C96J00

Uninsured Employers' Fund

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 an assessment on (1) awards against employers or insurers for permanent disability or death and (2) amounts payable by employers or insurers under settlement agreements. Chapter 495 of 2020 increased the assessment from 2% to 3% for fiscal 2021 to assist with the UEF declining fund balance. UEF also collects penalties from sanctions on uninsured employers and recovers benefits paid out for uninsured claims.

Operating Budget Summary

Fiscal 2023 Budget Decreases $47,498, or 0.9%, to $5.3 Million
($ in Thousands)

Note: The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which may include cost-of-living adjustments, increments, annual salary review increases, and bonuses.

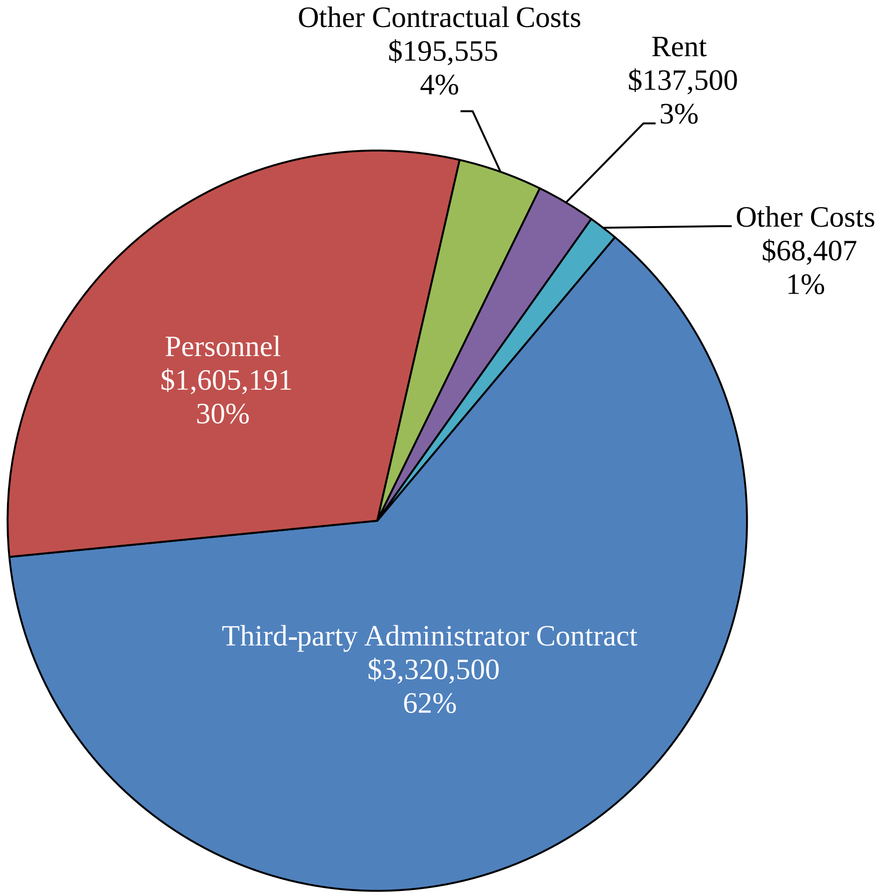
For further information contact: Jason A. Kramer Phone: (410) 946-5530

- The large increase in funding between the fiscal 2021 actual and the fiscal 2022 working appropriation is due to the agency not budgeting a large contract properly in fiscal 2021.

Fiscal 2023 Overview of Agency Spending

The fiscal 2023 allowance totals $5.3 million, as shown in **Exhibit 1**. A contract with a third-party administrator (TPA) to perform many core functions of the agency comprises $3.3 million, or 62%, of the allowance, while personnel costs total $1.6 million, or 30%, of the allowance.

Exhibit 1
Overview of Agency Spending
Fiscal 2023 Allowance



Source: Governor's Fiscal 2023 Budget Books

Proposed Budget Change

The fiscal 2023 allowance declines by about $47,000 compared to the fiscal 2022 working appropriation, as shown in **Exhibit 2**. The only changes are slight declines in regular earnings and other personnel costs and changes in cost allocations that are set by the Department of Budget and Management (DBM). All other spending remains unchanged from the prior year working appropriation. The changes do not include cost-of-living adjustments, increments, and bonuses budgeted in DBM, which total $67,000 in fiscal 2022 deficiency appropriations and $162,000 in the fiscal 2023 allowance.

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

How Much It Grows:	**Special Fund**	**Total**
Fiscal 2021 Actual	$1,940	$1,940
Fiscal 2022 Working Appropriation	5,375	5,375
Fiscal 2023 Allowance	5,327	5,327
Fiscal 2022-2023 Amount Change	-$47	-$47
Fiscal 2022-2023 Percent Change	-0.9%	-0.9%

Where It Goes:	**Change**
Personnel Expenses	
Other fringe benefit adjustments	-$1
Retirement system contributions	-5
Employee and retiree health insurance	-6
Regular earnings	-32
Other Changes	
State controlled cost allocations	-3
Total	**-$47**

Note: Numbers may not sum to total due to rounding. The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which may include cost-of-living adjustments, increments, annual salary review increases, and bonuses.

Personnel Data

	FY 21 Actual	FY 22 Working	FY 23 Allowance	FY 22-23 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 12/31/21	4.00	30.77%
Vacancies Above Turnover	4.00	

- Two of the 4 vacant positions have been vacant for longer than six years. UEF states that 2 positions are in the hiring process and that the remaining 2 would be filled by the end of the fiscal year.

Key Observations

1. Fund Status Remains Tenuous

As shown in **Exhibit 3**, the fiscal 2021 closing fund balance was $8.5 million, up from the $6.3 million closing balance one year prior. The most recent actual report, completed by Pinnacle Actuarial Resources in December 2020, found that UEF had unpaid liabilities of approximately $115.8 million at the close of fiscal 2020.

Exhibit 3
UEF Fund Balance
Fiscal 2017-2023 Est.
($ in Thousands)

Fiscal Year	2017 Actual	2018 Actual	2019 Actual	2020 Actual	2021 Actual	2022 Est.	2023 Est.
Beginning Balance	**$8,822**	**$7,037**	**$7,011**	**$5,782**	**$6,326**	**$8,470**	**$9,087**
Revenue							
Assessments Collected	$7,589	$9,586	$8,501	$9,928	$10,949	$9,900	$9,900
Investment Income	111	121	123	96	20	21	$21
Recovery of Benefit Payments Owed by Uninsured Employers	709	1,492	918	1,319	1,341	1,500	2,000
Total Revenue	**$8,409**	**$11,200**	**$9,542**	**$11,343**	**$12,310**	**$11,421**	**$11,921**
Expenditures							
Benefits Payments	$8,863	$8,531	$7,766	$7,402	$5,110	$5,430	$5,680
TPA Contract		918	1,007	1,382	3,115	3,321	3,321
Other Agency Operating Expenses	1,590	1,788	2,011	2,015	1,940	2,054	2,007
Total Expenditures	**$10,453**	**$11,237**	**$10,784**	**$10,799**	**$10,165**	**$10,804**	**$11,007**
Adjustment	$259	$11	$12	$0	$0	$0	$0
Surplus/-Deficit	**-$2,044**	**-$37**	**-$1,241**	**$544**	**$2,144**	**$617**	**$914**
Estimated Ending Balance	**$7,037**	**$7,011**	**$5,782**	**$6,326**	**$8,470**	**$9,087**	**$10,001**

TPA: third-party administrator

Source: Governor's Fiscal 2023 Budget Books, Uninsured Employers' Fund

Compared to the Pinnacle study, actual experience in the subsequent years has varied. Fiscal 2021 assessment revenues, hampered by the pandemic, were about $3.7 million less than anticipated. However, fiscal 2021 benefit payments were about $1.3 million less than expected, and fiscal 2022 payments are also estimated to be lower than predicted. It is unclear what share of the TPA contract costs Pinnacle included as operating expenses versus benefits payments, however. Current operating costs of more than $5 million annually are more than three times higher than just five years ago. TPA has increased the share of claims in which the agency has found non-UEF coverage from 9% of claims to 55% of claims, which results in reduced benefits payments. UEF also expects increases in revenue collections. However, the cost savings due to TPA's work are offset by the cost of the contract. Based on current assumptions about costs and revenues, it still appears that the fund is on track for insolvency by the end of the decade. When asked for a plan to deal with insolvency, the agency states that it believes that its assessment rate should be higher.

UEF's Managing for Results data, as well as its statutorily required annual report, continue to report its TPA expenses as benefits payments, which presents an unclear picture of UEF benefit payments. The Department of Legislative Services (DLS) first raised the issue of improper budgeting and reporting of the TPA contract expenses in its 2019 budget analysis of the agency. **DLS recommends that UEF correctly report TPA contract expenses as operating expenses rather than benefits payments in future reports.**

A useful point of reference for UEF is the Subsequent Injury Fund (SIF), which performs a somewhat similar function of compensating injured workers whose pre-existing injuries are worsened by a current injury. **Exhibit 4** compares various performance metrics of the two agencies. SIF makes 10 times as many payments that are worth twice as much as UEF and resolves a similar number of cases with an operating budget of half the UEF. There are however, significant differences in agency responsibilities. One large difference in operating costs is driven by UEF's need to do much more investigation into what party is ultimately responsible, a function SIF is not required to perform. UEF also is involved in collections, criminal prosecutions, and business license suspensions. SIF performs several of the functions in-house that the UEF has outsourced to its TPA, such as independent medical exam need assessments and bill reviews, interpretation services, and the review of all claimant expenses. SIF only makes indemnity payments, while UEF is charged with making both indemnity and medical payments, which are ongoing and more complex.

Exhibit 4
Comparison of SIF and UEF Performance Data
Fiscal 2021

	SIF	UEF
Payments Made	$19,151,208	$8,225,106
Assessments Collected	$22,758,080	$10,948,564
Recovered Benefit Payments from Insurers		$1,340,995
Cases Resolved	648	600
Payments Made	20,168	1,984
Operating Budget	$2,445,028	$5,055,000
Authorized Positions	17	13

SIF: Subsequent Injury Fund
UEF: Uninsured Employers' Fund

Source: Governor's Fiscal 2023 Budget Books

The budget committees in the 2021 *Joint Chairman's Report* (JCR) requested a report on the structure of UEF, SIF, and Workers' Compensation Commission (WCC), including areas of overlapping responsibilities and a recommendation of whether there should be a restructuring of the agencies. The report detailed significant conflict of interest issues if SIF, UEF, and/or WCC were to be merged and strongly recommended against any change in structure.

The committees also requested a thorough evaluation of UEF's personnel needs. The report provided a list of current job titles and responsibilities. The personnel complement at UEF consists of the following:

- ***executive director:*** responsible for the operations of the agency;
- ***chief financial officer:*** **o**versight of financial matters and assists the executive director with daily operations;
- ***administrative program manager:*** reviews assessments and claims for accuracy, assists with billing;
- ***administrative specialist:*** responsible for administrative tasks, maintains records, prepares reports; and
- ***assistant Attorneys General (5):*** represent agency at workers compensation hearings, cases, and appeals and assist with other legal and collections issues.

However, the report did not provide an evaluation of personnel needs, such as whether or not the current staffing levels are adequate, lacking, or excessive. While UEF asserts that the contract with its TPA is permanent and necessary for the proper operation of the agency, this lack of evaluation makes it difficult to determine whether or not that is the case.

Audit Finds Poor Oversight of TPA Payments

An audit by the Office of Legislative Audits (OLA) published in September 2021 found that UEF did not ensure that payments to its TPA were supported and consistent with contract terms and did not review recurring payments processed by TPA to ensure that claimants were still eligible. It also found that UEF did not adequately pursue collection on delinquent accounts.

The OLA report noted overpayments to TPA of $521,083 between July 2019 and February 2021. For example, TPA did not provide proper documentation of the hours worked by its employees working to process UEF claims, and UEF did not implement any review process. Auditors found that TPA did not report any claims processing activity for one of their employees; UEF was not aware of the discrepancy until OLA brought it to their attention. UEF also was making $13,650 monthly payments ($273,000 total) for services that were already included in the contract's monthly administrative fee. In some cases, UEF management knew of the overpayments but erroneously believed the payments were permissible. Other overpayments were made due to a misunderstanding of the contract terms. Similar findings regarding poor oversight of TPA were noted in OLA's previous audit.

The report noted a lack of review of approximately $1.9 million in recurring indemnity payments in fiscal 2020. The OLA review determined that UEF could not document a review of the recurring payments. The report did not detect any improper payments.

The audit also noted that one person employed by Corvel was the immediate family member of a former UEF employee who was involved in the procurement of the TPA contract, and a current employee had their costs covered by Corvel to attend an out-of-state conference sponsored by Corvel. While these facts were disclosed by the employees on financial disclosure forms, the State Ethics Commission advised the activities may violate State ethics laws. A referral to the commission was made by OLA; no action has yet been taken.

DLS recommends that UEF resolve issues surrounding its TPA contract before pursuing an increase in the annual assessment. DLS also recommends adding language to the budget restricting $250,000 in special funds pending a report from OLA certifying that UEF has taken corrective action on its audit findings.

Operating Budget Recommended Actions

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

, provided that since the Uninsured Employers' Fund (UEF) has had serious findings in the most recent fiscal compliance audit issued by the Office of Legislative Audits (OLA), $250,000 of this agency's special fund appropriation may not be expended unless:

(1) UEF provides a status report to OLA describing the corrective action that it has taken with respect to all audit findings on or before November 1, 2022; and

(2) a report is submitted to the budget committees by OLA listing each audit finding along with a determination that each finding was corrected. The budget committees shall have 45 days from the date of the receipt of the report to review and comment to allow for funds to be released prior to the end of fiscal 2023.

Explanation: Due to audit findings regarding a lack of oversight of the UEF third-party administrator, a portion of its budget will be withheld pending the adoption of corrective action by the agency and a determination by OLA that each finding was corrected. OLA shall submit reports to the budget committees on the status of repeat findings.

Information Request	**Author**	**Due Date**
Status of corrective actions related to the most recent fiscal compliance audit	OLA	45 days before the release of funds

Appendix 1
2021 *Joint Chairmen's Report* Responses from Agency

The 2021 JCR requested that UEF prepare one report. An electronic copy of the full JCR responses can be found on DLS Library website.

- ***Report on UEF Personnel Needs and Potential Restructuring:*** The 2021 JCR requested a report analyzing the personnel needs of UEF and the structure of three workers' compensation-related agencies. The report recommended no structural changes and did not provide an adequate review of personnel needs. The report is discussed further in the Key Observations section of this analysis.

Appendix 2
Audit Findings

Audit Period for Last Audit:	Nov. 28, 2016 – Nov. 30, 2020
Issue Date:	September 2021
Number of Findings:	3
Number of Repeat Findings:	2
% of Repeat Findings:	67%

Finding 1: **UEF did not ensure that payments to its TPA were adequately supported and consistent with the contract terms. As a result, payments totaling $521,083 for which the rate paid by UEF was not included in the contract or exceeded the rates specified in the contract were identified.**

Finding 2: UEF did not adequately review recurring indemnity payments processed by TPA to ensure claimants were still eligible for payment.

Finding 3: **UEF did not adequately monitor and pursue collection of all delinquent accounts. As of November 30, 2020, there were 1,920 delinquent accounts totaling $14.5 million that, based on their age, should have been referred to the State's Central Collection Unit.**

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

Appendix 3
Object/Fund Difference Report
Uninsured Employers' Fund

Object/Fund	FY 21 Actual	FY 22 Working Appropriation	FY 23 Allowance	FY 22 - FY 23 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	$ 1,586,249	$ 1,649,592	$ 1,605,191	-$ 44,401	-2.7%
02 Technical and Special Fees	500	3,321,000	3,321,000	0	0%
03 Communication	21,512	21,508	21,508	0	0%
04 Travel	18,000	15,825	15,825	0	0%
08 Contractual Services	146,606	199,730	195,555	-4,175	-2.1%
09 Supplies and Materials	17,000	17,000	17,000	0	0%
10 Equipment – Replacement	10,000	10,000	10,000	0	0%
13 Fixed Charges	140,496	139,996	141,074	1,078	0.8%
Total Objects	**$ 1,940,363**	**$ 5,374,651**	**$ 5,327,153**	**-$ 47,498**	**-0.9%**
Funds					
03 Special Fund	$ 1,940,363	$ 5,374,651	$ 5,327,153	-$ 47,498	-0.9%
Total Funds	**$ 1,940,363**	**$ 5,374,651**	**$ 5,327,153**	**-$ 47,498**	**-0.9%**

Note: The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which may include cost-of-living adjustments, increments, annual salary review increases, and bonuses.