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Maryland Uninsured Employers' Fund-C96J00
Fiscal Year 2022 Operating Budget
Response to Department of Legislative Services Analysis

Maryland House of Delegates
House Appropriations Committee
Public Safety and Administration Subcommittee
Delegate Keith E. Haynes, Chair
Hearing – February 8, 2021

Maryland Senate Budget and Taxation
Committee
Public Safety, Transportation and
Environment Sub-Committee
Senator Cory V. McCray, Chair
Hearing – February 8, 2021

Please accept the following, with the enclosed attachments, as the written testimony of the Maryland Uninsured Employers' Fund (UEF) on February 8, 2021 regarding the status of the UEF and the budget proposal for FY 2022:

Introduction

The Maryland Uninsured Employers' Fund (UEF/Agency) is a statutory agency created to protect Maryland workers who are injured on the job (or develop an occupational disease). The purpose of the Agency is to provide workers' compensation benefits when an uninsured employer fails to provide benefits awarded by the Maryland Workers' Compensation Commission (WCC) to an injured worker because of the employer's failure to maintain workers compensation insurance coverage for employees. We provide medical treatment and financial support for hundreds of Maryland workers and their families. Without the UEF, they would be left without.

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The UEF is a special fund which is funded by fines levied by the WCC against uninsured employers and also by assessments imposed on most WCC awards of indemnity benefits. The agency also strives to recover reimbursement from uninsured employers for expenditures made by the UEF pursuant to WCC Orders.

It is important to emphasize that the UEF is also 100% self-funded and has only comparatively recently become a fully independently functioning agency.

During the past four years the UEF has been continually and actively engaged in the process of identifying and correcting a host of serious issues which were left by prior UEF management, going back years, including correcting serious deficiencies in the critical areas of structure, claims administration and collections. It is important to emphasize that this work during these past few years continues a process begun over a decade ago to build a fully independent and self-sufficient agency. That difficult job has been neither steady nor without mishaps – but progress has been clear, success has been self-evident and the efforts of the staff, the Administration and the Legislature continues to show substantial results. All involved should take pride at the enormous progress which directly benefits injured Maryland workers and their families.

Agency Response to Covid-19

Nothing demonstrates the improvements in the UEF during recent years better than our response to the ongoing Covid-19 pandemic and State government closure. Thanks to quick responses, planning and implementation of emergency procedures, an excellent and resourceful staff, a competent and experienced TPA contractor, and the leadership and direct assistance of other State agencies, the agency was able to quickly set up a successful remote teleworking program which enabled us to continue to function effectively remotely.

The Fund took immediate proactive action in February, 2020 to prepare for various contingencies regarding the COVID-19 situation and the agency's functions. We reviewed the Office of Personnel Services and Benefits Policy regarding Pandemic Flu Attendance and Leave (Pandemic Flu Policy) and also reviewed the Fund's plan for dealing with any disruption in agency function. Our staff meet in order to discuss the details of the Pandemic Flu Policy and related issues regarding the situation and possible responses thereto. Meetings were also conducted with the agency's Principal Counsel who supervises our agency's five attorneys general as well as the supervisor of our contractual Third-Party Claims Administrator (TPA) to discuss the Pandemic Flu Policy and related issues, again in preparation for the agency continuing to function remotely. We also reached out to one of our TPA's Vice Presidents to discuss the company's possible responses to the situation and plans. All of this was done with a

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view of making all persons aware of the situation and the possibilities involved and to be prepared for various contingencies, including the closure by the State of the UEF office.

We worked with DoIT on the program to obtain laptop computers for key staff to use for remote work off site. Thanks to the work of the agency and DoIT, the agency was able to obtain five laptop computers for our staff to use. The agency was also able to also separately procure other laptops itself for remote use so when the State Government was forced to close down State offices the agency was able to quickly convert to teleworking and remote functioning.

We have engaged in weekly remote meetings as an agency since March of 2020 in order to discuss relevant matters with both staff and other interested parties on an ongoing basis. Our goal was, and remains, to function as a competent, ongoing agency no matter what situations present as well as to have staff cognizant of the health situation and vigilant as to their own health and safety.

Agency functions during the remote period of activity have included:

- Implementation of Senate Bill 8 (Ch 0495, 2020), – The Agency worked with the WCC on changing the assessment amount in order to be prepared for the July 1, 2020 implementation date of legislation. The Agency proactively sent letter to insurers to advise them of the change in assessment amount in June of 2020.
- Continuing Agency Function during site closure – The Agency has been functioning remotely since the mid-March office shut down. The Agency obtained and distributed 12 new laptop computers for staff. Agency staff meets by conference call weekly to discuss issues and concerns. Claims management, case preparation and investigation, legal preparation, and collections are all continuing without issues. All divisions of Agency continue to operate smoothly in spite of shut down. Staff individually goes to office as needed to process mail, checks, and claims.
- Preparations for return to site – Since late February Agency staff has been discussing and planning on an ongoing basis for site reopening. The Agency is ready to resume operations as soon as State gives its permission.
- Hearing resumption at WCC – Live Hearings resumed at the WCC in June of 2020. As a result of Staff organization and preparation the UEF was preparing cases for hearings throughout the shut down and was ready to proceed as required when relevant cases were resumed. Hearings continue to go smoothly.
- Collection of Funds Due – The UEF is 100% self-funded. When the Agency site prepared for closure the Agency developed plans for effective use of staff time, including collection activities. Collections staff have been continuing the Agency's program of collecting and processing monies due as a result of WCC Orders effectively and has also been doing a review of past-due debt to prioritize collection.

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- Staffing – The UEF was in the process of hiring four new staff for positions to fill vacant slots and improve agency function when the closure of State offices and the resulting health restrictions stopped that process. Because the UEF funds these positions directly, the process of hiring can begin again when conditions permit. The UEF, recognizing the legislature's interest in our staffing plans, is anxious to hire these new staff, evaluate their performance, and move ahead as required to fill any remaining positions. Such would have been the case today had the Covid-19 pandemic not occurred.

Had the Covid-19 pandemic occurred four years ago little of what was accomplished and described above would have happened. The agency in 2017 would have been woefully unprepared for the outbreak and resulting closure. Fortunately, the hard work of the last four years resulted in an agency that remains functioning smoothly on a daily basis today.

Agency Response to the Analysis of the FY 2022 Maryland Executive Budget

Please also find attached hereto this agency's Response to the Analysis of the FY 2022 Maryland Executive Budget for your review. Please consider our responses, especially to suggested recommendations, which are made to you after discussions among the staff and which are based on our expertise with, and knowledge of, our unique role and mission as a state agency.

We thank the budget analyst, Mr. Jason A. Kramer for his professional and collaborative work with this agency. We appreciate his efforts to work with this agency to provide the legislature with both information and various recommendations regarding the UEF.

As a former member of the legislature, it is always a pleasure to appear before legislative committees – albeit remotely in these extraordinary times – and I look forward to working with you to continue our collaborative progress to make the Maryland Uninsured Employers' Fund an even more outstanding and successful State government agency.

Sincerely,

Michael W. Burns, Esq.

The Honorable Michael W. Burns, Esquire

Encl.

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C96J00

Uninsured Employers' Fund (UEF)

Executive Summary- Response to Key Observations and Recommendations

Key Observations

- 1) Without action, fund balance will continue to decline.

Response: Like every aspect of government, the Covid-19 pandemic and resulting economic and social havoc has impacted the UEF. During the months of the current government restrictions, the UEF worked closely with the Pinnacle staff in order to provide them with as much valid and accurate data as requested. The result, The Pinnacle Study (Study), is an estimate of the future status of the UEF, but considering the nature of the variables – for example the number and nature of claims found to be compensable by the UEF, the revenue received by the UEF through assessments and collections from uninsured employers, the increase in medical costs over time, and other matters – it must

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be considered as an estimate based on past data and projections based on trends which may or may not hold true.

Clearly, the revenue numbers from the one-year assessment increase to 3% authorized by the legislature in the 2020 do not indicate the expected amount of revenue projected pre-pandemic. The agency, recognizing this, has requested a one-year extension of the sunset extension from July 1, 2021 to July 1, 2022, in order to generate revenue and to obtain relevant data from hopefully more normal times and events to judge the Fund's actual status now and going forward.

Additionally, efforts to increase collections from uninsured employers are much more robust today than at any point in the agency's history – legal actions are proceeding now on multiple fronts to ensure collection of funds owed to the UEF that simply were non-existent several years ago. Over time these actions should produce more revenue for the fund.

Whether the Fund will require an increase in revenue in the future will become clearer once the pandemic ends, life returns to normal, and the improvements in UEF collections efforts have time to mature and generate reliable numbers.

2) Staffing needs

Response – In the report to the legislature regarding staffing levels, the UEF reported that before the Covid-19 pandemic the agency was in the process of hiring four new positions. These consisted of full-time State employees at Fiscal Technician I and II position levels as well as two contractual employees to fill open collections investigator positions. The Covid-19 restrictions made continuing this process impossible unfortunately and the ongoing restrictions have contributed to delaying these actions. The agency is actively preparing to resume this process as soon as conditions allow.

Currently, the UEF has four full time staff and four temporary workers who handle agency functions. The planned hiring of the four named positions above will replace three of those temporary workers with newly filled state positions. That will give the agency a total of thirteen positions filled, since the five OAG Attorney Generals on staff since 2018 are all fully funded out of the UEF Fund and are in UEF PINs.

Once those positions are filled the agency will wait to see the results of those four new hires, the costs involved, and the general financial condition of the agency. It is anticipated that the last temporary position will also eventually be replaced by a new full-time State employee filling a law paralegal position already authorized. That plan is subject to review depending on various factors, including the condition of the Fund.

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Once that is accomplished the UEF itself will be staffed with full-time employees (and two contractual employees) and will be at the point where future hires will be based on perceived need in the collections area and the agency's financial condition.

The UEF is a self-funded agency. Staffing increases have been and remain subject to the overall financial health of the Fund. The pandemic has added another substantial factor for consideration. Since the agency is completely self-funded, we have been cautious about committing the agency to a larger payroll until we were in a position to judge the Fund's financial position was ready for such a commitment. Before the pandemic our judgement was that it was ready, especially since several of the proposed hires would be offset by the dropping of no longer needed temporary employees.

Unlike most other State agencies, the UEF cannot rely on the General Fund to cover our needs. The process of staffing and hiring has been deliberate and cautious – emphasis has been placed on the areas requiring emphasis such as claims administration, legal and collections. That process as proven successful and the agency will, Covid-19 willing, be able to report four new hires to the Legislature in 2022.

The UEF also points out that DBM participated in the formulation, consideration and production of the Report to the Legislature discussed in this item by the analyst. DBM was consulted by the UEF on the preparation of the report and reviewed drafts of the proposed report and the final submitted version, offering suggestions and comments throughout the process. We remain grateful to DBM for their assistance with that project.

3) Struggles with administrative function and Recommended action

Response- As is documented in numerous reports to the Governor, the Legislature and in Budget presentations to these committees, the condition of the UEF when the current leadership took charge in late 2016 was a disaster. The new Director, upon review, found that literally every aspect of the agency was in need of support and repair; in some cases various functions, some critical, of the agency had ceased altogether. It was, in point of fact, remarkable that the UEF was functioning at all by late 2016.

Faced with those facts and that reality, the Director, the Board and the administration acted as quickly as possible to make the agency functional. The actions taken often included not only completely restoring past functions which had atrophied, it included numerous actions to initiate processes that should have been begun literally decades before. If mistakes were made along the way they were at least mistakes of commission and not omission. The agency sincerely regrets any such errors and continues to work to comply with law, regulation, process and procedures and especially the legislature and its

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directives. Upon the whole, and it is upon the whole the work should be judged, the progress of the UEF from November 2016 to today is remarkable and a tribute to the agency staff, the Executive and Legislature who all contributed to that success.

As to the budget issues remarked upon in the analysis, the agency notes that, in fact, there is currently an amendment being worked on between DBM and the UEF to correct the lack of an appropriation for the TPA contract for the Fiscal Year discussed therein. The agency and DBM have been working together to achieve an agreed upon figure for submission for some time now and it will be submitted quite soon. As to the FY 2022 allowance issues, if there are minor corrections required because a mistake in the placement of an item in the budget proposal or a need for more information the agency apologizes and notes that such mistakes and corrections in agency budgets are not a rare occurrence for any agency and are easily dealt with and resolved.

There is also a Recommendation in the analysis that recommends adding a section to the budget bill that would restrict funding for the UEF, SIF, WCC, and DBM pending a report that recommends the feasibility of restructuring the WCC, the SIF and the UEF in unspecified ways, or, in the alternative an evaluation of the total personnel needs of UEF. The Recommendation reads as follows:

SECTION XX. AND BE IT FURTHER ENACTED, That \$100,000 of the special fund appropriation in the Uninsured Employers' Fund (UEF), \$100,000 of the special fund appropriation in the Subsequent Injury Fund (SIF), \$100,000 of the special fund appropriation in the Workers' Compensation Commission (WCC), and \$100,000 of the general fund appropriation in the Department of Budget and Management made for the purpose of general operation expenses may not be expended unless the agencies provide a report to the budget committees analyzing the existing structure of the Uninsured Employers' Fund, Subsequent Injury Fund, and Workers' Compensation Commission. The report shall include: (1) an evaluation of the current structure of the UEF, SIF, and WCC, including but not limited to areas of overlapping responsibilities; (2) a recommendation of whether the agencies should be restructured, including but not limited to resource sharing and merging; and (3) if the recommendation does not call for restructuring, a thorough evaluation of the UEF's personnel needs.

The UEF responds to this suggestion to note, in summary, that joint structuring and management has been attempted before involving the WCC, the SIF and the UEF and it was found to be unworkable, unmanageable and of questionable legality. Because of the nature of the three agencies involved, any attempt at involving the agencies in joint management or functioning, including "resource sharing and merging," would result in

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chaos and substantial difficulties for all three agencies involved without any resulting benefit whatsoever to any of the suggested agencies, to State Government or to the Workers Compensation system.

Some history is in order. Research reveals that, apparently, decades ago, the WCC had some sort of oversight over the functions and management of both the UEF and the SIF. This system could not and did not work – the WCC has nothing in common with the functions and responsibilities of either the UEF or the SIF and, in fact, hears cases with both agencies as parties - so the SIF was spun off from WCC involvement and later the UEF was as well.

For reasons unknown today, for some reason the SIF took charge are various internal UEF functions years ago. The attempt to do this was a complete failure. The Office of Legislative Audits (OLA) found significant problems with the concept of, and various specific aspects of, the SIF and the UEF being managed by the SIF and issued audit findings and recommendations regarding the unworkability of the system then in place earlier in this century. There were also legitimate concerns expressed about the conflict of interest between two state agencies with such different functions, sometimes adversarial, having common management and in 2010, at the urging of DBM under the O'Malley administration, a formal process was begun to separate the two agencies. This was accomplished in or about 2011.

The UEF wishes to emphasize that the SIF deserved and deserves credit for trying for years to do the impossible in managing itself and partially managing a different agency, the UEF, with different needs and requirements. That they were unsuccessful was not a result of their lack of effort; the idea itself was unworkable, not to mention the legal complications of having two agencies that sometimes appeared in WCC hearings as adversaries having one management team for certain agency functions. The UEF remains grateful to this day to the SIF for their help and assistance.

The evidence of the need for separation of the agencies is demonstrated by the substantial and excellent progress the SIF has made in the decade since its complete separation from the UEF. In every way, it has become a model State agency.

Unfortunately, the same cannot be said for the UEF. In spite efforts, the UEF drifted downward in both function and morale over the next five years after separation. Staff left and were not replaced, programs were allowed to become ineffective or simply stopped, and the Fund balance drifted downward year by year. Eventually the UEF sunk to a point of near collapse in 2016.

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That changed in 2016, a process well documented multiple times in other reports and legislative appearances. As illustrated in this response and other documents, the UEF is today a functioning successful agency. It has stabilized and improved in a number of areas. It has initiated programs and processes – the RFP for TPA services being one example – which should have been started and accomplished years, if not decades, ago.

To attempt to combine any of the functions of the UEF, the SIF and the WCC would create chaos at all three agencies. Plus, it would go back to a system found inefficient and unacceptable by the OLA and DBM over a decade ago. Additionally, the WCC, an independent administrative hearing agency, cannot take charge of any aspects of entities that commonly come before the WCC in litigation such as litigants like the SIF and the UEF. Such a system would clearly have the appearance of impropriety and would call into question the WCC's role as a neutral hearing body for workers compensation claims. Any combination of the management and roles of these three agencies and their functions would do real, and perhaps permanent damage, to the State's workers compensation system.

Should the legislature desire another study from the UEF of our current staff environment and current staffing requirements as well as aspirational goals for staffing this agency is more than happy to provide such a report to the legislature in the interim after session concludes.

The UEF does, however, respectfully but strongly urges and requests that the Legislature leave the proposed WCC, the SIF and the UEF joint reporting requirement as drafted, and any requirements for a study of reorganization and restructuring of these discussed agencies involving some of sort of jointly managed "resources", out of the Budget as is proposed by the Budget analysis.

Thank you for your time and consideration of the agency's views and requests.