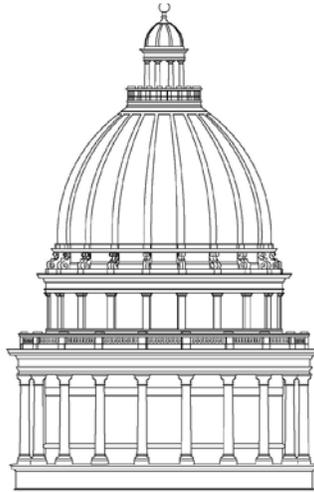


REPORT TO THE  
**UTAH LEGISLATURE**  
Number 2013-07



**A Performance Audit of  
The Utah Insurance Department**

July 2013

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315  
(801) 538-1033 • FAX (801) 538-1063

**Audit Subcommittee of the Legislative Management Committee**  
President Michael G. Waddoups, Co-Chair • Speaker Rebecca D. Lockhart, Co-Chair  
Senator Ross I. Romero • Representative David Litvack

JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

July, 2013

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Utah Insurance Department** (Report #2013-07). A digest is found on the blue pages located at the front of the report. The scope and objectives of the audit are explained at the close of the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA  
Auditor General

JMS/lm



# Digest of A Performance Audit of The Utah Insurance Department

The Utah Insurance Department (UID) administers and enforces licensing laws for over 103,000 licensees. UID has an annual budget over \$8 million with 87 employees. UID primarily regulates the insurance industry through seven divisions that protect Utah's citizens by actively regulating all aspects of the insurance market and assessing the financial strength of insurers to ensure their assets are sufficient to pay claims.

The primary focus of this audit is the Market Conduct Division, which serves as the administrative enforcement arm of the department. Eight market conduct examiners (investigators) ensure compliance with insurance laws by investigating alleged violations and auditing agent and agency financials.

In order to ascertain agent perceptions of UID and the Market Conduct Division, we developed and distributed two surveys. The first was designed to obtain feedback on UID generally and the second was designed to obtain feedback about market conduct investigations and administrative enforcement. We also reviewed investigation and enforcement cases.

## **Department Survey Results Were Generally Favorable.**

Resident producers (agents) responded favorably to a variety of survey questions regarding UID. Survey participants gave favorable ratings for six areas of the department, and to UID efforts to achieve five mission-related objectives. Furthermore, a majority of participants believe licensing standards and fees are reasonable. Nevertheless, it is concerning that nearly a quarter of participants feel that UID does not provide easy access to information about law and rule changes.

## **Market Conduct Survey Results Were Less Favorable.**

Individuals who were investigated by the Market Conduct Division during the last three years responded less favorably to a variety of questions regarding the division. We anticipated an unfavorable bias toward the division due to its role in administrative enforcement; however, survey responses raise concerns about explanations of the investigative process provided by market conduct examiners

## **Chapter I: Introduction**

## **Chapter II: UID Should Improve Communication with Licensees**

(investigators) to respondents. Investigators received a higher number of poor ratings and should improve their explanation of the investigation process.

### **Chapter III: Investigation Case Review Shows Need for Better Documentation**

**Investigation Case Review Shows Some Monetary Penalty Inconsistencies.** Our review of 60 randomly selected enforcement cases showed that 53 (88 percent) monetary penalties were consistent with UID forfeiture guidelines. However, 7 cases (12 percent) lacked documentation to support penalties that did not follow the guidelines. Adequate documentation to support findings and recommended penalties should provide proper evidence that agents or agencies do not receive differential treatment.

**Investigation Files Lack Adequate Documentation in Other Areas.** Our review showed that investigation files lacked adequate documentation in four other areas. The probation penalty needs to be supported by adequate documentation. Mitigating circumstances need to be significant and relevant to the penalty recommendations. Investigation files should include specific complaint sources, and lastly, both the original recommendation and final penalties should be included in the investigation file.

### **Chapter IV: Policies and Procedures Are Needed**

**Investigation Results Need to Be Clearly Communicated.** The Market Conduct Division needs a policy to guide communication with respondents following investigations. The division should use consistent, standard forms to clearly communicate violations, recommended penalties, and corrective action options. A standard format can help ensure that respondents understand their responsibilities and rights and do not feel undue pressure to settle. In addition, all relevant investigation and post-investigation correspondence should be included in the case file.

**Case Management Practices Should Be Outlined in Policy.** The Market Conduct Division should use its case management tools to monitor critical investigation and enforcement activities. Specifically, the division should prioritize complaints based on relevant factors such as potential public harm. Furthermore, while the division reviews caseload data as needed, a more formalized process should be established to ensure its activities are managed consistently, efficiently, and effectively.

# REPORT TO THE UTAH LEGISLATURE

Report No. 2013-07

## **A Performance Audit of The Utah Insurance Department**

July 2013

Audit Performed By:

|                  |                |
|------------------|----------------|
| Audit Manager    | Rick Coleman   |
| Audit Supervisor | Wayne Kidd     |
| Audit Staff      | Michael Allred |



# Table of Contents

|   | Page |
|---|------|
| Digest.....   | i    |
| Chapter I   |      |
| Introduction.....   | 1    |
| UID Administers Insurance Licensing and Regulation.....                     | 1    |
| Audit Scope and Objectives.....   | 4    |
| Chapter II  |      |
| UID Should Improve Communication with Licensees .....                       | 7    |
| Department Survey Results Were Generally Favorable.....                     | 7    |
| Market Conduct Survey Results Were Less Favorable .....                     | 14   |
| Recommendations .....   | 17   |
| Chapter III   |      |
| Investigation Case Review Shows a Need for Better Documentation.....        | 19   |
| Investigation Case Review Shows Some Monetary Penalty Inconsistencies ..... | 19   |
| Investigation Files Lack Adequate Documentation in Other Areas .....        | 24   |
| Recommendations .....   | 29   |

|  |    |
|--|----|
| Chapter IV   |    |
| Policies and Procedures Are Needed .....                     | 31 |
| Investigation Results Need to Be Clearly Communicated.....   | 31 |
| Case Management Practices Should Be Outlined in Policy ..... | 35 |
| Recommendations .....  | 37 |
| Appendices.....  | 39 |
| Agency Response .....  | 53 |

# Chapter I

## Introduction

Utah's Insurance Department (UID) administers and enforces licensing laws for over 103,000 licensees, including producers (agents), agencies, and insurance providers (insurers/companies). UID fosters a healthy and competitive insurance market by promoting fair and reasonable practices that ensure available, affordable, and reliable insurance products and services. The department accomplishes this mission by educating, serving, and protecting consumers, governmental agencies, and insurance industry participants at a reasonable cost. UID states that its primary roles in regulating Utah's insurance industry include:

- Protecting Utah's citizens by actively regulating all aspects of the insurance market
- Assessing the financial strength of insurers to ensure their assets are sufficient to pay claims

A commission and an oversight board, as well as several divisions, assist the department in fulfilling its responsibilities. This report addresses department customer service and consistency of investigation and administrative enforcement practices for agents and agencies.

### UID Administers Insurance Licensing and Regulation

Chapter 2 of the Insurance Code (*Utah Code* Title 31A) authorizes UID to administer insurance laws. The department does so primarily through licensing and regulation. The insurance commissioner directs these efforts with an annual budget over \$8 million and 87 employees.

#### Department Has Several Divisions

UID's responsibilities revolve primarily around insurance licensing and regulation. Department administration is handled by the office of the commissioner and the administration division, which direct the overall operations of the department and are responsible for things

---

**The Insurance Department protects consumers and fosters a healthy and competitive insurance market.**

---

---

**The department's licensing and regulation functions are handled by seven divisions.**

---

such as accounting, budgeting, and human resources. Licensing and regulation are handled by seven key divisions, summarized below:

1. **Producer Licensing.** This division is responsible for initial and renewal licensing of individual and organization (agency) agents, adjusters, and consultants.
2. **Property and Casualty Services.** This division provides customer service to licensees and consumers by processing inquiries and complaints. The division also monitors and regulates insurance rates and forms related to property and casualty insurance.
3. **Life and Health Insurance.** Like the Property and Casualty Services Division, this division also provides customer service by processing inquiries and complaints, and also monitors and regulates insurance rates and forms related to life and health insurance.
4. **Examination and Solvency.** This division licenses insurance companies, and analyzes and verifies company financial information to assess the financial strength of insurers.
5. **Captive Insurers.** This division promotes Utah as domicile for captive insurers (insurance companies owned wholly by the insured).
6. **Fraud.** This division conducts (criminal) insurance fraud investigations and prosecutes violators.
7. **Market Conduct.** This division conducts (administrative) investigations and fiduciary audits of the insurance industry to verify compliance with insurance laws and regulations. This division is discussed in further detail in the following section.

### **The Market Conduct Division Investigates Violations And Enforces Insurance Laws and Regulations**

The primary focus of this audit is the Market Conduct Division, which serves as the administrative enforcement arm of the department. Eight market conduct examiners (investigators) ensure compliance with insurance laws by investigating alleged violations and auditing

---

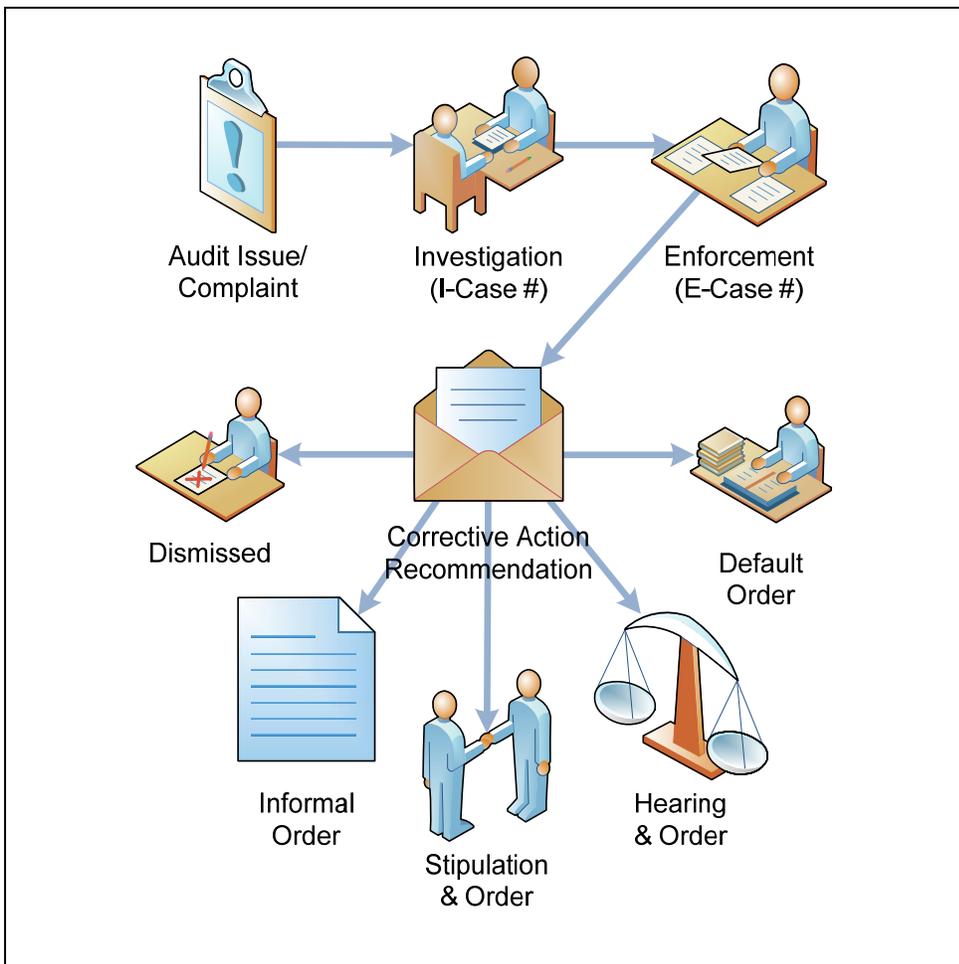
**The Market Conduct Division was the focus of this audit.**

---

agent and agency financials. The division assists the commissioner and/or presiding officers, department directors, and enforcement counsel to take administrative corrective action against noncompliant individuals and organizations.

In 2012, the division opened 485 new investigation cases (I-Cases) from complaints received by the department. Cases that progress to corrective action generally follow the investigation and administrative enforcement process summarized in Figure 1.2.

**Figure 1.2 Market Conduct Administrative Enforcement Process.** Cases requiring corrective action progress through the following administrative enforcement process.



Source: Auditor summary

As shown in Figure 1.3, the corrective action process starts with a complaint. If the complaint is judged to have merit by the Market Conduct Division director, it is assigned an investigation case number

When a violation is found, an enforcement action is initiated by the investigator's corrective action recommendation.

(I-Case #) and investigated by a market conduct examiner. If there are findings during the investigation, the case is assigned an enforcement case number (E-Case #) in order to pursue corrective action.

After the E-Case number is assigned, the division notifies the respondent of recommended corrective action and the case is closed by informal order, stipulation and order, or hearing and order. Some cases are also closed by dismissal or default order. Following an order, a respondent may appeal the decision through administrative (department) review and judicial (court of appeals) review; however, the division reports that such appeals are rare.

**We Reviewed 112 Enforcement Cases Handled by the Market Conduct Division in 2012 to Determine Outcomes.** Of the 112 enforcement cases (E-Cases) reviewed, 63 (56 percent) were closed by stipulation and order. Twenty-two (20 percent) were closed by informal order, and one (<1 percent) was closed by hearing and order. The remaining enforcement cases were closed by default order (13 percent) or dismissal (10 percent). The division also reported issuing 87 private letters of admonition (warning letters) during 2012.

The division often collects forfeitures (fines) during administrative action. Occasionally the division also collects fines as part of multi-state examinations and settlements. Figure 1.3 summarizes total fines collected by the Market Conduct Division over the last five years.

**Figure 1.3 Market Conduct Forfeitures.** A summary of fines collected through enforcement action over the last five years.

|              | 2008              | 2009              | 2010              | 2011              | 2012              |
|--------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Regular      | \$ 310,737        | \$ 385,925        | \$ 323,351        | \$ 493,413        | \$ 381,068        |
| Multi-state  | –                 | –                 | 120,474           | 113,241           | 432,191           |
| <b>TOTAL</b> | <b>\$ 310,737</b> | <b>\$ 385,925</b> | <b>\$ 443,825</b> | <b>\$ 606,654</b> | <b>\$ 750,259</b> |

Source: Utah Insurance Department

## Audit Scope and Objectives

We were asked to review the consistency of UID practices related to licensing, fees, investigations, corrective action, and administrative penalties for violations of insurance laws. Initially, we interviewed staff

**Of 112 enforcement cases in 2012, 63 were closed by stipulation and order.**

**For this audit, we were asked to focus on reviewing administrative penalties for violations of insurance laws.**

and then developed two surveys to ascertain licensee perceptions of department customer service and the department's investigation process.

The first survey was a general survey for resident producers (agents and agencies licensed to sell insurance in the state) designed to obtain their feedback on licensing and fees. The second survey was directed to licensees who have been investigated by the Market Conduct Division and was designed to obtain feedback about their experiences with the investigation and corrective action processes.

We primarily focused our scope on the Market Conduct Division to determine whether:

- The investigation process is well managed
- Investigation reports are complete
- Penalties are consistent and appropriate

In addition to the initial interviews and surveys, we conducted additional interviews to develop a flow chart of the investigation and corrective action processes. We looked at control points to determine if the processes are managed efficiently and effectively. Furthermore, we reviewed investigation reports to determine adequacy of documentation. We also reviewed a sample of enforcement cases to determine whether penalties were consistently applied for three significant violation types: licensing, trust accounts, and marketing practices.

**This Page Left Blank Intentionally**

## **Chapter II**

### **UID Should Improve Communication with Licensees**

In order to better understand insurance agent opinions of Utah's Insurance Department (UID) and its Market Conduct Division, we conducted two surveys: one regarding the department and one regarding the division. While survey participants generally responded favorably, the surveys raise concerns about the department's communication with licensees. We did not survey insurance companies (insurers or providers) for this report.

We sent the first survey to resident agents and agencies licensed to sell insurance in the state. The survey showed that licensee ratings of the department and its efforts to achieve mission-oriented objectives are generally favorable. Furthermore, a majority of resident licensees believe licensing fees and standards are reasonable. However, nearly a quarter of licensees feel the department does not provide easy access to information regarding law and rule changes.

We sent the second survey to individuals who were investigated by the Market Conduct Division during the last three years. The survey showed that market conduct examiners (investigators) are rated less favorably and should improve their explanation of the investigation process.

#### **Department Survey Results Were Generally Favorable**

Survey participants responded favorably to a variety of questions regarding UID. Specifically, the department received a majority of excellent ratings for online license renewals, and a majority of good ratings for all other rated items discussed in this section. Furthermore, a majority of participants believe licensing standards and fees are reasonable. Nevertheless, it is concerning that nearly a quarter of participants do not feel that the department provides easy access to information about law and rule changes.

---

**We conducted two surveys: one regarding the department and one regarding the Market Conduct Division.**

---

---

**Most participants responded favorably to a variety of questions about UID.**

---

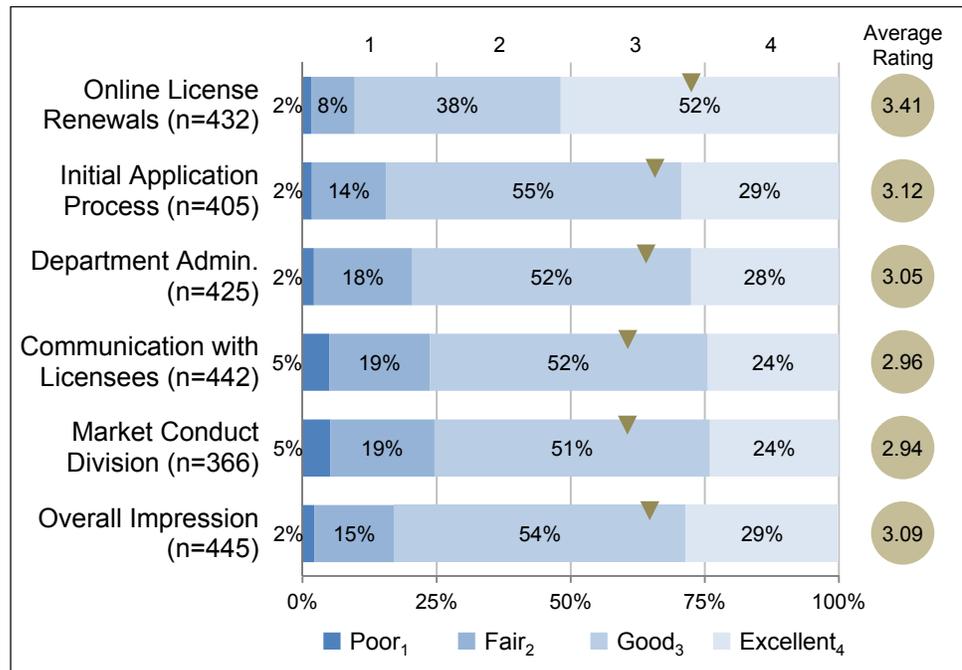
We sent the survey to a random sample of resident insurance licensees and 471 recipients (33 percent) participated. A summary of all responses to this survey is provided in Appendix A.

### Department Generally Rated Favorably

When asked to rate UID in six areas, survey participants generally gave favorable ratings. Participants were asked to rate each aspect as Poor, Fair, Good, or Excellent. In order to standardize the results for comparison, we assigned each rating a number on a four-point scale (Poor=1, Fair=2, Good=3, and Excellent=4) and calculated a weighted-average rating for each area. As shown in Figure 2.1, average ratings ranged from 2.94 to 3.41 out of 4, or Fair/Good to Good/Excellent.

**Figure 2.1 Department Survey Question #3: Please Rate the Following Aspects of Utah’s Insurance Department.** This question allowed participants to rate six areas of the department. Participants rated department communication with licensees and the Market Conduct Division less favorably than the other areas.

**Online license renewals were rated especially high, with 52 percent excellent ratings.**



Source: Auditor analysis of survey conducted March 25-April 2, 2013, n=456-462\*  
 \* Although 456-462 of 471 respondents answered these questions, the preceding summary does not include a number of N/A responses, reflected by the lower n counts for each aspect.

As shown in the previous figure, overall rankings were very favorable. All areas received majorities of Good or Excellent ratings. Online license renewals were rated especially high, with 52 percent

Excellent ratings. In additional comments, several participants mentioned the department’s helpful staff, and a few participants licensed in multiple states remarked that the department surpassed other states in service.

It is somewhat concerning that department communication with licensees and the Market Conduct Division received double the Poor ratings of other areas (5 percent each, compared to 2 percent for the other four areas). These lower ratings support findings from both surveys that the department could improve communication with licensees. In comments, some participants cited difficulty reaching department employees by phone, lack of notification regarding law and rule changes, and concerns about the complexity of laws and rules. Although some agents expressed concerns, most rated the department’s communication efforts as Good or Excellent.

### **UID Efforts to Achieve Mission-Related Objectives Were Rated Slightly Less Favorably**

When asked to rate department efforts to achieve various objectives related to its mission statement, survey participants gave slightly less favorable ratings. Average ratings for this question ranged from 2.83 to 2.98 (Fair to Good). We asked participants to rate department efforts to:

- “...foster a healthy insurance market by promoting fair and reasonable practices.” (Mission Statement)
- Facilitate the continuing education of agents
- Protect the public from unscrupulous agents and agencies
- Investigate complaints against insurance agents and agencies
- Regulate and investigate agents and agencies that offer illegal inducements

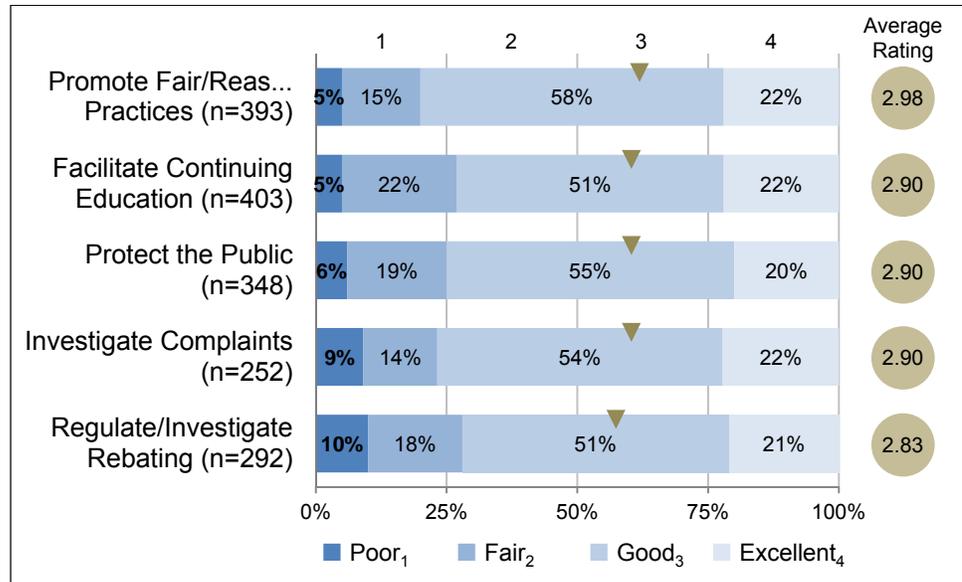
These efforts are important because they directly relate to the department’s commitment to accomplish its mission by “...educating, serving, and protecting consumers, governmental agencies, and insurance industry participants.” Figure 2.2 summarizes survey participants’ ratings of the department’s efforts to realize the previously mentioned aims.

---

**Communication with licensees was not rated as favorably as other areas.**

---

**Figure 2.2 Department Survey: Question #5: Please Rate the Utah Insurance Department's Efforts to....** Efforts to achieve five mission-oriented objectives were rated similarly; however, efforts to regulate and investigate rebating were rated slightly lower.



**UID received mostly excellent or good ratings for its efforts to achieve five mission-related objectives.**

Source: Auditor analysis of survey conducted March 25-April 2, 2013, n=459-461\*  
 \* Although 459-461 of 471 respondents answered these questions, the preceding summary does not include a number of Don't Know responses, reflected by the lower n counts for each statement.

The previous figure shows that UID received majorities of Good ratings for its efforts to achieve five mission-related objectives. However, average ratings are less favorable than those discussed previously, and Poor ratings increased to 5-10 percent (vs. 2-5 percent).

**Promoting Fair and Reasonable Practices Earned the Highest Ratings.** With 80 percent Good to Excellent ratings, efforts to fulfill the department's mission statement by promoting fair and reasonable practices received the highest ratings, with an average rating of 2.98 out of 4.

**Facilitating Continuing Education Earned Mostly Good to Excellent Ratings.** Continuing education for licensees is essential to promoting reasonable practices and educating licensees in order to foster a healthy insurance market. The department reports there are currently over 27,000 continuing education classes available to insurance licensees. The ratings for this area were mostly favorable (73 percent Good to Excellent) with an average rating of 2.90 out of 4.

**Protecting the Public Also Earned Positive Ratings.** Protecting the public from unscrupulous agents is directly related to the department's commitment to protect consumers while accomplishing its mission. The ratings for this area were mostly favorable and similar to those for facilitating continuing education.

**Investigating Complaints Rated Well Overall, but Poor Ratings Increased.** Complaints may come from consumers, governmental agencies, or other licensees. Investigating complaints against licensees helps promote fair practices and protect consumers. The average rating for this area was similar to those for protecting the public and continuing education; however, Poor ratings nearly doubled to 9 percent. Some survey participants commented that the department did not investigate their complaints. The Market Conduct Division usually handles such investigations.

**Regulating and Investigating Illegal Inducements, While Rating the Same Overall as the Two Prior Statements, Also Earned Higher Poor Ratings.** The division also regulates and investigates illegal inducements (rebating). Illegal inducements are benefits, not specified in or related to an insurance contract, provided to consumers in exchange for entering into an insurance contract. Inducements are regulated by *Utah Code* 31A-23a-402.5 and *Utah Administrative Code* R590-154.

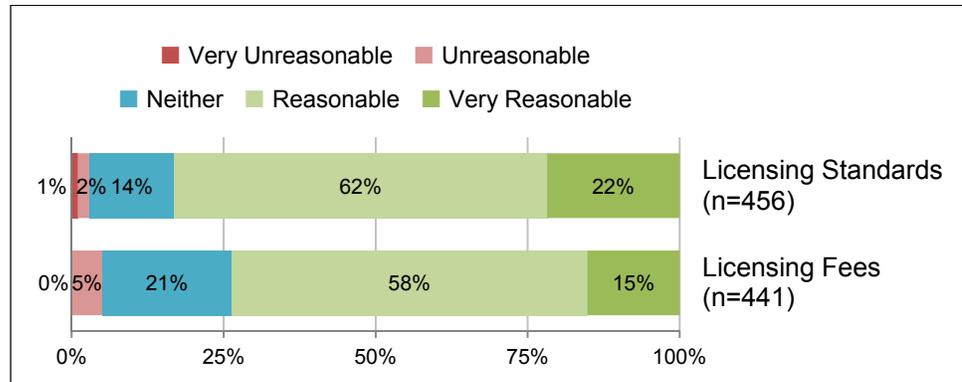
Investigation and regulation of illegal inducements is intended to promote fair market practices and protect consumers and licensees. With an average rating of 2.83 out of 4, it is concerning that 10 percent of licensees gave Poor ratings to these efforts. In comments, some participants expressed concerns about the complexity of rebating laws and unchecked rebating by larger agencies.

### **Licensing Standards and Fees Are Reasonable**

We asked survey participants to rate the reasonableness of UID licensing standards and fees. As shown in the Figure 2.3, the majority of participants thought licensing standards and fees were reasonable.

**Figure 2.3 Department Survey Question #4: Please Rate the Reasonableness of the Utah Insurance Department's....** A summary of survey participant ratings of the reasonableness of UID licensing standards and fees is shown below.

**Most agents rated both licensing standards and fees as reasonable.**



Source: Auditor analysis of survey conducted March 25-April 2, 2013, n=441-456 of 471

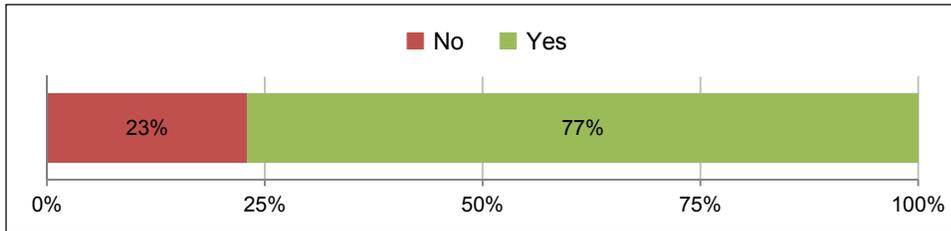
While we anticipated an unfavorable bias toward licensing standards and fees, the ratings were very favorable. Eighty-four percent of participants rated licensing standards as Reasonable or Very Reasonable, and 73 percent rated licensing fees as Reasonable or Very Reasonable. Five percent or fewer of participants rated either as Unreasonable or Very Unreasonable.

As a self-supporting regulatory agency, UID collects fees to pay for its operations. *Utah Code* 31A-3-103(3) requires the commissioner to publish the schedule of fees approved by the legislature; these fees are published in *Utah Administrative Code* R590-102. A typical agent license or renewal fee is \$75 per year.

**UID Should Review the Effectiveness of Its Communication Methods**

We asked survey participants whether they felt the department provides easy access to information related to law and rule changes. Figure 2.4 summarizes their responses.

**Figure 2.4 Department Survey Question #9: Do you feel the Utah Insurance Department provides easy access to information related to law/rule changes?** A summary of survey participant responses to the question regarding accessibility of law and rule change information is shown below.



Source: Auditor analysis of survey conducted March 25-April 2, 2013, n=296\*

\* Although 446 of 471 respondents answered this question, the preceding summary does not include 150 “Don’t know” responses, reflected by the lower “n” counts for each aspect.

As shown above, a strong majority of participants marked “Yes”; however, it is concerning that nearly a quarter marked “No”. Several participants commented that they would like to regularly receive information about law and rule changes via email, especially since the department should have email addresses for every agent and agency as required by *Utah Code R590-258* (enacted 8 September 2010).

Survey participants remarked that it is unclear where to find information regarding such changes, and one indicated that “it would be helpful if there was a follow-up email when someone is licensed or renewed explaining all the different sources of communication.”

In 2010, the department notified every licensee by mailed letter that it would no longer mail notices regarding rulemaking or bulletins. The letter explained how to register with Twitter, and included a link to the department website and encouragement to follow the department on Twitter for rulemaking and bulletin updates. When the department found that some companies did not use Twitter, it provided access to a third party email service called “Monitor this Page” as an alternative.

The department utilizes several methods to post law and rule changes for licensees. These methods include “Monitor this Page”—email distributed through a third party (after signing up for the service); laws, rules, news, and bulletins on the department’s website; Twitter and an RSS feed. Nevertheless, less than a quarter of participants stay informed through department news, bulletins, or email, and, only about 1 percent use Twitter or RSS feeds.

---

**Nearly a quarter of resident licensees want improved access to law and rule changes.**

---

---

**UID has several methods to post law and rule changes for licensees.**

---

**Some of the available information sources for law and rule changes are not well utilized.**

A vast majority (80 percent) of survey participants indicated that they stay informed of law and rule changes related to insurance licensing through continuing education. About 40 percent stay informed through word-of-mouth or professional associations. Further information is available in Appendix A (survey question #8).

## **Market Conduct Survey Results Were Less Favorable**

Participants in this survey responded less favorably when asked questions regarding Market Conduct Division investigations. We anticipated an unfavorable bias toward the division due to its role in administrative enforcement. This survey showed that market conduct examiners are rated highest for professionalism with an average rating of 2.76 out of 4, but could improve their explanation of the investigation process, which received an average score of 2.33 out of 4. In addition to communication concerns, survey participants also reported aggressive behavior and undue pressure to settle (sign stipulated agreements rather than participate in administrative hearings). These concerns are addressed in Chapter IV.

**Our survey about the Market Conduct Division was completed by agents who had been investigated.**

The purpose of the investigation survey was to address concerns regarding the division; therefore, we emailed an online survey to 744 individuals investigated by the division during the last three years. We obtained the email addresses from Utah's Insurance Department (UID). While 238 recipients (32 percent) responded to the invitation to participate in the survey, only 81 respondents (11 percent) indicated knowledge of being investigated during the last three years.

According to UID staff, many investigations are opened and closed without findings or contacting the investigated party; therefore, it is not surprising that many participants did not know they had been investigated. We expected a smaller sample size for this survey because the number of investigations is relatively small when compared to the total number of insurance licensees.

### **Market Conduct Examiners Received More Poor Ratings**

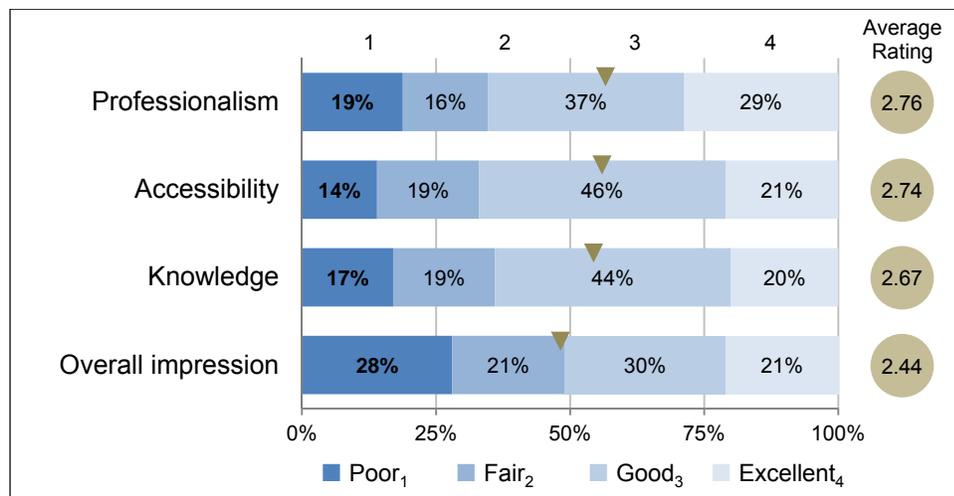
Average ratings for market conduct examiners were Fair to Good, ranging from 2.44 to 2.76 on the four-point rating scale described earlier in this chapter. As shown in the Figure 2.5, 14 to 28 percent

gave Poor ratings. As mentioned earlier, this may be due in part to bias; however, these Poor ratings are still concerning. Survey participants also provided comments for many of the survey questions, which support our concerns.

Please note that without a benchmark, it is difficult to assess how concerned we should be with the Poor ratings. Nevertheless, we can compare the average ratings and percentage of Poor ratings in these questions with previously discussed ratings. Such comparisons suggest that there is room for improvement in the Market Conduct Division, particularly when it comes to investigations conducted by market conduct examiners (investigators).

**The number of poor ratings are concerning, but they could be due in part to bias of agents who had been investigated.**

**Figure 2.5 Market Conduct Division Survey Question #6: Please Rate the Investigator(s) You Interacted with During the Investigation.** Survey participants gave a fairly high percentage of poor ratings to market conduct examiners in all areas.



Source: Auditor analysis of survey conducted March 25-April 2, 2013, n=70\*  
 \* Seventy-six of 81 respondents answered this question; however, the preceding summary does not include six Don't know responses

While these ratings appear favorable, they are less favorable than other ratings discussed in this chapter. Furthermore, we are concerned by the percentage of Poor ratings in these categories and participant comments regarding poor examiner communication and pressure to settle (Chapter IV).

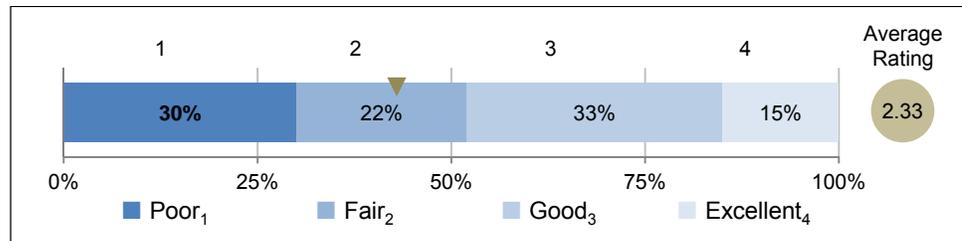
## Market Conduct Examiners Should Improve Their Explanation of the Investigation Process

Survey participants were asked a number of questions related to examiner communication during and after investigations. These questions covered initial explanation of the investigation process, contact following the investigation, and explanations related to the administrative enforcement process. A review of survey responses to these questions indicated poor examiner communication. Some participants described limited or inconsistent communications and reception of conflicting or inaccurate information during investigations. One participant commented that “it seemed like the state had no policy or procedure manual or clear records.”

Survey responses indicated poor examiner communication.

Market conduct examiners may explain the investigation process to a respondent when opening an investigation. We asked survey participants to rate the explanation they received from their examiner regarding the investigation process. Figure 2.6 summarizes the responses of 73\* survey participants who rated the explanation they received.

**Figure 2.6 Market Conduct Survey Question #5: Please Rate the Investigator’s Explanation of the Investigation Process.** A summary of survey participant ratings of investigators’ process explanations is presented below.



Source: Auditor analysis of survey conducted March 25-April 2, 2013, n=73\*

\* Seventy-six of 81 respondents answered this question; however, the preceding summary does not include three Don’t Know responses.

The previous figure shows that nearly a third of participants gave Poor ratings for examiner explanations of the investigation process. UID does not have a policy to guide this process and explanation of the process is left to the discretion of the investigator. We believe better communication during investigations would improve department-licensee relationships and improve perceptions of the department.

With no written policy, explanation of the investigative process is left to the discretion of the investigator.

## **Recommendations**

1. We recommend that the department review the effectiveness of its communication methods for information regarding law and rule changes.
2. We recommend that the Market Conduct Division standardize examiner explanations of the investigation process with clear policy and examiner training.

**This Page Left Blank Intentionally**

## **Chapter III**

# **Investigation Case Review Shows Need for Better Documentation**

We reviewed a sample of the Market Conduct Division’s enforcement cases to determine if monetary penalties are consistently applied. The sample showed that 88 percent of the cases had consistent and appropriate monetary penalties. However, we questioned 12 percent of the cases because they lacked sufficient documentation to support penalties that did not follow the forfeiture guidelines. It appears that those monetary penalties should have been higher.

We also found that investigation files lack adequate documentation in other areas. The probation penalty needs to be supported by adequate documentation. Mitigating circumstances need to be significant and relevant to the penalty recommendations. Each investigation file should include the specific source of complaint; and lastly, the original recommendation and final penalties should be included in the investigation file.

We reviewed cases based on available departmental policies and guidelines. The department’s Corrective Action Policy assists division directors and presiding officers with their corrective actions to bring licensees into compliance. The department’s forfeiture guidelines provide staff with recommended corrective action to be imposed for specific regulatory violations. Because departmental criteria leave many important topics unaddressed, we also consulted the *Market Regulation Handbook* published by the National Association of Insurance Commissioners. The importance of the department establishing additional policies and procedures to guide staff in conducting investigations is discussed more thoroughly in Chapter IV.

## **Investigation Case Review Shows Some Monetary Penalty Inconsistencies**

A concern was raised by a few insurance agents during the audit that the Market Conduct Division does not consistently administer penalties among the insurance community. To address this concern,

---

**Most cases had appropriate monetary penalties, but 12 percent lacked documentation to support penalties.**

---

---

**We reviewed cases based on available departmental policies and guidelines.**

---

we reviewed a random sample of enforcement cases that resulted in corrective action for insurance agents and agencies. We found that 88 percent of the cases were given consistent monetary penalties that either followed the division's forfeiture guidelines or had documentation supporting why penalties did not follow the guidelines.

However, we found that 12 percent of the cases lacked adequate documentation to explain monetary penalties that did not follow the forfeiture guidelines. It appears that these penalties should have been higher and the agents (respondents) may have received favorable treatment.

### **Most Monetary Penalties Follow Forfeiture Guidelines**

A randomly selected sample of 60 enforcement cases found that 53 cases (88 percent) were given monetary penalties that followed the division's forfeiture guidelines or the documentation was adequate to explain monetary penalties that did not follow the guidelines. We reviewed a sample of investigation cases from 2010 to 2012 where the Market Conduct Division assessed monetary penalties for three significant administrative law violations:

- Licensing violations—such as acting as a producer, adjuster, or a consultant without a license
- Trust account violations—such as commingling, diverting, or not depositing deposit funds into an established trust account
- Unfair marketing practices—such as charging unauthorized fees, using noncompliant forms, or distributing misleading or false advertising

The division's forfeiture guidelines provide recommended penalties based on the type of violation. More serious violations have more severe penalties. The guidelines advise examiners on penalties, but the monetary amount can be increased or decreased according to aggravating or mitigating circumstances. Each investigation has to be looked at individually. We found that 37 of the cases followed the division's forfeiture guidelines and 16 of the cases had documentation in the investigation files that explained the penalties given.

---

**We reviewed 60 cases where the Market Conduct Division assessed monetary penalties.**

---

---

**We found 37 of the cases had penalties that followed the forfeiture guidelines and 16 of the cases had documentation to explain why penalties were different.**

---

## Case Documentation Does Not Adequately Explain Monetary Penalties for Seven Cases

In the sample, we found 7 cases or 12 percent had monetary penalties that deviated from the guidelines without adequate file documentation to justify the penalties. When a market conduct examiner opens an investigation, the examiner must establish an investigation file. The investigation file contains the applicable statutes and rules, the findings, and recommended department action for each investigation.

We questioned 4 monetary penalties among 21 licensing violations and 3 penalties among 21 trust account violations. We did not have any concerns regarding the monetary penalties among 18 unfair marketing practices.

### We Question Four Penalties within Licensing Violations.

Figure 2.1 shows the monetary penalties given to the agency or agent for each case, as well as the recommended amount from the department's forfeiture guidelines.

**Figure 2.1 Questioned Licensing Violations.** This figure shows four monetary penalties that do not match the recommended guidelines.

| Case | Violation                                  | Forfeiture Guidelines | Actual Penalty |
|------|--|-----------------------|----------------|
| 1    | No consultant agency license               | \$ 3,000              | \$ 1,500       |
| 2    | No consultant agency license               | 3,000                 | 1,500          |
| 3    | No consultant agency license               | 3,000                 | 1,000          |
| 4    | No customer service representative license | 1,500                 | 750            |

Source: Forfeiture Guidelines and investigation files

After reviewing the investigation files, it appears that all four of these cases should have had higher monetary penalties considering the forfeiture guidelines and other cases we reviewed with similar violations.

Due to the lack of adequate documentation in the investigation files, we reviewed each of the cases with division staff to get a better understanding of the penalties assessed. Their responses are stated below followed by our comments.

---

The investigation file needs to contain clear documentation to support penalties assessed.

---



---

We questioned four licensing monetary penalties, and three trust account penalties.

---



---

Due to the lack of documentation in the investigation files, we reviewed cases with division staff.

---

---

**Without sufficient documentation, it appears that these cases had favorable treatment.**

---

- **Case 1.** The original recommendation was \$3,000. The agency met with the prior insurance commissioner to dispute the recommendation. As a result of that meeting, the division was told to reduce the fine to \$1,500. However, no documentation explained this change.
- **Case 2.** The penalty was lower (\$1,500) because there was less harm to the public, but this point was not documented in the investigation file. However, other agencies' fines for the same violation followed the forfeiture guideline (\$3,000). If this violation is less serious and should be lower, then the forfeiture guideline should be changed.
- **Case 3.** The examiner was instructed to reduce the fine from \$3,000 to \$1,000 because it would be a hardship for the agent to provide for the agent's family. In contrast, the director said it was because it was a new agency, and the division has the practice of not recommending a monetary penalty so severe that it makes an agent or agency financially insolvent. However, no documentation supported either explanation.
- **Case 4.** The agency should pay more of the fine rather than the customer service representative. However, there was no documentation to support this statement.

The discussions with division staff further supported that adequate documentation is needed in the investigation files. Without sufficient documentation, it appears that these cases had favorable treatment.

### **We Question Three Penalties within Trust Account**

**Violations.** Figure 2.2 shows the monetary penalties given to the agency or agent for each case, as well as the recommended amount from the department's forfeiture guidelines.

**Figure 2.2 Questioned Trust Account Violations.** This figure shows three monetary penalties that do not match the recommended guidelines.

| Case | Violation   | Forfeiture Guidelines | Actual Penalty |
|------|---|-----------------------|----------------|
| 5    | 1. Not properly maintaining a trust account   | \$ 2,000              | \$ 1,000       |
| 6    | 1. Not properly maintaining a trust account (\$2,000)<br>2. Failed to deposit funds into a trust account (\$2,000)<br>3. Commingled trust funds (\$3,000) | 7,000                 | 2,500          |
| 7    | 1. Not establishing a trust account (\$2,000)<br>2. Commingled trust funds (\$3,000)  | 5,000                 | 2,500          |

Source: Forfeiture Guidelines

After reviewing the investigation files, again it appears that all three of these cases should have had higher monetary penalties considering the forfeiture guidelines and other cases we reviewed with similar violations. Case 6 should have had a penalty of \$7,000, and Case 7 should have had a penalty of \$5,000. Other trust account cases in the sample had monetary penalties that matched the forfeiture guidelines or documentation that justified a lower penalty.

Discussions with the division about these three cases did not resolve our concerns about how consistently and accurately they were adjudicated. Staff responses are stated below.

- **Case 5.** The monetary penalty was lower because the trust account was off by a small amount. (This fact was not listed as a mitigating circumstance.) However, the violation was that the agency was not maintaining or reconciling the trust account monthly, and the case also listed an aggravating circumstance – deposits were not properly documented. We question if the potential harm versus the actual result is properly reflected in the monetary penalty.
- **Case 6.** The division director agreed that there were a lot of problems with multiple violations, but noted that this case is on the agency owner and the wrongdoing was conducted by an employee. The agency had oversight, therefore the fine was needed, but the actions were done by a licensee whose license was revoked. However, the file lacked adequate documentation to justify the lower penalty.

**Some cases had low penalties compared to other cases we reviewed with similar violations.**

**Discussions with division staff did not resolve our concerns about how consistently and accurately cases were adjudicated.**

**Adequate file documentation guards against the possibility of differential treatment for similar violations.**

**Better file documentation is needed in four areas.**

- **Case 7.** The monetary penalty was lower because the agency set up a trust account prior to the audit. However, the investigation file’s executive summary and supporting documentation both state that the agency did not have a trust account established at the time of the audit. The executive summary states that since the audit, the agency set up a trust account. The investigation file contains conflicting information because a mitigating circumstance states that the agency set up a trust account prior to the audit, but that statement is not supported by the report’s documentation.

The department’s corrective action policy states that the division should be “fair and consistent in the imposition of corrective action.” All investigation files should contain adequate documentation to support the findings and recommended penalties, so that proper evidence exists that agents or agencies do not receive differential treatment.

### **Investigation Files Lack Adequate Documentation in Other Areas**

Our case review showed that the investigation files lacked adequate documentation in four other areas:

- First, when the probation penalty is given, the investigation files do not adequately explain why the probation was given.
- Second, we found mitigating circumstances that do not follow policy and do not appear to be relevant to the case.
- Third, the specific source of the complaint for each investigation is not documented in the investigation file.
- Fourth, original penalty recommendations are not included in the investigation files when they differ from final penalties. Including the original as well as the final penalties, supported with adequate documentation, provides the justification for the final penalties.

The investigation process should be more transparent by having adequate documentation in the files.

## **Probation Penalty Needs Better Documentation**

Thirty-three of the 60 reviewed cases had enforcement actions that included probation. Probation periods were given from 6 months to 24 months. Utah Insurance Department's (UID's) Corrective Action Policy states that probation cannot exceed 24 months. We did not see a recommendation that violated this policy. However, the investigation files do not clearly document why a probation period is given or explain the length of the probation. The department's policies do not provide guidance on when to recommend probation or the length of the probationary period, except that the forfeiture guidelines state that probation is recommended for two violations.

Although there is not a written policy, the division reports they give probation for fiduciary violations, repeat offenders, and agents who are uncooperative during an investigation. Probation may or may not be given in conjunction with a monetary penalty. Throughout our review, we found instances where probation was inconsistently applied. Below are three examples.

1. The division generally follows the practice of giving probation for fiduciary violations; however, we found a few exceptions. For the 21 trust account (fiduciary) violations reviewed in the case sample, four received a monetary penalty, but not a probation penalty.
2. We reviewed aggravating and mitigating circumstances in the investigation files to determine if they explained why probation was applied. It was not clear from the investigation files that aggravating and mitigating circumstances had an impact on the probation penalty. For example, two cases did not list any aggravating circumstances but both cases listed a mitigating circumstance. One case had a 12-month probation penalty, while the other case did not have a probation penalty. These cases were not fiduciary violations or repeat offenders and the investigation files did not state any uncooperative behavior.
3. UID's corrective action policy states that when probation is a recommended corrective action, a probation review plan must be included with the investigative report. However, we saw five

---

**Investigation files do not clearly document why a probation period is given or explain the length of the probation.**

---

---

**Our review found that probation was inconsistently applied.**

---

**Files should clearly document why probation is being recommended and include a probation review plan.**

investigation files where probation was recommended, but a review plan was not included in the investigative report.

The division should develop probation guidelines for the examiners and make consistent probation recommendations. The investigation files should clearly document why the probation penalty is being recommended and include a probation review plan.

### **Mitigating and Aggravating Case Circumstances Should Follow Policy**

When market conduct examiners open an investigation, they must create an investigation file. One of the sections of the investigation file is the recommended department action. This section lists the aggravating and mitigating circumstances as well as states the recommended monetary and nonmonetary penalties. Our review found that one frequently listed mitigating circumstance—the respondent was cooperative with the investigation—is not listed in the department’s policy and has no apparent effect on the enforcement action. Mitigating circumstances listed in investigation files should follow policy and be relevant to the case.

Throughout the case review, we frequently found “the respondent cooperated with the investigation” listed as a mitigating circumstance. The UID’s corrective action policy lists various mitigating circumstances but does not include a cooperative respondent as one of them. The policy lists the following:

- The relative innocence of the violation
- The number of similar violations
- Whether the violation was unintentional
- Whether the licensee demonstrated incompetency
- Whether efforts were made by the respondent to correct any harm
- Whether any efforts made by the respondent were prior to the department’s involvement
- The impact of the aggregate total of forfeitures

The examiners should not be including a mitigating circumstance in the investigation files—the respondent was cooperative—that does not follow policy.

**Mitigating circumstances are listed in UID’s corrective action policy.**

We found two other mitigating circumstances listed in investigation files that did not follow policy. In one case, part of a mitigating circumstances stated “he is an immigrant who recently arrived in the United States and has made great strides to live the American Dream.” In another case it stated the “respondent agreed to a stipulation and order.”

In addition, the mitigating circumstance of a cooperative respondent does not appear to have an impact on the recommended penalty. Throughout the case review, we could not determine how this mitigating circumstance affected the penalties given.

For example, an investigation file did not list any aggravating circumstances and listed one mitigating circumstance—that the respondent was cooperative during the entire investigation, and was prompt in providing requested information and willing to assist. However, the agency was charged \$3,000 for having an unlicensed customer service representative (CSR), as recommended in the forfeiture guidelines. In addition, the respondent was placed on probation for 12 months. The mitigating circumstance did not have a significant impact on this case.

We also found an example in the file review where the aggravating circumstances listed was simply a restatement of the violation. To be relevant, the aggravating circumstance should be something that heightens the concern about the violation, rather than just listing the violation again. Restating violations in the aggravating circumstances section of the investigation file does not follow the aggravating circumstances policy. Mitigating as well as aggravating circumstances listed should follow policy, be significant and relevant to the investigation, and supported with adequate documentation, so there is a clear connection to their impact on the recommended actions.

### **Specific Source of Complaint Should Be Documented**

During the audit, a few agents raised a concern that, if an agent or agency makes a complaint with the department, the department may retaliate and audit the agent or agency that filed a complaint. We looked into some cases relevant to this concern, but without documentation of the specific complaint source, we could not determine the validity of this concern.

---

**Mitigating and aggravating circumstances should be significant, relevant and follow policy.**

---

---

**SIRCON often lists the complaint source as the department even when the initial complaint came from an external source.**

---

Documentation of the source of the complaint does not exist in the investigation files, but the division case management system, SIRCON, has a field for complaint source. Unfortunately, in most instances SIRCON lists the complaint source as UID (i.e., the insurance department) even when the initial complaint came from an external source. Therefore, when we were reviewing cases regarding this issue, we had to ask the examiners who made the initial complaint and the nature of the complaint.

Our discussions with examiners brought to light instances where Agency A had made complaint about Agency B. The division audited Agency B, and, during that audit, Agency B made a similar complaint about Agency A. The division then audited Agency A. As a result, it appeared to Agency A that they had been audited because they made a complaint about Agency B.

Our survey of agents, discussed in Chapter II, included an open-ended question for agents or agencies that had been investigated: “What do you believe initiated the investigation?” Of the 74 responses (see Appendix B for a summary of all the responses):

- Nine stated that a competitor made a complaint against them. Thus, some agents realize that agencies do complain about one another.
- Eight stated that they believed that the department was retaliating because they made a complaint or they believed they were disliked by the department.

The perception does exist within the insurance community that the department might retaliate against an agent or agency if they make a complaint.

The investigation file contains the documents and evidence pertinent to the case, but does not require the examiner to state the source of the complaint or include the initial complaint. While SIRCON has information about the complaint source, it does not always specifically identify the actual complaint source.

The *Market Regulation Handbook*, an authoritative source for insurance industry information, states that the investigation file should include the source of the complaint. Adding the complaint section to

---

**The perception exists that the department might retaliate against an insurance agent or agency if they make a complaint.**

---

the investigation file (or including more specific information in SIRCON) would help protect the examiners and the division from claims that an examiner or the department is investigating an agent or agency due to retaliation.

### **Penalty Changes Are Not Stated In the Investigation Files**

The last section of the investigation file states the department's recommended penalties. At the conclusion of an investigation, the examiner lists the recommended monetary and nonmonetary penalties that apply to that case. However, the agent or agency being investigated may disagree with the recommended penalties and try to negotiate a settlement. If a settlement is negotiated, the originally recommended penalties are not always stated in the investigation file.

According to the *Market Regulation Handbook*, "all materials and documents gathered as a part of an investigation shall remain part of the investigative file, regardless of whether they are used as evidence." We believe that the division should follow the handbook and include original recommendations, negotiated penalties, and any related documents associated with a settlement in the investigation file.

---

**The investigator's recommended penalty should be included in the file even if a different amount is later negotiated.**

---

## **Recommendations**

1. We recommend that the Market Conduct Division include adequate documentation to support the recommended monetary penalties in the investigation files.
2. We recommend that the Market Conduct Division ensure that investigation files clearly document why a probation penalty is recommended and include a probation review plan.
3. We recommend that the Market Conduct Division require that mitigating and aggravating circumstances:
  - Be significant and relevant to the investigation
  - Be supported with adequate documentation
  - Have a clear connection to their impact on the recommended actions

4. We recommend that the Market Conduct Division document the specific source of complaints investigated in the investigation files or in SIRCON.
5. We recommend that the Market Conduct Division ensure that the original recommended penalties, as well as the final penalties, are stated in the investigation files.

## Chapter IV Policies and Procedures Are Needed

The Market Conduct Division should develop policies to guide the post-investigation process. The division needs a policy to provide guidance on informing respondents of their violations, the recommended penalties, and their corrective action options. The division should use consistent, standard forms to clearly communicate investigation results and corrective action options at the close of an investigation. All relevant correspondence associated with each investigation case, including the post-investigation process, should be included in the investigation file.

Also, while the division has case management tools available to monitor critical activities, we believe that two case management tools, prioritization of complaints and case monitoring metrics, should be improved. Policies should be developed to formalize existing practices and help ensure that the division's activities are managed efficiently and effectively.

### Investigation Results Need to Be Clearly Communicated

At the close of a violation investigation, the examiners (investigators) notify the respondent of the violations and the recommended penalties. The examiners are inconsistent in how they notify the respondent of investigation results. The current practice allows examiners to send a letter, or email, or make a phone call to notify the respondent of recommended action. The division needs to develop a policy that provides for consistency when informing respondents of enforcement actions.

The *Market Regulation Handbook* recommends using consistent forms. We believe that the Market Conduct Division should establish a process that uses consistent forms to inform respondents of recommended action at the close of an investigation. This step will help ensure that respondents understand the results of an investigation and their rights to an administrative hearing, and will help guard

---

**Policies are needed to guide examiners and ensure accurate communication with respondents.**

---

---

**Examiners are inconsistent in how they notify the respondent of investigation results.**

---

against respondents feeling undue pressure to agree to a settlement. In addition, the investigation files should contain relevant enforcement correspondence.

### **Standard Format Is Needed**

At the conclusion of an investigation, the respondent is informed of the recommended enforcement actions to be taken by the department. The investigation results should state the violations, the recommended penalties, and the respondent's responsibilities and options (due process). The respondent can accept the recommendations, or reject the recommendations and then negotiate a settlement or participate in an administrative hearing.

We reviewed copies of the written correspondence sent to respondents and found the information provided about the administrative adjudication process was inconsistent. Using standard language in all such correspondence would help ensure that respondents understand their responsibilities and their right to an administrative hearing. Here are a few examples from investigation files that illustrate the inconsistent information respondents are given:

---

**A standard format is needed to help ensure that respondents understand their responsibilities and rights.**

---

- A letter sent to a respondent listed the findings and the proposed penalties. At the end of the letter, there was a brief statement: "You are advised of your right to a hearing in the event you disagree with the proposed enforcement actions." The letter did not give much information regarding their right to an administrative hearing. The letter then directed the respondent to sign, initial, and date the document. It was not clear whether signing and initialing the document meant the respondent was waiving the right to a hearing or requesting a hearing. The document was signed, but not initialed.
- One letter sent to a respondent simply stated "please respond by [date] with your decision to accept or refuse this enforcement recommendation".
- A letter stated "This is only a recommendation by the Department and is subject to change upon review by the Enforcement Attorney. Please respond with your decision by [date], otherwise a complaint will be issued."

The division should consistently and clearly state respondents' rights and responsibilities in written recommendation letters, so respondents understand their corrective actions options at the close of an investigation. This is will help prevent respondents from feeling undue pressure to settle.

### **Some Respondents Feel Undue Pressure to Settle**

Some of the market conduct survey (Chapter II) comments indicated pressure to settle rather than request administrative hearings. Participants described this pressure as direct or subtle verbal "threats" of (a) low probability of success at hearing, and (b) high probability of increased penalties from the administrative law judge (ALJ). Participants reported pressure not only from investigators but also from the assistant attorney general (AAG).

Very few cases make it to an administrative hearing, and even fewer actually complete a hearing because many cases are settled after the department files a complaint against the respondent. A review of enforcement cases handled by the Market Conduct Division during calendar year 2012 revealed that only one of 112 cases proceeded to hearing and order.

The division expressed a desire to steer respondents toward settling (via Stipulation and Order) in order to promote efficiency. Settlements are preferable to hearings because they save the division time and money. One survey participant indicated a preference to settle due to time constraints, wanting to continue working on job-related activities rather than take the time for a hearing. Another participant described acceptance of the recommendations as a nuisance and wanted to move on.

One recommendation letter, referenced in the previous section, simply stated, "please respond by [date] with your decision to accept or refuse this enforcement recommendation." The respondent did not reply to the letter by the required date, so the examiner sent an email saying, that unless an immediate response was received "I will have to move forward by filing a complaint with the AG's [Attorney General] office. The \$1,500 forfeiture recommendation will no longer be an option." That language could be perceived as undue pressure by

---

**Standardized written communication can help prevent respondents from feeling undue pressure to settle.**

---

---

**The division steers respondents toward settling (via Stipulation and Order) in order to promote efficiency.**

---

implying the monetary penalty will increase if the recommended penalty is not accepted.

---

**If a complaint is filed, the AAG reviews the investigation report, and determines if the penalty should be increased, decreased, or remain the same.**

---

In practice, when the respondent does not accept the Market Conduct Division's recommended penalty, the AAG reviews the investigation report, and based on the AAG's assessment of the strength of the case will determine if the penalty should be increased, decreased, or remain the same. Our review of complaints filed in 2012 confirmed that penalties listed in the complaint may be either more or less than the original recommendation. But, often the penalty appears to be unchanged. Therefore, the investigator should not lead the respondent to assume that if a complaint is filed that the monetary penalty will increase.

Clearly stating a respondent's responsibilities and options in a formalized letter may help them not feel undue pressure at the conclusion of an investigation. Also, it won't mislead respondents in assuming that the monetary penalty will automatically increase, if they choose not to accept the recommended action.

### **All Enforcement Correspondence Needs to Be Documented**

According to the *Market Regulation Handbook*, "all materials and documents gathered as a part of an investigation shall remain part of the investigative file, regardless of whether they are used as evidence." The handbook also states that a record should be made of every interview that is conducted. In our audit work, we did not see any evidence to document a phone call made to inform a respondent of violations and the recommended penalties. In addition, the case review showed that some of the investigation files lacked complete documentation of the recommended action correspondence. Here are a few examples:

---

**Some investigation files lacked complete documentation of the recommended action correspondence.**

---

- One investigation file did not contain any documentation that an examiner had contacted the respondent at the close of the investigation.
- One investigation file stated that the respondent was emailed and mailed the enforcement recommendation, and that the respondent emailed the examiner back accepting the

recommendations; however, the original email and recommendation letter were not in the investigation file.

- Two investigation files contained email responses from the respondents concerning the proposed recommendations, but the original correspondence stating the original recommendations were not included in the case documents.
- One investigation file stated that the respondent had agreed to a stipulation and order, but there was no documentation to support either notifying the respondent of the recommended action or receiving a response.
- One investigation file had an email from a respondent that stated, “Thanks for the call yesterday. Could you please send us in writing what our options are? Could you please send the details?” That email is the only indication in the file that a phone discussion took place.

The department’s policy should include direction that all correspondence relating to the recommendations at the close of an investigation should be in the investigation file to show evidence that the respondents were properly informed of the enforcement actions.

## **Case Management Practices Should Be Outlined in Policy**

The purpose of case management tools is to help staff progress toward achieving expected results and manage programs efficiently and effectively. Case management tools set goals or standards, monitor the case process flow, and identify and monitor critical activities.

During the audit, we asked division staff about two case management tools: prioritization of complaints and case monitoring. The division does not have a formalized process in place to prioritize complaints, but they do discuss each complaint and determine which should be investigated. As for case monitoring, the division director can query SIRCON for case lists, but there is not an efficient method to routinely summarize caseload statistics for some lines of insurance. While the division routinely produces monthly caseload statistics for

---

**Good case management tools are important to monitor division activities.**

---

bail bonds and the title lines of business, it does not do so for other lines of insurance.

### **Complaints Should Be Prioritized Through a Standard Process**

The *Market Regulation Handbook* states that it may be beneficial to establish priorities for investigations to more efficiently address problems in a regulator's state insurance marketplace. Prioritizing identified problems should maximize an insurance department's investigative resources. The division should develop a list of factors that could be used in evaluating and prioritizing complaints.

---

**Complaints should be assessed and prioritized based on relevant factors such as potential public harm.**

---

We have been told by examiners that they have more than enough work to do, and that they do not have to look for agents or agencies to investigate. However, the division does not have a clear plan for prioritizing complaints. We have been told that certain complaints always receive priority, depending on the source. But we believe other factors are more important to consider, such as public harm. The *Market Regulation Handbook* suggests that each complaint be assessed and given a low, medium, and high priority. This process should be stated in policy and would help ensure that complaints are managed appropriately.

### **Case Monitoring Tools Need to Be Strengthened**

We believe that the division could be managed more efficiently by formalizing how it monitors the case status for all five lines of business by examiner. Also, we had to manually go through the files to determine the final result of investigation cases for calendar year 2012 that are summarized in Chapter I. We believe that the division should routinely monitor case flow and outcomes to review their effectiveness, consistency, and accuracy.

---

**The division director reviews caseload data as needed, but we think a more formalized process should be established.**

---

The Market Conduct Division has some case management tools in place, such as a case process flow summary for the title and bail bond lines of business. The division has data that monitors each investigation in those two lines of business, the status of each investigation, and how long each investigation has been open.

For other lines of insurance, the division can query case statistics on its computer software program, SIRCON, such as the number of cases open and closed within a month, and summarize investigations by the nature of the complaint or allegation. The division's director also reviews how timely each examiner closes cases, and their ability is measured on their performance reviews. We think the division should consider developing a more formalized process to periodically produce caseload metrics that department staff and the commissioner could review.

## **Recommendations**

1. We recommend that the Market Conduct Division develop in policy a standard format to communicate investigation results to the respondents, including a standard description of the respondent's responsibilities and rights.
2. We recommend that the Market Conduct Division require in policy that relevant correspondence pertaining to an investigation case be included in the investigation file.
3. We recommend that the Market Conduct Division formalize two case management tools: (1) complaint prioritization and (2) periodic caseload monitoring reports.

**This Page Left Blank Intentionally**

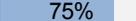
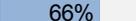
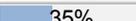
**Appendices**

**This Page Left Blank Intentionally**

**Appendix A**  
**Department Survey**

**This Page Left Blank Intentionally**

| <b>1. Are you a resident producer licensed through Utah's Insurance Department? (n=499)</b> |   | <b>%</b> |
|---|---|----------|
| Yes   |  | 94%      |
| No  |  | 4%       |
| Don't know  |  | 2%       |

| <b>2. What line(s) of insurance are you licensed to sell? (please select all that apply) (n=467)</b> |   | <b>%</b> |
|--|---|----------|
| Life Insurance   |  | 75%      |
| Accident & Health Insurance  |  | 66%      |
| Casualty Insurance   |  | 41%      |
| Property Insurance   |  | 41%      |
| Personal Lines Insurance   |  | 35%      |
| Variable Contracts   |  | 17%      |
| Title: Escrow  |  | 9%       |
| Title: Search  |  | 5%       |
| Title: Marketing Representative Only   |  | 3%       |

| <b>3. Please rate the following aspects of Utah's Insurance Department: (n=456-462)</b> | <b>Poor</b>  | <b>Fair</b>   | <b>Good</b>   | <b>Excellent</b>  | <b>N/A</b>   |
|---|--|---|---|---|--|
| Online License Renewals (n=462)   | 2%    | 8%     | 36%    | 48%    | 6%    |
| Initial Application Process (n=460)   | 2%    | 12%    | 48%    | 26%    | 12%   |
| Department Administration (n=461)   | 2%    | 17%    | 48%    | 25%    | 8%    |
| Communication with Licensees (n=459)  | 5%    | 18%    | 50%    | 24%    | 4%    |
| Market Conduct Division (n=459)   | 4%   | 15%   | 41%   | 19%   | 20%  |
| Overall Impression (n=456)  | 2%  | 14%  | 53%  | 28%  | 2%  |
| <b>3. Please rate the following aspects of Utah's Insurance Department: (n=366-445)</b> | <b>Poor</b>  | <b>Fair</b>   | <b>Good</b>   | <b>Excellent</b>  | <b>N/A</b>   |
| Online License Renewals (n=432)   | 2%  | 8%   | 38%  | 52%  |     |
| Initial Application Process (n=405)   | 2%  | 14%  | 55%  | 29%  |  |
| Department Administration (n=425)   | 2%  | 18%  | 52%  | 28%  |  |
| Communication with Licensees (n=442)  | 5%  | 19%  | 52%  | 24%  |  |
| Market Conduct Division (n=366)   | 5%  | 19%  | 51%  | 24%  |  |
| Overall Impression (n=445)  | 2%  | 15%  | 54%  | 29%  |  |

| <b>4. Please rate the reasonableness of the Utah Insurance Department's: (n=441-456)</b> | <b>Very unreasonable</b>   | <b>Unreasonable</b>  | <b>Neither reasonable nor unreasonable</b>  | <b>Reasonable</b>   | <b>Very reasonable</b>  |
|--|--|--|---|---|---|
| Licensing Standards (n=456)  | 1%  | 2%  | 14%  | 62%  | 22%  |
| Licensing Fees (n=441)   | 0%  | 5%  | 21%  | 58%  | 15%  |

| 5. Please rate the Utah Insurance Department's efforts to: (n=459–461)   | Poor | Fair | Good | Excellent | Don't know |
|--|------|------|------|-----------|------------|
| "...foster a healthy insurance market by promoting fair and reasonable practices."<br>—Mission Statement (n=459) | 4%   | 13%  | 50%  | 19%       | 14%        |
| Facilitate the continuing education of agents (n=460)  | 5%   | 19%  | 45%  | 19%       | 12%        |
| Protect the public from unscrupulous agents/agencies (n=460)   | 4%   | 14%  | 42%  | 15%       | 24%        |
| Investigate complaints against insurance agents/agencies (n=460)   | 5%   | 8%   | 30%  | 12%       | 45%        |
| Regulate and investigate agents/agencies that offer illegal inducements (n=461)                                  | 6%   | 12%  | 32%  | 13%       | 37%        |
| 5. Please rate the Utah Insurance Department's efforts to: (n=252–403)   | Poor | Fair | Good | Excellent | Don't know |
| "...foster a healthy insurance market by promoting fair and reasonable practices."<br>—Mission Statement (n=393) | 5%   | 15%  | 58%  | 22%       |            |
| Facilitate the continuing education of agents (n=403)  | 5%   | 22%  | 51%  | 22%       |            |
| Protect the public from unscrupulous agents/agencies (n=348)   | 6%   | 19%  | 55%  | 20%       |            |
| Investigate complaints against insurance agents/agencies (n=252)   | 9%   | 14%  | 54%  | 22%       |            |
| Regulate and investigate agents/agencies that offer illegal inducements (n=292)                                  | 10%  | 18%  | 51%  | 21%       |            |

| 6. Optional Please rate the last Utah Insurance Department employee with whom you interacted: (n=420–423) | Poor | Fair | Good | Excellent | Don't know |
|---|------|------|------|-----------|------------|
| Knowledge (n=423)   | 1%   | 6%   | 37%  | 32%       | 24%        |
| Responsiveness (n=422)  | 3%   | 8%   | 33%  | 33%       | 23%        |
| Professionalism (n=421)   | 1%   | 6%   | 34%  | 35%       | 23%        |
| Overall impression (n=420)  | 2%   | 8%   | 35%  | 33%       | 23%        |
| 6. Optional Please rate the last Utah Insurance Department employee with whom you interacted: (n=323–325) | Poor | Fair | Good | Excellent | Don't know |
| Knowledge (n=323)   | 1%   | 8%   | 49%  | 41%       |            |
| Responsiveness (n=326)  | 4%   | 10%  | 43%  | 42%       |            |
| Professionalism (n=325)   | 2%   | 8%   | 45%  | 46%       |            |
| Overall impression (n=325)  | 2%   | 10%  | 46%  | 42%       |            |

| 7. Optional Which of the following Divisions or Sections did the employee you rated work for? (n=226) | %   |
|---|-----|
| Life & Health Division  | 19% |
| Administration Division   | 18% |
| Market Conduct Division   | 8%  |
| Office of the Commissioner  | 5%  |
| Property & Casualty Division  | 4%  |
| Examination/Solvency Division   | 4%  |
| Captive Insurers Division   | 1%  |
| Fraud Division  | 1%  |
| Information Technology Services Division  | 0%  |
| Don't know  | 39% |

| <b>8. How do you stay informed on law/rule changes related to insurance licensing?<br/>(please select all that apply) (n=454)</b> | <b>%</b> |
|---|----------|
| Continuing Education  | 80%      |
| Word-of-mouth   | 43%      |
| Professional Association(s)   | 39%      |
| Department Bulletins (link)   | 25%      |
| Department E-mail   | 24%      |
| Department News (link)  | 14%      |
| Department RSS Feed   | 1%       |
| Department Twitter (link)   | 1%       |
| Other (please specify)  | 13%      |

| <b>9. Do you feel the Utah Insurance Department provides easy access to information related to law/rule changes?<br/>(n=446)</b> | <b>%</b> |
|--|----------|
| Yes  | 51%      |
| No   | 15%      |
| Don't know   | 34%      |

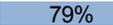
  

| <b>9. Do you feel the Utah Insurance Department provides easy access to information related to law/rule changes?<br/>(n=296)</b> | <b>%</b> |
|--|----------|
| Yes  | 77%      |
| No   | 23%      |
| Don't know   |          |

**This Page Left Blank Intentionally**

**Appendix B**  
**Market Conduct Survey**

**This Page Left Blank Intentionally**

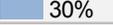
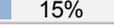
| <b>1. Are you licensed by the Utah Insurance Department to sell insurance? (n=238)</b> |   | <b>%</b> |
|--|---|----------|
| Yes  |  | 79%      |
| No   |  | 21%      |

| <b>2. What line(s) of insurance are you licensed to sell? (please select all that apply) (n=181)</b> |   | <b>%</b> |
|--|---|----------|
| Life Insurance   |  | 55%      |
| Accident & Health Insurance  |  | 49%      |
| Property Insurance   |  | 30%      |
| Casualty Insurance   |  | 29%      |
| Title: Escrow  |  | 25%      |
| Personal Lines Insurance   |  | 20%      |
| Title: Search  |  | 14%      |
| Variable Contracts   |  | 6%       |
| Title: Marketing Representative Only   |  | 5%       |
| Limited Lines: Bail Bonds  |  | 3%       |
| Limited Lines: Other   |  | 1%       |
| Other (please specify)   |  | 3%       |

| <b>3. During the last three years, have you (or has your agency) been investigated by the Utah Insurance Department? (n=227)</b> |   | <b>%</b> |
|--|---|----------|
| Yes  |    | 36%      |
| No   |    | 45%      |
| Don't know   |  | 20%      |

| <b>4. What do you believe initiated the Utah Insurance Department's investigation of you (or your agency)? (n=74)</b> |   | <b>%</b> |
|---|---|----------|
| Licensing issue*  |  | 28%      |
| Consumer complaint*   |  | 16%      |
| Other complaint*  |  | 15%      |
| Competitor complaint*   |  | 12%      |
| UID aggression/retribution*   |  | 11%      |
| Market conduct audit*   |  | 7%       |
| Advertising issue*  |  | 5%       |
| Don't know*   |  | 5%       |

\* Qualitative responses to open-ended question categorized by auditor.

| <b>5. Please rate the investigator's explanation of the investigation process: (n=76)</b> | <b>Poor</b>   | <b>Fair</b>   | <b>Good</b>  | <b>Excellent</b>  | <b>Don't know</b>   |
|---|---|---|--|---|---|
|   |  |  |  |  |  |
| <b>5. Please rate the investigator's explanation of the investigation process: (n=73)</b> | <b>Poor</b>   | <b>Fair</b>   | <b>Good</b>  | <b>Excellent</b>  | <b>Don't know</b>   |
|   |  |  |  |  |  |

| 6. Please rate the investigator(s) you interacted with during the investigation: (n=76) | Poor | Fair | Good | Excellent | Don't know |
|---|------|------|------|-----------|------------|
| Professionalism   | 17%  | 14%  | 34%  | 26%       | 8%         |
| Accessibility   | 13%  | 17%  | 42%  | 20%       | 8%         |
| Knowledge   | 16%  | 17%  | 41%  | 18%       | 8%         |
| Overall impression  | 26%  | 20%  | 28%  | 20%       | 7%         |

| 6. Please rate the investigator(s) you interacted with during the investigation: (n=70) | Poor | Fair | Good | Excellent | Don't know |
|---|------|------|------|-----------|------------|
| Professionalism   | 19%  | 16%  | 37%  | 29%       |            |
| Accessibility   | 14%  | 19%  | 46%  | 21%       |            |
| Knowledge   | 17%  | 19%  | 44%  | 20%       |            |
| Overall impression  | 28%  | 21%  | 30%  | 21%       |            |

| 7. Following the investigation, did the investigator contact you to share the results of the investigation? (n=76) | %   |
|--|-----|
| Yes  | 72% |
| No   | 20% |
| Don't know   | 8%  |

| 8. Following the investigation, did the investigator inform you of any violations and recommend a penalty, or penalties? (including forfeiture and/or other corrective action) (n=76) | %   |
|---|-----|
| Yes   | 70% |
| No  | 22% |
| Don't know  | 8%  |

| 9. How reasonable do you feel the investigator's recommendations were, given the circumstances? (n=53) | Very Unreasonable | Unreasonable | Neither reasonable nor unreasonable | Reasonable | Very reasonable |
|--|-------------------|--------------|-------------------------------------|------------|-----------------|
|  | 21%               | 26%          | 15%                                 | 26%        | 11%             |

| 10. Did the investigator inform you that you did not have to accept the recommendation(s), and could instead participate in a hearing where you could present your case before an Administrative Law Judge (ALJ)? (n=53) | %   |
|--|-----|
| Yes  | 60% |
| No   | 25% |
| Don't know   | 15% |

| <b>11. How did you respond to the investigator's initial recommendations? (n=53)</b> |     | % |
|--|-----|---|
| Accepted the recommendation(s)   | 77% |   |
| Declined the recommendation(s)   | 23% |   |
| Ignored the communication  | 0%  |   |

| <b>12. Was the significance of signing a stipulation and order explained to you prior to signing the formal agreement? (e.g. waiver of right to appeal, etc.) (n=51)</b> |     | % |
|--|-----|---|
| Yes  | 47% |   |
| No   | 22% |   |
| Don't know   | 14% |   |
| N/A  | 18% |   |

| <b>13. At any time following the investigation, did you (and/or your attorney) negotiate a settlement with the Utah Insurance Department? (n=51)</b> |     | % |
|--|-----|---|
| Yes, before the department filed a formal  | 10% |   |
| Yes, after the department filed a formal   | 20% |   |
| Yes, during/after the pre-hearing  | 4%  |   |
| No   | 67% |   |

| <b>14. Please rate your experience with the administrative hearing (n=39-41)</b> | Poor | Fair | Good | Excellent | N/A |
|--|------|------|------|-----------|-----|
| Administrative Law Judge (ALJ) (n=39)  | 10%  | 0%   | 8%   | 0%        | 82% |
| Assistant Attorney General (n=39)  | 8%   | 5%   | 8%   | 0%        | 79% |
| Hearing outcome (n=39)   | 15%  | 10%  | 5%   | 0%        | 69% |
| Overall experience (n=41)  | 22%  | 5%   | 12%  | 0%        | 61% |
| <b>14. Please rate your experience with the administrative hearing (n=7-16)</b>  | Poor | Fair | Good | Excellent | N/A |
| Administrative Law Judge (ALJ) (n=7)   | 57%  | 0%   | 43%  | 0%        | X   |
| Assistant Attorney General (n=8)   | 38%  | 25%  | 38%  | 0%        |     |
| Hearing outcome (n=12)   | 50%  | 33%  | 17%  | 0%        |     |
| Overall experience (n=16)  | 56%  | 13%  | 31%  | 0%        |     |

| <b>15. Did you appeal the outcome of the administrative hearing? (n=41)</b> |      | % |
|---|------|---|
| Yes   | 0%   |   |
| No  | 100% |   |

| <b>16. Please rate your experience with the appeals process: (n=0)</b> | Poor | Fair | Good | Excellent | N/A |
|--|------|------|------|-----------|-----|
| Agency Review (Commissioner/designee)                                  | 0%   | 0%   | 0%   | 0%        | 0%  |
| Judicial Review (Court of Appeals)                                     | 0%   | 0%   | 0%   | 0%        | 0%  |

**This Page Left Blank Intentionally**

## **Agency Response**

**This Page Left Blank Intentionally**



# Insurance Department

State of Utah

GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

NEAL T. GOOCH  
*Commissioner*

June 27, 2013

John M. Schaff, CIA  
Auditor General  
Office of the Legislative Auditor  
W315 Utah State Capitol Complex  
Salt Lake City, UT 84114

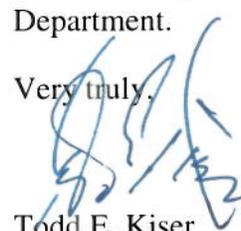
Auditor General Schaff:

Please find attached the Utah Insurance Department's response to A Performance Audit of The Utah Insurance Department (Report No. 2013-07) ("Report").

I would like to thank you and your staff, specifically Rick Coleman, Wayne Kidd and Michael Allred, for their professionalism conducting this audit. They were responsive, respectful and accommodating in their requests for information and working with my staff.

I am pleased to receive the Report and its recommendations. As further outlined in the attached, I am utilizing the Report as a resource to direct and implement improvement at the Insurance Department.

Very truly,



Todd E. Kiser  
Commissioner of Insurance

Enclosure

# RESPONSE TO A PERFORMANCE AUDIT OF THE UTAH INSURANCE DEPARTMENT

JULY 2013

## I. COMMISSIONER'S EXECUTIVE SUMMARY

As the recently appointed chief officer of the Utah Insurance Department ("Department") I appreciate this opportunity of receiving the objective Performance Audit of the Utah Insurance Department, Number 2013-07 (the "Report"). I recognize that while the Report is generally positive, there are areas that need attention and improvement.

I accept and agree with the Report's overall recommendations that the Department: 1) improve communication with insurance producers; 2) better document market conduct case files; and 3) update market conduct policies and procedures to provide responsive and accurate information in a timely manner to licensees being investigated or involved in an enforcement action.

Improving communication with insurance producers is a goal I made when I accepted the position of insurance commissioner earlier this year. To achieve that goal I initiated a three prong approach. First, I began a dialog with insurance producers and other licensees with the launch of "Conversations with the Commissioner." The first event was held on June 5<sup>th</sup> at the Capitol Complex and directed at licensees in the Salt Lake Valley and Northern Utah. The dialog began with an electronic invitation to insurance producers to hear and participate in a presentation on a variety of topics by Department staff. That pilot event was well received and provided valuable insight on how to proceed. The next Conversations with the Commissioner is scheduled for July 16<sup>th</sup> in Provo. Visits to Cache, Carbon and Washington counties are planned later this year. Second, my staff and I have will be presenting continuing education courses ("CE") focused on updates, changes and important information about Utah insurance laws offered, free of charge, to Utah producers. Although my staff presents regularly when invited to participate in CE events, these CE events will be sponsored by the Department and will be offered periodically throughout the year in different regions of the State. Finally, based on feedback I have received from the Utah insurance producer community, the Department is developing a newsletter for distribution to Utah insurance producers. The newsletter will highlight a message from the commissioner, information about laws and rule changes, other timely and relevant information including the popular report on enforcement actions taken by the Department.

As more fully described below, my staff and I are in the process of revising and updating investigative policies and procedures, reviewing and updating forms, templates and communication opportunities to address each of the recommendations in the Report. I anticipate the updated market conduct policies and forms, after review by the Department's assistant attorney general, will be fully implemented within the next forty-five (45) days.

I look forward to answering any questions members of this honorable body have and reporting back next year on successful implementation of the Report's recommendations.

## II. CHAPTER II - THE UID SHOULD IMPROVE COMMUNICATION WITH LICENSEES

**Recommendation 1: We recommend that the Department review the effectiveness of its communication methods for information regarding law and rule changes.**

Response: *The Department accepts this recommendation.*

*As noted in the Commissioner's Executive Summary above, the outreach program, "Conversations with the Commissioner," began on June 5, 2013 at the State Capitol Complex. The Department will continue to participate in CE opportunities when invited as well as creating and sponsoring our own CE events on rule and law changes as well as other insurance related topics that will be provided, without charge, to Utah insurance producers on a periodic basis. The Department is also creating an electronic newsletter to keep all licensees informed of new developments, changes and enforcement actions. We will continue to keep our website up-to-date and provide access to "Monitor This Page", RRS Feeds and communicate via Twitter. The Department is working with DTS on the technological logistics on emailing the newsletters and other communications to our 103,000 producer licensees. The Department recognizes that communication is the backbone of any organization and is committed to enhance that critical communication.*

**Recommendation 2: We recommend that the Market Conduct Division standardize examiner explanations of the investigative process with clear policy and examiner training.**

Response: *The Department agrees with and accepts this recommendation.*

*The Market Conduct Division director is in the process of reviewing, revising and updating the Division's policies related to communicating with licensees being investigated. Once those updated policies and procedures are reviewed by the Department's assistant attorney general and adopted by the commissioner, the Market Conduct director will conduct formal training on all policies and procedures for all market conduct investigators. In addition, packets of the policies and procedures will be given to new investigators along with training. It is anticipated the updated polices will be approved and training of current staff will be completed mid-August 2013.*

## III. CHAPTER III – INVESTIGATION CASE REVIEW SHOWS NEED FOR BETTER DOCUMENTATION

**Recommendation 1: We recommend that the Market Conduct Division include adequate documentation to support the recommended monetary penalties in the investigation files.**

Response: *The Department agrees with and accepts this recommendation.*

*Adequate documentation in investigation files is already required by current policies and procedures. However, review and additional training on those policies and procedures will be conducted by the Market Conduct Division director. It is anticipated that review and training by the Market Conduct director on this subject will be completed by mid-August 2013.*

**Recommendation 2: We recommend that the Market Conduct Division ensure that investigative files clearly document why a probation penalty is recommended and include a probation review plan.**

*Response: The Department agrees with and accepts this recommendation.*

*Documentation standards in investigation files are already outlined and required by current policies and procedures. However, review of existing policies and procedures as well as additional training on the standards will be conducted by the Market Conduct director. It is anticipated that review and training will be completed by mid-August 2013.*

**Recommendation 3: We recommend that the Market Conduct Division require that the mitigating and aggravating circumstances:**

- **Be significant and relevant to the investigation**
- **Be supported with adequate documentation**
- **Have a clear connection to the impact on the recommended actions**

*Response: The Department agrees with and accepts this recommendation.*

*The revision and update to the Market Conduct Division's policies and procedures will include specific guidelines on how to document relevant and significant mitigating and aggravating circumstances that have a clear connection to a recommended action. Once adopted, the Market Conduct director will provide training on the new mitigating and aggravating circumstance policies and procedures to all Market Conduct investigators. It is anticipated that the new policy will be adopted and training will be completed by mid-August 2013.*

**Recommendation 4: We recommend that the Market Conduct Division document the specific source of complaints investigated in the investigation files or SIRCON.**

*Response: The Department agrees with and accepts this recommendation.*

*The Market Conduct Division addressed this recommendation by adding a requirement in the Investigation Report Template to designate the source of the complaint. The Market Conduct policies and procedures are being updated to require more specificity in SIRCON (the Department's database system) when the source of the complaint is from within the Department or another agency. Information will include the name of the division, individual or circumstance, as appropriate, from which each complaint is received. Training on the updated Investigation Report Template and the new requirements for use of more specific complaint sources in the SIRCON database is complete.*

**Recommendation 5: We recommend that the Market Conduct Division ensure that the original recommended penalties as well as the final penalties are stated in the investigation files.**

*Response: The Department agrees with and accepts this recommendation.*

*The Market Conduct Division's policies and procedures will be reviewed and updated to ensure all Market Conduct investigators properly document investigation files. Training will also be conducted by the Market Conduct director with particular emphasis on procedures for updating investigation files as they move toward closure so a clear record of any changes is reflected in the file. It is anticipated the policies and procedures will be updated and training on maintenance of investigation files will be complete by mid-August 2013.*

#### **IV. CHAPTER IV - POLICIES AND PROCEDURES ARE NEEDED**

**Recommendation 1: We recommend that the Market Conduct Division develop in policy a standard format to communicate investigation results to the respondents, including a standard description of the respondent's responsibilities and rights.**

*Response: The Department agrees with and accepts this recommendation. The Market Conduct Division is revising a "recommendation letter" template to address this recommendation. The template will be reviewed by the Department's assistant attorney general before approval. The Market Conduct director will also conduct training on the use of the template. It is anticipated the template and training will be completed by mid-August 2013.*

**Recommendation 2: We recommend that the Market Conduct Division require a policy that relevant correspondence pertaining to an investigation case be included in the investigation file.**

*Response: The Department agrees with and accepts this recommendation.*

*Adequate documentation in investigation files is already required by current policies and procedures. However, a review, revision and additional training on those policies and procedures, with specific emphasis on inclusion, in writing, of any and all communication pertaining to an investigation, will be conducted by the Market Conduct director. It is anticipated that the review and policy update as well as training for all Market Conduct investigators on this subject will be completed by mid-August 2013.*

**Recommendation 3: We recommend that the Market Conduct Division formalize two case management tools: (1) complaint prioritization and (2) periodic caseload monitoring reports.**

*Response: The Department agrees with and accepts this recommendation.*

*The Market Conduct Division director will develop a formal case management policy, utilizing the guidelines in the NAIC Market Regulation Handbook, for complaint prioritization and a separate case management tool. This will enable the Department to better monitor and track Market Conduct investigators' caseloads, timeliness and other relevant information in a matrix format that can be produced in a timely and efficient manner. The formal case management policies will include reporting protocols to the Office of the Commissioner. It is anticipated that the enhanced case management tools will be developed and implanted by the end of the third calendar year quarter of 2013.*

## **V. CONCLUSION**

The Department is pleased to have the resource presented by this audit. The Department is motivated and committed to implement the Report's recommendations.