Nassau County Interim Finance Authority

NIFA

REVIEW AND ANALYSIS OF THE MULTI-YEAR FINANCIAL PLAN UPDATE FISCAL 2023 – 2026

August 1, 2023

NASSAU COUNTY
INTERIM FINANCE AUTHORITY

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I. SUMMARY OF FINDINGS

On June 30, 2023, the County Executive released his Updated Multi-Year Financial Plan, Fiscal 2023-2026 (the "Update"). The Update contains the Administration's revised projections for FY 2023 and an updated outlook for FYs 2024-2026 (the "Out-Years").

After reviewing the Update and independently developing projections of year-end results, we have concluded that the County's near-term fiscal outlook in the Major Funds continues to improve.[1] Specifically, our analysis shows: (1) an improved fiscal outlook for FY 2023; (2) that the Out-Year risks are significant but substantially consistent with our previous assessment; and (3) that the County has larger reserve balances available to mitigate unforeseen risks.

Nevertheless, although we are projecting a potential surplus of between $17.9 million and $73.1 million in FY 2023, we are also projecting sizeable deficits in the Out-Years that could reach between $188.7 million and $247.4 million by FY 2026, as shown in the following table.

Operating Results on a GAAP Basis Control Period Calculation ($ in millions)									
FY 2017	FY 2018	FY 2019	FY 2020 *	FY 2021*	FY 2022	FY 2023p	FY 2024p	FY 2025p	FY 2026p
($63.2)	($61.2)	$76.8	$90.6	$27.2	$79.7	$17.9	($120.6)	($127.2)	($188.7)
						$73.1	($152.2)	($180.7)	($247.4)

Top shaded row reflects projected baseline operating results. Bottom shaded row reflects projections including other Opportunities and Risks.
* Operating results include CARES Act funding and/or unbudgeted debt restructuring savings.

Our projected deficits exceed the one percent threshold for imposing a Control Period in each of the Out-Years. A discussion of the projections appears later in the report.

The near-term budgetary improvement has resulted from a combination of:

- stronger-than-assumed sales tax revenue;
- higher-than-assumed investment income;
- higher-than-assumed Federal and State aid;
- lower-than-assumed costs for employee salaries and fringe benefits; and
- lower-than-assumed costs for debt service.

1 "Major Funds" are defined as the General Fund, the Police District Fund, the Police Headquarters Fund, the Fire Commission Fund, and the Debt Service Fund. The Major Funds are the only Funds that are part of the NIFA Control Period calculation, and do not include certain major expenditures, such as the funding of sewer and storm water treatment services and support payments to Nassau Community College.

A portion of the favorable variances are offset by a combination of:

- lower-than-assumed departmental revenues;
- lower-than-assumed revenue from fines and forfeitures;
- higher-than-assumed spending on Early Intervention/Pre-K Special Education; and
- higher-than-assumed spending on social services programs.

Although we are projecting Out-Year deficits, the Update includes budgeted contingency reserves of $38.0 million in FY 2024, $25.0 million in FY 2025 and $20.0 million in FY 2026. The County's near-term financial outlook has been bolstered by the transfer of $300.7 million in surplus resources (generated in FY 2022) into various reserves, which as of June 30, 2023, total $608.3 million. These resources, which are not appropriated in the operating budget, can support limited expenditures in future years for, among other purposes, tax certiorari refunds, judgments and settlements, and retirement system costs without negatively impacting the Control Period calculation.

In accordance with Federal regulations governing the American Rescue Plan Act ("ARPA"), the County also plans to apply $269.5 million of the $385.0 million in Federal aid it received from ARPA to offset revenue losses it experienced due to the COVID-19 pandemic. How these resources will be appropriated from the County's ARPA Fund have not been disclosed; however, the resources may significantly augment the County's other existing reserves. Decisions to expend the ARPA resources, which by regulation must be obligated by December 31, 2024, and spent by December 31, 2026, require approval of the County Legislature.

Despite the increased reserves, we have ongoing concerns regarding several significant liabilities that could impair the County's ability to sustain its fiscal progress on a recurring basis. These concerns include the County's large long-term liabilities for tax certiorari refunds, non-certiorari litigation, Workers' Compensation claims and the County's contingent risk stemming from deteriorating finances of the Nassau Health Care Corporation. Any one of these issues could interrupt the fiscal progress that has been made by the County in recent years.

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What follows is additional analysis of the Update: Section II discusses FY 2023 and Section III discusses the Out-Years. To fully understand NIFA's opinions regarding the County's financial position, this Report should be read in tandem with NIFA's October 20, 2022 report on the Multi-Year Financial Plan, Fiscal 2023-2026, which can be found on the NIFA website at https://nifa.ny.gov/financial-plan-reports.

II. DISCUSSION OF FY 2023

The following discussion contains our detailed fiscal assessment of the County's Major Funds based on data available as of June 30, 2023.

Projected Variances in FY 2023

We conclude, after adding all our favorable and unfavorable projected variances, that FY 2023 could end with a surplus of between $17.9 million and $73.1 million on a GAAP basis, which is an improvement from our last assessment of the adopted budget (the "Budget") in November of 2022.

The following table lists our baseline projections.

FY 2023 Projected Results
Surplus / (Risk)
($ in millions)

($ in millions)	2023 Adopted Budget	2023 NIFA Projections	Surplus / (Risk)
Revenues:			
Fines and Forfeitures	**$106.1**	**$80.8**	**($25.3)**
Fines & Administrative Fee	*26.4*	*12.3*	*(14.1)*
Red Light Camera & Administrative Fee	*48.1*	*41.3*	*(6.7)*
Boot & Tow and School Bus Stop Arm Camera	*6.0*	*0.7*	*(5.3)*
Other Fines	*25.7*	*26.4*	*0.8*
Investment Income	**6.1**	**35.4**	**29.3**
Rents and Recoveries	**33.9**	**15.6**	**(18.3)**
Reversal of Prior Year Encumbrances	*8.2*	*2.3*	*(5.9)*
Cash Recoveries	*5.7*	*0.1*	*(5.7)*
Sale of County Land	*3.5*	*0.0*	*(3.5)*
Other Recoveries	*16.4*	*13.2*	*(3.2)*
Departmental Revenues	**222.1**	**180.5**	**(41.7)**
GIS Tax Map	*45.0*	*20.6*	*(24.4)*
Mortgage Recording Fee	*30.0*	*18.7*	*(11.3)*
Revenue from Income and Expense Law	*5.0*	*0.0*	*(5.0)*
Other Departmental Revenues	*142.1*	*141.2*	*(1.0)*
Federal & State Aid	**422.6**	**450.3**	**27.7**
Sales Tax	**1,527.3**	**1,563.2**	**35.9**
Other Revenues	**1,010.8**	**1,010.4**	**(0.4)**
Total Revenues	**$3,328.9**	**$3,336.1**	**$7.2**
Expenditures:			
Salaries and Wages	**$989.9**	**$973.6**	**$16.3**
Full-Time, Part Time and Seasonal Savings	*723.9*	*699.1*	*24.8*
Overtime	*78.6*	*103.9*	*(25.3)*
Other	*187.4*	*170.5*	*16.8*
Fringe Benefits	**679.5**	**652.9**	**26.5**
Health Insurance (Active & Retirees)	*368.9*	*356.3*	*12.6*
Medicare Reimbursement	*40.2*	*30.7*	*9.4*
Social Security	*68.7*	*63.6*	*5.2*
Other	*201.7*	*202.4*	*(0.7)*
Debt Service	**214.9**	**201.3**	**13.6**
Local Government Assistance	**91.1**	**92.5**	**(1.4)**
Early Intervention/Pre-School	**150.0**	**164.7**	**(14.7)**
Social Services Programs	**421.2**	**435.6**	**(14.4)**
Other Expenditures	**782.3**	**797.5**	**(15.2)**
Total Expenditures	**$3,328.9**	**$3,318.2**	**$10.7**
Total Projected Operating Results (Baseline)			**$17.9**

The following table lists other potential opportunities for savings that may be available or risks that may confront the County this year and which were not included in our baseline projections listed above.

Other Opportunities and Risks Surplus / (Risk) ($ in millions)	
Total Projected Operating Results (Baseline)	**$17.9**
Retroactive Cost for Labor Pattern (assuming remaining unions do not settle in 2023)	$42.1
Contingency Reserve	$25.0
Vacancies Savings	$17.5
Sales Tax (additional impact due to possible decline in sales tax receipts)	($18.3)
GIS Tax Map Verification Fee (potential adverse court action)	($5.0)
Subtotal Projected Operating Results (Including Other Opportunities and Risks)	**$79.2**
GAAP Basis Adjustments*	**($6.1)**
Total Projected Operating Results (Including Other Opportunities and Risks)	**$73.1**

***Comptroller's estimated accounting adjustments for Major Funds defined in the NIFA Act. We were advised that this calculation is subject to change since it does not include adjustments for GASB No. 87, GASB No. 96, and the effect of open encumbrances at year end.**

Major Revenue Variances

Fines & Forfeitures

The Administration has reduced its projection for fines and forfeitures by $12.4 million; however, our analysis indicates that revenues derived from fines and forfeitures could fall below the Budget by $25.3 million in the following amounts: (1) fines and general administrative fees down $14.1 million; (2) red light camera revenues down $6.7 million, including administrative fees; (3) boot and tow fees down $3.0 million; (4) school bus camera fines to be down $2.3 million; and offset by $0.8 million in other favorable fines.

We note that the School Bus Stop Arm Camera initiative has been implemented in the Town of Hempstead since December 2022. As of February 2023, approximately 12,000 tickets have been issued, and about 900 are being challenged.[2] The County will collect $18.00 per issued ticket and $18.00 for each challenged ticket. The County's involvement in the School Bus Stop Arm Camera initiative is limited to processing appeals; however, it is mandated to hear them. The boot and tow program was suspended by the County Executive due to the pandemic and never reinstated.

[2] The preliminary data was reported in "Newsday" on February 27, 2023. The County has not provided NIFA with more recent data. A contract with BusPatrol America was approved by the Town of Hempstead in January 2022, with revenues derived from the citations to be split between the Town (55%) and BusPatrol (45%).

Investment Income

Our projections indicate that investment income will result in a surplus of $29.3 million compared to the Budget. The increase is attributed to high cash balances and higher-than-assumed interest rates.

Rents and Recoveries

Our analysis indicates that revenues from rents and recoveries could fall below the Budget by $18.3 million. The variance is primarily due to: (1) projected shortfalls in recoveries of prior-year appropriations ($5.9 million) and (2) projected shortfalls in cash recoveries ($5.7 million). The first arise from a determination that previously encumbered funds will not be spent, but which are subsequently subtracted from the County's operating result by the Comptroller through year-end GAAP adjustments. The second arise from capital project closeouts in which unused bond proceeds are subsequently used to pay debt service (an operating expense) and therefore not recognized under the Control Period calculation.

The projected variance also includes a $3.5 million shortfall in revenue anticipated from the sale of County property. Although the County has had past success in selling some of its properties, it is still being determined if the County can reach agreements to sell certain newly designated properties, get requisite legislative approvals, and close the transactions before the end of the year.

Other variances in Rents and Recoveries include: a $1.3 million shortfall in the rent collection for Mitchel Field; lower collections in the amount of $0.9 million from recoveries from Workers' Compensation; $0.7 million in uncollected recoveries from damaged County property; and lower revenues collected from utilities chargebacks to the Nassau County Coliseum.

Departmental Revenues

Our analysis indicates a potential shortfall of $41.7 million in departmental revenues, primarily due to projected variances in several real estate-related revenues, such as GIS tax map verification fees ($24.4 million) and mortgage recording fees ($11.3 million). These revenues, which had been driven by the surge in home sale transactions, escalating prices, and the volume of mortgage refinancing transactions attributed to record-low interest rates, have softened as interest rates have risen dramatically since last year.

Further, in March 2020 the State Supreme Court deemed the GIS tax map fee "unlawful and unconstitutional." The County appealed the decision and on April 19, 2023, the lower court decision was affirmed by a four-judge State appellate court panel. Our projections for GIS tax map reflect the recent fee reduction approved by the Legislature at its April 24, 2023, meeting, from $355 to $270 per document. Although we are using the County's lower fee schedule in our baseline risk calculation, the plaintiff has challenged the County's actions.

Consequently, included in the list of "Other Opportunities and Risks" (see table above) is an additional unfavorable adjustment of $5.0 million for the County's GIS tax map verification fee to reflect the possibility that the newly filed litigation results in the Court mandating the County to abolish the fee before the end of this year.

Other major components of departmental revenue variances include: (1) no revenue from the County's Income and Expense Law ($5.0 million), which was proposed several years ago but suspended due to ongoing litigation; (2) lower-than-anticipated ambulance fees ($4.1 million); (3) miscellaneous revenue shortfalls ($0.7 million); and (4) a favorable offset from higher-than-anticipated reimbursement for Pre-School Medicaid programs ($3.8 million).

Federal and State Aid

State Aid is projected to be $20.1 million higher than the Budget. The surplus is attributable to higher Statewide Mass Transportation Operating Assistance ("STOA") grant funding and aid related to Early Intervention and Pre-school services. Federal Aid is also projected to be higher than the Budget by $7.6 million due to an increase in caseloads in social services programs and an increase in funding received from the State Criminal Alien Assistance Program ("SCAAP"). These favorable variances are offset by a shortfall in funds anticipated from the Federal Transit Administration.

Sales Tax Revenue

Our analysis indicates that net sales tax revenue could exceed the Budget by $34.5 million.[3] This projection is composed of $35.9 million in favorable gross sales tax revenue offset by $1.4 million in higher payments for local government assistance.

Forecasting sales tax revenue during a period of high inflation and economic uncertainty is challenging. As shown in the following table, sales tax revenue exhibited strong year-over-year growth in January and March, contracted by 5.4% in February and showed modest growth in April and May (compared to the same months in 2022). It is unclear if growth in April and May is indicative of a period of trending weakness, which could be followed by sustained weakness, or merely an anomaly in an otherwise positive trend. For example, preliminary June data, which is incomplete due to normal reporting lags, underscores this uncertainty because it preliminarily indicates a rebound to strong year-over-year growth of 10.0% for the month.

Sales Tax Growth 2023 versus 2022	
January	18.5%
February	(5.4%)
March	7.7%
April	0.8%
May	1.4%
June (partial)	10.0%
YTD	**4.2%**

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3 This projection assumes that the County will also receive $27.4 million in additional sales tax revenue that cannot be recognized in FY 2022. The recognition of this incremental revenue must be deferred until FY 2024. The deferral relates to how much of the excess sales tax revenue in FY 2022 is generated outside the City of Long Beach.

We are concerned that the pronounced growth in sales tax revenue experienced over the past two and one-half years is likely not sustainable. Consequently, included in the list of "Other Opportunities and Risks" (see table above) is an $18.3 million incremental net loss of sales tax revenue that would occur if sales tax receipts were to contract in the remaining months of FY 2023 by 3.3% compared to the same period last year.[4] If that were to happen, net sales tax revenue would surpass the Budget by $16.2 million instead of $34.5 million.

Each percentage point of growth (contraction) in the remaining checks of FY 2023 will add (subtract) approximately $8.1 million in net revenue to (from) the projected $18.3 million incremental variance.

Other Revenues

"Other revenues" include categories such as higher collections from the County's 911 cell phone surcharge and its entertainment tax based on current trends, offset by lower Interfund Revenue due to a lower debt service chargeback related to the sewer debt held in the operating funds.

Major Expenditure Variances

Salaries and Wages

Our analysis indicates that expenditures on salaries and wages could be $16.3 million lower-than-assumed in the Budget. The favorable variance is composed primarily of projected savings from 244 full-time net vacancies.[5] The departments with the largest number of full-time vacancies are listed in the table below.

Department	FY2023 Budget	On Board	Vacancy
Police Headquarters	1,627	1,520	107
Social Services	559	471	88
NC Sheriff/Correctional Center	940	857	83
District Attorney	468	412	56
Public Works	417	369	48
Assessment Department	164	133	31
Board of Elections	160	141	19
Health Departments	181	162	19
Other Agencies	3,211	3,104	107
Attrition factor budgeted centrally	(314)	0	(314)
	7,413	7,169	244

Savings from these vacancies, even if assuming positions are filled before the end of FY 2023, will mostly offset the $25.3 million in projected Countywide overspending on

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4 During the fiscal crisis, sales tax revenue contracted by 3.3% in the last six months of FY 2008 and then by 5.2% in FY 2009.

5 The number of vacancies (and value of savings) in individual departments is partially offset by an attrition factor that was budgeted centrally.

overtime. The County should closely examine these full-time vacancies for opportunities to eliminate unneeded positions, thereby permanently ensuring recurring savings. There are also other opportunities for savings in part-time and seasonal positions. Furthermore, we include savings of $17.5 million in the list of "Other Opportunities and Risks" (see table above) as the value of current vacancies if they remain unfilled for the rest of the year.

Our analysis indicates that overtime continues to be underfunded, particularly in the Police Department and the Correctional Center. NIFA is currently projecting overtime in the Police Department to be $11.7 million higher than the Budget. Overtime costs in the Correctional Center may be $8.3 million higher than the Budget. Other departments that contribute to the unfavorable variances are the Fire Commission, Public Works, and the Department of Social Services.

Included in the list of "Other Opportunities and Risks" (see table above) are savings from both settled and unsettled labor contracts. The retroactive payments attributable to the County's contract with the Police Benevolent Association ("PBA"), which was approved by NIFA in February 2023, was accrued in FY 2022, thereby freeing up these budgeted resources in FY 2023.

The County has not yet concluded labor agreements with the Civil Service Employees Association ("CSEA") and the Correction Officers Benevolent Association ("COBA"), but has budgeted for pattern-conforming agreements similar to those reached with the other unions. If the County does not reach agreements with CSEA and COBA in FY 2023, corresponding savings will be realized in FY 2023. If this were to happen, we would encourage the County to transfer these unused resources into its labor reserve for use in FY 2024 rather than re-budgeting for these costs in FY 2024.

Fringe Benefits

The County could realize at least $26.5 million in savings in fringe benefits primarily due to the significant number of vacancies (referenced above) that the Administration expects to maintain throughout the current year. Included in this amount is $12.6 million in savings from health insurance premiums that rose less than originally assumed in the Budget. Our analysis also includes savings on Medicare Reimbursement of approximately $9.4 million and Social Security contributions, which are projected to be $5.2 below the Budget due to the number of vacancies.

Other variances in Fringe Benefits include lower-than-expected payments to the Employee Retirement System ("ERS") and the Police and Fire Retirement System ("PFRS") totaling $6.3 million. We project additional savings in other fringe benefit categories such as: Dental Insurance ($2.0 million); unbudgeted savings from employee contributions towards health insurance ($2.0 million); a lower-than-expected final payment required to discharge the County's retirement system contribution liability that had been deferred each year since 2012 ($0.8 million); MTA mobility tax ($0.8 million) and other fringe benefits codes ($0.6 million). These favorable variances are slightly more than offset by $13.2 million in unallocated budgeted savings for a net negative variance of $0.7 million.

Local Government Assistance

Pursuant to Section 1262-e of New York State Tax Law, the County must establish a Local Government Assistance Program to distribute sales tax collections to the towns and cities within the County in an amount equal to a 0.25% component of the 4.25% local sales tax.[6] Consequently, since we are projecting sales tax revenues to exceed the Budget, we are likewise projecting payments for the Local Government Assistance Program to increase by $1.4 million.

Debt Service

Our analysis indicates that there are savings of $13.6 million in principal and interest expenditures since the County did not undertake the $125.0 million in capital borrowing that had been originally planned for December 2022 and which would have required debt service payments to commence in FY 2023.

Early Intervention/Preschool Special Education

Early Intervention is a program that provides services to children under the age of three with developmental delays and disabilities. Preschool Special Education serves children ages three to five providing educational and supportive services.

Based on historical trends, our analysis indicates that the cost for these services can be as high as $164.7 million, which is $14.7 million higher than the Budget. We will monitor these programs closely and will adjust our projections, as necessary, once the new school year starts and caseloads can be assessed.

Social Services

Our analysis projects a net shortfall of $14.4 million in social services programs as follows:

Overspending on Recipient Grants ($6.7 million) and Purchased Services ($24.3 million) is driven, in part, by higher caseloads than assumed in the Budget. The overspending is mitigated, in part, by lower spending on Emergency Vendor Payments ($1.9 million) and Medicaid ($14.7 million). Medicaid savings are driven by a temporary increase in the Federal reimbursement rate for these services, thereby lowering the corresponding State and local match. The State FY 2024 budget indicates that the continuation of the enhanced Federal savings will no longer be passed through to the counties; therefore, Nassau County's cost will increase in the Out-Years.

We project $6.7 million in overspending on Recipient Grants and remain concerned that the County may experience continued increases in the number of eligible families and

[6] There is also a program to distribute a portion of sales tax collections to the incorporated villages within the County, which has typically amounted to $1.25 million annually.

individuals receiving Temporary Assistance for Needy Families and Safety Net Assistance in the Out-Years if the economy falls into a recession.

Our analysis indicates that expenditures for Purchased Services are projected to exceed the Budget by approximately $24.3 million due to higher-than-assumed caseloads for family day care services. In contrast, Emergency Vendor payments are on track to be below the Budget by $1.9 million.

Other Expenditures

"Other expenditures" include shortfalls in the following categories: Contractual Services; Utility Costs; General Expenses; and Workers' Compensation. These are offset by savings in Mass Transportation and Other Expenses.

Contractual Services reflects a shortfall in the amount of $13.5 million. This unfavorable variance is primarily due to: (1) an increase of $5.9 million in utilities chargebacks to the Correctional Center (from NHCC) resulting from the County's new contract with Nassau Energy, LLC;[7] (2) $4.0 million for expenses associated with an increase in the rate charged by the Nassau Inter-County Express Bus System and additional routes; (3) $2.0 million in higher costs for outside counsel in the County Attorney's office; (4) $2.0 million for maintenance contracts in the Department of Public Works; and (5) an increase of $0.9 million for police union legal fees. These unfavorable variances are offset by savings in miscellaneous contracts for various County departments.

Utility Costs are projected to be higher because of the new contract with Nassau Energy, LLC. The unfavorable variance totals $3.6 million and it is expected to be allocated among the customers serviced by the power plant.

General Expenses are projected to be $1.4 million higher than the Budget primarily due to higher costs for Court Remands based on historical data and current trending. Workers' Compensation is projected to be $0.2 million higher than the Budget.

These unfavorable variances are offset by net savings in Other Expenses, which are comprised of: (1) $5.0 million in higher expenses related to the Bar Association legal defense fund (which is partially offset by higher State Aid); (2) $1.1 million in increased costs for Expense of Loans; offset by (3) $1.6 million in savings in Mass Transportation that reflect a decrease in costs for the Long Island Rail Road Station Maintenance program; and (4) $8.1 million from a favorable variance in Suits and Damages due to the Administration's expected use of resources held in the Litigation Fund instead of the operating budget.

[7] Nassau Energy, LLC provides thermal energy to Nassau Community College, the Nassau Veterans Memorial Coliseum, the Long Island Children's Museum, the Cradle of Aviation, the Long Island Marriott, Nassau University Medical Center, the Correctional Center, the Technical Service Building, and the Aquatic Center.

County Reserves

As of June 30, 2023, the County has $608.3 million held in several reserves earmarked for specific purposes, as shown in the following table. These reserves are available to fund future County obligations, subject to the reserves' specific restrictions, without negatively impacting the Control Period calculation.

Fund	Program	Balance Available as of 6/30/2023 ($ in millions)
Litigation	Non-Certiorari Judgments	$136.9
	Workers' Compensation	14.8
	Longevity Payments - non-Police District	37.6
	Non-Certiorari Judgments - Police District	27.8
	Longevity Payments - Police District	29.2
	Tax Certiorari	97.6
	Health Insurance Reserve	25.0
	Labor Reserve	20.0
	Insurance Reserve	10.0
Total Litigation Fund		**$398.9**
Other Reserves:		
	Employee Benefit Accrued Liability Reserve Fund	$14.1
	Bonded Indebtedness Reserve Fund	125.0
	Retirement Contribution Reserve (General Fund)	70.3
Total Other Reserves:		**$209.4**
Total All Reserves:		**$608.3**

The following discussion provides a brief synopsis of the Litigation Fund and the Other Reserves listed in the above table.

The Litigation Fund was established in 2015 in accordance with the transitional borrowing plan approved by NIFA to ensure that the County no longer borrowed for judgments and settlements. Since its inception the County has allocated year-end surpluses to dedicated purposes within the Litigation Fund, such as: Workers' Compensation claims, longevity payments owed to satisfy labor settlements, judgments and settlements (non-certs related) specific to the Police District Fund, and tax certiorari refunds. A portion of the FY 2022 surplus added funds into the Litigation Fund for purposes such as health insurance, labor and insurance.

The Employee Benefit Accrued Liability Reserve Fund was created in 2004 with the sole purpose to fund future termination payouts for unused vacation and sick leave accruals and other similar payments. The $14.1 million in the Employee Benefit Accrued Liability Reserve Fund can be used solely to mitigate any shortages related to terminal leave pay in the Police District Fund. Terminal leave pay associated with Police Headquarters or any other operating fund cannot be paid out of this Fund.

The Bonded Indebtedness Reserve Fund was established in 2005. Its purpose is to set aside resources for future partial payments of debt service. In FY 2022, the County transferred $105.0 million of the budgetary surplus to supplement this reserve, which amount cannot be used unless included in the adopted budget.

The Retirement Contribution Reserve Fund was formed in 2004. It was created to allocate resources to cover portions of future retirement systems payments. The Administration allocated $40.0 million from its FY 2022 budgetary surplus to supplement this Fund to cover retirement system payments incurred in the General Fund only.

As a consequence of the settlements of certain legal action(s) initiated against manufacturers, distributors and pharmacies that were involved in the marketing, selling and/or distribution of opioids in the County, the County received $55.9 million in FY 2021 and $20.5 million in FY 2022.[8] As directed by the County Legislature, these funds are earmarked for the treatment and prevention of opioid addiction and family support. As of June 30, 2023, the County has appropriated $15.0 million to fund opioid prevention programs.

The Administration's projections assume the transfer of $92.0 million of unused resources into one or more reserves at the end of this year. However, such transfers depend on the County's final operating results and the Comptroller's accounting treatment of the $54.0 million non-refundable advance rent payment, which was received from Las Vegas Sands. Furthermore, it is noteworthy that the FY 2022 ACFR states: "While the cash is available, the revenue will be recognized over the life of the lease in accordance with GASB Statement No. 87."

At this time, the Administration still needs to provide information regarding into which specific reserve(s) the $92.0 million will be transferred. As recommended earlier, if labor negotiations with the unsettled unions do not conclude during FY 2023, the County should consider allocating amounts already budgeted to cover the costs for pattern-conforming contracts into a labor reserve.

On June 6, 2023, the Administration presented to the Legislature a request for approval to transfer $269.5 million of resources from the American Rescue Plan Fund to the General Fund ($250.0 million) and to the Sewer and Storm Water Resources District Fund ($19.5 million). The County plans to apply these resources to offset revenues losses due to the COVID-19 pandemic. As of today, the Administration has not disclosed the distribution of the funding within the General Fund. However, as mentioned earlier in this report, the resources may significantly augment the County's other existing reserves. The County has received a total of $385.0 million from ARPA. The table below details the movements of resources within the fund.

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[8] Reported in the Comptroller's Annual Comprehensive Financial Report for FY 2022.

AMERICAN RESCUE PLAN FUND ($ in millions)					
Categories	**ARPA Resources**	**Obligated**	**Available as of 6/30/2023**	**Proposed Transfer***	**Remaining Balance**
Salaries & Wages	$1.6	$0.7	**$0.8**	$0.0	**$0.8**
Fringe Benefits	0.5	0.1	**0.4**	0.0	**0.4**
Equipment**	0.1	0.0	**0.1**	0.0	**0.1**
General Expenses	0.2	0.0	**0.1**	0.0	**0.1**
Contractual Services**	99.2	53.9	**45.3**	20.0	**25.3**
General Reserve	198.4	0.0	**198.4**	198.4	**0.0**
ARP Direct Payments	85.1	29.0	**56.1**	51.1	**5.0**
Total	**$385.0**	**$83.8**	**$301.2**	**$269.5**	**$31.7**

*Proposed transfer of $250.0 million to the General Fund and $19.5 million to the Sewer and Storm Water Resources District Fund.

** Approximately $13.4 million has been encumbered but not spent.

III. THE OUT-YEAR GAPS: FY 2024 – FY 2026

The County is required to submit its FY 2024-2027 Multi-Year Financial Plan to NIFA on September 15, 2023, which is a little more than one month from now. Although the proposed Plan will not be effective until January 1, 2024, the County should include strategies that ensure the progress it has made toward being balanced on a GAAP basis can be sustained.

THE COUNTY'S CURRENT OUT-YEAR PROJECTIONS

The Administration projects Out-Year surpluses of approximately $2.6 million in FY 2024, $3.8 million in FY 2025, and $1.6 million in FY 2026. In contrast, our analysis indicates that the County's projections may be far too optimistic.

As shown in the table below, NIFA is projecting deficits in FY 2024, FY 2025, and FY 2026 in both our baseline and conservative assumption scenarios. In those years, the projected deficits exceed the one percent deficit threshold that would require imposition of a Control Period even in our baseline assumption scenario.

PROJECTED OUT-YEAR EXPENDITURES EXCEED REVENUES

($ in millions)	FY 2024	FY 2025	FY 2026
County Estimate	**$2.6**	**$3.8**	**$1.6**
NIFA Estimate (baseline scenario)	**($120.6)**	**($127.2)**	**($188.7)**
NIFA Estimate (conservative scenario)*	**($152.2)**	**($180.7)**	**($247.4)**

*Projected deficits have been reduced by the budgeted contingency reserves of $38.0 million, $25.0 million, and $20.0 million, respectively.

Major Differences in Out-Year Projections

The major components contributing to the unrecognized gaps by the County consist of:

- Overestimated departmental revenues, including from the GIS Tax Map Verification fee, which is being litigated. The courts have determined that the existing fees were unconstitutional, but instead of eliminating the fees, the County reduced the fee from $355 to $270 per document. The revised fee schedule is being challenged; consequently, our projection reflects a 50% discount for a potential adverse court ruling. In a similar case, Suffolk County was mandated to eliminate the fee. Other fees in this category are also overestimated, such as those from the Income and Expense Law and mortgage recording fees;
- Overestimated revenues from fines and forfeitures, mainly due to revenues related to fines from tickets issued by the Police Department, red light

camera tickets and the associated administrative fees, public safety, and the inclusion of the school bus camera initiative; and

- Uncertain revenue from the annual sale of County property and recoveries. In addition, our analysis excludes budgeted amounts from prior-year recoveries since these proceeds do not constitute revenue under the GAAP. We also exclude proceeds from cash recoveries from capital project closeouts since these resources would be used to pay debt service (an operating expense) and therefore excluded under the Control Period calculation.[9]

OTHER CONCERNS

Sales Tax Revenue

The Administration is being cautiously optimistic in its projection of sales tax revenue and is using projected sales tax growth rates in 2023, 2024, 2025 and 2026 (1.5%, 1.5%, 1.75% and 2.0%, respectively) that are below the County's most recent ten-year average. However, the current uncertain economic conditions concern us because the pronounced growth in sales tax revenue experienced over the past two and one-half years may not be sustainable and, if the local economy enters a recession, such revenue could contract from current levels before resuming growth in the future.

The County was forced to confront this exact situation in 2009 after the effects of the economic crisis in 2008 were followed by a 5.2% decline in sales tax revenue. The same thing happened in 2014 (for different reasons) after the surge in sales tax revenues in 2013, which resulted from non-recurring Superstorm Sandy-driven spending, was followed by a decline of 4.2%. Consequently, our assumptions range from growth rates (in our baseline scenario) of 1.3% in 2023 followed by 1.5% in 2024, 2025 and 2026, respectively, to more conservative assumptions of no growth in 2023 and a contraction of 2.6% in 2024 followed by annual growth rates of 1.5% in 2025 and 2026.

Labor Costs

Contracts with all the County's labor unions expired on December 31, 2017. Only the Detectives Association, Inc. ("DAI"), the Superior Officers Association ("SOA") and the Police Benevolent Association ("PBA") have concluded subsequent agreements.

The Administration expects the other unions to agree to new contracts which are consistent with the pattern set by the DAI and matched by the SOA and PBA.

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[9] Resources realized from capital project closeouts are used by the County to pay debt service, which is an operating expense. Since these unused resources were originally raised through the issuance of bonds, they do not contribute to the County's operating results for Control Period calculation purposes.

Consequently, the Update continues to reflect labor costs consistent with this bargaining pattern.

Retirement System Contributions

The Update reflects the Administration's assumption that the County's contribution rates to both the Employees' Retirement System ("ERS") and the Police and Fire Retirement System ("PFRS") will remain constant during the term of the FY 2023-2026 Multi-Year Plan. However, the State Comptroller has recently advised that future employer contribution rates are being increased in response to the weak investment performance in State FY 2023 by the Common Retirement Fund, which invests the assets of the ERS and PFRS.[10] The official notification validates our concerns expressed in previous NIFA reports.

We acknowledge that the County has $70.0 million available in its retirement contribution reserve and can use these resources to pay for a portion of its retirement system obligation in future years and reflect this offset in our "conservative scenario."

Tax Certiorari Backlog

The total tax certiorari liability was reported by the Comptroller in the County's Annual Comprehensive Financial Report ("ACFR") to be $383.4 million at December 31, 2022. This included $272.1 million of non-current liabilities, including $10.5 million in estimated liability payable from the Disputed Assessment Fund ("DAF"), and $111.2 million in current liabilities. The long-term liability decreased by approximately $323.9 million during 2022, including $259.8 from its settlement of property tax litigation with Long Island Power Authority/National Grid.

We remain concerned that the Administration has not presented its plan for long-term assessment reform, which is necessary for us to build confidence that the tax certiorari refund liability will not grow in future years.

Non-Certiorari Litigation

The County has estimated its future liabilities for non-certiorari judgments and settlements that may result from the multitude of lawsuits the County is currently litigating, including proceedings referred to as the "Utilities Litigations." These liabilities were reported by the Comptroller in the ACFR to be $568.8 million at December 31, 2022.

The payment of this liability is not factored into our Out-Year risk assessment but could require significant expenditures to the extent that the costs exceed the amounts appropriated in the operating budget and/or held in the Litigation Fund. The County has included $45.0 million in FY 2024, $40.0 million in FY 2025, and $35.0 million in FY

[10] The investments held by the Common Retirement Fund fell 4.1% for the State's fiscal year ending March 31, 2023, which is a 10.0% shortfall from the Fund's 5.9% assumed rate of return.

2026 for non-certiorari judgments and settlements. The County also has $164.7 million in its Litigation Fund to supplement these allocations.

Workers' Compensation Claims

The County's long-term liabilities for Workers' Compensation claims were reported by the Comptroller in the ACFR to be $322.7 million at December 31, 2022. The County noted in its April bonds official statement that "no assurance can be given that additional claims will not be made or that the ultimate liability on existing and future claims will not be greater." The County has designated a portion of the Litigation Fund for Workers' Compensation claims totaling $14.8 million.

Nassau Health Care Corporation

The financial health of the Nassau Health Care Corporation ("NHCC") and its potential impact on Nassau County, including but not limited to Correctional Center healthcare services, continues to be a major source of concern for NIFA. NHCC's audited financial statements continue to state that substantial doubt exists about NHCC's ability to continue as a going concern.

NHCC has experienced recurring operating losses, a working capital deficit and has a total negative net position of approximately $1.1 billion at December 31, 2022. It is also dependent on the continuation of Federal, State and local subsidies, certain of which have or are scheduled to end or be reduced.

Most worrisome is that NHCC has reported a cash balance of $26.9 million at July 28, 2023 compared to $83.2 million at December 31, 2022. It is expected that NHCC will deplete its available cash balances by November.

The circumstances are troubling for the obvious reason that the County has a direct-pay guarantee on NHCC's outstanding debt, which totaled $115.1 million at December 31, 2022 ($100.0 million after debt service payment due August 1st), or approximately $138.8 million including interest payments. Our projections reflect the potential risk that the County will be required to fund this liability over five years.

The County may incur additional costs in the event it provides additional funding to NHCC as a moral obligation to the County's underserved residents.

The County also contracts with NHCC to provide medical, mental health, dental, and ancillary services to inmates incarcerated at the Correctional Center and services for individuals needing inpatient and outpatient treatment for chemical dependency. Consequently, the County may need to secure alternatives to NHCC for the provision of these services, at possibly a greater cost, should NHCC reach a point that it is unable to deliver them.

POTENTIAL GAP-CLOSING PLAN INITIATIVES

The Administration contends, "[t]he County's Fiscal 2023-2026 Multi-Year Financial Plan Update is structurally balanced with no gaps; therefore, no discussion of a gap closing plan is required." However, the Administration did identify several initiatives it is pursuing to improve the County's finances. These initiatives have been included in previous iterations of the County's Gap-Closing Plan.

State Aid Mandated Cap

The County pays third-party vendors to provide preschool education for certain children aged five or younger and receives a 59.5% reimbursement from the State for the costs incurred. The Administration wants the State to increase the reimbursement rate to offset the increasing expenses being incurred by the County, which are not within the County's control. We have been previously told that the effort is being led by the New York State Association of Counties on behalf of all counties in New York, but it is unclear if there is any support in the State Legislature.

Building Consolidation

The Administration, without any specifics or supporting documentation, expects to reduce expenses through centralization and reduction of office space, generating additional savings in utilities and maintenance costs. Although the County workforce has declined over the years, we are holding this initiative at risk until a detailed plan is developed that lays out specific initiatives.

Debt Defeasance

The Administration is considering an initiative to defease outstanding County debt to generate recurring debt service savings. The Administration has estimated that defeasing $100.0 million of outstanding bonds would result in annual debt service expense reduction of between $6.0 million and $8.0 million. The County currently has $125.0 million in its Bonded Indebtedness Reserve Fund.

Efficiency Program

The Administration expects to realize savings from permanently consolidating and realigning its workforce levels. We continue to question this initiative since there is a lack of specificity and the County continues to carry 244 full-time vacancies in the Budget.

Economic Development

The Administration has stated that there are opportunities for economic development of downtown areas, but has not identified any specific projects or explained how this would generate new revenue.

Sands Casino

The County entered into a lease agreement with Las Vegas Sands ("LVS") for development of approximately 70-acres of land at the Nassau Coliseum site. The LVS plans include a casino, hotel and entertainment center.

Although all of the County's costs have not been calculated, the lease agreement calls for the County to receive a non-refundable, advance rent payment of $54.0 million, a minimum annual rent of $5.0 million, and $900,000 towards public safety while LVS awaits a potential State gaming license. If the NYS Gaming Commission awards a casino license to LVS, the annual rent and public safety payment will double to $10.0 million and $1.8 million, respectively. LVS will also pay the County a minimum of $25.0 million annually for the Gaming Tax Revenue Guarantee (upon the commencement of the casino operation or three-year anniversary of the license award) and annually fund a Community Benefits Program, which grows from $2.0 million to $4.0 million over the term of the lease agreement. The Administration expects the licensing decision in late 2024, or early 2025.

The County Comptroller has not determined if the $54.0 million payment will be recognized in FY 2023 or will be treated as deferred revenue (under GAAP) and amortized over the term of the lease agreement.

IV. CONCLUSION

The County's fiscal outlook during the term of the Update has improved in recent months, but the favorable change does not necessarily demonstrate lasting improvement in the County's fiscal strength. We project growing deficits in FY 2024, FY 2025, and FY 2026 for which the County has not supplied us with their proposed solutions.

We hope, but do not know, if the County will use the significant resources held in its reserves to reduce large burdensome liabilities, such as tax certiorari refunds and non-certiorari judgments and settlements. In addition, despite our request, the County has still not clarified its fiscal role in stabilizing NHCC's fiscal standing or explained to us how it will handle health care for its inmates if NHCC is forced to curtail its operations.

The County points to its improved finances as a reason to exit the Control Period but has not been forthcoming about many of the challenges that lie ahead. Once we can evaluate all sides of the County's fiscal situation, we will be better able to predict when, or if, the Control Period will end. To assist us in this evaluation, a letter requesting answers to a series of questions was sent to the County Executive in July of 2022. Although the letter was acknowledged, none of our questions have been answered.