



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Gregory A. Hook, CPA
Legislative Auditor

April 27, 2023

Senator Guy J. Guzzone, Chair
Senate Budget and Taxation Committee
Miller Senate Office Building, 3 West Wing
11 Bladen Street
Annapolis, Maryland 21401

Delegate Benjamin S. Barnes, Chair
House Appropriations Committee
House Office Building, Room 121
6 Bladen Street
Annapolis, Maryland 21401

Dear Senator Guzzone and Delegate Barnes:

The Office of Legislative Audits (OLA) has reviewed the actions taken by the Uninsured Employers' Fund (UEF) to resolve the three findings in our September 14, 2021 audit report. This review was conducted in accordance with a requirement specified in the April 2022 *Joint Chairmen's Report* (JCR), page 15. The JCR required that, prior to the release of \$250,000 of its special fund appropriation for fiscal year 2023, UEF must take corrective action on all audit findings on or before November 1, 2022. The JCR language further provided that OLA submit a report to the budget committees listing each audit finding along with a determination that each finding was corrected. The OLA report is required to be submitted to allow 45 days for the budget committees to review and release the funds prior to the end of the fiscal year.

The September 14, 2021 audit report of UEF contained three audit findings that were addressed by eight recommendations. In accordance with the April 2022 JCR requirement, UEF provided a report to OLA, dated October 20, 2022, detailing the corrective actions it had taken with respect to the audit findings (**Exhibit 1**). The UEF status report indicated that corrective actions had

been completed for all three findings. In accordance with our policy, we have redacted any vendor names or products mentioned by UEF in this document.

We reviewed the UEF status report and related documentation, performed limited tests and analyses of the information, and held discussions with UEF personnel as necessary to assess the implementation status of the related recommendations. Our review did not constitute an audit conducted in accordance with generally accepted government auditing standards. Based on our review, we determined that UEF had resolved Finding 2, but had not yet taken sufficient actions to correct Findings 1 and 3. Specifically, although UEF had implemented certain elements of the recommendations related to Findings 1 and 3, the actions to date did not address the entirety of the findings (**Exhibit 2**). Consequently, at the time of our review, our assessment of Findings 1 and 3 concluded that they were still in progress (**Exhibit 3**).

After discussing our review results, UEF generally agreed with the accuracy of the information presented. We wish to acknowledge the cooperation extended to us during the review by UEF. We also wish to acknowledge UEF's willingness to address the audit issues and implement appropriate corrective actions.

We trust our response satisfactorily addresses the JCR requirement. Please contact me if you need additional information.

Sincerely,



Gregory A. Hook, CPA
Legislative Auditor

cc: Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee
Joint Audit and Evaluation Committee Members and Staff
Senator William C. Ferguson IV, President of the Senate

Delegate Adrienne A. Jones, Speaker of the House of Delegates
Governor Westley W. Moore
Comptroller Brooke E. Lierman
Treasurer Dereck E. Davis
Attorney General Anthony G. Brown
Secretary Helene T. Grady, Department of Budget and Management
Michael W. Burns, Executive Director, Uninsured Employers' Fund
Martin E. Lewis, Chairman of the Board, Uninsured Employers' Fund
Joan M. Peacock, Manager, Audit Compliance Unit, Department of Budget
and Management
Victoria L. Gruber, Executive Director, Department of Legislative Services
Jason A. Kramer, Senior Policy Analyst, Department of Legislative
Services

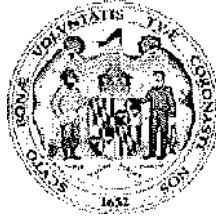
Exhibit 1 to April 27, 2023 Letter to Joint Chairmen

LAWRENCE J. HOGAN, JR.
GOVERNOR

STATE OF MARYLAND

MARTIN E. LEWIS
CHAIR

MICHAEL W. BURNS
Director
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CASEY BRYANT
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STATE OF MARYLAND
UNINSURED EMPLOYERS' FUND

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October 20, 2022

Gregory A. Hook, CPA
Legislative Auditor
State of Maryland
Office of Legislative Audits
State Office Building, Room 1202
301 West Preston Street
Baltimore, Maryland 21201

Dear Mr. Hook:

Please accept this letter as the Maryland Uninsured Employer's Fund (UEF) report to the Office of Legislative Audits (OLA) for the Audit Report dated September 21, 2021 (2021 Audit) as required by the Joint Chairmen's Report (JCR) for the 2022 Legislative Session. As outlined on p.15 of the JCR, the Legislature enacted the following:

C96J00.01 General Administration

Add the following language to the special fund appropriation:
provided that since the Uninsured Employers' Fund (UEF) has had serious findings in the most recent fiscal compliance audit issued by the Office of Legislative Audits (OLA), \$250,000 of this agency's special fund appropriation may not be expended unless:

Exhibit 1 to April 27, 2023 Letter to Joint Chairmen

(1) UEF provides a status report to OLA describing the corrective action that it has taken with respect to all audit findings on or before November 1, 2022; and

(2) a report is submitted to the budget committees by OLA listing each audit finding along with a determination that each finding was corrected. The budget committees shall have 45 days from the date of the receipt of the report to review and comment to allow for funds to be released prior to the end of fiscal 2023.

JCR at p. 15.

The UEF reports the following as to the corrective actions taken regarding the three findings from the 2021 Audit:

Finding 1-

UEF did not ensure that payments to its TPA were adequately supported and consistent with the contract terms. As a result, we identified payments totaling \$521,083 for which the rate paid by UEF was not included in the contract or exceeded the rates specified in the contract.

UEF Response-

The UEF has expanded its inquiry into this Finding to include areas not noted in the OLA Audit Finding. After working for months with the agency's Attorneys General, the agency has evaluated every bill on all fixed priced items under the contract with the contractor and has confirmed that the UEF has overpaid the contractor. The contractor has denied that it was overpaid. Regarding this contractual dispute, the UEF has made a written claim with the contract's procurement officer pursuant to State Finance and Procurement Article §15-216.1 and COMAR Sec. 21.10.04.05 on August 31, 2022. The agency further intends to reduce the contractor's monthly fee during the remaining months of the contract until the agency is made whole in order to recover the funds. Under law, the state procurement officer has 180 days to make a decision on the claim and either party could then appeal that decision to the Board of Contract Appeals.

Recommendations 1-

We recommend that UEF

- a. ensure that invoiced amounts are supported and agree to contract approved rates and level of services prior to approving invoices for payment (repeat), and discontinue payments not provided for in the contract;
- b. establish a process for monitoring TPA performance for claims processing and related functions (repeat); and
- c. consult with legal counsel regarding the potential to recover the aforementioned overpayments.

Exhibit 1 to April 27, 2023 Letter to Joint Chairmen

The UEF has also established procedures to have fiscal staff review invoiced amounts to "ensure that invoiced amounts are supported and agree to contract approved rates and level of services prior to approving invoices for payment" and has discontinued payments not provided for in the contract and adjusted payments to conform to the requirements of the contract.

As part of this process the fiscal staff continues to monitor the performance of the TPA regarding claims management and processing, a process which has been ongoing.

As noted, the agency has been working with the agency staff to recover overpayments.

The UEF has, therefore, complied with this finding and recommendations to the extent possible by law at this time. Further action on recovery of overpayments awaits the decision of the procurement officer and the resulting response of the TPA, both of which are actions outside of the control of this agency. Upon the results of these decisions the agency will take appropriate action to recover the funds owed as outlined above.

The UEF strongly emphasizes that this matter may well end up in litigation and upon the direction of counsel has limited discussion of details herein in a public document as to this matter in contemplation of litigation as being in the best interests of the State of Maryland in successfully recovering all relevant funds.

Finding 2 -

UEF did not adequately review recurring indemnity payments processed by the TPA to ensure claimants were still eligible for payment.

Recommendations 2-

We recommend that UEF

- a. establish a documented procedure to verify, at least on a test basis, that recurring indemnity payments are made only to eligible individuals; and
- b. obtain and review the results of the TPA's alive and well checks to ensure that future recurring indemnity payments to deceased individuals are terminated and recover any payments made after the date of death.

UEF Response

As noted in the initial response to the 2021 Audit, Agency staff has been complying with Recommendation 2a. for many months. A fiscal staff member is forwarded a spreadsheet from the TPA with relevant information bi-weekly and randomly reviews cases to ensure payments confirm to WCC orders. Names of cases reviewed are recorded.

Additionally, a process has been in place for almost one year whereby quarterly meetings are conducted between UEF staff, Attorneys General and TPA staff to review a detailed list of all ongoing permanent disability cases in detail. Each relevant case is discussed and reviewed between UEF staff, OAG staff and TPA staff.

Exhibit 1 to April 27, 2023 Letter to Joint Chairmen

Finally, a process by the UEF to review the results of all "alive and well" checks was implemented many months ago with the results of all checks conducted furnished to Agency Director as "alive and well" checks occur for review by the Director. Information concerning those checks is forwarded to the UEF by the TPA when they occur.

The UEF has, therefore, complied with the Find and Recommendations of Finding 2.

Finding 3-

UEF did not adequately monitor and pursue collection of all delinquent accounts. As of November 30, 2020, there were 1,920 delinquent accounts totaling \$14.5 million that, based on their age, should have been referred to the State's Central Collection Unit (CCU).

Recommendations 3 -

We recommend that UEF

- a. investigate and take the necessary corrective actions to resolve the noted deficiencies (generate dunning notices and produce accurate accounts receivable aging reports) to ensure that the accounting system provides sufficient information to monitor and pursue collection activities (repeat),
- b. refer all delinquent accounts to CCU for collection in accordance with the amended CCU regulations (repeat), and
- c. establish a process to identify and refer delinquent employers to applicable State and local licensing authorities for license or permit suspension (repeat).

UEF Response

In response to Finding 3 the UEF hired a temporary staff person whose responsibilities have been to comply with this Audit Finding and resulting recommendations. The UEF reports that this person now reviews accounts to insure accurate and ongoing collection efforts, refers all delinquent accounts to the Central Collection Unit (CCU) on a regular ongoing basis, and has related responsibilities for these activities. This individual works with other staff members as well on the matters discussed above.

As previously noted, as part of the ongoing program to overhaul, correct and initiate proper Agency functioning, the UEF set up a program to "establish a process to identify and refer delinquent employers to applicable State and local licensing authorities for license or permit suspension" several years ago. That program has been and remains ongoing. Based on Recommendation 3.c., the agency, working with its Attorneys General, has memorialized the process for identifying and referring delinquent employers for license or permit suspension in detail. A copy of the Agency License Revocation Process procedures document has been previously provided to the OLA in 2021.

The license suspension program continues to be ongoing, and routinely is initiated whenever an employer fails to comply with the terms of relevant Orders issued by the Workers

Exhibit 1 to April 27, 2023 Letter to Joint Chairmen

Compensation Commission (WCC) and therefore triggers UEF involvement and expenditures in a case.

After hiring the new temporary staff member, training that person, and many months of full-time research and investigation the UEF can report it has completely reviewed and disposed of the 1920 accounts referred to us by the OLA Audit. The results are as follows:

- 1150 accounts totaling \$13,416,703.91 were sent to the CCU for collection.
- 20 accounts for amounts owed under \$30.00 cannot be sent to the CCU because the CCU refuses to accept amounts due under \$30.00 for collection.
- 750 of the "delinquent accounts" identified for referral to the CCU were found to have either already been sent to the CCU for collection previously by the agency or were not eligible to be sent to the CCU for reasons including: the claims had been paid; a settlement approved by the WCC reduced the original amount owed; the claim had been dismissed or never pursued by the claimant; the debtor was deceased; a payment agreement had been agreed to by the parties; the claims are ongoing so revised debt amounts are forwarded as generated by the UEF to the CCU already; and/or 100 percent of the claim total eligible for collections had already been forwarded to the CCU.

These 750 claims totaled \$1,082,161.72.

The UEF has, therefore, hired a temporary staff position to handle and comply with the Finding Number 3, and related recommendations, and continues to deal with relevant ongoing matters. As previously detailed, the agency has also resolved the 1920 accounts herein in compliance with this finding and recommendations.

The UEF asserts that it has, therefore, complied fully with Audit 2021 Finding 2 and 3 and has, to the extent legally possible, complied with Audit 2021 Finding 1. The UEF requests that the OLA so find and report such to the Maryland Legislature in a timely fashion.

Thank you for your attention, assistance and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael W. Burns, Esquire
Director

Exhibit 2 to April 27, 2023 Letter to Joint Chairmen

Status of OLA's September 14, 2021 Audit Report on the Uninsured Employers' Fund (UEF)

Prior Recommendations	Status Based on OLA Review
Third Party Administrator Contract 1. We recommend that UEF a. ensure that invoiced amounts are supported and agree to contract approved rates and level of services prior to approving invoices for payment, and discontinue payments not provided for in the contract.	Not Resolved (In Progress)
b. establish a process for monitoring third party administrator (TPA) performance for claims processing and related functions.	Not Resolved (Minimal or No Progress)
c. consult with legal counsel regarding the potential to recover the aforementioned payments.	Resolved
Claims Processing 2. We recommend that UEF a. establish a documented procedure to verify, at least on a test basis, that recurring indemnity payments are made only to eligible individuals.	Resolved
b. obtain and review the results of the TPA's alive and well checks to ensure that future recurring indemnity payments to deceased individuals are terminated and recover any payments made after the date of death.	Resolved
Accounts Receivable 3. We recommend that UEF a. investigate and take the necessary corrective actions to resolve the noted deficiencies (generate dunning notices and produce accurate accounts receivable aging reports) to ensure that the accounting system provides sufficient information to monitor and pursue collection activities.	Not Resolved (Minimal or No Progress)
b. refer all delinquent accounts to the State's Central Collection Unit (CCU) for collection in accordance with the amended CCU regulations.	Not Resolved (In Progress)
c. establish a process to identify and refer delinquent employers to applicable State and local licensing authorities for license or permit suspension.	Resolved

Exhibit 3 to April 27, 2023 Letter to Joint Chairmen

OLA's Assessments Regarding Repeat Findings and Recommendations That Were Not Resolved

Prior Report Recommendation – Finding 1

We recommend that UEF

- a. ensure that invoiced amounts are supported and agree to contract approved rates and level of services prior to approving invoices for payment (repeat), and discontinue payments not provided for in the contract; and**
- b. establish a process for monitoring third party administrator (TPA) performance for claims processing and related functions (repeat).**

Status: Not Resolved

Our review disclosed that although UEF ensured that invoices from the TPA vendor were in accordance with the approved contract rates, UEF still did not obtain documentation to support the propriety of the charges. In addition, UEF had not established a process to monitor the TPA's performance for claims processing and related functions.

Prior Report Recommendation – Finding 3

We recommend that UEF

- a. investigate and take the necessary corrective actions to resolve the noted deficiencies (generate dunning notices and produce accurate accounts receivable aging reports) to ensure that the accounting system provides sufficient information to monitor and pursue collection activities (repeat), and**
- b. refer all delinquent accounts to the State's Central Collection Unit (CCU) for collection in accordance with the amended CCU regulations (repeat).**

Status: Not Resolved

Our review disclosed that UEF had not taken corrective action to ensure its automated accounts receivable system generated dunning notices and produced accurate reports for the purpose of monitoring and pursuing collection activities (including referrals to CCU for collection).

Consequently, although UEF established a process to refer delinquent accounts to CCU, since it was not based on reliable reports there was no assurance that all appropriate delinquent accounts were referred to CCU.