A Report
to the
Montana
Legislature

Financial-Compliance Audit

Department of Labor and Industry

For the Two Fiscal Years Ended June 30, 2013

October 2013

Legislative Audit Division

13-15

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Financial-compliance audits are conducted by the Legislative Audit Division to determine whether an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States Government Accountability Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting. Most staff members hold Certified Public Accountant (CPA) licenses.

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October 2013

The Legislative Audit Committee
of the Montana State Legislature:

This is our financial-compliance audit report on the Department of Labor and Industry for the two fiscal years ended June 30, 2013. Included in this report are eight recommendations related to professional and occupational licensing board fees, uninsured employers' fund accounts receivable, elevator licensing program inspections and corrective action plans, elevator inspection fees and related accounts receivable, improper programmer access, demotion pay rules, cash management controls, and other state compliance issues.

This report includes the department's financial schedules. The financial schedule presentation is intended to provide the legislative body with information necessary for decision-making purposes; it is not intended to conform to the financial reporting requirements established in generally accepted accounting principles (GAAP). The financial schedule presentation has not changed, but audit reporting standards have changed. Auditing standards require us to clearly communicate that the financial schedule presentation is not intended to, and does not, conform to GAAP reporting requirements. The Independent Auditor's Report on page A-1 contains language to this effect in the section titled "Adverse Opinions on U.S. Generally Accepted Accounting Principles." This section does not imply the amounts presented on the department's financial schedules are not fairly stated. Page A-1 also communicates the extent to which the user can rely on the information contained in the financial schedules in the section titled "Unmodified Opinions on Regulatory Basis of Accounting."

The department's written response to the audit recommendations is included in the audit report at page B-1. We thank the commissioner and her staff for their cooperation and assistance throughout the audit.

Respectfully submitted,

/s/ Tori Hunthausen

Tori Hunthausen, CPA
Legislative Auditor

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Appointed and Administrative Officials

Department of Labor and Industry	Pam Bucy, Commissioner Dore Schwinden, Deputy Commissioner Judy Bovington, Chief Legal Counsel Adam de Yong, Acting Administrator, Business Standards Division Kim Moog, Administrator, Centralized Services Division Diana Ferriter, Administrator, Employment Relations Division Roy Mulvaney, Administrator, Unemployment Insurance Division Mike Cooney, Administrator, Workforce Services Division George Parisot, Chief Information Officer Rende Mackay, Human Resource Director
Administratively Attached Functions	James Shea, Judge, Workers' Compensation Court Dan Ritter, Executive Director, Office of Community Services
Administratively Attached Boards and Commissions	Board of Labor Appeals Board of Personnel Appeals Commission for Human Rights Professional and Occupational Licensing Boards

For additional information concerning the Department of Labor and Industry, contact:

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Montana Legislative Audit Division

Financial-Compliance Audit
Department of Labor and Industry
For the Two Fiscal Years Ended June 30, 2013

October 2013 | 13-15 | Report Summary

The Department of Labor and Industry (department) exists to promote the well-being of Montana's workers, employers, and citizens. The department is responsible for licensing and regulating individuals and businesses engaged in various professions within the state. We determined only four professional and occupational licensing (POL) boards had fees commensurate with costs during both fiscal years 2012-13 and 2011-12, contrary to state law. In addition, we found the department did not actively manage or account for hundreds of employers not carrying workers' compensation insurance.

Context

The department's responsibilities are vast and include administration of the unemployment insurance program; enforcement of state and federal labor, state wage and hour, workers' compensation, discrimination, and state and federal health and safety laws. In addition, the department establishes and enforces minimum building codes; conducts research and collects employment statistics; provides job training to individuals; provides administrative support to the 36 professional and occupational licensing boards; and oversees federal and state training and apprenticeship programs.

Results

This report contains eight recommendations to the department, with one or more recommendations applicable to each of the department's five divisions. The department did not actively manage or account for hundreds of employers not carrying workers' compensation insurance. We determined that 21 of the 36 professional and occupational licensing boards administratively attached to the department charged fees that were not commensurate with costs during fiscal year 2011-12 and 26 of the 36 were not commensurate with costs in fiscal year 2012-13, which is contrary to state law.

Audit work also identified several internal control deficiencies, some of which are related to the department's:

- Administration of safety inspections and fiscal management aspects of the Elevator Licensing Program, resulting in noncompliance with state law and department administrative rule.
- Information systems programmer's having unrestricted access.
- Demotion pay rules.

Recommendation Concurrence	
Concur	7
Partially Concur	1
Do Not Concur	0
Source: Agency audit response included in final report.	

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Chapter I – Introduction

Introduction

We performed a financial-compliance audit of the Department of Labor and Industry (department) for the two fiscal years ended June 30, 2013. The objectives of the audit were to:

1. Determine if the financial schedules present fairly the department's results of operations and changes in fund equity and property held in trust for each of the fiscal years ended June 30, 2013, and June 30, 2012.
2. Determine department compliance with selected applicable state and federal laws and regulations.
3. Obtain an understanding of the department's control systems to the extent necessary to support our audit of the department's financial schedules and, if appropriate, make recommendations for improvements in management and internal controls of the department.
4. Determine the implementation status of prior audit recommendations.

This report contains eight recommendations to the department.

Auditing standards require us to communicate, in writing, deficiencies in internal control we identified as a result of audit objective #3 above and considered to be significant or material. A deficiency in internal control exists when the design or operation of a control does not allow management or employees to prevent or detect and correct misstatements on a timely basis. A material weakness is one or more deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial schedules will not be prevented, or detected and corrected on a timely basis. A significant deficiency is one or more deficiencies in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Table 1 outlines the status of significant deficiencies we identified during this audit.

Table 1
Summary of Deficiencies in Internal Control

Subject	Type of Deficiency	Page
Uninsured Employers' Fund Accounts Receivable	Significant	10
Unemployment Insurance Programmer Access	Significant	15

Source: Compiled by Legislative Audit Division.

Our consideration of internal control was not for the purpose of expressing an opinion on the effectiveness of internal controls. Therefore, material weaknesses or significant deficiencies may exist that were not identified.

Internal Service Funds

In accordance with §17-8-101(6), MCA, we reviewed the fees charged and the fund equity of the department's internal service funds for fiscal years 2011-12 and 2012-13.

The table below summarizes our determination of fees commensurate with costs and reasonableness of fund equity balances.

Table 2

Internal Service Funds Fees and Fund Equity

Fund Name and Description	Fees Commensurate with Costs		Fund Equity Reasonable	
	FY12	FY13	FY12	FY13
Commissioner's Office/Centralized Services Division – Accumulates costs incurred by the Commissioner's Office and Centralized Services Division that are of benefit to all divisions, and allocates those costs amongst the divisions.	No	Yes	No	Yes
Administrative Services – Accumulates legal costs incurred for activity at the Business Standards Division, and allocates those costs amongst the programs at the division.	No	Yes	Yes	Yes
Office of Information Technology – Accumulates costs incurred for providing information technology and related support services to all divisions, and allocates those costs amongst the divisions.	Yes	No	Yes	Yes

Source: Compiled by the Legislative Audit Division.

As the table above illustrates, fees were not commensurate with costs in fiscal year 2011-12 and fund equity was not reasonable at June 30, 2012, in the Commissioner's Office/Centralized Services Division fund. The fund collected more fees than necessary to cover costs and the fund equity was larger than necessary at fiscal year-end. This fund is used, in part, to charge centralized costs to federal grant awards. Because some of the excess cash in the fund was attributed to charges made against federal grants that had previously closed, department staff had to work with the department's federal cost negotiator to receive approval to issue a refund from this fund. The refund was issued in fiscal year 2012-13.

Fees were not commensurate with costs in fiscal year 2011-12 in the Administrative Services fund. The fund collected more fees than necessary to cover costs in the fund. The department issued a refund from this fund in fiscal year 2012-13 to return the cash balance to the various funds/programs at Business Standards Division that had previously been charged.

Fees were not commensurate with costs in fiscal year 2012-13 in the Office of Information Technology fund. The department did not collect enough fees to cover the costs incurred in this fund. The department has been monitoring the activity in this fund, and adjusting the allocation process in hopes of charging fees that are commensurate with costs. In addition, in fiscal year 2012-13, the fund incurred significant one-time only expenses, which contributed to the under collection.

Based on our review, the department issued refunds for excess fees which indicates they are actively managing Internal Service funds in an effort to comply with the requirement to ensure fees are commensurate with costs. Therefore, we make no recommendation to the department at this time.

Background

The department operates as part of a national employment, unemployment insurance, and job training system that assists individuals in preparing for and finding work. The department assists employers in finding workers and pays workers unemployment benefits if they are temporarily unemployed through no fault of their own.

The department enforces state and federal labor, state wage and hour, workers' compensation, discrimination, and state and federal health and safety laws. In addition, the department conducts research, collects statistics, and provides rulings in labor management disputes. The department also administers building codes enforcement, weights and measures, and professional and occupational licensing.

The department is organized into the Commissioner's Office, five divisions, and two administratively attached units. A brief description of the Commissioner's Office, divisions, and administratively attached units follows.

Commissioner's Office – The Commissioner's Office provides administrative and support services to the department. It is responsible for the overall administration of the department, including direction and program focus. The office provides legal, personnel-related, and computer services for the department and administratively attached boards and commissions.

Centralized Services Division – Centralized Services provides central services including payroll, accounting, purchasing, budgeting, and general services. It provides administrative hearing and dispute resolution services.

Employment Relations Division – Employment Relations administers and enforces federal and state wage and hour, labor relations, workers' compensation, workplace safety, contractor registration, and human rights statutes. In addition, both the Board of Personnel Appeals and Human Rights Commission, which are administratively attached to the department, are part of this division.

Unemployment Insurance Division – Unemployment Insurance administers the state's unemployment insurance laws and related federal programs. The division operates through the Contributions, Program Support, and Claims Processing Bureaus. The Board of Labor Appeals, which is administratively attached to the department, is part of this division.

Workforce Services Division – Workforce Services administers and operates employment, training, and re-training programs, including the job service offices. It collects, analyzes, and disseminates employment statistics, provides services to veterans and dislocated workers, and offers trade adjustment assistance to individuals affected by the North American Free Trade Agreement.

Business Standards Division – Business Standards oversees professional and occupational licensing, weights and measures, and building codes administration. Thirty-six licensing boards that are administratively attached to the department are part of this division. Table 4, on page 8, provides the name of each licensing board and information on fees.

Workers' Compensation Court – The court provides a legal forum for Montana's employees and the insurance industry to resolve disputes arising out of work-related injuries and occupational disease.

Office of Community Services – The office administers federal programs including AmeriCorps and Campus Corps and coordinates community service and volunteer efforts statewide.

The full-time equivalent employees (FTE) were allocated as follows.

Table 3
Full-Time Equivalent Employees
At June 30, 2013

Location	Permanent HB2 FTE	Permanent Proprietary FTE	Total FTE
Commissioner's Office	8	44.25	52.25
Centralized Services Division	9	22.5	31.5
Employment Relations Division	130.6	–	130.6
Unemployment Insurance Division	153	–	153
Workforce Services Division	293.95	–	293.95
Business Standards Division	151.03	–	151.03
Workers' Compensation Court	7	–	7
Office of Community Services	4	–	4
Totals	**756.58**	**66.75**	**823.33**

Source: Compiled by Legislative Audit Division from the Department of Labor and Industry personnel.

Prior Audit Recommendations

The prior financial-compliance audit of the department for the two fiscal years ended June 30, 2011, contained seven recommendations. Of the seven recommendations, the department fully implemented six and partially implemented one. The recommendation not fully implemented relates to following established internal control procedures to ensure Workforce Investment Act (WIA) subrecipients comply with federal audit requirements. Based on our review, the department followed established internal control procedures, and one isolated subrecipient failed to comply with federal audit requirements during the audit period. The department is working with its subrecipient to ensure an audit is completed. As a result, we make no further recommendation at this time.

Chapter II – Findings and Recommendations

Professional and Occupational Licensing Boards

Fees are not commensurate with costs and cash balances exceeded twice the annual appropriation for Professional and Occupational Licensing (POL) boards in fiscal years 2012-13 and 2011-12.

Section 37-1-134, MCA, is specific to the POL boards and states "each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits." Another statute, §17-2-302, MCA, relates to state charge for service funds, which allows funds to maintain a cash balance not greater than twice its annual appropriation, and is applicable to POL boards. POL boards are recorded on the state's accounting records as state special revenue funds, but have a requirement similar to that of internal service funds, in that fees are to be commensurate with costs.

Fees Commensurate with Costs

During our audit we reviewed all 36 of the POL boards to determine whether fees were commensurate with costs. We found 26 of the 36 board's fees were not commensurate with costs in fiscal year 2012-13, and 21 of the board's fees were not commensurate with costs for 2011-12. In all cases where fees were not commensurate with costs, boards have excess fund equity balances.

The following table summarizes the results of each board at fiscal year-end 2012-13 and 2011-12.

Table 4

Professional and Occupational Licensing Boards Fees Commensurate with Costs

POL Board	Fiscal Year 2012-13 Fees Commensurate with Costs	Fiscal Year 2011-12 Fees Commensurate with Costs
Board of Alternative Health Care	No	No
Board of Architects	No	No
Board of Athletic Licensing	Yes	No
Board of Athletic Trainers	No	No
Board of Chiropractors	No	No
Board of Clinical Lab Science Practitioners	No	No
Board of Dentistry	Yes	Yes
Board of Funeral Services	No	Yes
Board of Hearing Aid Dispensers	No	Yes
Board of Landscape Architects	No	No
Board of Licensed Addiction Counselors	No	No
Board of Massage Therapy	No	No
Board of Medical Examiners	No	N/A
Board of Nursing	N/A	No
Board of Nursing Home Admin	No	No
Board of Occupational Therapists	No	Yes
Board of Optometry	No	Yes
Board of Outfitters	No	No
Board of Pharmacy	No	No
Board of Physical Therapy Examiners	No	No
Board of Plumbers	No	Yes
Board of Private Alternative Adolescent Residential or Outdoor Programs	No	Yes
Board of Private Security Officers & Investigators	No	No
Board of Professional Engineers	N/A	No
Board of Psychologists	Yes	Yes
Board of Public Accountants	No	No
Board of Radiologic Technicians	No	Yes
Board of Real Estate Appraisers	No	No
Board of Realty Regulations	No	Yes
Board of Respiratory Care	No	No
Board of Sanitarians	Yes	No
Board of Speech Pathologists	Yes	No
Board of Social Workers & Professional Counselors	Yes	Yes
Board of Veterinary Medicine	Yes	Yes
Cosmetology Board	No	N/A
Electrical Board	N/A	Yes

Source: Compiled by the Legislative Audit Division.

N/A –These boards have a two-year licensing renewal, therefore, were evaluated on a two-year cycle.

Excess Cash Balances

In addition, we reviewed cash balances for each of the boards to determine whether they exceeded twice the annual appropriation and found six of the 36 boards had excess cash balances. Section 17-2-302, MCA, requires state agencies that deposit money into a state charge for services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for that year or greater than the biennial appropriation from the account. The POL boards have annual appropriations.

The following table summarizes the six POL boards with excessive cash balances.

Table 5
Professional and Occupational Licensing Boards Excess Cash Balances

POL Board	Fiscal Year 2012 – Cash Balance Less than Twice the Appropriation	Fiscal Year 2013 – Cash Balance Less than Twice the Appropriation
Board of Architects	No	No
Board of Athletic Licensing	No	Yes
Board of Athletic Trainers	Yes	No
Board of Landscape Architects	Yes	No
Board of Nursing	Yes	No
Board of Pharmacy	No	No

Source: Compiled by the Legislative Audit Division from information recorded on the state's accounting records.

Summary

When fees are not commensurate with costs and boards have excess cash balances, this indicates licensed professionals may be overcharged for their professional licenses and should be refunded. Department of Labor and Industry (department) personnel stated they were aware fees were not commensurate with costs and cash balances exceed twice its annual appropriation for some of the boards and are working on better ways to monitor board expenditure activities and modify rates on a more frequent basis. Department personnel stated they try to maintain a cash balance up to twice the annual appropriation, but recognize that they may not need to maintain such a large cash balance for some boards, so plan to look at cash needs more closely, as some costs, such as legal, can be difficult to estimate. Department personnel also indicated the process to charge fees can be lengthy and many of the boards only meet on a quarterly basis.

Recommendation #1

We recommend the department:

A. *Monitor and set rates to ensure fees are commensurate with costs and cash balances do not exceed twice the annual appropriation, as required by law.*

B. *Refund licensees, when necessary, to ensure fees are commensurate with costs.*

Invalid Uninsured Employers' Fund Accounts Receivable

The department does not have adequate internal controls over the management of and accounting for Uninsured Employers' Fund accounts receivables, which resulted in the department writing off $5.8 million in uncollectible accounts.

The department administers the Uninsured Employers' Fund (UEF) established in §39-71-503, MCA. The purpose of the UEF is to pay injured employees the same benefits the employee would have received had their employer been properly insured under the workers' compensation system. The UEF is statutorily required to recover the costs of providing benefits to injured workers by collecting, from the employer, an amount equal to the benefits paid. Additionally, the UEF is statutorily required to collect penalties and interest from employers.

The department established individual employer accounts receivable on the state's accounting system for amounts assessed to employers under state law, but not yet collected. During the current audit, department personnel conducted an internal review of all UEF employer accounts receivable to determine which were still valid receivables, and which were uncollectible. In this review, the department identified 500 to 600 accounts not being actively managed or billed by the department, some of which dated back to 1993. Department staff attributed this to decisions made by prior management to stop collection activities on certain accounts they deemed uncollectible; while prior management determined the accounts to be uncollectible, the accounts were never removed from the state's accounting system. The accounts were not periodically reviewed and adjusted, but remained idle on the state's accounting system. This is contrary to state accounting policy, which states accounts should not sit idle and requires agencies have polices in place to ensure timely billing of receivables to help lower the number of uncollectible receivables recorded on the accounting system.

As a result of not managing or billing on these accounts for up to 20 years, the department had hundreds of individual UEF employer accounts receivable recorded on the state's accounting records at June 30, 2012 that were not valid receivables. The department made accounting entries in fiscal year 2012-13 to reduce the accounts receivable balance by approximately $5.8 million. While the department made the necessary adjustment in fiscal year 2012-13, the accounting records as of June 30, 2012, were misstated.

The department also established an allowance for uncollectible UEF employer accounts. State accounting policy requires allowance accounts be established so that when netted against the receivables, the resulting dollar amount represents the true value of the receivables expected to be collected. Department staff indicated UEF employer charges are very difficult to collect. Department staff estimated the average annual collection rate was 18.15 percent during fiscal years 2008-09 to 2011-12. As such, the allowance account should approximate 81.85 percent of the total UEF employer accounts receivable balance. From fiscal year 2009-10 to fiscal year 2011-12, the UEF allowance account (as a percentage of receivables) steadily decreased from 65 percent to 39 percent, indicating that the allowance account was not sufficient under state accounting policy.

In fiscal year 2012-13, the department made an approximate $11.5 million entry to increase the allowance for uncollectible accounts as of June 30, 2013. As required by state accounting policy, smaller and more frequent adjusting entries should have been made. Had these adjusting entries been made on a frequent basis, they would have been reflected in the UEF's revenue activity in the year of adjustment. Instead, the entire $11.5 million adjustment was reported in the UEF's revenue activity for fiscal year 2012-13. The department should have recorded a portion of the revenue adjustment to the prior year. The department estimates $10.3 million should have been recorded as a reduction in fund equity to reflect prior year revenues. As a result, the accounting records, as of June 30, 2013, are misstated.

Due to the number of accounts unmanaged and not billed, the magnitude of the misstatements identified during the current audit period, as well as the potential misstatements that could occur in the future as a result of not properly managing, monitoring collection activities, and accounting for employer accounts receivable, we consider there to be a significant deficiency in the department's internal controls.

Recommendation #2

We recommend the department implement procedures to ensure accounts receivable and uncollectible accounts are properly managed, monitored, billed, and adjusted on the state's accounting system, as required by state accounting policy.

Elevator Licensing Program

The department administers the Elevator Licensing Program and is responsible for ensuring the safety of elevators in the state. Under Montana law, the department is required to adopt rules relating to the design, construction, alteration, operation, maintenance, repair, inspection, installation and testing of elevators, escalators and other related equipment. All elevators are required to be inspected annually and a reasonable fee charged, based on the type of elevator equipment being inspected.

The following sections discuss how the department's internal controls for elevator inspections, fees, and billing practices can be improved.

Annual Inspections and Corrective Action Plans

The department does not have adequate controls in place to ensure elevators and related equipment are inspected annually, and corrective action plans are completed within 14 days.

We reviewed a detailed listing of inspection dates for elevators and related equipment, in fiscal years 2012-13 and 2011-12, and found there are approximately 2,900 elevators to inspect across the state. Section 50-60-711 (1), MCA, requires all elevators, escalators, and other related equipment be inspected by the department to ensure compliance with the requirements of the applicable building code. Administrative rule requires inspections be done on an annual basis and more frequent intervals as part of plans of correction. We found approximately 838 elevators were inspected beyond a one year inspection period. Of the 838 late inspections, we noted approximately 600 were up to three months late, 180 were between three and six months late, and 60 were over six months late.

When inspections result in deficiencies, administrative rule requires corrective action plans be completed by elevator owners or lessees within 14 days. Department management stated they do not require corrective action plans to be completed within the 14 day requirement, but instead allow for 30 days. Administrative rule states "When a department inspection reveals a deficient condition, the department, within 24 hours, will issue a corrective notice providing the owner or lessee 14 days to correct the deficiencies. Failure by the owner or lessee to correct the deficiencies or to submit a plan of correction acceptable to the department within the time stated will result in the issuance of a formal notice and order to stop operation of the conveyance."

State laws and administrative rules were established to provide for the safe operation of elevators. When elevators are not inspected annually and corrective action plans are not completed timely, there is increased risk of unsafe elevators operating which could result in injury to members of the public. Department management indicated they have not been able to complete annual inspections and follow the 14 day rule because they do not have adequate staff resources. When we discussed this issue with department personnel they indicated they currently have one inspector available to complete inspections for the entire state. Department staff explained it has been extremely difficult to recruit inspectors and retain staff due to competitive salaries offered outside of state government. The department is not able to pay elevator inspectors a competitive wage. Department management said inspectors are required, by law, to be licensed mechanics, so given their skill sets, are paid much more in the private sector.

Recommendation #3

We recommend the department comply with state law and administrative rule by ensuring elevators and other related equipment is inspected annually and corrective action plans are completed within 14 days.

Inspection Fees and Billing Practices

The department's elevator inspection fees are not sufficient and its billing practices are inadequate to ensure revenues are collected.

Inspection Fees

We reviewed fees charged for elevator inspections and found the fees charged from fiscal years 2008-09 to 2012-13 were not sufficient. The program had a negative fund equity balance each year and had to obtain loans from other programs to cover costs. The expenditures in fiscal years 2012-13 and 2011-12 exceeded revenues in the program by over $100,000 each year, and at fiscal year-end 2012-13 loans payable were at $407,950.

Department management said they did not monitor or adjust the fees because they were waiting to see how many full-time inspectors were going to be needed for the program. The department recently did an analysis to see how many elevators each inspector could manage and compared its fees to four neighboring states. In late fiscal year 2012-13, department staff developed a fee model for the first time for this program, which was based on estimated costs and revenues generated by inspections while keeping fees low in comparison to neighboring states.

The fee model developed for a state with a large geographic area should not necessarily have fees lower than its neighboring states. For example, inspector's travel costs for a large state will likely be higher than neighboring states. Department management said the problems they face with program revenues and expenditures directly relate to the number of inspections they are able to complete. The fee model was built around four full-time inspectors. The department has not been able to recruit and retain inspectors and currently has one inspector. Without an adequate number of inspectors, revenues are not generated.

We believe the fee model should be based on the actual number of inspectors the department can employ and if compared to neighboring states, those states should have similar geographic areas. As a result, the current fee model developed is not reasonable. Section 50-60-711(2), MCA, requires the department to establish and charge a reasonable fee. We do not believe fees are reasonable since the program has a outstanding loan balance at June 30, 2013, which was necessary to cover program costs.

Billing Practices

Department management further attributed some of its fiscal problems to its accounts receivable for inspections. Department personnel stated in fiscal years 2012-13 and 2011-12 they billed elevator owners or lessees after inspections were completed, and if owners or lessees did not pay, they billed again after the next inspection. In other words, they bill on an annual basis. During our audit, we reviewed accounts receivable for elevators that received inspections in 2010 and were not yet paid, which totalled $53,820. Some of these accounts may be uncollectible.

State accounting policy requires agencies have policies in place to ensure timely billing of receivables to help lower the number of uncollectible receivables recorded on the accounting system. It further states receivable and allowance balances should be periodically reviewed and adjusted. Department management said they do not have uncollectible accounts because they are all collectible. Annual billing is not a timely billing process and unpaid inspection fees dating back to 2010 indicate they should review and consider estimating and recording an allowance for uncollectible accounts amount, as required by state accounting policy. The department does not have adequate billing processes in place to ensure timely receipt of revenue.

Recommendation #4

We recommend the department comply with state accounting policy and law by:

A. *Charging sufficient and reasonable inspection fees.*

B. *Implementing procedures to bill accounts on a timely basis and establishing an allowance for uncollectible accounts.*

Unemployment Insurance Programmer Access

The department has not established appropriate segregation of duties over information system change control processes in the Unemployment Insurance Division.

The department administers the Unemployment Insurance (UI) program, which provides benefits to workers who are unemployed through no fault of their own. Benefits are funded in part by the federal government and in part by contributions assessed against employers in the state. The department utilizes two significant information systems to assist in the administration of the UI program: the Montana Integrated System to Improve Customer Service (MISTICS) and the Unemployment Insurance Tax (UIT) systems, which are used for benefit and employer related information and processes, respectively.

We reviewed the change control processes for these two systems, and identified the following issues related to programmer access and segregation of duties.

- The department does not restrict programmer access to the production code for the UIT system. Unauthorized changes could have negative impacts on the department or employers who are assessed contribution rates. Department programming staff indicated they are aware current practices do not adequately segregate duties, and they could make unauthorized changes, but that there are not enough staff with adequate knowledge of the system to employ proper segregation.

- The department does not restrict programmer access to files containing script language used to update the MISTICS production code between the time when the script language is tested and when it is subsequently applied to the production code. Unauthorized changes could have negative impacts on unemployment insurance benefit claimants or the department. Department staff indicated they do not believe it is necessary to restrict programmer access to the scripts used to update MISTICS because it would not be feasible for a programmer to make changes that would be of personal financial benefit, given the complexity of the programming. Programmers, however, still have access that would allow them to make inappropriate changes, whether intentional or not.

Best practices indicate there should be a separation of duties to address the potential for abuse of unauthorized privileges and to reduce the risk of malicious activity without collusion. Programmers have the knowledge and understanding to manipulate programming code, whether intentionally or unintentionally. Inappropriate access increases the risk of changes to data or system processing without detection. Because programmers have this knowledge and understanding, they should not have access to modify the production code or scripts used to modify the code.

The MISTICS and UIT systems are critical in supporting the UI program, which paid out approximately $390 million in claimant benefits and collected approximately $320 million in employer contributions in fiscal years 2011-12 and 2012-13 combined. Because of the size of UI Program and the complexity of the computer systems involved, there is the potential for unapproved system changes to go undetected. Any such changes have the potential to impact a large number of individuals and organizations within the state, as well as, the accuracy and completeness of the financial activity of the UI program. Therefore, we consider there to be a significant deficiency in the department's internal controls.

Recommendation #5

We recommend the department restrict programmer access to production code (including scripts) and ensure proper segregation of duties in the system change control process.

Demotion Pay Rules

The department does not have a process in place to ensure consistent and equitable treatment of employees when demoted.

The State Human Resource Broad Band Pay Plan policy provides guidelines and requirements for agencies when creating pay rules. State policy requires "Agency pay rules must be fiscally responsible, actively managed, and consistent with the agency's mission and objectives." The policy further requires agency pay rules to address the base pay of employees who are demoted. This policy requirement promotes consistent and equitable treatment among all employees who are demoted.

During our audit, we identified a situation where an employee was demoted and moved into another position, but the employee's salary was not decreased to reflect the duties of the new position. A demotion is defined as the assignment of an employee to a lower position in the agency's hierarchical structure. The individual's salary was nearly twice that of any other employee in a similar position. The department agreed to hold the employee harmless, maintaining the previous salary when demoted, for 180 days following the reassignment. Prior to the end of the 180 days, the employee retired at the higher salary. There are many employees that work in the same position and perform the same job duties, yet received nearly half the pay. The employee was being paid close to 200 percent of the maximum under the broad band pay plan, while others were paid close to 100 percent. Inequitable treatment could result in lawsuits and be costly to the department.

Department management said this practice is highly unusual, is not used on a regular basis, and their pay rules do not specifically address demotions. Department personnel also stated the section of state policy they believed to have followed in this situation relates to reclassification pay adjustments. However, in this situation the employee's former position was not reclassified. Instead, the employee was moved into an existing position which paid significantly less. In addition, it does not relieve the department from its responsibility to establish guidelines for setting base pay for employees who are demoted in its pay rules, ensuring consistent and equitable treatment.

Recommendation #6

We recommend the department establish base pay rules for demotions in accordance with the state human resource broad band pay plan policy.

Cash Management

The department does not have adequate internal controls to ensure it complies with cash management requirements in the Unemployment Insurance Program, resulting in excess funds being drawn from the federal government.

The department administers the UI program, and receives federal grant funds from the U.S. Department of Labor, on a reimbursement basis, to cover administrative costs associated with the program. Federal regulations require the department to request reimbursement in the amount of actual cash outlays made for direct and indirect administrative costs incurred.

In our review of the department's draw activity for fiscal years 2011-12 and 2012-13, we identified three instances in which the department drew federal grant funds in excess of actual expenditures incurred for the administration of the UI program. The amounts overdrawn ranged from $72,000 to $315,000. In each of the three instances, the department personnel completing the draws were serving as back-up for the grant accountant who normally performs the draws. Upon return, the grant accountant identified the overdrawn amounts, and reduced subsequent draws until the excess cash on hand was used.

While the department identified the overdrawn amounts and took appropriate action by reducing subsequent draws, the department's established control procedures are not sufficient to ensure that all cash draws are made in accordance with the federal regulations applicable to the program. Office of Management and Budget Circular A-133 requires the department maintain internal control over the UI program that provides reasonable assurance the program is managed in compliance with federal regulations.

Recommendation #7

We recommend the department enhance internal controls to ensure compliance with federal cash management requirements related to the Unemployment Insurance Program.

Other State Compliance

The department is not in compliance with state laws related to collecting unemployment insurance benefit overpayments, certification to the state Lottery for unemployment insurance benefit overpayments, public disclosure of costs on all public documents, and a Board of Chiropractors' appointment.

During our current audit, we noted the following four instances of noncompliance with state law.

- Section 39-51-3206, MCA, states a UI benefit offset may not exceed 50 percent of the weekly benefits to which a claimant is entitled unless the claimant gives written consent. The department does not obtain written consent from its claimants authorizing collection of UI benefit overpayments when more than 50 percent of the weekly benefit amount is acquired as repayment to the department. The department accepts verbal consent to withhold more than 50 percent of the weekly benefits. Department personnel said requiring claimants to submit written authorization would serve as a deterrent to claimants. It is much easier for claimants to call the department and request they withhold more than 50 percent than it is to require they submit a written consent.
- The 2011 Legislative Session enacted §39-51-3208(2), MCA, requiring the department to periodically certify to the state Lottery the names and social security numbers of persons who have incurred benefit overpayments and who are liable for unpaid taxes, including penalties and interest. The law became effective October 1, 2011. The department has not implemented procedures to certify to the state Lottery the names and social security numbers of persons that have incurred unemployment insurance benefit overpayments and employers that are liable for unpaid taxes, including penalties and interest. Department management placed other projects, including implementation of a new computer system, at higher priority levels, as this was lower risk, and they did not have the resources to implement procedures to make periodic certifications to the state Lottery.
- Section 18-7-306, MCA, requires each agency to include a public disclosure of costs on all public documents. If the cost cannot be reasonably estimated, the publication must state, "This document is printed at state expense. Information on the cost of publication may be obtained by contacting the Department of Administration." The department does not include the required cost disclosures on all of its public documents.
- Section 37-12-201, MCA, requires the Board of Chiropractors to elect annually a secretary-treasurer from its membership. The board does not have a secretary-treasurer and was not aware of the requirement so has never made this election. This could result in improper segregation of duties, as the responsibilities of a secretary-treasurer is different than that of a president and vice-president.

Recommendation #8

We recommend the department implement procedures to ensure compliance with laws related to collecting unemployment insurance benefit overpayments, certification to the state Lottery for unemployment insurance benefit overpayments, public disclosure of costs on all public documents, and a Board of Chiropractors' appointment.

Independent Auditor's Report and Department Financial Schedules

LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor
Deborah F. Butler, Legal Counsel

Deputy Legislative Auditors
Cindy Jorgenson
Angus Maciver

Independent Auditor's Report

The Legislative Audit Committee
of the Montana State Legislature:

Introduction
We have audited the accompanying Schedules of Changes in Fund Equity & Property Held in Trust, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out of the Department of Labor and Industry for each of the fiscal years ended June 30, 2013, and 2012, and the related notes to the financial schedules.

Management's Responsibility for the Financial Schedules
Management is responsible for the preparation and fair presentation of these financial schedules in accordance with the regulatory format prescribed by the Legislative Audit Committee, based on the transactions posted to the state's accounting system without adjustment; this responsibility includes recording transactions in accordance with state accounting policy; and designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial schedules that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility
Our responsibility is to express opinions on these financial schedules based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial schedules. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial schedules, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the department's preparation and fair presentation of the financial schedules in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the department's internal control, and accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as the overall presentation of the financial schedules.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Basis for Adverse Opinions on U.S. Generally Accepted Accounting Principles
As described in Note 1, the financial schedules are prepared from the transactions posted to the state's primary accounting system without adjustment, in the regulatory format prescribed by the Legislative Audit Committee. This is a basis of accounting other than accounting principles generally accepted in the United States of America. The financial schedules are not intended to, and do not, report assets, liabilities, and cash flows.

The effects on the financial schedules of the variances between the regulatory basis of accounting described in Note 1 and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material.

Adverse Opinions on U.S. Generally Accepted Accounting Principles
In our opinion, because of the significance of the matter discussed in the "Basis for Adverse Opinions on U.S. Generally Accepted Accounting Principles" paragraph, the financial schedules referred to above do not present fairly, in accordance with accounting principles generally accepted in the United States of America, the financial position of the Department of Labor and Industry as of June 30, 2013 and June 30, 2012, or changes in financial position or cash flows for the year then ended.

Unmodified Opinions on Regulatory Basis of Accounting
In our opinion, the financial schedules referred to above present fairly, in all material respects, the results of operations and changes in fund equity and property held in trust of the Department of Labor and Industry for each of the fiscal years ended June 30, 2013, and 2012, in conformity with the basis of accounting described in note 1.

Respectfully submitted,

/s/ Cindy Jorgenson

Cindy Jorgenson, CPA
Deputy Legislative Auditor
Helena, Montana

August 30, 2013

DEPARTMENT OF LABOR & INDUSTRY
SCHEDULE OF CHANGES IN FUND EQUITY & PROPERTY HELD IN TRUST
FOR THE FISCAL YEAR ENDED JUNE 30, 2013

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Internal Service Fund	Agency Fund	Private Purpose Trust Fund
FUND EQUITY: July 1, 2012	$ (25,981)	$ 42,595,009	$ 470,323	$ 135,988,603	$ 1,317,306	$ 0	$ 25,603,500
PROPERTY HELD IN TRUST: July 1, 2012						$ 30,340	
ADDITIONS							
Budgeted Revenues & Transfers-In	41,828	34,423,767	34,946,819	222,126,293	3,132,460		
Nonbudgeted Revenues & Transfers-In		2,819,960	184,612	6			2,059,000
Prior Year Revenues & Transfers-In Adjustments		166,450	(10,397)	(420,990)	1,807,537		
Direct Entries to Fund Equity	1,466,702	(96,895)			(26,645)		
Additions to Property Held in Trust						893,287	
Total Additions	1,508,530	37,313,282	35,121,034	221,705,308	4,913,352	893,287	2,059,000
REDUCTIONS							
Budgeted Expenditures & Transfers-Out	1,482,657	42,437,069	34,283,713	179,145,607	6,778,283		
Nonbudgeted Expenditures & Transfers-Out		861,737		2,966,579	96,493		150,000
Prior Year Expenditures & Transfers-Out Adjustments	(14,229)	(460,789)	(119,007)	(954,407)	(24,412)		
Reductions in Property Held in Trust						901,050	
Total Reductions	1,468,428	42,838,017	34,164,706	181,157,779	6,850,364	901,050	150,000
FUND EQUITY: June 30, 2013	$ 14,121	$ 37,070,273	$ 1,426,650	$ 176,536,132	$ (619,707)	$ 0	$ 27,512,500
PROPERTY HELD IN TRUST: June 30, 2013						$ 22,577	

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment.
Additional information is provided in the notes to the financial schedules beginning on page A-9.

DEPARTMENT OF LABOR & INDUSTRY
SCHEDULE OF CHANGES IN FUND EQUITY & PROPERTY HELD IN TRUST
FOR THE FISCAL YEAR ENDED JUNE 30, 2012

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Internal Service Fund	Agency Fund	Private Purpose Trust Fund
FUND EQUITY: July 1, 2011	$ (82,020)	$ 39,377,291	$ 262,974	$ 98,832,144	$ 614,859	$ 121,414	$ 24,822,904
PROPERTY HELD IN TRUST: July 1, 2011						$ 99,407	
ADDITIONS							
Budgeted Revenues & Transfers-In	34,396	46,349,362	39,490,548	256,748,016	7,003,682		
Nonbudgeted Revenues & Transfers-In		649,441	6,444	93,670	32		780,596
Prior Year Revenues & Transfers-In Adjustments	(7,600)	(129,309)	108,168	(998,736)		(479,383)	
Direct Entries to Fund Equity	1,583,813	51,634	381				
Additions to Property Held in Trust						362,040	
Total Additions	1,610,609	46,921,128	39,605,541	255,842,950	7,003,714	(117,343)	780,596
REDUCTIONS							
Budgeted Expenditures & Transfers-Out	1,557,329	43,272,137	39,454,942	218,987,473	6,106,533		
Nonbudgeted Expenditures & Transfers-Out		499,846		2,106,597	196,189		
Prior Year Expenditures & Transfers-Out Adjustments	(2,759)	(68,573)	(56,751)	(2,407,579)	(1,456)	(357,969)	
Reductions in Property Held in Trust						431,107	
Total Reductions	1,554,570	43,703,410	39,398,191	218,686,491	6,301,266	73,138	0
FUND EQUITY: June 30, 2012	$ (25,981)	$ 42,595,009	$ 470,324	$ 135,988,603	$ 1,317,307	$ 0	$ 25,603,500
PROPERTY HELD IN TRUST: June 30, 2012						$ 30,340	

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Additional information is provided in the notes to the financial schedules beginning on page A-9.

DEPARTMENT OF LABOR & INDUSTRY
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN
FOR THE FISCAL YEAR ENDED JUNE 30, 2013

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Internal Service Fund	Private Purpose Trust Fund	Total
TOTAL REVENUES & TRANSFERS-IN BY CLASS							
Licenses and Permits		$ 14,926,125					$ 14,926,125
Taxes		155	$ 5,393		$ 303		5,851
Charges for Services		888,254	11,158		3,995,994		4,895,406
Investment Earnings		42,617		$ 4,199,345			4,241,962
Fines and Forfeits	$ 41,828	(6,084,593)	668,004	400			(5,374,361)
Monetary Settlements		507,054					507,054
Sale of Documents, Merchandise and Property		44,235		4,550			48,785
Rentals, Leases and Royalties		46,537					46,537
Contributions and Premiums		22,385,110		166,883,194			189,268,304
Grants, Contracts, and Donations		299,459				$ 2,059,000	2,358,459
Transfers-in		4,321,692	1,689,351				6,011,043
Capital Asset Sale Proceeds		16,129					16,129
Inception of Lease/Installment Contract		16,646					16,646
Federal Indirect Cost Recoveries					943,700		943,700
Miscellaneous		757					757
Federal			32,747,128	50,617,820			83,364,948
Total Revenues & Transfers-In	41,828	37,410,177	35,121,034	221,705,309	4,939,997	2,059,000	301,277,345
Less: Nonbudgeted Revenues & Transfers-In		2,819,960	184,612	6		2,059,000	5,063,578
Prior Year Revenues & Transfers-In Adjustments		166,450	(10,397)	(420,990)	1,807,537		1,542,600
Actual Budgeted Revenues & Transfers-In	41,828	34,423,767	34,946,819	222,126,293	3,132,460	0	294,671,167
Estimated Revenues & Transfers-In	57,000	44,865,676	39,310,651	214,198,047	6,864,296		305,295,670
Budgeted Revenues & Transfers-In Over (Under) Estimated	$ (15,172)	$ (10,441,909)	$ (4,363,832)	$ 7,928,246	$ (3,731,836)	$ 0	$ (10,624,503)
BUDGETED REVENUES & TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS							
Licenses and Permits		$ (420,717)					$ (420,717)
Taxes		(10,316)	$ (510)		$ (7)		(10,833)
Charges for Services		(1,374,701)	(12,342)	$ (2,000)	(2,310,659)		(3,699,702)
Investment Earnings		(9,890)		2,772,840			2,762,950
Fines and Forfeits	$ (15,172)	(8,697,351)	132,130	(200)			(8,580,593)
Sale of Documents, Merchandise and Property		(7,435)		(11,950)			(19,385)
Rentals, Leases and Royalties		(6,500)					(6,500)
Contributions and Premiums		2,620,521		(13,278,899)			(10,658,378)
Grants, Contracts, and Donations		(1,330,139)					(1,330,139)
Transfers-in		(1,192,068)	(718,578)				(1,910,646)
Capital Asset Sale Proceeds		(11,519)					(11,519)
Federal Indirect Cost Recoveries					(1,421,170)		(1,421,170)
Miscellaneous		(1,794)		(1,000,000)			(1,001,794)
Federal			(3,764,532)	19,448,455			15,683,923
Budgeted Revenues & Transfers-In Over (Under) Estimated	$ (15,172)	$ (10,441,909)	$ (4,363,832)	$ 7,928,246	$ (3,731,836)	$ 0	$ (10,624,503)

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment.
Additional information is provided in the notes to the financial schedules beginning on page A-9.

DEPARTMENT OF LABOR & INDUSTRY
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN
FOR THE FISCAL YEAR ENDED JUNE 30, 2012

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Enterprise Fund	Internal Service Fund	Agency Fund	Private Purpose Trust Fund	Total
TOTAL REVENUES & TRANSFERS-IN BY CLASS								
Licenses and Permits		$ 14,289,181						$ 14,289,181
Taxes		282	$ 6,443		$ 319			7,044
Charges for Services		2,491,327	7,300		5,631,023			8,129,650
Investment Earnings		50,860		$ 3,597,261				3,648,121
Fines and Forfeits	$ 26,057	4,608,267	686,279	100				5,320,703
Monetary Settlements		422,860						422,860
Sale of Documents, Merchandise and Property		50,981		675				51,656
Rentals, Leases and Royalties		43,857						43,857
Contributions and Premiums		21,665,835		164,887,001				186,552,836
Grants, Contracts, and Donations		77,812				$ (479,383)	$ 780,596	379,025
Transfers-in		3,147,292		100,000				3,247,292
Capital Asset Sale Proceeds	739	20,940						21,679
Federal Indirect Cost Recoveries					1,372,372			1,372,372
Miscellaneous				(165)				(165)
Federal			38,905,138	87,258,078				126,163,216
Total Revenues & Transfers-In	26,796	46,869,494	39,605,160	255,842,950	7,003,714	(479,383)	780,596	349,649,327
Less: Nonbudgeted Revenues & Transfers-In		649,441	6,444	93,670	32		780,596	1,530,183
Prior Year Revenues & Transfers-In Adjustments	(7,600)	(129,309)	108,168	(998,736)		(479,383)		(1,506,860)
Actual Budgeted Revenues & Transfers-In	34,396	46,349,362	39,490,548	256,748,016	7,003,682	0	0	349,626,004
Estimated Revenues & Transfers-In	57,740	43,061,654	41,827,830	226,182,002	6,678,906			317,808,132
Budgeted Revenues & Transfers-In Over (Under) Estimated	$ (23,344)	$ 3,287,708	$ (2,337,282)	$ 30,566,014	$ 324,776	$ 0	$ 0	$ 31,817,872
BUDGETED REVENUES & TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS								
Licenses and Permits		$ (284,738)						$ (284,738)
Taxes		(11,306)	$ (510)		$			(11,816)
Charges for Services		543,326	(15,700)	$ (2,000)	469,092			994,718
Investment Earnings		(6,792)		2,177,091				2,170,299
Fines and Forfeits	$ (23,344)	2,038,086	161,278	(500)				2,175,520
Sale of Documents, Merchandise and Property		(589)		(58,885)				(59,474)
Rentals, Leases and Royalties		(6,500)						(6,500)
Contributions and Premiums		2,089,580		9,489,659				11,579,239
Grants, Contracts, and Donations		(1,522,983)						(1,522,983)
Transfers-in		453,594	(380,000)					73,594
Capital Asset Sale Proceeds		(2,120)						(2,120)
Federal Indirect Cost Recoveries					(144,316)			(144,316)
Miscellaneous		(1,850)		(1,000,050)				(1,001,900)
Federal			(2,102,350)	19,960,699				17,858,349
Budgeted Revenues & Transfers-In Over (Under) Estimated	$ (23,344)	$ 3,287,708	$ (2,337,282)	$ 30,566,014	$ 324,776	$ 0	$ 0	$ 31,817,872

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment.
Additional information is provided in the notes to the financial schedules beginning on page A-9.

DEPARTMENT OF LABOR & INDUSTRY
SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT
FOR THE FISCAL YEAR ENDED JUNE 30, 2013

	Business Standards Division	Commissioner's Office/ Centralized Services Division	Employment Relations Division	Office of Community Services	Unemployment Insurance Division	Workers Compensation Court	Workforce Services Division	Total
PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT								
Personal Services								
Salaries	$ 6,398,859	$ 4,463,914	$ 5,822,961	$ 254,547	$ 6,980,241	$ 381,871	$ 11,873,713	$ 36,176,106
Other Compensation	123,372		5,200	400	7,450		3,370	139,792
Employee Benefits	2,260,799	1,346,372	2,023,304	95,857	2,674,973	118,789	4,450,610	12,970,704
Personal Services-Other		(56,177)						(56,177)
Total	8,783,030	5,754,109	7,851,465	350,804	9,662,664	500,660	16,327,693	49,230,425
Operating Expenses								
Other Services	1,249,342	544,455	1,749,033	100,000	1,507,640	18,773	1,045,952	6,215,195
Supplies & Materials	463,962	279,074	368,431	39,640	352,962	13,456	551,242	2,068,767
Communications	384,091	107,294	273,925	59,758	940,863	6,718	777,951	2,550,600
Travel	514,628	56,540	276,751	26,310	60,121	6,975	429,131	1,370,456
Rent	411,040	298,804	640,480	21,760	361,821	36,275	944,736	2,714,916
Utilities	3,554		6,977		25,141	3,187	117,430	156,289
Repair & Maintenance	113,724	123,796	62,448	1,309	86,506	2,518	339,375	729,676
Other Expenses	2,031,177	909,902	795,585	235,597	3,916,872	42,570	1,697,476	9,629,179
Total	5,171,518	2,319,865	4,173,630	484,374	7,251,926	130,472	5,903,293	25,435,078
Equipment & Intangible Assets								
Equipment			42,906				16,206	59,112
Capital leases - equipment							16,646	16,646
Intangible Assets					1,778,067			1,778,067
Total			42,906		1,778,067		32,852	1,853,825
Grants								
From State Sources	4,776						286,464	291,240
From Federal Sources				2,645,128			6,766,567	9,411,695
Total	4,776			2,645,128			7,053,031	9,702,935
Benefits & Claims								
To Individuals			2,350,910		176,916,167			179,267,077
From State Sources			82,850					82,850
From Other Sources			150,000					150,000
Insurance Payments			56,708					56,708
Total			2,640,468		176,916,167			179,556,634
Transfers-out								
Fund transfers	167,219	3,092	34,190	136,213	74,861		38,781	454,356
Mandatory Transfers							174,010	174,010
Total	167,219	3,092	34,190	136,213	74,861		212,791	628,366
Debt Service								
Loans							2,364	2,364
Capital Leases							4,188	4,188
Total							6,552	6,552
Other Post Employment Benefits								
Other Post Employment Benefits		215,478						215,478
Total		215,478						215,478
Total Expenditures & Transfers-Out	$ 14,126,543	$ 8,292,544	$ 14,742,659	$ 3,616,519	$ 195,683,685	$ 631,132	$ 29,536,212	$ 266,629,294
EXPENDITURES & TRANSFERS-OUT BY FUND								
General Fund		$ 276,662	$ 1,070,709	$ 121,957			$ (900)	$ 1,468,428
State Special Revenue Fund	$ 13,942,187	590,540	11,589,997	53,112	$ 3,874,517	$ 631,132	12,156,532	42,838,017
Federal Special Revenue Fund	183,478	575,856	603,452	3,441,450	11,983,130		17,377,340	34,164,706
Enterprise Fund			1,328,501		179,826,038		3,240	181,157,779
Internal Service Fund	878	6,849,486						6,850,364
Private Purpose Trust Fund			150,000					150,000
Total Expenditures & Transfers-Out	14,126,543	8,292,544	14,742,659	3,616,519	195,683,685	631,132	29,536,212	266,629,295
Less: Nonbudgeted Expenditures & Transfers-Out	59,682	95,614	847,401	30,300	2,909,871		131,939	4,074,809
Prior Year Expenditures & Transfers-Out Adjustments	(246,074)	(37,363)	(63,344)	4,030	(1,045,772)	(5,834)	(178,489)	(1,572,845)
Actual Budgeted Expenditures & Transfers-Out	14,312,934	8,234,292	13,958,601	3,582,189	193,819,586	636,966	29,582,762	264,127,330
Budget Authority	17,939,945	10,699,653	15,455,835	3,752,671	227,872,455	672,204	42,723,095	319,115,859
Unspent Budget Authority	$ 3,627,010	$ 2,465,360	$ 1,497,234	$ 170,482	$ 34,052,869	$ 35,238	$ 13,140,334	$ 54,988,529
UNSPENT BUDGET AUTHORITY BY FUND								
General Fund		$ 1	$ 1	$ 105			$ 900	$ 1,008
State Special Revenue Fund	$ 3,503,760	1,999,703	860,123	16,327	$ 16,557,697	$ 35,238	996,561	23,969,409
Federal Special Revenue Fund	123,250	369,082	157,518	154,050	4,500,964		12,128,112	17,432,977
Enterprise Fund			479,591		12,994,208		14,760	13,488,560
Internal Service Fund		96,574						96,574
Unspent Budget Authority	$ 3,627,010	$ 2,465,360	$ 1,497,234	$ 170,482	$ 34,052,869	$ 35,238	$ 13,140,334	$ 54,988,529

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

DEMPARTMENT OF LABOR & INDUSTRY
SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT
FOR THE FISCAL YEAR ENDED JUNE 30, 2012

	Business Standards Division	Commissioner's Office/ Centralized Services Division	Employment Relations Division	Office of Community Services	Unemployment Insurance Division	Workers Compensation Court	Workforce Services Division	Total
PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT								
Personal Services								
Salaries	$ 6,180,730	$ 4,140,741	$ 5,409,813	$ 308,559	$ 6,902,463	$ 374,441	$ 12,249,155	$ 35,565,902
Other Compensation	109,838		7,275	200	10,350		2,329	129,992
Employee Benefits	2,258,265	1,284,345	1,921,477	116,786	2,649,488	119,849	4,624,250	12,974,460
Personal Services-Other		26,903						26,903
Total	8,548,833	5,451,989	7,338,565	425,545	9,562,301	494,290	16,875,734	48,697,257
Operating Expenses								
Other Services	2,037,063	463,676	1,276,963	147,740	1,550,511	14,667	1,437,829	6,928,449
Supplies & Materials	539,830	236,390	131,933	80,601	339,465	8,330	849,318	2,185,867
Communications	359,343	101,937	259,086	90,962	1,055,319	7,232	759,706	2,633,585
Travel	517,906	66,774	225,076	35,255	85,119	9,812	447,493	1,387,435
Rent	383,400	252,792	564,967	17,631	327,177	36,158	902,651	2,484,776
Utilities	4,142		6,859		25,308	3,142	123,597	163,048
Repair & Maintenance	91,611	135,527	65,780	893	102,639	3,817	355,004	755,271
Other Expenses	2,634,199	884,111	1,049,949	238,147	3,344,519	57,493	2,196,295	10,404,713
Goods Purchased For Resale	841		11					852
Total	6,568,335	2,141,207	3,580,624	611,229	6,830,057	140,651	7,071,893	26,943,996
Equipment & Intangible Assets								
Equipment	22,008	(86,615)	90,809				18,163	44,365
Total	22,008	(86,615)	90,809				18,163	44,365
Grants								
From State Sources	8,582						412,183	420,765
From Federal Sources				2,931,075			11,649,409	14,580,484
Grant To Non-Governmental Ent				25,000				25,000
Total	8,582			2,956,075			12,061,592	15,026,249
Benefits & Claims								
To Individuals			1,663,848		215,825,931			217,489,779
From State Sources			90,550					90,550
Insurance Payments			102,782					102,782
Total			1,857,180		215,825,931			217,683,111
Transfers-out								
Fund transfers	114,343	22,695	125,048	30,432	87,345		158,378	538,241
Mandatory Transfers					529		175,020	175,549
Total	114,343	22,695	125,048	30,432	87,874		333,398	713,890
Debt Service								
Loans							2,364	2,364
Capital Leases							1,525	1,525
Total							3,889	3,889
Other Post Employment Benefits								
Other Post Employment Benefits		173,302						173,302
Total		173,302						173,302
Total Expenditures & Transfers-Out	$ 15,262,101	$ 7,702,578	$ 12,992,226	$ 4,023,281	$ 232,306,163	$ 634,941	$ 36,364,669	$ 309,285,959
EXPENDITURES & TRANSFERS-OUT BY FUND								
General Fund		$ 277,931	$ 1,073,323	$ 123,426			$ 79,890	$ 1,554,570
State Special Revenue Fund	$ 15,258,876	583,038	10,845,783	379,775	$ 3,459,197	$ 634,941	12,541,800	43,703,410
Federal Special Revenue Fund	2,055	541,513	590,145	3,520,080	11,017,219		23,727,179	39,398,191
Enterprise Fund			840,944		217,829,747		15,800	218,686,491
Internal Service Fund	1,170	6,300,096						6,301,266
Agency Fund			(357,969)					(357,969)
Total Expenditures & Transfers-Out	15,262,101	7,702,578	12,992,226	4,023,281	232,306,163	634,941	36,364,669	309,285,959
Less: Nonbudgeted Expenditures & Transfers-Out	82,172	195,019	415,005	43,356	2,003,815		63,265	2,802,632
Prior Year Expenditures & Transfers-Out Adjustments	1,841	(1,936)	(361,054)	(9,847)	(2,584,506)		60,415	(2,895,087)
Actual Budgeted Expenditures & Transfers-Out	15,178,088	7,509,495	12,938,275	3,989,772	232,886,854	634,941	36,240,989	309,378,414
Budget Authority	18,517,681	9,481,105	14,610,894	4,372,240	257,960,152	670,301	45,868,836	351,481,209
Unspent Budget Authority	$ 3,339,593	$ 1,971,610	$ 1,672,619	$ 382,468	$ 25,073,298	$ 35,360	$ 9,627,847	$ 42,102,795
UNSPENT BUDGET AUTHORITY BY FUND								
General Fund		$ 1,233	$	$				$ 1,233
State Special Revenue Fund	$ 3,328,975	1,278,306	1,359,468	134,767	$ 209,877	$ 35,360	$ 2,505,607	8,852,360
Federal Special Revenue Fund	10,618	379,207	90,493	247,701	4,235,149		7,100,875	12,064,043
Enterprise Fund			222,658		20,628,272		21,365	20,872,295
Internal Service Fund		312,864						312,864
Unspent Budget Authority	$ 3,339,593	$ 1,971,610	$ 1,672,619	$ 382,468	$ 25,073,298	$ 35,360	$ 9,627,847	$ 42,102,795

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment.
Additional information is provided in the notes to the financial schedules beginning on page A-9.

Department of Labor and Industry
Notes to the Financial Schedules
For the Two Fiscal Years Ended June 30, 2013

1. Summary of Significant Accounting Policies

Basis of Accounting

The Department of Labor & Industry (the department) uses the modified accrual basis of accounting, as defined by state accounting policy, for its Governmental fund category (General, State Special Revenue, and Federal Special Revenue). In applying the modified accrual basis, the department records:

- Revenues when it receives cash or when receipts are realizable, measurable, earned, and available to pay current period liabilities.
- Expenditures for valid obligations when the department incurs the related liability and it is measurable, with the exception of the cost of employees' annual and sick leave. State accounting policy requires the department to record the cost of employees' annual and sick leave when used or paid.

The department uses accrual basis accounting for its Proprietary (Enterprise and Internal Service) and Fiduciary (Private-Purpose Trust and Agency) fund categories. Under the accrual basis, as defined by state accounting policy, the department records revenues in the accounting period when realizable, measurable, and earned, and records expenses in the period incurred when measurable.

Expenditures and expenses may include: entire budgeted service contracts even though the department receives the services in a subsequent fiscal year; goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end; and equipment ordered with a purchase order before fiscal year-end.

Basis of Presentation

The financial schedule format was adopted by the Legislative Audit Committee. The financial schedules are prepared from the transactions posted to the state's accounting system without adjustment.

The department uses the following funds:

Governmental Fund Category

- **General Fund** – to account for all financial resources except those required to be accounted for in another fund.

- **State Special Revenue Fund** – to account for proceeds of specific revenue sources that are legally restricted to expenditures for specific state program purposes. Department State Special Revenue Funds include the various professional and occupational licensing boards, contracts from Public Health and Human Services, the Employment Security Account, Subsequent Injury Administration, Building Codes, Weights and Measures, Workers' Compensation Regulation, Uninsured Employers, and cashed Plan I and II Securities.
- **Federal Special Revenue Fund** – to account for activities funded from federal revenue sources. Department Federal Special Revenue Funds include the Workforce Investment Act, Employment Services, and Unemployment Insurance Administrative Funds.

Proprietary Fund Category

- **Internal Service Fund** – to account for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursement basis. Department Internal Service Funds include funds to accumulate and distribute costs. These include the Commissioner's Office and Centralized Services Division, Business Standards Division Legal Services, and the Office of Information Technology.
- **Enterprise Fund** – to account for operations (a) financed and operated in a manner similar to private business enterprises, where the Legislature intends that the department finance or recover costs primarily through user charges; (b) where the Legislature has decided that periodic determination of revenues earned, expenses incurred, or net income is appropriate; (c) where the activity is financed solely by a pledge of the net revenues from fees and charges of the activity; or (d) when laws or regulations require that the activities' cost of providing services, including capital costs, be recovered with fees and charges rather than with taxes or similar revenues. Department Enterprise Funds include the Subsequent Injury Fund and the Unemployment Insurance (UI) Fund. The June 30, 2013 UI fund equity was $179,686,756. The fund equity balance included $172,699,889 in cash held by the United States Treasury.

Fiduciary Fund Category

- **Private-Purpose Trust Fund** – to account for activity of any trust arrangement not properly reported in a pension fund or an investment trust fund where the principal and income benefit individuals, private organizations, or other governments. Department private purpose trust funds are the Workers' Compensation Plan I and Plan II Securities funds.
- **Agency Fund** – to account for resources held by the state in a custodial capacity. Agency funds may be used on a limited basis for internal (to the State) clearing account activity but these must have a zero balance at fiscal year-end. The department agency funds include the Wage Collection Fund and for the year ended June 30, 2012, the Settlements Fund.

2. General Fund Equity Balance

The negative fund equity balance in the General Fund does not indicate overspent appropriation authority. The department has authority to pay obligations from the statewide fund when it pays General Fund obligations. The department's outstanding liabilities exceeded the assets it had placed in the fund, resulting in a negative ending General Fund equity balances for the fiscal year ended June 30, 2012. This balance was positive for the fiscal year ending June 30, 2013.

3. Direct Entries to Fund Equity

Direct entries to fund equity in the General and State Special Revenue funds for both fiscal years include entries generated by SABHRS to reflect the flow of resources within individual funds shared by separate agencies.

Direct entries to fund equity balances in the General, State Special Revenue, and Federal Special Revenue, and Internal Service funds for both fiscal years, and the Enterprise Fund for fiscal year 2013 also include correction of errors from a previous period that occurred at least two fiscal years prior and entries to record or adjust fund equity classifications.

4. Unemployment Insurance

Benefit Payments

Unemployment Insurance Benefits and Claims payments reached peak levels in fiscal year 2010, due to the recession. As the economy has improved, and people are returning to work, benefits continue to decrease. Benefits and Claims payments totaled $215,825,931 for the fiscal year ending June 30, 2012, to $176,916,167 for the fiscal year ending June 30, 2013.

Due from Federal Government

For the fiscal year ending June 30, 2013, the department made an error in booking the amount due from the federal government in the Unemployment Insurance Administration fund. This error resulted in revenues exceeding expenditures in the fund by $895,450. As a result, federal revenues, due from federal government, and fund equity are overstated in the fund as of June 30, 2013. In response to this incident, the department is creating written procedures for recording this entry, and providing additional training for the staff who create the entry.

5. Uninsured Employers' Fund

Allowance for Doubtful Accounts

An internal review of the fund equity for the Uninsured Employers' Fund revealed to the Department that the methodology previously used to calculate the fund's allowance for doubtful accounts was inadequate, resulting in an overstated fund equity balance. A change in methodology for estimating the Allowance for Doubtful Accounts for the Uninsured Employers' Fund was instituted for the fiscal year ending June 30, 2013. The result in this change in methodology was an increase in the Allowance for Doubtful Accounts from $7,425,298 in fiscal year 2012 to $13,247,901 in fiscal year 2013. When recording this entry, the Department had difficulty determining how much of this increase was related to current year revenue, and how much was related to activity of previous years. As such, as of June 30, 2013, the entire increase was recorded as a reduction to current year revenue. This resulted in a negative revenue balance in the Uninsured Employers' Fund at fiscal year-end. This determination was made, and a correcting journal completed, in Fiscal Year 2014.

Accounts Receivable

During the fiscal year ending June 30, 2013, an internal review of customer accounts was initiated. As a result of this review, $1,515,485 in customer accounts was written off. These accounts were all at least ten years old. The internal review is ongoing, and additional write-offs are expected. The balance of customer accounts to be written off was estimated at $4,338,962, and Accounts Receivable for this fund was reduced by that amount for the fiscal year ending June 30, 2013.

Department of Labor and Industry

Department Response

Montana Department of
LABOR & INDUSTRY

Steve Bullock, Governor
Pam Bucy, Commissioner

Centralized Services Division
Kim Moog, Administrator

RECEIVED
OCT 22 2013
LEGISLATIVE AUDIT DIV.

October 21, 2013

Ms Tori Hunthausen
Legislative Auditor
Legislative Audit Division
PO Box 201705
Helena MT 59620-1705

Subject: Financial Compliance Audit #13-15: Department of Labor and Industry

Dear Ms. Hunthausen:

The Department of Labor and Industry has reviewed the October 2013 Financial Compliance Audit for the two fiscal years ending June 30, 2013. The Department would like to thank your audit staff for their review. As a Department we are always looking for ways to improve and appreciate their efforts to help assure we are providing quality services with the best accountability possible. Our responses to the recommendations appear below:

Recommendation #1

We recommend the department:

A. **Monitor and set rates to ensure fees are commensurate with costs and cash balances do not exceed twice the annual appropriation, as required by law.**
B. **Refund licensees, when necessary, to ensure fees are commensurate with costs.**

Response:

A. **Partially Concur.** The department agrees that cash balances should not exceed twice the annual appropriation, and has developed plans for reducing cash balances of the funds in violation of this statute. The department also agrees that monitoring fund equity balance for the professional and occupational licensing boards is necessary to ensure that a fair and equitable fee is established for licensees. However, because this interpretation of the term "fees commensurate with costs" utilizes the fiscal year as its framework, the department is unable to ever be fully compliant, due to the fact that the operating cycle of most boards does not align with the state's fiscal year. In order to maximize staff resources and minimize fluctuations in staffing levels amongst department staff, renewal periods for the various boards are distributed throughout the year. The result is operating cycles that vary from board to board.

An example of a Board that would be unable to be compliant is the Board of Massage Therapists. In 2012, the Board of Massage Therapists was determined to have fees that were not commensurate with costs due to the fact that revenues exceeded expenses for the Board in that year by more than 10%. For fees to have been considered commensurate with costs in that fiscal year, the Board would have needed to refund licensees approximately $55,000. The resulting fund equity balance at year end would have been adequate to support operations of the Board for an estimated 32 days. This would not be sufficient to sustain the Board until their next renewal deadline of August 31. The result would be a negative cash balance for that board until the next renewal took place, which would put the department at risk of non-compliance with 17-2-107, MCA, the statute that indicates negative cash balances should not exist within a fund or subfund for more than seven working days.

This interpretation of "fees commensurate with costs" also does not allow for any type of reserve or contingency funding. Board expenses can vary significantly from year to year depending on the number of complaints received by the Board and the complexity of any ensuing investigation. It is important for the Board to have a reserve in order to be able to respond to these types of unexpected expenses.

The audit report mentions that internal service funds have a similar "fees commensurate with costs" requirement. The requirement is more clearly defined in internal service fund environments, for two reasons. First, internal service funds are generally allowed to maintain at least a sixty day working capital balance. There is no similarly defined allowable balance for the boards. Second, internal service funds generally receive revenue on a regular and reoccurring basis throughout the fiscal year. The professional and occupational licensing boards hold renewals either annually or biennially. The revenue received during these renewals must sustain the boards until their next renewal, therefore, a sixty day working capital, if it were allowed, would not be a sufficient or responsible reserve for boards to maintain.

From a historical perspective, this statute has long been subject to various interpretations. A history of the statute and compliance activity associated with it is detailed below.

Section 37-1-134, MCA, was enacted by Chap. 345, L. 1981 [Senate Bill 412]. The text of sec. 37-1-134, MCA, as originally enacted in 1981 stated: "All licensing boards allocated to the department shall set fees reasonably related to the respective program area costs. Unless otherwise provided by law, each board within the department may establish fee including but not limited to fees for programs areas such as application, examination, renewal, reciprocity, late renewal, and continuing educations. Board costs not related to a specific program areas may be equitably distributed to program areas as determined by the board. Each board shall maintain records sufficient to support the fees charged for each program area."

The preamble to SB 412 provided:

"WHEREAS, most fees set by professional and occupational licensing boards are specified or limited in amount by law; and

"WHEREAS, such limitations are not necessarily serving the purpose intended in that the fees are not related to costs incurred and board revenues are insufficient in some cases and excessive in others.

"THEREFORE, it is the intent of this act to authorize and require such licensing boards to set fees reasonably related to the costs of administering the various programs under their jurisidiction."

The Statement of Intent attached to SB 412 read as follows:

> "A statement of intent is required for Senate Bill 412 because it grants licensing boards within the Department of Professional and Occupational Licensing the authority to set fees.
>
> "Presently fees charged by most licensing boards are set by law. Wherever changed circumstances require a change in fees legislation is required. Each session several bills are introduced to modify board fees. By allowing boards to set their own fees, flexibility is provided the boards to meet changing circumstances. At the present time, fees set by law are not based upon actual costs incurred by licensing boards in carrying out their various functions.
>
> "It is the intent of the Legislature that fees set by licensing boards be reasonably related to the costs of the respective programs. "Programs" of the licensing boards are intended to be such areas of responsibility as applications, examinations, renewals, and reciprocity. "Reasonably related" is intended to mean that the department generally breaks down the costs associated with the various programs and sets each fee at a level to cover these costs and the costs of maintaining the ongoing operations of the board. "Reasonably related" does not mean the department is required to maintain an exact system of actual costs, but rather means the department should generally allocate costs of the program equitably among the various fee categories."

In 1999, the professional and occupational licensing boards were housed at the Department of Commerce. In that year, DOC had an audit finding that indicated that 6 of 33 boards did not maintain records that were sufficient to support the fees charged as reported by law, and therefore were not in compliance with 37-1-134, MCA. The finding indicates that, since 1983, six of the previous seven audit reports addressed similar concerns.

As a part of the 2003 Financial-Compliance Audit, the Department received another audit finding associated with this statute, again indicating violations of 37-1-134, MCA. The funds detailed in the report as being non-compliant were those funds whose cash balances exceed two times the annual appropriation, which is prohibited by 17-2-302, MCA.

In 2004, a performance audit over professional and occupational licensing boards, requested by House Joint Resolution 20, was performed by the Legislative Audit Division (LAD). One objective of this performance audit was to assess the effectiveness of procedures for ensuring licensing fees are established at a level commensurate with the costs of regulation. The audit determined that fees for first-time applicants and renewals were commensurate with costs; however, fees for administrative services were not. A recommendation was made that the department seek statutory authority to set uniform administrative service fees and develop procedures to ensure administrative service fees are commensurate with the cost of services. This recommendation has since been implemented.

In 2005, 37-1-134, MCA was amended (through House Bill 182, enacted as Chapter 467) to read "Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs."

The statute changes that took place in 2005 as a result of HB 182 were intended to provide the boards with additional flexibility in charging fees that were reasonable and fair, however, it appears that the language used is still somewhat ambiguous and open to many interpretations. Under the current statute, it is not clear if the "fees commensurate with costs" language applies to a fiscal year or to a business cycle. It is also unclear as to, how much, if any, reserve or contingency funding is allowed.

This ambiguity is further evidenced by the fact that the statute has been tested and interpreted differently over the years. The 1999 audit report indicates that the department was unable to provide supporting documentation to show how fee amounts were calculated, which left LAD unable to determine whether the fees charged were commensurate with the corresponding expenditures. The 2003 audit report indicated that seven boards had cash balances in excess of two times the annual appropriation, and therefore, fees were not commensurate with costs. The 2004 performance audit analyzed fees by comparing percentages of revenue types across boards, surveying licensees regarding fee amounts, and comparing license fees to those in other states. Based upon this analysis, the report indicated that fees were commensurate with costs for first-time applicants and renewals. For this audit, revenues, expenses, and fund equity balances were compared within the fiscal year being audited. If variances exceeded a certain amount within that fiscal year, it was determined that fees were not commensurate with costs. All of these interpretations appear to be reasonable interpretations of the statute; however, they vary significantly from one another.

In conclusion, the department concurs that cash balances should not exceed two times the annual appropriation, and that fees should be set in a manner that is fair and equitable to licensees in relation to the costs incurred by the Board. The department does not agree with the current interpretation of the language "fees commensurate with costs" in 37-1-104, MCA.

Recognizing that the language is broad enough that it can be subject to many different interpretations, the department plans to pursue a legislative remedy which will clarify requirements and allow for a funding methodology that better aligns with the business cycle of the boards, while still providing the necessary protections for licensees.

B. **Partially Concur.** The department is working with individual boards that are out of compliance with 17-2-302, MCA to develop corrective action plans for bringing cash balances to a reasonable level. The department needs clarification or expansion of intent on the "fees commensurate with costs" language in order to fully concur.

Recommendation #2

We recommend the department implement procedures to ensure accounts receivable and uncollectible accounts are properly managed, monitored, billed, and adjusted on the state's accounting system, as required by state accounting policy.

Response:

Concur. The department recognized the overstatement of our accounts receivable in SFY2013. After disclosing the issue to the audit team, we adjusted our accounts receivable and uncollectible accounts to properly reflect the true value of the receivable that we expect to collect. The department has established procedures to properly manage, monitor and bill the current accounts receivable.

Recommendation #3

We recommend the department comply with state law and administrative rule by ensuring elevators and other related equipment is inspected annually and corrective action plans are completed within 14 days.

Response:

Concur. Pursuant to 50-60-705 (2) (b), MCA, the department has adopted comprehensive national safety standards for elevators and lifts however the department agrees the rules 24.301.607(6) adopted under 50-60-705(2)(a) need to be modified to include more realistic response times for owners to correct deficiencies. The department plans a rule action this year (2013) to modify the response times. In addition, the department plans to institute, as part of the current software, a tracking system capable of monitoring those devices with deficiencies and provide timely department action as currently detailed in 24.301.607(6).

Recommendation #4

We recommend the department comply with state accounting policy and law by:

A. Charging sufficient and reasonable inspection fees.

B. Implementing procedures to bill accounts on a timely basis and establishing an allowance for uncollectible accounts.

Response:

A. **Concur.** Both inspection intervals and revenue generation are tied directly to inspections completed therefore completely dependent on having a full complement of inspection personnel. The department has historically struggled with recruiting and retaining qualified elevator inspectors due to pay difference between the state and private industry. The department is currently recruiting for replacement inspection personnel and will seek HR solutions to better compete for these workers. The department will also explore the possibility for outside (independent) inspections (as allowed by law – 50-60-711 (2) (a)) although this mechanism will result in a potential severe decrease in revenues that would have to be made up in fee increases. The department also plans, in the current posting, to recruit one additional inspector to more adequately cover the large inspection areas.

   The department has made one fee modification this year in rule and continues to monitor the present fee model. Some of those fees have not taken effect yet due to the license renewals have not come due, while others have not had the full effect of inspection cycles because of vacancy in some positions. The department stands ready to implement additional rule changes for fees as needed to make the fees commensurate with costs. The department will evaluate at the end of state fiscal year 2014 to determine if a change is necessary.

B. **Concur.** The department has historically struggled with billing when multiple inspections are needed to complete compliance of the device. Customers often get confused on what is owed when multiple inspections have been performed and delays result in receiving payments. The department is developing an enhanced invoice report which will still allow billing of inspection services within 24 hours of the inspection being performed but will now detail out what the customer has previously paid and provide additional information on the number and date of each inspection. This new invoice /billing procedure should reduce delays in receiving payments as well as reduce overall receivables. Additionally, the department also plans to automate into our system a method of printing/sending follow-up notices of monies owed on devices and from this process will determine a reasonable benchmark (allowance) for when an account is considered uncollectable. The department plans to have this complete by July 1, 2014.

Recommendation #5

We recommend the department restrict programmer access to production code (including scripts) and ensure proper segregation of duties in the system change control process.

Response:

Concur. The department is moving from the UIT system to a new tax system. Segregation of duties and restricted access will be built into the change control processes of that new system. This new system is expected to be in operation by February 24, 2014. Further segregation of duties will be implemented by the end of the state fiscal year.

Recommendation #6

We recommend the department establish base pay rules for demotions in accordance with the state human resource broad band pay plan policy.

Response:

Concur. The Department agrees, and has since established a policy in accordance with the state human resource broad band pay plan policy.

Recommendation #7

We recommend the department enhance internal controls to ensure compliance with federal cash management requirements related to the Unemployment Insurance Program.

Response:

Concur. The draws that resulted in excess cash being drawn were completed by back-up staff when the primary accountant for the fund was out of the office. The Department has created written procedures for completing this cash draw in accordance with the Treasury State Agreement, which will provide guidance when a back-up person is needed to complete the draw.

Recommendation #8

We recommend the department implement procedures to ensure compliance with laws related to collecting unemployment insurance benefit overpayments, certification to the state Lottery for unemployment insurance benefit overpayments, public disclosure of costs on all public documents, and a Board of Chiropractors' appointment.

Response:

Concur.

UI Benefit Offsets - Currently, when a claimant contacts the agency to request that UI withhold benefits at a higher rate than the typical 50% offset, we have honored that verbal request as a means for the claimant to repay more quickly. The department will seek a statutory change next session to allow the verbal acceptance of a claimant's request to offset his/her benefits at a percentage higher than the normal 50%.

Certification to the State Lottery - The department has worked with the State Lottery to arrange an automated process for cross matching information. The process has been delayed and the department is now looking toward an interim manual cross check system to meet the requirements. This system will be implemented by December 31, 2013.

Public Disclosure of Costs - A number of Department publications are produced by the Research and Analysis Bureau (R&A) for online distribution, and are only reproduced at state expense upon specific customer request. Those publications contain a modified version of the statutorily-required statement to accurately reflect this, with an estimate of a cost to reproduce that publication on demand. To comply with statute, the Department is in the process of changing the statement on all affected R&A publications to the following statement: "One copy of this public document was published at an estimated cost of $... per copy, for a total cost of $..., which includes $... for printing and $... for distribution."

Board of Chiropractors – A secretary-treasurer was elected by the Board at their July 31, 2013 meeting.

Sincerely,

Pamela Bucy

Pamela Bucy
Commissioner
Department of Labor and Industry

CC: Kim Moog, CSD Administrator