C96J00
Uninsured Employers' Fund

Operating Budget Data

($ in Thousands)

	FY 11 Actual	FY 12 Working	FY 13 Allowance	FY 12-13 Change	% Change Prior Year
Special Fund	$1,044	$1,137	$1,172	$35	3.1%
Adjusted Special Fund	**$1,044**	**$1,137**	**$1,172**	**$35**	**3.1%**
Adjusted Grand Total	**$1,044**	**$1,137**	**$1,172**	**$35**	**3.1%**

- The Uninsured Employers' Fund's fiscal 2013 allowance increases by $35,427 over the fiscal 2012 working appropriation, principally due to increases in employee fringe benefit payments and higher consulting fees that are partially offset by lower telecommunication and rent expenses.

Personnel Data

	FY 11 Actual	FY 12 Working	FY 13 Allowance	FY 12-13 Change
Regular Positions	11.00	12.00	12.00	0.00
Contractual FTEs	0.00	0.00	0.00	0.00
Total Personnel	**11.00**	**12.00**	**12.00**	**0.00**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.48	4.00%
Positions and Percentage Vacant as of 12/31/11	2.20	18.33%

- There is no change to the fund's personnel complement.

- The agency has 2.0 full-time regular positions that are currently vacant, a claims investigator and an office secretary, as well as a 0.2 position for the labor representative to the fund's board. All positions are presently in the recruitment phase.

Note: Numbers may not sum to total due to rounding.

For further information contact: Dylan R. Baker Phone: (410) 946-5530

Analysis in Brief

Major Trends

Operating Cost Per Resolved Case Climbs: The fund's caseloads and resolution record has fallen well short of previous activity levels even as the agency's budgeted costs have remained steady. **The agency should comment on the caseload figures and its strategy to increase the number of cases resolved.**

Issues

Decline in Fund Balance Due to Sharp Increase in Benefit Payments: The combination of surging medical expenses and agency-specific and national case management trends that have kept cases open have increased benefit payments significantly and lowered the fund's balance. **The agency should comment on the increased frequency and value of per case medical payments and its plans to maintain the financial integrity of the fund in the face of the rapid growth of benefit payment levels.**

Recommended Actions

1. Concur with Governor's allowance.

Operating Budget Analysis

Program Description

The Uninsured Employers' Fund (UEF) protects workers whose employers are not insured under State Workers' Compensation Law. The UEF reviews and investigates claims filed by employees, or in the case of death, by their dependents. If the employer does not properly compensate a claimant, the fund will directly pay the compensation benefits and medical expenses. The UEF will then attempt to recover all benefits paid plus certain assessments from the uninsured employer. The source of the special fund is from a 2% assessment on (1) awards against employers or insurers for permanent disability or death; and (2) amounts payable by employers or insurers under settlement agreements. The UEF also collects penalties from sanctions on uninsured employers and revenue from recovery of benefits paid out for uninsured claims. The mission addresses the need for:

- efficiently investigating and defending all designated noninsured cases;
- monitoring awards and following established procedures to ensure prompt payment to claimants and health care providers; and
- tracking and collecting fines, assessments, and awards benefits paid by the fund, and maintaining the adequacy and integrity of the fund balance.

Performance Analysis: Managing for Results

As shown in **Exhibit 1**, the UEF Managing for Results (MFR) measures track the agency's caseloads and operating efficiency. The operating cost per resolved case has traditionally served as an indicator of the UEF's productivity. This measure increased to $2,631 per case in fiscal 2009, after having registered below $1,200 per case since fiscal 2001. Then, in fiscal 2010, the measure escalated to $7,410 per case resolved, before falling back to $2,271 in fiscal 2011.

As Exhibit 1 shows, the operating expenditures for the fund have been relatively steady over the period under review, so the prime factor causing the drastic change in this productivity measure has been a stark decline in case loads, both new and resolved. During the previous five-year lapse from fiscal 2004 to 2008, UEF opened an average of 869 cases and resolved 949 of them, eliminating a pre-existing backlog. In the most recent five-year period, inclusive of projected totals for fiscal 2012 and 2103, these figures are nearly halved, falling to 535 new cases and 311 resolutions. This equates to a 38.5% decline in total cases handled by the fund, with 67.2% fewer cases reaching resolution.

Exhibit 1
Uninsured Employers' Fund Program Management Data
Fiscal 2009-2013

	2009	2010	2011	Est. 2012	Est. 2013	Average 2004-08	Average 2009-13	Percent Change
New Cases	553	491	556	540	533	869	535	-38.4%
Cases Resolved	415	139	464	200	339	949	311	-67.2%
Operating Expenditures ($ in Millions)	$1.09	$1.03	$1.05	$1.14	$1.13	$0.98	$1.09	11.2%
Operating Cost Per Resolved Case	$2,631	$7,410	$2,271	$5,685	$3,330	$1,034	$4,265	312.5%

Source: Uninsured Employers' Fund

There has been an industrywide trend in the period under review wherein fewer workers' compensation claims have been filed, but this environment is not enough to explain the change seen in the fund's activities. By way of example, the Workers' Compensation Commission's (WCC) average claim volume fell by 12% when comparing the same five-year periods. The agency states that its 38.5% drop in cases resolved, especially in fiscal 2009 and 2010, was additionally affected by attorney vacancies and related representation issues. The UEF states that these concerns have been resolved, and the projected increases in resolutions attests to this fact, but there is a still a significant breach between forecast activity and that of the recent past. **The agency should comment on the caseload figures and its strategy to increase the number of cases resolved.**

Proposed Budget

As shown in **Exhibit 2**, the agency's fiscal 2013 allowance increases by $35,427 over the 2012 working appropriation. Operating expenditures grow chiefly due to a $19,400 increase in consulting fees and $13,766 in statewide charges for attorney general, retirement, personnel system, and information technology administrative services. Declines in telecommunication expenses of $10,515 and rental payments of $4,500 partially offset the growth. Personnel expenditures grow on the fringe benefit side by $13,581 for employee/retiree health insurance payments and $7,465 for retirement contributions, while salaries decline by $6,299 to reflect the removal of funds for the one-time bonus in fiscal 2012.

Exhibit 2
Proposed Budget
Uninsured Employers' Fund
($ in Thousands)

How Much It Grows:	Special Fund	Total
2012 Working Appropriation	$1,137	$1,137
2013 Allowance	1,172	1,172
Amount Change	$35	$35
Percent Change	3.1%	3.1%
Contingent Reductions	$0	$0
Adjusted Change	$35	$35
Adjusted Percent Change	3.1%	3.1%

Where It Goes:	
Personnel Expenses	
Employee and retiree health insurance	$14
Retirement contributions	7
Salary adjustments (removal of one-time bonus)	-6
Other fringe benefit adjustments	-1
Other Changes	
Consulting fees	19
Office of the Attorney General administrative fee	6
Statewide Personnel System charge	5
Retirement agency administrative fee	2
Information Technology service fee allocation	1
Rent expense	-5
Telecommunication expenses	-11
Other	4
Total	**$35**

Note: Numbers may not sum to total due to rounding.

Issues

1. Decline in Fund Balance Due to Sharp Increase in Benefit Payments

The UEF derives its funds from an assessment on awards against/settlements with employers or insurers for permanent disability or death, as defined by Sections 9-1007 through 9-1011 of the Labor and Employment Article. In fiscal 2004, the UEF increased the assessment on permanency awards from 1 to 2% as part of an agreement in which the agency would use the higher assessment to provide the estimated $13.1 million in payouts for outstanding Bethlehem Steel workers' compensation claims in the wake of that company's bankruptcy. The rate was subsequently reduced to 1% on January 25, 2008, because the reserves required to pay for Bethlehem Steel had been reduced sufficiently so that the outstanding balance was deemed adequate to meet anticipated losses. At the time, the 72 outstanding Bethlehem Steel claims had a reserve value set by the Injured Workers' Insurance Fund at $8.49 million, while the fund balance contained $13.6 million. Immediately following the end of fiscal 2009, the UEF Board returned the assessment to 2% as the Bethlehem Steel liability was revalued at $8.96 million for the 56 claims remaining.

Exhibit 3 shows recent fund history. The agency had previously forecast that the assessment's return to 2% of eligible awards at the onset of fiscal 2010 would halt the decline in the fund's balance, which had fallen from $13.05 million in fiscal 2007 to $10.9 million by the end of fiscal 2009 and provide the resources necessary to fund the assumed liabilities. At the time, the agency estimated moderate growth in the balance as the Bethlehem Steel claims were slowly rolled off-book.

Exhibit 3
Uninsured Employers' Fund History
Fiscal 2004-2012

Year	Ending Balance	Annual Change
June 30, 2004	$6,983,119	81.5%
June 30, 2005	10,320,738	47.8%
June 30, 2006	12,222,475	18.4%
June 30, 2007	13,048,417	6.8%
June 30, 2008	12,869,708	-1.4%
June 30, 2009	10,909,127	-15.2%
June 30, 2010	10,506,350	-3.7%
June 30, 2011	9,234,732	-12.1%
June 30, 2012 (Est.)	7,978,333	-13.6%

Note: In fiscal 2004, the Uninsured Employers' Fund increased the assessment on permanency awards from 1 to 2%. The rate was subsequently reduced to 1% for the period of January 25, 2008, to July 1, 2009, whereafter it returned to 2%.

Source: Uninsured Employers' Fund

Even with the increased assessment, the depletion of the fund's holdings has accelerated in the past two fiscal years. These claims have been slow to reach conclusion and through fiscal 2011, the UEF has paid out more than $13.9 million to Bethlehem Steel claimants, a sum in excess of the total original reserve valuation with only 40% of the claims having been closed. The annual payments to benefit recipients has totaled roughly $2.3 million and has strayed only slightly from the average as the timing of settlements or the worsening of the condition of those awarded permanency and their related medical treatments produces year-to-year variations. Yet, while the Bethlehem Steel payments were the motive to increase the assessment and provide the fund with additional monies, more critical in the erosion of the fund is the recent acceleration of UEF-originated claimant benefit payments.

Factors Influencing Spike in Benefit Payments

Over the previous five-year period, from fiscal 2005 to 2009, payments made by the UEF to claimants averaged $3.17 million and were never more than 5% away from this average. Yet, as shown in **Exhibit 4**, in fiscal 2010, these benefit payments grew to $4.1 million and surged still higher in fiscal 2011 to $6.1 million.

Exhibit 4
Uninsured Employers' Fund Revenue and Expenditures
Fiscal 2008-2012

	2008	2009*	2010	2011	2012 (Est.)
Revenue					
2% Assessment on Awards	$5,791,922	$3,435,138	$6,435,201	$7,265,835	$7,300,000
Non-certification Penalty	186,830	139,910	70,669	14,388	20,000
Fines and Assessments	2,892	980	354	982	650
Interest on Fund Balance	621,241	422,789	220,412	205,796	210,000
Recovery of Benefits	273,837	278,290	168,465	192,803	200,000
CCU Collections	114,281	95,784	160,400	129,021	150,000
Total Revenue	**$6,991,002**	**$4,372,891**	**$7,055,502**	**$7,808,825**	**$7,880,650**
Expenditures					
Operating	$1,038,695	$1,092,342	$1,053,553	$1,029,941	$1,137,049
Claimant Benefits	3,332,703	3,197,231	4,130,753	6,126,351	5,800,000
Beth Steel Claim Payouts	2,791,273	2,096,639	2,273,973	1,919,379	2,200,000
Total Expenditures	**$7,162,671**	**$6,386,212**	**$7,458,279**	**$9,075,671**	**$9,137,049**
Revenue Less Expenditures	-$171,669	-$2,013,322	-$402,778	-$1,266,846	-$1,256,399
Beginning Fund Balance	$13,048,417	$12,869,708	$10,909,127	$10,506,350	$9,234,732
Closeout Adjustments	-7,040	52,741	0	-4,771	0
Fund Balance	**$12,869,708**	**$10,909,127**	**$10,506,350**	**$9,234,732**	**$7,978,333**

CCU: Central Collections Unit

*The assessment rate was 1% during the latter half of fiscal 2008 and all of fiscal 2009.

Source: Uninsured Employers' Fund

The agency cites four factors for the significant increase in benefit payments. First and most importantly are recent increases in medical expenses. Hospital bills, which are payable by the UEF at full value, have grown at an accelerated pace and have helped yield a near doubling of medical expense. For example, in fiscal 2009, the UEF made a total of 1,547 medical payments valued at $1.1 million. Yet, during the first six months of fiscal 2012, the UEF has processed 1,189 medical payments worth over $1.37 million. Given that caseload figures are increasing at a much slower pace than medical payments, the payment per active case is accelerating. **The UEF should discuss the increased frequency and value of per case medical payments.**

The second factor is the attorney vacancy/low case closings discussed in the MFR section that have permitted claims and their medical bills to stay open that otherwise might have been closed. The longer cases stay open, the higher the expense incurred, and when new cases are opened without a compensating closure of existing cases, the agency's payout totals increase well above the intake provided by the 2% assessment. Given the high ongoing cost of vacant attorney positions, the agency could develop a network of on-call contractual attorneys capable of handling extant casework until a full-time incumbent is appointed.

Thirdly, the UEF has faced a significant increase in physician-dispensed drugs with markups over the price available at pharmacies. This trend is not exclusive to the UEF, and many insurers such as the Injured Worker's Insurance Fund locally and the National Council on Compensation Insurance nationally are undertaking efforts to address the problem. Finally, Medicare has imposed extensive pre-approval requirements on claims that must be met before WCC can approve settlements. As a result, claimant attorneys are not seeking to settle claims as quickly or as often as had previously been the case. Consequently, the claims involving the most serious injuries, and thus the most expensive cases, remain open longer, and the medical portion of the fund's expenses increases in tandem.

This set of benefit payment requirements creates an untenable situation given the current caseload metrics. In fact, if the benefit payments and assessment inflows projected in fiscal 2012 continued at the same level into the future with no further increases, the fund would be completely depleted by fiscal 2018. **The agency should discuss its plans to maintain the financial integrity of the fund in the face of the rapid growth of benefit payment levels.**

Recommended Actions

1. Concur with Governor's allowance.

Appendix 1

Current and Prior Year Budgets

Current and Prior Year Budgets
Uninsured Employers' Fund
($ in Thousands)

	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2011					
Legislative Appropriation	$0	$1,090	$0	$0	$1,090
Deficiency Appropriation	0	60	0	0	60
Budget Amendments	0	0	0	0	0
Reversions and Cancellations	0	-105	0	0	-105
Actual Expenditures	**$0**	**$1,044**	**$0**	**$0**	**$1,044**
Fiscal 2012					
Legislative Appropriation	$0	$1,129	$0	$0	$1,129
Budget Amendments	0	8	0	0	8
Working Appropriation	**$0**	**$1,137**	**$0**	**$0**	**$1,137**

Note: Numbers may not sum to total due to rounding.

Fiscal 2011

- A deficiency appropriation of $59,917 was added to the fiscal 2011 appropriation to provide funds for information technology upgrades needed to accommodate expanded fiscal responsibilities at the UEF required to correct issues related to a recent legislative audit.

- Canceled funds of $105,300 resulted from the fund having reduced salary and fringe outlays due to multiple positions being vacant during different portions the year (two attorneys, a fiscal clerk, a board member, and an investigator) along with underspending on office supplies and agency travel.

Fiscal 2012

- The distribution of centrally budgeted funds for a one-time employee bonus of $750 increased salaries by $8,070.

Appendix 2

Audit Findings

Audit Period for Last Audit:	February 20, 2008 – January 31, 2011
Issue Date:	September 2011
Number of Findings:	3
Number of Repeat Findings:	2
% of Repeat Findings:	67%
Rating: (if applicable)	

Finding 1: **The UEF lacked adequate procedures and controls over accounts receivable records administered by the Subsequent Injury Fund.**

Finding 2: **The UEF lacked adequate procedures and controls over indemnity and medical claims.**

Finding 3: The UEF did not adequately monitor the propriety of amounts paid to the Injured Workers' Insurance Fund, specifically for invoices of payments valued below $100,000 for Bethlehem Steel-related claims.

*Bold denotes item repeated in full or part from preceding audit report.

Object/Fund Difference Report
Uninsured Employers' Fund

Object/Fund	FY 11 Actual	FY 12 Working Appropriation	FY 13 Allowance	FY 12 - FY 13 Amount Change	Percent Change
Positions					
01 Regular	11.00	12.00	12.00	0.00	0%
Total Positions	**11.00**	**12.00**	**12.00**	**0.00**	**0%**
Objects					
01 Salaries and Wages	$ 833,900	$ 1,019,455	$ 1,033,964	$ 14,509	1.4%
02 Technical and Spec. Fees	1,609	2,000	2,000	0	0%
03 Communication	16,450	33,695	23,180	-10,515	-31.2%
04 Travel	12,170	8,000	8,000	0	0%
08 Contractual Services	40,811	14,832	49,798	34,966	235.7%
09 Supplies and Materials	3,416	5,800	5,800	0	0%
10 Equipment – Replacement	4,335	0	0	0	0.0%
11 Equipment – Additional	22,687	0	0	0	0.0%
12 Grants, Subsidies, and Contributions	68,994	8,994	8,994	0	0%
13 Fixed Charges	39,885	44,273	40,740	-3,533	-8.0%
Total Objects	**$ 1,044,257**	**$ 1,137,049**	**$ 1,172,476**	**$ 35,427**	**3.1%**
Funds					
03 Special Fund	$ 1,044,257	$ 1,137,049	$ 1,172,476	$ 35,427	3.1%
Total Funds	**$ 1,044,257**	**$ 1,137,049**	**$ 1,172,476**	**$ 35,427**	**3.1%**

Note: The fiscal 2012 appropriation does not include deficiencies.

Appendix 3