New Mexico
Office of Superintendent of Insurance

Annual Financial Statements and Schedules

With Independent Auditors' Report

For the Fiscal Year Ended

June 30, 2017

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
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June 30, 2017

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STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
Official Roster
As of June 30, 2017

Administrative Officials

John G. Franchini	Superintendent of Insurance
Robert Doucette	Deputy Superintendent of Insurance
Vicente Vargas	General Counsel
Margaret Caffey-Moquin	Chief Staff Counsel
Andy Romero	Director, Compliance Division
Jolene Gonzales	Chief Administrative Officer & Acting CFO at 6/30/2017

Timothy M. Keller
State Auditor

Sanjay Bhakta, CPA, CGFM, CFE, CGMA
Deputy State Auditor

State of New Mexico
OFFICE OF THE STATE AUDITOR

INDEPENDENT AUDITOR'S REPORT

John G. Franchini, Superintendent of Insurance
Office of Superintendent of Insurance
Santa Fe, New Mexico

Report on Financial Statements

We were engaged to audit the accompanying financial statements of the governmental activities, each major fund, the aggregate remaining fund information, and the budgetary comparisons for the general fund and major special revenue funds of the Office of Superintendent of Insurance (OSI) as of and for the year ended June 30, 2017, and the related notes to the financial statements, which collectively comprise the OSI's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. Because of the matters described in the "Basis for Disclaimer of Opinions" paragraphs, however, we were not able to obtain sufficient appropriate audit evidence to provide a basis for audit opinions on the financial statements as identified above under "Report on Financial Statements."

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements 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 entity's internal control. Accordingly, we express no such opinion.

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An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We were not able to obtain sufficient and appropriate audit evidence to provide a basis for our audit opinions.

Basis for Disclaimer of Opinions

We were unable to obtain sufficient audit evidence to conclude that the financial statements, as a whole, are free from material misstatement. We were unable to obtain sufficient appropriate audit evidence relating to the valuation and completeness of the receivables of the *Insurance Suspense Fund (SHARE 11820)* because OSI management was unable to provide a receivable listing or aging schedule. Accounting principles generally accepted in the United States of America require that such supporting detail be maintained by management. The receivables of the *Insurance Suspense Fund (SHARE 11820)* agency fund include premium taxes collected by OSI on behalf of the State General Fund and other state agencies, and governmental revenues for OSI operations. The amount by which this departure would affect the receivables of the *Insurance Suspense Fund* and the Governmental Activities has not been determined.

We were unable to obtain sufficient appropriate audit evidence relating to the valuation of revenues of the Governmental Activities, a material portion of which are derived from the receipts of the *Insurance Suspense Fund (SHARE 11820)*. During our audit we identified numerous errors relating to the coding of receipts including fees, licenses, penalties, and taxes, in the IDEAL system. Additionally, OSI's premium tax return forms do not accommodate all the information required to correctly account for receipts. Accounting principles generally accepted in the United States of America require that such supporting detail be maintained by management. The amount by which this departure would affect the revenues of the Governmental Activities has not been determined.

We were unable to obtain sufficient appropriate audit evidence relating to the completeness of the transactions of the *Trust Funds with the Superintendent of Insurance Fund (SHARE 11870)*. OSI did not record any of the transactions relating to the amounts held in trust through the statewide accounting system SHARE, which is OSI's book of record. Accounting principles generally accepted in the United States of America require that all transactions be accounted for in the reporting entity's book of record. The amount by which this departure would affect the assets and liabilities of the *Trust Funds with the Superintendent of Insurance* has not been determined.

Disclaimer of Opinions

Because of the significance of the matters described in the "Basis for Disclaimer of Opinions" paragraphs, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for audit opinions on the financial statements of OSI as of June 30, 2017. Accordingly, we do not express an opinion on these financial statements.

Emphasis of Matter

As discussed in Note 2, the financial statements of OSI are intended to present the financial position, and the changes in financial position of only that portion of the governmental activities, each major fund, and the aggregate remaining fund information of the State of New Mexico that is attributable to the transactions of OSI. They do not purport to, and do not, present fairly the financial position of the entire State of New Mexico as of June 30, 2017, and the respective changes in its financial position, for the year then ended in conformity with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Other Matters

Required Supplementary Information

Management has omitted *Management's Discussion and Analysis* that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

Other Information

Our audit was conducted for the purpose of forming opinions on OSI's financial statements that collectively comprise the OSI's basic financial statements. The combining and individual fund financial statements listed as other supplementary information are presented for purposes of additional analysis and are not a required part of the basic financial statements. The schedule of expenditures of federal awards is presented for purposes of additional analysis as required by *Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and is also not a required part of the basic financial statements.

The schedule of expenditures of federal awards and additional schedules listed as "other supplemental information" are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America.

We were engaged for the purpose of forming an opinion on the basic financial statements as a whole. The schedule of expenditures of federal awards and additional schedules listed as "other supplemental information" in the table of contents are presented for the purposes of additional analysis and are not a required part of the financial statements. Because of the significance of the matters described in the "Basis for Disclaimer of Opinions" paragraphs, it is inappropriate to, and we do not, express an opinion on the schedule of expenditures of federal awards and additional schedules listed as "other supplemental information" in the table of contents.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards,* we have also issued our report dated November 1, 2017 on our consideration of the OSI's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering OSI's internal control over financial reporting and compliance.

Office of the State Auditor

Office of the State Auditor
Santa Fe, New Mexico
November 1, 2017

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF NET POSITION
June 30, 2017

		Governmental Activities
ASSETS		
Current Assets:		
State General Fund Investment Pool	$	5,733,510
Federal Grants Receivable		23,915
Due from Agency Fund		-
Other Receivables		78,429,652
Prepaid Expenses		22,692
Total Current Assets		84,209,769
Capital Assets:		
Capital Assets, Net of Depreciation		287,664
Total Capital Assets		287,664
Total Assets		84,497,433
LIABILITIES		
Current Liabilities:		
Accounts Payable and Accrued Expenses	$	507,354
Payroll Benefits & Taxes Payable		135,472
Accrued Wage Payable		113,358
Compensated Absences		284,678
Due to State General Fund		55,032,992
Other Liabilities		2,960,500
Due to Other State Agencies		23,322,451
Stale Dated Warrants		47,488
Unearned Revenues		17,500
Total Current Liabilities		82,421,793
Non-current Liabilities:		
Total Non-current Liabilities		-
Total Liabilities	$	82,421,793
NET POSITION		
Net Investment in Capital Assets		287,664
Restricted for Special Purposes		1,787,976
Total Net Position	$	2,075,640

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF ACTIVITIES
For the Year Ending June 30, 2017

		Program Revenue			Net (Expense)
Functions/Programs	**Expenses**	**Charges for Services**	**Operating Grants and Contributions**	**Capital Grants and Contributions**	**Governmental Activities**
Governmental Activities:					
Insurance Regulation	$ 9,392,482	$ 12,092,646	$ 1,324,183	$ -	$ 4,024,347
Total governmental activities	9,392,482	12,092,646	1,324,183	-	4,024,347

General Revenues:	
Reversions to the State General Fund	(9,595,707)
Fraud Fund Assessments	1,444,666
Continuing Education Fees	93,955
Other Revenue - Net of Amounts Due to Other Funds	25,137
Special Item-Transfer of Operations	
Transfer from Fiduciary Fund	665,100
Transfers - Other Financing Uses	(2,650,500)
Total General Revenues (Expenses) and Special Items	(10,017,349)
Change in Net Position	$ (5,993,002)
Net Position - beginning	8,068,642
Net Position - ending	$ 2,075,640

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
BALANCE SHEET
GOVERNMENTAL FUNDS
June 30, 2017

	General Operating Fund - 11690	Insurance Operations Fund - 11810	Insurance Suspense Fund - 11820	Other Governmental Funds	Total Governmental Funds
ASSETS					
State General Fund Investment Pool	$ 1,934,567	$ -	$ 3,002,481	$ 796,463	$ 5,733,511
Federal Grants Receivable	23,915	-	-	-	23,915
Due from Other Funds	-	-	-	-	-
Other Receivables	66,422	-	78,335,299	-	78,401,721
Prepaid Expenses	22,692	-	-	-	22,692
Total Assets	$ 2,047,596	$ -	81,337,780	$ 796,463	$ 84,181,839
LIABILITIES AND FUND BALANCES					
Liabilities:					
Voucher Payable	$ 507,354	$ -	$ -	$ -	$ 507,354
Payroll Benefits & Taxes Payable	135,472	-	-	-	135,472
Accrued Wages Payable	113,358	-	-	-	113,358
Due to State General Fund	-	-	55,032,992	-	55,032,992
Other Liabilities and Unearned Revenues	1,840	-	2,959,833	16,327	2,978,000
Stale Dated Warrants	-	-	47,488	-	47,488
Due to Other State Agencies	22,190	-	23,297,467	-	23,319,657
Total Liabilities	780,214	-	81,337,780	16,327	82,134,321
Fund Balances:					
Nonspendable:					
Inventory					
Prepaid Expenses	22,692	-	-	-	22,692
Restricted:					
Special Purposes	1,244,690	-	-	780,136	2,024,826
Total Fund Balances	1,267,382	-	-	780,136	2,047,518
Total Liabilities and Fund Balances	$ 2,047,596	$ -	$ 81,337,780	$ 796,463	$ 84,181,839

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
RECONCILIATION OF THE BALANCE SHEET OF GOVERNMENTAL FUNDS TO THE STATEMENT OF NET POSITION
June 30, 2017

Total fund balance, governmental funds		$ 2,047,518
Amounts reported for governmental activities in the Statement of Net Position are different because:		
Long-term Receivables are not collected in the current period and therefore are not reported in the government funds:	27,931	
Amounts from Long Term Receivables due to other funds	(2,793)	
Governmental Capital Assets	889,690	
Accumulated Depreciation	(602,026)	
		312,802
Long-term liabilities are not due and payable in the current period and therefore are not reported in the government funds:		
Compensated Absences		(284,678)
Net Position of Governmental Activities in the Statement of Net Position		$ 2,075,642

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
GOVERNMENTAL FUNDS
For the Year Ending June 30, 2017

	General Operating Fund - 11690	Insurance Operations Fund - 11810	Insurance Suspense Fund - 11820	Other Governmental Funds	Total Governmental Funds
REVENUES					
Insurance Tax	$ -	$ -	$ -	$ 1,444,666	$ 1,444,666
Investment Earnings	-	-	-	-	-
Special Appropriation	-	-	-	-	-
Miscellaneous	1,121	-	-	-	1,121
Federal Revenue	1,324,183	-	-	-	1,324,183
Other Fees	-	11,700,825	-	484,655	12,185,480
Total Revenues	1,325,304	11,700,825		1,929,321	14,955,450
EXPENDITURES					
Current:					
Personnel Services & Employee Benefits	6,788,332	-	-	-	6,788,332
Contractual Services	1,454,320	-	-	-	1,454,320
Other	1,068,304	-	-	-	1,068,304
Capital Outlay:	-	-	-	-	-
Total Expenditures	9,310,956	-		-	9,310,956
Excess (Deficiency) of Revenues Over Expenditures	(7,985,652)	11,700,825		1,929,321	5,644,494
OTHER FINANCING SOURCES (USES)					
Operating Transfers In - Intra-Agency	7,803,900	-	-	-	7,803,900
Reversions to State General Fund	(792,682)	(8,803,025)	-	-	(9,595,707)
Operating Transfers - Inter-Agency				(2,650,500)	(2,650,500)
Operating Transfers Out - Intra-Agency	-	(5,706,900)	-	(1,431,900)	(7,138,800)
Total Other Financing Sources and Uses	7,011,218	(14,509,925)		(4,082,400)	(11,581,107)
Net Change in Fund Balances	(974,434)	(2,809,100)		(2,153,079)	(5,936,613)
Fund Balances - Beginning	2,241,816	2,809,100		2,933,215	7,984,131
Fund Balances -Ending	$ 1,267,382	$ -	$ -	$ 780,136	$ 2,047,517

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES TO THE STATEMENT OF ACTIVITIES
For the Year Ending June 30, 2017

Net change in fund balances - total governmental funds:		$ (5,936,613)
Amounts reported for Governmental Activities in the Statement of Activities are different because:		
Capital Outlay	-	
Depreciation Expense	(90,299)	
Change in capital assets		(90,299)
Change in Compensated Absences		8,773
Note Recievable		25,137
Change in Net Position		$ (5,993,002)

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE - BUDGET AND ACTUAL
GENERAL OPERATING FUND - 11690
For the Year Ending June 30, 2017

	Budgeted Amounts		Actual Amounts Budgetary Basis	Variance with Final Budget - Positive (Negative)
	Original	Final		
REVENUES				
Insurance Tax	$ -		$ -	$ -
Investment Earnings	-		-	-
Special Appropriation	-		-	-
Other State Funds	-		-	-
Miscellaneous	-		1,121	1,121
Federal Revenue	2,456,700	2,456,700	1,324,182	(1,132,518)
Other Fees	1,365,800	1,377,921	-	(1,377,921)
Total Revenues	3,822,500	3,834,621	1,325,303	(2,509,318)
EXPENDITURES				
Personnel Services & Employee Benefits	8,790,900	8,224,837	6,788,332	1,436,505
Contractual Services	1,304,000	3,019,800	1,454,320	1,565,480
Other	1,365,800	1,377,921	1,068,303	309,618
Total Expenditures	11,460,700	12,622,558	9,310,955	3,311,603
Excess (Deficiency) of Revenues Over Expenditures	(7,638,200)	(8,787,937)	(7,985,652)	802,285
OTHER FINANCING SOURCES (USES)				
Transfers In	7,803,900	7,803,900	7,803,900	-
Reversions to State General Fund	-	-	(792,682)	792,682
Cash Balance Re-Budgeted	-	-	-	-
Transfers Out	-	-	-	-
Total Other Financing Sources and Uses	7,803,900	7,803,900	7,011,218	792,682
Net Change in Fund Balances	165,700	(984,037)	(974,434)	(9,603)
Fund Balances - beginning			2,241,816	(2,241,816)
Fund Balances - ending	$ 165,700	$ (984,037)	$ 1,267,382	$ (2,251,419)

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE - BUDGET AND ACTUAL
INSURANCE OPERATIONS FUND - 11810
For the Year Ending June 30, 2017

	Budgeted Amounts		Actual Amounts Budgetary Basis	Variance with Final Budget - Positive (Negative)
	Original	Final		
REVENUES				
Insurance Tax	$ -	$ -	$ -	$ -
Investment Earnings	-	-	-	-
Special Appropriation	-	-	-	-
Intergovernmental	-	-	-	-
Miscellaneous	-	-	-	-
Federal Revenue	-	-	-	-
Other Fees	5,706,900	5,706,900	11,700,825	5,993,925
Total Revenues	5,706,900	5,706,900	11,700,825	5,993,925
EXPENDITURES				
Personnel Services & Employee Benefits	-	-	-	-
Contractual Services	-	-	-	-
Other	-	-	-	-
Total Expenditures	-	-	-	-
Excess (Deficiency) of Revenues Over Expenditures	5,706,900	5,706,900	11,700,825	5,993,925
OTHER FINANCING SOURCES (USES)				
Transfers In	-	-		-
Reversions to State General Fund	-	-	(8,803,025)	8,803,025
Transfers Out	(5,706,900)	(5,706,900)	(5,706,900)	-
Total Other Financing Sources and Uses	(5,706,900)	(5,706,900)	(14,509,925)	8,803,025
Net Change in Fund Balances			(2,809,100)	2,809,100
Fund Balances - beginning			2,809,100	(2,809,100)
Fund Balances - ending	$ -	$ -	$ -	$ -

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF NET POSITION HELD IN TRUST FOR PATIENT'S COMPENSATION FUND CLAIMS
JUNE 30, 2017

ASSETS			
State General Fund Investment Pool		$	8,294,474
Investments			33,882,958
	Total Assets		42,177,432
LIABILITIES			
Claims Payables			1,362,500
Vouchers Payable			279,641
Payroll Benefits and Taxes Payable			1,338
Accrued Wages Payable			1,253
Other Liabilities			30
PCF Long Term Claims/Liabilities			66,400,000
	Total Liabilities		68,044,762
	Net Liability Held in Trust for Claims	$	(25,867,330)

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF CHANGES IN NET POSITION HELD IN TRUST FOR PATIENT'S COMPENSATION FUND CLAIMS
FOR THE YEAR ENDED JUNE 30, 2017

Additions to Net Position Attributed to:		
Investment Earnings	$	2,425,172
Plan Participant Surcharges		21,482,220
Total Additions		23,907,392
Deductions from Net Position Attributed to:		
Personnel Services and Employee Benefits		69,819
Contractual Services		245,319
Claims Paid		13,746,286
Claims Legally Authorized at June 30th		-
Actuarial Adjustment to estimated Claims		-
Other - Intra-Agency Transfer		665,100
Total Deductions		14,726,524
Net Increase (Decrease)		9,180,868
Net Position Held in Trust for Claims Beginning of Year		(35,048,198)
Net Position Held in Trust for Claims End of Year	$	(25,867,330)

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF NET POSITION HELD IN TRUST FOR POLICY HOLDERS AND CREDITORS
JUNE 30, 2017

ASSETS		
Cash held Banks for Ancillary Receiverships	$	1,908,266
General and Special Deposits Held in Trust For Policy Holders and Creditors		552,385,331
Total Assets		554,293,597
LIABILITIES		
General and Special Deposits held in Trust For Policy Holders and Creditors		552,385,331
Policy Holders and Creditors Payable		-
Earnings Payable per 59A-10-7 NMSA 1978		-
Vouchers Payable		-
Other Liabilities		-
Total Liabilities		552,385,331
Net Position Held in Trust for Policy Holders and Creditors	$	1,908,266

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
STATEMENT OF CHANGES IN NET POSITION HELD IN TRUST FOR POLICY HOLDERS AND CREDITORS
FOR THE YEAR ENDED JUNE 30, 2017

Additions to Net Position Attributed to:		
General and Special Deposits Received	$	-
Net Change in Ancillary Receivership Deposits		300,710
Earnings from General and Special Deposits		-
Total Additions		300,710
Deduction from Net Position Attributed to:		
Contractual Services		-
Distributions to NM Property and Casualty Guaranty Association		-
Distributions Legally Authorized at June 30th		-
General and Special Deposit Refunded		-
Earnings Paid per 59A-10-7 NMSA 1978		-
Other		-
Total Deductions		-
Net Increase (Decrease)		300,710
Net Position Held in Trust for Policy Holders and Creditors Beginning of Year		1,607,556
Net Position Held in Trust for Policy Holders and Creditors End of Year	$	1,908,266

The accompanying notes are an integral part of the financial statements.

NOTE 1: HISTORY AND FUNCTION

The Office of Superintendent of Insurance (OSI) was created on July 1, 2013, pursuant to the passage of Constitutional Amendment 4 during the 2012 General Election and the subsequent enactment of House Bill 45 (Laws of 2013, Chapter 74) from the 1st Session of the 51st Legislature. These actions removed the insurance regulatory function from the Public Regulation Commission (where it was housed as the "Insurance Division") and placed it in a newly-created adjunct state agency entitled the "Office of Superintendent of Insurance." The enabling legislation also created an Insurance Nominating Committee to appoint the Superintendent of Insurance.

The mission of OSI is to provide consumers with convenient access to reliable insurance products which are underwritten by dependable and financially sound companies. The OSI strives to ensure that these companies have a proven history of fair and reasonable rates and are represented by trustworthy and qualified agents. The OSI is committed to consumer protection and to the deterrence and prosecution of insurance fraud.

The vision of OSI is to become one of the country's leading regulatory agencies with respect to overseeing the insurance industry in New Mexico and ensuring that New Mexico insurance consumers are treated fairly and honestly. In addition, OSI strives to be a leader with respect to the roll out of the Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA) or "Obamacare" and ensuring New Mexicans have access to quality and affordable health insurance that maintains a level of minimum standards.

Administration

The Administration Unit includes the Superintendent of Insurance, the Deputy Superintendent of Insurance, General Counsel, Office of Superintendent of Insurance legal staff, the Chief Administrative Officer, the Chief Financial Officer, Budget and Finance units, Human Resources unit, Public Information, Information Technology, and Records, all of which provide administrative support to the Office of Superintendent of Insurance.

Company Licensing

The Company Licensing Bureau licenses insurance companies and other risk-bearing insurance entities. Pursuant to this, the bureau receives, reviews and renders determinations on applications from insurance companies that want to enter the New Mexico insurance market. The bureau oversees approximately $550 million of insurance company deposits held for the protection of New Mexico policyholders. The bureau also reviews and processes documentation submitted by insurance companies for acquisitions, re-domestications, mergers and name changes. The bureau is responsible for the collection of premium taxes and policy filings from surplus lines brokers.

Producer (Agent) Licensing

The Producer (Agent) Licensing Bureau licenses approximately 100,000 insurance professionals, as well as, non-risk-bearing insurance entities. This includes insurance agents, agencies, brokers, adjusters, third party administrators, consultants, bail bondsmen, solicitors and motor clubs, as well as limited license insurance vendors such as cell phone sales agents and travel agents. To protect consumers, the bureau determines the qualifications and eligibility of applicants and processes license applications, renewals and the appointment of agents by insurance companies.

NOTE 1: HISTORY AND FUNCTION CONT.

Examinations

The Examinations Bureau reviews insurance company financial statements filed with the OSI. The bureau also conducts periodic financial examinations, as well as ad hoc specialized market conduct and target financial examinations of insurance companies and agents. The Chief Examiner coordinates an internal solvency review team, consisting of financial analysts, and examiners to review annual and quarterly financial statements filed by insurance companies domiciled in New Mexico and elsewhere and to plan examination activity.

Life & Health Product Filings

The Life & Health Product Filing Bureau reviews and renders determinations on the rates and coverage provisions filed by insurance companies for products pertaining to health, life, annuities, long-term care, Medicare supplement and credit life and disability filings. The bureau approves or disapproves such filings where required, based on their compliance with insurance statutes, regulations and bulletins and with OSI policies and procedures. As a member of the Interstate Insurance Compact, New Mexico participates in multi-state reviews of many life and annuity product filings.

Property/Casualty Product Filings

The Property/Casualty Product Filing Bureau reviews and renders determinations on the rates and coverage provisions filed by insurance companies for products pertaining to automobile, homeowners, workers' compensation, medical malpractice and other assorted products. The bureau approves or disapproves such filings where required, based on their compliance with insurance statutes, regulations and bulletins and with OSI policies and procedures.

Workers' Compensation

The Workers' Compensation Unit, a division of the Property and Casualty Product Filing Bureau, monitors the New Mexico Workers' Compensation Assigned Risk Pool, handles complaints by employers regarding their workers' compensation class code assignment and premiums, oversees the Safety Bonus Program and represents the OSI in other matters relating to Workers' Compensation.

Consumer Assistance

The Consumer Assistance Bureau receives, processes and resolves complaints and inquiries from consumers about insurance rates and claim-handling for all insurance products other than those involving managed health care. The bureau alerts the Investigations Bureau of situations where a complaint reveals a potential violation of insurance statutes and regulations by an insurance company or other insurance licensee.

Managed Health Care

The Managed Health Care Bureau administers and enforces New Mexico's Patient Protection Act and related regulations. The bureau handles complaints and inquiries from managed health care consumers and conducts outreach presentations throughout the state to inform consumers and health care providers of their rights under the Patient Protection Act. The bureau reviews external grievance appeals, proposes rule amendments and also takes appropriate enforcement actions where merited.

Investigations Division

The Investigations Bureau investigates concerns arising from consumer complaints and other sources to determine whether a licensed insurance company or agent has violated insurance statutes or regulations and takes appropriate enforcement actions where merited.

NOTE 1: HISTORY AND FUNCTION CONT.

Insurance Fraud

The Insurance Fraud Bureau investigates and prosecutes, through state district courts, insurance fraud committed by insurance policyholders and applicants, medical providers, third party claimants and other perpetrators of white-collar insurance fraud crimes. The bureau collaborates with state, local and federal law enforcement and regulatory agencies in these efforts and receives its funding from the annual fraud assessment.

Title Insurance

The Title Insurance Bureau, funded by the annually assessed title insurance maintenance fee, regulates the title insurance industry through rate-making and rule-making hearings held every odd numbered year. The Bureau collects and analyzes the annual agent and underwriter statistical reports, and the agent audit procedures. The Bureau annually assesses the insurers based on annual budgeting and maintenance. Periodically the Bureau performs on-site title plant inspections, affiliations, appointments, bank reconciliations, no-pay no-service documentation, and premium calculations. The Bureau performs the investigation of marketing compliance within the regulations. The Bureau regulates more than 75 licensed title insurance agents and underwriters in New Mexico. The bureau investigates complaints, allegations of defalcations, marketing non-compliance, and other infractions by title agents and insurers. The Bureau coordinates with the Investigation Division and Fraud Bureau for appropriate enforcement actions.

Financial Audit

The Financial Audit Bureau is responsible for processing and auditing premium tax filings for approximately 2,000 insurance companies that write policies in New Mexico. All insurers authorized to transact business in New Mexico and all property bondsmen, self-insurers, title companies and risk retention groups are subject to pay premium tax on a quarterly basis. Policy filing fees for life and health insurance companies are processed in this office. The due dates for life and health filing fees are governed by policy changes and new submissions. The fees are determined by the type of policy or submission. Policy filing fees for property and casualty insurance companies are also processed in this office. Property and casualty filing fees are due annually and are determined by premiums written in applicable lines of business. Revenue Audit is responsible for receipting Examination's annual statement filing fees and the Fraud Bureau's annual fraud assessment.

ACA (Affordable Care Act) Implementation

The OSI has received two grants under the Affordable Care Act to help OSI enhance its health insurance rate review process and to assist consumers with understanding their health care options. These grants have allowed OSI to hire additional staff and actuarial consultants and to develop www.nmhealthratereview.com, a website that provides consumers with information and feedback opportunities on health rate filings. OSI has received two other federal grants for the Consumer Assistance Program to inform New Mexicans about their health insurance needs, right and responsibilities and providing consumer assistance or ombudsman programs. In addition, OSI has entered into a Memorandum of Understanding (MOU) with the New Mexico Health Insurance Exchange (NMHIX), to implement the section of the NMHIX statute that requires OSI to provide any needed regulations to govern or assist the NMHIX in providing increased access to health insurance in New Mexico. In carrying out these duties the Bureau works closely with OSI leadership and all bureaus involved in health insurance; additionally, it is tasked with developing numerous new initiatives within OSI related to health insurance reform.

Patient's Compensation Fund

While its primary function is the regulation of insurance, the OSI also administers the Patient's Compensation Fund (PCF), which is a medical malpractice insurance risk-assuming function mandated by the Medical Malpractice Act. The PCF is explained further in Note 6.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements for the New Mexico Office of Superintendent of Insurance (OSI) (the Office or OSI) have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The GASB periodically updates its codification of the existing Governmental Accounting and Financial Reporting Standards that along with subsequent GASB pronouncements (Statements and Interpretations), constitutes GAAP for governmental units. More significant of these accounting policies are described below.

The Office complies with GASB #54. In the governmental fund financial statements, fund balances are classified as non-spendable, restricted, or unrestricted (committed, assigned, or unassigned). Restricted represents those portions of fund balance where constraints placed on the resources are either externally imposed or imposed by law through constitutional provisions or enabling legislation. Committed fund balance represents amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the Legislative and Executive branches of the State. Assigned fund balance is constrained by the Legislature's and Executive Branch's intent to be used for specific purposes or in some cases by legislation.

The above statement did not have a significant impact on the financial statements of the Office.

A. FINANCIAL REPORTING ENTITY

The Superintendent is the chief executive of the Office of the Superintendent of Insurance, and, is appointed by the Insurance Nominating Committee. The current Superintendent was re-appointed by the Insurance Nominating Committee March 10, 2016, and this appointment runs through December 31, 2019. These financial statements include all funds, account groups and activities over which the Superintendent has oversight responsibility**.** The Superintendent has decision-making authority, the power to designate management, the responsibility to significantly influence operations and has primary accountability for fiscal matters.

A primary government is any state or general purpose local government consisting of all the organizations that make up its legal entity. All funds, organizations, institutions, agencies, departments, and offices that are not legally separate are, for financial reporting purposes, part of the primary government. The Office, therefore, is part of the primary government of the State of New Mexico and its financial data should be included with the financial data of the State. The Office is not included in any other governmental "reporting entity" as defined in Section 2100, *Codification of Governmental Accounting and Financial Reporting Standards.* Copies of the State of New Mexico's Comprehensive Annual Financial Report can be requested from the Department of Finance and Administration, Financial Control Division/State Controller, Bataan Memorial Building Room 320, Santa Fe, NM 87501.

In accordance with the criteria set forth in GASB # 39 and # 61 for determining component units, OSI does not have component units.

B. BASIC FINANCIAL STATEMENTS

The basic financial statements include both government-wide (based on OSI as a whole) and fund financial statements. The reporting model focus is on either OSI as a whole or major individual funds (within the fund financial statements). Both the government-wide and fund financial statements (within the basic financial statements) categorize primary activities as either governmental or business type activities. OSI is a single purpose government entity and has no business-type activities. In the government-wide Statement of Net Position, the governmental activities column is presented on a consolidated basis by column using the economic resources measurement focus and the accrual basis of accounting and incorporates long-term assets and receivables as well as long-term debt and obligations. Additionally, internal activity has been eliminated at this level of presentation.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONT.

The government-wide Statement of Activities reflects both the gross and net cost per functional category (education, labor, transportation, etc.), which are otherwise being supported by general government revenues. The Statement of Activities reduces gross expenses (including depreciation expense on capital assets) by related program revenues, operating and capital grants. The program revenues must be directly associated with the function which consists of grants and fees.

The net cost is normally covered by general revenues (taxes, intergovernmental revenues, interest income, etc.). Historically, the previous model did not summarize or present net cost by function or activity. The Office does not currently employ indirect cost allocation systems.

This government-wide focus is more on the sustainability of the Office as an entity and the change in aggregate financial position resulting from the activities of the fiscal period.

The fund financial statements are similar to the financial statements presented in the previous accounting model. Emphasis here is on the major funds of the governmental categories. Non-major funds (by category) or fund type are summarized into a single column. OSI's major funds are the General Fund and the Insurance Operations Fund.

The governmental fund statements are presented on the current financial resources measurement focus and modified accrual basis of accounting. This presentation is deemed appropriate to (a) demonstrate legal compliance, (b) demonstrate the source and use of liquid resources, and (c) demonstrate how OSI's actual experience conforms to the budget or fiscal plan. Since the governmental fund statements are presented on a different measurement focus and basis of accounting than the government-wide statements' governmental column, a reconciliation is presented on the page following each statement, which briefly explains the adjustment necessary to transform the fund based financial statements into the governmental column on the governmental-wide presentation.

OSI's fiduciary funds (agency/trust funds) are presented in the fund financial statements in total. Since by definition these assets are being held for the benefit of a third party and cannot be used to address activities or obligations of the government, these funds are not incorporated into the government-wide statements. Conversely other governmental resources cannot be used to address activities or obligations of the fiduciary funds.

C. BASIS OF PRESENTATION

The financial transactions of the Department are recorded in individual funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund balance, revenues, expenditures or expenses, and other financing sources or uses. Government resources are allocated to, and accounted for, in individual funds based upon the purpose for which they are to be spent and the means by which spending activities are controlled. The various funds are summarized by type in the accompanying financial statements.

OSI uses the following fund types:

<u>Governmental Fund Types</u>

All governmental fund types are accounted for on a spending or financial flow measurement focus. Only current assets and current liabilities are generally included on their balance sheet. Their reported fund balance (net current assets) is considered a measure of available spendable resources. Governmental fund operating statements present increases (revenues and other financing sources) and decreases (expenditures and other financing uses) in net current assets. Accordingly, they are said to present a summary measurement focus, expenditure recognition for governmental fund types is limited to exclude amounts represented by noncurrent liabilities. Since they do not affect net current assets, such long-term amounts are not recognized as governmental fund type expenditures or fund liabilities. The following is a description of the Governmental Funds of the Department.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONT.

The **General Fund**, also known as the Insurance Operating Fund, is the general operating fund of the Office and considered a major fund. It is used to account for all financial resources except those required to be accounted for in another fund. This is a reverting fund, with the exception of amounts received from federal grants and other proceeds legally restricted. The General Fund is SHARE System fund 11690.

Special Revenue Funds: The Special Revenue Funds are used to account for the proceeds of specific revenue sources. (other than expendable trusts or major capital projects) that are legally restricted to expenditures for specified purposes. The Special Revenue non-major funds are SHARE System fund 11830 Insurance Licensee Continuing Education, 11840 Insurance Examination Fund, 11860 Title Insurance Maintenance Assessment, 11820 Insurance Suspense Fund, and 11880 Insurance Fraud Fund.

In addition, SHARE System fund 11820, Insurance Suspense Fund, was recorded in the FY17 financial statements as a Special Revenue Fund rather than an Agency as recorded in previous years. This change was required by the Department of Finance and Administration to ensure compliance with GAAP.

State Statute governs how much, if any, amounts remaining in these funds revert to the State at year end.

Insurance Operations Fund: A major special revenue fund that consists of the money received by OSI that is part of the balance derived from the fees imposed pursuant to subsections A & E of 59A-6-1 NMSA 1978 other than the fees derived from property and vehicle insurance business. The legislature shall annually appropriate from the fund to OSI those amounts necessary for the division to carry out its responsibilities pursuant to the Insurance Code and other laws. Any balance in the fund at the end of a fiscal year greater than one-half of that fiscal year's appropriation shall revert to the general fund. The Insurance Operations Fund is SHARE System fund 11810.

Fiduciary Fund Types

Fiduciary funds are used to report assets held in trustee or agency capacity for others and therefore are not available to support OSI programs. The reporting focus is upon net assets and changes in net assets and employs accounting principles similar to proprietary funds.

Patients' Compensation Fund: A private purpose trust fund to account for funds accumulated for payments of claims for bodily injury or death due to malpractice by a health care provider insured under the Medical Malpractice Act. This fund was created by Section 41-5-1 through 42-528, NMSA 1978 "Medical Malpractice Act". The purpose of the act is to promote the health and welfare of the people of New Mexico by making available professional liability insurance for health care providers in New Mexico. The Patients' Compensation Fund is SHARE System fund 11850 and is referred to as the PCF.

Assets Held in Trust for Policy Holders and Creditors: This is a private purpose trust fund to account for assets held in trust per 59A-5-18 and 59A-5-19 NMSA 1978. The insurance code requires companies wishing to transact business in New Mexico to deposit certain securities in trust for the benefit of policy holders and creditors. Insurance company rights during solvency are detailed in 59A-10-7 and include any earnings on these required deposits. When a delinquency occurs the securities are liquidated for policy holders and creditors according to 59A-41-18 NMSA 1978 and placed in ancillary receivership accounts. The Assets Held in Trust for Policy Holders and Creditors fund is SHARE System fund 11870 and is referred to as the Trust Fund.

Non-Current Governmental Assets/Liabilities

GASB Statement #34 eliminated the presentation of Account Groups for fixed assets and long-term debt but provides for these records to be maintained and incorporates the information into the Governmental column in the government-wide Statement of Net Position.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONT.

D. BASIS OF ACCOUNTING

Basis of accounting refers to the point at which revenues or expenditure/expenses are recognized in the accounts and reported in the financial statements. It relates to the timing of the measurements made, regardless of the measurement focus applies.

The Government-wide Financial Statements and the Fiduciary Fund Financial Statements are presented on an accrual basis of accounting. The Governmental Funds in the Fund Financial Statements are presented on a modified accrual basis.

Accrual

Under the accrual method of accounting revenues are recognized when earned and expenses are recognized when incurred.

Modified Accrual

All governmental funds utilize the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues and other governmental fund resource increments are recognized in the accounting period in which they become susceptible to accrual – that is, when they become both measurable and available to finance expenditures of the current fiscal period; "available" means collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. The Department considers funds available if received within "60 days" after year-end. Expenditures are generally recognized under the modified accrual basis of accounting when the related liability is incurred.

Revenues from grants that are restricted for specific uses are recognized as revenues and as receivables when the related costs are incurred and all other eligibility requirements are met. Contributions and other monies held by other state and local agencies are recorded as a receivable at the time the money is made available to the specific fund. Revenues collected for future periods are deferred until available. All other revenues are recognized when they are received and are not susceptible to accrual.

Program revenues consist of federal grants. Charges for services consist primarily of fees charged to regulated entities.

Expenditures are recorded as liabilities when incurred. An exception to this general rule is that accumulated unpaid annual, compensatory and certain sick leave are accrued as current liabilities. Expenditures charged to federal programs are recorded utilizing the cost principle described by the various funding sources.

In applying the "susceptible to accrual" concept to intergovernmental revenues pursuant to GASB Statement #33, *Accounting and Financial Reporting for Nonexchange* Transactions the provider should recognize liabilities and expenses and the recipient should recognize receivables and revenues when the applicable eligibility requirements including time requirements, are met. Resources transmitted before the eligibility requirements are met, under most circumstances, should be reported as advances by the provider and deferred revenue by the recipient.

E. BUDGETS AND BUDGETARY ACCOUNTING

The New Mexico State Legislature makes annual appropriations to the Department, which lapse at fiscal year-end. Legal compliance is monitored through the establishment of a budget (modified accrual basis) and a financial control system, which permits a budget to actual expenditure comparison. Expenditures may not legally exceed appropriations for each budget at the program appropriation unit level. Budgeted appropriation unit amounts may be amended upon approval from the Budget Division of the State of New Mexico Department of Finance and Administration within the limitation as specified in the General Appropriation Act. The budget amounts shown in the financial statements are the final authorized amounts as legally revised during the year.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONT.

The budget is adopted on a modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get paid by the statutory deadline (Section 6-10-4 NMSA 1978) that must be paid out of next year's budget. A reconciliation of budgetary basis of GAAP basis will be necessary if any accounts payable at the end of the fiscal year are not paid by the statutory deadline. The Department has not included such reconciliation for fiscal year 2017 as all payables were paid by the statutory deadline. Each year the Legislature approves multiple year appropriations, which the State considers as continuing appropriations. The Legislature authorizes these appropriations for two to five years; however, it does not identify the authorized amount by fiscal year. Consequently, the appropriation is budgeted in its entirety the first year the Legislature authorizes it. The unexpended portion of the budget is carried forward as the next year's beginning budget balance until either the project period has expired or the appropriation has been fully expended. The budget presentations in these financial statements are consistent with this budgeting methodology.

The budgetary basis differs from the basis of accounting required by Generally Accepted Accounting Principles (GAAP). Significant differences between the budgetary basis and GAAP include the following:

1. The budget does not consider reversions to the State General Fund.

2. The budget includes encumbrances (obligations for unperformed contracts for goods or services). GAAP does not include encumbrances, for multi-year appropriations only.

3. The budget statements are presented on modified accrual basis.

The Department follows these procedures in establishing the budgetary data reflected in the financial statements:

1. No later than September 1, the Department submits to the Legislative Finance Committee (LFC), and the Budget Division of the Department of Finance and Administration (DFA), an appropriation request for the fiscal year commencing the following July 1. The appropriation request includes proposed expenditures and the means of financing them.
2. Budget hearings are scheduled before the New Mexico House Appropriations and Senate Finance Committees. The final outcome of those hearings is incorporated into the State's General Appropriation Act.
3. The Act is signed into Law by the Governor of the State of New Mexico within the legally prescribed time limit, at which time the approved budget becomes a legally binding document.
4. Not later than May 1, the Department submits to DFA an annual operating budget by appropriation unit and account code based upon the appropriation made by the Legislature. The Budget Division of DFA reviews and approves the operating budget, which becomes effective on July 1. All subsequent budget adjustments must be approved by the Director of the DFA-State Budget Division and LFC.
5. Formal budgetary integration is employed as a management control device during the fiscal year for the General and Special Revenue Funds. Agency funds are not budgeted as they have no expenditure activity.

F. ENCUMBRANCES

Encumbrances represent commitments related to unperformed contracts for goods and services. Encumbrance accounting, under which purchase orders, contracts, and other commitments for the expenditure of monies are recorded in order to reserve that portion of the applicable appropriation, is employed as an extension of formal budget integration in the governmental funds. All current year encumbrances lapsed at year-end. In cases where the appropriations do not lapse at year-end, the encumbrances outstanding are re-encumbered for the same amount outstanding at year-end and do not constitute expenditures or liabilities because the commitments will be honored during the subsequent year. The Department does have an appropriation, which is multiple year and does not lapse at year-end.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONT.

G. ASSETS, LIABILITIES AND FUND BALANCE

1. Cash and Cash Equivalents

The Department's interest in the pooled cash on deposit with the State Treasurer's Office (STO) and Ancillary Receivership Accounts on deposit with area banks is considered cash and cash equivalents. The Ancillary Receivership Accounts represent funds held in trust for the payment of claims for insurance companies, which are in receivership.

2. Investments

Investments in the Patient's Compensation Fund are held with the State Investment Council. The Investment Council operates in accordance with appropriate State law and regulations. Interest on investments is recorded as revenue in the year the interest is earned.

3. Receivables

OSI has receivable from federal awards, memorandums of understanding, a title insurance settlement, and a retired employee**.**

4. Federal Grants Receivable:

Various reimbursement procedures are used for federal awards received by the Department. Consequently, timing differences between expenditures and program reimbursements can exist at any time during the fiscal year. Receivable balances at fiscal year-end represent amounts expended during the fiscal year that are related to a federal grant, however the reimbursement for the expenditure was not received prior to the end of the fiscal year.

5. Inter-fund Receivables and Payables

Short-term amounts owed between funds are classified as "Due to/from Other Funds".

6. Prepaid Items

These amounts represent prepayment of postage, which has benefit to the OSI beyond the fiscal year, ending June 30, 2017. Prepaid items are expensed when consumed under the consumption method. Therefore, these items are allocated to the fiscal year in which they are used. A portion reported in nonspendable fund balance represents a prepaid item.

7. Capital Assets

Property, plant and equipment purchased or acquired at a value of $5,000 or greater are capitalized per Section 12-6-10 NMSA 1978. Assets are carried at historical cost or estimated historical cost. Contributed assets are recorded at the fair market value as of the date received. Additions, improvements and other capital outlays that significantly extend the useful life of an asset are capitalized. Other costs incurred for repairs and maintenance are expensed as incurred.

Depreciation on all assets is provided on the straight-line basis over the following estimated useful lives with no salvage value. The Department utilized American Appraisal to determine the useful lives based on generally accepted useful lives for the different classes and types of assets.

Machinery and Equipment

Other Personal Property – 12 years
Computer Equipment (including software) – 3 to 10 years
Furniture, Fixtures, and Accessories – 6 to 20 years
Automotive – 8 years

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONT.

The Department utilizes a building that is owned by the Facilities Management Division of the State of New Mexico General Services Department. These assets and the related depreciation expense are not included in the accompanying financial statements. GASB Statement #34 requires the recording and depreciation of infrastructure assets. Infrastructure assets include roads, bridges, traffic signals, etc. The Department does not own any infrastructure assets.

8. Compensated Absences

Qualified employees are entitled to accumulate annual leave according to a graduated leave schedule of 80 to 160 hours per year, depending upon length of service and employees hire date. A maximum of thirty working days (240 hours) of accumulated annual leave may be carried forward into the beginning of the calendar year and any excess leave is lost. When employees terminate, they are compensated for accumulated annual leave as of the date of termination, up to a maximum of 240 hours.

Qualified employees are entitled to accumulate sick leave at the rate of one day for each calendar month of service. There is no limit to the amount of sick leave that an employee may accumulate. Once per fiscal year in either January or July, employees may elect to be paid for 50% of accrued sick leave in excess of 600 up to 720 hours, but not to exceed 120 hours (net 60 hours can be paid). At retirement, employees can receive 50% payment up to 400 hours for the hours over 600 hours of accumulated sick leave. Therefore, only sick leave which has been accrued represents the hours earned at June 30, 2017, over 600 hours. Expenditures for accumulated sick pay for hours under 600 hours will be recognized as employees take such absences.

Compensatory time may be granted to individuals when overtime is needed.

The non-current portion (the amount estimated to be used in subsequent fiscal years) for Governmental Funds is maintained separately and represents a reconciling item between the fund and government-wide presentations.

9**. Unearned Revenues:**

The unearned revenues of $ 16,327.36 are Title Insurance Maintenance Fund Assessments for FY 18 that were received by OSI prior to July 1, 2017. The unearned revenues of $1,172.81 are Federal Grant monies for FY18 that were received by OSI prior to July 1, 2017.

10. Deferred Inflows/Outflows

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption net position that applies to a future period(s) and so will not be recognized as an outflows of resources (expense/expenditures) until then. The Office did not have any items that qualified for reporting in this category as of June 30, 2017.

In addition to liabilities the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents a consumption net position that applies to a future period(s) and so will not be recognized as an inflows of resources (revenue) until then. The Office did not have any items that qualified for reporting in this category as of June 30, 2017.

11. Reservations of Fund Balance

The Department complies with GASB 54—Fund Balance Reporting and Governmental Fund Type Definitions. The pronouncement provides modifications to, and additional types of, fund balance classifications. This statement will enhance the usefulness of fund balance information to provide more consistency among the classifications and will establish reporting standards for all governments that report governmental funds. The definition of each classification is summarized below:

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONT.

Non-Spendable Fund Balance - The nonspendable fund balance classification is the portion of fund balance that includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact. The “not in spendable form” criterion includes items that are not expected to be converted to cash, for example, inventories and prepaid amounts.

Restricted Fund Balance - The restricted fund balance classification is the portion of fund balance that reflects constraints placed on the use of resources (other than nonspendable items) that are either: (a) externally imposed by creditors (such as through debt covenants). grantors, contributors, or laws or regulations of other governments; or (b) imposed by law through constitutional provisions or enabling legislation.

Committed Fund Balance - The committed fund balance classification is the portion of fund balance that can only be used for specific purposes pursuant to constraints imposed by formal action of the government's highest level of decision-making authority.

Assigned Fund Balance - The assigned fund balance classification is the portion of fund balance that are constrained by the government's *intent* to be used for specific purposes, but that are neither restricted nor committed.

Unassigned Fund Balance - The unassigned fund balance classification is the portion of fund balance that is residual classification for the general fund. This classification represents fund balance that has not been assigned to other funds and that has not been restricted, committed, or assigned to specific purposes within the general fund.

H. NET POSITION

The government-wide Fund Financial Statements utilize a net position presentation. Net position are categorized as investment in capital assets, restricted and unrestricted.

Net Investment in Capital Assets – is intended to reflect the portion of net assets which are associated with non-liquid, capital assets less outstanding capital asset related debt. The total net investment in capital assets is $287,664.

Restricted Net Position – are liquid assets (generated from revenues and not bond proceeds), which have third-party constraints placed on their use either by (1) external groups such as creditors, grantors, contributors or laws or regulations of other governments or (2) law through constitutional provisions or enabling legislation limiting their use. OSI complies with GASB 46 "Net Assets Restricted by Enabling Legislation". The amount of net position restricted by enabling legislation is $1,787,976.

Unrestricted Net Position (Deficit) – represent all other unrestricted liquid assets that do not meet the definition of “restricted net position” or “net invested in capital assets”. Unrestricted deficit results mainly from the recording of the compensation absences liability and litigation liability for which future appropriations will pay the liability. The amount of unrestricted net position is $0.

I. USE OF ESTIMATES

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

NOTE 3: CASH AND INVESTMENTS

State law (Section 8-6-3 NMSA 1978) requires the Department's cash be managed by the New Mexico State Treasurer's Office (STO). At June 30, 2017 the Department had $23,624,746 invested in the State General Fund Investment Pool. OSI believes the cash invested in the State General Fund Investment Pool is represented fairly and with no material misstatements due to the reconciliation done by OSI. The Department has established internal processes applying the State of New Mexico Manual of Model Accounting Practices (MAP). These processes are designated to implement necessary and mandatory controls to avert accounting errors and violations of state and federal laws and rules related to financial matters. In addition, the Department ensures that any disbursement of funds does not exceed the unencumbered funds at its disposal. Incorporating the State's financial software system (SHARE) and monthly internal reporting and reconciliation throughout the fiscal year, OSI maintains optimum fiscal safeguards. This ensures that the cash balances in SHARE are correct to the extent that OSI has control (i.e. collection, depositing, reconciling, and documentation of outstanding items) of the cash, its receipts and transfers to the state general fund and other state agencies pursuant to state statue. Any discrepancies are researched immediately. Expenditure support is retained with all transactions. Due to these controls, the Department believes the value of its share of the SGFIP at June 30, 2017 materially approximates $23,624,746, including fiduciary funds. The following is a summary and reconciliation:

Name of Depository		Account Name	SHARE System Fund No.	Type of Deposit	Interest Bearing	Bank/DFA Statement Balance at 6/30/2017
General Fund:						
	NM State Treasurer	Insurance Operating Fund	11690	State Treasury	No	1,934,567
	Total General Fund					1,934,567
Special Revenue Funds:						
	NM State Treasurer	Insurance Operations Fund	11810	State Treasury	No	-
	NM State Treasurer	Insurance Suspense Fund	11820	State Treasury	No	3,002,480
	NM State Treasurer	Insurance Licensee Cont Educ	11830	State Treasury	No	93,963
	NM State Treasurer	Insurance Examination Fund	11840	State Treasury	No	1,387
	NM State Treasurer	Title Ins Maintenance Assess.	11860	State Treasury	No	342,569
	NM State Treasurer	Insurance Fraud Fund	11880	State Treasury	No	358,544
	Total Special Revenue Funds					3,798,943
Fiduciary Funds:						
	NM State Treasurer	Patient's Compensation Fund	11850	State Treasury	Yes	8,294,474
	Total Fiduciary Fund					8,294,474
Department Total						$ 14,027,984

Reconciliation Between SGFIP and Financial Statements

Amounts held in the SGFIP at 6/30/2017	$23,624,746
Reversions to the State General Fund - Note 10	-9,595,707
DFA Reconciling Item	-1,055
	14,027,984
SGFIP per the Statement of Net Position	$5,733,510
SGFIP per the Statement of Net Position Held in Trust	$8,294,474
	$14,027,984

NOTE 3: CASH AND INVESTMENTS CONT.

Interest Rate Risk: The Department does not have an investment policy that limits investments maturities as a means of managing its exposure to fair value losses arising from increasing interest rates. The New Mexico State Treasurer's Office does have an investment policy that limits investments maturities to five years and less on allowable investments. This policy is means of managing exposure to fair value losses arising from increasing interest rates. This policy is reviewed and approved annually by the New Mexico State Board of Finance.

Credit Risk: The New Mexico State Treasurer's Office pool is not rated.

For additional GASB 40 disclosure regarding cash held by the New Mexico State Treasurer's Office, the reader should refer to separate audited financial statements prepared by the New Mexico Treasurer's Office for the fiscal year ended June 30, 2014 which will disclose the categories of risk involved.

Cash in Banks – Ancillary Receivership. The following is a listing of the Department's Ancillary Receivership cash balances on deposit at a local financial institution. The amounts are reported in the SHARE 11870 Trust fund. These balances are grouped by depository financial institutions as of June 30, 2017.

Century Bank of Santa Fe – Demand Deposit Accounts	$1,908,266

This amount is listed on the Fiduciary Statement of Net Position Held in Trust for Policy Holders and Creditors. There were no reconciling items for these bank accounts. Refer to Note 20 for further information related to the trust fund.

The OSI has entered into a custodial agreement with the above financial institution and the New Mexico State Treasurer. According to this agreement, the State Treasurer is responsible for approving all changes in the pledged collateral, monitoring the collateral requirements, and ensuring that all collateral meets the requirements of state law. As of June 30, 2017, the State Treasurer reported that the cash account was adequately collateralized in accordance with state statutes. Please refer to the separately issued financial statements of the State Treasurer's Office for additional information.

Pooled Investments. The OSI has entered into an agreement with the State Investment Council pursuant to Section 6-8-1.G, NMSA 1978 to participate in the investment pool. The Pool is not registered with the SEC and is managed by the State Investment Council. The investments are valued at fair market value based on quoted market prices at the valuation date. The reported value of the pooled shares is the same as the fair value of the pooled shares.

The value of the investments maintained at the State Investment Council External Pooled Investment Funds is as follows at June 30, 2017:

	Market Value
Core Bond Fund	$ 25,033,208
Large Cap Index	4,015,269
Non US Developed Index	1,792,119
Non US Emerging Markets	1,308,989
Mid/Small Cap	1,733,373
	$ 33,882,958

Concentration of Credit Risk: The OSI places no limit on the amount the OSI may invest in any one issuer. Please see the financial statements of the State Investment Council for a further discussion of the risks of the pooled investments. Their audit report may be obtained by contacting the State Investment Council at 41 Plaza La Prenza #A, Santa Fe, New Mexico 87507.

NOTE 4: DUE FROM AND DUE TO OTHER FUNDS

Due from and due to other funds represent inter-fund receivables and payables arising from interdepartmental transfers primarily due to statutory requirements for transferring funds collected by one fund and expended by another. There were no inter-fund receivables and payables in FY17. These are routine transactions that occur monthly or annually. These amounts are eliminated on the government-wide financial statements. Agency funds are excluded from governmental funds and governmental-wide financial statements. All inter-fund balances are expected to be repaid in the next fiscal year.

NOTE 5: CAPITAL ASSETS

The changes in capital assets for the year are as follows:

	Beginning Balance 7/1/2016	Additions	Deletions	Ending Balance 6/30/2017
Governmental-type Activities				
Computer Equipment	$ 417,116	$ -	$ (8,708)	$ 408,408
Furniture and Fixtures	6,793	-	-	6,793
Automotive	546,118	-	(71,629)	474,489
Total Capital assets at Historical Cost	$ 970,027		(80,337)	889,690
Less: Accumulated Depreciation				
Computer Equipment	206,343	60,887	(8,708)	258,522
Furniture and Fixtures	4,698	340	-	5,038
Automotive	381,023	29,073	(71,629)	338,467
Total Accumulated Deprecation	592,064	90,299	(80,337)	602,026
Governmental Activities Capital Assets, Net	$ 377,963	$ (90,299)	$ -	$ 287,664

All Capital Assets listed above are being depreciated. The Office of Superintendent of Insurance does not have any Capital Assets that are not being depreciated, such as land.

Depreciation expense for the current year is $90,299 for the governmental funds.

NOTE 6: PATIENTS' COMPENSATION FUND CLAIMS

The New Mexico Patients' Compensation Fund (PCF) serves a vital role in supporting the overall health of the medical professional liability insurance (MPLI) system in New Mexico. The PCF provides excess coverage that stabilizes the operating results of participating insurers and encourages competition which leads to greater availability and affordability of coverage. In New Mexico and other states, a competitive MPLI market tends to attract new physicians leading to greater access to care. The coverage provided by the PCF requires the use of an occurrence coverage form, preferred by healthcare providers, with limits that provide comprehensive coverage to ensure that injured patients receive appropriate compensation for their injuries. As a result, all stakeholders in the New Mexico healthcare system benefit in some way from a healthy PCF. 41-5-25(H) NMSA 1978 requires an independent actuarial study of the PCF not less than once every two years. The review examines several aspects of the PCF including analyses of indicated reserves for unpaid losses, appropriate assessment surcharges for upcoming policy periods, the impact of potential legislative changes and an examination of the competitive landscape for MPLI in New Mexico and surrounding areas.

NOTE 6: PATIENTS' COMPENSATION FUND CLAIMS CONT.

The actuarial analysis was conducted by a third party on the Patient's Compensation Fund during fiscal year 2016. The results of this study are listed on the PCF's statement of net position for Patient's Compensation fund claims as long term claims payable. Per the independent actuarial analysis discounted claims existing at 12/31/2015 total $66,400,000. This report may be obtained by writing to State of New Mexico Office of Superintendent of Insurance, PO Box 1689, Santa Fe, NM 87504-1689. It should be noted there are significant actuarial assumptions used in estimating potential liabilities, including the rate of return on investment and the number and cost of claims, among others. The differences in any of the assumptions and actual results may significantly change the potential liabilities. All claim liabilities are paid out of the Patients' Compensation Fund. The next statutorily required actuarial analysis of the PCF will occur in fiscal year 2018.

The Statement of Net Position Held in Trust for Patient's Compensation Fund Claims reflects a net liability. Section 41-5-25(F) NMSA 1978 provides for proration of payments in the event the fund is exhausted.

NOTE 7: SPECIAL APPROPRIATIONS

The following describes the status of special appropriations the Department received.

Appropriation	Appropriation End Date	Current Year Revenue	Amount Appropriated	Current Year Expenditures	Project to Date Expenditures	Unexpended Portion
Laws of 2016, Chapter 11, Section 12	6/30/2018		$ 1,250,000	$ 167,079	$ 907,811	$ 342,189

Laws of 2016, Chapter 11, Section 12 extended the appropriation to 6/30/18 originally established under Laws of 2013, Chapter 227, Section 7, item 13. The purpose of the appropriation is to migrate the insurance system and processes towards a paperless, web-based environment. The appropriation is from the assessments authorized by Section 59A-6-1-1, NMSA 1978 for an insurance division licensing and revenue accounting system. The appropriation was budgeted within the general operating fund 11690.

NOTE 8: CHANGES IN COMPENSATED ABSENCES

The changes in short-term liabilities for government type activities are as follows:

	Balance Beginning	Increases	Decreases	Balances Ending
Compensated Absences:				
Annual Leave	$ 251,058	152,433	155,262	$ 248,229
Compensatory Leave	40,479	33,021	37,777	35,723
Sick Leave	1,914	3,725	4,913	726
Total Short-Term Liabilities	$ 293,451	189,179	197,952	$ 284,678

NOTE 9: DUE TO OTHER STATE AGENCIES

The following are short-term amounts owed by the Insurance Suspense Agency Fund to other state agencies:

Due to Other State Agencies	Fund No.	Amount	Due to Agency/Fund	Fund No.	Amount
Governmental Funds:					
General Operating Fund	11690	$ 22,191	State Auditor's Office	11200	$ 22,191
Agency Funds					
Insurance Suspense Fund	11820	55,032,992	Department of Finance & Administration	85300	55,032,992
Insurance Suspense Fund	11820	230	Department of Finance & Administration	04500	230
Insurance Suspense Fund	11820	4,632,078	Department of Finance & Administration	73600	4,632,078
Insurance Suspense Fund	11820	18,665,159	Department of Finance & Administration	43000	18,665,159
Totals:		$ 78,352,650			$ 78,352,650

NOTE 10: REVERSIONS

Pursuant to the ADDENDA TO ACCOUNTING POLICY STATEMENT FOUR – CUSTODIAL FUNDS issued by the State Controller on July 14, 2017, the reversion to the State General Fund was treated as a cash transaction as of June 30th, rather than recording the amount as a liability which was the practice in prior years. The reversion amount was settled using the state's adjustment period on September 22, 2017.

Unexpended and unencumbered cash balances of certain funds revert to the State General Fund at year-end. For certain funds, cash recoveries during the fiscal year from stale dated warrants and prior year reimbursements are also due to the State General Fund. Amounts due to the State General Fund for the year ending June 30, 2017 were paid in September 2017.

Current year reversions as of June 30, 2017:

	SHARE System Fund 11810	SHARE System Fund 11690	Total
General Fund			
FY17 Reversions	$ 5,993,925	$ 792,682	$ 6,786,607
Prior Year Reversions - FY16	2,809,100	-	2,809,100
Total Reversions to the State General Fund	$ 8,803,025	$ 792,682	$ 9,595,707

NOTE 11: TRANSFERS

Interagency and interfund transfers as of June 30, 2017 were as follows:

A - Intra-agency Transfers

During the fiscal year, the Department transferred funds that were recorded as "Other Financing Sources/Uses". The purpose of the transfers from the special revenue funds to the general fund were to comply with the allocated operating budget.

Other financing sources and uses consist of the following:

A-Intra-Agency Transfers

Fund		Transfers In	Transfers Out
11690	Insurance Operating Fund	$ 7,803,900	$ -
11810	Insurance Operations Fund	-	5,706,900
11850	Patient Compensation Fund	-	665,100
11860	Title Ins Maintenance Assess. Fund	-	390,700
11880	Insurance Fraud Fund	-	1,041,200
	Grand Total	$ 7,803,900	$ 7,803,900

B – Inter-agency Transfers

Agency / Fund		Transfers In	Transfers Out
Office of Superintendent of Insurance			
11690	General Operating Fund - Reversion	$ -	$ 792,682
11810	Insurance Operations Fund - Reversion		8,803,025
11830	Insurance Licensee Continuing Education	-	1,213,700
11860	Title Ins Maintenance Assess. Fund	-	202,600
11880	Insurance Fraud Fund	-	1,234,200
Department of Finance and Administration			
85300	Appropriation Account - Reversion	9,595,707	
85300	Appropriation Account - Fund Balance Transfer	2,650,500	
	Grand Total	$ 12,246,207	$ 12,246,207

NOTE 12: OPERATING LEASE COMMITMENTS

The Department is obligated for the lease of mailing equipment, which is being accounted for as operating lease. Operating leases do not give rise to property rights or lease obligations; therefore, this lease agreement includes a cancellation clause and is contingent upon legislative appropriation.

Future minimum annual payments under the operating lease agreement for the mailing equipment are as follows:

Year Ended June 30,	
2018	$ 192,708
2019	169,660
2020	145,719
2021	128,505
2022	128,859
Subsequent Years	204,341
Total Minimum Lease Payments	$ 969,792

NOTE 13: RETIREMENT PLANS (STATE PERA)

Compliant with the requirements of Government Accounting Standards Board Statement No. *68, Accounting and Financial Reporting for Pensions,* the State of New Mexico (the State) has implemented the standard for the fiscal year ending June 30, 2017.

The Office of Superintendent of Insurance, as part of the primary government of the State of New Mexico, is a contributing employer to a cost-sharing multiple employer defined benefit pension plan administered by the Public Employees Retirement Association (PERA). Overall, total pension liability exceeds Plan net position resulting in a Net pension liability. The State has determined the State's share of the net pension liability to be a liability of the State as a whole, rather than any agency or department of the State and will not be reported in the department or agency level financial statements of the State. All required disclosures will be presented in the Comprehensive Annual Financial Report (CAFR) of the State of New Mexico.

Information concerning the net pension liability, pension expense, and pension-related deferred inflows and outflows of resources of the primary government will be contained in the CAFR and will be available, when issued, from the Office of State Controller, Room 166, Bataan Memorial Building, 407 Galisteo Street, Santa Fe, New Mexico, 87501.

Plan Description: Substantially all of the Office's full-time employees participate in a public employee retirement system authorized under the Public Employees Retirement Act (Chapter 10, Article 11, NMSA 1978). The Public Employee's Retirement Association (PERA) is the administrator of the plan. The plan provides for retirement benefits, disability benefits, survivor benefits, and cost-of-living adjustments to plan members and beneficiaries. PERA issues a separate, publicly available financial report that includes financial statements and required supplementary information for the plan. That report may be obtained by writing to PERA, P.O. Box 2123, Santa Fe, NM 87504-2123. That report is also available on PERA's website at.

Funding Policy: Plan members are required to contribute 8.92% of their gross salary. The Office is required to contribute 16.59% of the gross covered salary. The contribution requirements of the plan members and the Office are established in State statute under Chapter 10, Article 11, NMSA 1978. The requirements may be amended by act of the Legislature.

NOTE 14: POST-EMPLOYMENT BENEFITS – STATE RETIREE HEALTH CARE

Plan Description. The Office of Superintendent of Insurance contributes to the New Mexico Retiree Health Care Fund, a cost-sharing multiple-employer defined benefit postemployment healthcare plan administered by the New Mexico Retiree Health Care Authority (RHCA). The RHCA provides health care insurance and prescription drug benefits to retired employees of participating New Mexico government agencies, their spouses, dependents, and surviving spouses and dependents. The RHCA Board was established by the Retiree Health Care Act (Chapter 10, Article 7C, NMSA 1978). The Board is responsible for establishing and amending benefit provisions of the healthcare plan and is also authorized to designate optional and/or voluntary benefits like dental, vision, supplemental life insurance, and long-term care policies.

Eligible retirees are: 1) retirees who make contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the RHCA plan on the person's behalf unless that person retires before the employer's RHCA effective date, in which event the time period required for employee and employer contributions shall become the period of time between the employer's effective date and the date of retirement; 2) retirees defined by the Act who retired prior to July 1, 1990; 3) former legislators who served at least two years; and 4) former governing authority members who served at least four years.

The RHCA issues a publicly available stand-alone financial report that includes financial statements and required supplementary information for the postemployment healthcare plan. That report and further information can be obtained by writing to the Retiree Health Care Authority at 4308 Carlisle NE, Suite 104, Albuquerque, NM 87107.

Funding Policy. The Retiree Health Care Act (Section 10-7C-13 NMSA 1978) authorizes the RHCA Board to establish the monthly premium contributions that retirees are required to pay for healthcare benefits. Each participating retiree pays a monthly premium according to a service based subsidy rate schedule for the medical plus basic life plan plus an additional participation fee of five dollars if the eligible participant retired prior to the employer's RHCA effective date or is a former legislator or former governing authority member. Former legislators and governing authority members are required to pay 100% of the insurance premium to cover their claims and the administrative expenses of the plan. The monthly premium rate schedule can be obtained from the RHCA or viewed on their website at www.nmrhca.state.nm.us.

The employer, employee and retiree contributions are required to be remitted to the RHCA on a monthly basis. The statutory requirements for the employer and employee contributions can be changed by the New Mexico State Legislature. Employers that choose to become participating employers after January 1, 1998, are required to make contributions to the RHCA fund in the amount determined to be appropriate by the board.

The Retiree Health Care Act (Section 10-7C-15 NMSA 1978) is the statutory authority that establishes the required contributions of participating employers and their employees. For employees that were members of an enhanced retirement plan (state police and adult correctional officer member coverage plan 1; municipal police member coverage plans 3, 4 or 5; municipal fire member coverage plan 3, 4 or 5; municipal detention officer member coverage plan 1; and members pursuant to the Judicial Retirement Act) during the fiscal year ended June 30, 2017, the statutes required each participating employer to contribute 2.5% of each participating employee's annual salary; and each participating employee was required to Contribute 1.25% of their salary. For employees that were not members of an enhanced retirement plan during the fiscal year ended June 30, 2017, the statute required each participating employer to contribute 2.0% of each participating employee's annual salary; each participating employee was required to contribute 1.0% of their salary. In addition, pursuant to Section 10-7C-15(G) NMSA 1978, at the first session of the Legislature following July 1, 2013, the legislature shall review and adjust the distributions pursuant to Section 7-1-6.1 NMSA 1978 and the employer and employee contributions to the authority in order to ensure the actuarial soundness of the benefits provided under the Retiree Health Care Act. The Office of Superintendent of Insurance's contributions to the RHCA for the years ended June 30, 2017 and 2016 were $95,362 and $97,168, respectively, which equal the required contributions for each year.

NOTE 15: FUND BALANCE

Government Fund Balances - Restricted and Committed

The OSI's fund balances represent: (1) *Restricted Fund Balance*, which include balances that are legally restricted for specific purposes due to constraints that are externally imposed by creditors, grantors, contributors, or laws or regulations of other government or imposed by law through constitutional provisions or enabling legislation; (2) *Committed Fund Balance*, which include balances that can only be used for specific purposes pursuant to constraints imposed by formal action of the Legislative and Executive branches; (3) *Non-Spendable Fund Balance*, which includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact; (4) *Unassigned Fund Balance,* which includes a portion of fund balance that is residual classification for the general fund. This classification represents fund balance that has not been assigned to other funds and that has not been restricted, committed, or assigned to specific purposes within the general fund. Committed, assigned, or unassigned amounts are considered to have been spent when an expenditure is incurred for purposes for which amount in any of the unrestricted fund balance classification could be used.

The following is a summary of the Restricted Fund Balance amounts by fund type at June 30, 2017:

Governmental Funds		
Major Governmental Funds:		
General Operating Fund (11690)	$	1,244,690
Insurance Operations Fund (11810)		0
Insurance Suspense Fund (11820)		0
Nonmajor Governmental Funds:		
Insurance Licensee Cont. Educ. Fund (11830)		93,963
Insurance Examinations Fund (11840)		1,387
Title Ins. Maintenance Assess Fund (11860)		326,242
Insurance Fraud Fund (11880)		358,544
	$	2,024,826

The OSI has a portion of fund balance in the amount of $22,691.69 that is Non-spendable. This amount consists of prepaid expenses.

NOTE 16: GENERAL FUND INVESTMENT POOL NOT RECONCILED

Compliant with statute 6-10-3 (NMSA 1978), and to optimize state cash management and investment practices, funds of various state agencies are deposited in the State General Fund Investment Pool (SGFIP). This pool is managed by the New Mexico State Treasurer's office (STO). Claims on the SGFIP are reported as financial assets by the various investing in the SGFIP.

As communicated last year, the Financial Control Division (FCD) in collaboration with the State Treasurer's Office, implemented a comprehensive reconciliation model that compared aggregated agency claims on the State General Fund Investment Pool and to the associated resources held by the State Treasurer's Office. This process now has been reviewed by the IPAs performing audits of the General Fund, the Department of Finance and Administration and the State of New Mexico's Comprehensive

NOTE 16: GENERAL FUND INVESTMENT POOL NOT RECONCILED (CONT.)

Annual Financial Report for fiscal year 2016. Each review of the process deemed it to be adequate and the findings related to Cash Reconciliation were significantly reduced or eliminated. Successfully addressing this issue allowed the Department to reinstate $100M that had been reserved as a loss contingency. For FY 2017 the following assertions are provided,

1. The calculated difference between resources maintained by STO and the agency claims has remained stable and within a narrow and acceptable range « $200k standard deviation over the last twelve months;

2. Resources are sufficient to cover claims and there is no need to adjust any specific business unit claim on the SGFIP

3. All claims will be honored at face value.

NOTE 17: NEW ACCOUNTING STANDARDS

In February 2015, the GASB issued Statement No. 72, *Fair Value Measurement and Application,* which is effective for financial statements for periods beginning after June 15, 2015. Earlier application is encouraged. The OSI has reviewed this standard and its impact on financial reporting. The OSI has investments belonging to the Patient's Compensation Fund. However the primary purpose of these investments are to pay claims, and not to earn income. Therefore, for the year ending June 30, 2017, these funds do not constitute investments for the purposes of GASB 72 measurement and application.

In June 2015, the GASB issued Statement No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68.* The provisions of this Statement are effective for financial statements for periods beginning after June 15, 2016. This statement did not have a material impact on the Office's financial statements.

In June 2015, the GASB issued Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans,* which is effective for financial statements for fiscal years beginning after June 15, 2016. This statement will not have a material impact on the Office's financial statements.

In June 2015, the GASB issued Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions,* which is effective for fiscal years beginning after June 15, 2017. The standard will be implemented during the fiscal year ended June 30, 2018. OSI is continuing to evaluate whether this statement will have a material impact on the Office's financial statements.

GASB Statement No. 76 is *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments.* The objective of this Statement is to identify, in the context of the current governmental financial reporting environment, the hierarchy of generally accepted accounting principles (GAAP). This statement reduces the GAAP hierarchy to two categories of authoritative GAAP and address the use of authoritative and non-authoritative literature in the event that the accounting treatment for a transaction or other event is not specified within a source of authoritative GAAP. This statement will not have a material impact on the Office's financial statements.

In August 2015, GASB issued Statement No. 77, *Tax Abatement Disclosures,* which are effective for financial statements for periods beginning after December 15, 2015. The OSI implemented this standard during the fiscal year ended June 30, 2017. OSI has evaluated its processes and determined it does not enter into tax abatement agreements in the course of its ordinary business. GASB 77 does not apply to OSI's FY17 financial reporting.

NOTE 18: RISK MANAGEMENT, LITIGATION AND CONTINGENT LIABILITIES

The OSI is exposed to various risks of losses related to torts; theft of, and damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. Section 15-7-2 NMSA 1978 requires the General Services Department, Risk Management Division (RMD) to be responsible for the acquisition and administration of all insurance purchased by the state. Since 1977, various state statutes have been created which allow RMD to insure, self-insure or use a combination of both. Any claims are processed through RMD.

OSI is party to various claims and lawsuits arising in the normal course of business for the Patient's Compensation Fund (PCF) and Ancillary Receiverships. The PCF financial statements include an actuarial estimate of claims existing at 12/31/2015. Amounts administered through ancillary receivership are paid from funds in custody of the Superintendent pursuant to the Insurance Code. OSI is a party to the Willis Asset Management Receivership litigation and anticipates settling outstanding claims in the amount of $140,000 with proceeds from the defendant's liquidated assets. In the opinion of management these matters will not have a material effect on the financial statements.

NOTE 19: SUBSEQUENT EVENTS

Premium Taxes Owed:
On October 19, 2017 the State Auditor released the "Special Audit Report, 2017 Premium Tax Filings". This report is the result of the State Auditor's November, 2016 designation. The objectives of the engagement and specific procedures performed and findings identified can be viewed at:

https://www.saonm.org/media/audits/440_OSI_Special_Audit_September_2017_PREMIUM_TAX_FILINGS.pdf

This report identified $64,607,018 of premium taxes owed to OSI and the State of New Mexico and reported in the Insurance Suspense Fund. This amount was not known to OSI at June 30th therefore this amount is not included as a receivable in the financial statements. There may be penalties, refunds or credits related to this amount, and other settlements that ultimately affect the amount. There may also be tax assessments, refunds or credits related to the remaining premium tax population – not included in the audit - that are unknown at this time.

Settlement with the New Mexico Office of the Attorney General:
On October 30, 2017 the New Mexico Office of the Attorney General announced it had reached an $18.5 million dollar settlement with one of the insurers identified as owing amounts to OSI from the premium tax audit. This settlement is specifically related to Medicaid. Amounts owed by this insurer related to other special audit findings continue to be subject to OSI enforcement and collection. Premium taxes collected from this settlement will be presented in the Insurance Suspense Fund, and are ultimately reported as State General Fund revenues.

Patient's Compensation Fund (PCF) Membership Expansion:

On September 29, 2017 Presbyterian Hospital entered the Patient's Compensation Fund. This added 700 new members and represents a significant increase in membership. The approximate number of members at June 30th, 2017 is not known, due to many factors, including part time membership. Therefore these notes cannot state the exact membership percentage increase. This change will immediately reflect increased surcharge revenue. However the effect on the long term liability cannot be determined. A new statutorily required actuarial study will be performed in fiscal year 2018 and a new estimate for the long term liability will be determined at that time.

NOTE 20: TRUST FUND FOR THE BENEFIT OF POLICY HOLDERS AND CREDITORS

59A-5-18 NMSA 1978 requires insurance companies transacting business in New Mexico to make deposits held in trust for the benefit of all policy holders and creditors. This deposit is the 'general deposit'. 59A-5-19 NMSA 1978 requires insurance companies transacting business in New Mexico to make deposits held in trust for the benefit only of all the policy holders and creditors in this state. This is the 'special deposit'. These general and special deposits, in addition to cash held for ancillary receiverships, are referred to as the "trust fund". The current custodian of the securities contained in the trust fund and of the ancillary receivership cash accounts is Century Bank of Santa Fe.

Deposits eligible for the trust fund include securities outlined in 59A-10-3 NMSA 1978, with further references to 59A-9-6 and 59A-9-8. The required amounts of the deposits are detailed in 59A-5-16. As long as insurers remain solvent OSI is acting in a fiduciary capacity. Insurer's rights during solvency are outlined in 59A-10-7 and include the right to all income generated by their deposits. 59A-41-18 NMSA 1978 governs the conduct of delinquency proceedings against insurers and provides for ancillary receivership.

SHARE fund 11870 has been established for the trust fund. During FY 2017 none of the transactions for the trust fund were processed through SHARE. The only items reflected on the trust fund fiduciary financial statements are the balances of the ancillary receivership bank accounts and general and special deposits as of June 30, 2017.

NOTE 21: INSURANCE SUSPENSE FUND

The Insurance Suspense Fund was formerly treated as an agency fund, but is now reported as a governmental fund. Receipts are collected by, and in the custody of, the Office but are either pending credit to the Insurance Operations Fund or other state funds. Per the Insurance Code all money received for fee, licenses, penalties and taxes, except for the amounts directed to the Law Enforcement Protection Fund (LEPF) per 29-13-3 NMSA 1978, are initially deposited into the Insurance Suspense Fund. All the fees that are ultimately credited to the OSI's own Insurance Operations Fund pass through this fund. The primary other entities the Office collects revenues for are the State General Fund, the State Fire fund and the Law Enforcement Protection Fund. Refunds owed back to insurers are also paid from this fund. The Insurance Suspense Fund does not have a legally adopted budget, therefore no budgetary comparison is presented in the financial statements.

Amounts in the Suspense Fund are distributed as follows:

Fire Protection Fund: Per 59A-6-5E(1) NMSA 1978, That part of the balance (of fees licenses, penalties and taxes) derived from property and vehicle insurance business.

Other States: Per 59A-6-5C NMSA 1978, Allocation of premiums collected pursuant to 59A-14-12 to other states.

Refunds: 59A-6-5B NMSA 1978, Refunds of amounts erroneously paid as fees, licenses, penalties and taxes.

Insurance Operations Fund: Per 59A-6-5D NMSA 1978, amounts owed to the Insurance Operations Fund are determined as follows:

	Fees imposed by 59A-6-1 Subsection A&E, net of fees owed to LEPF
Less	Fees derived from property and vehicle insurance business
Equals	Amounts remitted to the Insurance Operations Fund

State General Fund: Per 59A-6-5E(3) NMSA 1978, Suspense fund balances remaining from all other insurance business are disbursed to the state general fund.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
NON MAJOR GOVERNMENTAL FUNDS
June 30, 2017

INSURANCE EXAMINATION FUND (SHARE Fund 11840): To account for funds received from insurance companies and insurance agencies which have been financially audited and examined for financial solvency. Remuneration and expenses of salaried personnel of the Insurance Department serving in the examination shall be paid to the Superintendent pursuant to Section 59A-4-14 NMSA 1978 and all money in excess of $20k remaining in the fund and unencumbered at fiscal year-end reverts to the general fund.

INSURANCE LICENSEE CONTINUING EDUCATION FUND (SHARE Fund 11830): To account for funds received and expended for the purpose of administering the continuing education program pursuant to the provision of Section 59A-12-26 NMSA 1978. The fund is non-reverting.

TITLE INSURANCE MAINTENANCE FUND (SHARE Fund 11860): To account for fees relating to the New Mexico Title Insurance Law pursuant to Sections 59A-30-1 through 59A-30-14 NMSA 1978. The maintenance fee is not greater than 1% of all title insurance premiums written in New Mexico. This rate is set annually and is set to produce the amount of funds necessary to pay all expenses of regulating the business of title insurance, including the compensation and expenses of salaried personnel and consultants employed by the office.

INSURANCE FRAUD FUND (SHARE Fund 11880): To account for fees collected under the provisions of the Insurance Fraud Act pursuant to Section 59A-16C-14 NMSA 1978. This fee is not less than $200 and is not greater than 1/10th of 1% of all premiums on policies written in New Mexico. Direct written premiums for workers compensation are excluded from calculations for this fund. The fraud assessment for title insurers is determined per Section 59A-30-8 NMSA 1978. This fee is set annually to produce the amount of funds estimated as necessary to pay all expenses of carrying out the provisions of the Insurance Fraud Act. This is a continuing and non-reverting fund.

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
June 30, 2017

	Insurance Examination Fund - 11840	Insurance Licensee Continuing Education - 11830	Title Insurance Maintenance - 11860	Insurance Fraud - 11880	Total Governmental Funds
ASSETS					
State General Fund Investment Pool	$ 1,387	$ 93,963	$ 342,569	$ 358,544	$ 796,463
Investments	-	-	-	-	-
Federal Grants Receivable	-	-	-	-	-
Due from Other Funds	-	-	-	-	-
Due from Other State Agencies	-	-	-	-	-
Other Receivables	-	-	-	-	-
Inventories	-	-	-	-	-
Prepaid Expenses	-	-	-	-	-
Total Assets	$ 1,387	$ 93,963	$ 342,569	$ 358,544	$ 796,463
LIABILITIES AND FUND BALANCES					
Liabilities:					
Voucher Payable	$ -	$ -	$ -	$ -	$ -
Payroll Benefits & Taxes Payable	-	-	-	-	-
Accrued Wages Payable	-	-	-	-	-
Due to State General Fund	-	-	-	-	-
Other Liabilities	-	-	16,327	-	16,327
Due to Other State Agencies	-	-	-	-	-
Total Liabilities	-	-	16,327	-	16,327
Fund balances:					
Nonspendable:					
Prepaid Expenses	-	-	-	-	-
Restricted for:					
Special Purposes	1,387	93,963	326,242	358,544	780,136
Total Fund Balances	1,387	93,963	326,242	358,544	780,136
Total Liabilities and Fund Balances	$ 1,387	$ 93,963	$ 342,569	$ 358,544	$ 796,463

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
COMBINING STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
NONMAJOR GOVERNMENTAL FUNDS
For the Year Ending June 30, 2017

	Insurance Examination Fund - 11840	Insurance Licensee Continuing Education - 11830	Title Insurance Maintenance - 11860	Insurance Fraud - 11880	Total-Other Governmental Funds
REVENUES					
Insurance Tax	$ -	$ -	$ -	$ 1,444,666	$ 1,444,666
Investment Earnings	-	-	-	-	-
Special Appropriation	-	-	-	-	-
Intergovernmental	-	-	-	-	-
Miscellaneous	-	-	-	-	-
Federal Revenue	-	-	-	-	-
Other Fees	-	93,955	390,700	-	484,655
Total Revenues	-	93,955	390,700	1,444,666	1,929,321
EXPENDITURES					
Personnel Services & Employee Benefits					
Contractual Services	-	-	-	-	-
Other	-	-	-	-	-
Capital Outlay	-	-	-	-	-
Total Expenditures	-	-	-	-	-
Excess (Deficiency) of Revenues Over Expenditur	-	93,955	390,700	1,444,666	1,929,321
OTHER FINANCING SOURCES (USES)					
Operating Transfers In	-	-	-	-	-
Operating Transfers Out - Inter-Agency		(1,213,700)	(202,600)	(1,234,200)	(2,650,500)
Operating Transfers Out - Intra-Agency	-	-	(390,700)	(1,041,200)	(1,431,900)
Total Other Financing Sources and Uses	-	(1,213,700)	(593,300)	(2,275,400)	(4,082,400)
Net Change in Fund Balances	-	(1,119,745)	(202,600)	(830,734)	(2,153,079)
Fund Balances - beginning	1,387	1,213,708	528,842	1,189,278	2,933,215
Fund Balances - ending	$ 1,387	$ 93,963	$ 326,242	$ 358,544	$ 780,136

Office of Superintendent of Insurance
Schedule of Expenditures of Federal Awards
For the Year Ending June 30, 2017

Federal Grantor / Pass-Through Grantor / Program or Cluster Title	**Federal CFDA Number**	**Pass-Through Entity Identifying Number**	**Federal Expenditures**
Department of Health and Human Services			
Direct Programs:			
Health Insurance Rate Review - Cycle II	93.511	None	$ 418,236
Health Insurance Rate Review - Cycle III	93.511	None	730,826
Subtotal			1,149,062
Total Department of Health and Human Services			1,149,062
Total Expenditures of Federal Awards			$ 1,149,062

Notes to the Schedule of Expenditures of Federal Awards

1. Basis of Presentation
The accompanying Schedule of Expenditures of Federal Awards (Schedule) includes the federal grant activity of Office of Superintendent of Insurance and is presented on the modified accrual basis of accounting. The information in this Schedule is presented in accordance with the requirements of Title 2 Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Therefore, some amounts presented in this schedule may differ from amounts, presented in, or used in the preparation of the financial statements.

2. Sub-recipients
The Office of Superintendent of Insurance did not provide any federal awards to subrecipients during the fiscal year.

3. Non Cash Federal Assistance
The Office of Superintendent of Insurance did not receive any non cash federal assistance.

3. Indirect Cost Rate
The Office of Superintendent of Insurance has elected not to use the 10 percent de minimus indirect cost rate allowed under Uniform Guidance.

5. Matching

Matching costs (Office of the Superintendent's share of certain program cost) are not included in the reported expenditures. The basis of accounting varies by federal program consistent with the underlying regulations pertaining to each program. The amounts reported as federal expenditures were obtained from the federal financial reports for the applicable program and periods. The amounts reported in these reports are prepared from records maintained for each program, which are reconciled with the Office's financial reporting system.

6. Insurance

No insurance is carried specifically to cover equipment purchased with federal funds. Any equipment purchased with federal funds has only a nominal value, and is covered by the Office of the Superintendent of Insurance casualty insurance policies.

7. Loan or Loan Guarantees

There were no loans or loan guarantees outstanding at year-end.

Reconciliation of Schedule of Expenditures of Federal Awards to Financial Statements:

Total federal awards expended per Schedule of Expenditures of Federal Awards	$ 1,149,062
Total amount expended per MOU with the NM Health Insurance Exchange	$ 175,120
Total federal expenditures presented on Financial Statements	$ 1,324,182
Total expenditures funded by other sources	$ 7,986,774
Total Expenditures	$ 9,310,956

Timothy M. Keller
State Auditor

Sanjay Bhakta, CPA, CGFM, CFE, CGMA
Deputy State Auditor

State of New Mexico
OFFICE OF THE STATE AUDITOR

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Mr. John G. Franchini, Superintendent of Insurance
Office of Superintendent of Insurance
Santa Fe, New Mexico

We were engaged to audit, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, each major fund, the aggregate remaining fund information, and the budgetary comparisons for the general fund and major special revenue funds of the Office of Superintendent of Insurance (OSI), as of and for the year ended June 30, 2017, and the related notes to the financial statements, which collectively comprise OSI's basic financial statements, and have issued our report thereon dated November 1, 2017. Our report disclaims an opinion on such financial statements because we were unable to obtain sufficient audit evidence to conclude that the financial statements, as a whole, are free from material misstatement. Specifically, we were unable to obtain sufficient appropriate audit evidence relating to the valuation and completeness of the receivables of the *Insurance Suspense Fund* (SHARE 11820). We were also unable to obtain sufficient appropriate audit evidence relating to the valuation of revenues of the Governmental Activities, derived from the receipts of the *Insurance Suspense Fund* (SHARE 11820). We were further unable to obtain sufficient appropriate audit evidence relating to the completeness of the transactions of the *Trust Funds with the Superintendent of Insurance Fund* (SHARE 11870) fiduciary fund because OSI did not record any of the transactions relating to the amounts held in trust through the statewide accounting system SHARE, which is OSI's book of record.

Internal Control over Financial Reporting

In connection with our engagement to audit the financial statements of OSI, we considered OSI's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of OSI's internal control. Accordingly, we do not express an opinion on the effectiveness of OSI's internal control.

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Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as described in the accompanying schedule of findings and questioned costs, we identified certain deficiencies in internal control that we consider to be material weaknesses and significant deficiencies.
A *deficiency* in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We consider the deficiencies described in the accompanying schedule of findings and questioned costs as items FS 2016-001, FS 2016-003, FS 2016-006, FS 2016-014, FS 2016-015, and FS 2016-021 to be material weaknesses.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described in the accompanying schedule of findings and questioned costs as items, FS 2015-001, FS 2016-005, FS 2016-008, FS 2016-010, FS 2016-011, FS 2016-012, FS 2016-017, FS 2017-003, FS 2017-004, FS 2017-005, FA 2015-003 and FA 2015-006 to be significant deficiencies.

Compliance and Other Matters

In connection with our engagement to audit the financial statements of OSI, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our engagement, and accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and which are described in the accompanying schedule of findings and questioned costs as items FS 2014-001, FS 2014-004, FS 2015-002, FS 2016-016, FS 2016-013, FS 2016-018, FS 2017-001, FS 2017-002, FS 2017-006, and FS 2017-007. Additionally, if the scope of our work had been sufficient to enable us to express opinions on the basic financial statements, other instances of noncompliance or other matters may have been identified and reported herein.

OSI's Responses to Findings

OSI's responses to the findings identified in our engagement are described in the accompanying schedule of findings and questioned costs. OSI's responses were not subjected to the auditing procedures applied in the engagement to audit the financial statements and, accordingly, we express no opinion on them.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an engagement to perform an audit in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Office of the State Auditor
Santa Fe, New Mexico
November 1, 2017

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE REQUIRED BY THE UNIFORM GUIDANCE

Mr. John G. Franchini, Superintendent of Insurance
Office of Superintendent of Insurance
Santa Fe, New Mexico

Report on Compliance for Each Major Federal Program

We were engaged to audit the Office of Superintendent of Insurance's (OSI) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on OSI's major federal program for the year ended June 30, 2017. OSI's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with the federal statutes, regulations, and the terms and condition of federal awards applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for OSI's major federal program based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirement of Title 2 U.S. *Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about OSI's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

Because of the matters described in the "Basis for Disclaimer of Opinions" paragraph, we were unable to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on compliance for OSI's major federal program.

Basis for Disclaimer of Opinion

We were unable to obtain sufficient appropriate audit evidence to conclude that OSI's financial statements, as a whole, are free from material misstatement. As a result, the scope of our audit was not sufficient to enable us to express an opinion on whether the schedule of expenditures of federal awards is fairly stated, in all material respects, in relation to the basic financial statements as a whole. Further, as described in

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Finding 2016-006, we noted entity-wide deficiencies in OSI's internal controls. We were unable to obtain sufficient documentation to support OSI's compliance with the requirements of its major program nor were we able to satisfy ourselves as to OSI's compliance with these requirements by other auditing procedures.

Disclaimer of Opinion on the Major Federal Program

Because of the significance of the matters described in the "Basis for Disclaimer of Opinion" paragraph, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on compliance. Accordingly, we do not express an opinion on the OSI's compliance with the compliance requirements applicable to its major program.

Other Matters

The results of our auditing procedures disclosed instances of noncompliance, which are required to be reported in accordance with the Uniform Guidance and which are described in the accompanying schedule of findings and questioned costs as items FA2015-003 and FA2015-006. Additionally, if the scope of our work had been sufficient to enable us to express an opinion on OSI's compliance with the compliance requirements applicable to its major program, other instances of noncompliance or other matters may have been identified and reported herein.

OSI's responses to the noncompliance findings identified in our audit are described in the accompanying schedule of findings and questioned costs. OSI's responses were not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the responses.

Report on Internal Control over Compliance

Management of OSI, is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In connection with our engagement to audit OSI's compliance with the compliance requirements applicable to its major program, we considered OSI's internal control over compliance with the types of requirements that could have a direct and material effect on the major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for the major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of OSI's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, we identified certain deficiencies in internal control over compliance, as described in the accompanying schedule of findings and questioned costs as items FA 2015-003 and FA 2015-006 that we consider to be significant deficiencies. Additionally, if the scope of our work had been sufficient to enable us to express an opinion on OSI's compliance with the compliance requirements applicable to its major program, other instances of noncompliance or other matters may have been identified and reported herein.

OSI's responses to the internal control over compliance findings identified in our audit are described in the accompanying schedule of findings and questioned costs. OSI's responses were not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the responses.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

Office of the State Auditor

Office of the State Auditor
Santa Fe, New Mexico
November 1, 2017

STATE OF NEW MEXICO
OFFICE OF SUPERINTENENT OF INSURANCE
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
June 30, 2017

SECTION I: SUMMARY OF AUDIT RESULTS

Financial Statements:

1. Type of auditor's report issued	Disclaimer
2. Internal Control over Financial Reporting	
a. Material Weakness Identified?	Yes
b. Significant Deficiencies not considered to be material weakness?	Yes
c. Noncompliance Material to the financial statements noted?	Yes

Federal Programs:

1. Internal Control over major programs:	
a. Material Weakness Identified?	No
b. Significant Deficiencies not considered to be material weakness?	Yes
2. Type of auditor's report issued on compliance for major program	Disclaimer
3. Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a) ?	Yes
4. Identification of Major Programs:	

Program Name	CFDA Number
Health Insurance Rate Review Cycle II	93.511
Health Insurance Rate Review Cycle III	93.511
The threshold for distinguishing Types A & B programs:	$750,000

5. The Department was determined to be a low-risk auditee?	No

SECTION II: FINANCIAL STATEMENT FINDINGS

2014-001 CONTROLS OVER PAYROLL - REVISED AND REPEATED-(FINDINGS THAT DO NOT RISE TO THE LEVEL OF SIGNIFICANT DEFICIENCY)

CONDITION

During our testwork for payroll disbursement, we reviewed 47 payroll disbursements and noted the following:

- Seven employee's rate of pay could not be substantiated by supporting documentation.
- 16 disbursements included sick leave taken, annual leave taken, compensatory time taken or administrative leave taken without documentation of supervisor approval, totaling 167.37 hours and $4,305.12. Per discussion with the OSI Human Resource Manager, OSI did not implement an official leave form until February 2017. None of these exceptions occurred after February 2017.
- One out of 47 payroll disbursements did not have written approval for overtime hours worked, totaling six hours and $256.03.

During testwork for personnel files, we reviewed 36 personnel files and noted the following:

- For 12 personnel files tested we were unable to locate an annual employee performance evaluation form for fiscal year 2017.
- For 5 personnel files tested we were unable to verify that the employee successfully completed a director-approved course of study on employee appraisal within 90 days of appointment as a supervisor.
- For two personnel files tested we were unable to locate documentation of a final evaluation prior to the completion of the employee's probationary period.

OSI was unable to provide proof that OSI had human resource policies including agency compensation policies and written complaint procedures that were provided and approved by SPO.

It appears that OSI has made progress on the corrective action plan outlined in the fiscal year 2016 management response to this finding. However, based on the testwork performed there were additional payroll deficiencies noted.

CRITERIA

Per Section 6-5-2.C NMSA 1978, "state agencies shall implement internal accounting controls designed to prevent accounting errors and violation of state and federal law and rules related to financial matters. In addition, state agencies shall implement controls to prevent the submission of processing documents to the [financial control] division that contain errors or that are for a purpose not authorized by law."

OSI's Employee Handbook states annual and sick leave may not be used before it is accrued and must be authorized before it is taken. OSI's Employee Handbook states that supervisors must obtain the Superintendent's or his designee's approval in writing, prior to changing an employee's workweek and submit a copy of the approval and the employee's written notification to the Human Resources Office for placement in the employee's personnel file.

1.7.9.9(A) NMAC states "managers and supervisors must successfully complete a director-approved course of study on employee performance appraisal within 90 days of appointment as a supervisor."

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

1.7.9.9(B) NMAC states "the performance and development of a career employee shall be reviewed semi-annually and appraised by the immediate supervisor on an annual basis completed by the employee's anniversary date."

1.7.9.9(C) NMAC states "the performance and development of a probationary employee shall be reviewed through at least two interim reviews and a final review prior to the completion of the employee's probationary period."

State Personnel Board Memorandum dated May 13, 2014 regarding the most recent legislative approved classified salary increases states: "Salary increases are subject to satisfactory performance…A completed Employee Evaluation (EE) or Management Evaluation (ME) form approved by the State Personnel Office is the only acceptable appraisal document to be used to record and employee's performance rating…"

EFFECT

Employees may be receiving compensation that is not supported by documentation in the personnel file. Employees may be paid for time they did not work or be compensated for leave that was not accrued. An employee may be compensated for overtime that was not approved. Employees with satisfactory performance may not receive approved raises due to the fact that performance appraisals have not been completed. Noncompliance with NMAC and OSI's Employee Handbook.

CAUSE

It does not appear that OSI staff was following proper procedures. There appears to be a lack of enforcement and monitoring of OSI's HR policies.

RECOMMENDATION

OIS should ensure that authorized pay rates are documented in the personnel files. OSI should ensure that all leave is approved on OSI's leave form as outlined in OSI's employee handbook. OSI should ensure overtime is not accrued for employees without an authorized overtime request form. OSI should review NMAC requirements to ensure compliance.

MANAGEMENT RESPONSE

"The OSI Human Resources office provided copies of Personnel Action Request Forms, Personnel Action Requests and offer letters for all employees listed in the initial findings of the audit in support of employee's rates of pay. Some of the documentation provided was dated back as far as the year 2002; however, these documents are only initiated when there is a change to an employee's position that results in a change in rate of pay or any personnel transaction. If an employee has filled a position and no personnel transactions have occurred, it is possible that there would be no new documentation in the personnel file to support a current rate of pay that has been affected by Pay Rate Changes due to Legislative Action. Some of the employees tested may have been subject to these pay rate changes for FY 09, FY 14 and FY 15. A full review of the employment history in SHARE would accurately reflect the employee pay rate history.

The OSI managers and supervisors continue to ensure that all employee evaluations are conducted timely and are submitted to OSI HR to be placed in the employee personnel files. There were two employees out of the twelve employees who did not have a completed FY 17 employee evaluation in their file that had not completed their probationary period until November 2017.

The OSI will continue to ensure that all managers and supervisors attend a director-approved course of study on employee appraisals within 90 days of appointment as a supervisor and will continue to ensure that those employees submit certificates of completion for their personnel files. OSI HR has contacted employees who were reported on this finding and has collected certificates for placement in the respective personnel files.

The OSI will continue to ensure that all employees submit leave and overtime request forms as appropriate and will continue that supervisors and managers continue to ensure time is accurately recorded and approved in the SHARE system. The SHARE system does not allow employees to use leave prior to being accrued and will result in an exception in the time reporting system. Any future approved pay rate changes tied to performance evaluations will be reflected in the employee personnel files.

The responsible person for HR files will be determined after the SPO consolidation has occurred."

AUDITOR REBUTTAL

OSA's review of the personnel files indicated a lack of documentation to support authorized rates of pay, timely performance appraisals for both regular and probationary employees, and attendance at required training for certain positions.

2014-004 TRAVEL AND PER DIEM (FINDINGS THAT DO NOT RISE TO THE LEVEL OF A SIGNIFICANT DEFICIENCY – REVISED AND REPEATED)

CONDITION

The OSI employee travel can either be paid by the State of New Mexico or reimbursed by professional associations as a benefit of OSI's membership in these professional associations. During our audit procedures, we tested travel reimbursed by professional associations. Nine travel reimbursements out of a total of eighteen tested were reimbursements in whole or in part by professional associations. Two travel reimbursements from professional associations out of nine tested do not comply with OSI's FIN -01 Travel Policy or the OSI Employee Handbook. The documentation provided is incomplete.
It appears that the corrective action plan described in the fiscal year 2016 management response to this finding has been mostly effective in ensuring that travel reimbursements are processed in accordance with the travel policy. OSI has continued to make progress to comply with the implemented travel policy relating to employee travel regardless of source of funds. However, we noted noncompliance for one employee when the source of funding is a professional association.

CRITERIA
State agencies must follow 2.42.2.9 NMAC regarding the reimbursement of actual expenses in lieu of per diem rates. OSI staff must also comply with OSI policy #OSI FIN-01 and the OSI Employee Code of Conduct Section 4.2 Travel Payments and Other Related Expenses.

EFFECT

OSI is not in compliance with 2.42.2.9 NMAC or OSI's internal policies for travel reimbursements. The continued failure of OSI employees to follow the policies and procedures could result in the NAIC grant funds not being fully utilized. In addition, by circumventing the required pre-audit of the travel vouchers, it is possible for employees to receive funds they are not eligible to receive or be reimbursed more than once for the same travel.

CAUSE

All employees were not required to follow OSI's policies and procedures of OSI policy FIN-01, OSI Employee Handbook and the Mileage and Per Diem Act due to management override of controls.

RECOMMENDATION

OSI should ensure that all employees follow the OSI's policies and procedures for travel reimbursements and properly monitor compliance.

MANAGEMENT RESPONSE

"The OSI policy has been updated on October 30, 2017. It states, "Any travel that is paid one-hundred percent (100%) by an outside entity, OSI Employees will follow that entity's process and rates for reimbursement. Any travel reimbursed by an outside entity less than one-hundred percent (100%), the OSI Employee will follow DFA rules for reimbursement." This change will enable all OSI employees to be on the same page."

2015-001 CONTROLS OVER VEHICLE USAGE (SIGNIFICANT DEFICIENCY & NON-COMPLIANCE - REVISED AND REPEATED)

CONDITION

During our testwork relating to controls over state vehicle usage, we requested the vehicle logs for all vehicles owned or leased by OSI and noted the following:

- Ten out of 27 vehicle logs were not provided.
- Two of the 17 mileage logs provided to us did not have the entire fiscal year documented.

The ten logs not provided to us belong to vehicles assigned to the Investigations Division. An interoffice memorandum dated June 10, 2016 and signed by the Superintendent of Insurance on December 15, 2016 stated mileage logs were not required for the Bureau Chief, the Deputy Superintendent, and agents who are assigned take home vehicles. The memorandum also states the Bureau Chief will have access to the GPS tracking system in order to track and run reports of the assigned vehicles. We requested copies of the GPS tracking system reports and were provided with a report run on September 6, 2017, shortly after our request for information.

The OSI Employee Handbook does not contain a written policy that allows authorized drivers to use state vehicles to commute between work and residence.

OSI sent a letter to the Secretary of GSD on May 10, 2017 requesting an exemption from the requirement to maintain vehicle logs for the Insurance Fraud Bureau. On May 24, 2017 the Secretary of GSD responded and stated the GSD would work with OSI to come up with a solution. We were not provided supporting documentation of an exemption granted for fiscal year 2017.

OSI was unable to provide a copy of the required report as part of the terms Section 24(B) of the vehicle leases signed with the New Mexico General Services Department Transportation Division and required under 1.5.3.20(E) NMAC.

The corrective action plan described in the fiscal year 2016 management response to this finding has not been implemented effectively. The corrective action plan references the new Employee Handbook however, the implemented Employee Handbook does not address the Investigations Division specific requirements related to vehicle usage.

CRITERIA

1.5.3.11 NMAC lists required documents in state vehicles. 1.5.3.11 H NMAC states that vehicle logs are required documents and that "this log should have the date, employee name, beginning and ending mileage, destination, purpose of trip, type of fuel purchased, number of gallons purchased, total fuel cost, other vehicle related purchase, and a place for the supervisor to make verifications." 1.5.3.29. B (8) NMAC states "a state agency that has custody of one or more state vehicles shall develop written inventory, administration, operational and replacement policies."

1.5.3.20 NMAC defines commuting and authorization to commute. The rule states "a state agency must develop a written policy that allows authorized drivers to use state vehicles to commute between work and residence." Only the agency cabinet secretary or director can approve the commuting policy. 1.5.3.20 C. NMAC states "A state agency must develop a written policy that allows drivers to use state vehicles to commute between work and residence for security purposes." 1.5.3.20 D. NMAC states "all agency cabinet secretaries or agency heads must acquire approval from the governor's office." Approvals need to be forwarded to the State Central Fleet Authority.

Section 3.7 C of the OSI Employee Handbook, states "The OSI does not allow an employee the personal use of a state owned vehicle – there are no exceptions to this policy."

Section 3.7 M of the OSI Employee Handbook states "Every time a state vehicle is used, a Travel Information form will be completed by the employee. Each form will contain the following information: date, employee name, beginning and ending mileage, and destination."

1.5.3.25 NMAC states "if the director or designee finds that a leased state motor vehicle is accumulating low mileage, the director or designee will notify the state agency in writing that a state vehicle assigned to it is being under-utilized. The state agency shall examine its utilization of the state vehicle and respond in writing justifying to the director or designee its need for the state vehicle and describing its intra-agency rotation plan. If the agencies does not provide such a plan, the director or designee will rotate vehicles among state agencies."

1.5.3.20(E) NMAC states "each state agencies permitting authorized drivers to utilize domicile-to-duty privilege shall maintain current records of and provide a current copy of the following to SCFA:

(1) all state authorized commuters/passengers by name and position;
(2) the number of total miles each state authorized driver, who commutes, drives annually between work and residence using a state vehicle;
(3) the number of times annually a state authorized driver who is given written approval to use a state vehicle to commute between his assigned post of duty and his primary residence and is called back when the state employee is off-duty
(4) review all authorizations to use a state vehicle to commute at least once a year; and
(5) provide an annual commuting report to SCFA that identifies by authorized commuter; the vehicle state plate, total commuting mileage, number of call backs for ending fiscal year; this report shall also identify drivers and state vehicle plates authorized to commute for the following year; this report is due sixty (60) days prior to each fiscal year."

EFFECT

The memo signed in December 2016 appears to conflict with NMAC related to vehicle usage and required reporting. OSI may not be in compliance with NMAC.

OSI is not in compliance with its Employee Handbook. Unauthorized usage of these vehicles increases maintenance costs as well as fuel costs for OSI.

OSI may not be able to determine if they are correctly following IRS guidelines contained in Publication 15-B regarding taxable fringe benefits for personal use of vehicles.

CAUSE

OSI currently has two fleet coordinators, one for the Investigations Division and an ASD staff member is the fleet coordinator for the remainder of the agency.

The internal memo signed in December, 2016 provides guidance to staff contrary to NMAC.

The OSI Employee Handbook does not address domicile to duty or contain policies regarding the authorization to commute.

RECOMMENDATION

OSI should have one fleet coordinator with control over the agency's entire fleet and be given the authority to ensure that all employees comply with OSI's vehicle use policies, GSD's vehicle use regulations, and IRS regulations.

OSI should follow its established and acknowledged policies and procedures for vehicles. If determined necessary OSI should update its policies to accommodate the fraud bureau requirements while still complying with GSD regulations. Approvals related to vehicles used for commuting should be retained by the fleet coordinator.

MANAGEMENT RESPONSE

"OSI disagrees with portions of this finding. On April 12, 2016, the Insurance Fraud Bureau (IFB) implemented its own additional guidelines regarding the use of department vehicles by its sworn personnel, specifically explaining the need for and authorizing IFB's vehicle take-home policy, and largely aimed at addressing issues related thereto. It is precisely because the requirements applicable to IFB Agent vehicles vary so greatly from those applicable to vehicles used by all other OSI employees that two separate fleet coordinators have been designated. Yet despite these specific, documented policies and requirements, as well as those discussed above, OSA concludes that OSI somehow remains out of compliance, but in light of this additional documentation, it is unclear what OSA still categorizes as "unauthorized usage."

In addition, in its Quick Reference Guide for Public Employers (https://www.irs.gov/pub/irs-pdf/p5138.pdf), the IRS discusses whether 'qualified non-personal use vehicle' qualifies as a taxable fringe benefit. Listed specifically as an example of such usage that can be excluded from an employee's income are "[u]nmarked vehicles used by law enforcement officers. The officer must be authorized to carry a firearm, execute search warrants and make arrests." *Id.* at pgs. 9-10. As currently constituted, each of these conditions is satisfied by the duties and responsibilities assigned to IFB Agents, and the aforementioned OSI/IFB policies have been implemented to insure that the usage of these vehicles is compliant with these IRS restrictions. Despite this exception specifically raised by the IRS itself, and the black letter internal policies meant to insure compliance with those restricted criteria, OSA somehow suggests that there remains a potential violation.

OSI, worked towards compliance in FY17 by equipping all IFB vehicles with a Global Positioning System to monitor the location and operation of vehicles. The GPS tracking system allows IFB to track and run reports of the assigned vehicles, therefore do not believe mileage logs are required. A tracking and mileage log will be kept for any vehicle which does not have a GPS system.

The Internal Fraud Bureau (IFB) has assigned a Special Agent to work with GSD to ensure IFB has a sufficient tracking and reporting mechanism and if need be will work to obtain an exemption. In addition, OSI will make changes to the Employee Handbook to either include and/or make reference to IFB's internal policy and ensure there is no conflicting language between the two policies. "

AUDITOR REBUTTAL

The auditors were aware of exclusions related to authorized vehicle usage for certain fraud bureau employees and therefore those employees were excluded from this testwork population. OSA worked with OSI's HR manager to determine employees that should be excluded because they are law enforcement officials. However, the Bureau Chief and Deputy Superintendent are not considered law enforcement officials. Additionally, we reviewed the OSI Employee Handbook and did not locate policies for vehicle usage for law enforcement or fraud bureau.

2015-002 CHIEF PROCUREMENT OFFICER'S REPORTING REQUIREMENT (FINDINGS THAT DO NOT RISE TO THE LEVEL OF SIGNIFICANT DEFICIENCY– REPEATED AND MODIFIED)

CONDITION

In reviewing OSI's compliance with Section 13-1-95.2 NMSA 1978, we noted that the agency did not have a chief procurement officer (CPO) for a portion of fiscal year 2017. OSI's CPO left in January 2017 and the new CPO was certified in May 2017.

OSI has made progress in correcting this finding however OSI did not have a CPO for a portion of the fiscal year.

CRITERIA

Per Section 13-1-95.2 NMSA, "On or before January 1 of each year beginning in 2014, and every time a chief procurement officer is hired, each state agency and local public body shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office, if applicable." In addition, "a chief procurement officer shall pass a recertification examination approved by the secretary of general services".

EFFECT

OSI was not in compliance with Section 13-1-95.2 NMSA 1978 for a portion of fiscal year 2017.

CAUSE

Staff turnover for the CPO and OSI did not have another individual with the CPO certification.

RECOMMENDATION

OSI should ensure that the chief procurement officer or the individual in charge of procurement is certified in accordance with Section 13-1-95.2 NMSA 1978. Additionally OSI should certify an additional employee as a backup CPO.

MANAGEMENT RESPONSE

"OSI agrees with this finding and recommendation. In FY17, the Chief Procurement Officer vacated the position in January 2017. The position was filled on March 13th, 2017. Confirmation was received on March 22nd by the employee that she was registered for the next available Chief Procurement Officer (CPO) Certification classes to be conducted on April 4th through the 7th. Although the classes were taken and passed in April, the General Services Department did not issue a certificate until May 23, 2017. OSI did not have a CPO in place during this transition but remedied the situation as soon as it was able to. The Chief Financial Officer will be attending the CPO certification training in February 2018 which is the next available CPO training. This will ensure that there is a backup CPO in the absence of the current CPO."

2016-001 CONTROLS OVER CASH RECEIPTS (MATERIAL WEAKNESS - REPEATED AND MODIFIED)

CONDITION

During our test of controls over cash receipts it was noted that when checks are received at OSI, they are not logged in and receipted and therefore we cannot ascertain completeness of cash receipts except for ACH transactions. In addition, we are unable to determine if OSI complies with the requirement to deposit cash receipts by the next business day. This affected over $340,000,000 in deposits for the year. In addition, incoming mail processing is not performed under a dual control process. The envelope containing a payment is date stamped and then distributed to different bureaus, depending on the type of payment. Amounts are subsequently processed by bureaus and returned to finance for depositing. There is no process to reconcile what is received to what is deposited each day.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

During fiscal year 2017, OSI has not made progress in implementing corrective action. OSI has purchased a system that will allow OSI to scan and date all incoming mail, the system will be implemented in fiscal year 2018 per the OSI management.

CRITERIA

Section 6-10-3 NMSA 1978, "all public money in the custody or under the control of any state official or agency obtained or received by any official or agency from any source, except as in Section 6-10-54 NMSA 1978 provided, shall be paid into the state treasury. It is the duty of every official or person in charge of any state agency receiving any money in cash or by check, draft or otherwise for or on behalf of the state or any agency thereof from any source, except as in Section 6-10-54 NMSA 1978 provided, to forthwith and before the close of the next succeeding business day after the receipt of the money to deliver or remit it to the state treasurer."

Section 6-5-2 NMSA 1978, "state agencies shall comply with the model accounting practices established by the [Financial Control] division and the administrative head of each agency shall ensure that the model accounting practices are followed." Per MAPs FIN 2.3 all state agencies are required to perform the following with regards to cash receipts:

1. Count the cash received and verify the check or money order is completed properly;
2. Document the receipt of money using an appropriate log, including the date, amount, payer name, and the name of the receipting individual; and
3. Place the receipts in a secure location until deposited.

Section 6-5-2 (C) NMSA 1978, "state agencies shall implement internal accounting controls designed to prevent accounting errors and violation of state and federal law and rules related to financial matters".

EFFECT

Cash receipts could be lost or misappropriated. Deposits may not be made in a timely manner as required by state law.

CAUSE

OSI does not currently have policies and procedures regarding cash receipts and was not following MAPs requirements regarding cash receipts.

RECOMMENDATION

OSI should immediately implement the requirements listed in MAPs FIN 2.3. Additionally, OSI should implement internal policies and procedures to ensure receipts are properly logged, tracked, recorded and deposited timely.

MANAGEMENT RESPONSE

"OSI agrees with the finding and recommendation. To ensure incoming mail processing is performed under a dual process, beginning in June 2017, two OSI staff were assigned the task of opening the mail and there is a backup employee if one of the assigned staff is out. In addition, OSI will implement a new system that will scan checks, record amounts, identify sender, and scan any other correspondence. This system will ensure compliance with MAPs FIN 2.3. The Administrative Services Division will also implement policies and procedures to ensure receipts are properly logged, tracked, recorded and deposited timely."

2016-003 SUSPENSE FUND CODING - (MATERIAL WEAKNESS - REVISED AND REPEATED)

CONDITION

During revenue testwork, we traced amounts received from the supporting documentation through the IDEAL system (revenue tracking system). We tested 40 revenue transactions and noted the following:

- Seven out of the 40 items tested included companies licensed for both life and health business in New Mexico. Premium Taxes are self-reported and life and health insurance lines are combined, totaling $116,762.96. We were unable to determine the correct revenue distribution because the life and health insurance lines are combined. Life and health insurance have different statutory distribution requirements. OSI distributed life and health related insurance line receipts as life insurance receipts. The fiscal year 2017 revenue distribution worksheet for insurance premium tax and premium tax penalties totals $183,854,334.
- Seven out of the 40 items tested included surplus line insurance. OSI uses one IDEAL code for surplus lines, regardless of the actual line of insurance. Through discussions with OSI it was determined that all surplus line amounts received in fiscal year 2017 were for property or casualty insurance, but we were unable to verify the amounts for property and casualty. Property and casualty amounts received have different statutory distribution requirements, the seven items tested totaled $25,835.97. OSI distributed surplus line receipts as casualty insurance. The fiscal year 2017 revenue distribution worksheet for surplus line totals $3,427,409.
- Two of the 40 items tested were health insurance related, totaling $183,418. The amount collected was coded to insurance that withheld 10% to remit to the Law Enforcement Protection fund (LEPF) and the remaining balance was coded to remit to the state general fund. The entire amount should have been coded to remit to the state general fund.
- One of the 40 items tested, was coded to remit to the State Fire Fund in error, totaling $500. The item should have been coded to remit 10% to the LEPF and the remaining balance to the State General Fund.
- Currently fees per 59A-6-1A and E NMSA 1978 go directly into the insurance operations fund 11810. In fiscal year 2017 the amount reflected on the revenue consolidation spreadsheet for these fees totaled $11,258,229. Per 29-13-3 NMSA 1978 certain amounts from this total should have been remitted to the LEPF Discussions with OSI revealed this is a systemic problem within the IDEAL system. We were unable to determine the correct amount of this total that should have been remitted to the LEPF.

During fiscal year 2017 OSI has not made progress in implementing corrective action. In fiscal year 2018 OSI started a conversion process to State Based System (SBS) and is in the process of designing an interface to accommodate statutory distribution requirements. This system will be implemented in fiscal year 2018 per the OSI's management.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

CRITERIA

Section 59A-6-5 NMSA 1978, Distribution of division collections, describes how funds are required to be accounted for and distributed once they are received by OSI.

Section 29-13-3 NMSA 1978 describes the types of insurance, the types of revenues, and the rate, used to calculate amounts owed to the Law Enforcement Protection fund.

EFFECT

The amounts remitted from the Insurance Suspense Fund to the State General Fund, the State Fire Fund, the Law Enforcement Protection Fund and the Insurance Operations Fund may be distributed incorrectly.

CAUSE

The revenue codes used in the IDEAL system used to process payments do not agree to Sections 59A-6-5 or 29-13-3 NMSA 1978. Additionally, forms used for premium tax returns do not differentiate between life and health insurance, therefore companies self-reporting do not differentiate amounts reported between these two types of insurances. Premium tax return data for life and health insurance should be distinctly identifiable to correctly allocate the distributions from the Insurance Suspense Fund to other funds.

RECOMMENDATION

OSI should design the interface between SBS and SHARE to correctly accommodate all statutory revenue distribution requirements. Premium tax forms should be revised so that companies can report premium tax for life and health separately by lines of insurance and the amounts due to the Law Enforcement Protection Fund can be correctly determined.

MANAGEMENT RESPONSE

"Due to IDEAL's program limitations and high costs associated with reprogramming, OSI will continue to review current calculations and entry methodology for departments responsible for collection and distribution of revenue funds. OSI's Chief Staff Counsel will coordinate statute reviews and required distributions to ensure OSI is in compliance. In the past year OSI worked with the NAIC's State-Based System (SBS) transition team, and provided the relevant cash and budget codes to address issues such as those present in this finding. SBS was unable to accommodate this process requiring OSI to consider other options.

OSI's has researched various options and has come up with solutions to this issue. OSI is currently working with two contractors that will provide the needed services. OSI expects the interface and subsequent interface/SBS functionality testing to be completed no later than December 31, 2017."

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

2016-005 NON-COMPLIANCE WITH THE PROCUREMENT CODE (SIGNIFICANT DEFICIENCY - REPEATED AND MODIFIED

CONDITION

Our audit included the review of 15 contracts for compliance with the State Procurement Code. We noted the following exceptions:

- For four contracts, OSI did not have documentation for obtaining three quotes prior to selecting contractors for contracts exceeding $20,000 but not exceeding $60,000. The procurement files only contained documentation for one quote from the vendor who was awarded the contract.
- For one item selected, we were unable to obtain purchase orders or a current contract for the vendor. The ancillary receivership legal services contract provided as supporting documentation is dated February 26, 1991. It appears that transactions involving this vendor are conducted outside of the state procurement system.
- We noted two instances wherein contractors performed services without a valid contract in place even though the original contract had expired.

Based on the testwork performed, it does not appear that management has made progress on the corrective action plan described in management's response to this finding in the fiscal year 2016 Audit Report.

CRITERIA

Section 13-1-125(B) NMSA 1978 states that "a state agency or local public body may procure professional services having a value not exceeding sixty thousand dollars ($60,000), in accordance with professional service procurement rules promulgated by the department of finance and administration, the general services department, or a central purchasing office with the authority to issue rules."

- 1.4.1.51(A) NMAC states that "for small purchases of nonprofessional services, construction or items of tangible personal property having a value exceeding twenty thousand dollars ($20,000) but not exceeding sixty thousand dollars ($60,000), and in accordance with any procedures and processes set forth by the state purchasing agent, no fewer than three businesses shall be solicited via written requests containing the specifications for the procurement to submit written quotations that are recorded and placed in the procurement file."
- MAPS FIN 4, Business Process P0-03, illustrates that if the agency has a professional service contract less than $60,000 the first step is to obtain quote(s).

Section 13-1-150(B) NMSA 1978 states that "a contract for professional services may not exceed four years, including all extensions and renewals."

Section 6-5-2(B) NMSA 1978 states that the financial control division "shall issue a manual of model accounting practices containing the policies and procedures and shall annually review and, if necessary, revise and reissue the manual. State agencies shall comply with the model accounting practices established by the division, and the administrative head of each state agency shall ensure that the model accounting practices are followed."

- 2.20.5.8.C(2) NMAC states that "it is the responsibility of the chief financial officer to ensure that all transactions are recorded daily in the agency's accounting records."
- Furthermore, MAPS 0.0 FCD (State Agencies' Mission and Objectives) further clarifies this as "all transactions shall be recorded daily in SHARE and approved by the agencies management.
- 2.20.5.8.C(8) NMAC states that "it is the responsibility of the chief financial officer to ensure that all payments to vendors are accurate, timely and the state agency has certified they are for services rendered or goods received."
- Furthermore, MAPS 0.0 FCD (State Agencies' Missions and Objectives) further clarifies this as "all payments to vendors shall be accurate and timely and be for services already rendered or goods received and accepted by the state agency as complying with the contract or purchase order."

EFFECT

OSI is not in compliance with the Procurement Code, Procurement Regulations, DFA Regulations and the Manual of Model Accounting Practices (MAPS).

CAUSE

Lack of policies and procedures for OSI's ASD function, for procurements, for contracts, and a lack of training regarding compliance with rules and regulations. OSI had turnover in the Chief Procurement Officer position and staff was not assigned to track contract term dates so OSI could not appropriately plan for the services to continue with extensions or competitive procurements for a new contract.

RECOMMENDATION

OSI should create policies and procedures related to procurement, contracts, and ASD's role in recording all transactions then provide training for employees on implementing the new policies and procedures. OSI should review all existing contracts and verify there is documentation of compliance with the Procurement Code and all applicable regulations.

MANAGEMENT RESPONSE

"OSI agrees with the finding and recommendation. OSI had misinterpreted Section 13-1-99A NMSA 1978 and had not obtained three quotes on all professional service contracts; however, will ensure compliance on future professional service contracts. As recommended, the Administrative Services Division will create policies and procedures related to procurement, contracts and ASD's role in recording all transactions then provide training for employees on implementing new policies and procedures. OSI will review all existing contracts to verify there is documentation of compliance with the Procurement Code and all applicable regulations."

2016-006 ENTITY-WIDE CONTROL DEFICIENCY (MATERIAL WEAKNESS - REVISED AND REPEATED)

CONDITION

As part of our audit we performed procedures to understand OSI's overall control environment. This process included inquiries and observations of functions pertinent to financial reporting and controls over compliance. During our procedures, we noted instances where the elements of the internal control framework prescribed by the Committee of Sponsoring Organizations (COSO) were not in place or deficient. For example, although the risk assessment component of the COSO framework exists at OSI, it is not well documented and not well understood by various bureaus within the agency. Monitoring may be ineffective due to management override of controls and lack of accountability. Our audit identified the following areas of concern:

1. Process decentralization. OSI does not have an organizational structure in place to ensure that duties, control, and monitoring are delegated to individuals at the appropriate level of the agency and that effective oversight exists. Examples include:

    - The patient's compensation fund (PCF) is not assigned to a specific bureau for oversight. The fund duties are divided between legal, actuary staff, finance and a contract adjuster, with each area performing their required tasks. This process did not change in fiscal year 2017. We also noted an employee funded with federal funds was performing PCF tasks in fiscal year 2017.
    - The company licensing bureau processes the trust fund transactions and the Administrative Services Division is responsible for trust fund financial reporting. There appears to be a lack of oversight and accountability relating to the trust fund overall. This lack of oversight resulted in incomplete accounting records which were provided to OSA to prepare the financial statements. In fiscal year 2017, OSI made progress in identifying relevant compliance requirements, however the trust fund processes still lacked oversight and accountability. We also noted trust fund transactions were not processed through SHARE in fiscal year 2017.
    - There appears to be a lack of oversight and accountability relating the IDEAL (a revenue recording program) at a system-wide level. Individual bureaus enter their own data into IDEAL without reconciliation procedures. Issues affecting the entire system may not be identified and/or corrected. This process did not change in fiscal year 2017.

2. In fiscal year 2017, OSI implemented an Employee Handbook to formalize effective agency-wide policies and procedures. We noted in the fiscal year 2016 audit report that most bureaus reported doing things the "way it has always been done." However, even with the Employee Handbook we noted clearly defined lines of authority and reporting for communication of pertinent information do not appear to be known to employees and some members of management. Examples include:

    - Management appears to have made decisions which directly caused misstatements of the fiduciary financial statements. We noted specific errors relating to trust fund excess deposits, trust fund asset eligibility and ancillary receivership transactions. This process did not change in fiscal year 2017.
    - The Employee Handbook does not appear to address unique requirements of the Investigations Division for vehicle usage.
    - Management appears to override existing controls, including the acknowledged Employee Handbook, and disregard established lines of authority.

3. Staff and management are aware of most statutes and regulations that directly affect their duties. However, staff and management are not always aware of how their processes impact other bureaus, or OSI as a whole. This process did not appear to change in fiscal year 2017.
4. In fiscal year 2016, we noted instances that management and employees did not appear to perform their job functions in accordance with standard policies and procedures. We also noted misunderstandings about accountability and that OSI did not have to follow the same rules as other state agencies. While OSI is an independent agency, it must still comply with professional conduct

rules and regulations, the Procurement Code, and other statutes, rules and regulations such as those promulgated by the Legislature, the State Personnel Office, the Department of Finance and Administration and the General Services Department. During fiscal year 2017, OSI implemented the Employee Handbook and code of conduct and made some progress towards standardization. However, as auditors noted above, not all individuals are following the stated policies and procedures.

5. OSI staff do not always have a clear understanding of communication requirements. When we inquired employees about their responsibilities to report alleged fraud, waste, and/or abuse they responded by indicating there would be some form of communication up the chain of command. Employees were not aware of any specific requirements. When we inquired of those up the chain of command about their responsibilities when allegations were brought to their attention the response was "it depends on the situation." The Employee Handbook does not contain information regarding requirements for reporting and responding to concerns communicated to management relating to fraud, waste or abuse.
6. OSI does not appear to have a risk assessment process in place that proactively identifies new laws and regulations that have a potential to affect compliance and financial statements or the financial statements of other state agencies. We noted the Vaccine Purchasing Act was effective during fiscal year 2017 and has a potential impact to OSI and the Department of Health.

CRITERIA

The COSO internal control framework is recognized as the leading guidance for designing, implementing and conducting internal control and assessing its effectiveness. In an "effective" internal control system, five components work to support the achievement of an entity's mission, strategies and objectives. These five elements are known as control environment, risk assessment, control activities, information, and communication and monitoring.

Section 6-5-2 NMSA 1978 requires that state agencies implement internal accounting controls designed to prevent accounting errors and violations of state and federal law and rules related to financial matters.

EFFECT

Without all five components of the COSO framework in place and operating effectively OSI may lack adequate internal controls necessary to safeguard assets and prevent or detect intentional or unintentional misstatements of accounting information. When management is not required to follow policies and procedures established by the Employee Handbook the handbook becomes less effective. The absence of consistently applied policies and procedures, and the absence of clearly defined methods for both horizontal and vertical communication within OSI, may prevent management and staff from effectively administering the Insurance Code. Noncompliance with State statue.

CAUSE

Management and staff appear to be performing tasks according to historical practice without adequate knowledge of underlying legal requirements and other rules. OSI's Employee Handbook policies and procedures appears ineffective at ensuring compliance with applicable statutes, rules and requirements because it does not appear to be consistently followed by all levels of staff and management and adequately addresses the specific requirements of the entire organization. The risk assessment process has not been formalized or effectively communicated. OSI's processes have not changed since OSI was a division of the Public Regulation Commission (PRC). It is unclear why management overrides established controls to continue historical practices.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

RECOMMENDATION

OSI should implement policies and procedures that incorporate the five components of the COSO internal control framework. Specifically, process ownership, reporting lines, and clear channels of communication should be established for all management and employees. The Superintendent, responsible for OSI's organization and management, should provide oversight to ensure that members of the management team and others in positions of authority follow established internal controls and policies and procedures.

MANAGEMENT RESPONSE

"OSI recognizes that there have been many obstacles to overcome that have led to the Agency operating at less than optimum level. The Agency is relatively new still trying to establish itself after separation from PRC. There are always challenges in changing long standing culture and processes. There have been continuous staffing issues exacerbated by the loss of over 30 FTEs in the last fiscal year.

OSI senior managers will meet beginning on November 20. 2017 to discuss all audit findings and areas of improvement and to make changes where necessary to include consideration of this particular finding. This will be an on-going process headed by the Deputy Superintendent."

2016-008 EXCESS DEPOSITS IN TRUST FUND (SIGNIFICANT DEFICIENCY AND MATERIAL NON COMPLIANCE – REVISED AND REPEATED)

CONDITION

During our review of the insurance company's trust accounts we noted ten out of 28 accounts did not have withdrawal forms and had deposits in the trust account that exceeded the $100,000 excess limit documented for the type of deposit per Section 59A-10-6 NMSA 1978 totaling $4,847,194.50.

It appears that OSI has made some progress on the corrective action plan outlined in the fiscal year 2016 management response to this finding. OSI authorized the company to release their excess deposit and provided the company with the appropriate withdrawal forms for three of 28 accounts, however the companies had not signed the forms prior to year-end.

CRITERIA

Section 59A-10-6 NMSA 1978 states that excess amounts maintained over the required general and special deposits required amounts cannot exceed $100,000. This amount is permitted to absorb market fluctuations.

Section 59A-10-9(A) (2) NMSA 1978 states general and special deposits be released "upon the insurer ceasing to transact business in this state, and all of the liabilities for which the deposit was security have been satisfied or terminated, or assumed by another insurer authorized to transact insurance in New Mexico."

EFFECT

Noncompliance with State statute. Insurance companies may have a legal claim to excess amounts.

CAUSE

OSI is not sufficiently monitoring trust fund compliance requirements.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

RECOMMENDATION

OSI should review all trust fund accounts with excess amounts greater than $100,000 and authorize the company to release the excess deposit as appropriate and provide appropriate withdrawal forms. Policies and procedures should refer to applicable statutes regarding amounts required for the general and special deposit.

MANAGEMENT RESPONSE

"OSI believes it has done all that is necessary to ensure deposits are not excessive. There are some companies that because of circumstances are required to maintain a higher deposit. The other companies whose deposit is higher that required is due to the companies not complying with the procedure for release of deposit in accordance with 59A-10-9C. NMSA 1978 which reads in pertinent part "Release of a deposit shall be made only on application to" …. "the superintendent". Companies have been notified of requirements. We are awaiting their response. The auditor was provided a chart listing all companies with excess deposits and the reason thereof.

Current process requires the Company Licensing Bureau Chief to review deposits monthly and notify any companies that are maintaining deposits outside to the required amount. As a further protection, the custodian bank also notifies any company whose deposit has fallen below required levels.

At the exit conference the auditor revealed for the first time, and this is not included in the written finding presented to us, that Company licensing needs to communicate with ASD to ensure that excess deposits are accounted for as liabilities. OSI will establish a process whereby ASD will be notified of excess deposits as necessary by 12/31/2017."

AUDITOR REBUTTAL

The condition in repeat finding 2016-006, regarding the control environment, discussed at the exit conference, specifically refers to the lack of trust fund oversight and accountability.

2016-010 TRUST FUND SECURITIES ELIGIBILITY (SIGNIFICANT DEFICIENCY - REVISED AND REPEATED)

CONDITION

In our review of the insurance company's trust accounts we noted the following:

- Six out of 28 accounts tested were cash assets, totaling $2,669,000. Securities are specifically referenced in State statute as eligible trust deposits.
- One out of 28 accounts tested had a foreign bond security that does not appear to be an eligible security, totaling $204,079.
- OSI and the custodian bank were not able to provide documentation of official securities credit ratings to test the eligibility of pledged securities as of June 30, 2017. OSI stated that the bank provides a report that outlines which companies are below the required S&P/Moody's ratings at the beginning of each month.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

OSI has made some progress in correcting this finding by liquidating all Certificates of Deposit and appears to be valuing the US Strips appropriately. However, additional actions are needed to comply with trust fund valuation and security eligibility requirements.

CRITERIA

Section 59A-10-3(A) NMSA 1978 states "all general deposits and special deposits, in the minimum amount specified therefor, shall consist of public obligations of the type eligible for investment of funds of domestic insurers under Section 59A-9-6."

Section 59A-10-3(B) NMSA 1978 states "all additional general or special deposits required by the superintendent shall consist of:

(1) Public obligations as referred to in Subsection A of this section;
(2) Corporate obligations
(3) Notes or bonds secured by mortgages insured or debentures issued by the federal housing administrator and obligations of national mortgage associations."

Section 59A-9-8 NMSA 1978 states "an insurer may invest in the bonds, debentures or secured obligations of any solvent corporation organized and existing under the laws of any state, or of Canada or province thereof, which has been in existence and active business operation for not less than five (5) years, and which has not defaulted in payment of interest or principal of any of its obligations during the five (5) years prior to investment."

Sections 59A-9-6 and 59A-9-8 NMSA 1978 state the required minimum credit ratings acceptable for the securities held in trust as the general or special deposit, per Moody's Investment Services or Standard and Poors. Additionally, 13.2.4.11 NMAC outlines the valuation methods allowed.

EFFECT

Assets held as part of the general or special deposit as of June 30, 2017 may not meet the statutorily required minimum credit rating or be eligible for deposits.

CAUSE

Section 59A-10-7 B allows the Superintendent to "approve reasonable arrangements" "under which a solvent insurer may sell a particular deposited asset, immediately reinvest the proceeds of such sale in other assets eligible for deposit." However, there is no official guidance to staff or insurers regarding eligibility of cash or OSI's interpretation of "immediately" and "reasonable" as it pertains to short term cash in the trust fund.

It is unclear why OSI allowed a foreign bond security to be deposited. The bank stated that the security was a foreign security and OSI allowed the transaction to be processed.

OSI's contract with the bank does not stipulate that the bank must provide security credit ratings in their monthly report to OSI.

RECOMMENDATION

OSI should issue guidance for staff and other interested parties defining what constitutes a "reasonable arrangement" and "immediately" so that procedures can be performed consistently and in accordance with

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

State statute. OSI should review all trust fund accounts with cash as an asset and request the company purchase allowable securities.

OSI should review all trust fund accounts for foreign securities and request the company purchase allowable securities. OSI should develop policies and procedures for staff to follow to ensure that only eligible securities are being purchased in accordance with the statutory requirements set forth in Sections 59A-9-6 and 59A-9-8 NMSA 1978.

The contract with the custodian should be updated to require the bank to provide official securities credit ratings in their monthly report to OSI.

MANAGEMENT RESPONSE

"

1. Six out of 28 accounts tested were cash assets, totaling $2,669,000. Securities are specifically referenced in State statute as eligible trust deposits.

2. One out of 28 accounts tested had a foreign bond security that does not appear to be an eligible security, totaling $204,079.

3. OSI and the custodian bank were not able to provide documentation of official securities credit ratings to test the eligibility of pledged securities as of June 30, 2017. OSI stated that the bank provides a report that outlines which companies are below the required S&P/Moody's ratings at the beginning of each month.

Number 1 above refers to cash balances in some accounts. We agree with the auditor that cash is not generally allowed as an eligible deposit. The statute does however contemplate the need for temporary deposits of cash as indicated by 59A-10-7.B. NMSA 1978. B. which reads:

The superintendent may prescribe or approve reasonable arrangements and safeguards under which a solvent insurer may sell a particular deposited asset, immediately reinvest the proceeds of such sale in other assets eligible for deposit under this article, and deposit such other assets in lieu of that sold, in absence of excess deposit of the insurer adequate to cover such exchange. The statute does not specifically prohibit cash deposits. To the contrary, 59A-10-7B. NMSA 1978 allows the Superintendent to approve "reasonable arrangements", when a particular deposited asset is sold. As a practical matter, such transactions typically necessitate conversion to cash for short periods of time.

The question lies in the definition of reasonable and immediate as pointed out by the auditor. The OSI has developed some measures to help reduce the time cash is kept on deposit. The notice to companies from the custodian bank that deposits are requiring renewal is now being sent 45 days prior maturity to give companies longer notice to renew. The notice was previously sent out 30 days prior to maturity. The companies are being notified that it is imperative that they replace maturing securities before maturity date.

In addition, currently, on a monthly basis the Company Licensing Bureau Chief reviews all pending securities for compliance with renewal requirements. The Bureau Chief sends a follow up communication to any companies that have not renewed timely, requiring immediate compliance compliance.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

Effective immediately companies in good standing will be notified by the Company Licensing Bureau Chief at the time of monthly review, that failure to renew within 30 days, proceedings to suspend certificate of authority may begin.

Companies on a watch list or are otherwise considered at risk will be allowed 15 days to comply and failure to do so will trigger proceedings to suspend certificate of authority.

Number 2 above is agreed with by OSI. The process is already underway to require replacement. Staff has been cautioned about ensuring that all eligibility requirements are met.

Number 3 refers to official securities ratings. OSI management disagrees that a violation has occurred. The auditor reports that the OSA and the custodian bank were unable to provide documentation of official securities credit ratings. First, the auditor never requested the ratings. Secondly, the statute 59A-9-6B. reads as follows: "B. No such investment shall be made in any bond or evidence of indebtedness rated lower than BAA by Moody's Investment Service, Inc. or BBB by Standard & Poors, Inc." Statute and rule require ***only*** that investments and securities maintain a minimum rating. We are not aware of any and the auditor has not disclosed any that do not meet the required standard.

To ensure the standards are maintained, the custodial bank provides the rating for each security at the time of deposit. Securities that do not meet the standard are not accepted. On a monthly basis, the bank provides OSI a listing of any security that has declined below the minimum standard. The insurer is also notified about the deficiency and directed that it is imperative the matter be corrected. If requested, we can provide proof that this is occurring.

To improve on this process, and to clarify requirements, the bank will be directed to notify companies that they have 30 days to correct.
Additionally, effective immediately companies that are still out of compliance after 30 days notice from bank, and are in good standing will be notified that failure to correct deficiency within 30 additional days, may trigger proceedings to suspend certificate of authority.
Companies on a watch list or are considered at risk will be allowed 15 additional days to comply and failure to do so will trigger proceedings to suspend certificate of authority."

2016-011 IMPROPERLY COMPLETED CASH RECEIPTS (SIGNFICANT DEFICIENCY - REVISED AND REPEATED)

CONDITION

During our revenue testwork, we noted two instances that a check payee listed on the check was OSI and another payee. Once check in the amount of $1,201.98 was made payable to the order of OSI and an OSI employee and one check in the amount of $7,246.93 was made payable to the Public Regulation Commission and OSI.

During fiscal year 2017, OSI has not made progress in implementing corrective action. OSI has purchased a system that will allow OSI to scan and date all incoming mail, the system will be implemented in fiscal year 2018.

CRITERIA

Section 6-5-2 NMSA 1978 states that "State agencies shall comply with the model accounting practices established by the Financial Control Division and the administrative head of each agency shall ensure that the model accounting practices are followed." Fin-Map 2.3 requires state agencies to perform the following procedures for cash receipts:

1. Count the cash received and verify the check or money order is completed properly;
2. Document the receipt of money using an appropriate log, including the date, amount, payer name, and the name of the receipting individual; and
3. Place the receipts in a secure location until deposited.

Per Section 6-5-2(C) NMSA 1978, "State agencies shall implement internal accounting controls designed to prevent accounting errors and violation of state and federal law and rules related to financial matters."

EFFECT

Incorrectly completed cash receipts could be deposited in a bank account not belonging to OSI. Conversely, an incorrectly completed receipt may be rejected by OSI's financial institution.

CAUSE

OSI is not verifying that checks or money orders received are completed properly. OSI does not currently have its own policies and procedures regarding cash receipts and was not following Fin-Map requirements regarding cash receipts.

RECOMMENDATION

OSI should immediately implement the requirements listed in Fin-Map 2.3. Additionally, OSI should implement internal policies and procedures to ensure improperly completed receipts are rejected.

MANAGEMENT RESPONSE

"OSI agrees with this finding and recommendation. The Administrative Services Division (ASD) will review all checks prior to deposit to ensure that the check payee listed on the check is OSI and is not written to another payee or does not include another payee. Any check that is written to the wrong payee or includes another payee other than OSI will be returned and another check requested to be written to OSI only. ASD will also ask Divisions to audit checks received for the proper payee prior to sending to ASD for deposit."

2016-012 PATIENT COMPENSATION FUND REVENUE DISCREPANCIES (SIGNIFICANT DEFICIENCY - REVISED AND REPEATED)

CONDITION

During our testwork for the Patient Compensation Fund (PCF), we tested five batches to determine the surcharge (premium) revenue. The five batches contained a total of forty six member surcharges. We noted the following:

- 38 out of 46 surcharges appear to have been undercharged. 25 of the 38 undercharges appear to be one day of surcharge.
- Four out of 46 surcharges appear to have been overcharged.
- 17 out of 46 surcharges reviewed were for coverage in during both fiscal year 2017 and 2018 but the revenue was included in fiscal year 2017.
- 13 out of 46 surcharges reviewed were for coverage beginning in fiscal year 2018 but the revenue was recorded as fiscal year 2017 revenue.

OSI has made some progress in correcting this finding however errors still exist. OSI has developed a PCF revenue audit process and has begun reviewing all surcharges for accuracy. OSI is also developing enhancements to the PCF system to so that OSI will not have to rely on carrier calculations and will instead independently calculate the correct surcharge amounts based on information entered. The system enhancements are in progress for fiscal year 2018.

CRITERA

The PCF is funded by surcharges (premiums) paid by plan participants. These surcharges are based on actuarial principles. Surcharges must be applied accurately and consistently among all plan participants. The coverage dates are specific and calculations must correctly reflect the coverage beginning and end dates. PCF revenue and accounts receivable information are recorded in the financial statements. This information must be timely, complete, contain a correct valuation and be reflected in the correct fiscal year.

EFFECT

Some of the amounts paid by plan participants may be incorrect or cannot be validated. Carriers may be undercharging and members may receive coverage for dates that have not been paid. OSI is unable to determine if the revenue amounts are accurate, if plan participants owe additional surcharges or if amounts reflected on the financial statements are for the correct accounting period. Inaccurate revenue amounts create financial statement misstatements.

CAUSE

OSI's organizational structure is designed around oversight of the insurance industry however the PCF is different, similar to operating an insurance company. The organizational structure provides no clear ownership of all the processes involved in the PCF. Attorneys, actuaries, adjustors, and finance all have different responsibilities related to the PCF. However, no one party is responsible to coordinate all the various processes or to ensure that critical processes are not overlooked. The critical process of billing has been delegated to independent insurance companies. Independent OSI review started during fiscal year 2017.

PCF carriers may not have been provided information on completing the field for coverage ending date. Some carriers may be viewing this date as the last date of coverage and other carriers may be viewing this as the first date of no coverage.

RECOMMENDATION

The organizational structure should be updated to identify a position responsible for all of the tasks surrounding the PCF. This position should have the authority to direct all parties having a role in the PCF, and to coordinate all the processes and tasks. The billing process should be reviewed and updated to ensure participants are charged correct amounts, that accounts receivables are established and that financial statements contain accurate information.

Official guidance should be provided to carriers to correctly report the coverage ending date. OSI should ensure that revenues are collected for all days of coverage.

OSI should implement a process to report PCF receipts from carriers in the correct accounting period.

MANGEMENT RESPONSE:

"Since OSI has not seen the batches that were tested, OSI cannot comment on those findings. OSI is aware that carriers usually record the coverage ending date as the same day as the coverage starting date but one year later. For example, coverage that starts on 4/1/2016 and ends on 3/31/2017 is usually reported as ending on 4/1/2017, which is technically inaccurate. However, OSI receives the appropriate annual surcharge so these situations should not be viewed as an undercharge.

The EFFECT section contains excessive or inaccurate statements. While OSI relies on the carriers to assign doctors to the proper rating classes for their medical specialties and to apply experience-rating debits to those doctors who have had claims, in most situations OSI can validate the accuracy of the remitted surcharges. Also, aside from the common inaccuracy discussed above in reporting the end date of coverage, OSI is not aware of any members receiving coverage for dates that have not been paid.

The CAUSE section properly notes that administering the Patient's Compensation Fund (PCF) is fundamentally different from the primary mission of OSI, which is to regulate the insurance industry in New Mexico. OSI agrees with the finding that one individual with no other major responsibilities should be assigned to overseeing the administration of the PCF. OSI has attempted to create such a position but have been thwarted by SPO's requirement that such a person supervise at least two people.

The CAUSE section also states that "the critical process of billing has been delegated to independent insurance companies." That is not an adverse finding since subsections C and D of Section 41-5-25

NMSA 1978 of the Medical Malpractice Act require that the carriers bill the medical providers and remit the collected surcharges to the PCF.

Regarding the items contained in the RECOMMENDATIONS section, the Superintendent has determined that OSI's Property/Casualty Actuary, will oversee the PCF subject to the supervision of the Chief Actuary, who has been overseeing the PCF for many years. OSI's IT Bureau is in the process of revising the screens that carriers use to upload coverage information to the PCF so that our system will automatically compute the surcharge for each provider, thereby eliminating the need for OSI to audit surcharge amounts. As part of this reprogramming effort, the IT Bureau will put rules in place to ensure that surcharge revenues are reported in the fiscal year in which coverage started. Tracking Accounts Receivable is not an issue for OSI because OSI requires surcharge checks to accompany every coverage upload and do not record coverages until OSI has received the associated surcharges. Also, OSI's Property/Casualty Actuary will advise carriers to enter the last day of coverage, rather than the first day of no coverage, in the "ending date of coverage" field so that no confusion occurs."

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

AUDITOR REBUTTAL

Our testwork included reviewing copies of certificates of coverage provided to full time and part time PCF members. The certificates state the end date of coverage as the "expiration date." We reviewed consecutive coverages and noted that the start date of the coverage is the day after the expiration date.

Additionally, Section 41-5-25 (C) and (D) NMSA 1978 refers to the carriers billing the members. The Cause section of this finding is referring to OSI's billing the carriers to ensure correct amounts are reported as revenue and received.

2016-013 BUDGETARY NON-COMPLIANCE (FINDINGS THAT DO NOT RISE TO THE LEVEL OF A SIGNIFICANT DEFICIENCY- REVISED AND REPEATED)

CONDITION

OSI is required by State statute to collect certain fees to pay for or offset the cost of operations. Our audit included review of fund-related statutes, process interviews with bureaus and a review of the approved budget. The following item was noted:

Agents are required to have continuing education and submit a listing of their continuing education annually to OSI. At the time the agent submits a record to OSI they must also remit a fee equal to $1.00 per credit hour. OSI collects the fee and updates the IDEAL system with the information provided. The money collected is credited to the continuing education fund. These funds are not being used to administer a continuing education program. This money has not been budgeted for several years and continued to increase. In fiscal year 2017, the fund balance was transferred to the Department of Finance and Administration.

OSI has not made progress in implementing a corrective action during fiscal year 2017.

CRITERIA

Section 59A-12-26.1 NMSA 1978 requires fees imposed by the provisions of Section 59A-12-26 NMSA 1978 be deposited in the insurance licensee continuing education fund for the purpose of administering the continuing education program.

CAUSE

OSI has not implemented a continuing education program. Continuing education fund monies have not been budgeted because OSI has not implemented a continuing education program.

EFFECT

The fee charged to agents for continuing education is not being used to administer a continuing education program. OSI is not administering a continuing education program pursuant to State statute.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

RECOMMENDATION

We recommend OSI follow all applicable statutes related to budgetary compliance for the continuing education fund. All required amounts should be collected, however fees that provide no purpose or are not in accordance with the insurance code should be discontinued.

MANAGEMENT RESPONSE

"The Compliance Division Director will review applicable statutes and take action as necessary with regards to the continuing education fund monies by June 30, 2018. After review of statutes a determination will be made regarding the use of fees collected and the future continuation of the fund."

2016-014 TRUST FUND (SHARE 11870) TRANSACTIONS NOT INCLUDED IN STATEWIDE ACCOUNTING SYSTEM. (MATERIAL WEAKNESS – REVISED AND REPEATED)

CONDITION

We noted that OSI maintains the General and Special deposits in trust for policy holders and creditors (the trust fund) and seven ancillary receivership accounts. SHARE fund 11870 has been established for the OSI trust fund. The market value at June 30, 2017 in the general and special deposit trust fund was approximately $552 million. The total amount in the ancillary receivership accounts at June 30th is approximately $1.9 million. We noted the following:

- The deposits, withdrawals, or payments detailed transactions in the trust fund or the ancillary accounts are not entered into SHARE.
- There is no other accounting system in place to record these transactions timely, completely and accurately.
- The transactions are not recorded in OSI's records.
- The financial statements cannot be properly prepared and reviewed by auditors.

The corrective action plan described in the fiscal year 2016 management response to this finding has not been implemented effectively. Based on the testwork performed, it appears that OSI has made no improvements towards mitigating the condition of the prior year's finding.

CRITERIA

2.20.6.8 NMAC prescribes application procedures and conditions of approval of authorization or exception to authority to issue warrants and states "Each and every December 31, a state agency that wishes to issue warrants or exception from the requirement of prior submission of proposed vouchers, purchase orders, or contracts to the division for the following fiscal year (July 1 through June 30) shall apply for authorization or exception by submitting a written request to the secretary of the department explaining in detail the reasons why efficiency or economy will be better achieved by the state agency issuing warrants or waiving the prior submission requirements." The agency is also required to include a report outlining how it complied with various conditions and standards including recording transactions daily in the agency's accounting records and recording transactions timely, completely and accurately in all accounting systems, including subsidiary systems.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

EFFECT

OSI is issuing warrants without authority. SHARE fund 11870 does not contain information regarding the transactions occurring in these accounts. Additionally, OSI does not have the accounting information from these transactions in a system that can be used to generate accurate and timely financial statements. Due to the lack of records the financial statements only include the trust fund Ancillary Receivership cash balances and the General and Special deposit market values at June 30, 2017.

CAUSE

OSI staff received Office of the State Treasurer authorizations for a state agency to open a deposit account pursuant to 6-1-13 NMSA 1978. OSI staff was unaware of the additional requirements pursuant to 2.20.6.8 NMAC, regarding issuing warrants and maintaining an accounting system to record all transactions and timely report all activity in the state's book of record.

RECOMMENDATION

OSI should comply with 2.20.6 NMAC. OSI management should ensure compliance adherence.

MANAGEMENT RESPONSE

"OSI senior managers will meet beginning on November 20, 2017 to discuss all audit findings and areas of improvement and to make changes where necessary, to include consideration of this particular finding. This will be an ongoing process headed by the Deputy Superintendent."

2016-015 MANNER OF HOLDING GENERAL AND SPECIAL TRUST DEPOSITS (MATERIAL WEAKNESS - REPEATED)

CONDITION

Our audit included reviewing compliance with State statutes for general and special trust deposits. These deposits, totaling approximately $552 million, are held in trust to protect policy holders and creditors. Based on the information provided to us, we were not able to verify the custodian bank's agreement with the safekeeping institution to ensure that OSI has valid claims on securities if the custodian was unable to act on OSI's behalf. The contract between OSI and the custodian bank states that the custodian will not release any securities without the Superintendent's or his designee's approval, however, the statements provided do not have the elements required under 13.2.4.9 NMAC Manner of Holding Deposits.

The corrective action plan described in the fiscal year 2016 management response to this finding has not been implemented effectively. Based on the testwork performed, it appears that OSI has made no improvements towards mitigating the condition of the prior year's finding.

CRITERIA

Section 59A-10-2A Purpose of Deposit states Deposits made in the state pursuant to … the Insurance code shall be held in trust for the respective purposes stated in those sections.

13.2.4.9 NMAC Manner of Holding Deposits states "All deposit accounts shall be held in the designated depository in the name of the 'superintendent of insurance of the State of New Mexico, custodian for (name) insurance company (general/special/other deposit amount).'

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

EFFECT

OSI's claims to these assets may not be legally enforceable. This could result in no protection for policy holders and creditors.

CAUSE

The safekeeping institution maintains the securities in the name of the custodian bank. The custodian bank shows all the accounts in the name of the insurance companies. The contract, as currently written, may not permit the custodian bank to hold the assets in the legally required manner.

RECOMMENDATION

OSI should follow the requirements 13.2.4.9 NMAC and ensure that there is a valid and legally enforceable claim to these assets.

MANAGEMENT RESPONSE

"Since the finding was revealed in 2016 this office has attempted to devise a solution that would satisfy the requirement specified in NMAC 13.2.4.9 Manner of Holding Deposits. Discussions have been on-going with legal counsel, the custodian bank as well as the State Treasurer. We do not agree with the Auditor's statement that the OSI's claims to these assets may not be legally enforceable. The Auditor indicates a violation of rule NMAC 13.2.4.9 that reads in pertinent part that "All deposits shall be held in the designated depository in the name of the "superintendent of insurance" of the state of New Mexico, custodian for (name) insurance company". After further consideration of the auditor's concerns and its own regulations the Custodian bank has proposed changing the Statement of account to read as per below. We believe that this will comply with the rule cited above.

Statement of Account

January 1, 2017 Through September 30, 2017

Superintendent of Insurance of the State of New Mexico, Custodian for

xxxxxxxx Mutual Casualty Company

Account Number : 1xyz

Please contact your administrator - with any questions concerning your account.

xxxxxxx Mutual Casualty Company

State of NM Ancillary Receiver PO Box 1689

Santa Fe, , NM 87504-1689

The Account and Asset(s) reported on this statement are pledged to the State of New Mexico,

Office of the Superintendent of Insurance, as Agent Office of the Treasurer, State of New Mexico,

as Trustee Pursuant to Contract #60-440-16-0047

Confidential And Privileged Information"

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

2016-016 LACK OF WRITTEN POLICIES AND PROCEDURES FOR WORK FROM HOME (FINDINGS THAT DO NOT RISE TO THE LEVEL OF A SIGNIFICANT DEFICIENCY - REPEATED)

CONDITION

During our audit procedures, we noted an employee works from home half the day and from the office the other half of the day on a regular basis. The employee developed a log to account for all activities performed at home. OSI has no written policies and procedures regarding employees working from home. There is no documentation in this employee's personnel file indicating approval or justification for working from home.

The corrective action plan described in the fiscal year 2016 audit report references the Employee Handbook, however we did not note policies on working from home or telecommuting in the Employee Handbook effective February 2017. It appears there has not been progress towards resolving this finding.

CRITERIA

Per Section 6-5-2(C) NMSA 1978, "State agencies shall implement internal accounting controls designed to prevent accounting errors and violation of state and federal law and rules related to financial matters. In addition, state agencies shall implement controls to prevent the submission of processing documents to the financial control division that contain errors or that are for a purpose not authorized by law."

Written policies and procedures provide guidance to employees on expectations regarding working from home and also provide an official reporting mechanism to account for time worked. Additionally, written policies and procedures ensure fair, consistent and transparent treatment of all employees in similar circumstances.

EFFECT

OSI does not have an official reporting mechanism for employees to report time worked at home and accountability could be compromised. The lack of official personnel file documentation puts this employee at risk of accusations relating to time reporting, leave accruals and PERA contributions.

CAUSE

OSI does not have policies and procedures regarding working from home. The employee received verbal permission to work from home and there is no documentation in the personnel file.

RECOMMENDATION

OSI should develop agency-wide policies regarding working from home to include required written approvals, an effective and consistent method to account for all activities performed while working at home and a time frame for review to determine if circumstances continue to warrant working from home. Appropriate documentation should be maintained in an affected employee's personnel file.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

MANAGEMENT RESPONSE

"The OSI is aware that the current administration is not in favor of telecommuting. Therefore, the OSI does not have a telecommuting policy implemented. However, although, the OSI does not have a telecommuting policy in place as best practice does not allow for regular occurrence of work time off site, the Superintendent has the sole authority to allow employees to work off site. Any employee wishing to work off site must request direct permission from the Superintendent. The Superintendent reviews the circumstances for the request and makes a determination as to whether the request will be allowed."

2016-017: SUPERINTENDENT SALARY DOCUMENTATION (SIGNIFICANT DEFICIENCY – REPEATED AND MODIFIED)

CONDITION

During our payroll testwork, we noted the Superintendent's personnel file contained one personnel action request form (PARF) dated July 2014 to set the salary. Also, it was determined the Superintendent's initial term was set by statute as July 1, 2013 through December 31, 2015. The Insurance Nominating Committee January 2016 board minutes state the Superintendent resigned and there is no indication that an acting

Superintendent was appointed. The Insurance Nominating Committee reappointed the previous Superintendent on March 10, 2016, retroactively. These personnel actions are not reflected in SHARE HR module and the Superintendent continued to receive the salary during the period between his resignation (December 31, 2015) and his reappointment (March 10, 2016).

The corrective action plan described in the fiscal year 2016 management response to this finding has not been implemented effectively. Based on the testwork performed, it appears that OSI has made no improvements towards mitigating the condition of the prior year's finding.

CRITERIA

Section 59A-2-2(D) NMSA 1978 states "the Superintendent's annual compensation shall be subject to legislative appropriation and established by the insurance nominating committee at the start of each term and annually thereafter. The Superintendent's annual compensation shall be no lower than that of the lowest-compensated cabinet secretary and no higher than that of the highest-compensated cabinet secretary."

EFFECT

Human resources did not have documentation of the Superintendent's resignation and/or his re-appointment from the Insurance Nominating Committee

Due to the technical vacancy, bulletins or other directives issued by OSI, including any approvals of insurance company extraordinary dividends, or the outcome of any hearings, may be invalid, and be subject to legal challenge.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

CAUSE

OSI has not designed controls related to ensure the appointment, resignation or salary of a Superintendent of Insurance are reflected in SHARE HCM. The Insurance Nominating Committee may not be aware of the need for these controls.

There is a lack of communication between the Insurance Nominating Committee and the OSI Human Resource office regarding the Superintendent's term and salary. The OSI HR Office does not review any personnel files for completeness. Instead they rely on information provided to them.

The Nominating Committee may not be aware of the requirement to annually set the Superintendent's compensation.

RECOMMENDATION

OSI should review the Superintendent's personnel file for completeness annually and verify the documentation contained in the personnel file supports what the employee is actually paid.

All decisions made during the technical vacancy should be reviewed for possible legal ramifications and the decisions made from this review should be communicated with the effected party(ies).

MANAGEMENT RESPONSE

"The Position/Personnel Action Request Form (PPARF) that is currently on file for the Superintendent does reflect the Superintendent's current annual salary. If there are any changes with the position or there are any personnel changes, ie. Salary, a new PPARF will be initiated and sent to DFA for approval. Upon receiving approval from DFA, the approved PPARF will be placed in the personnel file.

In regards to reflecting personnel actions on the SHARE HR module, the module is not equipped to accept or process the Superintendents reappointment as of March of 2016. On the other hand, OSI will update the Superintendents personnel file to appropriately reflect his reappointment by the Insurance Nominating Committee.

The audio recording of the January 2016 Insurance Nominating Committee meeting does not indicate that the Superintendent resigned his position as Superintendent of Insurance, therefore, the minutes of the January meeting do not appropriately reflect the proceedings and therefore should not be relied upon for accuracy. As a result, the Superintendent's personnel file would not contain or require a record of the purported resignation.

Furthermore, in the absence of the Superintendent resigning his position, and pursuant to Article XX, Section 7 of the New Mexico Constitution, Bowman Bank and Trust Co. v. The First National Bank, 18 N.M. 589, State ex rel. Rives v. Herring, 57 N.M. 600, and New Mexico Attorney General Opinion 58-233 (1958), no vacancy occurred during the period of January 1, 2016 and March 10, 2016."

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

2016-018 ANCILLARY RECEIVERSHIP ASSETS (OTHER NON-COMPLIANCE – REPEATED AND MODIFIED)

CONDITION:

As part of our audit procedures, we tested whether delinquent insurance companies had assets in the trust account, or, as required, delinquent insurers had their trust accounts liquidated and the proceeds placed into receivership bank accounts. Audit testwork revealed one instance where OSI had been appointed ancillary receiver, but not all of the insurer's assets had been liquidated and there was $940,000 of securities still pledged as a special deposit which should have been liquidated and put into the ancillary receivership bank account to pay necessary expenses of the ancillary receivership proceedings.

It does not appear that the corrective action plan described in the FY16 management response to this finding has been implemented effectively. Based on our testwork performed, it appears that OSI has made no improvements towards mitigating the condition of the prior year's finding.

CRITERIA:

Section 59A-41-19(A) NMSA 1978 states "whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the superintendent as ancillary receiver."

Section 59A-41-19(B) NMSA 1978 states "the ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver."

59A-10-9A (3) states "if the insurer is subject to delinquency proceedings, upon proper order of a court of competent jurisdiction the insurers deposited assets shall be released to the receiver, conservator, rehabilitator or liquidator of the insurer.

EFFECT:

The Superintendent has not liquidated all special deposit assets of the insolvent company to pay the necessary expenses of the ancillary receivership proceedings, and it does not appear the Superintendent has transferred all remaining assets to the domiciliary receiver as required by 59A-41-19(B) NMSA 1978.

CAUSE:

OSI's outside legal counsel informed OSI that "it will not be necessary to liquidate more than one security of one of companies at this time." However, this appears at odds with the court order which instructed the custodian bank to release the special deposits and any accrued interest of the insurer and all merged insurance companies, directly to the ancillary receiver to pay ancillary receivership administrative fees, expenses, costs, and court approved special deposit claims of New Mexico's insureds and creditors. Furthermore, OSI stated that "Section 59A-10-9C provides that the Superintendent may release deposits 'in whole or in part'. Therefore, there could be funds in the ancillary account as well as in the deposit account simultaneously." However, Section 59A-10-9C applies to insurers in good standing as Section 59A-10-9A (3) specifically addresses insurers subject to delinquency proceedings.

RECOMMENDATION:

OSI should review all insurers in receivership and determine compliance with Sections 59A-41-19(B) and 59A-10-9A (3) NMSA 1978.

MANAGEMENT RESPONSE

"The Auditor is correct that deposited assets belonging to one company in receivership have not completely been transferred to an ancillary account.

Auditor is also correct that outside legal counsel informed OSI that "it will not be necessary to liquidate more than one security of one of the companies at this time".

OSA Management does not agree that a violation has occurred. By statute, the Superintendent of insurance is the receiver and is given the rights and responsibilities pertaining to that designation.

Under "Cause", the auditor states in pertinent part that the advice of outside legal counsel (referred to above), "appears to be at odds with the court order". The following is the part of the court order being cited.

"Century Bank, New Mexico N.A is ordered to release forthwith the special deposits (and/or proceeds thereof) and any accrued interest thereon, of Lumbermens Mutual Casualty Company and all merged insurance companies doing business in New Mexico, including American Manufacturers Mutual Insurance Company and American Motorists Insurance Company, directly to the Ancillary receiver ***or as he may direct."***

The order does instruct the bank to release all assets directly to the receiver (Superintendent of Insurance) ***or as he may direct***. The court order clearly gives the Superintendent the discretion to manage the assets as deemed necessary.

The Auditor cites 59A-41-19(B) NMSA 1978 that reads in pertinent part as follows: "The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state."

The statute gives the Superintendent discretion by requiring the liquidation of assets "as soon as practicable". Additionally, the liquidation should occur to, "liquidate from their respective securities those special deposit claims and secured claims ***which are proved and allowed*** in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings". This further bolsters the argument that deposits may be transferred to the ancillary account in whole or in part.

Finally 59A-10-9-A. reads as follows: "….shall be released only as follows:"

(3) "…..Upon proper order of a court of competent jurisdiction the insurer's assets shall be released to the receiver, conservator, rehabilitator or liquidator of the insurer". This statutory requirement merely requires release to the receiver with no requirements as to how the funds should be transferred.

Finally, as fiduciary, the Superintendent is required to exercise due diligence over the assets in his care. This includes ensuring that the assets' earning capacity is optimized. Transferring all assets to a cash account would severely diminish their earning capacity exposing the OSI to accusations of negligence in carrying out its fiduciary duty."

AUDITOR REBUTTAL

The court order, from December 2, 2014, states the bank is ordered to release the special deposits directly to the Ancillary Receiver, or as he may direct, potentially to an individual acting in the capacity of receiver. However as of June 30, 2017 there was no receiver direction of these proceeds.

2016-021 ACCOUNTS RECEIVABLE MANAGEMENT (MATERIAL WEAKNESS – REVISED AND REPEATED)

CONDITION

During our accounts receivable testwork, we were unable to obtain an accounts receivable aging report for various types of revenues processed. OSI recorded funds collected in the Insurance Suspense Fund for July and August with an unadjusted balance totaling $78,335,299, as accounts receivable at fiscal year-end 2017, even though the amounts collected in July and August may be fiscal year 2018 transactions. We were unable to obtain proper supporting documentation or determine if the $78,335,299 unadjusted accounts receivable balance is materially correct.

We noted a legal settlement made by one of the bureaus that was not recorded in the financial statements, the settlement created a note receivable in the amount $27,930.

We noted another bureau indicated amounts were outstanding and owed to the bureau. However, the exact amount and specific information could not be provided. We noted one item in the amount of $200 tested in our revenue distribution testwork for this bureau was outstanding since 2011.

We noted a note receivable from a retired employee states payments would commence in July 2016, however it appears that no payments have been received.

The corrective action plan described in the fiscal year 2016 management response to this finding has not been implemented effectively.

CRITERIA

Section 6-5-2 NMSA 1978 states that "State agencies shall comply with the model accounting practices established by the Financial Control Division and the administrative head of each agency shall ensure that the model accounting practices are followed." Fin-Map 11.1 requires all state agencies to actively manage accounts receivable and keep detailed accounts receivable ledgers.

EFFECT

The accounts receivable amounts listed on the financial statements may be materially misstated. The potential misstatement cannot be determined. Revenues may be recorded in the wrong fiscal year. Amounts owed to OSI may not be collected. In addition, the Governor, the State Legislature and others relying on accurate data to plan future year expenditures for New Mexico may not have accurate information to base decisions.

CAUSE

OSI does not have its own policies and procedures regarding accounts receivable. OSI did not properly follow Fin-Map requirement for accounts receivable for sources of revenue for which they are responsible.

OSI is decentralized, various bureaus in OSI have the legal authority to make settlements that create accounts receivable. Controls have not been established to ensure that amounts legally owed to the OSI are communicated to the Administrative Services Division to be properly recorded and tracked. The IDEAL system cannot process amounts received from Human Resource related receivables.

The IDEAL system was not designed to track amounts owed, only amounts collected. During fiscal year 2017, payments received were entered into the IDEAL system and a batch report was created and a revenue code was assigned. Amounts received are not matched to an amount owed to OSI, such as a bill or other invoice. OSI does not have an automated system, or manual process, to track amounts owed from various revenue sources, or to know the total population of entities owing amounts.

RECOMMENDATION

OSI should immediately develop policies and procedures regarding all types of accounts receivable and follow Fin-Map requirements. OSI is in the process of converting from the IDEAL system to State Based System (SBS) and OSI should work with SBS to develop an accurate way to track receivables.

MANAGEMENT RESPONSE

"OSI receives several deposits daily. Based on the deposit information provided it is impossible for the Administrative Services Division to determine what Fiscal Year a company is making payment for. The current system does not allow revenues received to be classified between applicable fiscal years. For receivables that are known and recorded in the financial statements, collection efforts will be made to ensure payment is received. OSI cannot force payment of outstanding receivable amounts recorded in the receivables but can only pursue collection efforts."

2017-001 NON-COMPLIANCE WITH THE VACCINE PURCHASING ACT (OTHER NON-COMPLIANCE)

CONDITION

During our audit, we reviewed OSI's compliance with the Vaccine Purchasing Act. The following exceptions were noted:

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

- OSI has not promulgated rules or issued a Bulletin requiring each health insurer and group health plan to report the number of children it insured who were under the age of nineteen in accordance with the Vaccine Purchasing Act reporting requirement. The NM Department of Health (DOH) provided OSI a list of respondents for health insurers and group health plans and OSI sent a memo with instructions and response deadlines. The information was collected via Survey Monkey.
- 43 out of a total of 223 health insurers and group health plans responded after the deadline and were not assessed the statutory fine of $500 per day. The unassessed late fees total $534,000.
- The survey data is not certified as correct by the reporting entity and OSI does not perform any independent steps to verify the survey data.

CRITERIA

Section 24-5A-6 (A) and (A) (1) NMSA 1978 states, "No later than 120 days following the enactment of the Vaccine Purchasing Act the office of superintendent shall: promulgate rules requiring each health insurer and group health plan to report the number of children it insured who were under the age of nineteen as of December 31, 2014 and to annually report the number of children it insures who will be under the age of nineteen as of December 31 of each subsequent year..."

Section 24-5A-7 (B) NMSA 1978 states, "A health insurer or group health plan that fails to file a report required by the office of superintendent pursuant to Subsection A of Section 6 of the Vaccine Purchasing Act shall pay a late filing fee of five hundred dollars ($500) per day for each day from the date the report was due."

Section 25-5A-8 NMSA 1978 states, "The department and the office of superintendent shall promulgate and enforce such rules as may be necessary to carry out the provisions of the Vaccine Purchasing Act."

EFFECT

OSI may not have provided health insurers and group health plans with official guidance to enable compliance with the Vaccine Purchasing Act. The survey population may not be complete thereby producing inaccurate results.

OSI has not collected late filing fees of $534,000 in accordance with State statute.

The lack of data verification may cause errors. The data is used in a statutory reimbursement formula and any errors may cause inaccurate reimbursement requests sent from the DOH to health insurers.

CAUSE

OSI has not promulgated rules or bulletins to comply with the requirements of the Vaccine Purchasing Act.

RECOMMENDATION

OSI should review all pertinent requirements of the Vaccine Purchasing Act and develop processes for compliance. These processes should include evaluation of the DOH list of respondents for completeness, fine assessment and collection for late reporting and data certification of correctness by an individual at the reporting entity with the appropriate level of authority.

MANAGEMENT RESPONSE

"OSI agrees with the finding and recommendation. Pursuant to 24-5A-6(A) and (A)(1) and 24-5A-8, NMSA 1978; the OSI Health Insurance Exchange staff will promulgate rules requiring each health insurer/entity or health plan to report the number of children it insured under the age of nineteen as of December 31 of each subsequent year. OSI will coordinate with DOH for input on proposed rules prior to implementation. OSI in conjunction with DOH will continue to develop processes for compliance, to include; the evaluation of the DOH list of respondents for completeness, data certification of correctness, and fine assessment and collection for late reporting in accordance with 24-5A-7(B), NMSA 1978. "

2017-002 NON-COMPLIANCE WITH THE STATE USE ACT (OTHER NON-COMPLIANCE)

CONDITION

Our audit included the review of 15 contracts for compliance with the State Use Act. We noted for four contracts that OSI did not have documentation that the service price for the contracts were in accordance with the established rates by the New Mexico Council for Purchasing from Persons with Disabilities and that the central non-profit agency for the State of New Mexico was contacted by OSI prior to obtaining the services by other means.

CRITERIA

Section 13-1C-7(A) NMSA 1978 states "a state agency or local public body intending to procure a service on a list published by the council, shall, in accordance with rules of the council procure the service at the price established by the council if the service is available within the period required by the state agency or local public body."

1.4.1.95 NMAC states "in regard to the procurement of services, before utilizing any other procurement method allowed under the Procurement Code, a state agency or local public body shall first offer the procurement to the central non-profit agency under contract with the state."

EFFECT

OSI may be subject to discipline by the New Mexico Council for Purchasing from Persons with Disabilities or the State Purchasing Agent. Non-compliance with State statute.

CAUSE

Turnover for the Chief Procurement Officer position and inconsistency regarding organization and documentation for the procurement file caused some files to not have proper documentation of price established by the council.

Lack of understanding that if a State Price Agreement is used the central non-profit agency still must be contacted to determine if the services can be obtained through the central non-profit agency.

RECOMMENDATION

OSI should review all existing contracts and verify pertinent documentation is retained in the file as proof of compliance with the State Use Act. OSI management should develop policies and procedures to ensure that all future procurements of services comply with the State Use Act's requirements.

MANAGEMENT RESPONSE

"Compliance with the State Use Act for three of the four contracts may be questionable. One of the contracts did have the appropriate supporting documentation to reflect compliance with the State Use Act and has been provided to the auditors. Two of the contracts questioned were professional service contracts which are services that are not provided by Horizons and listed as one of their exemptions on their website. One contract is a multi-year General Service Agreement prepared by the General Services Department specifically for OSI. OSI has procured services via this GSA since 2014 by preparing a purchase order. OSI's Certified Procurement Officer will review all existing contracts and verify pertinent documentation is retained in file as proof of compliance with the State Use Act. OSI will include guidance in procurement policies and procedures to ensure that all future procurements of services comply with the State Use Act's requirements."

2017-003 TRUST FUND REQUIRED SPECIAL DEPOSITS (SIGNIFICANT DEFICIENCY)

CONDITION

We reviewed required amounts of deposit for the insurance company's trust accounts which are amounts held in trust for policy holders and creditors. During our review, we noted one out of 28 accounts tested had a special deposit that was $1,300,000 less than the amount required by the Superintendent of Insurance. OSI notified the company in August 2017 and the issue appears to have been resolved in September 2017.

CRITERIA

Section 59A-10-8 NMSA 1978 states "if for any reason the market value of assets of the insurer held on deposit in this state falls below the amount required under the Insurance Code, the insurer shall promptly deposit other or additional eligible assets sufficient to cure the deficiency. If the insurer fails to cure the deficiency within a reasonable time after receipt of notice thereof from the superintendent, the superintendent shall revoke the insurer's certificate of authority."

EFFECT

OSI may have failed to suspend or revoke an insurers' certificate of authority to transact insurance in New Mexico when required by State statute. Policy holders and creditors may not have sufficient financial protection.

CAUSE

OSI has not defined what constitutes a reasonable time for insurers to remedy deposits that fall below the required amount. Current processes at OSI did not identify the deficiency as of June 30, 2017. OSI does not appear to have established policies and procedures to follow when the required amount in the trust fund is deficient.

RECOMMENDATION

OSI should provide guidance for their staff and other interested parties defining the reasonable time for a company to remedy a deficient deposit. OSI should develop policies and procedures outlining specific steps for staff to follow when a company's deposit is less than the required amount to ensure compliance with State statute.

MANAGEMENT RESPONSE

"We agree with the finding. In the cited case, it was determined in June that the higher amount of deposit was required. The appropriate deposit was not obtained in September. It is important to note that this particular situation is an unusual occurrence due to a consent decree. In this situation, the statute allows but does not require the Superintendent to maintain a higher amount.

In all other cases a newly developed procedure has been implemented. When a deposit amount falls below required levels, the bank immediately notifies the insurer of the deficiency. As an additional measure, the Bureau Chief (BC) in Company Licensing reviews levels monthly. If the deposit remains below the requirement, the BC notifies the company and allows 15 days for compliance. Extensions may be allowed for good reason if the company is in good standing and is making progress toward compliance. Documentation is maintained.

The Company Licensing Bureau will develop and implement by December 31, 2017 a process for troubled companies. This process will begin proceedings to take appropriate measures against non-complying companies that are on a watch list or are otherwise considered high risk if they have not complied within 2 weeks of notification by the custodian bank."

2017-004 VENDORS PAID WITHOUT VERIFICATION OF CONTRACT PERFOMANCE MEASURES (SIGNIFICANT DEFICIENY)

CONDITION

During our testwork of internal controls over cash disbursements, we noted two disbursements totaling $17,528 that required specific performance measures for payment but did not have documentation that the performance measure was achieved.

- One disbursement for $12,169 had a status report that was not signed for accuracy by the contractor and there is no evidence of OSI review; the status report is for a running total of four months not the required two week period; and the invoice was for one month of hours listed not the required two week performance measure.
- One disbursement for $5,359 did not have documentation for the required performance measure.

CRITERIA

Both contracts required specific performance measures prior to payment, as listed below:

- One contract has a performance measure stating, "compensation to be provided every two weeks based on contractor provided status report identifying hours worked for the 2-week period."
- One contract has a performance measure stating, "the contractor will keep a log… and compile a monthly report of all issues. The monthly report is required and has to accompany each monthly invoice for payment to be made each month."

EFFECT

OSI may pay vendors without actually receiving the performance required to fulfill the contract. Timesheets or other types of logs prepared without a signature may not be accurate. Vendors are not held accountable for performance measures.

CAUSE

OSI lacks a consistent process to ensure compliance with performance measures prior to approval of invoices.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

RECOMMENDATION

OSI should implement a process to ensure compliance with performance measures prior to approval of invoices. OSI should train staff on acceptable forms of backup documentation for compliance with performance measures.

MANAGEMENT RESPONSE

"OSI agrees with the finding and recommendation. OSI will implement a process to ensure compliance with performance measures prior to approval of invoices. The Administrative Services Division (ASD) staff will be trained on auditing vouchers and ensuring all supporting documentation required by a contract is provided prior to payment of invoice. Any invoice missing required documentation will be rejected back to the project manager listed on the contract. ASD will train staff on acceptable forms of backup documentation for compliance with performance measures."

2017-005 PATIENT'S COMPENSATION FUND CONTRACT INVOICES PAID WITHOUT VERIFICATION OF PERFOMANCE MEASURES (SIGNIFICANT DEFICIENY)

CONDITION

During our testwork of internal controls of cash disbursements, we noted three disbursements from the Patient's Compensation Fund totaling $44,191 do not appear to agree with the requirements stated in the performance measure. We noted the following:

Two disbursements for $27,275 did not include detailed information for the payment. The invoice lists unit price as N/A and the gross receipts tax is not separately identified, there is only a total line listed on the invoice.

One disbursement for $16,916 did not include detailed information for the payment. The invoice lists unit price as N/A and the gross receipts tax is not separately identified, there is only a total line listed on the invoice. In addition, the invoice had a running total of work performed by dated from December 3, 2016 through May 31, 2017.

CRITERIA

The contract has a due date of "every two weeks, beginning October 17, 2016 or contract execution for a total of 680 hours." Invoices or other documentation should be sufficiently detailed to support payment for services.

EFFECT

OSI may pay vendors without actually receiving the performance required to fulfill the contract. Timesheets or other types of logs prepared without any signature may not be accurate. Vendors are not held accountable for performance measures.

CAUSE

OSI lacks a consistent process to ensure compliance with performance measures prior to approval of invoices.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

RECOMMENDATION

OSI should implement a process to ensure compliance with performance measures prior to approval of invoices. OSI should train staff on acceptable forms of backup documentation for compliance with performance measures.

MANAGEMENT RESPONSE

"OSI agrees with the finding and recommendation. OSI will implement a process to ensure compliance with performance measures prior to approval of invoices. The Administrative Services Division (ASD) staff will be trained on auditing vouchers and ensuring all supporting documentation required by a contract is provided prior to payment of invoice. Any invoice missing required documentation will be rejected back to the project manager listed on the contract. ASD will train OSI staff on acceptable forms of backup documentation for compliance with performance measures."

2017-006 FAILURE TO DISCLOSE ALLEGATIONS OF FRAUD (OTHER NON-COMPLIANCE)

CONDITION

During the audit, we consider fraud in accordance with AU-C 240. We conducted fraud risk interviews with all levels of staff and management to discuss, among other topics, any known or alleged fraud, waste or abuse. These interviews are scheduled directly with the staff member selected. During our procedures, we noted the following:

We inquired of the fraud risk interviewees "Are you aware of any alleged fraud?" Two members of executive management responded that they were not aware of any alleged fraud. These interviews occurred on August 28th and 29th, 2017. However, the Superintendent sent a letter to OSA dated September 22, 2017, indicating there may have been alleged fraud which occurred prior to August 28th and 29th.. The letter included a report from an independent contractor regarding an investigation stating "serious financial issues were discovered" and "I am concerned that there is a high risk of fraud, embezzlement, and/or misappropriation or misapplication of funds…" The information was also broadcast on a local television station.

OSA has not made a determination that any fraud occurred.

CRITERIA

Auditing standards require management representations to include that management has provided the auditor with all relevant information and access, as agreed upon in the terms of the audit engagement. Auditing standards also require management representations that management has disclosed to the auditor its knowledge of fraud or suspected fraud affecting the entity. In addition, the audit engagement letter signed by the Superintendent of Insurance describes Management Responsibilities. One of the management responsibilities is to provide "unrestricted access to persons within government from whom we determine it necessary to obtain audit evidence." The signed engagement letter also states "Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government…"

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

EFFECT

Not disclosing all known instances or allegations of fraud to auditors when specifically asked indicates a potential scope limitation imposed by management. Per AU-C 705, "If the auditor is unable to obtain sufficient appropriate audit evidence due to a management imposed scope limitation, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive, the auditor should either disclaim an opinion on the financial statement or, when practicable, withdraw from the audit."

Uncertainty as to whether all known allegations of fraud have been communicated.

CAUSE

Unknown.

RECOMMENDATION

OSI executives should comply with the terms of the engagement. OSI management should ensure all levels of management and staff understand the importance of responding to auditor requests.

MANAGEMENT RESPONSE

"The report in question and its related examination is linked to the Insurance Fraud Fund (fund), and was NOT initiated as a result of alleged or possible fraud. Instead said examination was initiated to evaluate the administration of the fund and provide guidance for the implementation of enhanced controls to better administer the fund. As a result, there was no alleged fraud to be reported by OSI employees.

Furthermore, a select few Insurance Fraud Bureau (IFB) personnel had direct knowledge and oversite of the examination and those specific employees were never interviewed by OSA. Had those IFB employees been interviewed OSA would have been appropriately informed of the examination scope.

The employees that OSA did interview with regard to this issue either did not have knowledge of the examination, or they knew very little about the examination and not enough to determine whether it was fraud related.

The report referenced in this finding does not allege fraud and even indicates that fraud has not been discovered. Instead the report points out that the current management of the fund leaves open the risk to fraudulent activity. Consequently, OSI has initiated steps to enhance controls over the fund in order to prevent or at least identify fraudulent activity."

2017-007 NON-COMPLIANCE WITH THE GOVERNMENTAL CONDUCT ACT (OTHER NON-COMPLIANCE)

CONDITION

Our audit included a review of the OSI Employee Handbook and acknowledgements to determine compliance with the Governmental Conduct Act. Our testwork identified the Code of Conduct, contained within the OSI Employee Handbook had not been filed with the NM Secretary of State.

SECTION II: FINANCIAL STATEMENT FINDINGS (CONTINUED)

CRITERIA

Section 10-16-11 (C) NMSA 1978 states all codes of conduct shall be filed with the secretary of state and are open to public inspection.

EFFECT

OSI may not be in compliance with Section 10-16-11 NMSA 1978 "Codes of Conduct" of the Governmental Conduct Act.

CAUSE

OSI did not file the agencies code of conduct with the Secretary of State.

RECOMMENDATION

The Code of Conduct should be filed with the Secretary of State as required.

MANAGEMENT RESPONSE

"The OSI will ensure that this finding is corrected and that the OSI Code of Conduct is filed with the Secretary of State."

SECTION III: FEDERAL AWARD FINDINGS

FA2015-003 (REVISED AND REPEATED) LACK OF INTERNAL CONTROLS OVER REPORTING (SIGNIFICANT DEFICIENCY, NON-COMPLIANCE)

Federal program information:
Funding Department: Department of Health and Human Services
Title: Grants to Support States in Health Insurance Rate Review- Cycle II & Cycle III
CFDA Number: 93.511
Award Year: 2014

CONDITION
During our testwork over Federal Awards we noted the Programmatic Reports are submitted to the U.S. Department of Health and Human Services without proper documentation of review.

Progress has been made towards implementing management's corrective action plan and reports now appear to be submitted by the required due date. However, OSI still does not maintain documentation supporting submissions are properly reviewed prior to submission.

CRITERIA
The OMB Circular A-102 Common Rule requires that non-Federal entities receiving Federal awards (i.e., the Department's management) establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements. Per OMB Circular A-133, the Department "shall implement a process designed to provide reasonable assurance that transactions

are properly recorded and accounted for to permit the preparation of reliable financial statements and federal reports, maintain accountability over assets and demonstrate compliance with laws, regulations and other compliance requirements. Furthermore, per the grant agreement programmatic reports are due 30 days after the end of each federal fiscal quarter and the annual programmatic report is due 90 days after the end of the applicable year-end date."

CAUSE

The new program manager was not hired until the 2nd quarter of fiscal year 2017 and was unfamiliar with the review requirements.

QUESTIONED COSTS

None

EFFECT

Non-compliance with reporting requirements and regulations could cause OSI to lose available funding.

RECOMMENDATION

OSI should ensure that all reports and supporting documentation submitted to federal agencies are reviewed by management prior to submission. OSI should maintain documentation supporting this review.

MANAGEMENT RESPONSE

The Grants Manager started employment with OSI November 12, 2017 and received the audit findings December 5, 2017. The Grants Manager implemented internal controls in January 2018 to ensure compliance with all federal reporting guidelines during FY18.

FA2015-006 (REVISED AND REPEATED) MISSING AND/OR INCORRECT TIME AND EFFORT CERTIFICATIONS (SIGNIFICANT DEFICIENCY, NON-COMPLIANCE)

Federal program information:
Funding Department: Department of Health and Human Services
Title: Grants to Support States in Health Insurance Rate Review- Cycle II & Cycle III
CFDA Number: 93.511
Award Year: 2014
Questioned Costs: Cannot Determine

CONDITION

During our testwork, we noted:

1. OSI did not maintain minimum semiannual certification report required to substantiate time and effort for one employee with 100% of time charged to a grant.
2. OSI did not maintain a personnel activity report, or equivalent, for employees that worked on both federal and non-federal awards.
3. Two employees certified they spent 100% of their time on the federal grant but it appears that their time should be allocated to federal and nonfederal programs.
4. One individual's rate of pay could not be substantiated by supporting documentation.

SECTION III: FEDERAL AWARD FINDINGS (CONTINUED)

The corrective action plan described in the fiscal year 2016 management response to this finding has been partially implemented. OSI made progress in ensuring time and effort certifications are completed and maintained in accordance with Federal requirements. However, it appears certifications may not be accurate and employees are not required to maintain personnel activity reports in instances where employees work on both federal and non-federal awards.

CRITERIA

OMB A-87 states, "Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semiannually and will be signed by the employee or supervisory official having first-hand knowledge of the work performed by the employee."

CAUSE

The first program manager was unfamiliar with the requirements for time and effort required certifications and personnel activity reports. A new program manager was hired during fiscal year 2017 and began to enforce compliance with required certifications but was unaware certain employees' routine job duties included tasks unrelated to the federal award. Personnel activity reports or other activity logs are not used and there is not a process to review tasks for eligibility. OSI staff did not reconcile the certifications to the labor cost vouchers to verify that the certifications supported the financial records.

QUESTIONED COSTS

Unknown

EFFECT

OSI may have charged salary expenditures to a federal award, when the expenditures appear to be for non-federal expenditures. Improper federal expenditures increases the risk of non-compliance with laws, regulations, or grant conditions. Improper and unsupported federal expenditures may be disallowed costs.

RECOMMENDATION

We recommend OSI prepare, approve and maintain semiannual certification, and/or personnel activity, reports. Grant/program managers should verify that certifications signed by employees are supported by the tasks performed and the labor cost vouchers. Any identified discrepancies should be reviewed and corrected immediately. Documentation supporting the authorized rate of pay should be appropriately maintained. OSI should train employees on the difference between federal and non-federal activities performed and how to accurately complete certifications.

MANAGEMENT RESPONSE

"Staff were required to sign the Time & Effort (T&E) Certification every 6 months. Staff that did not have signed certifications on file resigned prior to the end of the 6 month signing period. Staff did not sign the certification upon departure from OSI. This deficiency has been corrected for FY18.

SECTION III: FEDERAL AWARD FINDINGS (CONTINUED)

The Grants Manager created a new T&E certification form for FY18 that certifies time by all funding sources, federal grants & MOU (other State funds).   Staff salaries and benefits are also distributed by percentages on all federal and other State funds (MOU) effective 7/1/2017.

In January 2017, The Grants Manager attempted to change all federally funded positions ensuring percentage distribution to all available funding sources, federal and other State funds (MOU). Since OSI did not have a CFO at that time, the ASD would not make the necessary corrections. Beginning 7/1/2017 (FY18), all staff salaries & benefits are distributed by percentages on 2 federal and 1 other state funds (MOU) funding sources."

SECTION IV: PRIOR YEAR FINDINGS

FINANCIAL STATEMENT FINDINGS:

2014-001 CONTROLS OVER PAYROLL - REVISED AND REPEATED
2014-002 PAYROLL DOCUMENTATION - RESOLVED
2014-004 TRAVEL AND PER DIEM-OTHER TRAVEL- REVISED AND REPEATED
2015-001 CONTROLS OVER VEHICLE USAGE – REVISED AND REPEATED
2015-002 CHIEF PROCURMENT OFFICER – REVISED AND REPEATED
2016-001 CONTROLS OVER CASH RECEIPTS – REVISED AND REPEATED
2016-002 PATIENT’S COMPENSATION FUND DEFICIT – RESOLVED
2016-003 SUSPENSE FUND CODING – REVISED AND REPEATED
2016-004 UNDOCUMENTED ADDITIONAL COMPENSATION – RESOLVED
2016-005 NON-COMPLIANCE WITH THE PROCUMENT CODE – REVISED AND REPEATED
2016-006 ENTITY-WIDE CONTROL DEFICIENCY – REVISED AND REPEATED
2016-007 CONTROLS OVER INFORMATION TECHNOLOGY – RESOLVED
2016-008 TRUST FUND EXCESS DEPOSITS – REVISED AND REPEATED
2016-009 EXTRAORDINARY DIVIDEND APPROVAL – RESOLVED
2016-010 TRUST FUND SECURITIES ELIGIBILITY – REVISED AND REPEATED
2016-011 IMPROPERLY COMPLETED CASH RECEIPTS – REVISED AND REPEATED
2016-012 PATIENT’S COMPENSATION FUND REVENUE DISCREPANCIES – REVISED AND REPEATED
2016-013 BUDGETARY NON-COMPLIANCE – REVISED AND REPEATED
2016-014 TRUST FUND TRANSACTIONS OUTSIDE OF SHARE – REVISED AND REPEATED
2016-015 MANNER OF HOLDING GENERAL AND SPECIAL DEPOSITS – REVISED AND REPEATED
2016-016 POLCIES AND PROCEDURES FOR WORK FROM HOME – REVISED AND REPEATED
2016-017 SUPERINTENDENT’S SALARY DOCUMENATION – REVISED AND REPEATED
2016-018 ANCILLARY RECEIVERSHIP ASSETS – REVISED AND REPEATED
2016-019 WEX FUEL CARD USAGE – RESOLVED
2016-020 ACCOUNTS PAYABLE – RESOLVED
2016-021 ACCOUNTS RECEIVABLE MANAGEMENT – REVISED AND REPEATED
2016-022 UNAUTHORIZED RELEASE OF INFORMATION - RESOLVED

FEDERAL AWARD FINDINGS:

FA 2015-003 INTERNAL CONTROLS OVER REPORTING – REVISED AND REPEATED
FA 2015-004 SUSPENSION/DEBARMENT – RESOLVED
FA 2015-005 FEDERAL DISBURSEMENTS – RESOLVED
FA 2015-006 TIME AND EFFOR CERTIFICATION – REVISED AND REPEATED

STATE OF NEW MEXICO

OFFICE OF SUPERINTENDENT OF INSURANCE

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SUPERINTENDENT OF INSURANCE
John G. Franchini - 505-827-4299

DEPUTY SUPERINTENDENT
Robert Doucette - 505-827-5832

Audit Finding		**Corrective Action Plan**	**Person Responsible**	**Estimated Completion Date**
FA2015-003	Lack of Internal Controls over Reporting	As described in management's response	Grant's Manager	30-Jun-18
FA2015-006	Missing and/or Incorrect Time & Effort Certification	As described in management's response	Grant's Manager	30-Jun-18

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
Exit Conference
For the Year Ending June 30, 2017

EXIT CONFERENCE:

An Exit Conference was held on October 30, 2017. The following individuals were in attendance:

<u>Representing the Office of the Superintendent of Insurance:</u>

Robert Doucette, Deputy Superintendent of Insurance

Vicente Vargas JD, Chief General Counsel

Margaret Caffey Moquin JD, Chief Staff Council

Bersabe Rodriguez, Chief Financial Officer

Andy Romero, ARM, AIC, Director, Compliance Division

<u>Representing the Office of the State Auditor:</u>

Sanjay Bhakta, CPA, CGFM, CFE, CGMA, Deputy State Auditor

Sunalei Stewart, JD, Chief of Staff

Lynette Kennard, CPA, CGFM, Director, Financial Audit Division

Elise Mignardot, CPA, Audit Manager

Chelsea Martin, CPA, CFE, CICA, CRFAC, Audit Supervisor

PREPARATION OF THE FINANCIAL STATEMENTS:

The accompanying OSI financial statements have been prepared by the Office of the State Auditor, the organization's independent public auditor. The financial statements, however, are the responsibility of OSI management.