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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 19, 2016

Eric Madoff
Executive Director/CEO
New York State Insurance Fund
199 Church Street
New York, NY 10007

Re: Report 2016-SIF-01

Dear Mr. Madoff:

Our Office conducted an examination¹ of outstanding premiums owed to the New York State Insurance Fund (NYSIF). The objectives of our examination were to determine (i) the extent to which NYSIF participates in the Statewide Offset Program (SWOP), and (ii) the amount of outstanding premiums NYSIF may have been able to recover through SWOP since April 2012.

A. Results of Examination

Although NYSIF has not yet recovered funds through SWOP, officials have taken steps to participate in the program. This includes developing internal business procedures and necessary system changes that NYSIF plans to start by the end of 2016. NYSIF and its customers stand to benefit from participation in SWOP. In fact, since 2012, we estimate NYSIF could have recovered up to \$3.8 million in outstanding premiums from vendors doing business with New York State agencies. NYSIF officials believe the amount recoverable to date is likely less for various reasons, including that it can take up to one year to certify a debt to SWOP. If this is the case, we estimate NYSIF would have been able to recover up to \$1.0 million since 2012.

We shared a draft report with NYSIF officials and considered their comments (Attachment A) in preparing this final report. In response to the draft report, NYSIF generally agreed with our recommendations. NYSIF is taking steps to participate in SWOP and will determine the feasibility of using SWOP manually until the system becomes automated. NYSIF does not support using an alternative process to certify debts to SWOP as officials conclude it would not be cost effective.

¹ We performed our examination in accordance with the State Comptroller's authority set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

B. Background and Methodology

New York State business owners pay NYSIF premiums for workers' compensation and disability benefits insurance policies (policies). If a policyholder stops making payments, NYSIF cancels the policy and determines the amount the policyholder owes. NYSIF may conduct a final audit to arrive at the amount owed. NYSIF attempts to recover amounts determined as owed through its Legal department or through external collection agencies. In certain circumstances, this may include pursuing a judgment against the policyholder.

Some New York State businesses that are NYSIF debtors are also vendors who do business with State agencies. According to State Tax Law, State agencies can use SWOP, administered by the Department of Taxation and Finance (DTF), to offset certain debts against tax refunds or other State payments. According to guidelines issued by the Division of the Budget (DOB), in order for a debt to be eligible for offset through SWOP, agencies must follow certain procedures, including obtaining a judgment or making a final administrative determination against a debtor. In the case of a final administrative determination, the agency must give a debtor written notice of the amount due, ensure the debtor has the opportunity for its concerns or objections to "be heard," and issue a final determination of the amount due and owing.

In May 2015, we recommended NYSIF participate in SWOP to recover outstanding insurance premium debts. At the time, officials were receptive to our suggestion and indicated their intention to pursue this option.

To accomplish our objectives, we analyzed SWOP legislation and guidelines and interviewed officials at NYSIF and DTF. In addition, we analyzed data from NYSIF and from the State's payment records to identify vendors with outstanding NYSIF receivables as of March 24, 2016 that also received payments from State agencies during our examination period (April 1, 2012 to May 2, 2016).

C. Details of Findings

NYSIF Should Take Additional Steps to Participate in SWOP

NYSIF has not begun to collect outstanding insurance premiums through SWOP since our recommendation in May 2015. However, NYSIF has taken necessary steps toward participating in the program: NYSIF has obtained DOB's approval to participate in SWOP; discussed their interest with DTF officials; developed internal business procedures; and identified system enhancements to process outstanding receivables through SWOP. We encourage NYSIF to continue taking steps to participate in SWOP.

At the time of this report, NYSIF anticipates initiating the system changes after July 2016. While NYSIF completes these, officials should assess the feasibility of submitting receivables which

meet SWOP criteria to DTF on an individual basis to start collecting these debts as soon as possible.

Currently, NYSIF's legal department may pursue judgments on accounts with outstanding premiums valued at more than \$20,000. For accounts with outstanding premiums valued at less than \$20,000, NYSIF typically employs private collection agencies, which may obtain judgments on accounts with outstanding premium balances over \$3,000.

There may be opportunities for improvement with NYSIF's process. Under SWOP, agencies can pursue debts valued at \$25 or more. NYSIF could also consider a formal, administrative process to qualify an outstanding debt for participation in SWOP without obtaining judgments. To the extent practicable, NYSIF should explore automating an administrative mechanism, allowing appropriate due process, as it may provide a cost effective alternative to collect NYSIF's outstanding debt. As the next section illustrates, there is an opportunity for substantial recoveries to be obtained from State vendors.

Recoverable Amount of Premium Through SWOP

NYSIF provided our Office with a file of 7,176 policyholders with approximately \$249 million in outstanding collection receivables of more than \$3,000 each. We compared this file to payments that State agencies made to New York State vendors during our examination period and found NYSIF may have been able to recover up to \$3.8 million through SWOP during our examination period.

NYSIF officials believe a portion of the estimated \$3.8 million should not be considered collectable because NYSIF has not yet obtained judgments on some of the accounts. NYSIF cannot readily identify which accounts do not have judgments; however, NYSIF officials estimate obtaining a judgment takes nine months to one year. If judgments take one year to obtain, we estimate that NYSIF still may have collected up to \$1.0 million through SWOP during our examination period. Further, obtaining administrative determinations to collect debt through SWOP may take less than one year. Our analysis shows the faster NYSIF can certify a debt to SWOP, the more effective the program will be in recovering outstanding premiums.

NYSIF also has 2,312 policies totaling approximately \$2.9 million, where each policy's total collection receivable is between \$25 and \$3,000. Of this, we found that 21 policies totaling approximately \$26,000 could have been recovered through SWOP during our examination period. Generally, NYSIF does not pursue judgments on accounts of these lower values. As an alternative to incurring the cost of a judgment, NYSIF may be able to use administrative determinations to recover these outstanding collection receivables through SWOP.

NYSIF advised that some collection receivables would not be recoverable through SWOP because policyholders may: already be paying NYSIF on their outstanding balance; be suing NYSIF regarding the debt; be waiting for a final amount due from NYSIF; have declared bankruptcy; not be locatable; be unauthorized foreign entities that must be served for judgment in a different manner. NYSIF officials were unable to provide us with the policyholders and account balances for each of these categories of receivables. NYSIF officials should consider identifying policies by receivable category to better manage and recover outstanding debt through SWOP.

Recommendations

- 1) *Continue taking steps to participate in SWOP.*
- 2) *Consider system enhancements to identify policyholders and account balances for each category of receivables.*
- 3) *Assess the feasibility of submitting receivables which meet SWOP criteria to DTF on an individual basis prior to implementation of proposed system changes, and*
- 4) *Explore implementing an alternative process, such as administrative determinations, where feasible to qualify outstanding debt for SWOP.*

We thank the management and staff of the New York State Insurance Fund for the courtesies and cooperation extended to our auditors. Since your response to our draft report is generally in agreement with these recommendations, there is no need for further response unless you feel otherwise. If you choose to provide a response, we would appreciate receiving it by September 19, 2016 indicating any actions planned to address the recommendations in this report.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enc: Attachment A

cc: Kenneth Shulman, Director of Internal Audit
Howard Feldman, Principal Attorney



New York State Insurance Fund

August 15, 2016

Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
110 State Street
Albany, New York 12236

Re: Response to Audit

Dear Mr. McHugh:

The New York State Insurance Fund (“NYSIF”) has received your draft report regarding NYSIF’s participation efforts in the Statewide Offset Program (“SWOP”), and the amount of outstanding premiums that NYSIF could have recovered through SWOP since 2012. As stated in the report, we note this is the second in a series of OSC audits on the subject of recovering unpaid NYSIF premiums from State contractors who are otherwise owed State monies. As noted in your Findings, NYSIF has taken the necessary steps toward participating in SWOP, and continues to further our participation efforts.

Below are NYSIF’s responses to your recommendations:

Recommendation 1) Continue taking steps to participate in SWOP.

- *NYSIF has taken, and will continue to take, the necessary steps toward participating in SWOP. To date, NYSIF has obtained approval from the Division of Budget (“DOB”) to participate in SWOP, discussed our participation with the Department of Taxation and Finance (“DTF”), and developed internal business procedures to do so, and identified necessary system enhancements for participation in the program. We are also proceeding with enhancements to our systems that will allow us to identify and process our legally enforceable debts through SWOP. As the changes are being engineered by our IT department, we will meet with DTF to discuss matching our respective electronic files.*

Recommendation 2) Consider system enhancements to identify policyholders and account balances for each category of receivables.

- *See NYSIF response to recommendation #1.*

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Recommendation 3) Assess the feasibility of submitting receivables which meet SWOP criteria to DTF on an individual basis prior to implementation of proposed system changes.

- *NYSIF will review with DTF the requirements which would allow us to manually submit debt to the program. If DTF agrees that a manual process is feasible, we will begin submitting as soon as possible. Concurrently, we will continue working on the system enhancements that will automate the transmission of eligible debt between NYSIF and DTF.*

Recommendation 4) Explore implementing an alternative process, such as administrative determination, where feasible to qualify outstanding debt for SWOP.

- *After a thorough evaluation, NYSIF has determined it is not feasible to implement an alternative process. Under SWOP, debt owed to NYSIF or other state agencies can be offset by any state payments owed to such debtor, following a court judgment or a final administrative determination. NYSIF does not utilize an administrative review process, as the judgment properly obtained in court is appropriate and sufficient to qualify for SWOP. Currently, NYSIF has over 10,000 cancellations annually for which we pursue collection. Adding an administrative appeal process to an already thorough, time-tested and statutorily authorized collection process would cause undue delay in the collections process, and would not be cost effective for NYSIF.*

As steward of the State contracting and expenditure process, OSC has in the past offered its partnership with NYSIF to identify and fully participate in a State debtor to State creditor matching program. We look forward to working with both OSC and DTF to further enhance the debt collection process.

Yours Truly,



Shirley Stark
Deputy Executive Director