C96J00

Uninsured Employers' Fund

Operating Budget Data

($ in Thousands)

	FY 16 Actual	FY 17 Working	FY 18 Allowance	FY 17-18 Change	% Change Prior Year
Special Fund	$1,189	$1,602	$1,700	$98	6.1%
Adjustments	0	0	-5	-5	
Adjusted Special Fund	**$1,189**	**$1,602**	**$1,695**	**$93**	**5.8%**
Adjusted Grand Total	**$1,189**	**$1,602**	**$1,695**	**$93**	**5.8%**

Note: Includes targeted reversions, deficiencies, and contingent reductions.

- The fiscal 2018 allowance increases by $93,000, or 5.8%, over the working appropriation when including an across-the-board contingent reduction in pension cost. The increase is primarily driven by personnel costs.

Personnel Data

	FY 16 Actual	FY 17 Working	FY 18 Allowance	FY 17-18 Change
Regular Positions	14.00	14.00	14.00	0.00
Contractual FTEs	0.00	0.00	0.00	0.00
Total Personnel	**14.00**	**14.00**	**14.00**	**0.00**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.00	0.00%
Positions and Percentage Vacant as of 12/31/16	6.00	42.86%

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

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- Total positions in the Uninsured Employers' Fund (UEF) fiscal 2018 allowance remain unchanged compared to the fiscal 2017 working appropriation; however, UEF abolished 1 vacant claims investigator position and gained 1 position from the Department of Human Resources (DHR) during fiscal 2017. The salary of the transferred position from DHR exceeds the salary of the abolished position, resulting in an increase in regular earnings in fiscal 2018. UEF has recently hired 1 contractual full-time equivalent claims investigator to replace the loss of the regular position.

- UEF's budgeted turnover is 0.0% due to its low number of employees; however, as of December 31, 2016, the agency had 6 vacant positions, resulting in a vacancy rate of 42.9%. UEF has had persistent vacancies over the past five fiscal years as a result of attrition and the inability to fill positions due to hiring freezes. In the years when the agency was fully staffed, cases resolved exceeded the number of new incoming cases, allowing UEF to close out prior unresolved cases and eliminate a backlog. In the years when UEF has not been fully staffed, new cases have exceeded resolved cases, leading to a buildup of cases from prior years. UEF is in the process of requesting a hiring freeze exception in order to fill vacant positions. More details on caseload trends for this agency are discussed in the Managing for Results section of this analysis.

Analysis in Brief

Major Trends

New Cases Outstrip Resolved Cases, Resulting in Growing Backlog: In recent years, the number of new cases has been greater than the number of resolved cases, creating a backlog. From fiscal 2011 to 2016, UEF has received 3,114 new cases and resolved 2,581 cases, resulting in a carryover of 533 cases. UEF's vacancy rate has increased from 1.8% in fiscal 2009 to 50.0% in fiscal 2016, corresponding to the buildup in case backlog. In prior years, the agency attributed drops in resolved cases to attorney vacancies. **UEF should comment on the decline in case closures in recent years and the cause of this trend, particularly addressing any impact vacancies may have had. The Department of Legislative Services recommends adopting committee narrative expressing intent that UEF be exempt from hiring freeze restrictions, given the agency is entirely funded through a dedicated special fund revenue source.**

Issues

Fund Could Face Insolvency within Five Years: UEF is entirely special funded through a 2% assessment on awards against and settlements with employers or insurers for permanent disability or death. Though the assessment has been at its maximum rate, increasing benefit payments have pushed the fund toward insolvency faster than expected. **UEF should comment on the viability of the fund and discuss if legislation is needed during the 2017 session to raise the assessment rate. UEF should update the budget committees on any actions that have been taken to address the issues identified and any recommendations made by the 2014 actuarial study.**

Recommended Actions

1. Abolish a position transferred from the Department of Human Resources that is not justified.

2. Adopt committee narrative expressing intent that the agency be exempt from hiring freeze restrictions.

Operating Budget Analysis

Program Description

The Uninsured Employers' Fund (UEF) protects workers whose employers are not insured under the Maryland Workers' Compensation Law. 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 claimant's compensation benefits and medical expenses. UEF then holds the uninsured employer liable for the total benefits that the fund paid to the claimant and for certain penalties and assessments.

The cost of administering the fund and providing benefits to claimants is wholly specially funded. The special funds are derived 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. UEF also collects penalties from sanctions on uninsured employers and revenue from recovery of benefits paid out for uninsured claims. The fund's 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 by the fund, and maintaining the adequacy and integrity of the fund balance.

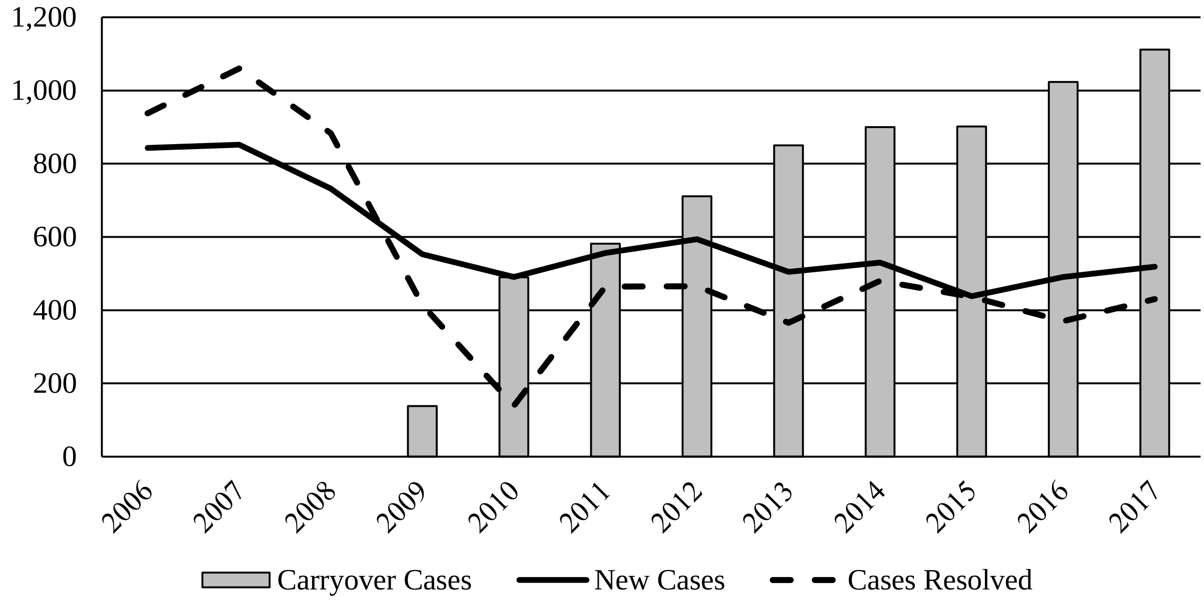
Performance Analysis: Managing for Results

1. New Cases Outstrip Resolved Cases, Resulting in Growing Backlog

In recent years, the number of new cases has been greater than the number of resolved cases, creating a backlog. From fiscal 2011 to 2016, UEF has received 3,114 new cases and resolved 2,581 cases, resulting in a carryover of 533 cases, as shown in **Exhibit 1**.

UEF's caseload has dropped from an average of 965 new cases annually from fiscal 2001 to 2008 to an average of 520 new cases annually from fiscal 2009 to 2016, a 46.1% decrease. Despite fewer incoming cases, case closures have declined from an average of 928 annually from fiscal 2001 to 2008 to an average of 392 annually from fiscal 2009 to 2016, a 57.8% decrease.

Exhibit 1
New Cases, Resolved Cases, and Carryover Cases
Fiscal 2006-2017 Estimates



Note: Cases resolved in fiscal 2010 do not include Bethlehem Steel cases.

Source: Department of Budget and Management, *Fiscal 2018 Managing for Results*

As shown in **Exhibit 2,** UEF's vacancy rate has increased from 1.8% in fiscal 2009 to 50.0% in fiscal 2016, corresponding to the buildup in case backlog. In prior years, the agency attributed drops in resolved cases to attorney vacancies. From fiscal 2009 through 2016, the longest attorney vacancies occurred from fiscal 2014 to 2015, corresponding to a decrease in case closures by 44 cases, or 9.2%. Additionally, the executive director position was vacant for 15 months from fiscal 2015 to 2016 due to a hiring freeze. However, UEF notes that the number of resolved cases is not entirely the result of staffing shortages but also to the circumstance of each case; the process of disputing, closing and/or resolving a claim varies.

UEF should comment on the decline in case closures in recent years and the cause of this trend, particularly addressing any impact vacancies may have had. The Department of Legislative Services (DLS) recommends adopting committee narrative expressing intent that UEF be exempt from hiring freeze restrictions, given the agency is entirely funded through a dedicated special fund revenue source.

Exhibit 2
Historical Vacancies
Uninsured Employers' Fund
July 2003-July 2016

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Vacancies	0.0	2.0	1.0	0.0	0.0	1.0	0.2	1.0	2.20	2.2	2.2	6.5	4.0	7.0
Positions	12.0	13.0	13.0	11.0	11.0	11.0	11.0	11.0	12.0	12.0	14.0	14.0	14.0	14.0
% Vacant	**0.0%**	**15.4%**	**7.7%**	**0.0%**	**0.0%**	**9.1%**	**1.8%**	**9.1%**	**18.3%**	**18.3%**	**15.7%**	**46.4%**	**28.6%**	**50.0%**

Source: Department of Budget and Management; Department of Legislative Services

Proposed Budget

As shown in **Exhibit 3**, the fiscal 2018 allowance increases by $93,000, or 5.8%, over the working appropriation when including an across-the-board contingent reduction in pension cost. The increase is primarily driven by personnel cost.

Exhibit 3
Proposed Budget
Uninsured Employers' Fund
($ in Thousands)

How Much It Grows:	**Special Fund**	**Total**
Fiscal 2016 Actual	$1,189	$1,189
Fiscal 2017 Working Appropriation	1,602	1,602
Fiscal 2018 Allowance	1,695	1,695
Fiscal 2017-2018 Amount Change	$93	$93
Fiscal 2017-2018 Percent Change	5.8%	5.8%

Where It Goes:	
Personnel Expenses	
Increments and other compensation	$122
Employee and retiree health insurance	-29
Employees retirement system, include across-the-board contingent reduction	61
Other fringe benefit adjustments	1
Other Changes	
Information technology contracts	-59
Other	-3
Total	**$93**

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

Across-the-board Reductions

The fiscal 2018 budget bill includes a $54.5 million (all funds) across-the-board contingent reduction for a supplemental pension payment. Annual payments are mandated for fiscal 2017 through 2020 if the Unassigned General Fund balance exceeds a certain amount at the close of the fiscal year. This agency's share of these reductions is $4,696 in special funds. This action is tied to a provision in the Budget Reconciliation and Financing Act of 2017.

Personnel Changes

In fiscal 2017, UEF abolished a vacant claims investigator position with a salary of approximately $34,000 and gained a position from the Department of Human Resources (DHR) with a salary of approximately $83,000; UEF has recently hired 1 contractual full-time equivalent claims adjuster to replace the loss of the regular position. The recently acquired higher salaried position is the reason for the increase in regular earnings and retirement costs in fiscal 2018 when compared to fiscal 2017; there are no increment or cost-of-living adjustments in the fiscal 2018 allowance. It is unclear the role the position transferred from DHR will play in assisting the fund. **DLS recommends abolishing the position transferred from DHR.**

Issues

1. Fund Could Face Insolvency within Five Years

UEF is entirely special funded through a 2% assessment on awards against and 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, UEF increased the assessment on permanency awards from 1% to 2% in order to provide for the estimated payouts for the Bethlehem Steel workers' compensation claims in the wake of the company's bankruptcy. The rate was reduced back to 1% in fiscal 2008 because reserves required to pay for Bethlehem Steel claims had been reduced, but immediately following the end of fiscal 2009, the UEF board returned the assessment to 2% as the Bethlehem Steel liability was revalued higher. Besides added costs of Bethlehem Steel claims, benefit payments in general have been increasing. UEF attributes this increase to rising medical and prescription costs and low case closings, which permit claims and their medical bills to stay open that otherwise might have been closed.

During the 2014 legislative session, the budget committees directed UEF to perform an actuarial study to determine the fund's health and whether the 2% assessment rate on workers' compensation awards is sufficient to maintain the fund's viability. Pinnacle Actuarial Resources, Inc. conducted the study in 2014. Based on the actuary's assumptions, the fund was expected to be solvent through fiscal 2024, but beyond that, UEF would not be able to fully support the agency's operating costs. However, applying actual expenditures from fiscal 2012 through 2016 to the 2014 actuarial forecast shows UEF only being solvent through fiscal 2021, as shown in the updated forecast in **Exhibit 4**.

The 2015 *Joint Chairmen's Report* requested UEF to submit a report providing options to maintain the fund and asked UEF to comment on whether the assessment rate was sufficient to maintain the fund's viability. A report was submitted on January 21, 2016, which concluded that despite the assessment being at the maximum rate determined by statute since fiscal 2009, the fund will struggle to meet upcoming claims in the next three to five years. UEF presented two recommendations:

- the assessment percentage should be allowed to increase by an additional 1% to 2% over the current 2% maximum, as determined in statute, to allow for the accumulation of funds necessary to cover current and future claims; and

- the fund balance cap of $5 million as established in Section 9-1011 in the Labor and Employment Article should be increased or removed completely to allow the fund to reach a balance high enough to cover upcoming claims.

Additionally, UEF reported that a comparable analysis was underway on 921 open claims (not including 130 open claims for Bethlehem Steel and 30 open claims for the A&P bankruptcy). In a letter dated February 22, 2016, the budget committees requested that UEF complete the analysis for the State's cost exposure on these open claims and submit a summary of the fund's outstanding liabilities by December 2016, in order to better determine the appropriate assessment rate to sustain the fund. UEF has not completed the analysis on these open claims.

Exhibit 4
Actuary Projected Fund Decline – Updated With Actual Expenditures from Fiscal 2012-2016
Fiscal 2012-2024 Est.
($ in Thousands)

Fiscal Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Beginning Balance	**$9,704**	**$10,225**	**$9,737**	**$9,755**	**$9,016**	**$6,676**	**$4,843**	**$3,442**	**$2,681**	**$1,738**	**$610**	**-$708**	**-$2,218**
Revenue													
Gross Fund Revenue	$8,700	$8,292	$8,381	$8,390	$8,726	$8,296	$8,295	$8,646	$8,603	$8,560	$8,517	$8,474	$8,432
Investment Income	107	94	115	110	105	104	105	92	84	75	64	51	35
Total Revenue	**$8,807**	**$8,386**	**$8,496**	**$8,499**	**$8,831**	**$8,400**	**$8,400**	**$8,738**	**$8,687**	**$8,635**	**$8,581**	**$8,525**	**$8,467**
Expenditures													
Benefits Payments	$7,149	$7,714	$7,210	$7,977	$9,982	$8,632	$8,102	$7,848	$7,946	$8,045	$8,146	$8,247	$8,351
Agency Operating Expenses	1,137	1,159	1,268	1,260	1,189	1,602	1,700	1,651	1,684	1,718	1,752	1,787	1,823
Total Expenditures	**$8,286**	**$8,873**	**$8,478**	**$9,238**	**$11,171**	**$10,234**	**$9,801**	**$9,499**	**$9,630**	**$9,763**	**$9,898**	**$10,035**	**$10,174**
Structural Balance	**$521**	**-$488**	**$18**	**-$739**	**-$2,340**	**-$1,834**	**-$1,401**	**-$761**	**-$943**	**-$1,128**	**-$1,317**	**-$1,510**	**-$1,706**
Ending Balance	**$10,225**	**$9,737**	**$9,755**	**$9,016**	**$6,676**	**$4,843**	**$3,442**	**$2,681**	**$1,738**	**$610**	**-$708**	**-$2,218**	**-$3,924**

Source: Pinnacle Actuarial Resources, Inc. 2014 Actuarial Study; Department of Budget and Management, Managing for Results

Legislation would be needed to raise the assessment rate to increase revenue to the fund. Repealing or amending Section 9-1011 in the Labor and Employment Article to remove or raise the $5 million fund balance cap would also require legislation, though in practice this statute has not been enforced (given the recent fund balances above $5 million).

UEF should comment on the viability of the fund and discuss if legislation is needed during the 2017 session to raise the assessment rate.

Data Mismanagement

The study conducted by Pinnacle expressed concerns with UEF's recordkeeping. For instance, the study noted that claims information for the two most recent fiscal years appeared to be incomplete, that there were discrepancies in the data files, and that groups of significant data were indistinguishable. Pinnacle made the following recommendations:

- actuarially evaluate the unfunded loss liability and cash flow at least every two to three years to monitor their size and the possible need to revise the assessment rate;
- maintain historic archives of claims files and summarize those files on an annual basis in order to track the annual rates of change in these key statistics;
- attribute payments to the proper award type instead of defaulting to the "miscellaneous payments" category;
- review reserve coding for consistency; and
- create new, more specific data fields.

UEF should update the budget committees on any actions that have been taken to address the issues identified and any recommendations made by the 2014 actuarial study.

Recommended Actions

1. Add the following language to the special fund appropriation:

   <u>, provided that PIN 092697 Administrative Manager Senior I position transferred from the Department of Human Resources shall be abolished and this appropriation reduced by $105,900 to eliminate associated salary and fringe benefits of this position.</u>

   Explanation: This language abolishes PIN 092697 Administrative Manager Senior I position transferred from the Department of Human Resources and reduces the special fund appropriation by $105,900 to eliminate associated salary and fringe benefits of this position. The role of this position at the Uninsured Employers' Fund is not justified.

2. Adopt the following narrative:

   Hiring Freeze Exemption: It is the intent of the budget committees that the Uninsured Employers' Fund be exempt for hiring freeze restrictions, given that the agency is entirely funded through a dedicated special fund source.

Appendix 1

Current and Prior Year Budgets

Uninsured Employer's Fund
($ in Thousands)

	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2016					
Legislative Appropriation	$0	$1,499	$0	$0	$1,499
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	21	0	0	21
Reversions and Cancellations	0	-331	0	0	-331
Actual Expenditures	**$0**	**$1,189**	**$0**	**$0**	**$1,189**
Fiscal 2017					
Legislative Appropriation	$0	$1,584	$0	$0	$1,584
Cost Containment	0	0	0	0	0
Budget Amendments	0	18	0	0	18
Working Appropriation	**$0**	**$1,602**	**$0**	**$0**	**$1,602**

Note: Does not include targeted reversions, deficiencies, and contingent reductions. Numbers may not sum to total due to rounding.

Fiscal 2016

The budget for the Uninsured Employers' Fund (UEF) decreased by a net $310,000 in fiscal 2016. This decrease is primarily due to cancellation of $331,000 in special funds as a result of a hiring freeze that held 5 positions vacant, including the executive director position. This decrease was partially offset by a $21,000 increase in special funds to allocate a 2% salary adjustment that was reduced in Section 20 of the 2016 budget bill but re-authorized in Section 48 of the same bill, per legislative intent.

Fiscal 2017

The fiscal 2017 working appropriation for UEF increased by $18,000 in special funds to reflect a budget amendment allocating employee increments.

Appendix 2
Object/Fund Difference Report
Uninsured Employers' Fund

Object/Fund	FY 16 Actual	FY 17 Working Appropriation	FY 18 Allowance	FY 17 - FY 18 Amount Change	Percent Change
Positions					
01 Regular	14.00	14.00	14.00	0.00	0%
Total Positions	**14.00**	**14.00**	**14.00**	**0.00**	**0%**
Objects					
01 Salaries and Wages	$ 755,410	$ 1,152,289	$ 1,312,108	$ 159,819	13.9%
02 Technical and Spec. Fees	713	3,000	715	-2,285	-76.2%
03 Communication	42,081	54,511	53,824	-687	-1.3%
04 Travel	2,470	29,000	10,348	-18,652	-64.3%
08 Contractual Services	275,056	240,690	199,029	-41,661	-17.3%
09 Supplies and Materials	11,013	15,000	16,400	1,400	9.3%
10 Equipment – Replacement	15,561	20,000	15,561	-4,439	-22.2%
11 Equipment – Additional	0	1,565	0	-1,565	-100.0%
13 Fixed Charges	86,700	85,570	91,528	5,958	7.0%
Total Objects	**$ 1,189,004**	**$ 1,601,625**	**$ 1,699,513**	**$ 97,888**	**6.1%**
Funds					
03 Special Fund	$ 1,189,004	$ 1,601,625	$ 1,699,513	$ 97,888	6.1%
Total Funds	**$ 1,189,004**	**$ 1,601,625**	**$ 1,699,513**	**$ 97,888**	**6.1%**

Note: Does not include targeted reversions, deficiencies, and contingent reductions.