State of Ohio

Office of the Inspector General

RANDALL J. MEYER, Inspector General

Report of Investigation

AGENCY: OHIO BUREAU OF WORKERS' COMPENSATION
FILE ID NO.: 2014-CA00015
DATE OF REPORT: AUGUST 10, 2017

The Office of the Ohio Inspector General ...
The State Watchdog

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Randall J. Meyer
Ohio Inspector General

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL
RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER:	2014-CA00015
SUBJECT NAME:	Public Employer State Agencies Employer Group Refunds
AGENCY:	Ohio Bureau of Workers' Compensation
BASIS FOR INVESTIGATION:	Complaint
ALLEGATIONS:	Failure to Comply with State Law and/or Regulations; and Failure to Establish Adequate Internal Controls for Agency/Department Functions.
INITIATED:	February 4, 2014
DATE OF REPORT:	August 10, 2017

EXECUTIVE SUMMARY

The Office of the Ohio Inspector General opened an investigation after receiving a complaint concerning the issuance of refunds by the Ohio Bureau of Workers' Compensation (OBWC) in November 2013 to Ohio's public universities for excess contributions paid to the Ohio State Insurance Fund. The complainant alleged that the OBWC Actuarial Division failed to consider $46 million of unrecovered managed care organization costs (MCO)[1] in its Public Employer State Agency (PES) program funding analysis. Had the unrecovered $46 million been considered in the analysis, the PES program analysis would have shown a $25 million negative balance and therefore, OBWC should not have issued the refunds.

The Office of the Ohio Inspector General determined the PES program funding analysis was limited in scope to determine whether contributions from PES program participants were sufficient to fund payments for injured worker benefits paid to PES program participants' employees. This investigation further noted that in 2007, then-OBWC Administrator Marsha Ryan decided to not collect the approximate $46 million of unrecovered MCO costs. Instead, Ryan decided to bill the PES program participants the MCO costs beginning July 1, 2007. In addition, Ohio Administrative Code §4123-17-35 was amended to include a rate component for MCO costs effective July 1, 2007.

The complainant's second concern focused on a 2006 OBWC internal legal counsel opinion which opined that "the collection of past MCO fees was likely limited to a one-year limit under R.C. 4123.40." Investigators determined that the Actuarial Division PES program funding analysis focused solely on the contributions for benefits paid to injured workers for PES program participants' employees and excluded MCO costs. The OBWC Actuarial Division chief stated to investigators that this 2006 legal opinion had no impact on the PES program funding analysis since the MCO costs were excluded.

[1] The approximately $46 million in MCO administrative costs and incentive fees were paid from the Public Employer State Agency (PES) employer group within the Ohio State Insurance Fund for the period of March 1997 through June 30, 2007.

The Office of the Ohio Inspector General concluded that OBWC management returned the excess contributions either through future MCO rate reductions or through an issued refund check to the PES program participants in accordance with Ohio Revised Code §131.39.

However, the Office of the Ohio Inspector General was unable to determine whether OBWC used an allowable source of funds within the Ohio State Insurance Fund as provided by Ohio Revised Code §4123.30 and §4123.40 to fund PES program MCO participant costs paid for fiscal years 1998 through 2007 or for benefit payments issued during periods when the PES program was in an overall deficit. This matter has been referred to the Ohio Auditor of State for further consideration.

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On January 22, 2014, Ohio Bureau of Workers' Compensation (OBWC) Internal Audit Manager Keith Elliott contacted the Office of the Ohio Inspector General and representatives from the Ohio Office of Budget and Management Office of Internal Audit to request a meeting. On January 27, 2014, representatives from both agencies met with Elliott to discuss his concerns regarding the November 2013 refund of excess contributions to Ohio's public universities by OBWC. These refunds were paid from the Public Employer State Agencies'[2] (PES) contributions to the Ohio State Insurance Fund.

In December 2012, the OBWC Actuarial Division had completed a PES program funding analysis to determine whether OBWC had collected sufficient funds to finance the PES program as a result of the PES ratemaking process. Elliott explained that the OBWC Internal Audit Division initiated a special project in February 2013 to examine the methodology used by the OBWC Actuarial Division and to verify that the calculations and associated adjustments were supported by underlying documentation.

According to Elliott, the special project determined that the unrecovered $46 million of managed care organization administrative and incentive expenses paid from March 1997 through June 30, 2007, were excluded from the PES program funding analysis. Elliot alleged that had the $46 million been included, the PES program funding analysis would have shown a deficit (negative cash balance.) As such, OBWC would not have refunded excess contributions to the universities. Elliott also expressed reservations about the appropriateness of the time period used by the OBWC Actuarial Division while conducting the PES program funding analysis.

BACKGROUND

The Ohio Bureau of Workers' Compensation is responsible for providing workers' compensation insurance to all public and private employees except those that qualify for self-insurance. It is the largest exclusive workers' compensation system in the United States. An administrator/chief executive officer of OBWC is appointed by the governor. OBWC is also overseen by an 11-

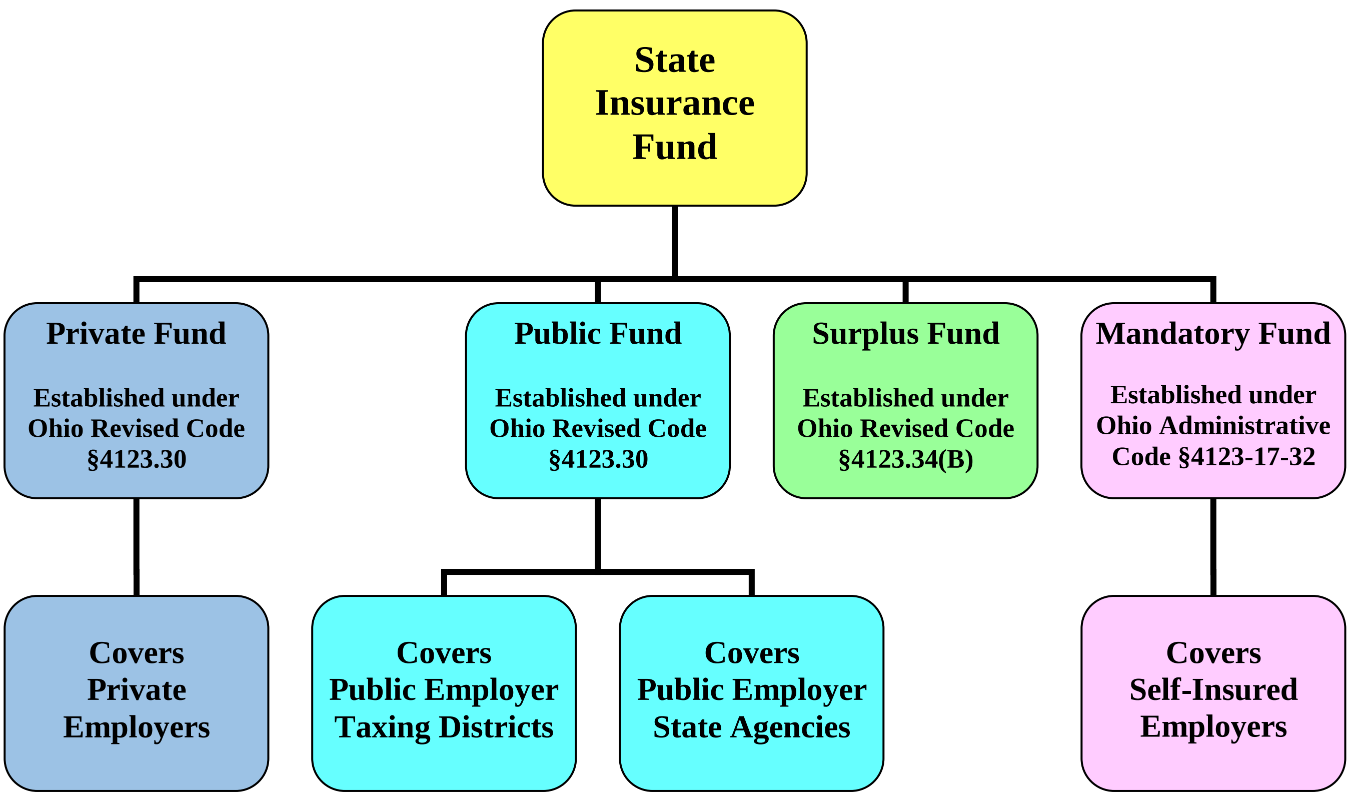
[2] The Public Employer State Agencies employer group accounts for contributions and payments for state agencies, boards, commissions, and state universities.

member board with members experienced in financial accounting, investments and securities, and actuarial management. OBWC is funded through assessments paid by employers.[3]

The Ohio General Assembly enacted Ohio Revised Code §121.52, effective September 10, 2007, which created the deputy inspector general for the Ohio Bureau of Workers' Compensation and the Industrial Commission of Ohio (ICO). This statute requires a deputy inspector general be designated who "… shall investigate wrongful acts or omissions that have been committed by or are being committed by officers or employees …" of both OBWC and the ICO, and provides the deputy inspector general the same powers and duties as specified in Ohio Revised Code §121.42, §121.43, and §121.45 for matters involving OBWC and ICO.

State Insurance Fund

Per OBWC representatives, the State Insurance Fund is composed of the following:



[3] Source: OBWC annual report.

Ohio Revised Code §4123.30 provides that the State Insurance Fund consists of two funds, a public and a private fund and that "… each such fund shall be collected, distributed, and its solvency maintained without regard to or reliance upon the other." This section states,

> Whenever in this chapter reference is made to the state insurance fund, the reference is to such two separate funds but such two separate funds and the net premiums contributed thereto by employers after adjustments and dividends … This section does not prevent the deposit or investment of all such moneys intermingled for such purpose but such funds shall be separate and distinct for all other purposes, and the rights and duties created in this chapter shall be construed to have been made with respect to two separate funds and so as to maintain and continue such funds separately except for deposit or investment.

Ohio Revised Code §4123.30 further provides that, "… disbursements shall not be made on account of injury, disease, or death of employees of employers who contribute to one of such funds unless the moneys to the credit of such fund are sufficient therefor and no such disbursements shall be made for moneys or credits paid or credited to the other fund."

Duties of the OBWC Administrator

Ohio Revised Code §4123.29 (A)(2)(a) requires the OBWC administrator to,

> … fix the rates of premium of the risks of the classes based upon the total payroll in each of the classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in this chapter and to maintain a state insurance fund from year to year. The administrator shall set the rates at a level that assures the solvency of the fund.

Public Fund Employer Contributions

Ohio Revised Code §4123.48 provides that,

> … (t)he bureau of workers' compensation shall keep, for the state and each county, taxing district, district activity, and institution, an individual account showing the amount

> of money paid into the public insurance fund and the amount of losses incurred against the fund.

Public Employer State Agency Rate Setting

Ohio Revised Code §4123.40, effective September 16, 1998, outlined the process used to establish the workers' compensation rates paid by the Public Employer State Agencies[4] (PES). This section provides guidance for the frequency and the calculation of PES rates "… so that the state and its departments, agencies, and instrumentalities contribute an amount sufficient to meet individual obligations and maintain a solvent public insurance fund." This section further states that the contributions collected from state employers "… shall not be used to pay compensation or other benefits attributable" to county and taxing district employees. Additionally, county and taxing district contributions should not be used "… to pay compensation or other benefits attributable to" state employees.

This ORC section also permitted the consideration of overages or shortages when calculating the rate for the succeeding period, stating,

> … if the amounts remitted to the bureau for a fiscal period are greater or less than actual awards or payments for the like period by reason of an error in the prior estimates of gross payroll or awards or payments.

On September 17, 2014, this statute was amended and removed the requirement that the overages or shortages were created "… by reason of an error in the prior estimates of gross payroll or awards or payment."

Ohio Administrative Code §4123-17-35 specifies that the OBWC administrator, with the advice and consent of the board of directors, is authorized to approve for public employer state agencies separate rates for agency contributions for claims payments and for the managed care

[4] The Public Employer State Agencies employer group accounts for contributions and payments for state agencies, boards, commissions, and state universities.

organization costs to the Ohio State Insurance Fund.[5] This section further stated that OBWC will compare, "… the actual and collected costs to account for any overage or shortage in the costs collected. The bureau will apply any overages or shortages to the costs for the next policy year period."

Processing and Recording Errors

Ohio Administrative Code §4123-17-28 (A) provides guidance when OBWC, "… detects an inaccuracy in the recording or processing of data, records, payroll, claims, or other pertinent items affecting the risk's[6] status, merit-rated modification or premium, such discrepancy shall be corrected." Section B provides guidance on how the employer's rates are to be adjusted for corrections identified in Section (A).

Refunds

Ohio Revised Code §131.39 states, in part,

> … if a state agency determines that all or a portion of a fee, fine, or penalty, or other nontax payment made to the agency is not owed, the agency may refund, from the fund to which the payment was credited, the amount that is not owed.

Managed Care Organizations

House Bill 107, enacted in 1993, established a managed care system called the Health Partnership Program (HPP), for state-funded and self-insured employers and their employees. The managed care system is a "… health care model focusing on the proactive oversight and coordination of all medical services rendered to a patient."[7] Beginning in 1998, OBWC entered into managed care contracts on a calendar year basis with managed care organizations to manage the medical portion of injured workers' claims on behalf of employers.

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[5] The reference to the managed care costs was added to Ohio Administrative Code §4123-17-35, effective July 1, 2007.

[6] The OBWC workers' compensation policy purchased by an employer is referred to as the risk.

[7] Source: https://www.bwc.ohio.gov/basics/guidedtour/generalinfo/ProvGlossHPP.asp.

INVESTIGATIVE SUMMARY

During the investigation, the Office of the Ohio Inspector General interviewed OBWC employees in the Actuarial, Fiscal and Planning, Managed Care Organization (MCO) Compliance and Reporting, and Internal Audit divisions to obtain an understanding of the Public Employer State Agency (PES)[8] rate setting, rate collection, benefit payment, and administrative expense payment processes. Due to the OBWC implementation of a new computer system, ongoing external financial and fiduciary audits, and other ongoing time-sensitive projects, these interviews were conducted from March 20, 2014, through September 28, 2016. Relevant records requested on October 9, 2014, were ultimately received by the Office of the Ohio Inspector General on August 20, 2015. Additional records requests were submitted to and received from the OBWC Fiscal and Planning, MCO Compliance and Reporting, and Legal divisions between May 13, 2014, and December 1, 2016.

On January 27, 2014, the Office of the Ohio Inspector General and representatives from the Ohio Office of Budget and Management Office of Internal Audit met with Ohio Bureau of Workers' Compensation (OBWC) Internal Audit Manager Keith Elliott to discuss his concerns regarding a December 5, 2012, memorandum summarizing an Actuarial Division analysis (referred to as the "PES program funding analysis") and the November 2013 refunds OBWC issued to Ohio's public universities for excess (surplus) contributions.

Ohio Revised Code §4123.30 provides that the Ohio State Insurance Fund is comprised of two funds, a public fund and a private fund. The public fund includes a fund for local governmental entities called the Public Employer Taxing District Fund and for state agencies and universities called the Public Employer State Agency fund. Elliott explained that in the mid-1990s, OBWC began contracting with managed care organizations to manage injured worker medical expenses incurred as the result of the workplace injury. OBWC used monies from the Ohio State Insurance Fund to pay for MCO services. Elliott stated that the costs for the MCO services were included in the private employer rates and that a decision was made by OBWC to not include these costs in the PES rates.

[8] The Public Employer State Agencies employer group accounts for contributions and payments for state agencies, boards, commissions, and state universities.

Elliott also stated that from March 1997 through June 30, 2007, the Ohio State Insurance Fund issued payments to managed care organizations (MCOs) for administrative and incentive costs for processing of PES program participants' injured workers' claims. During this same timeframe, OBWC did not collect moneys from PES program participants to fund payments for MCO costs totaling approximately $46 million. Elliott expressed concerns whether the $46 million had been included in the PES program funding analysis. Elliott noted that had the $46 million of unrecovered MCO costs been included, the PES program would have a negative cash balance and funds would not have been available for OBWC to issue refunds to Ohio's public universities.

Elliott explained that in early 2013, the OBWC Internal Audit Division became aware that the OBWC Actuarial Division had completed the PES program funding analysis. This analysis was summarized in a December 5, 2012, memorandum prepared by OBWC Actuarial Division Chief Chris Carlson. **(Exhibit 1)** Elliott believed that the objective of the PES program funding analysis was to determine the overall PES program balance.

2012 Actuarial Analysis of the PES Fund

According to the OBWC Board of Directors Actuarial Committee's meeting minutes for April 26, 2012, Carlson reported that the PES program remained in a deficit (negative) balance. The OBWC Actuarial Committee meeting minutes indicate that Carlson stated that the Actuarial Division was taking steps to eliminate the PES program negative balance by the end of fiscal year 2015 (June 30, 2015.)

According to the OBWC Actuarial Committee's meeting minutes for May 23, 2012, Carlson reported that, "… the actuarial division plans to improve prediction procedures of annual paid indemnity, annual paid medical, and annual payroll for state agencies." Later in the meeting, Carlson stated that he "… has identified a few areas with potential improvements in methodology."

On December 5, 2012, OBWC Actuarial Division Chief Chris Carlson submitted a memorandum (referred to as "the memorandum") to the OBWC administrator and select senior staff summarizing the results of an actuarial analysis of "… the calculation of the long-term surplus or deficit standing of each agency and the PES program in total." **(Exhibit 1)** Carlson's memorandum further explained that "… one of these issues impacts only the program standing while the other impacts the overall program financial standing, the state agency standing, and contribution rates developed for the PES participants."

On September 28, 2016, the Office of the Ohio Inspector General interviewed Carlson to obtain an understanding of the reasoning for the analysis and the direction provided to the Actuarial Division staff to conduct the PES program funding analysis. Carlson explained that after the April 26, 2012, OBWC Actuarial Committee meeting, he had reviewed the PES program in further detail. Carlson believed this review identified some "disconnects" between the overall PES program balance and the total of the surpluses or deficits for each individual agency participating in the PES program. Carlson explained that when he added up the identified surplus or deficit balances for the PES program participants, it appeared that the PES program had a surplus (positive) balance contrary to the deficit balance he had reported to the OBWC Actuarial Committee in April 2012.

Because of these "disconnects," Carlson requested OBWC Actuarial Division Underwriter David Childress and his staff to start with 1980[9] and "… try to reconcile the numbers" for each PES program participant and the PES program overall through 2011. Carlson further explained that the focus of the reconciliation only involved contributions made by PES program participants, payments issued for medical and indemnity benefits to or on behalf of the injured worker, and excluded contributions by PES program participants for MCO costs, administrative costs, and the safety and hygiene fees.

Per the meeting minutes at the December 19, 2012, OBWC Actuarial Committee meeting, Carlson reported that the Actuarial Division had completed the PES program funding analysis.

[9] This was the earliest available hard copy or electronic records maintained that were easily accessible.

This analysis was presented to the OBWC Actuarial Committee on April 25, 2013, prior to the first reading of the proposed 2013 PES contribution rates for fiscal year 2014. Carlson's presentation summarized the records obtained, reviewed, and the comparisons performed for each PES program participant. Carlson reported to committee members that the PES program funding analysis resulted in an adjusted overall PES program balance as of January 1, 2012, from an approximate $5.6 million deficit to an almost $21 million surplus. **(Exhibit 1)**

When reporting the PES funding analysis results to the OBWC board of directors, Carlson acknowledged that the overall PES program has a long-term surplus (positive cash) balance, but also recognized that there were individual PES program participants still with deficit (negative cash) balances. Carlson was questioned by OBWC directors of how management intended to resolve the PES program participant surpluses and deficits. Carlson responded that OBWC was reviewing several approaches to eliminate the existing PES program participant surpluses and deficits. Potential approaches discussed to resolve the issue included, but were not limited to, future rate reductions and in some instances, the participant receiving a check.

Internal Audit Review of the PES Program Funding Analysis

In early 2013, after becoming aware of the analysis' existence, Elliott stated that he had discussed his (Elliott's) concerns about the December 5, 2012, OBWC Actuarial Division Public Employer State Agency (PES) [10] program funding analysis with Dennis Vanek,[11] then-OBWC chief of Internal Audit. Elliott stated he was concerned whether the PES program funding analysis had considered the $46 million in unrecovered MCO costs paid by the Ohio State Insurance Fund between March 1997 and June 30, 2007. Elliott explained to investigators that Vanek approved Elliott to review the PES program funding analysis and determine whether the adjustments to the PES program balance were reasonable.

OBWC had provided in its records response a February 21, 2013, document prepared by Elliott summarizing the objectives of the internal audit special project. Elliott noted in this document

[10] The Public Employer State Agency employer group accounts for contributions and payments for state agencies, boards, commissions, and state universities.
[11] Vanek resigned effective November 23, 2013.

that "… management has asked IA [Internal Audit] to review the analysis and assess the accuracy of it and its conclusions." Elliott further explained to investigators during a meeting and a subsequent interview that "…the other primary objective was did they [the Actuarial Division] or did they not factor in the known unrecovered MCO costs in coming up with whether or not we had a surplus?"

From a review of the records provided by OBWC, investigators identified an email exchange between Elliott and Vanek about the internal audit special project objectives to review the PES program funding analysis. The following email summarizes further instructions given by Vanek to Elliott for the special project reviewing the PES program funding analysis:

om:	Vanek, Dennis
Sent:	Thursday, February 21, 2013 3:26 PM
To:	Elliott, Keith
Subject:	Re: B 01 00 PES Study - Scoping Document - 2-21-13.doc

Keith,

We are only going to validate the numbers they produced, and report statements of fact. I am not going to argue methodology or philosophy, but we will include the facts.

Facts:
1. Calculation does not include MCO Administration fees prior to 2006 (approximately $46million)
2. Calculation does not include DWRF (need to confirm) - the reason it does not is that the analysis includes medical payments and premium only, adjudication and other assessments are not being reimbursed.
3. Calculation does not include adjudication fees (need to confirm) - see above
4. Calculation does not include MCO fees charged and collected subsequent to 2006 (need to confirm) - see above

This way, we get the report and facts out faster. Arguing with them over methodology will only delay our ability to publish the facts.

Cheers,
- Dennis

Elliott told investigators he had based his review solely on the information provided in the December 5, 2012, Actuarial Division memorandum (hereafter "memorandum") submitted by OBWC Actuarial Division Chief Chris Carlson. Elliott said he did not meet with Carlson to obtain an understanding of what the PES program funding analysis involved. Instead, Elliott reviewed the memorandum and met with OBWC Actuarial Division Underwriter Childress to review supporting documentation for the PES program funding analysis and to discuss the process used to identify the PES program balance adjustments summarized in the memorandum.

The OBWC Internal Audit Division issued a special project report dated May 8, 2013, **(Exhibit 2)** summarizing the procedures performed and the results of those procedures. These procedures included reviewing "… the rationale for key adjustments and other information supporting the need for the adjustment." The special project report concluded that the procedures were "performed without exception" and that "… the rationale for the need for the various adjustments appears reasonable." Elliott further explained to investigators that he had reviewed the documentation Childress prepared supporting the adjustments identified while completing the PES program funding analysis. Elliott acknowledged that the adjustments identified by Childress "… seemed at least plausible" and that he did not have any significant concerns.

Billing of Unrecovered Managed Care Organization (MCO) Costs

Investigators noted that the May 8, 2013, OBWC Internal Audit Division special project report **(Exhibit 2)** mentioned two additional items for the OBWC Actuarial Division's consideration for inclusion in the PES program funding analysis. The first item identified was the unrecovered $46 million of MCO administrative costs and incentive fees incurred from March 1997 through June 30, 2007. The special project report stated:

- The approximate $46 million of unrecovered MCO administrative and incentive costs were inappropriately excluded from the PES ratemaking process.
- "When these costs are considered, the $21 million surplus actually reflects a deficit of $25 million."

The special project report concluded that, "… the unrecovered MCO costs should be included in any evaluation of the overall funding status of the PES program, and of individual PES employers."

According to OBWC Manager of Actuarial Operations Elizabeth Bravender, one of the "selling-points" made in 1996 for the Healthcare Partnership Plan (HPP) was that the subcontractors (the MCOs) could efficiently and effectively process the payments better than OBWC and it would reduce OBWC costs. Bravender acknowledged that a letter was sent to the Ohio Department of Administrative Services (ODAS) by then-OBWC Chief Risk Officer Marty Herf dated November 4, 1996, **(Exhibit 3)** clarifying OBWC's position on charging employers MCO costs incurred for HPP. The letter stated, that "… no employers, including private, public and state agency/universities, will be charged additional premiums due to the implementation of HPP.[12]"

Further review of records provided by OBWC revealed conversations in May 1998 referencing an OBWC Actuarial Division review of the funding of MCO administrative fees for the Public Employer State Agencies employer group. Then-OBWC Director of Actuarial Bill Darlage emailed Herf on May 8, 1998, stating that the "law requires the PES premiums and claims costs of State Agencies must be kept separate from other employer types." Darlage further stated it was the Actuarial Division opinion that "… the cost of the state agency MCO fees should be charged back to the PES community." **(Exhibit 4)** Darlage further explained that the Actuarial Division had identified four options that were under consideration at that time which would be included "… in the next rate rule recommendation in April 1999."

OBWC provided a copy of the OBWC Internal Audit Division internal audit report issued in March 1999 summarizing the results of a review of the PES program. This review determined that approximately $2.8 million paid by OBWC to several MCOs for 1997 was excluded from the annual PES program participants' workers' compensation rate calculation. The audit recommended:

> To ensure that all applicable costs are subject to recapture through the PES ratemaking process, the BWC Actuarial Department[13] should revise the current ratemaking process to include MCO administrative and incentive payments in the costs used to develop PES rates.

Investigators questioned Bravender whether the Actuarial Division had responded to the Internal Audit Division recommendation. Bravender believed that the OBWC Actuarial Division had responded by stating that OBWC had already collected too much money from PES and that OBWC would delay collecting MCO costs until the PES program surplus was exhausted.

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[12] OBWC began charging the private employer and public employer taxing district employer groups for the participant's associated MCO costs in 1998 and 2000, respectively.
[13] The Actuarial Department is currently referred to as the Actuarial Division.

Records provided by Bravender showed email correspondence on August 9, 2000, with OBWC employees Nancy Barber and Teresa Arms, referencing a study the OBWC Actuarial Division was conducting "… to determine how including MCO payments in rates would affect state agencies." Bravender told investigators each time OBWC attempted to add a MCO rate component to the PES program participants' workers' compensation rates, that OBWC "… met backlash from the PES community, and they would pull out the letter." Bravender explained that the PES community would refer to the 1996 letter from Marty Herf stating there would be no additional premiums charged due to the implementation of HPP. Bravender clarified that OBWC had "… found with the state agencies [PES] that they would fluctuate from having given us too much money to not having given us enough." Bravender recalled in 2000, that OBWC "… had enough of their money so there wasn't an immediate need to go out and say hey, we need more money."

In 2006, Bravender recalled that then-OBWC Administrator William Mabe[14] had asked her for additional Actuarial Division issues that needed to be addressed. Bravender recalled mentioning to Mabe that the PES program participants were not being billed for MCO costs incurred on their behalf by the Ohio State Insurance Fund. At Mabe's direction, Bravender gathered information about the issue. Bravender recalled that ultimately Mabe believed the PES rates should have included the MCO costs and that the PES program participants needed to pay the MCO costs incurred to date,[15] which had not been billed. However, Mabe resigned as OBWC administrator effective January 6, 2007, and the costs were not billed to the PES program participants.

Even though OBWC did not have an administrator for a few months, Bravender recalled that discussions about charging the PES participants the MCO costs continued. Bravender provided investigators with the following January 11, 2007, MCO Coalition[16] meeting agenda which included discussions of an OBWC internal legal opinion, repayment of past calendar MCO fees, and three reimbursement options for MCO fees to be included in future rates. Per a document provided by Bravender, the three options were: 1) including MCO assessments in the PES

[14] Mabe was appointed as OBWC administrator on October 31, 2005.
[15] Costs incurred for the period March 1997 through June 30, 2006.
[16] The MCO Coalition meeting was a meeting of the 27 cabinet agencies and public universities and hospitals which wished to attend to discuss various topics impacting the PES program workers' compensation rates.

program rate methodology; 2) creating an additional MCO assessment outside of the existing PES program rates; or 3) directly billing agencies for their own MCO costs.

Investigators determined that Marsha Ryan was appointed as the OBWC administrator on May 1, 2007. While she (Bravender) was not involved in the decision of whether to bill the PES program participants for the unrecovered MCO costs, Bravender recalled that Ryan decided that OBWC was going to charge the PES employer group participants for MCO costs from "… this point forward." Records provided by OBWC for review included a June 2007 form letter signed by Administrator Ryan summarizing the decision to bill the PES program participants' MCO costs. **(Exhibit 5)**

Investigators noted that the May 2013 Internal Audit Division special project report also stated that "… BWC began including the [MCO] costs in 2007" and that the previous year's unrecovered MCO costs were also billed. Bravender stated that the initial fiscal year 2008 MCO rate component did not include any of the $46 million of unrecovered MCO costs from previous fiscal years. Investigators further noted that Ohio Administrative Code §4123-17-35 was amended, effective July 1, 2007, to establish an additional contribution rate for PES program participants specifically for paying the participants' associated MCO costs.

On June 27, 2007, the ODAS state payroll administrator issued a letter to state agencies, boards, and commissions. This letter detailed the fiscal year 2008 workers' compensation rate components which included a specific rate component for the MCO costs. A review of subsequent letters and rate recommendations approved by the OBWC board of directors revealed that the MCO fee continues to be a component of the workers' compensation rate for PES program participants.

PES Program Funding Analysis Timeframe

The second item summarized in the May 8, 2013, OBWC Internal Audit Division special project report was the concern as to whether the appropriate time period was used by the Actuarial

Division while performing the PES program funding analysis. The special project report **(Exhibit 2)** stated:

> The prior BWC Legal Opinion, which indicated that BWC could not go back further than one year to collect any unrecovered amounts, may impact BWC's ability to refund any over recovered amounts and should be considered in evaluating options for dealing with any surpluses or deficits in the PES program.

During the investigation, the Office of the Ohio Inspector General became aware of an October 10, 2006, email sent by OBWC Manager of Actuarial Operations Elizabeth Bravender to then-OBWC employee Cathy Moseley and then-Chief of OBWC Fiscal and Planning Division Tracey Valentino.[17] This email summarized notes taken by Bravender during an October 6, 2006, meeting held with the Ohio Department of Administrative Services (ODAS) and the Ohio Office of Budget and Management (OBM). **(Exhibit 6)** Mosley responded on October 10, 2006, to Bravender and Valentino with additional notes which mentioned a legal review to be conducted by the governor's office, OBM, ODAS, and OBWC.

After reviewing the email during an interview with investigators, Bravender recalled that she was asked to obtain a legal opinion addressing whether state agencies were required to pay MCO costs going forward; pay past years' MCO costs that were not previously billed by OBWC; and if there was a statute of limitations in collecting the unrecovered MCO costs. Bravender recalled emailing OBWC Attorney Tom Sico with the questions listed in the October 10, 2006, email.

On July 14, 2016, Bravender provided investigators with an October 2006 form letter (example in **Exhibit 7**) to be sent to PES program participants and the participants' supporting addresses, which stated:

> This letter is to advise you of a situation that recently came to light during a review of the Ohio Bureau of Workers' Compensation's (BWC's) prior years' internal audit reports. It appears that state agencies have not been required to pay managed care organizations (MCOs) medical management fees since the inception of the Health Partnership Program in 1997.

[17] Valentino resigned from OBWC effective April 26, 2014.

The letter further described the next steps to be taken to determine the outstanding liabilities associated with the MCO fees, establishing a payment methodology, and reviewing the existing managed care programs. The letter indicated the process would take several months.

On October 7, 2015, Sarah Morrison,[18] then-OBWC general counsel, provided investigators with a copy of a September 29, 2015, letter issued in response to an Ohio Auditor of State inquiry about the PES program participant rates. This letter contained a summary of the 2006 legal opinion requested by Bravender.

Morrison's letter stated that the 2006 legal opinion:

> … Opined that MCO costs should have been included in the estimated costs of awards or payments calculated for PES employers. With regard to the question of collecting MCO fees for previous years, BWC Legal determined that R.C. 4123.40 suggested that the period for review and collection was limited to determining the rate for the next succeeding fiscal year. Even though MCO fees should have been part of the statutory calculation, it was the opinion of BWC Legal that collection of past MCO fees was likely limited to a one-year limit under R.C. 4123.40.

Morrison further stated that:

> … the 2006 memorandum did recognize that, although R.C. 4123.40 suggested that the period for review was limited to one year, OAC 4123-17-17 and OAC 4123-17-28 provided exceptions to that time limit such as when there are errors in recording or processing data.

Lastly, Morrison stated it was her understanding "… that management decided to not collect any past MCO fees from the PES employers, but to collect them going forward only."

[18] Morrison was appointed OBWC administrator and CEO, effective May 17, 2016.

Carlson acknowledged to investigators during a September 28, 2016, interview that he would have become aware of the 2006 legal opinion regarding MCO costs during the exit conference[19] with Vanek and Elliott. Carlson indicated that the 2006 legal opinion did not impact the PES program funding analysis. Carlson reiterated that the PES program funding analysis involved solely the PES program participants' contributions and payments made on the participants' behalf to injured workers and did not consider MCO costs.

Resolution of PES Program Participant Surpluses and Deficits

According to the meeting minutes on April 25, 2013, OBWC Actuarial Division Chief Chris Carlson told the members of the OBWC Actuarial Committee that the PES program funding analysis revealed that the overall PES program had a long-term surplus (positive cash balance) and not a deficit (negative cash balance) as had been reported in the past. However, Carlson noted there were PES program participants who were still in a deficit position thereby requiring the positive cash balances to supplement these participants' workers' compensation costs.

After Carlson's presentation of the PES program funding analysis results, several of the OBWC directors questioned how the PES program participant surpluses and deficits would be resolved. Carlson responded that OBWC was reviewing several approaches to eliminate the existing PES program participant surpluses and deficits. Carlson reported that possible solutions could involve rate reductions and in some instances, participants receiving a refund check.

On May 29, 2013, and again on June 20, 2013, Carlson presented to the OBWC Actuarial Committee members the July 1, 2013, PES rate recommendation.[20] Carlson reported that the PES participant program contribution rates were "… adjusted to return/recover 20% of the financial balance." This recommendation was subsequently approved by the OBWC Actuarial Committee on June 20, 2013, and then by the OBWC Board of Directors on June 21, 2013.

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[19] An exit conference is a meeting held with management at the end of the engagement to review the preliminary results of the engagement and to provide an opportunity to management to provide additional explanations or documentation to resolve issues identified during the engagement.

[20] Each time a motion is presented to the OBWC Actuarial Committee for approval, board rules require two readings of the recommendation prior to a motion being made for the recommendation to be sent to the OBWC Board of Directors for approval.

OBWC provided investigators with a copy of the Expedited Contribution Return to Universities Program approved by then-Administrator Stephen Buehrer,[21] Chief Actuarial Officer Christopher Carlson, then-Chief of OBWC Fiscal and Planning Division Officer Tracy Valentino, and then-OBWC Chief Legal Officer Sarah Morrison. This program was established to "… return roughly 50 percent of the accumulated surplus" for each of the universities and university hospitals participating in the PES program. Whereas, the remaining PES program participants received a future rate reduction[22] or increase based on whether the participant had a surplus or deficit.

On November 12, 2013, OBWC sent a letter to The Ohio State University stating:

> The Bureau of Workers' Compensation, earlier this year, provided an exhibit that displayed the development of your agency's current program balance as a participant in the State Agency Workers' Compensation program as of December 31, 2012 as an attachment to our annual contribution rate letter. As part of the contribution rate setting process for fiscal year 2013/2014, we adjusted your agency's program contribution rate to return approximately 20 percent of your program "surplus" over the course of the current fiscal year.
>
> At the request of some participants and in order to expedite the surplus return to universities and university hospitals, we are providing the enclosed check less any currently outstanding balance. The amount of your return check is roughly equal to 50 percent of your program surplus as of the end of 2012. We hope that you will put this money to good use in not only educating Ohio's generation but also in your efforts to keep your employees safe from workplace hazards.

The letter further explained how the remaining PES program contribution surplus would be returned over the next three fiscal years.

Ohio Revised Code §131.39, provides that:

> … if a state agency determines that all or a portion of a fee, fine, or penalty, or other nontax payment made to the agency is not owed, the agency may refund, from the fund to which the payment was credited, the amount that is not owed.

OBWC issued a total of 20 warrants[23] on November 13, 2013, and November 26, 2013, to state universities to refund excess PES program contributions totaling $8,308,868.56.

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[21] Stephen Buehrer resigned as OBWC administrator effective April 15, 2016.
[22] During meetings with PES program participants, OBWC was notified by the participants that many of the participants could not use the refund without obtaining controlling board approval to spend the funds. As such, OBWC agreed to return surpluses to these agencies through future MCO rate reductions.
[23] Warrant is a legal negotiable instrument drawn against the state treasury in place of a commercial bank.

Per the meeting minutes for the first reading of the July 1, 2014, PES rate recommendation for fiscal year 2015, Carlson explained at the December 18, 2013, OBWC Actuarial Committee meeting, that, "… there will be a financial position adjustment through the net return of $1.2 million across agencies via adjusted contribution rates." Carlson then provided detailed explanations of the methods being used to return surpluses to, and collect deficits from, non-university and university PES program participants. On January 23, 2014, the OBWC Actuarial Committee passed a motion approving the PES rate recommendation effective July 1, 2014, which was subsequently approved by the OBWC Board of Directors on January 24, 2014.

Accounting for the Unrecovered $46 Million of MCO Costs

During the investigation, investigators were made aware of an October 4, 2006, Cleveland Plain Dealer news article **(Exhibit 8)** which referenced an undated letter[24] sent by then-OBWC Administrator William Mabe to then-ODAS Administrator Carol Nolan Drake. **(Exhibit 9)** This letter stated that OBWC was establishing within the State Insurance Fund a $46.1 million accounts receivable for MCO fees accrued for Public Employer State Agencies (PES) "… since the inception of the Health Partnership Plan in March 1997." According to the news article, Mabe stated,

> "We paid the money on behalf of the state agencies, but it appears that we haven't collected the money from the state agencies, so that's what I'm going back and doing," he said.

Although the Ohio State Insurance Fund general ledger did not reflect the $46.1 million, MCO Fees Receivable at the end of the fiscal year (June 30, 2015), Chief of the OBWC Fiscal and Planning Division Barb Ingram acknowledged that her review of the Ohio State Insurance Fund general ledger for the PES employer group showed the following activity in the MCO Fees Receivable line item for the Ohio State Insurance Fund:

[24] According to the document properties, this undated letter was initially created on September 29, 2006.

Date	Description of Activity	Amount
6/30/2006	PES MCO Fees Receivable	$ 40,055,673.72
6/30/2006	Write Down MCO Fees Receivable as Uncollectible	(34,703,485.95)
MCO Fees Receivable - PES - FY 2006		5,352,187.77
6/30/2007	Reverse Off MCO Fees Receivable	(5,352,187.77)
MCO Fees Receivable - PES - FY 2007		$ -

During a June 2, 2016, meeting, Ingram was unable to offer an explanation to investigators as to why OBWC management determined the approximate $34 million was uncollectible as of June 30, 2006, or why the remaining $5,352,187.77 was deducted from the MCO Fee Receivable balance as of June 30, 2007. Ingram also noted that no current OBWC Fiscal and Planning Division employees were involved with the recording of these accounting transactions within the Ohio State Insurance Fund.

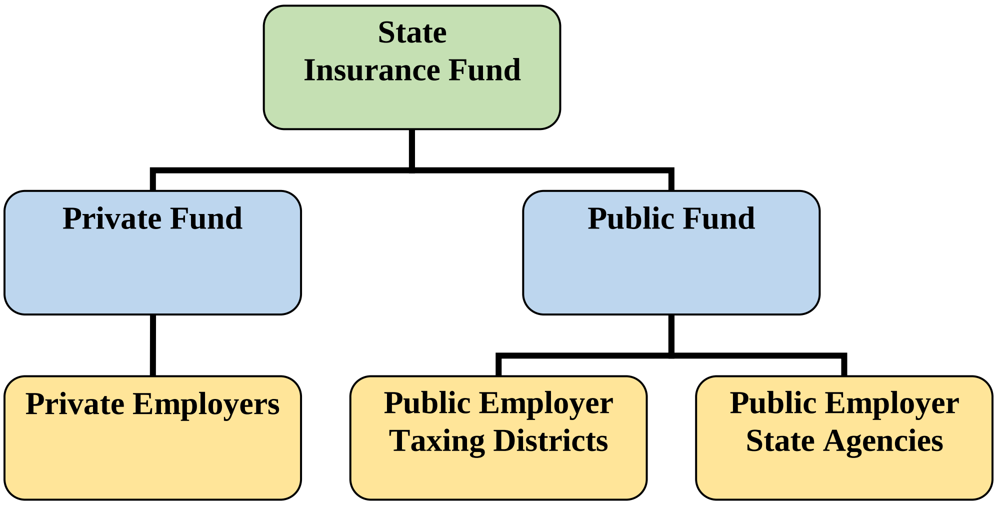
Funding of Unrecovered MCO Administrative Fee Payments and PES Deficits

The October 2006 Cleveland Plain Dealer news article referenced a letter which explained that the MCO costs had "… been continuously paid from the State Insurance Fund." The letter further stated that, "… no additional charges were collected from any other employer group, nor has any other entity bore the burden to fund this expense." The OBWC State Insurance Fund general ledger[25] confirmed that OBWC had issued payments for MCO fees on behalf of the PES program participants. However, investigators noted that it was not until July 1, 2007, that OBWC began collecting contributions from PES program participants to fund those costs.

Investigators also noted that the OBWC Actuarial Division PES program review had determined that the PES program had a deficit (negative cash) balance at calendar year end for 17 of the 32 years reviewed. **(Exhibit 10)** These deficit balances were the result of the calendar year's cash contributions from the PES program participants being less than the cash benefit payments issued to injured workers or providers on the behalf of the injured worker for the same period.

[25] The general ledger provided by OBWC showed transactions as of January 1, 1998, through December 31, 2015.

Ohio Revised Code §4123.30 provides that the Ohio State Insurance Fund consists of:



According to this section, "… each such fund shall be collected, distributed, and its solvency maintained without regard to or reliance upon the other." This section also provides:

> Whenever in this chapter reference is made to the state insurance fund, the reference is to such two separate funds but such two separate funds and the net premiums contributed thereto by employers after adjustments and dividends. … This section does not prevent the deposit or investment of all such moneys intermingled for such purpose but such funds shall be separate and distinct for all other purposes, and the rights and duties created in this chapter shall be construed to have been made with respect to two separate funds and so as to maintain and continue such funds separately except for deposit or investment.

Ohio Revised Code §4123.40, effective September 16, 1998, provides that the contributions collected from state employers "… shall not be used to pay compensation or other benefits attributable" to county and taxing district employees. Additionally, county and taxing district contributions should not be used "… to pay compensation or other benefits attributable to" state employees.

On December 9, 2015, and June 2, 2016, investigators met with OBWC Chief of Fiscal and Planning Division Barb Ingram to obtain an understanding of what source of monies within the Ohio State Insurance Fund were used to fund payments when expenses exceeded contributions paid. When this occurred, Ingram said in general, that the excess amounts were funded with the Ohio State Insurance Fund unrestricted net assets.

Ingram explained that the unrestricted net assets consist of investment income earned on the commingled employer groups' funds available for investment. Ingram stated in a November 1, 2016, email that, the "… State Insurance Fund investments are not tracked by employer group." Ingram further explained in a December 30, 2015, email that:

> We [OBWC] have never completed an allocation of the investment income for the general ledger or financial reporting purposes. Actuarial includes investment return assumptions when calculating the premium rates so from my perspective we are making sure that each employer group maintains its solvency as required by statute.

Ingram's statements were contrary to OBWC Actuarial Division Chief Chris Carlson's statement during a September 28, 2016, interview. Carlson stated PES workers' compensation rates are not discounted by future investment income earnings. Carlson explained, "… with the state agency program, we're collecting the money today for the payments that we expect to make today. So there, there's no really time value money to consider."

During the December 9, 2015, and June 3, 2016, meetings, OBWC Fiscal and Planning Division Chief Barb Ingram also explained that the current OBWC financial reporting system for the Ohio State Insurance Fund does not maintain fund balances for each of the four employer groups.[26] In addition, the financial reporting system records the accounting activity for certain administrative fees, safety and hygiene fees, and certain funds in the private employer group revenue and expense account codes and then reclassifies or allocates funds as deemed appropriate to the other employer groups' revenue or expense account codes within the Ohio State Insurance Fund and other funds maintained by OBWC.

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[26] Employer groups are the private employers, public employer taxing districts, public employer state agencies, and the self-insured employers.

During the course of the investigation, OBWC representatives also referenced the ability to make certain payments using the "Surplus" account within the Ohio State Insurance Fund. Ohio Revised Code §4123.34 (B) established the Surplus account and provided that "… a portion of the money paid into the state insurance fund shall be set aside for the creation of a surplus fund account within the state insurance fund." This section further states that, "… the administrator shall account for all charges, whether statutory, discretionary, or contingency, that the administrator may make to the surplus fund account. …" Investigators also noted that a 1980 Ohio Attorney General's opinion, (1980 Ohio Op. Atty General No. 72) concluded, "the surplus created pursuant to R.C. 4123.34(B) must be maintained an accounted for as two separate accounts, a 'public surplus account' within the 'public fund' and a 'private surplus account' within the 'private fund.'"

Investigators reviewed the OBWC Ohio State Insurance Fund general ledger and responses to information requests provided by OBWC, and noted OBWC maintains account balances for the private employer group, public employer taxing district employer group, and self-insured employer group. On August 1, 2016, OBWC Fiscal and Planning Division Chief Barb Ingram provided the following Surplus Fund account balances:

State Insurance Fund Surplus Account Balances (Deficits)				
	June 30, 2007	Dec 31, 2007	June 30, 2008	Dec 31, 2008
Private	(1,449,488,206.61)	(1,501,268,129.62)	(1,598,823,438.11)	(1,713,348,912.42)
Public Taxing District	(105,027,977.10)	(106,467,771.91)	(117,007,619.17)	(118,165,282.36)
Self-Insured	8,044,652.77	9,827,828.83	7,754,425.65	6,727,290.40
	(1,546,471,530.94)	(1,597,908,072.70)	(1,708,076,631.63)	(1,824,786,904.38)

This response revealed that OBWC did not maintain a Surplus Account for the public employer state agency employer group. As such, investigators were unable to determine whether OBWC used funds from the Surplus Fund account to fund the $46 million of MCO costs.

Based upon this investigation, the Office of the Ohio Inspector General is unable to determine whether OBWC used an allowable source of funds within the Ohio State Insurance Fund as provided by Ohio Revised Code §4123.30 and §4123.40 to fund PES program MCO participant costs paid for fiscal years 1998 through 2007 and benefit payments made when the PES program had a deficit (negative cash) balance.

CONCLUSION

On January 27, 2014, the Office of the Ohio Inspector General and representatives from the Ohio Office of Budget and Management Office of Internal Audit met with Ohio Bureau of Workers' Compensation Internal Audit Manager Keith Elliott to discuss his concerns regarding the refunds issued by OBWC in November 2013 to Ohio's public universities for excess contributions paid to the Ohio State Insurance Fund. Elliott explained that the OBWC Actuarial Division had completed a public employer state agency (PES) program funding analysis, identified errors in the calculation of the overall and individual participants' balances, and determined the PES program had a surplus (positive cash) balance on January 1, 2012, instead of a deficit (negative cash) balance as reported to the OBWC Actuarial Committee in April 2012.

Elliott had two concerns regarding the PES program funding analysis. The first concern was that the PES program funding analysis had failed to consider $46 million of unrecovered managed care organization costs and that inclusion of these costs would have resulted in an approximate $25 million deficit (negative cash) balance. As such, OBWC should not have issued approximately $8.3 million in refunds to Ohio's public universities.

The Office of the Ohio Inspector General conducted interviews of employees in the Actuarial, Fiscal and Planning, and Internal Audit divisions. These interviews and review of documents provided by OBWC revealed that the PES program funding analysis only examined PES program participants' contributions to fund benefit payments for medical and indemnity benefits, and the payments issued on behalf of each participant agency to the injured workers. The analysis excluded any funds collected from PES program participants for the MCO costs and any other associated fees, assessments, or costs.

Investigators noted that OBWC did not collect contributions from PES program participants to fund approximately $46 million in MCO administrative costs and incentive fees paid from the PES employer group within the Ohio State Insurance Fund for the period of March 1997 through June 30, 2007. However, the Office of the Ohio Inspector General determined, from records provided by OBWC and interviews conducted, that in 2006, then-OBWC Administrator William Mabe had intended to collect the unrecovered costs from the PES program participants.

Investigators further noted that in 2007, then-OBWC Administrator Marsha Ryan decided to only bill the PES program participants the MCO costs beginning July 1, 2007, and not collect the approximate $46 million of unrecovered MCO costs. In response to this decision, the Ohio Office of Budget and Management sent a payroll letter to PES program participants explaining the components of their workers' compensation rate which included the MCO cost rate component. In addition, Ohio Administrative Code §4123-17-35 was amended to include a rate component for MCO costs effective July 1, 2007.

The second concern expressed by Elliott involved the appropriateness of the time period used by the OBWC Actuarial Division when conducting the PES program funding analysis. Elliott's concerns were focused on an OBWC internal legal counsel opinion issued in 2006 which opined that OBWC could only collect unbilled MCO costs from PES participants for the previous year. However, investigators determined that the PES program funding analysis performed excluded MCO costs from the analysis. The OBWC Actuarial Division chief stated to investigators that this legal opinion had no impact on the PES program funding analysis, since the PES program analysis excluded MCO costs and other fees or assessments billed to PES program participants.

The Office of the Ohio Inspector General determined during this investigation that the PES program funding analysis was limited in scope to determine whether contributions from PES program participants were sufficient to fund payments for injured worker medical and indemnity benefits paid to PES program participants' employees. While conducting the analysis, OBWC identified adjustments to the overall and individual PES program participant balances which resulted in the total PES program balance being adjusted from an approximate negative cash balance of $5.6 million to an approximate $21 million cash balance. Investigators also noted that there were PES program participants who had either a surplus (positive cash) or deficit (negative cash) balance.

Ohio Revised Code §131.39 provides, in part,

> … if a state agency determined that all or a portion of a fee, fine, or penalty made to the agency is not owed, the agency may refund, from the fund to which the payment was credited, the amount that is not owed.

OBWC management determined the excess contributions would be returned either through future MCO rate reductions or in some instances, by issuing the PES program participant a check. In November 2013, OBWC issued 20 checks totaling approximately $8 million to Ohio's public universities. In 2014, OBWC began the process to either return surplus (positive cash) or recouping the deficit (negative) cash balances from the appropriate PES program participants by adjusting their MCO rates as deemed appropriate.

Accordingly, the Office of the Ohio Inspector General finds no reasonable cause to believe a wrongful act or omission occurred in this instance.

In addition, the Office of the Ohio Inspector General found that the current OBWC financial reporting system for the State Insurance Fund does not maintain fund balances for each of the employer groups nor the public and private funds and did not maintain a Surplus Fund account balance for the PES employer group. In addition, OBWC does not allocate investment income earned on commingled invested assets between the employer groups. As such, the Office of the Ohio Inspector General is unable to determine whether OBWC used an allowable source of funds within the State Insurance Fund as provided by Ohio Revised Code §4123.30 and §4123.40 to fund PES program MCO participant costs paid for fiscal years 1998 through 2007 or for benefit payments issued during periods when the PES program was in an overall deficit.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the administrator of the Ohio Bureau of Workers' Compensation to respond within 60 days with a plan detailing how these recommendations will be implemented.

1. Consider the merits of maintaining a fund balance for each employer group to ensure that the rates being set are sufficient to maintain a solvent Ohio State Insurance Fund and payments issued are in accordance with the guidance provided in Ohio Revised Code §4123.40.

2. Consider the benefits of allocating monthly investment income to the employer groups on a pro rata basis based on which employer groups' funds were invested to assist in the determination of whether rates established for the employer group are sufficient to maintain a solvent Ohio State Insurance Fund.

REFERRAL(S)

This report of investigation will be provided to the Ohio Auditor of State who is responsible for conducting annual audits and compliance with applicable Ohio Revised Code and Ohio Administrative Code sections for further consideration.

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL
RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Bureau of Workers' Compensation

FILE ID #: 2014-CA00015

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
August 10, 2017

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