

A Financial Review of

# The Law Enforcement Officer Standards and Education Fund

August 2004

Report No. 04-047



# Law Enforcement Officer Standards and Education Fund

## Overall Conclusion

Local law enforcement agencies (agencies) can improve certain controls over law enforcement officer standards and education (LEOSE) funds. However, the agencies we audited have used the funds for the intended purpose: to provide continuing education for law enforcement officers.

Our primary findings are as follows:

- A significant number of local law enforcement agencies lack controls to ensure that unspent LEOSE funds are retained and spent later for only the statutory purpose.
- For some jurisdictions, it appears that LEOSE funds have replaced local funding for continuing education.
- A significant number of agencies retain their LEOSE funds outside of each jurisdiction's treasury.

The objectives for the audit were to determine whether local law enforcement agencies have established proper controls over LEOSE funds and whether expenditures have been consistent with statutory restrictions. These objectives are related in that procedures should ensure proper management of the funds and compliance with statutory restrictions. Appendix 2 details the controls we would expect agencies to have in order to manage LEOSE funds in accordance with statute.

### Program Description

The Law Enforcement Officer Standards and Education Fund (LEOSE) is an account in the state treasury. The Comptroller of Public Accounts (Comptroller) collects and deposits proceeds from court costs into the account.

The General Appropriations Act appropriates to the Comptroller the total amount to be distributed to local law enforcement agencies. Local agencies must use the funds to provide continuing education for law enforcement officers. For appropriation year 2004, the appropriated amount was \$6 million.

Under the Texas Occupations Code, twenty percent of the appropriated amount is distributed to all participating agencies in equal shares, and eighty percent is distributed based on the number of qualifying officers at each entity.

For 2004, the Comptroller distributed the \$6 million to 2058 local agencies representing over 60 thousand law enforcement officers.



# Detailed Results

## Chapter 1

### ***Local Law Enforcement Agencies Can Improve Certain Controls over LEOSE Funds to Ensure Compliance with State Requirements***

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We identified many opportunities for local law enforcement agencies (agencies) to improve their controls over law enforcement officer standards and education (LEOSE) funds. Generally, these involved two related issues: whether the funds were held in a separate account or were commingled with local funds, and whether the funds were held inside or outside a government treasury. While statute does not require the creation of a separate LEOSE account within a government treasury, doing so would be a preferred way for agencies to safeguard the funds and meet the key requirements from the Occupations Code and a related Attorney General opinion.

We also identified other weaknesses in how some agencies receive and deposit their LEOSE checks and how they separate responsibility for LEOSE funds among employees. We identified these through an analysis of 258 LEOSE checks, survey responses from 142 agencies, and site audits of 12 agencies.

#### Chapter 1-A

#### **Problems Resulted from the Absence of a Separate Account for LEOSE Funds within a Government Treasury**

Of 142 agencies responding to our survey, 34 (24 percent) did not maintain a separate account for LEOSE funds. Eight of the 12 agencies we audited commingled their LEOSE funds with local funds. Over half of the city or county agencies we surveyed retained their funds outside the treasuries of their jurisdictions.

Where LEOSE funds were commingled with local funds:

- Agencies usually lacked the means to ensure that unspent funds would be retained and spent only for the intended purpose, as required by Attorney General Opinion JC-0190.
- Agencies sometimes could not demonstrate that the LEOSE funds supplemented, rather than replaced, local funding for continuing education, as required by the Texas Occupations Code (Section 1701.157[e]).
- Agencies could not always demonstrate conclusively whether the LEOSE funds were spent for their intended purpose. For example, an agency could claim that a questionable transaction was paid for by local funds rather than LEOSE funds and was thus subject to different rules.

LEOSE funds are mailed, by check, to more than 2,000 local officials. (Table 1 in Appendix 3 lists the types of local law enforcement agencies that receive LEOSE funds.) Where the funds were cashed or deposited outside a government treasury, we observed a lack of consistent fiscal oversight over LEOSE funds by the presiding jurisdiction. The way in which LEOSE funds are distributed poses unique risks that could be mitigated by keeping the funds within a governmental treasury.

**A significant number of local law enforcement agencies lack controls to ensure that unspent LEOSE funds are retained and spent later for only the intended purpose.**

When agencies commingle their LEOSE and local funds, they must make assumptions about whether they spend the LEOSE funds before spending the local funds. Doing so affects agencies' ability to ensure that they retain any LEOSE funds not spent at the end of a fiscal period and spend the funds in later periods for only the intended purpose (see text box). When LEOSE funds are commingled with local funds, it usually is not possible to determine whether the LEOSE *share* of unspent funds has been or would be retained.

**Attorney General Opinion JC-0190**

Funds allocated by Section 1701.157 of the Occupations Code to local law enforcement agencies for continuing education of local law enforcement officers may not be diverted to the general fund of a county or municipality.

Our survey found that a minimum of 10 percent of responding agencies appeared to lapse unspent LEOSE funds to their jurisdictions' general funds. When we followed up with selected respondents, we found indications that a number of officials were not aware of the requirement that LEOSE funds not be diverted to a jurisdiction's general fund. Three of the jurisdictions contacted agreed to restore LEOSE balances to the law enforcement agencies.

Results from our on-site audits of 12 agencies indicated that this may be a more significant problem than was suggested by the survey. Eight of the agencies lacked specific procedures to ensure that future unspent LEOSE funds would be retained, but two of these agencies could demonstrate that past balances had been appropriately carried forward.

**For some jurisdictions, it appears that LEOSE funds have replaced local support for continuing education.**

It appears that some jurisdictions have reduced or eliminated local funding for continuing education for law enforcement officers because of the availability of state

**Section 1701.157(e) of the Texas Occupations Code**

A local law enforcement agency may not use money received under Subsection (a) to replace funds that are provided to the agency by the county or municipality having jurisdiction over the agency on a recurring basis for training law enforcement officers and support personnel.

LEOSE funds (see text box). Twenty-one of the survey respondents reported that LEOSE funds make up 100 percent of their training budgets. We confirmed this information with approximately half of these agencies; the remainder apparently had misunderstood the question.

An additional 32 agencies responded that while they receive local funds for training, LEOSE funds make up 60 percent or more of their total budgets for continuing education. Almost by definition, fund replacement occurs where LEOSE funds represent a high percentage of the overall budget for continuing education.

Replacing of funds also may occur in the following situations:

- LEOSE funds have been commingled with local funds in a single account and are assumed to have been spent first. Funds left over then are assumed to belong to the jurisdiction rather than to the law enforcement agency.
- LEOSE funds are held outside the jurisdiction's treasury, and local training funds are held inside. The agency head chooses to spend the LEOSE funds first because they are readily available and can be spent like cash. At the end of the fiscal

period, all the LEOSE funds have been spent, but all the local funds remain and are lapsed to the jurisdiction's general fund.

**A significant number of agencies retain their funds outside of their jurisdictions' treasuries.**

Over half of the agencies responding to our survey indicated that they kept their LEOSE funds outside of their jurisdictions' treasuries. This also was true of two of the agencies we audited, including one whose recordkeeping was not complete and detailed.

Jurisdictions exercised widely differing levels of oversight for LEOSE funds held outside government treasuries. For example, one county auditor reported that she exercised no oversight at all and that LEOSE funds were not included in the jurisdiction's budget or financial reports. For other counties, the opposite was true. However, even when a county auditor audits the agencies in his or her jurisdiction, he or she may be reluctant to comment on the appropriateness of LEOSE expenditures, focusing instead on the accuracy of revenues, expenditures, and fund balances. This is because the Occupations Code gives authority to approve expenditures to the head of the law enforcement agency.

If LEOSE funds are not deposited in a governmental treasury, the risk increases that they will not be used as intended. For example, we learned of situations in which the official who received the checks cashed them, rather than depositing them, or attempted to place the funds in a personal bank account. Some receiving officials were no longer entitled to receive the funds (for example, officials who had retired or had been voted out of office). Fraud occurred in one instance where the checks were cashed or deposited outside a treasury; two similar allegations are currently under investigation.

Throughout this audit we heard from local law enforcement officials who feared or had observed a loss of control over the funds if the funds were held in a treasury. But we also observed compatible local arrangements, such as law enforcement officials keeping the funds outside the treasury but consenting to an annual audit.

Chapter 1-B

**Other Areas for Improvement Include Controls Over Receiving and Depositing LEOSE Checks and Separation of Cash Management Duties**

Local law enforcement agencies can improve their receiving and depositing of LEOSE checks, the separation of responsibility for key cash management duties, and other controls related to their LEOSE funds.

**Receipt and deposit of LEOSE funds.** We analyzed the disposition of checks that the Office of the Comptroller of Public Accounts (Comptroller's Office) sent to 258 randomly selected local agencies and found weaknesses in some agencies' receiving and depositing of the checks. Specifically, 19 percent had one or more exception, such as checks that had not cleared, checks that were not deposited within 30 days as required by the Local Government Code, Section 113.022, or checks that had not been restrictively endorsed as "for deposit only." Based on this sample, we estimate

that 391 agencies statewide that were receiving payments of \$495,010 exhibited one or more of these weaknesses in depositing the funds.

When we followed up with selected agencies, some found and deposited their missing checks. One city recovered funds that had mistakenly been deposited outside its treasury. Through these follow-ups, we were also informed that the checks lacking restrictive endorsements had, in fact, been deposited and were not cashed or stolen.

**Segregation of duties.** Forty-eight percent of the agencies responding to our survey indicated that they have not segregated key cash management duties. In particular, agencies should separate responsibility for the following functions among employees where feasible:

- Depositing receipts and recording the transactions
- Approving disbursements and preparing vouchers or making the associated purchases
- Performing timely cash reconciliations and issuing checks or handling cash
- Preparing reconciliations and reviewing/approving reconciliations

We recognize that it may be difficult for smaller agencies to separate these responsibilities, but inadequately segregated duties creates a risk that someone could take LEOSE funds without being detected, particularly given the related weaknesses identified in receiving and depositing LEOSE checks when the funds are being held outside a government treasury.

**Other controls.** Responses to our survey from 142 agencies indicated additional opportunities for improvement:

- Thirty-seven percent of these agencies had no policies or procedures regarding the management and use of LEOSE funds. Having policies and procedures that cover such topics as receiving and depositing funds, reviewing and approving expenditures, recording transactions, and performing reconciliations and audits, would help ensure that LEOSE funds are managed in accordance with statutory requirements.
- Twenty-seven percent reconcile LEOSE cash only on a yearly basis. More frequent reconciliations would help ensure that account activity is recorded accurately.
- Sixty-three percent provide no routine reports on LEOSE fund activity to management or others in the jurisdiction with fiscal oversight. Providing routine fund activity reports would help promote and ensure proper oversight by management.
- Thirty percent have not had their LEOSE funds/accounts audited in the past two years. Performing regular audits would help ensure that funds are properly accounted for and expended for their intended purpose

Appendix 3 provides additional information about the survey and the responses.

## *The Agencies We Audited Generally Spent the Funds for Appropriate Purposes, Maintained Adequate Records, and Reported Accurate Counts of Officers*

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With the exception of the issues noted in Chapter 1, the 12 agencies at which we conducted on-site audits generally comply with statutory restrictions.

In general, the agencies we audited maintained complete and detailed records. Section 1701.157(c) of the Texas Occupations Code states that “the head of a law enforcement agency shall maintain a complete and detailed written record of money received and spent by the agency under this section.”

Only one of the audited agencies’ recordkeeping was not adequate to meet this criterion. In an additional case, the absence of sufficient documentation prevented us from determining whether an agency’s expenditures were consistent with the statute.

Expected documentation included such items as a description of the training, proof of attendance, invoices, contracts (if applicable), purchase orders, requisitions, receipts, and, for purchases of goods, receiving reports.

In general, the agencies we audited spent funds for matters clearly related to continuing education for law enforcement officers. Section 1701.157(d) of the Texas Occupation Code states that “a local law enforcement agency shall use money received under Subsection (a) only as necessary to ensure the continuing education of persons licensed under this chapter.”

As discussed above, we could not verify that expenditures were appropriate for the agency whose recordkeeping was not complete and detailed. For the remaining agencies, the expenditures we reviewed were appropriate and clearly related to continuing education.

In general, the agencies we audited accurately reported the number of officer positions. When applying for LEOSE funds, an agency must submit to the Comptroller’s Office an affidavit stating its number of full-time budgeted positions as of January 1 of the preceding year. To be counted for this purpose, the officer must be licensed under the Texas Occupations Code, work an average of at least 32 hours per week, be compensated at least at the minimum wage, and receive all employee benefits offered to a peace officer by the political subdivision. The number of officers reported directly influences the amount of money the agency receives. We tested the accuracy of the affidavits at the request of the Comptroller’s Office.

Only two of the audited agencies over-reported the number of full-time budgeted positions. The over-reporting appeared inadvertent, and in one case the agency agreed to submit a revised affidavit to the Comptroller’s Office.

# Appendices

## Appendix 1

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

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#### **Objectives**

The objectives for the audit were to determine whether local law enforcement agencies have established proper controls over state law enforcement standards and education (LEOSE) funds and whether expenditures are consistent with statutory restrictions.

#### **Scope**

This audit focused on the distribution and disposition of checks sent in 2004, agency financial transactions from 2003 and 2004, and the number of officers reported for 2003 and 2004.

#### **Methodology**

In evaluating whether local agencies have established proper controls, we considered whether each entity had established control elements such as specific policies and procedures, appropriate authorizations/approvals, and segregation of duties.

In evaluating whether local agencies have complied with statutory restrictions, we considered whether each agency had:

- Accurately reported officer counts reported to the Office of the Comptroller of Public Accounts (Comptroller's Office).
- Maintained complete and detailed records.
- Ensured that expenditures are clearly related to continuing education for officers.
- Ensured that funds supplement, not supplant, local funds.
- Ensured that unspent funds are retained and spent only for the intended purpose.

This audit consisted of three main parts: an examination of the disposition of a random sample of payments, a survey of a random sample of agencies, and fieldwork site audits of 12 agencies of different types and sizes and in different regions of the state.

We analyzed the disbursement of 2,058 checks sent from the Comptroller's Office to local law enforcement agencies in 2004. From that list, we randomly sampled 258 agencies and asked them to complete a survey addressing the objectives above. We received 142 full or partial responses to the survey (55 percent). For these same 258 agencies, we analyzed the disposition of checks.

From the full list of agencies receiving the funds, we judgmentally selected 12 agencies for fieldwork site visits based on various factors, such as geographical

region of the state, type of agency (police department or sheriff's office, for example), whether the disposition of the checks suggested anything unusual, whether the agency had responded to the survey, and whether survey responses indicated financial risks. Our site visits examined financial transactions for fiscal years 2003 and 2004. At the completion of each site visit, we provided agencies with suggestions for improvement. As a result of our suggestions, a number of agencies developed policies, established separate accounts, or otherwise changed their accounting practices.

Based on similar factors, we also followed up with various entities by telephone or e-mail, particularly when answers to survey questions indicated possible noncompliance with state requirements.

We also:

- Interviewed staff members from the state Comptroller's Office, the Governor's Office of Budget and Planning, and the Texas Commission on Law Enforcement Officer Standards and Education.
- Reviewed work papers from two county auditors for all law enforcement agencies in their jurisdictions.

### **Other Information**

This audit complied with generally accepted government auditing standards applicable to performance audits. We conducted fieldwork from June 2004 to August 2004. The following members of the State Auditor's staff performed the audit:

- John Swinton, MPAff, CGFM (Project Manager)
- Juan Sanchez, MPA (Assistant Project Manager)
- William Hurley, CPA
- Robert Woodward
- Chuck Dunlap, CPA (Quality Control Reviewer)
- Nicole Guerrero, MBA (Audit Manager)

We offer sincere thanks to the 142 agencies who responded to our survey, the 12 agencies we audited, and the 2 county auditors whose work papers we reviewed.

## ***Expected Controls for LEOSE Funds***

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While many of the controls we would expect local law enforcement agencies (agencies) to have for their LEOSE funds are not specified in statute, having these controls would help the agencies manage their LEOSE funds in accordance with statute.

**Receipt and deposit.** The preferred method for agencies to ensure that they receive and deposit LEOSE funds would be to have the funds direct deposited into the appropriate account. Agencies can establish direct deposit by contacting the Comptroller's Office. This would ensure that the funds are deposited in a timely manner and would reduce the risk of loss or theft of the funds.

However, if agencies continue to receive checks in the mail, we would expect them to:

- Restrictively endorse the checks as "for deposit only" upon receipt.
- Deposit the checks promptly. (Local Government Code, Section 113.002, requires that checks be deposited within 30 days of receipt.)

**Separate account for LEOSE funds.** Maintaining LEOSE funds in a separate account would be the preferred way for agencies to ensure (1) that unspent LEOSE funds are retained and not diverted for other purposes and (2) that LEOSE funds do not replace local funding for continuing education. In addition, the head of the local law enforcement agency can work with other officials in the jurisdiction to ensure that LEOSE funds supplement, not replace, local funding for continuing education.

However, if an agency commingles LEOSE funds with local funds, we would expect the agency to develop additional controls, such as a subsidiary ledger, so that LEOSE funds can be accounted for separately.

**Account within treasury.** The local jurisdiction's treasury would be the preferred location for maintaining LEOSE funds to ensure that the funds are safeguarded, provided that the head of the law enforcement agency retains authority to approve expenditures.

However, if agencies deposit their LEOSE funds outside a treasury, we would expect the agencies to (1) notify the individual with primary fiscal oversight for the jurisdiction of the amount and location of LEOSE funds and (2) consider making this person/position a co-signatory on the account for times when the head of the law enforcement agency may be unavailable.

LEOSE funds should be reflected in the budgets and financial statements of each jurisdiction.

**Up-to-date policies and procedures.** We would expect agencies to have up-to-date policies and procedures for managing LEOSE funds. Such policies would address the issues cited above, and policies for multiple agencies within the same jurisdiction (such as a county with more than one constable precinct) would be the same or similar. The procedures would address the following:

- Responsibilities for key cash management duties, including the persons/positions who receive, deposit, approve, and review payments; record transactions; and reconcile the account
- The preparation and review of cash reconciliations and the frequency of reconciliations (preferably monthly or quarterly)
- Allowable expenditures—for example, whether to allow cash travel advances and whether checks can be written to “cash”
- Timing issues—for example, whether LEOSE funds are to be spent first or last—and procedures for carrying forward unspent LEOSE balances in proportion to the LEOSE share of the combined budget for continuing education
- Whether interest earned on the LEOSE balance belongs to the jurisdiction or to the agency
- Requirements for periodic reports and audits

## Additional Information Regarding Our Survey

For 2004, the Comptroller's Office distributed 2,058 LEOSE fund checks to local law enforcement agencies (see Table 1 for a breakdown by type of agency).

Table 1: A total of 2,058 local law enforcement agencies received approximately \$6 million in LEOSE funds in 2004.

LEOSE Fund Recipients for 2004, by Type of Agency		
Agency Type	Grant Amounts	No. of Agencies
City Marshal	\$ 36,697.32	32
Community College	50,016.29	29
Constable	533,991.08	559
County Sheriff	1,867,422.81	254
County/District Attorney	146,481.75	145
Fire Department/Marshal	160,623.31	181
Other	100,738.51	31
Police Department	2,964,060.05	755
School District	144,668.19	72
<b>Total</b>	<b>\$6,004,699.31</b>	<b>2,058</b>

Source: Comptroller of Public Accounts

From this population, we calculated our sample size of 258 based on a 95 percent confidence level, a 5 percent margin of error, an estimated 10 percent error percentage, and an estimated survey response rate of 50 percent. We received 142 responses (a 55 percent response rate), sufficient to support full description of our survey results and, in those cases noted in the report, generalization of these results.

Table 2 shows response rates by type of agency.

Table 2: The overall response rate for our survey was 55 percent, but it varied by type of agency.

Response Rate by Type of Agency			
Agency Type	No. Sampled	No. of Responses	Response Rate
City Marshal	4	3	75%
Community College	2	1	50%
Constable	70	28	40%
County/District Attorney	15	9	60%
County Sheriff	28	18	64%
Fire Department/Marshal	23	17	73%
OTHER	1		0%
Park Ranger	1	1	100%
Police Department	100	56	56%
School District	14	9	64%
<b>Total</b>	<b>258</b>	<b>142</b>	<b>55%</b>

The agencies responding to our survey received approximately \$740,000 in LEOSE funds for 2004 and spent approximately \$424,000 in 2003. Of this amount, detailed information on the category of expense was available for \$312,421. Table 3 shows their expenditures for 2003 by category of expense.

Table 3: Survey responses indicate that the largest category of expenditure for LEOSE funds is training equipment.

Expenditures by Category		
Category of Expense	Amount	% of Total
Training - equipment	86,078.00	27.55%
Registration	\$ 72,593.00	23.24%
Lodging	45,029.00	14.41%
Training - materials	34,964.95	11.19%
Educational fees	29,520.00	9.45%
Travel	23,533.88	7.53%
Other	20,702.00	6.63%
<b>Total</b>	<b>\$312,420.83</b>	<b>100.00%</b>

For our sample, LEOSE accounted for approximately 13 percent of expenditures for continuing education from all sources of funding. Collectively, the agencies held slightly more than \$2 million in LEOSE funds at the end of 2003.

To view the summarized results of the survey, please go to <http://www.sao.state.tx.us/apps/leose/results.cfm>.

## *Distribution Information*

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The Honorable Rick Perry, Governor