

LOUISIANA WORKFORCE COMMISSION
SECOND INJURY FUND



PERFORMANCE AUDIT
ISSUED FEBRUARY 8, 2012

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

February 8, 2012

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Charles E. "Chuck" Kleckley,
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our performance audit on the Louisiana Workforce Commission's Second Injury Fund.

The report contains our findings, conclusions, and recommendations. Appendix A contains the Louisiana Workforce Commission's response to this report. Appendix B contains our audit scope and methodology. Appendix C contains additional background information. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of the Louisiana Workforce Commission for their assistance during this audit.

Sincerely,

A handwritten signature in blue ink that reads "Daryl G. Purpera".

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

LWC-SIF 2012

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE, Legislative Auditor



Louisiana Workforce Commission - Second Injury Fund

February 2012

Audit Control # 40110008

Executive Summary

This report provides the results of our performance audit of the Louisiana Workforce Commission's (LWC's) Second Injury Fund (SIF). LWC requested our assistance in identifying methodologies it could use to determine whether the SIF is achieving its statutory purposes, as the agency has been trying to assess the effectiveness of this program since a sunset provision was recently added to state law. The purpose of the audit was also to determine if LWC ensured that the SIF met its legal requirements and the effect on workers' compensation costs if the SIF sunsets in 2014. The audit objectives and results of our work are as follows:

Objective 1: What methodologies could LWC use to determine whether the SIF is achieving its statutory purposes?

Results: According to LWC, it is unable to determine whether the SIF program is achieving its statutory purposes of (1) encouraging the employment, re-employment, or retention of employees and (2) protecting employers or their insurers from excess liability for workers' compensation due to a lack of methodology. During our audit research, we were unable to identify any methodologies from other states or best practices to assist LWC with determining whether the SIF encourages hiring decisions or protects entities from excess liability for workers' compensation. In addition, according to officials in states with active SIFs similar in purpose to Louisiana's, they too have no methodologies by which to determine whether the purposes of their SIF programs are being met. If LWC cannot find a way to determine whether the SIF is achieving its statutory purposes, it needs to report this to the legislature.

Objective 2: Did LWC ensure that the SIF complied with its legal requirements?

Results: LWC did not ensure that the SIF complied with two of its legal requirements. LWC reimbursed the Office of Risk Management without first receiving required reserve letters, and did not report SIF claim information to the National Council on Compensation Insurance. In addition, there are privacy concerns regarding the Permanent Partial Disability registry that LWC is required by statute to maintain for employers.

Objective 3: What is the effect on workers' compensation costs if the SIF sunsets in 2014?

Results: There may be no overall effect on workers' compensation costs should the SIF sunset in 2014. For example, while workers' compensation premiums could increase, the SIF assessments and administrative costs would decrease over time. However, there is no way to accurately predict the effect of the SIF sunset. In addition, the South Carolina Legislative Audit Council concluded in 2007 that South Carolina's SIF "primarily redistributes or shifts costs within the workers' compensation system and does not lower the overall costs of workers' compensation."

Overview of Louisiana Workforce Commission's Second Injury Fund

Second Injury Fund Program. Louisiana Workforce Commission's (LWC's) Second Injury Fund (SIF) reimburses employers or their insurers for a portion of workers' compensation claim costs in certain instances where an employee with a preexisting permanent partial disability¹ sustains a subsequent job-related injury. LWC's SIF was established in 1974. LWC's SIF staff administers the program on behalf of the Second Injury Board (Board). The five-member Board makes decisions on claims and payments based on LWC SIF staff recommendations. The SIF is financed through annual assessments paid by employers or their insurers. SIF's fiscal year 2011 budget was approximately \$46.2 million.

SIF Purposes. According to state law,² SIF's purposes are to:

1. Encourage the employment, re-employment, or retention of employees who have a permanent partial disability.
2. Protect employers, group self-insurance funds, and property and casualty insurers from excess liability for workers' compensation for disability when a subsequent injury to such an employee merges with his preexisting permanent physical disability to cause a greater disability than would have resulted from the subsequent injury alone.

SIF Participants, Assessments, and Reimbursements. Participants in the SIF include property and casualty insurers, self-insured employers, and group self-insured employers.³ Employers or their insurers pay an annual SIF assessment if they pay Louisiana workers' compensation benefits. In exchange for this SIF assessment payment, employers or their insurers may apply for reimbursements by filing SIF claims. If the SIF claim is approved, employers or their insurers request reimbursement for eligible expenses.⁴ Through the SIF, employers' or their insurers' workers' compensation claim costs are decreased to the deductible amount⁵ for eligible expenses. SIF reimburses eligible expenses that are incurred in excess of the deductible.

See Appendix C for a description of the SIF claim process.

¹ According to state law, a permanent partial disability shall mean any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment, to retention by an employer, or to obtaining re-employment, if the employee becomes unemployed.

² Louisiana Revised Statutes (R.S.) 23:1371(A)(1) and R.S. 23:1371(A)(2)

³ According to the Department of Insurance - Office of Property and Casualty's *Rate and Rule Filing Handbook* (January 2011 edition), a group self-insurance fund is an organized group of employers that form an association for the purpose of providing workers' compensation insurance for all of its member employers.

⁴ SIF pays for indemnity (wage loss) and medical benefit payments according to the reimbursement schedule in state law.

⁵ According to dictionary.com, a deductible is the amount for which the insured is liable on each loss, injury, etc., before an insurance company will make payment.

Objective 1: What methodologies could LWC use to determine whether the SIF is achieving its statutory purposes?

According to LWC, it is unable to determine whether the SIF program is achieving its statutory purposes of (1) encouraging the employment, re-employment, or retention of employees and (2) protecting employers or their insurers from excess liability for workers' compensation due to a lack of methodology. During our audit research, we were unable to identify any methodologies from other states or best practices to assist LWC with determining whether the SIF encourages hiring decisions or protects entities from excess liability for workers' compensation. In addition, according to officials in states with active SIFs similar in purpose to Louisiana's, they too have no methodologies by which to determine whether the purposes of their SIF programs are being met. If LWC cannot find a way to determine whether the SIF is achieving its statutory purposes, it needs to report this to the legislature.

Methodologies do not exist in other states or in best practices to determine whether the SIF encourages the hiring, rehiring, and retention of employees.

According to state law,⁶ the first purpose of the SIF is to encourage the employment, re-employment, or retention of employees who have a permanent partial disability. However, LWC does not have a methodology in place to determine whether the SIF meets this statutory purpose. Furthermore, we could not find any documented studies with methodologies to determine whether SIFs encourage hiring, rehiring, or retention of employees. We also spoke with SIF officials in seven states, including four states with active SIFs. Officials in states with active SIFs similar in purpose to Louisiana's did not determine whether the SIF's purposes were met because they could not identify a methodology to do so.

LWC officials told us during the audit that partnering the SIF with Louisiana Rehabilitation Services (LRS, a portion of which is now part of LWC) resources may be a way to encourage the employment, re-employment, and retention of employees with permanent partial disabilities. State law allows the Board to approve the allocation of a lump sum amount⁷ to LRS. Doing so would allow LRS to provide assistance to potential employers and qualified employees with permanent partial disabilities through the LRS Vocational Rehabilitation program. This program targets individuals with physical or mental disabilities resulting in substantial impediments to employment. According to the LWC Web site, this program offers individuals with disabilities a wide range of services designed to provide them with the skills, resources, attitudes, and expectations needed to compete in the interview process, get the job, keep the job, and develop a lifetime career. However, the population targeted by LRS may differ, in part, from the population targeted by the SIF. Thus, it is possible that this initiative may not help LWC encourage hiring and retention of employees through the SIF. In addition, LWC would

⁶ R.S. 23:1371(A)(1)

⁷ This allocation can be up to one percent of the Board's annual budget each year, according to Act 291 of the 2011 Regular Legislative Session. For FY 2012, this would be approximately \$462,000.

still need to identify a methodology to determine whether this partnering with LRS enabled it to meet its statutory purpose.

Recommendation 1: LWC should consider whether the SIF and LRS programs can be partnered or combined to help the SIF meet its statutory purposes.

Summary of Management's Response: LWC agrees with this recommendation. LWC has partnered its SIF program with LRS. According to preliminary and unaudited December 2011 data, 446 rehabilitative services were provided to 346 disabled workers who met the combined criteria for both the SIF and LRS programs. Of these 346 workers, 176 have been re-employed or able to maintain their employment to date. LWC anticipates that this partnership will result in measurable outcomes that will enable the program to determine if it is achieving its purpose of encouraging the employment, re-employment or retention of employees with permanent partial disabilities.

Recommendation 2: LWC should report to the legislature that it is unable to determine whether the SIF program is meeting its statutory purpose of encouraging the hiring, rehiring, and retention of employees.

Summary of Management's Response: LWC agrees with this recommendation. LWC reported this information during the 2010 legislative session, which resulted in changes to the statute and the addition of a sunset provision.

Legislative Auditor's Additional Comments: Once LWC has gathered sufficient data from the new SIF/LRS partnership, agency officials should determine whether an additional update should be provided to the legislature prior to the SIF's 2014 sunset date.

Methodologies do not exist in other states or in best practices to determine whether the SIF protects employers or their insurers from excess liability for workers' compensation.

According to state law,⁸ the second purpose of the SIF is to protect employers or their insurers from excess liability for workers' compensation. LWC officials told us they did not determine whether they meet the statutory purpose to protect employers or their insurers from excess liability for workers' compensation because they cannot determine how to do so. While conducting audit research, we could not find any studies with methodologies to determine whether workers' compensation costs are limited by SIFs. We also spoke with SIF officials in seven states, including four states with active SIFs. Officials in states with active SIFs similar in purpose to Louisiana's did not determine whether the SIF's purposes were met for their

⁸ R.S. 23:1371(A)(2)

programs because they could not identify a methodology to do so.⁹ For example, one state official told us that the only evidence staff has that the fund works is if a claim is received.

As described on page 3 and in Appendix C, the SIF program functions as an insurance program. As such, individual employers or their insurers that have the opportunity to take advantage of this program by filing successful claims may be able to limit excess liability for workers' compensation on a case-by-case basis. However, employers or their insurers that do not have the opportunity to take advantage of this program do not limit excess liability for workers' compensation; in fact, their liability for workers' compensation could be potentially increased by the cost of the SIF annual assessment. Thus, due to the nature of the SIF program, it is unknown whether LWC could measure this purpose across all entities without relying on anecdotal evidence from employers or their insurers. In fact, the South Carolina Legislative Audit Council concluded in its March 2007 review of South Carolina's SIF that it "primarily redistributes or shifts costs within the workers' compensation system and does not lower the overall costs of workers' compensation."¹⁰ If LWC cannot find a methodology to determine whether the SIF meets this statutory purpose then it needs to report this to the legislature.

LWC is required to provide an annual report to the governor and the legislature containing a statement of the fund's operations, according to state law.¹¹ We found some SIF information published in the *2010 Office of Workers' Compensation Administration Annual Report*, including claims received, claims closed, decisions rendered, claims pending, ongoing claims, total assessments, total reimbursements, and total administrative costs. However, this reporting requirement and the information it renders does not address whether the SIF meets its statutory purposes.

LWC's SIF claim and reimbursement data is unreliable. Since LWC did not have a methodology to determine whether the SIF protects employers or their insurers from excess workers' compensation liability, we attempted to determine whether the SIF is achieving this purpose ourselves. While attempting to identify a methodology, we determined that LWC's claim and reimbursement data is unreliable. LWC staff informed us that data could be changed without authorization. In addition, we found the data contained errors and inaccuracies such as blank cells and inconsistent references to employers. According to LWC staff, the database housing this data has not been technically supported by the vendor in many years. Although we are not certain the data could be used to determine if the SIF is achieving its statutory purposes, LWC needs to improve the reliability of the SIF data.

Recommendation 3: LWC should improve the reliability of its SIF data, including claim and reimbursement data, and consider upgrading its system.

Summary of Management's Response: LWC agrees with this recommendation.

⁹ Other states' SIF purposes, as described by state officials and stated in published program materials, include limiting workers' compensation costs for employers (Nevada, New Jersey, and Tennessee).

¹⁰ *A Review of the South Carolina Second Injury Fund*, South Carolina Legislative Audit Council, March 2007

¹¹ R.S. 23:1379

Recommendation 4: LWC should report to the legislature that it is unable to determine if the SIF is meeting its statutory purpose of protecting employers or their insurers from excess liability for workers' compensation costs.

Summary of Management's Response: LWC agrees with this recommendation. LWC reported this information during the 2010 legislative session, which resulted in changes to the statute and the addition of a sunset provision.

Legislative Auditor's Additional Comments: Agency officials should determine whether an additional update should be provided to the legislature prior to the SIF's 2014 sunset date.

Objective 2: Did LWC ensure that the SIF complied with its legal requirements?

LWC did not ensure that the SIF complied with two of its legal requirements. Specifically, LWC reimbursed the Office of Risk Management (ORM) without first receiving required reserve letters, and it did not report SIF claim information to the National Council on Compensation Insurance (NCCI). In addition, there are privacy concerns regarding the Permanent Partial Disability (PPD) registry that LWC is required to maintain for employers.

LWC reimbursed ORM without first receiving reserve letters, and it did not validate reserve letters.

According to state law,¹² before receiving reimbursement from the SIF, insurers must certify the decrease of the claim costs (reserves¹³) to the deductible amounts by submitting a “reserve letter” to LWC. We reviewed a sample of 35 ORM claim files to determine whether each of these files had a reserve letter.¹⁴ Of these 35 claim files, 11 files did not have a reserve letter but should have.¹⁵ We saw evidence in all 11 files that reimbursements had been made, although LWC could not produce the required reserve letters. In addition, LWC officials told us that reserve letters are not validated upon receipt, which would ensure that the insurer’s claim costs were decreased. By not validating these reserve letters, LWC cannot ensure that all requirements for SIF participation are met before reimbursements are made. That is, LWC cannot ensure that insurers are lowering reserves before receiving SIF reimbursements, which could potentially result in workers’ compensation premiums for insured employers not being reduced by SIF reimbursements paid to insurers.

Recommendation 5: LWC should ensure reserve letters are received and appropriately filed prior to providing SIF reimbursements as required by law.

Summary of Management’s Response: LWC agrees with this recommendation. However, LWC questions whether the criterion to require reserve letters applies to ORM as ORM is not an insurance carrier. According to LWC, it has implemented a second level of protection until a data system is implemented that can restrict payment only to claims meeting all payment criteria.

Legislative Auditor’s Additional Comments: As stated in our audit scope and methodology (Appendix B of this report), we selected a sample of ORM claims on behalf of state agencies in which reimbursements were received during the scope of our audit. We selected this particular claimant because we wanted to review the State of Louisiana’s participation in the SIF, since ORM is the state’s insurer and thus should be meeting the reserve letter requirement.

¹² R.S. 23:1378(A)(5)(a)(i)

¹³ Reserves are the estimated dollar amount needed to pay out a workers’ compensation claim.

¹⁴ We selected a random sample of claims filed by ORM on behalf of state agencies in which reimbursements were received during the scope of our audit (FY 2008-FY 2010).

¹⁵ We also found two misfiled reserve letters.

Recommendation 6: LWC should identify a method to validate information reported in reserve letters to ensure reimbursements are not provided to insurers that are not lowering claim costs (reserves) as required.

Summary of Management's Response: LWC agrees with this recommendation. LWC is finalizing reporting procedures during January 2012.

LWC does not yet report to the NCCI.

As of 2010, LWC is statutorily required to quarterly report information to NCCI regarding accepted SIF claims.¹⁶ LWC officials told us that the purpose of this requirement is for NCCI to identify claims where the claim costs were not decreased. However, LWC officials told us they have not yet begun reporting information to NCCI due to data issues. As of September 2011, LWC has not yet resolved this issue with NCCI.

According to an NCCI official, some insurance carriers are required to report changes in claim costs to NCCI once per year. If LWC reported SIF claim information to NCCI, and requested results of any discrepancies identified, then LWC could possibly identify claims where the claim costs were not decreased as required. Thus, since LWC has not yet begun reporting claim information to NCCI, LWC cannot ensure that insured employers are receiving benefits from the SIF.

Recommendation 7: LWC should begin reporting SIF claim data to NCCI as required by law.

Summary of Management's Response: LWC agrees with this recommendation. LWC met with the NCCI the week of January 23, 2012, to finalize procedures to meet the statutory requirements.

Privacy concerns exist regarding the PPD registry.

According to state law,¹⁷ LWC is required to maintain a PPD employee registry for employers. The PPD registry is one way for an employer or its insurer to prove an employer's knowledge of an employee's PPD prior to a second injury. Before LWC can provide reimbursements, an employer or its insurer must prove this knowledge. Thus, the registry may encourage employers to hire and retain employees with a permanent partial disability. However, LWC has not yet implemented the PPD employee registry. According to LWC officials, if implemented, allegations of prohibited Americans with Disabilities Act (ADA) discrimination and prohibited disclosure of information under the Health Insurance Portability and Accountability Act (HIPAA) are possible. We concur that there are potential concerns with violating federal and state health privacy laws, and the constitutional right to privacy, by implementing the registry. This issue should be considered by appropriate state legal authorities.

¹⁶ R.S. 23:1378(A)(5)(a)(ii)

¹⁷ As defined in R.S. 23:1371.1(4)

Recommendation 8: LWC should consult with its internal legal counsel and/or the attorney general regarding the legality of implementing the PPD employee registry. If LWC determines the PPD employee registry cannot be legally implemented, LWC should pursue a change to state law removing this requirement. If LWC determines the registry is legal, it should implement the registry to comply with law.

Summary of Management's Response: LWC agrees with this recommendation. LWC requested an opinion from the Attorney General's Office in December 2011 regarding privacy concerns associated with the implementation of the PPD employee registry.

Objective 3: What is the effect on workers' compensation costs if the SIF sunsets in 2014?

There may be no overall effect on workers' compensation costs should the SIF sunset in 2014. For example, while workers' compensation premiums could increase, the SIF assessments and administrative costs would decrease over time. However, there is no way to accurately predict the effect of the SIF sunset.

Louisiana's SIF will sunset in a phased approach beginning in 2014, with reimbursements continuing until all claims are paid (see Exhibit 1). In August 2009, the SIF was identified in the *Commission on Streamlining Government Report* as an "outdated activity that should no longer be part of the mission of the agency." According to 2010 legislative committee testimony, the sunset provision was added to evaluate if the fund is meeting its purposes. However, due to the lack of methodologies, LWC is unable to determine whether these purposes are being achieved.

**Exhibit 1:
Provisions of the SIF Sunset**

- December 31, 2014: Final accident date for claims.
- December 31, 2016: Supporting documentation due.
- December 31, 2017: Deadline for final Board decisions.
- December 31, 2017+: Reimbursements continue until all claims paid.

Source: R.S. 23:1371.2

Since 1992, at least 19 states have eliminated their SIFs. During our audit, we asked LWC and Department of Insurance officials how Louisiana's workers' compensation system might be impacted if the SIF were to sunset. These officials told us that workers' compensation premiums could increase, since SIF would no longer exist to help cover the cost of the claim (see Appendix C for an illustration of how SIF is a potential source of funding for workers' compensation claims). However, the assessments and administrative costs associated with operating the SIF would go away. As stated earlier in this audit, the South Carolina Legislative Audit Council concluded in 2007 that South Carolina's SIF "primarily redistributes or shifts costs with the workers' compensation system and does not lower the overall costs of workers' compensation."

APPENDIX A: MANAGEMENT'S RESPONSE



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Bobby Jindal, Governor
Curt Eysink, Executive Director

Office of the Executive Director

January 31, 2012

Daryl Purpera, CPA
Louisiana Legislative Auditor
1600 North Third Street
Baton Rouge, LA 70804

Dear Mr. Purpera:

The Louisiana Workforce Commission has reviewed the revised draft of your office's performance audit report on the Second Injury Fund. The Department, for the most part, concurs with the findings and recommendations contained in that report. As requested, we have included the enclosed completed checklist.

The Second Injury Fund, in essence, is a program that spreads the financial risk of hiring employees with permanent partial disabilities (PPD) from a single hiring employer to all employers throughout the State. This is done to place employees with a PPD on a level playing field with other employees by removing the added risk to the hiring employer. It is intended to remove the financial disincentive that exists because, in all likelihood, a WC injury to an employee with a PPD will result in higher medical costs, longer time away from work and additional accommodations than would result should an employee without a PPD sustain the same injury. Higher claim costs can result in higher premiums and experience modifiers that are often used in qualifying employers for bid jobs. The risk is spread to all employers through assessments that are paid by their WC insurance program whether it is individual self-insurance, group funding insurance or coverage through an insurance carrier.

Our comments regarding the recommendations for each objective in the report are discussed below.

Objective 1 – What methodologies could LWC use to determine whether the Second Injury Fund is achieving its statutory purposes?

Recommendation 1: LWC should consider whether the SIF and LRS programs can be partnered or combined to help SIF meet its statutory purposes.

- LWC agrees with this recommendation. The Second Injury Board has partnered with LRS. The SIB voted in October to make 50% of allowable SIB funding available to LRS to draw down matching federal funding at a rate of almost 4:1 federal to state funding. The combined amount funds services to LRS consumers who have been diagnosed with a medical condition presumed to constitute a PPD by the SIB. The listing of conditions can be found in LA R.S. 23:1378. As of December 31, 2011, 446 rehabilitative services were provided to 346 disabled workers who met the combined SIB/LRS criteria. Of these 346 workers, 176 have been re-employed or able to maintain their employment as a result of the SIB funding. Many of the remaining cases are still being worked and we anticipate similar job placement and retention results. While these are preliminary and unaudited figures, we are encouraged by the initial reports. We anticipate that this partnership will result in measurable outcomes that will enable the SIB to determine if it is achieving its' purpose of encouraging the employment, re-employment or retention of employees with PPDs. The SIB is meeting with NCCI to discuss possible methodologies of determining the effect of SIB on employer experience modifiers.

Recommendation 2: LWC should report to the legislature that it is unable to determine whether the SIF program is meeting its statutory purpose of encouraging the hiring, rehiring, and retention of employees.

- LWC agrees with this recommendation. This was done during the 2010 Legislative session and resulted in changes to the statute and the establishment of a Sunset Provision for the fund.

Recommendation 3: LWC should improve the reliability of its SIF data, including claim and reimbursement data, and consider upgrading its system.

- LWC agrees with this recommendation.

Recommendation 4: LWC should report to the legislature that it is unable to determine if the SIF is meeting its statutory purpose of protecting employers or their insurers from excess liability for workers compensation costs.

- LWC agrees with this recommendation. This was done during the 2010 Legislative session and resulted in changes to the statute and the establishment of a Sunset Provision for the fund.

Objective 2 – Did LWC ensure that the Second Injury Fund complied with legal requirements?

Recommendation 5: LWC should ensure reserve letters are received and appropriately filed prior to providing SIF reimbursement as required by law.

- Although LWC agrees with this recommendation, it should be noted that the audited sample was restricted to one claimant, the Louisiana Office of Risk Management (ORM). State law (LA R.S. 23:1378(A)(5)(a)) states that, "Upon the board's approval of a claim for reimbursement, the **insurer** shall immediately certify to the board that the medical reserve and the weekly disability benefits (indemnity) reserve do not exceed the threshold...." However, ORM is not an insurance carrier as required by statute and therefore it is questionable whether the criterion to require reserve letters applies to ORM. However, a second level of protection has been added until the SIB acquires a data system that can restrict payment only to claims meeting all criteria for payment.

Recommendation 6: LWC should identify a method to validate information reported in reserve letters to ensure reimbursements are not provided to insurers that are not lowering claim costs (reserves) as required.

- LWC agrees with this recommendation. NCCI reporting is a means of validating the lowering of reserves by insurance carriers and the SIB director is finalizing these reporting procedures during January 2012.

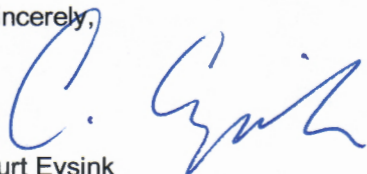
Recommendation 7: LWC should begin reporting SIF claim data to NCCI as required by law.

- LWC agrees with this recommendation. The SIB director met with NCCI the week of January 23, 2012, to finalize procedures to meet the statutory requirements.

Recommendation 8: LWC should consult with its internal legal counsel and/or the Attorney General regarding the legality of implementing the PPD employee registry. If LWC determines the PPD employee registry cannot be legally implemented, LWC should pursue a change to state law removing this requirement. If LWC determines the registry is legal, it should implement the registry to comply with the law.

- LWC agrees with this recommendation. The SIB requested an opinion from the Attorney General's Office on December 29, 2011, regarding privacy concerns associated with the implementation of the PPD Registry. We await their reply.

Sincerely,



Curt Eysink
Executive Director

Enc.

APPENDIX B: SCOPE AND METHODOLOGY

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. Louisiana Revised Statute (R.S.) 24:522 directs the legislative auditor to establish a schedule of performance audits to ensure that at least one performance audit is completed and published for each executive department agency within a seven-year period, beginning with the 1998 fiscal year. In accordance with this legislative mandate, we scheduled a performance audit of the Louisiana Workforce Commission (LWC). Our audit focused on the Second Injury Fund (SIF) program housed within LWC's Office of Workers' Compensation Administration. LWC requested our assistance in identifying methodologies it could use to determine whether the SIF is achieving its statutory purposes. The purpose of the audit was also to determine if the SIF met its legal requirements and the effect on workers' compensation costs if the SIF sunsets in 2014. We did not audit the SIF process and cannot provide any assurances on the effectiveness and efficiency of this process. Our audit period generally covered Fiscal Year 2008-2010, but in some cases we reviewed data from Calendar Year 2008 and reviewed information available at the conclusion of our audit period in September 2011 to evaluate trends and incorporate current information into this report as practicable.

The audit objectives were to answer the following questions:

1. What methodologies could LWC use to determine whether the SIF is achieving its statutory purposes?
2. Did LWC ensure that the SIF complied with its statutory requirements?
3. What is the effect on workers' compensation costs if the SIF sunsets in 2014?

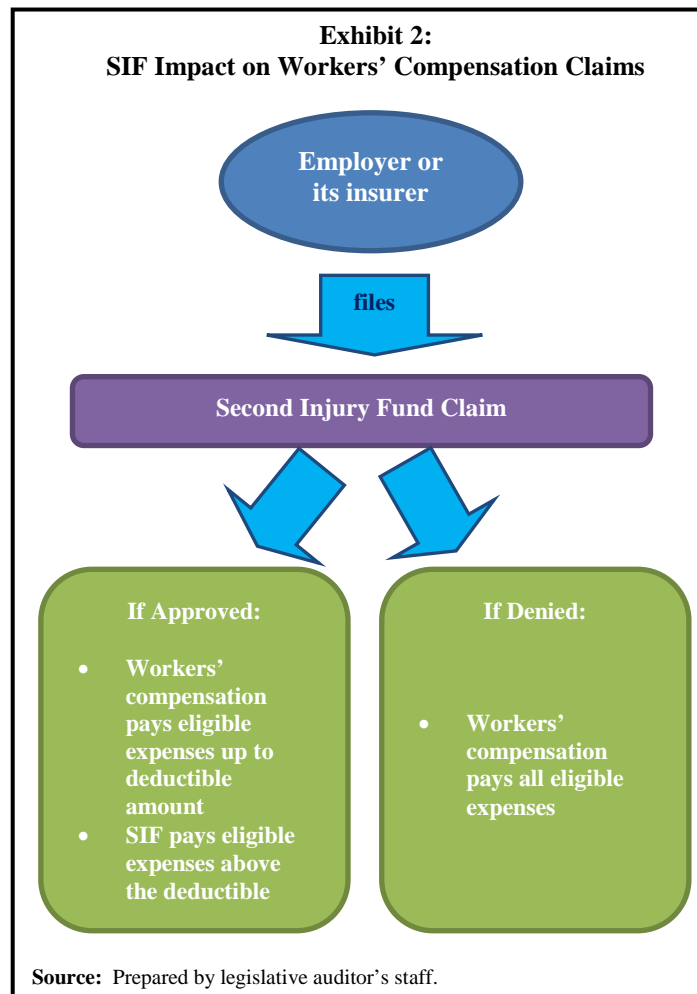
We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. To answer our objectives, we reviewed internal controls relevant to the audit objectives and performed the following audit steps:

- Reviewed SIF program law.
- Reviewed SIF information published on LWC's Web site.
- Interviewed LWC officials, including SIF program staff.
- Interviewed Louisiana Department of Insurance officials.

- Interviewed a National Council on Compensation Insurance official.
- Interviewed representatives from the Louisiana Association of Self Insured Employers.
- Attended several Second Injury Board meetings in Baton Rouge throughout the course of the audit.
- Reviewed a random sample of 35 SIF claim files that were filed by Louisiana's Office of Risk Management on behalf of state agencies in which reimbursements were received during the scope of our audit (FY 2008-FY 2010).
- Analyzed data obtained from SIF program staff and determined this data to be unreliable.
- Interviewed SIF officials in seven other states, including four states where SIFs are still active. These states include New Jersey, Nevada, Tennessee, and Texas (states with active SIFs) and South Carolina, Arkansas, and Georgia.
- Reviewed information in trade publications and from trade organizations in an attempt to obtain comparative and best practices information.
- Obtained a legal opinion from the Louisiana Legislative Auditor's legal section regarding the legality of the PPD employee registry.
- Reviewed the Streamlining Commission reports.

APPENDIX C: SECOND INJURY FUND CLAIM PROCESS

LWC pays reimbursements for approved SIF claims upon the employer's or its insurer's request and the Board's approval.¹⁸ Through the SIF, employers or their insurers' workers' compensation claim costs are decreased to the deductible amount for eligible expenses. Eligible expenses incurred in excess of the deductible are reimbursed by the SIF, as illustrated in Exhibit 2.



¹⁸ Our audit consisted of a program evaluation. Thus, we did not audit the SIF process and cannot provide any assurances on the effectiveness and efficiency of this process.