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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 11, 2008

Mr. Joseph Pennisi
Executive Director
NYS Workers' Compensation Board
20 Park Street
Albany, NY 12207

Re: Report 2008-F-17

Dear Mr. Pennisi:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Workers' Compensation Board (Board) to implement the recommendations contained in our audit report, *Ensuring Employer Coverage* (Report 2006-S-47).

Background, Scope and Objectives

The Workers' Compensation Law (Law) requires most employers to obtain workers' compensation coverage for their employees. This coverage provides payments to workers injured on the job to cover medical costs and lost wages. The workers' compensation program in New York State is administered by the Workers' Compensation Board (Board). Among its duties, the Board is responsible for ensuring that employers obtain and maintain the workers' compensation insurance coverage required by law. The Board also administers the Uninsured Employers Fund (UEF), which makes payments to injured workers whose employers do not have coverage. A Board administrative law judge determines whether the employer is liable for making payments to the injured worker. If the employer fails to make payment, the initial payment is made from the UEF and then the Board seeks restitution from the employer. The Board imposes penalties for lack of coverage, as well as for having a claim paid by UEF, as required by the Law. The Board has 13 Commissioners appointed by the Governor with the advice and consent of the Senate for seven-year terms. For the 2007-08 year, the Board had a budget of \$212.8 million.

Our initial audit report, which was issued on December 18, 2006, determined whether the Board (1) properly resolves cases involving employers for which the Board has no evidence of workers' compensation coverage, and (2) collects or otherwise accounts for penalties imposed against employers found not to have coverage. Our report identified ways to improve collections of

penalties and monitoring of employers. The objective of our follow-up was to assess the extent of implementation, as of July 31, 2008, of the four recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that the Board has implemented all four recommendations from the initial audit.

Follow-up Observations

Recommendation 1

Dedicate resources to developing the performance measures identified by the Board to help monitor penalty assessments and the collection process.

Status - Implemented

Agency Action - The Board has dedicated resources to developing performance measures for its operations, including penalty assessment and collections. The Board is tracking the implementation of performance measures and expects to have the performance measures for penalty assessment and collections in place by December 2008.

Recommendation 2

Ensure that the collection agencies are receiving any adjustments to penalties which occur subsequent to the penalty being referred.

Status - Implemented

Agency Action - Board officials explain that they have developed protocols to ensure that adjustments to penalties are received and recorded by the collection agencies. These include automated and manual checks to verify that the penalty amounts are up-to-date. We reviewed correspondence supporting that these protocols are in place.

Recommendation 3

Develop a formal mechanism for providing the names of employers involved in UEF cases to other relevant State agencies (e.g., Department of Labor, Taxation and Finance).

Status - Implemented

Agency Action - In 2007, the Legislature passed a law establishing an interagency committee requiring the Board to work with four other agencies, including the Department of Labor (Labor) and Department of Taxation and Finance (Tax), to help identify fraud. In addition to participating in this committee, the Board sends to both Tax and Labor, on a monthly basis, a computer-generated list of employees found liable in UEF cases. We reviewed the list and related correspondence. Board officials stated they also provide Labor with a list each month of employers the Board has shut down for noncompliance with the Law. We

reviewed correspondence regarding this list and confirmed this information was also shared with Labor.

Recommendation 4

Monitor UEF cases by industry or other appropriate fact pattern to assist the Board in ensuring that employers provide coverage.

Status - Implemented

Agency Action - Board officials stated they monitor UEF cases by industry to determine where they should focus their limited resources to ensure that employers provide coverage. We reviewed graphs and charts covering 2000 through 2007 and observed that the Board tracks UEF cases Statewide and by district, to identify industries that appear to present higher risk of no coverage. We also found that the Board tracks this information over time, to identify industry trends regarding UEF cases.

Major contributors to this report were Frank Houston, Robert Mainello, Jennifer Paperman, and Richard Podagrosi.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Board for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Cindi Frieder
Audit Manager

cc: Brian Collins, Director Regulator Affairs
Albert Blackman, Director Internal Audit
Tom Lukacs, Division of the Budget