

**THE UNITED STATES VIRGIN ISLANDS  
OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL**



**AUDIT OF THE DONATED  
LEAVE PROGRAM**

**ILLEGAL OR WASTEFUL ACTIVITIES SHOULD BE REPORTED TO  
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## **EXECUTIVE SUMMARY**

The following summarizes the major findings resulting from the Audit of the Donated Leave Program administered by the Department of Finance (AR-05-30-05).

### ***Finding 1: Guidelines (pages 4 to 7)***

- ✓ In general, the Department of Finance administered the Donated Leave Program in accordance with the provision of the Virgin Islands Code.
- ✓ The Department of Finance has not implemented rules and regulations to serve as a guideline for the interpretation of the Donated Leave Program law.
- ✓ There is no definition for the term “catastrophic health condition or injury”.
- ✓ Currently, the decision on whether an applicant will be allowed to participate in the Donated Leave Program rests with one individual, the Commissioner of the Department of Finance.

### ***Finding 2: Program Records (page 8)***

- ✓ The Department of Finance had followed the requirements of the Virgin Islands Code in gathering the necessary paperwork from Donated Leave Program applicants used in determining their eligibility to participate as either donors or recipients.
- ✓ However, personal records of donors and applicants were not adequately stored to safeguard sensitive and confidential medical information from easy access by unauthorized personnel.
- ✓ The failure to safeguard the applicants’ information violated the recently approved Federal Healthcare Information Privacy and Portability Act.



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September 9, 2005

Honorable Charles W. Turnbull  
Governor of the Virgin Islands  
Government House  
No. 21 Kongens Gade  
St. Thomas, Virgin Islands 00802

Honorable Lorraine L. Berry  
President  
26<sup>th</sup> Legislature  
Capitol Building  
St. Thomas, Virgin Islands 00802

Dear Governor Turnbull and Senator Berry:

Attached is our final report on the Donated Leave Program that is administered by the Department of Finance.

Although the Department in general administered the Donated Leave Program in accordance with the provisions of the Virgin Islands Code, some weaknesses were noted. In particular, we found that there were no written rules and regulations to guide the interpretation and administration of the Program. In addition, we found that Program files, in particular sensitive medical records, were not adequately secured to safeguard the confidentiality of the participants' information.

A draft report was submitted to the Commissioner of Finance on March 10, 2005 requesting comments and responses to the recommendations made in the report; however, to date we have not received a response from the Commissioner. Accordingly, the report is being issued without the auditee's response and all of the recommendations are considered unresolved.

If you or your staff require additional information, please call me at 774-6426.

Sincerely,

Steven van Beverhoudt, CFE, CGFM  
V. I. Inspector General

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# INTRODUCTION

## BACKGROUND

On October 13, 1994, the Virgin Islands Legislature passed Act 6031, which brought a Donated Leave Program (Program) into law. The Program enables government employees to donate paid leave time credits to co-workers so that the recipient would continue receiving a salary during a period of prolonged absence from work that was caused by suffering from a “catastrophic condition”. The Program’s intent, therefore, is to alleviate the financial burden that would otherwise be created as a result of the employee being absent from work on leave without pay.

The laws and regulations governing the operations of the Program are contained in Title 3, Chapter 25, Section 583(b) of the Virgin Islands Code (Code). The Code defines the circumstances under which Virgin Islands Government (Government) employees can legitimately participate in the Program, and it has vested the Commissioner of the Department of Finance (Finance) with the administrative authority to promulgate rules and regulations necessary to implement the provisions of the law, and to maintain appropriate records of donated leave for all employees who participate in the Program.

The Code outlines the criteria that must be met by employees in order to become eligible to participate in the Program as donors, or as recipients. The basic criteria state that both parties are required to be Government employees who have satisfactorily completed a one-year probationary period of service. A prospective recipient must submit documentation from a licensed physician, or other licensed health care provider, substantiating the nature, and anticipated duration of a disability that results from a serious health condition or injury to the employee, or to a member of his/her immediate family for whom he/she is the primary care giver.

An eligible donor must have at least twenty (20) days of accrued sick leave, and at least twelve (12) days of annual leave remaining after making a voluntary donation of his/her paid leave credits to an eligible recipient. An eligible recipient must have exhausted his/her own earned leave time credits prior to being credited incrementally with donations of at least five (5) sick or annual leave days, or a combination thereof, from one or more donors, until donations accrue to a maximum of 260 days.

While donated leave is being used, the recipient would continue to accrue personal sick and annual leave days, but these credits are frozen until the employee resumes work. On the resumption of work, any unused donated leave will be returned to the donor on a prorated basis in whole days. If the recipient retires before the resumption of work, unused donated leave is not credited to supplemental retirements benefits.

An employee is required to initiate a request for participation in the Program through his/her supervisor. Finance reviews the application for compliance with the eligibility criteria outlined in the Code for both recipients and donors, and makes the final decision on the employees’ eligibility to participate.

## **OBJECTIVES, SCOPE AND METHODOLOGY**

The objectives of our audit were to determine whether Finance: (i) administers the Program in accordance with the provisions of the Code; (ii) has formulated rules and regulations, as mandated by the Code, that would serve both to guide the operations of the Program, and to explain the provisions of the law; and, (iii) maintains and adequately secures records of donated leave for employees who have participated in the Program. The objectives also included the identification of inadequacies in the administration of the Program, and recommendations to address the causes of the inadequacies found.

The scope of our audit covered awards of donated leave over calendar years 2000 to 2001.

For the purpose of our audit, we reviewed of Program records, interviewed Program staff, and did research on other Programs operated by governments and agencies throughout the United States. We focused our audit on records maintained for Program participants from the Department of Justice (Justice) and the Department of Education (Education) whose payrolls are processed in the Payroll Division of Finance.

Except as described in the following paragraph, we conducted our audit in accordance with generally accepted government auditing standards applicable to performance audits contained in the Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to provide a reasonable basis for our findings and conclusions. Accordingly, we have performed such tests of records, and conducted other auditing procedures that were considered necessary under the circumstances.

Government auditing standards require that the audit organization undergo an external peer review at least once every three years. However, due to funding limitations, we were unable to meet the peer review requirement. We believe that this shortfall did not prevent us from meeting the requirements of the other applicable auditing standards.

As part of our audit, we evaluated the internal controls over the administration, recording, and record keeping for the Program. Weaknesses in internal controls in these areas are discussed in the Audit Results section of the report.

## **PRIOR AUDIT COVERAGE**

There were no indications in the records examined that the Program had been audited within the past five (5) years, and we were unaware of any recent audits in this area by any other firm or agency.

# **AUDIT RESULTS**

## **CONCLUSIONS**

We found that in general, Finance has administered the Program in accordance with the provisions of the Code. However, we did note that Finance: (i) had not formulated a body of rules and regulations that would serve as guidelines for the interpretation of the Program's law, and give employees wishing to participate in the Program a better understanding of how the Program works; although, recently, proposed rules and regulations have been drafted; and, (ii) had not provided adequate storage and security for the records of employees who have participated in the Program.

We attribute these conditions to the fact that the Program's operations and effectiveness had not been evaluated since its inception more than ten years ago.

As a result: (i) no guidelines were available to assist Finance in determining whether a particular condition was in fact a "catastrophic health condition" or not; (ii) the responsibility for making the determination rested with one individual; and (iii) confidential Program applicants' personal medical information was subject to easy access by unauthorized persons.

We made several recommendations to address the conditions and causes cited in the report. The recommendations addressed areas dealing with: (i) the establishments of rules and regulations to serve as a guide in the interpretation of the Program's law and to guide employees who wish to participate in the program; and, (ii) the safeguard of confidential participants' records in accordance with the Healthcare Information Privacy and Portability Act.

These matters are discussed in more details in the findings sections of the report.

## **FINDING 1: GUIDELINES**

Finance had not implemented rules and regulations that would serve as guidelines for the interpretation of the Program's law, and give employees wishing to participate in the Program a better understanding of how the Program works. After more than 10 years since the enactment of the law that brought the Program into existence, there is still no definition for the term "catastrophic condition", and the selection of employees for participation in the Program is based solely on Finance's discretion of what the term means. In the absence of rules and regulations to guide its operations, the law itself remains the only available document of reference for information relating to the Program's operations.

### **Background**

The Code requires that in order to qualify as an eligible recipient of donated leave, an employee must have been suffering from a "catastrophic health condition or injury". The Code has, however, not provided a definition for the term "catastrophic health condition or injury", nor has it given examples as to the nature of the illnesses that are deemed as catastrophic. It merely requires that a physician or a licensed health care provider provide medical verification of the nature and anticipated duration of the employee's disability resulting from a serious health condition or injury.

The Code's mandate is that Finance should administer the Program, and as such, should formulate rules and regulations that would serve, both to explain the provisions of the law, and be the guidelines for directing and controlling the operation of the Program. During the course of our review, Finance officials provided us with a copy of proposed rules and regulations that have been drafted but not yet implemented.

### **Catastrophic Condition**

Finance has been approving and disapproving participation in the Program on grounds of "catastrophic health condition", even though there is no clear definition of the term.

From our examination of the limited medical records of Program applicants maintained by Finance, we have observed that physicians merely document the nature of the illness on the employee's medical record without indicating whether or not the ailment is "catastrophic". Finance, therefore, has been making that determination.

Our audit has found some disapproval of donated leave requests that, in our opinion and based on the documents provided, could have been considered "catastrophic". There were instances where a similar condition that was determined to be "catastrophic" for one employee, was deemed not to be "catastrophic" in the case of another employee. Finance officials have indicated that in reviewing the various individual requests for donated leave, medical books and local physicians had been consulted to help in determining whether the condition qualified as "catastrophic" under the Program. Although we do not question if this was done, there were no records in the files to support the results of any research or advice obtained from physicians. In this regard, we have documented

the following examples of some of Finance's rulings relating to "catastrophic condition".

- ✓ An applicant whose illnesses were hypertension, diabetes, mellitus, and degenerate disk disease was approved. However, an applicant whose illnesses were diagnosed as hypertension, arthritis, and Scleroderma was disapproved. Finance officials stated that advice was obtained from a physician before a determination was made. We found no documents in the records to show the advice that was received.
- ✓ An applicant diagnosed as having a "high-risk" pregnancy due to fetal anomaly was approved. Another applicant diagnosed as having a "high-risk" pregnancy requiring delivery by cesarean section was also approved. While, an applicant whose pregnancy required delivery by cesarean section was disapproved. It was indicated that because the physician used the word "high-risk" in justifying the request for leave, the first two situations were approved, while the third situation was not.
- ✓ An applicant whose illness was diagnosed as "gangrenous perforated gall bladder with gallstones" was approved, while an applicant diagnosed as suffering from "kidney stones" was disapproved. Finance officials stated that after consultation with a physician, it was determined that kidney stones did not constitute a "catastrophic condition"; however, if the kidney stones later resulted in a situation to require surgery, then that would have been a "catastrophic condition".

Although one might argue that these three examples are not similar, one can argue that they are. We are not challenging the decisions made by Finance officials in each of the situations presented. However, with these examples, we are making several important points regarding the lack of rules and regulations for the Program.

First of all, there is no documentation to show the research done in arriving at the determinations made. There are no records of the medical books consulted or the physicians whose advice were sought. Second, by not having established criteria, another Commissioner of Finance, at a later time, might view similar requests for donated leave differently. Finally, the decision as to whether to approve or disapprove a request for donated leave is based solely on the interpretation of one individual, the Commissioner of Finance.

### **Defining Catastrophic Condition**

We used direct contact and the Internet to look at several other Programs operated by governments and agencies throughout the United States. The focus of our research was on "catastrophic condition". We were interested in learning the various ways by which this term was defined or explained by other organizations. We have documented the following observations.

Name of Agency	Definition of Catastrophic Condition	Non-Catastrophic Condition
Federal Government of the United States	A medical condition of an employee or family member, including normal pregnancy and the period of confinement and recuperation associated with it, which is likely to require an employee’s absence from duty for a prolonged period of time and substantial loss of income to the employee because of the unavailability of paid leave. In determining whether a medical emergency exists, the following should be considered: the authenticity and severity of the hardship situation; whether the medical emergency could have been foreseen by the employee; and the extent to which the hardship situation is within the control of the employee.	None given.
Delaware	Any illness or injury to an employee or a member of the employee’s family which is diagnosed by a physician and certified by the physician as rendering the employee or the member of the employee’s family unable to work for a period greater than 5 calendar weeks.	None given.
Arkansas	A medical condition of an employee or spouse or parent of the employee or of a child of the employee which may be claimed as a dependent under the Arkansas Income Tax Act of 1929, as certified by a physician that requires an employee’s absence from duty for a prolonged period of time and which, except for the catastrophic leave program, would result in a substantial loss of income to the employee because of the exhaustion of all earned sick, annual, holiday and compensatory leave.	None given.
Mississippi State University	A life- threatening injury or illness, which totally incapacitates the employee from work, as verified by a licensed physician. Chronic illnesses or injuries, such as cancer or major surgery requiring long recuperation periods.	Conditions which are short-term in nature, such as influenza and measles.
University of Western Virginia	Illness or injury which incapacitates the employee and creates a financial hardship.	None given.
University of California at Riverside	A serious, debilitating illness or injury which incapacitates the employee or the employee’s family member.	Pregnancy disability leave is specifically excluded.

We have noted the following from our research:

- ✓ Where a definition of “catastrophic condition or injury” was given, all the agencies we researched seemed to carry the same standard definition.
- ✓ Some entities gave examples of illnesses that they regarded as “catastrophic” and illness that were not to be regarded as “catastrophic”.

- ✓ Some entities regarded an illness as “catastrophic” in terms of the length of time that it took the employee away from work, and the economic hardships that were created as a result.
- ✓ Most entities specified that a licensed physician must make the determination as to whether or not a condition was “catastrophic”.

At the exit conference, the Commissioner of Finance provided us with a copy of proposed rules and regulations that are currently being considered. Among other things, the proposed rules and regulations attempts to define the term “catastrophic illness or injury” although, it still leaves it subject to interpretation by the Commissioner of Finance.

### **Recommendations**

We recommend that the Commissioner of Finance:

1. Expedite the formulation of rules and regulations, as mandated by the Code, to guide the operations of the Program, and to explain the provisions of the law.
2. Consult a professional body of licensed physicians for a definition, and/or a list of conditions that may be categorized as “catastrophic” and a list of illness that should not be considered as “catastrophic”.
3. Make available to employees a list of frequently asked questions (FAQ’s) and answers about the Program, so that one may become more informed about how the Program works.

## **FINDING 2: PROGRAM RECORDS**

In accordance with the requirements of the Code, Finance had appropriately gathered and processed the relevant paper work that Program applicants were required to file in order to determine their eligibility to participate in the Program as either donors or recipients. However, Finance has not adequately stored and secured the personal records of Program applicants by ensuring that there were proper physical, electronic, and procedural safeguards to protect sensitive and confidential medical information of applicants from exposure, and from easy access by unauthorized persons.

### **Background**

The Code requires that Finance maintain appropriate records of donated leave for all employees who have participated in the Program. These records would comprise the paper work that applicants are required to file for the purpose of determining their eligibility to participate in the Program as either donors or recipients.

In addition the Healthcare Information Privacy and Portability Act (HIPPA), recently approved by the Federal Government establishes very rigid guidelines and safeguards in order to protect the confidentiality of individuals' medical information.

### **Applicants' Files**

Our review of the documents showed that the file jackets containing the paper work were tattered, and not properly bound, and it was commonplace to find the records of applicants out of file jackets and stored in file jackets bearing the names of other applicants. The files were stored in uncovered boxes in an open area that was accessible to all other employees. Access to the files was not exclusively controlled because other documents that were not related to the Program were also stored in those boxes.

Finance did establish a sound procedural control by assigning responsibility for the Program files to one employee; however, that control was compromised because there were other documents that were being stored in the boxes relating to the work of several other employees.

During our review, we observed that medical records were missing from the personal files of several Program participants.

### **Recommendation**

We recommend that the Commissioner of Finance ensures that all Program applicant information is adequately safeguarded and stored in accordance with recent HIPPA requirements.

## ADDITIONAL INFORMATION NEEDED TO CLOSE RECOMMENDATIONS

<b><u>Recommendation Number and Status</u></b>	<b><u>Additional Information Needed</u></b>
1-1 Unresolved	Provide a copy of the approved rules and regulations.
1-2 Unresolved	Provide documentation to show how the term “catastrophic condition” will be defined. How will the new procedure be different from the existing one, where the Commissioner of Finance has the sole responsibility for making the determination.
1-3 Unresolved	Provide evidence to show how employees will be made aware of the workings of the Program.
2-1 Unresolved	Provided evidence to show that Program applicants’ information is safeguarded from unauthorized access as required by HIPPA.

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