a description of data extraction procedures.
 - Reconciled the total number of projects from the provided listing to PennDOT’s Road and Bridge Summary report on its public website.

Based on the above procedures, we found no limitations with using the data for our intended purposes. In accordance with *Government Auditing Standards*, we concluded that the listing of “decade of investment” projects was sufficiently reliable regarding completeness and accuracy for the purposes of this engagement.

- To assess the completeness and accuracy of the listing of the Multimodal Transportation Fund revenues and expenditures as reported in the Pennsylvania’s Independent Fiscal Office February 2018 letter to the legislature, we reconciled totals to the Commonwealth’s SAP accounting system. The SAP accounting system is an independent source that is evaluated as part of the annual audit of the Commonwealth’s Comprehensive Annual Financial Report. These annual audits are conducted jointly by the Department of the Auditor General and a Certified Public Accounting firm. Based on the above procedures, we found no limitations with using the data for our intended purposes. In accordance with *Government Auditing Standards*, we concluded that the Multimodal Transportation Fund revenues and expenditures as reported by the Pennsylvania’s Independent Fiscal Office were sufficiently reliable regarding completeness and accuracy for the purposes of this engagement.

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- To assess the completeness and accuracy of the Multimodal Transportation Fund Historical Cash Balance from the Treasury Portal, we conducted audit procedures as follows:
 - Interviewed Pennsylvania Treasury officials to obtain an understanding of its Treasury Portal and the information contained within its various reports.
 - Reconciled the Historical Cash Balance from the Treasury Portal as of June 30 to Treasury's Annual Investment Report for the fiscal years ended June 30, 2017 and 2018.
 - Reconciled the Historical Cash Balance from the Treasury Portal as of June 30, 2018, to PennDOT's records of appropriations and expenditures for Multimodal Transportation Fund projects.

Based on the above procedures, we found no limitations with using the data for our intended purposes. In accordance with *Government Auditing Standards*, we concluded that the Multimodal Transportation Fund Historical Cash Balance from the Treasury Portal was sufficiently reliable regarding completeness and accuracy for the purposes of this engagement.

- To assess the completeness and accuracy of the listing of Multimodal Transportation Fund projects planned and awarded for 2016-2017 and 2017-2018, we conducted audit procedures as follows:
 - Interviewed PennDOT management to gain an understanding of its procedures related to awarding multimodal transportation funds and tracking of projects and expenditures through the grant cycle.
 - Recalculated the schedule of expenditures related to projects at milestones within the grant process for mathematical accuracy.
 - Reconciled the listing of projects to a published listing of multimodal project awards on PennDOT's website.
 - Reviewed the award letter, request to proceed, grant agreement and invoices for an example project.

Based on the above procedures, we found no limitations with using the data for our intended purposes. In accordance with *Government Auditing Standards*, we concluded that the listing of Multimodal Transportation Fund projects was sufficiently reliable regarding completeness and accuracy for the purposes of this engagement.

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- To assess the completeness and accuracy of the listing of the 369 construction projects completed between July 1, 2016 and June 30, 2017, we conducted audit procedures as follows:
 - Traced a selection of ten projects from PennDOT's project website to the listing of constructions projects and a selection of ten projects from the listing of construction projects to PennDOT's website, noting agreement.
 - For our selection of 40 items, we traced the construction projects to PennDOT's ECMS system and supporting documentation.

Based on the above procedures, we found no limitations with using the data for our intended purposes. In accordance with *Government Auditing Standards*, we concluded that the listing of 369 construction projects was sufficiently reliable regarding completeness and accuracy for the purposes of this engagement.

- We did not perform procedures to validate the completeness and accuracy of the listing of wholesale providers contracted with PennDOT between January 1, 2014 through June 30, 2017, the listing of purchasing card transactions between August 17, 2015 and June 30, 2017, the listing of Quality Assurance Reviews performed between January 1, 2014 and June 30, 2017, the listing of projects awarded Transportation Infrastructure Improvement Fund monies between January 1, 2014 and June 30, 2017, and the summarized total activity within the Multimodal Transportation Fund from 2013-2014 through 2017-2018. As such, we deemed this information to be of undetermined reliability; however, this is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.
- Based on our procedures to follow up on prior audit findings and recommendations, we found that PennDOT's issuing agent audit log from January 1, 2016 through June 30, 2017, continued to be inaccurate and contained duplicate and erroneous entries. We reviewed all six of the card agent audits that the log indicated were completed between January 1, 2016 and June 30, 2017, and found only one was an actual completed audit with documented audit procedures and results. Out of the 40 full agent audits reviewed, we found 8 were not true audits. Specifically, five "audits" were picking up documents/materials for agents which had closed or gone out of business and three simply recorded that the agent was not open for business and therefore the audit could not be conducted. Based on these procedures, we have concluded the audit log to not be sufficiently reliable for the purpose of this engagement. See the Status of Prior Audit Findings for further details.

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Appendix B

History of Act 44 of 2007 and Act 89 of 2013

In 2005, Governor Rendell created the Transportation and Funding Reform Commission (TFRC) to study and make recommendations concerning the funding of public transportation, highways, and bridges in Pennsylvania. In its report dated November 2006, the TFRC reported that Pennsylvania's public transportation and highway and bridge systems were in crisis, both in terms of inadequate funding as well as decaying physical conditions.¹³² There were nearly 6,000 structurally deficient bridges and bridges were 50 years old on average. Over 8,500 miles of roads were in poor condition and there was a backlog to address safety and traffic congestion issues. Additionally, funding sources for public transit were unpredictable, not dedicated, and had minimal growth.¹³³ The report stated it needed \$1.7 billion in new revenue to address the growing transportation crisis.¹³⁴

In 2007, Act 44 was signed into law and created the Public Transportation Trust Fund (PTTF) as a dedicated fund to provide a portion of the transit funding recommended by the TFRC.¹³⁵ Funding deposited into the PTTF pursuant to Act 44 included a dedicated 4.4 percent of Sales and Use Tax, a transfer of approximately \$90 million from the State Lottery Fund dedicated for the Free Transit Program for Senior Citizens, and a transfer of any revenue remaining in the Public Transportation Assistance Fund not otherwise dedicated pursuant to law.¹³⁶

With the passing of Act 44, the Pennsylvania Turnpike Commission (Commission) and PennDOT created a "public-public" partnership in which the Commission was required to start contributing annual payments to PennDOT. Beginning with the fiscal year ended May 31, 2008, the Commission was mandated to transfer \$300 million into the PTTF for transit funding and \$450 million into the established Motor License Fund for transportation infrastructure improvements. After a three-year phase-in period, the total transfer was to be \$900 million in fiscal year 2009-2010 and then increase by 2.5 percent each year over the course of 50 years.¹³⁷

The original plan included tolling Interstate 80 (I-80) and transferring control of I-80, as well as tolls collected on that interstate, from PennDOT to the Commission. However, in April 2010 the Federal Highway Administration ultimately denied Pennsylvania permission to toll I-80 and the

¹³² Transportation and Funding Reform Commission, Investing in Our Future: Addressing Pennsylvania's Transportation Funding Crisis, November 2006, page ES-2, <http://pahighwayinfo.org/wp-content/uploads/2010/07/PTFRC_FULLREORT.pdf> (accessed July 6, 2018).

¹³³ <<http://www.penndot.gov/Doing-Business/Transit/Funding%20and%20Legislation/Documents/Act44FundPresentation.pdf>> (accessed September 18, 2017).

¹³⁴ Transportation and Funding Reform Commission, Investing in Our Future: Addressing Pennsylvania's Transportation Funding Crisis, November 2006, page ES-6 and ES-12.

¹³⁵ 74 Pa.C.S. § 1506(a).

¹³⁶ 74 Pa.C.S. § 1506(b).

¹³⁷ 74 Pa.C.S. §§ 1506(b)(1) and 1506(e)(2) and 75 C.S. § 8915.6(a). See 75 Pa.C.S. § 8901 definition of "Scheduled annual commission contribution."

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\$900 million annual payment provided for in Act 44 was reduced to \$450 million, with \$250 million going to the PTF and \$200 million going to the MLF.¹³⁸ Consequently, Act 44 was unable to address the transportation funding gap as much as expected.

In April 2011, Governor Corbett established the Transportation Funding Advisory Commission (TFAC) to develop a comprehensive, strategic proposal to address the transportation funding needs.¹³⁹ In August 2011, the TFAC released its final report which, amongst other things, highlighted the ongoing concern related to an underinvestment in transportation funding, which led to an aging and deteriorating transportation infrastructure throughout Pennsylvania. Additionally, the report noted for the past decade PennDOT had adopted a maintenance first approach, aiming to fix existing infrastructure, before building additional capacity through more highways and bridges. While this approach was sensible given funding constraints, in the words of the TFAC:

The Commonwealth has deferred improvements that are needed to support our current residents and economy, and is falling behind other states in the competition to attract new businesses. **The problem can only be solved by overhauling our approach to funding and delivering infrastructure and services.**¹⁴⁰ (Emphasis added)

In response to the TFAC's final report, in November 2013, Governor Corbett signed into law Act 89 of 2013, which aimed to provide a new era of public transportation improvement. Act 89 overhauled transportation and increased revenues across several Commonwealth funds as follows:

- Eliminated the 12 cents-per-gallon state retail gas and diesel tax and increased the millage rate of the Oil Company Franchise Tax (OCFT) to offset this elimination. The OCFT is a tax on gas and diesel at the wholesale level that is deposited into the MLF.¹⁴¹
- Increased driver licensing and vehicle registration fees and changed various traffic violation fines, surcharges, and permits.¹⁴² These revenues increased funds in both the MLF and the PTF.

¹³⁸ <<https://www.paturpike.com/business/act44.aspx>> (accessed July 24, 2018).

¹³⁹ Transportation Funding Advisory Commission, Final Report, August 2011, page 4, <<https://www.penndot.gov/about-us/Documents/TFAC%20Final%20Report%20-%20Spread%20Version.pdf>> (accessed May 23, 2018).

¹⁴⁰ Ibid., page 3.

¹⁴¹ 75 Pa.C.S. § 9502 and Pennsylvania Highway Information Association, Pennsylvania's New Transportation Funding Law, <<http://pahighwayinfo.org/wp-content/uploads/2014/12/Detailed-Summary-of-Act-89-of-2013.pdf>> (accessed May 23, 2018).

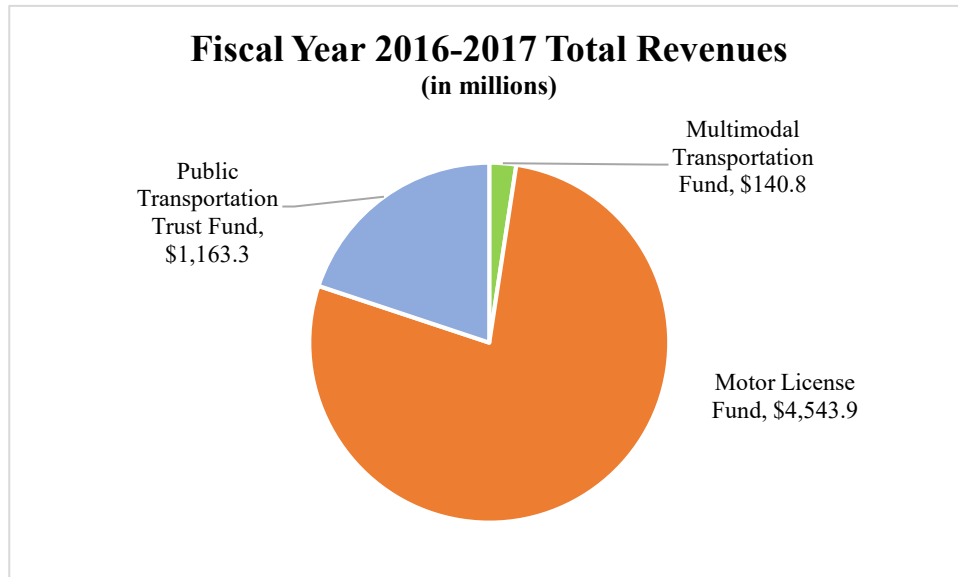
¹⁴² Pennsylvania Highway Information Association, Pennsylvania's New Transportation Funding Law, <<http://pahighwayinfo.org/wp-content/uploads/2014/12/Detailed-Summary-of-Act-89-of-2013.pdf>> (accessed May 23, 2018).

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- Changed the provisions of Act 44 related to the PA Turnpike Commission’s annual payments to PennDOT. The \$450 million annual obligation was reduced to \$50 million beginning in the fiscal year 2022-2023.¹⁴³ Additionally, it dedicated all of the \$450 million to the PTTF for transit programs.
- Established the Multimodal Transportation Fund (MTF) for rail (passenger and freight), ports/waterways, aviation, pedestrian, and bicycle facilities projects.¹⁴⁴ The MTF is funded by \$30 million of the Pennsylvania Turnpike Commission obligation redirected from the PTTF, \$35 million of the OCFT revenue redirected from the MLF, and certain unprotected fees.¹⁴⁵

For the fiscal year 2016-2017, the Act 89 funds, in addition to all other funds, were distributed between these three funds as follows:



Source: This chart was created by the Department of the Auditor General staff from data provided by PennDOT management. This data is of undetermined reliability as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our finding and conclusions.

¹⁴³ 74 Pa.C.S. §1506(b)(1)(iii).

¹⁴⁴ 74 Pa.C.S. § 2102.

¹⁴⁵ 75 Pa.C.S. § 9502(a)(1), 74 Pa.C.S. § 1506(e)(6), and Pennsylvania Highway Information Association, Pennsylvania’s New Transportation Funding Law, <<http://pahighwayinfo.org/wp-content/uploads/2014/12/Detailed-Summary-of-Act-89-of-2013.pdf>> (accessed May 23, 2018).

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Appendix C

PennDOT Construction and Engineering Procurement Overview

The Pennsylvania Department of Transportation (PennDOT) is responsible for about 40,000 miles of roadway and 25,000 bridges across the Commonwealth, as well as transportation in other areas such as aviation, transit, and rail facilities.¹⁴⁶ PennDOT works closely with federal and local governments and other planning partners to maintain its transportation network. According to PennDOT management, during our audit period of January 1, 2014 through June 30, 2017, approximately 55 percent of transportation construction projects were fully-funded with state monies and 45 percent were funded with state and federal monies.

Projects receiving state funds must adhere to the requirements of the Commonwealth Procurement Code, which delegates procurement responsibility to PennDOT for bridge, highway, dam, airport (except vertical construction), railroad, or other heavy/specialized construction.¹⁴⁷ Projects receiving federal funds must adhere to the statutory and regulatory requirements in Title 23 of the United States Code and Title 23 of the Code of Federal Regulations for development, administration, and oversight. The Federal Highway Administration (FHWA) and PennDOT Stewardship & Oversight Agreement (Agreement) outlines the FHWA oversight program requirements for processes such as project selection, consultant selection and management, design, construction monitoring, and contract administration. The Agreement also outlines requirements to monitor the effective and efficient use of funds authorized by conducting annual reviews of the state's processes and management practices in all areas relating to financial integrity and project delivery through the Single Audit process.¹⁴⁸ PennDOT issues publications to establish its policies and procedures for project procurement and monitoring pursuant to state and federal laws and regulations.

PennDOT manages every aspect of project delivery, from prequalification and requalification of business partners to the finalization close-out process of projects, through its Engineering and Construction Management System (ECMS).¹⁴⁹ The ECMS is also the communication portal between PennDOT and business partners for conducting transportation projects with electronic-based project advertising, establishing open two-way communications, and providing the same information to all interested parties. The public may also log into the ECMS system as a guest to view limited information on transportation projects.

All consultants, contractors, and subcontractors interested in performing transportation project work for PennDOT must be prequalified for assurance of integrity, responsibility, and

¹⁴⁶ <<http://www.projects.penndot.gov/projects/PAProjects.aspx>> (accessed December 17, 2018).

¹⁴⁷ 62 Pa.C.S. § 301(c)(1).

¹⁴⁸ Federal-Aid Highways Stewardship and Oversight Agreement, pages 7-13, <<https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>> (accessed October 4, 2018).

¹⁴⁹ PennDOT Publication 51 (04-16) *Plans, Specifications and Estimate Package Delivery Process Policies & Preparation Manual*, 2014 Edition, Change 2, page 12.

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competence.¹⁵⁰ Prequalification of business partners enables the processing and evaluation of the capacity and qualifications of the contractors and the subcontractors to perform highway project work in the Commonwealth.¹⁵¹ Additionally, the Contractor Responsibility Program (CRP) is a state-wide program to ensure all state agencies under the Governor's jurisdiction are contracting with responsible vendors as well as providing for the centralized collection and dissemination of information concerning non-responsible contractors.¹⁵²

The information required for prequalification for construction projects through PennDOT's ECMS include the applicant's audited financial statements, an organization and experience statement, and an affirmative action statement. Prequalification limits the applicant to the assignment of specific work classifications, such as earthwork, pavement, and incidental construction. Prequalified contractors must renew their qualified status every two years.

PennDOT also applies the past performance results from consultant and contractor evaluations conducted in the project finalization process of all construction projects. Past Performance Reports (PPRs) are evaluated to adjust a prime contractor's Performance Factor in ECMS. The Performance Factor is also known as the "assigned ability factor".¹⁵³ The PPR consists of three rating areas:

- Managing the Project
- Managing Compliance
- Managing Resources

PennDOT provides the relevant PPR information to the CRP System. The CRP is part of the re-qualification process. Additionally, during procurement the CRP Certification form is checked, signed and dated by a PennDOT designee attesting to the fact that the contractor is responsible and is not debarred or suspended.¹⁵⁴

Each calendar quarter, PennDOT publishes a six-month schedule of planned lettings (contracts that will be open to bid upon) and publishes this schedule on the ECMS website. Highway bid packages consist of PennDOT Publication 408, bid documents, special provisions, and plans. Bids are accepted from prime contractors who are currently prequalified and are Registered Business Partners (registered within PennDOT's ECMS system). Contractors' bids must be

¹⁵⁰ *US Code Title 23, Highways, Code of Federal Regulations*, Part 634-Construction and Maintenance, Subpart G-Engineering and Traffic Operations, §635.110-Licensing and qualification of contractors.

¹⁵¹ *PA Code Title 67, Chapter 457, Prequalification of Bidders*, Section 457.2 Purpose, page 457-22.

¹⁵² Commonwealth of Pennsylvania Governor's Office Management Directive 215.9 Amended, Contractor Responsibility Program.

¹⁵³ As defined in 67 Pa. Code § 457.5(f)(3).

¹⁵⁴ To protect the government's interests, any agency can exclude (i.e., debar or suspend) parties from receiving federal contracts or assistance for a range of offenses. Exclusions of companies or individuals from federal contracts or other funding can be located on the U.S. government's System for Award Management official website.

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received by PennDOT before the time and date of the opening stated in the bid package.¹⁵⁵ Generally, Pennsylvania law requires that construction projects be awarded to the prequalified contractor who provided the lowest bid. Low bid contracting is used to provide prospective contractors equal opportunity to perform the work while obtaining the lowest price possible.

Construction contract execution is completed by PennDOT's Central Office. PennDOT's policy for construction project oversight states that once the project successfully advances through the research, planning, and procurement stages and moves into construction status, oversight for the project is transferred from the PennDOT's Central Office to the appropriate PennDOT engineering district offices.¹⁵⁶ A legal agreement is prepared, executed and sent to the district office after the technical and cost proposals are deemed adequate by the Central Office. Based on the scheduled let date of the project, a "Notice to Proceed" is sent to the contractor by the district office.

¹⁵⁵ Conducting Business with the Pennsylvania Department of Transportation, PUB 4 (11-16), pages 15-19.

¹⁵⁶ Pennsylvania Department of Transportation PUB 637 (12-07) *ECMS Construction Contractor Manual*, page 10-8.

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Appendix D

Distribution List

This report was distributed to the following Commonwealth officials:

The Honorable Tom Wolf
Governor

The Honorable Leslie S. Richards
Secretary
Pennsylvania Department of Transportation

The Honorable Jen Swails
Secretary of the Budget
Office of the Budget

Ms. Suzanne Itzko
Deputy Secretary for Administration
Pennsylvania Department of Transportation

The Honorable Joseph M. Torsella
State Treasurer
Pennsylvania Treasury Department

The Honorable Tim Hennessey
Majority Chair
House Transportation Committee

The Honorable Josh Shapiro
Attorney General
Office of the Attorney General

The Honorable Mike Carroll
Democratic Chair
House Transportation Committee

The Honorable Michael Newsome
Secretary of Administration
Office of Administration

The Honorable Kim Ward
Majority Chair
Senate Transportation Committee

Mr. William Canfield
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