

STATE OF CONNECTICUT



AUDITORS OF PUBLIC ACCOUNTS

STATE CAPITOL

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JOHN C. GERAGOSIAN

ROBERT J. KANE

December 4, 2019

Representative Themis Klarides  
House Republican Leader  
Legislative Office Building, Room 4200  
300 Capitol Avenue  
Hartford, CT 06106

Representative Mitch Bolinsky  
Legislative Office Building, Room 4200  
300 Capitol Avenue  
Hartford, CT 06106

Dear Representatives Klarides and Bolinsky:

In a letter dated September 18, 2019, you asked our office to perform an audit of the John J. Driscoll United Labor Agency's (ULA) administration of the former Sandy Hook Workers Assistance Program (SHWAP) funds and answer specific questions regarding ULA's oversight of those funds. The John J. Driscoll United Labor Agency is a non-profit agency affiliated with the Connecticut AFL-CIO. This letter serves as our report on this matter.

Special Act No. 13-1 established the Sandy Hook Workers Assistance Program and the Sandy Hook Workers Assistance Fund (Fund) to provide immediate financial help for "affected persons" who suffered a mental or emotional impairment because of the tragic shooting at Sandy Hook Elementary School on December 14, 2012. The legislation required the Connecticut Judicial Branch's Office of Victim Services (OVS) to administer the program until it ended on August 31, 2015.

The act specified that no assistance would be paid to any affected person after August 31, 2015. OVS deposited a total of \$388,396 in donations, gifts, and grants into the Fund and distributed \$272,909 to recipients as of August 31, 2015. A total of \$115,827 remained in the Fund, including \$340 from 2 quarterly interest payments received after August 31, 2015.

	2012-2013	2013-2014	2014-2015	2015-2016	Cumulative
Deposits	\$ 204,801	\$ 183,008	\$ 527	\$ 60	\$ 388,396
Payments	\$ 29,646	\$ 126,577	\$ 74,276	\$ 42,410	\$ 272,909
Unexpended Balance	\$ 175,155	\$ 56,431	\$ (73,749)	\$ (42,350)	\$ 115,487
Applications Received	52	42	0	0	94
Applications Approved	15	11	4	4	34
Applications Denied	0	0	0	0	0
Applications Approved w/o Payment	37	31	(4)	(4)	60
Wage Losses	\$ 28,988	\$ 124,407	\$ 53,063	\$ 30,178	\$ 236,636
Medical Losses	\$ 658	\$ 2,170	\$ 21,213	\$ 12,232	\$ 36,273

Please note that the remaining 60 applications were determined "approved without payment" as the losses the applicants incurred were paid by other funding sources, or the applicants did not submit bills for eligible losses. According to OVS, no individual who submitted an application for assistance from the program was denied.

The act directed OVS to report to the General Assembly on or before May 1, 2015. The act required the report to "include recommendations to distribute any moneys remaining in the fund to such other charitable trusts or entities, including any community trust or foundation, as the administrator may determine will best fulfill the purposes of the program upon the termination of the program." The act did not provide for a specific process to distribute the funds at the end of the program.

On May 4, 2015, in accordance with the act, OVS reported the status of the Sandy Hook Workers Assistance Program to the General Assembly and disclosed a plan for the distribution of the remaining funds. OVS estimated that approximately \$140,000 would remain in the Fund and recommended the transfer of 75% of those funds to the John J. Driscoll United Labor Agency to be used to ensure that teachers affected by the tragedy continued to have access to programs and services. OVS also recommended the transfer of the rest of the funds (25%) to the Newtown Police Union, AFSCME AFL – CIO, Council 15 to serve the unmet needs of law enforcement and related personnel.

On August 18, 2015, OVS reported to the General Assembly that it would transfer 75% of the remaining SHWAP funds to the John J. Driscoll United Labor Agency to ensure that unionized and non-unionized school personnel affected by the December 14, 2012 tragedy continued to have access to programs and services. OVS would transfer the remaining funds to the Newtown Police Union for ongoing unmet needs of members of other police departments who responded to the Sandy Hook tragedy.

Prior to the disbursement of the funds, the Newton Police Union notified OVS that it no longer wanted its portion of the funds. OVS decided to transfer all of the remaining funds to ULA, but did not inform the legislature of this change.

OVS and ULA entered into 2 memorandums of understanding (MOU). The first, executed on July 6, 2016, reflects the 75% distribution to ULA. The MOU terms stated that ULA would use the funds "exclusively to ensure that unionized and non-unionized school personnel who were affected persons under the act continue to have access to programs and services."

The second MOU, signed on August 26, 2016, reflects the transfer to ULA for the 25% declined by the Newtown Police Union. The language in the second MOU mirrored the first "exclusively to ensure that unionized and non-unionized school personnel who were affected persons under the Act continue to have access to programs and services".

On September 1, 2016, OVS transferred the remaining funds, totaling \$115,827, to ULA. To date, ULA has distributed \$6,323 of the funds to 5 eligible recipients. In addition, ULA charged \$5,791 to cover administrative costs, as reflected in the MOU. Based on these distributions, ULA should have \$103,713 on hand and available for future distributions. However, ULA did not have these funds available.

In order to fulfill its fiduciary responsibilities, ULA should have maintained a cash (or short-term investment) balance of at least \$103,713 earmarked solely for SHWAP. However, it appears that as a result of financial difficulties, ULA may have used the SHWAP funds for other purposes. Since ULA commingled the \$115,827 in SHWAP funds with cash from other sources rather than segregate it in a separate bank account (ULA was not obligated to segregate it), we cannot readily determine exactly how ULA spent these funds. Because ULA does not have sufficient assets to satisfy its obligations, it does not appear to have fulfilled its fiduciary responsibility with respect to these funds.

ULA's financial statements showed a steady decline in net assets from \$188,420 as of June 30, 2014 to a deficit balance of \$20,962 as of June 30, 2018. Furthermore, ULA's financial condition continued to deteriorate in fiscal year 2019. ULA's unaudited preliminary trial balance as of June 30, 2019 shows a deficit net assets balance of \$76,029.

Additionally, ULA's assets as of June 30, 2018 consisted primarily of amounts receivable from funding sources. The Statement of Financial Position as of June 30, 2018 showed assets of \$16,088 in cash, \$3,700 in security deposits, and \$154,731 described as due from funding sources.

ULA's cash balance was only \$16,088 as of June 30, 2018, and it did not have any investments. Although ULA's cash balance fluctuated based on the timing of receipts and disbursements, it totaled only \$41,977 as of September 30, 2019.

Earlier this year, concerns were raised whether ULA was honoring the original intent of the act. There was a claim that ULA excluded first responders. This occurred because MOUs between OVS and ULA had language limiting the assistance to educational employees. On June 26, 2019, OVS and ULA executed an amendment to the original MOU restoring use of the 25% to meet the ongoing needs of affected persons who are members of police departments or state troopers to reflect the provisions of the act and legislative intent.

### **You asked the following questions:**

#### **How have the funds been distributed?**

ULA distributed a total of \$6,323 to 5 eligible recipients. Note 3 to ULA's financial statements for June 30, 2018 indicates that \$106,034 remained as of that date. However, since ULA's cash balance was only \$16,088 as of June 30, 2018, it appears that ULA used the remaining funds for other purposes.

**How many applications for funds have been received, accepted, and rejected?**

The ULA executive director stated that ULA received 5 requests and paid them all. She also informed us that ULA did not deny any request.

It should be noted that in an email dated February 12, 2019, OVS and ULA received an inquiry from one of the Newtown nonprofit organizations regarding the possibility of updating the MOU to include first responders. ULA responded that it had an obligation to honor the MOU and was instructed by OVS that the funds were to be used exclusively for unionized and non-unionized school personnel. OVS responded that it no longer had oversight regarding the funds. It also explained that the Newtown Police Chief declined the money as the police did not need it. OVS further explained that the Newtown Police Union also declined the money.

In your letter to us, you noted that you were aware of 2 individuals that were eligible for benefits, but did not receive them. However, we are not aware that ULA rejected any applicants. As we noted above, a Newton nonprofit inquired about funding available for first responders and referred to a police officer in need of these funds. However, ULA maintains it never received a claim and we found no evidence of one.

**Among the applications received, accepted, and rejected, what is the breakdown between union vs. non-union applicants?**

ULA did not maintain these statistics. The MOUs did not require ULA to maintain these statistics.

**Who are considered to be “affected persons” under the language of the MOU?**

The July 11, 2016 and August 26, 2016 MOUs state that ULA will use the funds exclusively to ensure that unionized and non-unionized school personnel who were affected persons under the act would continue to have access to programs and services. The MOU refers to the act’s definition of affected persons.

**Has any of the funding gone to provide assistance to individuals who are not “affected persons”?**

ULA provided us with documentation for the 5 recipients who received disbursements from the SHWAP funds and they all appeared to be affected persons.

**Why is the language of the amendment more restrictive than the language of the MOU? Why wasn’t the MOU dated July 11, 2016 also amended to make the language more restrictive and clear, in order to be consistent with the amendment language?**

On August 18, 2015 OVS notified the General Assembly of its intent to distribute the remaining funds as follows:

- OVS would transfer 75% of the remaining funds to the United Labor Agency, a charitable organization established by the Connecticut AFL-CIO, to be used to ensure that unionized and non-unionized school personnel who were affected by the Sandy Hook tragedy continued to have access to programs and services.

- OVS would transfer 25% of the remaining funds to the Newtown Police Union, (AFSCME AFL-CIO, Council 15) a labor organization, to be used by members of other police departments who responded to the affected area and had ongoing unmet needs.

Both MOUs state that ULA will use the funds exclusively to ensure that unionized and non-unionized school personnel who were affected persons under the act continued to have access to programs and services.

The June 26, 2019 revised MOU states that ULA could use the funds to meet the ongoing needs of members of the police departments or state police troops who are “affected person” under the act. The revised MOU intended to restore the use of the 25% to exclusively meet the ongoing needs of members of police departments or state troopers who are affected persons pursuant to the act and legislative intent.

In your letter to the Attorney General dated February 27, 2019, you raised concerns about the donations made to SHWAP. You presented this question to the Attorney General and he responded that he did not read the language of the amendment to be more restrictive. He stated that the language of the amendment mirrored the language set forth in Judge Carroll’s May 4, 2015 and August 13, 2015 letters to the General Assembly.

**What percentage of the funds, if any, has been used for administrative purposes, including operational expenses for the administration of the funds?**

The executive director informed us that ULA used 5% or \$5,791 of the funds for administrative costs. However, since ULA had a deficit net assets balance as of June 30, 2018, it is likely that ULA used additional funds for administrative or other purposes.

**How much money remains in the fund to date?**

The executive director told us that the ULA accounting system showed that the SHWAP fund has a balance of \$103,712. However, we found that ULA only had a cash balance of \$16,088 as of June 30, 2018. Although the cash balance fluctuated based on the timing of receipts and disbursements, it totaled only \$41,977 as of September 30, 2018.

**Does ULA continue to receive requests for assistance under SHWAP?**

The executive director told us that ULA received the last request on October 1, 2018 and promptly paid it.

**What is ULA’s specific process for determining eligibility for assistance?**

ULA entered into memorandums of understanding with the Town of Newton-Center for Support and Wellness and the Newtown-Sandy Hook Community Foundation, Inc. The requests usually came from those organizations after they were vetted for eligibility. If the requests were deemed eligible, ULA would process the payments. ULA relied on doctor’s notes and receipts for supporting documentation, and did not question the doctor’s notes.

**We respectfully request a review and presentation of, at minimum, a detailed, historical, chronologic break-down of distributions “by affected class,” qualifying and not, including answers to all aforementioned questions.**

These individuals received a total of \$6,323 from the SHWAP funds:

- Recipient 1 – Para Educator – \$534
- Recipient 2 – Reading Specialist – \$1,080
- Recipient 3 – Teacher – \$2,388
- Recipient 4 – Custodian – \$1,381
- Recipient 5 – Speech/Language Pathologist – \$940

**Conclusion**

The legislation and MOUs assumed that demand would outpace the amount of funding, but that did not occur. Therefore, neither the legislation nor MOUs addressed what should have happened to these funds if there was little or no demand for them.

Should a similar fund be created in the future, the language in legislation and related contracts should be specific in how the funds are to be distributed. To avoid comingling of assets, it may be necessary to create a separate fund account. Additionally, excess funds could be prorated and returned to donors. The legislation and contracts should ensure better state oversight of the successor non-profit agency so that it properly maintains the funds and distributes them consistent with the legislature’s intent. This oversight would help to preserve the appropriate segregation of funds and prevent comingling.

Please contact us if you have further questions or require additional information.

Sincerely,



Robert J. Kane  
State Auditor



John C. Geragosian  
State Auditor