



NICOLE GALLOWAY, CPA
Missouri State Auditor

September 18, 2017

Honorable Eric R. Greitens, Governor
Jefferson City, Missouri
and
Members of the General Assembly
Jefferson City, Missouri

This letter is to provide additional information relevant to my office's recently completed audit of the State Legal Expense Fund (LEF). During the completion of the audit, it came to my attention that a significant amount of otherwise LEF eligible expenditures were being paid outside the LEF process. Since the scope and objectives of the audit were specific to LEF activity, it was not appropriate to include discussion of payments outside of the LEF in that audit report.

Concurrent with the LEF audit, the State Auditor's Office requested information from all state agencies, elected officials, and higher education institutions regarding any payments made from January 1, 2015, to March 15, 2017, to settle any legal claims or potential claims, or payments made to avoid legal action, that would be eligible for payment from the LEF. Specifically, we requested information about payments made outside of the LEF that were paid directly by state entities for claims and judgments that may otherwise be eligible to be paid from the fund. These payments were to include, but not be limited to, those involving employment, discrimination, negligence, or other torts that did not go through the LEF. Based on information submitted, state entities paid approximately \$36.8 million for legal or potential claims outside of the LEF during the period reviewed.

State law requires certain entities reimburse the LEF for any settlements or judgments paid from the fund on their behalf. Section 105.716.1, RSMo, states, in part, that "in the case of any claim against the department of conservation, the department of transportation or a public institution which awards baccalaureate degrees, or any officer or employee of such department or such institution, any investigation, defense, negotiation, or compromise of any claim covered by sections 105.711 to 105.716¹ shall be conducted by legal counsel provided by the respective entity against which the claim is made or which employs the person against whom the claim is made. In the case of any payment from the state legal expense fund based upon a claim or judgment against the department of conservation, the department of transportation or any officer or employee thereof, the department so affected shall immediately transfer to the state legal expense fund from the department funds a sum equal to the amount expended from the state legal expense fund on its behalf." As a result, the Missouri Department of Conservation and the Missouri Department of Transportation defend and pay for any potentially LEF eligible expenses out of their operating budgets. While claims from higher education institutions are eligible to be paid from the LEF, institutions typically choose to pay for such claims from their operating budgets.

¹ These statutes refer to the State Legal Expense Fund.

Ten entities, including the Missouri Department of Conservation, Missouri Department of Transportation, and higher education institutions, provided a response to our request for information indicating they had paid LEF eligible claims outside of the fund. Based on responses to the information request, 527 legal or potential claims were paid outside of the LEF for payments totaling \$36,033,452 from January 1, 2015, to March 15, 2017. In addition, the Missouri Department of Transportation reported paying 1,055 small claims for a total of \$738,131 outside of the LEF during the same timeframe. We have not audited the information submitted by these entities and, accordingly, do not express an opinion or any other assurance on them.

The Missouri Department of Conservation provided information on four property damage claims settled for a total of \$2,851. Information was also provided on an employment claim settled for the resignation of the former Director. The former Director was allowed to remain on the department's payroll solely for the purpose of using his accrued annual and compensatory leave balances. After the former Director exhausted these balances, he was removed from the department's payroll.²

Harris-Stowe State University submitted 2 responses. One claim was for an accident settled for a payment of \$8,686. Another claim was for an altercation with a public safety officer settled for a payment of \$37,500.³

Lincoln University submitted one response. An employment claim was settled for a payment of \$5,000.

Missouri State University submitted 2 responses. Each claim was for an injury from a slip and fall incident. These claims were settled for a total payment of \$447.

Missouri Southern State University settled 9 employment claims. These claims were settled for a total payment of \$106,315.

Northwest Missouri State University submitted one response. A claim for wrongful arrest was settled for a payment of \$30,000.⁴

The Missouri Department of Transportation submitted information on 13 employment claims settled for a total payment of \$3,692,500,⁵ 50 general liability claims settled for a total payment of \$1,352,884, 125 fleet vehicle liability claims settled for a total payment of \$1,645,459, 63 general liability claims litigated for a total payment of \$10,849,399, 8 fleet vehicle liability claims litigated for a total payment of \$774,651, and 1055 general/fleet vehicle liability claims settled or litigated in small claims court for a total payment of \$738,131.

Truman State University submitted two responses. An employment claim was settled for \$7,500. A claim by the Environmental Protection Agency alleging violations of the standards for small quantity handlers of universal wastes was settled for a civil penalty of \$7,000 and for the implementation of a supplemental environmental project for a minimum of \$20,496.

University of Central Missouri settled seven employment claims. These claims were settled for payments totaling \$226,347.⁶

² This settlement did not have a monetary value attributed to it in the terms and conditions of the settlement agreement. This settlement is being reviewed in our ongoing audit of the Missouri Department of Conservation.

³ The university paid attorney fees as part of this settlement.

⁴ Effective March 26, 2014, the university purchased a Directors and Officers Liability Policy from an insurance company. The policy was canceled effective December 8, 2014. The insurance company paid this settlement.

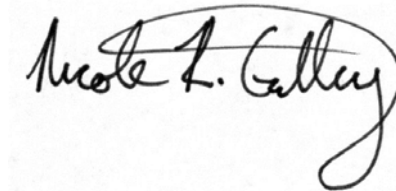
⁵ The department paid attorney fees as part of each of these settlements.

⁶ The university has an insurance policy that paid these claims.

The University of Missouri submitted 27 health professional liability claims and 213 other claims paid based on settlements or judgments. The health and professional liability payments totaled \$13,066,533. The payments for the other claims totaled \$4,199,883.⁷

Responses from Southeast Missouri State University, Missouri Western State University, and State Technical College of Missouri, as well as the other state entities we sent our request letter, indicated they made no payments to settle any legal or potential claims that would be eligible for payment under the LEF.

For information on the results of our LEF audit see report number 2017-098.

A handwritten signature in black ink that reads "Nicole R. Galloway". The signature is written in a cursive style with a large, looping flourish at the end of the word "Galloway".

Nicole R. Galloway, CPA
State Auditor

⁷ The university paid attorney fees as part of some of these payments.