

B40698

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

REVIEW REPORT
OF
INDIANA DEPARTMENT OF INSURANCE
June 1, 2008 to January 31, 2012



FILED
08/09/2012

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AGENCY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Commissioner	Jim Atterholt	01-10-05 to 06-21-09
	Carol Cutter (Deceased)	06-22-09 to 01-24-10
	Doug Webber (Interim)	01-25-10 to 06-21-10
	Stephen Robertson (Interim)	06-22-10 to 10-11-10
	Stephen Robertson	10-12-10 to 01-13-13



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Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE INDIANA DEPARTMENT OF INSURANCE

We have reviewed the activities related to the receipts, disbursements, and assets of the Indiana Department of Insurance for the period of June 1, 2008 to January 31, 2012. The Indiana Department of Insurance's management is responsible for the receipts, disbursements, and assets.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on the receipts, disbursements, and assets. Accordingly, we do not express such an opinion.

Financial transactions of this office are included in the scope of our audits of the State of Indiana as reflected in the Indiana Comprehensive Annual Financial Reports. Federal programs are included in the scope of our statewide single audits as reflected in the Statewide Single Audit Reports.

Based on our review, nothing came to our attention that caused us to believe that the activities related to the receipts, disbursements, and assets of the Indiana Department of Insurance are not in all material respects in conformity with the criteria set forth in the Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, and applicable laws and regulations except as stated in the review comments.

The Indiana Department of Insurance's response to the Review Comments identified in our review is described in the accompanying section of the report entitled Official Response. We did not review the Indiana Department of Insurance's response and, accordingly, we express no opinion on it.

This report is intended solely for the information and use of the Indiana Department of Insurance's management, and is not intended to be and should not be used by anyone other than these specified parties. In accordance with Indiana Code 5-11-5-1, this report is a part of the public records of the State Board of Accounts and of the office reviewed.

STATE BOARD OF ACCOUNTS

April 17, 2012

INDIANA DEPARTMENT OF INSURANCE
REVIEW COMMENTS
January 31, 2012

CONTRACT FORM AND APPROVAL

As stated in our prior reports (most recently B33619 and B29585), our testing identified professional service contracts entered into by the Indiana Department of Insurance (IDOI) without the review or approval by the Department of Administration, the State Budget Agency, or the Attorney General's office. Many of these contracts consist of letters of agreement which lack substantial portions of required State contract language. Contractual services without properly executed contracts approved by the Department of Administration, State Budget Agency, and the Attorney General included:

1. Reinsurance agreements for insurance companies who participate in the Mine Subsidence Fund.
2. Insurance policies issued by the Political Subdivision Risk Management Fund.
3. Joint custodial agreements for custodial deposits maintained at banks by insurance companies on behalf of policy holders.
4. Attorney's contract for the Patient's Compensation Fund.

IDOI should consider requesting contract form approvals from the Office of the Attorney General. Such approvals are available to agencies with a considerable number of contracts for the same types of services and can speed up the contract approval process.

Indiana Code 4-13-2-14.1 and 14.2 require that a contract to which a state agency is a party must be properly approved by the Department of Administration, the Budget Agency, and the Attorney General's office.

COLLECTION OF EXAMINATION FEES

As stated in our prior reports (most recently B33619 and B29585), every insurance company that conducts business within the State of Indiana is subject to an examination at least once every three to five years. IDOI uses independent CPAs, other professionals and agency staff to conduct examinations of insurance companies. For audit services performed by independent CPAs or other professionals, these firms invoice IDOI for all audit costs, invoices are "approved" by IDOI, and forwarded to the examined insurance company who makes payment directly to the retained firm. For audit services conducted by agency staff, IDOI will bill the insurance company for all audit costs other than travel costs of state employees. The state employees issue travel expense invoices directly to, and receive payments from, the examined insurance companies.

To ensure proper internal controls and accountability over public funds, procedures would dictate that all payments for audit costs from the examined companies would be sent to IDOI, deposited into state accounts, and then paid to employees, retained CPAs, or professionals.

According to Indiana Code 27-1-3.1-9(d), the Commissioner of Indiana Department of Insurance (IDOI) is empowered to retain Independent CPAs, other professionals and specialists as examiners. The cost of retaining these examiners shall be borne by the company that is the subject of the examination.

INDIANA DEPARTMENT OF INSURANCE
REVIEW COMMENTS
January 31, 2012
(Continued)

In an Attorney General opinion issued to the State Board of Account's State Examiner on January 16, 2002, and subsequently forwarded to the Commissioner of the Department of Insurance, the Office of the Attorney General stated: "Although it may be expedient to have the company pay individuals directly, the statute does not contemplate such a process." The Attorney General also indicated that, because outside consultants function as agents of the IDOI, "Consultants retained by the department should be compensated by the department even though it is the ultimate responsibility of the companies that are being examined to reimburse the department for those costs."

Each agency is responsible for compliance with applicable statutes, regulations, contract provisions, and state policies. Compliance is required, as applicable, with generally accepted accounting principles, and standards issued by the Governing Accounting Standards Board, Financial Accounting Standards Board, and other standard setting bodies and also with various accounting guides, manuals, and other publications. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview –Summary of Agency Accounting Responsibilities)

REIMBURSEMENT OF EXAMINER TRAVEL EXPENSES - STATE EMPLOYEE

As stated in our prior reports (most recently B33619 and B29585), as noted in our finding entitled "Collection of Examination Fees," the IDOI allowed examiners that are state employees to directly bill insurance companies for reimbursement of their travel costs rather than IDOI reimburse the state employees for travel expenses and include costs in the bill to the insurance companies.

Insurance industry practices utilized by the IDOI must not conflict with statute, policies, or procedures.

In an Attorney General opinion issued to the State Board of Account's State Examiner on January 16, 2002, and subsequently forwarded to the Commissioner of the Department of Insurance, the Office of the Attorney General stated: "Although it may be expedient to have the company pay individuals directly, the statute [IC-27-1-3.1-9(d)] does not contemplate such a process."

Financial Management Circular 2003-1, states in:

Section 2-6 states "An Agency may develop internal policies and procedures relating to State Travel by State Travelers. Such policies and procedures may not be inconsistent with this Circular and must be approved by both the State Budget Director and the Commissioner [of the Indiana Department of Administration], or their respective designees."

Section 3-2 states "Out-of-State Travel must be approved in advance in writing by the Commissioner, and the Agency Head, or their designees. In-State Travel must be approved in advance by the Agency."

40 IAC 2-1-9(3)(b) states: "A state officer or employee shall not solicit or accept compensation other than that provided for by law for such state officer or employee for the performance of official duties."

INDIANA DEPARTMENT OF INSURANCE
REVIEW COMMENTS
January 31, 2012
(Continued)

LACK OF SUBSIDIARY LEDGERS

As stated in our prior reports (most recently B33619 and B29585) we observed that the IDOI did not have effective subsidiary ledgers for the Mine Subsidence Fund. IDOI still does not collect any detailed information from insurers regarding policies issued and effective dates that would allow it to maintain a subsidiary ledger to verify individual claims against prior premium payment.

Each agency has the following responsibilities . . . [to] maintain an effective and accurate system for subsidiary and supplementary records. At all times, the agency's manual and subsidiary ledgers should reconcile with Encompass. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview – Summary of Agency Accounting Responsibilities)

EMPLOYEE VS. INDEPENDENT CONTRACTOR

The Indiana Department of Insurance (IDOI) entered into personal service contracts to assist the DOI health care reform team with the following tasks: assist the controller in grant budgeting and accounting; process all accounts payable payments, provide legal support and research for rate reviews; schedule/coordinate all calendars/events for the DOI health care reform staff; implement health care reform business requirements. The IDOI designates and controls the amount of hours the individuals are required to work and provides the contractors with computers and the necessary tools to perform their jobs. One or more of the contractors are under the direct supervision of IDOI staff.

Upon review of the criteria, we question whether these workers qualify as employees rather than independent contractors. The IDOI should evaluate the business relationships with these individuals using the Internal Revenue Service (IRS) Publication 15-A, Employer's Supplemental Tax Guide, for the criteria to determine an employer-employee or independent contractor relationship.

According to IRS Publication 15-A, the employer consequences of treating an employee as an independent contractor could result in additional employment tax liabilities.

Each agency, department, quasi, institution, or office is responsible for compliance with applicable statutes, regulations, contract provisions, state policies, and federal requirements. (Accounting and Uniform Compliance Guidelines for State and Quasi Agencies, Organizational Overview – Summary of Agency Accounting Responsibilities)

LATE PAYMENT PENALTY

Auditor of State accounting records reflect late payment penalties paid to vendors and charged to accounts of the Indiana Department of Insurance as a result of untimely payment of claims. Total penalties for the fiscal year 2011 were \$20,384.29 and for the current fiscal year through April 30 penalties were \$30,119.80. Total penalties for both fiscal year 2011 and current fiscal year through April 30 were \$50,504.09.

Indiana Code 5-17-5 requires a state agency to ". . . pay a late payment penalty at a rate of one percent (1%) per month on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel whenever the state agency . . . fails to make timely payment."

INDIANA DEPARTMENT OF INSURANCE
REVIEW COMMENTS
January 31, 2012
(Continued)

Payment of penalties and interest due to late payments to vendors may be the obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines for State and Quasi Agencies, 6.4.7.4)

Each agency, department, quasi, institution, or office is responsible for compliance with applicable statutes, regulations, contract provisions, state policies, and federal requirements. (Accounting and Uniform Compliance Guidelines for State and Quasi Agencies, Organizational Overview – Summary of Agency Accounting Responsibilities)

INDIANA DEPARTMENT OF INSURANCE
EXIT CONFERENCE

The contents of this report were discussed on June 14, 2012, with Stephen Robertson, Commissioner; Tina Kory, General Counsel; and Barb Lohman, Chief Financial Officer. The Official Response has been made a part of this report and may be found on pages 9 through 15.



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

IDOI

INDIANA DEPARTMENT OF INSURANCE

311 W. WASHINGTON STREET, SUITE 300

INDIANAPOLIS, INDIANA 46204-2787

TELEPHONE: (317) 232-2385

FAX: (317) 232-5251

Stephen W. Robertson, Commissioner

July 13, 2012

Bruce Hartman, State Examiner
Indiana State Board of Accounts
302 West Washington Street, Room E418
Indianapolis, Indiana 46204-2765

Re: Indiana Department of Insurance ("IDOI") Official Response to State Board of Accounts ("SBOA")
Review Report for the Period June 1, 2008, to January 31, 2012

Dear Mr. Hartman:

This letter contains the Indiana Department of Insurance's Official Response to the State Board of Accounts Audit Results and Comments as presented to the Indiana Department of Insurance on June 14, 2012. We are pleased that you found our activities to be in all material respects in conformity with applicable requirements, except for those findings noted below. SBOA's findings and comments appear in bold, with IDOI's responses following in plain text.

CONTRACT FORM AND APPROVAL

As stated in our prior reports (most recently B33619 and B29585), our testing identified professional service contracts entered into by the Indiana Department of Insurance (IDOI) without the review or approval by the Department of Administration, the State Budget Agency, or the Attorney General's office. Many of these contracts consist of letters of agreement which lack substantial portions of required State contract language. Contractual services without properly executed contracts approved by the Department of Administration, State Budget Agency, and the Attorney General included:

1. Reinsurance agreements for insurance companies participating in the Mine Subsidence Fund.
2. Insurance policies issued by the Political Subdivision Risk Management Fund.
3. Joint custodial agreements for custodial deposits maintained at banks by insurance companies on behalf of policyholders.
4. Attorney contracts for the Patient's Compensation Fund.

IDOI should consider requesting contract form approvals from the Office of the Attorney General. Such approvals are available to agencies with a considerable number of contracts for the same types of services and can speed up the contract approval process.

ACCREDITED BY THE
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

AGENCY SERVICES
(317) 232-2413

COMPANY COMPLIANCE
(317) 233-0697

CONSUMER SERVICES
(317) 232-2395
In-State 1-800-622-4461

EXAMINATIONS / FINANCIAL SERVICES
(317) 232-2390

MEDICAL MALPRACTICE
(317) 232-2402

SECURITIES / COMPANY RECORDS
(317) 232-1991

Indiana Code 4-13-2-14.1 and 14.2 require that a contract to which a state agency is a party must be properly approved by the Department of Administration, the Budget Agency, and the Attorney General's office.

In response to the IDOI's last Review Report issued by SBOA, IDOI prepared form contracts for approval by the Attorney General's Office. The Joint Custodial Agreement had received form approval in 1994, but IDOI had not renewed the approval. In October of 2009, the IDOI sent both the Mine Subsidence Reinsurance Agreement and the Joint Custodial Agreement to the Attorney General's Office for review. Despite follow-up by IDOI on November 20, 2009; December 10, 2009; January 21, 2010; and July 13, 2010; the IDOI received no response either approving or disapproving the forms.

The IDOI will resubmit the Mine Subsidence Reinsurance Agreement and the Joint Custodial Agreement to the Attorney General's Office. If a response is received, we will then submit the Political Sub policies and attorney contracts.

COLLECTION OF EXAMINATION FEES

As stated in our prior reports (most recently B33619 and B29585), every insurance company that conducts business within the State of Indiana is subject to an examination at least once every three to five years. IDOI uses independent CPAs, other professionals and agency staff to conduct examinations of insurance companies. For audit services performed by independent CPAs or other professionals, these firms invoice IDOI for all audit costs, invoices are "approved" by IDOI, and forwarded to the examined insurance company, who makes payment directly to the retained firm. For audit services conducted by agency staff, IDOI will bill the insurance company for all audit costs other than travel costs of state employees. The state employees issue travel expense invoices directly to, and receive payments from, the examined insurance companies.

To ensure proper internal controls and accountability over public funds, procedures would dictate that all payments for audit costs from the examined companies would be sent to IDOI, deposited into state accounts, and then paid to employees, retained CPAs, or professionals.

According to Indiana Code 27-1-3.1-9(d), the Commissioner of the Indiana Department of Insurance (IDOI) is empowered to retain Independent [sic] CPAs, other professionals and specialists as examiners. The cost of retaining these examiners shall be borne by the company that is the subject of the examination.

In an Attorney General opinion issued to the State Board of Account's State Examiner on January 16, 2002, and subsequently forwarded to the Commissioner of the Department of Insurance, the Office of the Attorney General stated: "Although it may be expedient to have the company pay the individuals directly, the statute does not contemplate such a process." The Attorney General also indicated that, because outside consultants function as agents of the IDOI, "Consultants retained by the department should be compensated by the department even though it is the ultimate responsibility of the companies that are being examined to reimburse the department for those costs."

Each agency is responsible for compliance with applicable statutes, regulations, contract provisions, and state policies. Compliance is required, as applicable, with generally accepted accounting principles, and standards issued by the Governing Accounting Standards Board, Financial Accounting Standards Board, and other standard setting bodies and also with various accounting

guides, manuals, and other publications. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview – Summary of Agency Accounting Responsibilities)

Domestic insurance companies are subject to a financial examination on a regular or emergency basis every three to five years. Market conduct examinations are on an as needed basis to verify the behavior of the company in the marketplace as to unfair claims and unfair trade practices, and include domestic, foreign, and alien insurers doing business in the state. Both exams are accomplished pursuant to Ind. Code § 27-1-3.1 *et. seq.* (the “Exam Statute”) and conducted in accordance with National Association of Insurance Commissioners (NAIC) Handbooks, as required by Ind. Code § 27-1-3.1 -9(a) (“In conducting the examination, the Commissioner shall observe those guidelines and procedures set forth in the NAIC examiner’s handbook.”).

The examinations statute was developed via IDOI’s participation with the NAIC (*see* Ind. Code § 27-1-1-2) as a model law similarly adopted by the legislators of many states. The development of this model and its eventual adoption by the Indiana legislature reflects the unique role of IDOI as a member of the NAIC and the public policy associated with the unfettered gathering of information via the use of an executed examination warrant. Insurance is a significant thread in the fabric of our economy and must be able to provide the protection contracted for when a peril arises. So, the Commissioner’s authority to **appoint** examiners must be preserved to facilitate the protection of Indiana citizens, even at times when internal budget restrictions may otherwise inhibit IDOI’s ability to confirm the solvency of an insurer or verify compliance with statutes designed to protect the industry and insuring public from harm. Those who designed the model and wisely adopted the model recognized three things when they crafted the following language:

“The cost of retaining these examiners shall be borne by the company that is the subject of the examination” Ind. Code § 27-1-3.1-9(d).

- 1) The appointment of examiners and others pursuant to an exam must be distinct from the other budgetary operations of IDOI so as not to adversely impact IDOI’s operations. A ‘subject’ company’s inability or chosen reluctance to pay an examination related bill would put a financial burden on IDOI and have an impact never anticipated by the legislature in its adoption of this model law.
- 2) The ‘subject’ company must not be able to impair IDOI’s review or scrutiny, by delaying or withholding payment to examiners and adversely impacting IDOI’s investigative authority or decision making. The use of the word ‘*shall*’ by the legislature left no room for variation on the issue of costs.
- 3) The Commissioner must have the flexibility to act in an expedient manner.

The use of the appointment mechanism was purposeful and allows for an extension of the Commissioner’s authority and flexibility of assignment of an examiner relative to a unique specialty or purpose.

Therefore, should IDOI, at any time pay an examiner directly, even anticipating next day reimbursement from the subject company IDOI has “borne the cost of the exam” and **done so in contravention of the statute.**

Implementing SBA's suggested interpretation of Ind. Code § 27-1-3.1 would put IDOI in violation of Indiana law and would make IDOI responsible for payment of the examiners' expenses. In the event of a slow payment or default on payment by the insurer, the suggested interpretation would result in IDOI being financially liable for payment, and then IDOI would need to seek repayment by the examined entity. Slow or no reimbursement would significantly inhibit IDOI's ability to perform its statutory audit and examination functions. A circumstance of slow payment is not unusual, especially with financially troubled companies. Under our current budget IDOI is unable to make payments to the examiner until receiving payment from the company. Our budget would need to be increased to allow for the possibility of default or delays. Under the current system, IDOI does not believe that it is responsible to the examiner if the insurer fails to pay. The examiner's remedy is with the company rather than IDOI. IDOI takes steps to ensure the examiner is aware of this fact and the examiner, in the engagement letter, acknowledges that IDOI is not responsible for payment of the expenses. All examination expenses are reviewed by IDOI and approved before being sent to the company for payment.

Outside examiners now conduct more than 95% of IDOI's financial and market conduct examinations. IDOI's ability to perform examinations could be severely limited by the recommended change. The potential consequences are significant, including but not limited to the loss of accreditation with the NAIC. Loss of accreditation results in IDOI's inability to fulfill its statutory obligations and potential loss of Indiana businesses to an accredited state.

Furthermore, the 2002 Attorney General "Opinion" cited above is not an Official Advisory Opinion, but rather an Advisory Letter. This letter fails to analyze or even mention Ind. Code § 27-1-3.1 -9(a) and (d), both quoted above. It is a well-established tenant of Indiana law that when two statutes conflict, the more specific provision controls over the more general one. *See, e.g., Grether v. Indiana State Board of Dental Examiners*, 159 N.E.2d 131 (Ind. 1959); *Lockard v. Miles*, 882 N.E.2d 288 (Ind. Ct. App. 2008) The Exam Statute is the more specific; therefore, it controls over other more general statutes, administrative rules, and guidebooks.

REIMBURSEMENT OF EXAMINER TRAVEL EXPENSES – STATE EMPLOYEES

As stated in our prior reports (most recently B33619 and B29585), as noted in our finding entitled "Collection of Examination Fees," the IDOI allowed examiners that are state employees to directly bill insurance companies for reimbursement of their travel costs rather than IDOI reimburse [sic] the state employees for travel expenses and include [sic] costs in the bill to the insurance companies.

Insurance industry practice utilized by the IDOI must not conflict with statute, policies, or procedures.

In an Attorney General opinion issued to the State Board of Account's State Examiner on January 16, 2002, and subsequently forwarded to the Commissioner of the Department of Insurance, the Office of the Attorney General stated: "Although it may be expedient to have the company pay individuals directly, the statute [IC 27-1-3.1-9(d)] does not contemplate such a process."

Financial Management Circular 2003-1, states in:

Section 2-6 states “An Agency may develop internal policies and procedures relating to State Travel by State Travelers. Such policies and procedures may not be inconsistent with this Circular and must be approved by both the State Budget Director and the Commissioner [of the Indiana Department of Administration], or their respective designees.”

Section 3-2 states “Out-of-State Travel must be approved in advance in writing by the Commissioner, and the Agency Head, or their designees. In-State Travel must be approved in advance by the Agency.”

40 IAC 2-1-9(3)(b) states: “A state officer or employee shall not solicit or accept compensation other than that provided for by law for such state officer or employee for the performance of official duties.”

The IDOI currently employs one examiner, who is the Exam Manager overseeing the contracted examiners. As such, he rarely travels. The one trip he took since his promotion to Exam Manager was incorrectly billed, approved, and paid at the higher Federal rate. IDOI has communicated to the Exam Manager and his supervisor that future travel, if there is any, will be reimbursed at the state rates. Going forward, the IDOI will pay the employee for his expenses and then seek reimbursement from the company under examination.

LACK OF SUBSIDIARY LEDGERS

As stated in our prior reports (most recently B33619 and B29585) we observed that the IDOI did not have effective subsidiary ledgers for the Mine Subsidence Fund. IDOI still does not collect any detailed information from insurers regarding policies issued and effective dates that would allow it to maintain a subsidiary ledger to verify individual claims against prior premium payment.

Each agency has the following responsibilities . . . [to] maintain an effective and accurate system for subsidiary and supplementary records. At all times, the agency’s manual and subsidiary ledgers should reconcile with Encompass (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview – Summary of Agency Accounting Responsibilities)

IDOI began the process of implementing subsidiary ledgers for the Mine Subsidence Fund, but the process was halted by a former employee. Now that this issue has been brought to the Commissioner’s attention, we have developed a new procedure that insurance companies writing insurance into the Mine Subsidence Fund will have to follow in their report for the third quarter of 2012, which began July 1, 2012. This new process will provide the IDOI with policy numbers, which IDOI can then use to verify individual claims against prior premium payment.

EMPLOYEE VS INDEPENDENT CONTRACTOR

The Indiana Department of Insurance (IDOI) entered into personal service contracts to assist the DOI health care reform team with the following tasks: assist the controller in grant budgeting and accounting; process all accounts payable payments; provide legal support and research for rate reviews; schedule/coordinate all calendars/events for the DOI health care reform staff; implement health care reform business requirements. The IDOI designates and controls the amount of hours the individuals are required to work and provides the contractors with computers and the necessary tools to perform their jobs. One or more of the contractors are under the direct supervision of IDOI staff.

Upon review of the criteria, we question whether these workers qualify as employees rather than independent contractors. The IDOI should evaluate the business relationships with these individuals using the Internal Revenue Service (IRS) Publication 15-A, Employer's Supplemental Tax Guide, for the criteria to determine an employer-employee or independent contractor relationship.

According to IRS Publication 15-A, the employer consequences of treating an employee as an independent contractor could result in additional employment tax liabilities.

Each agency, department, quasi, institution, or office is responsible for compliance with applicable statutes, regulations, contract provisions, state policies, and federal requirements. (Accounting and Uniform Compliance Guidelines for State and Quasi Agencies, Organizational Overview – Summary of Agency Accounting Responsibilities)

IDOI will review the IRS publication, evaluate these contracts, and act accordingly.

LATE PAYMENT PENALTY

Auditor of State accounting records reflect late payments penalties paid to vendors and charged to accounts of the Indiana Department of Insurance as a result of untimely payment of claims. Total penalties for the fiscal year 2011 were \$20,384.29 and for the current fiscal year through April 30 penalties were \$30,119.80. Total penalties for both fiscal year 2011 and current fiscal year through April 30 were \$50,504.09.

Indiana Code 5-17-5 requires a state agency to “. . . pay a late payment penalty at a rate of one percent (1%) per month on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel whenever the state agency . . . fails to make timely payment.”

Payment of penalties and interest due to late payments to vendors may be the obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines for State and Quasi Agencies, 6.4.7.4)

Each agency, department, quasi, institution, or office is responsible for compliance with applicable statutes, regulations, contract provisions, state policies, and federal requirements. (Accounting and Uniform Compliance Guidelines for State and Quasi Agencies, Organizational Overview – Summary of Agency Accounting Responsibilities)

As a preliminary matter, the IDOI notes that late payments through April 30 were audited, even though the report's stated end date is January 31, 2012. IDOI would ask that the SBOA not cite these same late payments in future audits.

The IDOI discovered through this audit that late payments were made inappropriately on two payments from the Indiana Patient's Compensation Fund ("PCF"). By statute, the PCF may only pay claims twice a year: January 15 and July 15. See Ind. Code § 34-18-6-4(a). Sometimes cases are settled and approved by a court months before a payout is allowed. Prior IDOI procedure was to request payment when a court order is received, and complete the date field with the current date of the request. In the two cases inappropriate late charges were applied, and the IDOI has requested repayment from the plaintiff's attorney. Furthermore, we have changed our procedure to reflect a date of either January 1 or July 1 on the payout request, so that the Auditor's Office does not incorrectly apply late payment penalties. The IDOI further notes that payments of judgments do not fall under the categories of written contracts for public works, personal services, goods and services, equipment, or travel.

The two inappropriate late payment penalties made on PCF cases were \$27,078.67 and \$7,500, for a total of \$34,578 of the \$50,504.09. Other late payment penalties, making up the remaining \$15,926.09, were generally a result of either internal delays or inability to pay because IDOI was waiting for the State Budget Agency ("SBA") to transfer funds into operating accounts. IDOI will work with internal staff and SBA to minimize these holdups in the future.

A handwritten signature in black ink that reads "Stephen W. Robertson". The signature is written in a cursive style with a long horizontal line extending from the top of the "S" across the top of the name.

Stephen W. Robertson, Commissioner
Indiana Department of Insurance