



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued September 30, 2021

Massachusetts Gaming Commission

For the period July 1, 2018 through March 31, 2020





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September 30, 2021

Ms. Cathy Judd-Stein, Chairperson
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Dear Ms. Judd-Stein:

I am pleased to provide this performance audit of the Massachusetts Gaming Commission. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2018 through March 31, 2020. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Massachusetts Gaming Commission for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
EBH	Encore Boston Harbor
GEU	Gaming Enforcement Unit
IEB	Investigations and Enforcement Bureau
MGC	Massachusetts Gaming Commission
MTBA	Massachusetts Thoroughbred Breeders Association
NVEL	Non-Voluntary Exclusion List
PPC	Plainridge Park Casino
RHDF	Race Horse Development Fund
SOMI	Standardbred Owners of Massachusetts Inc.
VSE	Voluntary Self-Exclusion

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Gaming Commission (MGC) for the period July 1, 2018 through March 31, 2020. In this audit, we examined MGC's administration of the Voluntary Self-Exclusion Program, the Non-Voluntary Exclusion List, and the Race Horse Development Fund.

Our audit revealed no significant instances of noncompliance by MGC that must be reported under generally accepted government auditing standards.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Gaming Commission (MGC) was established by Section 3 of Chapter 23K of the Massachusetts General Laws as the oversight agency charged with monitoring gaming establishments.

MGC consists of five full-time commissioners who are responsible for overseeing and implementing the licensing and regulation process for two casinos—MGM Springfield and Encore Boston Harbor (EBH)—and the sole statewide slots parlor, Plainridge Park Casino (PPC). According to MGC’s website, its mission is “to create a fair, transparent, and participatory process for implementing the expanded gaming law.”

MGC’s Research and Responsible Gaming Division develops and implements responsible gaming programs, including the Voluntary Self-Exclusion (VSE) Program and GameSense.¹ These programs provide specific structures to promote responsible gaming and ethical, responsible patron behavior.

The MGC Investigations and Enforcement Bureau (IEB) receives intelligence on gaming establishments and investigates any suspected violations described under Chapter 194 of the Acts of 2011 (the Gaming Law).

The Gaming Enforcement Unit (GEU) at the Massachusetts State Police works with IEB to investigate any activity taking place at MGM Springfield, EBH, and PPC.

MGC’s Division of Racing performs all regulatory duties and responsibilities related to the Massachusetts horse racing industry.

MGC’s office is at 101 Federal Street in Boston. MGC had 94 full-time employees as of March 31, 2020. It is a self-sustaining entity. Its operating costs are funded by the Massachusetts gaming industry through various assessments.

Voluntary Exclusion

Section 133 of Title 205 of the Code of Massachusetts Regulations (CMR) allows problem gamblers² to voluntarily bar themselves from entering the gaming areas of MGM Springfield, EBH, and PPC. They can

1. GameSense is a third-party vendor that promotes positive behaviors and attitudes to reduce the negative effects of problem gambling.
2. According to 205 CMR 133, the term “problem gambler” means “an individual who believes their gambling behavior is currently, or may in the future without intervention, cause problems in their life or in the lives of their family, friends, and/or co-workers.”

do this by completing an application on the GameSense website or in person with any designated agent.³ Once the application is completed, a designated agent forwards the application to the VSE program manager at the Research and Responsible Gaming Division, who maintains the VSE list, and the program manager adds the person to the list. The VSE program manager distributes the VSE list to licensees every Monday and Thursday unless one of those days is a holiday; the licensees may share it with their affiliates in other jurisdictions to help with proper administration of responsible gaming programs. The VSE program manager also sends the VSE list to GameSense supervisors and IEB. Licensees also share the list with their marketing departments to ensure that each person on the list is removed from marketing and player reward lists.

Non-Voluntary Exclusion

The regulation 205 CMR 152 allows MGC to establish a Non-Voluntary Exclusion List (NVEL) of individuals to be barred from the three gaming licensee locations. IEB receives referrals for individuals to be placed on the NVEL from GEU, the Office of the Attorney General, its own gaming agents, and gaming licensees' compliance departments. These referrals are based on previous or potential injurious threats to the interests of the gaming industry as a whole within the state. Once a person is referred, IEB verifies that the person meets the criteria for exclusion and gathers arrest records, conviction reports, and any other relevant information. The director of IEB reviews this information and decides whether to place the person on the NVEL.

IEB is responsible for ensuring that gaming licensees monitor gambling floors and prevent individuals on the VSE list and NVEL from entering or remove them immediately.

Race Horse Development Fund

Chapter 194 of the Acts of 2011 created the Race Horse Development Fund (RHDF) pursuant to Section 60 of Chapter 23K of the General Laws and 205 CMR 149. The RHDF's purpose is to build and strengthen the Massachusetts horse racing industry and to help pay for benefits for riders, trainers, and others who work in the industry by supplementing purses for standardbred and thoroughbred races. The RHDF is funded by a percentage of the gaming revenue generated by the three Massachusetts gaming licensees.

3. Designated agents are individuals who have completed training on processing applications for the VSE Program, if the training has been approved and administered by the commission or its designee per 205 CMR 133.02. Designated agents include GameSense agents, community-based treatment providers, and counselors.

Gross gaming revenue from MGM Springfield and EBH⁴ is taxed 25% by the state because they are Category 1 licensees; the RHDF receives 2.5% of the proceeds of this tax. Gross gaming revenue from PPC, a Category 2 licensee,⁵ is taxed 40% by the state, and an additional 9% of its gross gaming revenue is allocated directly to the RHDF. These percentages were established by Section 55 of Chapter 23K of the General Laws. The RHDF's total revenue during our audit period was \$42,582,022. Disbursements from the RHDF were \$17,073,216 for fiscal year 2019 and \$8,657,155 for fiscal year 2020.

Two breeding associations receive funding from MGC via the RHDF: Standardbred Owners of Massachusetts Inc. and the Massachusetts Thoroughbred Breeders Association. The percentage of the funding that each association receives is based on recommendations from the MGC Horse Racing Committee.⁶

RHDF funds are distributed as follows, according to Section 60 of Chapter 23K of the General Laws:

- 80% of the funds are allocated for purse accounts to fund purses for live races
- 16% of the funds are earmarked to administer thoroughbred and standardbred breeding associations
- 4% of the funds are set aside for health and pension benefits for the members of the New England Horsemen's Benevolent and Protective Association and the Harness Horsemen's Association of New England Inc.

4. According to Section 2 of Chapter 23K of the General Laws, a Category 1 license is "a license issued by [MGC] that permits the licensee to operate a gaming establishment with table games and slot machines."

5. According to Section 2 of Chapter 23K of the General Laws, a Category 2 license is "a license issued by [MGC] that permits the licensee to operate a gaming establishment with no table games and not more than 1,250 slot machines."

6. The Horse Racing Committee is made up of appointees of the Governor, the Treasurer, the Attorney General, the Standardbred Owners of Massachusetts Inc. and the Massachusetts Thoroughbred Breeders Association. The committee meets to make recommendations on how funds should be distributed between thoroughbred and standardbred racing facilities.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Gaming Commission (MGC) for the period July 1, 2018 through March 31, 2020.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer and the conclusion we reached regarding each objective.

Objective	Conclusion
1. Did MGC implement policies and procedures to comply with Section 133.02(3) of Title 205 of the Code of Massachusetts Regulations (CMR)?	Yes
2. Did MGC implement policies and procedures to comply with 205 CMR 152.06?	Yes
3. Did MGC implement a process for placing individuals on the Non-Voluntary Exclusion List (NVEL) in accordance with 205 CMR 152.03?	Yes
4. Did MGC administer the Race Horse Development Fund (RHDF) in accordance with the recommendations of the Horse Racing Committee per Section 60 of Chapter 23K of the General Laws?	Yes

To accomplish our objectives, we gained an understanding of MGC's internal control environment related to the objectives by reviewing applicable laws, regulations, and agency policies and procedures, as well as conducting interviews with management and staff members. We evaluated the operating effectiveness of internal controls regarding establishment and enforcement of the Voluntary Self-Exclusion (VSE) list and NVEL as well as the processing of payments from the RHDF.

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the audit objectives.

VSE Application Training

To determine whether MGC complied with 205 CMR 133.02(3), we performed a test to determine whether gaming agents received training as designated agents. We obtained a list from MGC of all gaming agents who processed VSE Program applications. We determined that MGC gaming agents completed 39 of the 524 applications received during our audit period; advisors from GameSense, MGC's third-party vendor, completed 480; and employees of MGC's authorized outside agencies, such as mental health counselors, completed 5. We reviewed all 39 applications completed by MGC's gaming agents during our audit period. We ensured that the gaming agents who received and processed the applications had completed the approved training and had properly signed off on applications.

Gaming Licensee Monitoring

To determine whether MGC provided coverage 24 hours a day, 7 days a week, to monitor enforcement of the NVEL by gaming licensees, we obtained shift reports, which list the MGC gaming agents on duty for all three gaming licensees: Plainridge Park Casino (PPC), MGM Springfield, and Encore Boston Harbor (EBH). Each casino operates on three shifts, which allows for coverage 24 hours a day, 7 days a week. We identified the number of days of operation during the audit period for each casino and determined that there were 1,483 total days of operation (624 days at PPC, 570 days at MGM Springfield, and 289 days at EBH) when MGC gaming agents provided coverage during the audit period. We selected a random, statistical sample of 30 of these 1,483 days, with a 95% confidence level, a 10% tolerable error rate, and a 0% expected error rate.

We obtained and reviewed the daily shift reports filed by MGC gaming agent supervisors, as well as the shift schedules for each location, to ensure that at least one MGC gaming agent or supervising agent was monitoring operations on each licensee gaming floor. We compared the data provided by MGC to the data from the Commonwealth's Human Resources Compensation Management System, which captures payroll-related accounting entries, and to records in the Massachusetts Management Accounting and Reporting System.⁷ We then reviewed MGC records to verify that gaming agents' schedules matched their reported work hours.

7. The Massachusetts Management Accounting and Reporting System is a complete financial management system designed to support the Commonwealth's financial functions.

MGC Placement of Individuals on the NVEL

MGC's Investigations and Enforcement Bureau determines whether individuals meet the criteria to be added to the NVEL and gathers relevant information, such as arrest records and conviction reports, from each individual's files. The criteria for an individual are recorded on a document called an exclusion order. We identified nine individuals who were placed on the NVEL during the audit period and reviewed their exclusion orders to determine whether they had been placed according to MGC's policy.

Horse Racing Committee Recommendations

MGC is required to disburse funds to the Massachusetts Thoroughbred Breeders Association (MTBA) and Standardbred Owners of Massachusetts Inc. (SOMI). The Horse Racing Committee makes recommendations on the percentage of funds to be distributed between the two associations and notifies the clerks of the state Senate and House of Representatives within 30 days after making its recommendations. We obtained all notifications and percentages sent by the Horse Racing Committee to the state Legislature during our audit period. We verified that distributed amounts conformed to the Horse Racing Committee's recommendations. We identified a population of 21 months of distributions that were made from the RHDF during our audit period. We selected a nonstatistical, judgmental sample of 8 months out of 21.

We identified the annual percentage amounts paid from the RHDF to SOMI and MTBA and reconciled them to the Horse Racing Committee distribution recommendations.

We reviewed documentation and verified the following:

- The distributions from the RHDF were in accordance with the percentages recommended by the Horse Racing Committee.
- Purse accounts received 80% of the funds from the RHDF, breeders' associations received 16%, and health and pension funds for members of the New England Horsemen's Benevolent and Protective Association and the Harness Horsemen's Association of New England Inc. received 4%.
- The distributions in MGC's fiscal year 2019 annual report matched those in MGC's monthly report ending March 31, 2020.

Data Reliability Assessment

To determine the reliability of the VSE list, we traced a sample of 20 individuals on the list to their applications filed during the audit period. In addition, we traced a sample of 20 applications to the VSE list.

To determine completeness of MGC NVEL data, we reviewed the files for 12 individuals considered for exclusion. We verified that 3 individuals did not qualify for exclusion based on the criteria in the regulation and that as a result, MGC did not issue exclusion orders for these 3 individuals. We determined that the other 9 individuals were added to the NVEL during the audit period. To determine the accuracy of the data, we performed tracing tests on the NVEL and traced exclusion orders to information on MGC's website.

We interviewed MGC officials concerning access and security for the VSE list and NVEL.

MGC management provided us with Excel spreadsheets showing revenue from gaming licensees and distribution amounts paid to MTBA and SOMI from the RHDF. We performed electronic testing to check for duplicate records and verify the total number of records on the spreadsheets.

Based on the data reliability procedures described above, we determined that the data obtained for our audit period were sufficiently reliable for the purposes of our audit work.

OTHER MATTERS

The Massachusetts Gaming Commission should work with the Massachusetts Thoroughbred Breeders Association and the Massachusetts Department of Agricultural Resources on matters related to the Race Horse Development Fund.

Chapter 194 of the Acts of 2011 expanded gaming in the Commonwealth and established the Race Horse Development Fund (RHDF) to support the Massachusetts thoroughbred and standardbred horse-racing industries. The Massachusetts Gaming Commission (MGC) administers the fund, which consists of money from gaming licensees. Section 60 of the Acts of 2011 states that funds from the RHDF are earmarked for thoroughbred and standardbred associations as approved by MGC, with 80% distributed into accounts that fund purse awards, 16% to support breeding associations, and 4% for health and pension benefits for the members of the New England Horsemen's Benevolent and Protective Association and the Harness Horsemen's Association of New England Inc.

Over the past several years, the Commonwealth's horse racing industry for thoroughbreds has changed. Specifically, in June 2019, the Suffolk Downs race track closed, and since then, all races that involve Massachusetts-bred thoroughbreds have been held out of state. This change in the industry has significantly affected the RHDF. Specifically, the 80% of the RHDF that is earmarked to fund purse awards cannot be distributed because, according to Section 4.02 of Title 205 of the Code of Massachusetts Regulations, it can only be used to fund races held in Massachusetts. Consequently, the Massachusetts Thoroughbred Breeders Association (MTBA) has been using the 16% of RHDF funding that is earmarked to support breeding associations to fund purses in out-of-state races when a Massachusetts-bred thoroughbred wins a purse. This is allowed under Section 2(g) of Chapter 128 of the Massachusetts General Laws.

As a result of the changes to the industry, spending from the RHDF for thoroughbred horse racing purses has declined while revenue deposited in the RHDF has increased. Specifically, according to MGC's annual reports, spending from the RHDF has decreased from \$17 million in fiscal year 2019 to \$8.7 million in fiscal year 2020. As of March 31, 2020, the unspent balance of the RHDF was \$16,851,650, of which \$16,836,045 was allocated for the thoroughbred racing purse award accounts. Consequently, the majority of the RHDF cannot be used as intended—to support the Massachusetts thoroughbred and

standardbred horse-racing industries in Massachusetts—or for any other purpose, and its unspent balance will continue to grow unless the Commonwealth takes measures to address the problem.

In recent years, bills have been filed in the Legislature regarding the horse racing industry. Some of them involved changes to the RHDF. For example, during the 2019–2020 legislative session, 10 such bills were filed in the Legislature, including House Bill 13, which was intended to grant MGC greater control and flexibility in determining the use of the RHDF. House Bill 387, filed during the 2020–2021 legislative session, is meant to reallocate \$10,000,000 annually from the RHDF to the Community Preservation Trust Fund.⁸

Section 2(g) of Chapter 128 of the General Laws requires MGC, MTBA, and management of the Equine Division of the Massachusetts Department of Agricultural Resources to consult to establish the percentages of purses to be awarded to breeders and owners for running horse races. The Office of the State Auditor believes that to better support the health of the thoroughbred racing industry in Massachusetts, MGC should also discuss the significant issues facing the industry—such as how to deal with the millions of dollars accumulating in the RHDF that cannot be distributed—with these entities, as well as with the Legislature as appropriate.

8. The Community Preservation Trust Fund was created under the Community Preservation Act in 2000 and is administered by the Department of Revenue. The fund provides money to communities to develop outdoor recreational areas, maintain their open spaces and historic aspects, and create affordable housing.