C96J00

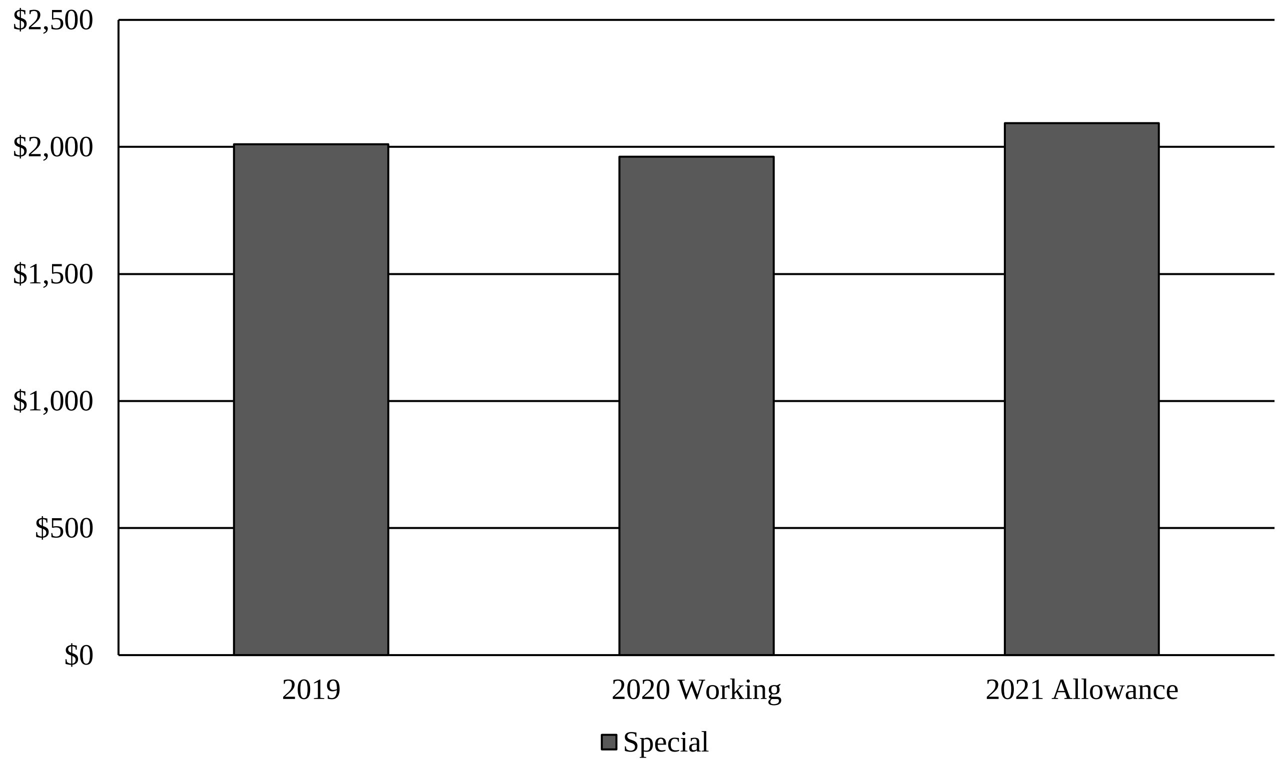
Uninsured Employers' Fund

Executive Summary

The Uninsured Employers' Fund (UEF) protects workers whose employers are not insured under the Maryland Workers' Compensation Law. UEF will directly pay claimants' compensation benefits and medical expenses and then hold the uninsured employer liable.

Operating Budget Summary

Budget Increases $131,667 or 6.7% to $2.1 Million in Fiscal 2021
($ in Thousands)



Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

- UEF's operating budget shows a relatively small increase; however, the allowance does not include a contract with a third-party administrator (TPA) expected to cost $3.1 million in fiscal 2021.

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Key Observations

- ***UEF Faces Potential Insolvency:*** UEF has been running at an annual deficit since fiscal 2013. Based on current revenue and expenditure estimates, it appears that fiscal 2021 expenditures will deplete fund balance and revenues. SB 8, a departmental bill, would provide the UEF board the authority to increase the assessment on workers' compensation claims from the current 2% up to 4%. A TPA contract to provide several key agency functions has driven operating expenses to levels several times higher than historic levels.

- ***UEF Fails to Comply with Legislative Directives:*** Several times since fiscal 2019, UEF has been unable or unwilling to comply with requests or directives of the General Assembly. It did not resolve repeat audit findings, procure an actuarial study, or include a TPA contract in its fiscal 2021 allowance.

Operating Budget Recommended Actions

		Funds	Positions
1.	Eliminate 2 PINs that have been vacant for several years and associated funding.	$ 90,688	2.0
2.	Adopt committee narrative requesting a report on the need for a third-party administrator, agency staffing needs, and the status of an actuarial study.		
	Total Reductions	**$ 90,688**	2.0

Budget Reconciliation and Financing Act Recommended Actions

1. Prevent the Uninsured Employers' Fund (UEF) from expending any money from UEF on administrative costs without an appropriation beginning in fiscal 2021.

C96J00
Uninsured Employers' Fund

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 to administer the fund and provide 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 recovers benefits paid out for uninsured claims. UEF'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 and assessments and maintaining the adequacy and integrity of the fund balance.

Performance Analysis: Managing for Results

1. Revised Performance Measures

UEF modified the performance data reported through its Managing for Results (MFR) submission beginning with the fiscal 2020 budget cycle. The new MFR measures, shown in **Exhibit 1**, include (1) the number of claims filed; (2) the number of investigations conducted; (3) the number of claims where coverage was found; (4) the number of claims where UEF was found to be responsible; and (5) the average number of open claims.

Exhibit 1
Uninsured Employers' Fund Performance Measures
Fiscal 2014-2021 Est.

	2014 Actual	2015 Actual	2016 Actual	2017 Actual	2018 Actual	2019 Actual	2020 Est.	2021 Est.
New Performance Measures								
Claims Filed	n/a	n/a	n/a	n/a	479	489	570	495
Investigations Conducted	n/a	n/a	n/a	n/a	479	483	570	495
Claims Where Coverage Is Found	n/a	n/a	n/a	n/a	98	168	170	172
Claims Where UEF Is Responsible	n/a	n/a	n/a	n/a	1,172	53	136	59
Average Open Claims	n/a	n/a	n/a	n/a	1,270	919	1,022	1,025
Prior Performance Measures								
New Cases	530	438	491	511	n/a	n/a	n/a	n/a
Investigations	700	840	816	757	n/a	n/a	n/a	n/a
Resolved Cases	480	436	370	430	992	556	425	550
Benefit Payments Made	3,414	4,102	3,740	4,114	2,250	2,425	2,600	2,650

UEF: Uninsured Employers' Fund

Note: New cases are replaced by claims filed, and investigations are replaced by number of investigations conducted starting in fiscal 2018.

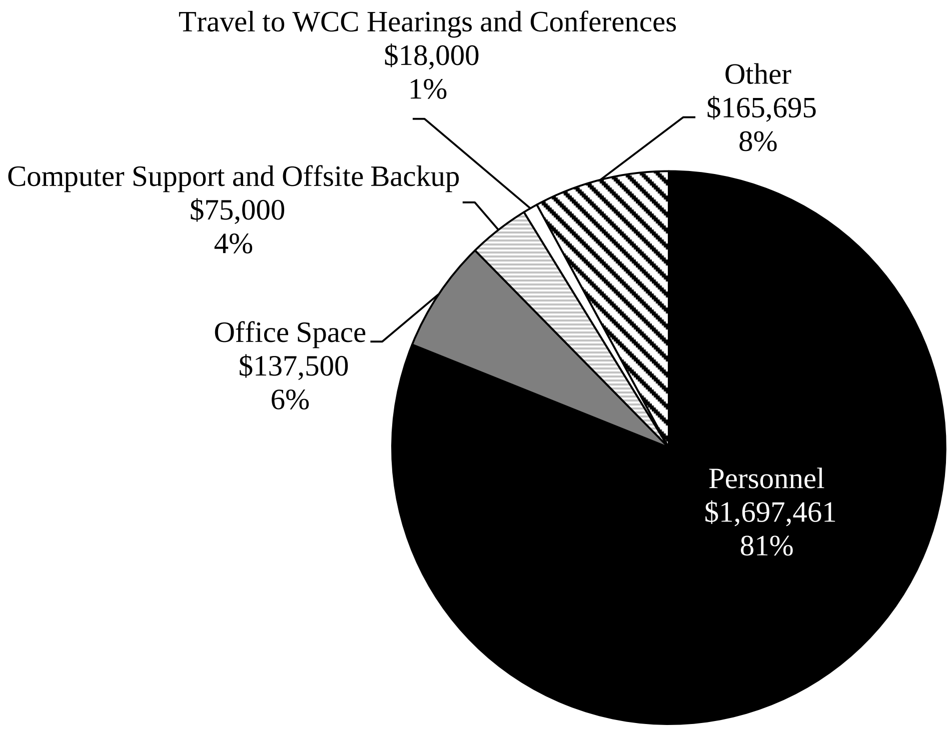
Source: Governor's Fiscal 2021 Budget Books

Most notable is the huge reduction in the number of claims where UEF is found to be responsible, from 1,172 in fiscal 2018 to only 53 in fiscal 2019. This is the result of CorVel, the agency's third-party administrator (TPA), reviewing UEF's files to determine for the first time in many years how many claims existed in which UEF was responsible. The fiscal 2018 number more accurately reflects all open cases at UEF at that time. From fiscal 2019 onward, the data represents new cases found to be UEF's responsibility. The agency attributes the estimated increase in fiscal 2020 to new cases that it expects from Bethlehem Steel retirees who suffered hearing loss. Chapter 16 of 2019 (the Budget Reconciliation and Financing Act (BRFA)) authorizes UEF to pay the hearing loss claims of certain Bethlehem Steel retirees.

Fiscal 2021 Overview of Agency Spending

The fiscal 2021 allowance totals \$2.1 million in special funds, with 81% of that dedicated to personnel costs, as shown in **Exhibit 2**. This chart does not include \$3.1 million in anticipated spending on a TPA that is not budgeted.

Exhibit 2
Overview of Agency Spending
Fiscal 2021 Allowance



WCC: Workers' Compensation Commission

Source: Governor's Fiscal 2021 Budget Books

Proposed Budget Change

As shown in **Exhibit 3**, the fiscal 2021 allowance increases by $131,667, or 6.7%, to $2.1 million. Most of the increase is due to health insurance premiums for employees and retirees that are determined by the agency's actual costs for health insurance.

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

How Much It Grows:	Special Fund	Total
Fiscal 2019 Actual	$2,011	$2,011
Fiscal 2020 Working Appropriation	1,962	1,962
Fiscal 2021 Allowance	2,094	2,094
Fiscal 2020-2021 Amount Change	$132	$132
Fiscal 2020-2021 Percent Change	6.7%	6.7%

Where It Goes:	Change
Personnel Expenses	
Employee and retiree health insurance	$86
Fiscal 2021 2% general salary increase	14
Retirement contributions	13
Regular earnings	7
Fiscal 2020 1% general salary increase	6
Other fringe benefit adjustments	-5
Other Changes	
Other contractual services	16
Office space	12
Computer support and offsite backup	11
Legal services support	-7
Telephone system	-11
Other changes	-10
Total	**$132**

Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

Personnel Data

	FY 19 Actual	FY 20 Working	FY 21 Allowance	FY 20-21 Change
Regular Positions	13.00	13.00	13.00	0.00
Contractual FTEs	0.00	0.00	0.00	0.00
Total Personnel	**13.00**	**13.00**	**13.00**	**0.00**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.00	0.00%
Positions and Percentage Vacant as of 12/31/19	3.00	23.08%
Vacancies Above Turnover	3.00	

- UEF has 3 vacant positions, 2 of which have been vacant since summer 2015. **The Department of Legislative Services (DLS) recommends deleting these 2 positions.**

Issues

1. Fund Heading to Insolvency without Intervention

Chapter 269 of 2019 required UEF to provide a report on the fund's solvency and whether the General Assembly should adjust or provide the authority to UEF to adjust the assessment on workers' compensation awards that is used to fund the agency and provide benefits. The report accurately notes that the fund is currently solvent, but that the fund has liabilities of $24.7 million, and that expenses have risen significantly for a claims administrator to address significant failures in the administration of the agency prior to the tenure of current management. The report also describes the impact to the agency as a result of Chapter 16, which added significant liabilities to the fund as a result of authorizing the fund to compensate hearing loss claims from Bethlehem Steel retirees. UEF estimates that the claims could amount to $6 million over the life of the claimants. Despite the report laying out a clear case for the need to increase revenues, no recommendation on increasing the assessment on workers' compensation awards was made, and no indication that the fund would likely deplete its funding in the near term is provided.

Exhibit 4 shows the fund's revenues and expenditures since fiscal 2016. Two things should be noted about UEF's reporting. First, the agency has been reporting in its MFR submission the nonbudgeted TPA contract as part of its "value of compensation and medical payments made," despite these clearly being operating expenditures. In addition, UEF has apparently not been reconciling revenue and expenditure data that it reports to the Department of Budget and Management (DBM) as part of its MFR submission with its actual revenues and expenditures. An adjustments line has been added to this exhibit to reconcile annual fund balances. **DLS recommends that UEF reconcile its expense and revenue data annually with its MFR submission and include TPA contract expenditures as part of the agency's operating expenses.**

UEF has been running at an annual deficit since fiscal 2013, which closed with an $11.1 million fund balance. Based on current revenue and expenditure estimates, it appears that fiscal 2021 expenditures will deplete fund balance and revenues. SB 8, a departmental bill, would provide the UEF board the authority to increase the assessment on workers' compensation claims from the current 2% up to 4%. A 1-percentage-point increase in the assessment would increase revenues between $4 million and $5 million, enough to avoid insolvency. Without action, the State risks adding harm to workers who have already been harmed by employers who did not carry workers' compensation insurance.

Exhibit 4
Uninsured Employers' Fund Balance
Fiscal 2016-2022 Est.
($ in Thousands)

Fiscal Year	**2016 Actual**	**2017 Actual**	**2018 Actual**	**2019 Actual**	**2020 Est.**	**2021 Est.**	**2022 Est.**
Beginning Balance	**$10,615**	**$8,822**	**$7,037**	**$7,011**	**$5,782**	**$2,469**	**-$414**
Revenue							
Gross Fund Revenue	$8,726	$7,589	$9,586	$8,501	$8,800	$9,200	$8,734
Investment Income	105	111	121	123	110	110	$113
Recovery of Benefit Payments Owed by Uninsured Employers	548	709	1,492	918	940	1,200	968
Total Revenue	**$9,380**	**$8,409**	**$11,200**	**$9,542**	**$9,850**	**$10,510**	**$9,815**
Expenditures							
Benefits Payments	$9,982	$8,863	$8,531	$7,766	$7,884	$8,092	$8,520
Nonbudgeted TPA Contract			918	1,007	3,317	3,208	3,321
Agency Operating Expenses	1,174	1,590	1,788	2,011	1,962	2,094	$2,136
Total Expenditures	**$11,156**	**$10,453**	**$11,237**	**$10,784**	**$13,163**	**$13,394**	**$13,976**
Adjustment	-$16	$259	$11	$12			
Surplus/-Deficit	**-$1,776**	**-$2,044**	**-$37**	**-$1,241**	**-$3,313**	**-$2,884**	**-$4,161**
Estimated Ending Balance	**$8,822**	**$7,037**	**$7,011**	**$5,782**	**$2,469**	**-$414**	**-$4,575**

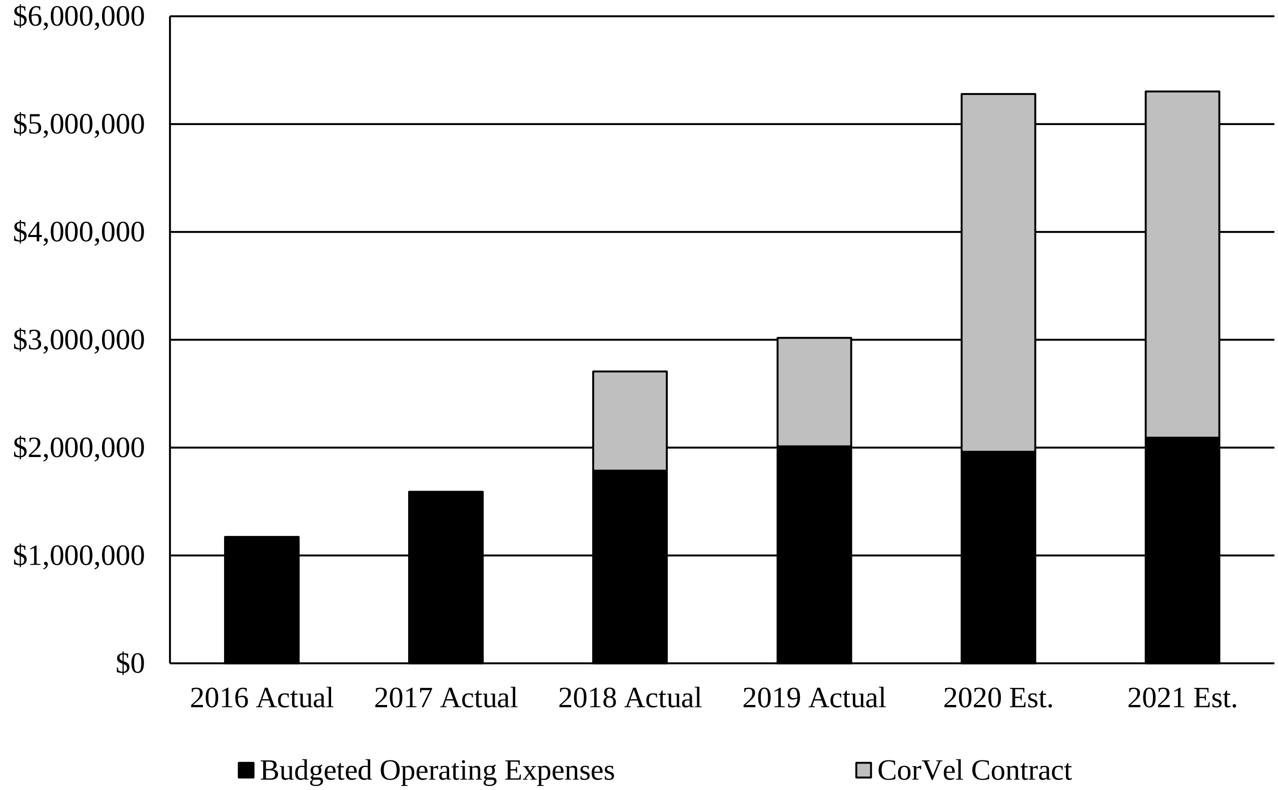
TPA: third-party administrator

Source: Uninsured Employers Fund; Governor's Fiscal 2021 Budget Books

CorVel Contract Explodes Agency Operating Expenses

The TPA contract with CorVel to provide several key agency functions has driven operating expenses to levels several times higher than historic levels, as shown in **Exhibit 5**. Including the contract with CorVel, operating expenses are expected to increase by 75% in fiscal 2020 to $5.3 million, compared to typical operating expenditures of approximately $1.2 million annually in fiscal 2016 and earlier. Operating expenses will represent 40% of total spending in fiscal 2021 compared to 12% in fiscal 2018.

Exhibit 5
Uninsured Employers' Fund Operating Expenses
Fiscal 2016-2021 Est.



Source: Uninsured Employers Fund; Governor's Fiscal 2021 Budget Books

UEF has clearly noted troubles with agency operations in the past as one reason to bring in a TPA. The contract with CorVel calls for it to perform the following functions:

- recording, tracking, and investigating claims for purposes of coverage determination and defense preparation for Workers' Compensation Commission hearings;
- monitoring of active, inactive, and resolved cases; and
- payment of benefit payments to claimants.

Based on the mission of UEF, it appears that numerous primary functions of the agency have been outsourced to TPA. While a TPA contract may be necessary in the short term in order to avoid disruption of benefit payments while the agency stabilizes, UEF should reevaluate the need for the TPA contract in the future. **DLS recommends the adoption of committee narrative requesting that, in conjunction with DBM, UEF produce a report documenting whether or not a TPA is needed beyond the current five-year contract. The report should also provide an analysis of the agency's current and future staffing needs in light of the shift of primary agency functions to an outside vendor. The report should also provide an update on the progress of obtaining an outside actuarial evaluation of the health of the fund and appropriateness of the assessment on workers' compensation awards.**

2. UEF Fails to Comply with Legislative Directives

Several times since fiscal 2019, UEF has been unable or unwilling to comply with requests or directives of the General Assembly.

In the 2018 session, the budget committees added language to UEF's budget to withhold $100,000 in special funds in fiscal 2019 due to the agency not resolving several repeat audit findings. A review by the Office of Legislative Audits released in 2019 found that several of the repeat findings were not resolved, and the withheld fiscal 2019 funds were canceled. UEF states that progress continues to be made on resolving the audit findings.

Also in the 2018 session, the budget included language to withhold $50,000 in fiscal 2019 special funds until UEF submitted a Request for Proposals (RFP) for a third-party claims administrator by February 1, 2019. An RFP was posted, and the Board of Public Works approved a five-year, $16.4 million contract with CorVel in June 2019. UEF never provided documentation of the RFP to the budget committees, and despite reminders from DLS, the agency did not follow the process to have its funds released. They were instead canceled.

During the 2019 session, the budget committees withheld $100,000 in special funds until UEF procured an actuarial study to determine the status of the fund and the appropriateness of the current assessment level. The agency notes that it has been trying to procure an actuarial study without success. A meeting was scheduled in September 2019 for potential bidders; none attended. UEF is currently awaiting replies to recently sent solicitations to several potential auditors as an under $50,000 procurement.

The 2019 *Joint Chairmen's Report* also included committee narrative requesting that UEF discontinue its recent practice of not budgeting the funds used to pay CorVel, its TPA. Despite the contract being awarded in June 2019, funds are not included in the fiscal 2021 allowance for this purpose nor has an amendment been submitted for the fiscal 2020 appropriation. **DLS recommends adding a provision to the BRFA to prohibit UEF from expending any money from the fund on administrative expenses without an appropriation.**

Operating Budget Recommended Actions

		Amount Reduction		Position Reduction
1.	Eliminate funding for 2 long-term vacant positions in the Uninsured Employers Fund. (PINs 055099 and 054626)	$ 90,688	SF	2.0

2. Adopt the following narrative:

Report on Operational Needs and Actuarial Study: The budget committees are concerned about the massive increase in operating expenditures due to the procurement of a contract with a third-party administrator (TPA) to perform many core functions of the agency. The committees direct that, in conjunction with the Department of Budget and Management (DBM), the Uninsured Employers' Fund (UEF) produce a report documenting whether or not a TPA is needed beyond the current five-year contract. The report should also provide an analysis of the agency's current and future staffing needs in light of the shift of primary agency functions to an outside vendor. The report should also provide an update on the progress of obtaining an outside actuarial evaluation of the health of the fund and appropriateness of the assessment on workers' compensation awards.

Information Request	**Authors**	**Due Date**
UEF operational needs and status of actuarial study	UEF DBM	September 1, 2020

Total Special Fund Reductions	**$ 90,688**	**2.0**

Budget Reconciliation and Financing Act Recommended Actions

1. Prevent the Uninsured Employer's Fund (UEF) from expending any money for administrative expenses from UEF without an appropriation beginning in fiscal 2021.

Appendix 1
2019 *Joint Chairmen's Report* Responses from Agency

The 2019 *Joint Chairmen's Report* (JCR) requested that the Uninsured Employers' Fund (UEF) prepare two reports. Electronic copies of the full JCR responses can be found on the Department of Legislative Services Library website.

- ***Documentation of Awarded Contract to Conduct Actuarial Study:*** UEF has not provided this information. This is discussed in the Issues section of this analysis.

- ***Quarterly Financial Reports:*** UEF has provided this data that has been used to inform the discussion of the fund balance in the Issues section of this analysis.

Appendix 2
Object/Fund Difference Report
Uninsured Employers' Fund

Object/Fund	FY 19 Actual	FY 20 Working Appropriation	FY 21 Allowance	FY 20 - FY 21 Amount Change	Percent Change
Positions					
01 Regular	13.00	13.00	13.00	0.00	0%
Total Positions	**13.00**	**13.00**	**13.00**	**0.00**	**0%**
Objects					
01 Salaries and Wages	$ 1,363,684	$ 1,569,961	$ 1,670,563	$ 100,602	6.4%
02 Technical and Special Fees	492	7,100	500	-6,600	-93.0%
03 Communication	43,678	32,012	21,512	-10,500	-32.8%
04 Travel	12,543	25,000	18,000	-7,000	-28.0%
08 Contractual Services	434,657	161,619	189,174	27,555	17.0%
09 Supplies and Materials	15,215	19,500	17,000	-2,500	-12.8%
10 Equipment – Replacement	0	11,385	10,000	-1,385	-12.2%
13 Fixed Charges	140,719	129,064	140,496	11,432	8.9%
Total Objects	**$ 2,010,988**	**$ 1,955,641**	**$ 2,067,245**	**$ 111,604**	**5.7%**
Funds					
03 Special Fund	$ 2,010,988	$ 1,955,641	$ 2,067,245	$ 111,604	5.7%
Total Funds	**$ 2,010,988**	**$ 1,955,641**	**$ 2,067,245**	**$ 111,604**	**5.7%**

Note: The fiscal 2020 appropriation does not include deficiencies, planned reversions, or general salary increases. The fiscal 2021 allowance does not include contingent reductions or general salary increases.

Appendix 3
Fiscal Summary
Uninsured Employers' Fund

Program/Unit	FY 19 Actual	FY 20 Wrk Approp	FY 21 Allowance	Change	FY 20 - FY 21 % Change
01 General Administration	$ 2,010,988	$ 1,955,641	$ 2,067,245	$ 111,604	5.7%
Total Expenditures	**$ 2,010,988**	**$ 1,955,641**	**$ 2,067,245**	**$ 111,604**	**5.7%**
Special Fund	$ 2,010,988	$ 1,955,641	$ 2,067,245	$ 111,604	5.7%
Total Appropriations	**$ 2,010,988**	**$ 1,955,641**	**$ 2,067,245**	**$ 111,604**	**5.7%**

Note: The fiscal 2020 appropriation does not include deficiencies, planned reversions, or general salary increases. The fiscal 2021 allowance does not include contingent reductions or general salary increases.