



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

*Making government work better*

Official Audit Report – Issued March 10, 2021

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## Office of Consumer Affairs and Business Regulation

For the period July 1, 2017 through June 30, 2019





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

*Making government work better*

March 10, 2021

Mr. Edward A. Palleschi, Undersecretary  
Office of Consumer Affairs and Business Regulation  
501 Boylston Street, Suite 5100  
Boston, MA 02116

Dear Undersecretary Palleschi:

I am pleased to provide this performance audit of the Office of Consumer Affairs and Business Regulation. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2017 through June 30, 2019. 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 Office of Consumer Affairs and Business Regulation 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 background.

Suzanne M. Bump  
Auditor of the Commonwealth

cc: Mike Kennealy, Secretary of the Executive Office of Housing and Economic Development

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## LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
CTR	Office of the Comptroller of the Commonwealth
DOB	Division of Banks
DOI	Division of Insurance
DOS	Division of Standards
DPL	Division of Professional Licensure
DTC	Department of Telecommunications and Cable
HIC	home improvement contractor
MMARS	Massachusetts Management Accounting and Reporting System
OCABR	Office of Consumer Affairs and Business Regulation
OSA	Office of the State Auditor
RCGF	Residential Contractor's Guaranty Fund

## 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 the Office of Consumer Affairs and Business Regulation (OCABR) for the period July 1, 2017 through June 30, 2019. We conducted this performance audit to determine whether OCABR administered its home improvement contractor (HIC) arbitration process in compliance with Sections 14.05(1), 14.08(4), 14.08(6), 14.08(7), 14.17(1), and 14.17(3) of Title 201 of the Code of Massachusetts Regulations (CMR) and administered its Residential Contractor's Guaranty Fund (RCGF) in compliance with Section 6 of Chapter 142A of the General Laws and 201 CMR 14.19(2), 14.20(1), 14.20(2), 14.20(3), 14.20(6), and 14.21(1).

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">13</a></b>	OCABR does not perform reconciliations of its financial records and has not segregated the duties of certain staff members who handle financial transactions.
<b>Recommendations</b> <b>Page <a href="#">14</a></b>	<ol style="list-style-type: none"><li>1. OCABR should develop policies and procedures that require its staff to perform regular reconciliations of its financial records.</li><li>2. OCABR should establish segregation of duties over the receipt, recording, deposit, and reporting of revenue.</li><li>3. OCABR should investigate and resolve the \$95,026 variance that we identified.</li></ol>
<b>Finding 2</b> <b>Page <a href="#">15</a></b>	OCABR did not collect up to \$101,400 in HIC registration and RCGF fees and allowed employees to change HIC application types without documentation and approval.
<b>Recommendations</b> <b>Page <a href="#">17</a></b>	<ol style="list-style-type: none"><li>1. OCABR should establish controls to ensure that its staff members assess and collect HIC registration fees and RCGF fees in accordance with the correct application types.</li><li>2. OCABR should create policies and procedures regarding the approval process for changes to HIC application types. These policies and procedures should include documentation and approval by a member of management when a staff member changes an HIC application type.</li></ol>

### Post-Audit Action

On December 11, 2020, OCABR gave us the following update regarding its ongoing investigation of the variance identified during our audit (see [Finding 1](#)).

*The Office of Consumer Affairs and Business Regulation notified our Secretariat, the Executive Office of Housing and Economic Development (HED) about the variance. HED provided IT*

*resources that examined the Home Improvement Contractor (HIC) IT systems and programs for any IT-related issues that could have been responsible for the variance. Based on HED IT's review, they determined that the technology appeared to be working properly and that they identified no IT issues that could account for the variance.*

*OCABR also requested and received assistance from HED finance staff. OCABR staff had previously manually cross referenced copies of checks with the database, but was unable to determine the cause of the variance. HED finance reviewed the methods and processes OCABR used regarding the variance. HED finance was not able to determine the cause of the variance.*

*OCABR and HED notified the MA Attorney General's Office (AGO) White Collar / Public Integrity Division regarding the variance and the circumstances around the variance. The communication between OCABR, HED, and the AGO remains ongoing.*

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## OVERVIEW OF AUDITED ENTITY

The Office of Consumer Affairs and Business Regulation (OCABR), within the Executive Office of Housing and Economic Development, was established under Section 1 of Chapter 24A of the Massachusetts General Laws and operates under the supervision and control of an undersecretary appointed by the Governor. According to OCABR's *Internal Control Guide*,

*The core mission of the Office of Consumer Affairs and Business Regulation (OCABR) is to inform, protect and advocate for consumers and assure fair and sound regulation of business and professionals. In advancing its mission OCABR continually works to strike a balance between the needs of consumers and the needs of businesses and professionals.*

OCABR staffs various consumer hotlines; investigates consumer problems; publishes educational brochures, alerts, and reports; conducts surveys of consumer needs; establishes programs and services to help consumers understand their rights and responsibilities in consumer transactions; recommends and implements consumer protection policies; and monitors the marketplace to promote fair and honest competition.

OCABR supervises five regulatory agencies:

- Division of Banks (DOB): DOB is the chartering authority and regulator for financial service providers in Massachusetts, which include state-chartered banks, credit unions, and more than 10,000 mortgage lenders and brokers. DOB performs routine examinations of all state-chartered banks and licensees for compliance with consumer protection laws and fair lending requirements and, as necessary, conducts special investigations at these financial service providers.
- Division of Insurance (DOI): DOI administers the Commonwealth's consumer protection laws and regulations regarding the insurance industry. To meet its responsibilities, DOI performs a variety of tasks, such as monitoring the financial health of insurance companies, approving insurance rates and forms, and coordinating the takeover and liquidation of insolvent insurance companies as well as the rehabilitation of financially troubled companies. DOI also investigates and enforces state laws and regulations pertaining to insurance and responds to consumer inquiries and complaints.
- Department of Telecommunications and Cable (DTC): DTC is responsible for overseeing compliance with laws and regulations affecting telephone and cable providers as well as their customers in Massachusetts and fostering competition in the cable industry. It is also responsible for ensuring that cable customers receive quality cable services at reasonable rates.
- Division of Professional Licensure (DPL): DPL oversees 28 boards of registration, as well as the Office of Public Safety and Inspections and the Office of Private Occupational School Education.

It licenses and regulates more than 580,000 individuals, businesses, and schools that engage in more than 150 trades and professions in Massachusetts.

- Division of Standards (DOS): DOS enforces regulatory accuracy requirements and standards related to weight and measurement devices often used in the sale of food, fuels, and other products. DOS is responsible for inspection of all fuel-dispensing equipment for required markings pertaining to grade and brand and for regulations regarding the sale of gasoline, as well as for the setting of standards for oils and antifreeze. DOS also performs a variety of other functions, such as testing and approving coin-operated devices; licensing auctioneers, transient vendors, and motor fuel and oil retailers; and registering auto damage repair shops. It also enforces laws and regulations related to item pricing.

In addition, OCABR oversees the state's Lemon Laws<sup>1</sup> and Lemon Law arbitration between consumers and sellers, data breach reporting, the Home Improvement Contractor (HIC) Program, and the Do Not Call Registry.

OCABR received state appropriations totaling \$1,235,222 and \$1,608,890 for fiscal years 2018 and 2019, respectively.

## HIC Program

The HIC Program was established in 1992 by Chapter 142A of the General Laws. Under this statute, contractors, partnerships, and corporations in the Commonwealth must be registered with OCABR as HICs if they perform residential contracting services in certain trades<sup>2</sup> as either contractors or subcontractors. According to Section 10 of Chapter 142A of the General Laws, to register with OCABR as an HIC, an applicant must submit to OCABR an application that includes information such as the following:

- (a) applicant's name, home address, business address . . . , and social security number;*
- (b) the names and addresses of any and all owners, partners or trustees of an applicant including, in case of corporate entities, the names and addresses of any and all officers, directors and principal shareholders . . .*
- (c) whether the applicant has ever been previously registered in the commonwealth as a contractor or subcontractor . . . and whether his registration has ever been suspended or revoked.*

Contractors can apply for HIC registration with OCABR online, by mail, or in person at OCABR. All application information is processed through the HIC registration database system, which interfaces

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1 The Lemon Laws are intended to protect consumers who have leased or purchased vehicles with serious defects.  
2. Examples of these trades include carpentry, masonry, painting (exterior), and plastering, as well as residential contracting services such as installation of roofing, siding, solar panels, in-ground swimming pools, and windows.

with the agency's website and can be used by consumers for such things as searching for registered HICs. A third-party vendor that OCABR has hired to process fee payments also has access to the system.

## HIC Registration and Residential Contractor's Guaranty Fund Fees

In order to apply for, reapply for, or renew their HIC registrations with OCABR, residential contractors must pay HIC registration fees (application, renewal, and reapplication) and, when required, a Residential Contractor's Guaranty Fund (RCGF) fee. When initially applying to register with OCABR as an HIC, an applicant must pay an application fee, which is deposited in the HIC Fund that is used for program expenses, as well as an RCGF fee based on the number of employees the applicant has (see table below). This fee is deposited in the RCGF, which is used to compensate homeowners for substandard work performed by registered HICs. In addition, registered HICs must renew their registrations and pay renewal fees every two years. Also, if an HIC fails to renew registration within the timeframe established by OCABR regulations (see [Finding 2](#)), the HIC must reapply for, rather than just renewing, the registration and pay a reapplication fee (equal to the application fee) and RCGF fee. The following tables detail HIC registration and RCGF fees charged by OCABR during the audit period.

### HIC Registration Fees

Type of Application	Fee	Number of Registrations	Fees Charged
Application	\$150	7,875	\$ 1,181,250
Renewal	\$100	18,842	1,884,200
Reapplication	\$150	4,414	662,100
Total	—	<u>31,131</u>	<u>\$ 3,727,550</u>

### RCGF Fees

Number of Employees of the Applicant	Fee	Number of Registrations	Fees Charged
0–3	\$100	11,446	\$ 1,144,600
4–10	\$200	614	122,800
11–30	\$300	167	50,100
31+	\$500	62	31,000
Total	—	<u>12,289</u>	<u>\$ 1,348,500</u>

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## HIC Arbitration Program

The HIC Arbitration Program helps resolve disputes between homeowners and registered HICs. According to OCABR's website,

*To qualify for arbitration, homeowners must be able to prove that:*

- *there was a written contract for the job;*
- *the contractor was registered as a Home Improvement Contractor on the date the contract was signed;*
- *the contract was for improvements, repairs, renovations, alteration, or additions to a preexisting owner-occupied residence with no more than 4 units;*
- *the property or residence was located in Massachusetts;*
- *the property is your primary residence; and*
- *your Request for Arbitration will be filed within two (2) years of the contract date.*

A homeowner who applies and qualifies for the HIC Arbitration Program is charged an arbitration fee, which ranges from \$150 to \$850, depending on the claim amount. A homeowner may also be charged additional fees if a hearing is extended beyond four hours, but may be reimbursed for all fees if the case is found in his/her favor.

During our audit period, 172 arbitration claims were filed. Twenty cases (some opened during the audit period, some opened previously) were closed during the audit period, totaling \$520,976 awarded by arbitrators or courts from HICs to homeowners.

## RCGF

Section 7 of Chapter 142A of the General Laws established the RCGF within OCABR to compensate homeowners up to \$10,000 for actual losses they may have incurred from work done by an HIC, or an HIC's employee or subcontractor, that is found by a court to be substandard or done in a manner that violates any consumer protection law or regulation. During our audit period, OCABR made 65 payments, totaling \$535,480, to consumers for eligible RCGF claims. If a homeowner files a complaint against an HIC and receives a payment from the RCGF, the HIC is responsible for reimbursing the fund for the payment. According to OCABR's website, for a homeowner to apply for compensation from the RCGF, the following criteria must be met:

- *There was a contract for the job*
- *The contractor was registered with the Office of Consumer Affairs and Business Regulation at the time the contract was signed*
- *The contractor—not the homeowner—secured the building permit*
- *The contract was for work on a pre-existing 1–4 family residence in Massachusetts that is the owner’s primary residence*
- *You filed for arbitration within two years of the [date] of the contract and satisfied the eligibility requirements for arbitration*
- *A court judgment or arbitration award in the homeowner’s favor has been issued, and all “reasonable efforts to collect” the judgment or award have been exhausted*
- *A Fund application was filed within **six** months of the arbitration award or court judgment*

The RCGF account activity during the audit period was as follows.

### RCGF Account Activity for Fiscal Years 2018–2019

Balance as of July 1, 2017	\$ 1,102,293
RCGF Fees	1,348,500
Interest Earned	12,347
Recovery on Intercept*	34,779
Administrative Fines (OCABR) <sup>†</sup>	139,192
RCGF Reimbursements	87,621
Claims Paid	(535,480)
Balance as of June 30, 2019	<u>\$ 2,189,252</u>

\* According to the website of the Office of the Comptroller of the Commonwealth, an intercept is an “an automated process that matches eligible payments to delinquent debt for individuals and organizations that function both as vendors for and customers of the Commonwealth of Massachusetts.” This line item represents amounts received by OCABR through the intercept process.

† Administrative fines are assessed by OCABR’s HIC Program coordinator against HICs based on complaints filed against them.

## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Office of Consumer Affairs and Business Regulation (OCABR) for the period July 1, 2017 through June 30, 2019.

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; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does OCABR administer the home improvement contractor (HIC) arbitration process in compliance with Sections 14.05(1), 14.08(4), 14.08(6), 14.08(7), 14.17(1), and 14.17(3) of Title 201 of the Code of Massachusetts Regulations (CMR)?	Yes
2. Does OCABR administer the Residential Contractor's Guaranty Fund (RCGF) in compliance with Section 6 of Chapter 142A of the General Laws and 201 CMR 14.19(2), 14.20(1), 14.20(2), 14.20(3), 14.20(6), and 14.21(1)?	No; see Findings <u>1</u> and <u>2</u>

In addition to concluding on our audit objectives, we identified an issue we believe warrants OCABR's attention, which we have disclosed in the "Other Matters" section of this report.

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to the objectives by reviewing OCABR's policies and procedures, as well as conducting inquiries with OCABR management. We evaluated the design of controls over the operation of OCABR's HIC Arbitration Program, RCGF cases, the HIC Fund, and the RCGF. We identified deficiencies within the HIC Fund and RCGF (see Finding 1 and Finding 2). We also evaluated the effectiveness of controls over the processes OCABR had established for establishing eligibility for RCGF cases and authorizing payments from the RCGF. We assessed whether these controls operated as intended during the audit period.

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

### **HIC Arbitration Program**

We selected a nonstatistical random sample of 35 arbitration cases from the population of 172 that were filed with OCABR during the audit period. We reviewed each hardcopy case file and verified that each one contained certain documentation required by OCABR regulations. This documentation included (1) a date stamp indicating the date the application was received by OCABR, (2) a notation indicating the date the case was approved or accepted for a hearing by OCABR, (3) a notation indicating the date on which the hearing was scheduled, (4) evidence that OCABR notified the filer that the claim was accepted for a hearing within 90 business days after accepting the request for arbitration, (5) evidence that any monetary awards were paid within 21 business days of the award date, and (6) notice to the claimant of the arbitrator's decision.

We compared the information in six fields in the HIC registration database for all 172 arbitration cases—the HIC registration number, case number, date the application was received, resolution, date paid, and amount paid—to the information about these cases on OCABR's website to determine whether OCABR accurately disclosed the information on its website.

### **RCGF**

We selected a nonstatistical random sample of 20 RCGF cases from a population of 102 that OCABR processed during our audit period and determined the following for each case: (1) whether the HIC was registered at the time of the execution of the contract with the claimant and was current on HIC registration fee payments; (2) whether a notice of payment was provided to the HIC before payment of the RCGF claim to the claimant; (3) whether OCABR received a reimbursement from the HIC for any claim paid from the RCGF to a claimant; (4) whether, when required, there was evidence of the revocation of an HIC's registration; and (5) whether claimants who won their cases were awarded no more than the maximum \$10,000. We also verified that OCABR maintained a balance in the RCGF that was sufficient to cover all of its anticipated RCGF cases for each fiscal year.

We compared fields in OCABR's HIC registration database for all 102 RCGF cases (specifically, the HIC registration number; contractor business name; responsible party; HIC's street address, including city, state, and ZIP code; claim number; date the claim was received; disposition; RCGF payment date; and

amount paid) to the information on OCABR's website to assess the accuracy of the information on the website.

We cross-referenced the "Home Improvement Contractor Delinquent List," dated October 25, 2018, on OCABR's website to OCABR's "HIC Registration Lookup" search tool and checked and compared the HIC registration numbers and HIC names in the two sources for accuracy.

We compared OCABR's payments from the RCGF for the audit period according to its financial records to the information in its HIC registration database and the Massachusetts Management Accounting and Reporting System (MMARS) and noted any discrepancies.

## **Other Analytical Procedures**

We examined all the information in OCABR's semiannual financial reports during the audit period, recalculated the totals in the reports, and compared this information to the information in MMARS.

To determine whether OCABR sent the information within the Office of the Comptroller of the Commonwealth's (CTR's) intercept timeline of 120 days, we used OCABR's "Debt Collection List" of HICs who were delinquent on RCGF reimbursements during our audit period to calculate the number of days from the reimbursement due date to when OCABR sent the delinquent HIC's information to CTR.

Using the "HIC Registration Lookup" search tool, we searched for HIC registration numbers equaling zero<sup>3</sup> and extracted from the website 492 contractor registrations. We separated the 492 registration numbers into two strata: registration status of "not registered" (445 registration numbers) and registration status other than "not registered" (47 registration numbers). For the first stratum, we selected a random nonstatistical sample of 25 of the 445 numbers and confirmed that they were not registered. For the second stratum, we selected a random nonstatistical sample of 10 of the 47 numbers and determined their registration statuses.

We analyzed all 43,739 fee transactions that were recorded in OCABR's HIC registration database during the audit period to determine whether OCABR charged the correct fee amounts in accordance with its policy.

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3. OCABR assigns a registration number of zero to HICs in the HIC registration database who have been brought to OCABR's attention—for instance, by a consumer complaint—but have never been registered. However, there were some HICs with statuses such as "revoked," "expired," and "suspended" who were incorrectly assigned registration numbers of zero in the database.

When sampling, we used a nonstatistical sampling method and did not project the results to the entire population.

## Data Reliability Assessment

### HIC Registration Database

We tested certain application controls<sup>4</sup> related to the calculation and recording of fees in OCABR's HIC registration database. We also tested certain general controls<sup>5</sup> regarding access to, and security of, the database. We confirmed that all 7,875 HIC applications in the database that were filed during our audit period were assigned distinct and sequential application numbers and that no gaps in numbers existed. We confirmed that all 58,625 of the total application numbers in the database were distinct and sequential numbers with no unexplained gaps.

We determined the reliability of the case information tables in the HIC registration database by completing the following tests:

- We randomly selected 10 of 172 arbitration cases filed during the audit period from the case information tables and traced them to hardcopy case files.
- We randomly selected an additional 10 arbitration cases from the hardcopy case files and traced them to the case information tables.
- We randomly selected 10 of 102 RCGF cases filed during the audit period from the hardcopy case files and traced them to the case information tables.
- We randomly selected an additional 10 RCGF cases from the case information tables and traced them to the hardcopy case files.
- We checked the case information tables for duplicate case numbers and dates outside the audit period.

Based on the results of our data reliability assessment, we determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit work.

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4. According to the US Government Accountability Office's publication *Assessing Data Reliability*, "**Application controls** . . . are incorporated directly into computer applications to help ensure the validity, completeness, accuracy, and confidentiality of transactions and data during application processing. They include controls over input, processing, output, master file, interface, and the data management system."

5. *Assessing Data Reliability* states, "**General controls** are the policies and procedures that apply to all or a large segment of an entity's information systems and help ensure the proper operation of information systems. They include security management, configuration management, and logical and physical access controls, among others."

## **MMARS**

In 2018, OSA performed a data reliability assessment of MMARS that focused on testing selected system controls (access controls, configuration management, and security management) for the period April 1, 2017 through March 31, 2018.

In our current audit, we tested security management controls at OCABR during the audit period to assess security awareness training and personnel screening. We randomly selected 10 of the 65 RCGF payments in MMARS disbursement reports and traced them to RCGF payment vouchers. We then randomly selected 10 RCGF payment vouchers and traced them to the MMARS disbursement reports.

Based on the results of our data reliability assessment, we determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit work.

## **N-court Payment System**

We reviewed the System and Organization Control reports,<sup>6</sup> bridge letters,<sup>7</sup> and peer review reports issued on N-court, a system that is provided and supported by a vendor and is used by OCABR to process fee payments. We verified the accuracy of 4 of 24 reconciliations prepared by OCABR by comparing N-court statements to OCABR's bank statements and its MMARS budget inquiry reports.

Based on the results of our data reliability assessment, we determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit work.

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6. A System and Organization Control report about a service organization's systems is issued by an independent contractor to provide assurance about a service organization's security, processing integrity, confidentiality, and/or privacy controls.

7. A bridge letter, also known as a gap letter, is made available by a service organization to cover the period between the reporting period end date of a System and Organization Control report and the release of a new report.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### **1. The Office of Consumer Affairs and Business Regulation does not perform reconciliations of its financial records and has not segregated the duties of certain staff members who handle financial transactions.**

The Office of Consumer Affairs and Business Regulation (OCABR) does not reconcile the revenue information in its financial records to the revenue information in its home improvement contractor (HIC) registration database and to the Massachusetts Management Accounting and Reporting System (MMARS). We performed a reconciliation of all HIC registration and Residential Contractor's Guaranty Fund (RCGF) fee revenue OCABR received during the audit period, as documented in its financial records, to the revenue information in its HIC registration database and MMARS and found a significant variance. The revenue that OCABR recorded in MMARS was \$95,026 lower than what was recorded in OCABR's HIC registration database and the overall financial records. OCABR officials were not aware of the variance and could not explain why it might have occurred. Because OCABR does not perform reconciliations of all of its financial records, there is a higher-than-acceptable risk of variances (such as the \$95,026 we identified, which could represent losses of funds), occurring and going undetected.

In addition, when reviewing OCABR's internal controls over revenue reconciliation, we noted that there was inadequate segregation of duties regarding the funds OCABR receives both in person at its office and by mail. Specifically, two OCABR employees receive funds in person and by mail, record financial transactions in a daily cashbook spreadsheet, deposit the funds, and report the amount of revenue collected each day to OCABR's director of accounting, who records the amounts in the agency's financial records. The same two employees are also able to access OCABR's HIC registration database and change the amounts charged to HIC applicants without oversight or authorization. Therefore, there is a higher-than-acceptable risk of funds being misappropriated.

### **Authoritative Guidance**

The Office of the Comptroller of the Commonwealth's (CTR's) "Cash Recognition and Reconciliation Policy," issued July 1, 2004, requires that all departments reconcile all received revenue in their internal accounting records to activity reported in MMARS:

*Daily system assurance must be performed by departments to ensure that there is a matching deposit for each cash transaction. This process involves comparing the results from all sources*

*that produce or contain payments and deposit information, and ensuring that they match. These information sources should include . . . all relevant MMARS tables.*

Section 10.04 of CTR's *Internal Control Guide* from June 2015, which OCABR is required to follow, states,

*Management should divide or segregate key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities . . . so that no one individual controls all key aspects of a transaction or event.*

## Reasons for Issue

OCABR lacks policies and procedures that require its staff to perform regular reconciliations of its financial records and that establish segregation of duties over the receipt, recording, deposit, and reporting of revenue.

## Recommendations

1. OCABR should develop policies and procedures that require its staff to perform regular reconciliations of its financial records.
2. OCABR should establish segregation of duties over the receipt, recording, deposit, and reporting of revenue.
3. OCABR should investigate and resolve the \$95,026 variance.

## Auditee's Response

*OCABR acknowledges that during the audit period it did not require its staff to perform regular reconciliations of HIC financial records. However, as of June 2020, staff are required to perform regular reconciliations of all HIC monies and transactions, and these activities are set forth in the OCABR policy entitled "HIC Registration Procedures—Application Review and Processing." The daily reconciliation process requires HIC registration staff to produce and distribute daily transaction reports from the HIC registration database and reconcile the daily transactions with daily receipts of payments from HIC contractors. With the implementation of this process, any variance is immediately identified and resolved. HIC registration staff then provides OCABR's accounting unit with the daily transaction reports and daily receipts and deposits. The accounting unit subsequently reviews and confirms the reconciliation. Additionally, on a monthly basis, the accounting unit conducts a full monthly reconciliation to ensure all transactions and deposits are reconciled within the database, the bank, and Massachusetts Management Accounting and Reporting System (MMARS).*

*In the months since being notified of the variance, OCABR has reconciled, down to the penny, the HIC registration transactions with monies for June, July, August, September, October, November, and December of 2020. . . .*

*OCABR recognizes that segregation of duties is essential to the successful recording, depositing, and reporting of revenue. As a result of working with your office, in June 2020 OCABR implemented a plan to segregate duties so that different employees perform the receipt, recording, depositing, and reporting of HIC revenue. The employee who processes the HIC transaction no longer reconciles the daily activity to the daily receipts. OCABR's senior staff provides daily oversight, guidance and communication to ensure adherence to the process for separation of duties. . . .*

*On May 20, 2020, the OSA notified OCABR of an apparent variance between the fee revenue OCABR received during the audit period, as documented in its financial records, to the revenue information in its HIC registration database and MMARS. Upon learning of the variance, OCABR promptly initiated an investigation. After conducting extensive internal reviews and a detailed analysis of all pertinent financial records, OCABR was not able to discover the cause of the variance. We then notified senior staff at the Executive Office of Housing and Economic Development (EOHED), who immediately deployed information technology (IT) resources to examine the HIC IT systems and programs in an effort to determine whether there were any technology-related explanations for the variance. Based on that review, OCABR has concluded that the technology was functioning properly and was not the cause of the variance.*

*OCABR staff also performed a manual cross referencing of each of the copies of checks for the two year audit period with each of the database entries, but was unable to determine the reason for the variance. EOHED finance staff independently reviewed this methodology, but this review did not ascertain the basis of the variance.*

*In November, OCABR notified the Office of the Attorney General's (AGO) White Collar / Public Integrity Division of the variance and the relevant circumstances pertaining to it. At this time, OCABR is continuing to work with the AGO on investigating this matter.*

## **Auditor's Reply**

Based on its response, OCABR is taking measures to address these issues.

### **2. OCABR did not collect up to \$101,400 in HIC registration and RCGF fees and allowed employees to change HIC application types without documentation and approval.**

During the audit period, OCABR did not collect up to \$101,400 of the HIC registration fees and RCGF fees that HICs incurred. Additionally, OCABR allowed two employees to change HIC application types (from reapplication to renewal) in the HIC registration database, thus reducing the amount charged to HICs, without documentation or approval; as a result, OCABR cannot be certain that fees were assessed to HICs in compliance with its regulations.

In 676 instances during our audit period, OCABR allowed an HIC to pay a renewal fee of \$100 even though the fee was paid late (more than 30 days past the expiration date of the current registration),

instead of requiring the HIC to pay a reapplication fee (\$150) as well as the RCGF fee. The difference between the fees OCABR collected and those it should have collected was \$101,400 (\$33,800 from HIC registration fees and \$67,600 from RCGF fees). Some of these HICs had submitted applications to renew their registrations within the prescribed timeframe, but had not paid their renewal fees within that timeframe. OCABR allowed these HICs to pay the renewal fee late, as indicated below, instead of requiring them to pay the reapplication fee and the RCGF fee.

### Late HIC Registrations by Number of Days

Number of Days Late	Number of Transactions
1–14	306
15–30	160
31–365	205
Over 365	5
Total	<u>676</u>

During our audit, OCABR officials identified 111 instances, out of the 306 that were 1 to 14 days late, where they believe a payment could have been mailed by an HIC within the required 30 days after expiration, but not received or processed by OCABR until after that period. However, even if we exclude these instances, the agency still allowed 565 contractors to pay only the \$100 renewal fee when they should have been charged the reapplication fee and the RCGF fee, resulting in at least \$84,750 in lost revenue (\$56,500 from RCGF fees and \$28,250 from HIC registration fees).

### Authoritative Guidance

According to Section 18.02(8)(b) of Title 201 of the Code of Massachusetts Regulations, which covers registration and enforcement of the HIC Program,

*An applicant shall submit a renewal application with fees within 30 days of the expiration date of the registration. Failure to submit a renewal application within this time period shall subject the applicant to the submission of an application for a new registration and payment of fees equal to the amount of the initial registration.*

Section 10.04 of CTR's *Internal Control Guide* from June 2015 states,

*Management should divide or segregate key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for:*

- *authorizing transactions,*
- *processing and recording them,*
- *reviewing the transactions, and*
- *handling any related assets or process so that no one individual controls all key aspects of a transaction or event.*

*In other words, control activities related to authority, custody, and accounting of operations ought to be separated to achieve adequate segregation of duties.*

## Reasons for Issues

OCABR management told us that they allowed HICs to pay the renewal fee rate when renewing their registrations if they submitted their renewal applications before the expiration dates or within the 30-day grace period. However, these HICs did not pay the fees associated with the applications within the required timeframes.

OCABR management stated that they had given two individuals permission to change HIC application types without documentation or approval each time. OCABR does not have any controls over changes to HIC application types, nor does it have documented policies and procedures to establish such controls.

## Recommendations

1. OCABR should establish controls to ensure that its staff members assess and collect HIC registration fees and RCGF fees in accordance with the correct application types.
2. OCABR should create policies and procedures regarding the approval process for changes to HIC application types. These policies and procedures should include documentation and approval by a member of management when a staff member changes an HIC application type.

## Auditee's Response

*OCABR agrees that there are opportunities for improvement in the administration of the HIC registration process and handling of the RCGF. OCABR has strengthened its policies and made process changes to better manage HIC registration. For example, check scanners were installed to facilitate more timely deposits; management has worked with IT to limit administrator editing access and privileges on the HIC system; we have implemented a review process for editing any transaction; and soon we will run a report to identify transactions processed outside of the time period [prescribed] in the regulations.*

*OCABR acknowledges that there were instances where HIC staff charged an HIC registrant the \$100 renewal fee instead of the \$150 reapplication fee and did not require the registrant to pay the RCGF fees. However, the draft audit report incorrectly states that under collection occurred in*

*[676] separate instances. OCABR has determined that the correct fee was, in fact, assessed and collected in some instances that OSA staff counted as under collection. . . .*

*There were . . . circumstances in which a transaction appeared to include the collection of an incorrect fee amount. However, we subsequently determined that in many cases, the fee was not paid late but rather staff recorded the transaction in the database outside of the 30-day grace period allowed per the regulation. As we previously noted to OSA staff, the HIC program was physically relocated two times during the audit period. Each relocation contributed to a delay in processing timely submitted HIC applications, either because OCABR's IT systems were not fully operational after the move, or because of delays in receiving forwarded mail. The draft report does state that OCABR identified at least 111 instances where we believe a payment was mailed by an HIC within the required 30 days after expiration, but was not received or processed by OCABR until after the 30 day period.*

*OCABR acknowledges that the lack of strong recordkeeping during the audit period makes it challenging to demonstrate that certain fees were assessed in compliance with HIC regulations. We are confident that the process and IT enhancements to both HIC registration and RCGF fee collection will prevent any future errors with the collection of HIC registration and RCGF fees. . . .*

*OCABR has established controls to ensure that its staff members assess and collect HIC registration fees and RCGF fees in accordance with the correct application types delineated in 201 CMR 18.00. OCABR has implemented new protocols to appropriately assign administrative privileges on the HIC system. If a staff member requests to modify an HIC application type or fee amount, that request is made in writing and must be reviewed by the HIC program manager. The manager must approve any modification to the registration and ensure that a request is submitted to IT so that they can make such modification. This new protocol ensures that all requests and modifications are tracked and recorded so staff can confirm that all transactions are processed in accordance with the regulations. . . .*

*OCABR has established and implemented policies and procedures regarding the approval process for changes to HIC application types. If a staff member requests to modify an HIC application type or fee amount, that request must be in writing and must be reviewed by the HIC program manager. If, after review, the manager approves the modification, the manager would make a request with IT to edit the registration. This is done to ensure that all requests and modifications are recorded and all transactions are processed in accordance with the regulations.*

*Additionally, there will be a regularly scheduled report to identify transactions processed outside of the [prescribed] time period which senior staff is able to review to ensure that transaction modifications are only being permitted in the correct circumstances (e.g. a complete HIC registration is submitted, but not processed, within the [prescribed] time period).*

## **Auditor's Reply**

In its response, OCABR asserts that there were circumstances where an application appeared to be late and therefore the fee collected was correct. However, any such fees did appear to be incorrect because they were entered late in the system.

In performing our testing in this area, the Office of the State Auditor (OSA) considered all of the explanations and other information provided by OCABR management and reviewed all available documentation to reach our conclusions. Although there may have been circumstances that caused correct fees to appear incorrect to OSA, OCABR cannot substantiate the extent to which such circumstances occurred. OCABR acknowledges that “the lack of strong recordkeeping during the audit period makes it challenging to demonstrate that certain fees were assessed in compliance with HIC regulations.”

Based on its response, OCABR is taking measures to address our recommendations on these issues.

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## OTHER MATTERS

### **The Office of Consumer Affairs and Business Regulation's website is difficult to navigate and contains inaccurate and incomplete information.**

The Office of Consumer Affairs and Business Regulation (OCABR) has structured its website to allow consumers to perform a variety of tasks, such as checking whether a home improvement contractor (HIC) is registered with OCABR, seeing whether an HIC has delinquent fee payments, and filing a complaint against an HIC. It has also published information on how to hire an HIC; required contract terms in home improvement contracts; and a document called "A Massachusetts Homeowner's Guide to the Home Improvement Contractor (HIC) Program" to help homeowners understand Chapter 142A of the Massachusetts General Laws, which governs the HIC Program.

In performing our audit testing, we used OCABR's website and evaluated it in terms of ease of navigation, as well as completeness and accuracy of information. In some areas, OCABR's website was very cumbersome to navigate. For example, a consumer has to go through at least seven steps to determine whether an arbitration or Residential Contractor's Guaranty Fund (RCGF) case has been filed against an HIC. Additionally, some information on the website was incomplete or inaccurate. For example, for 47 of the 172 arbitration cases that were filed during our audit period, no information was listed in three fields (date received, date paid, and amount paid) out of the six that are supposed to be populated from the arbitration tables used to enter arbitration case data. Similarly, 89 of the 102 RCGF cases filed during our audit period were missing the street and city name of the filer's address. Nine also had incorrect HIC street addresses, and 1 had an incorrect HIC business name.

In the Office of the State Auditor's opinion, because consumers depend on the information on OCABR's website to make informed decisions about procuring HIC services, OCABR should ensure that the website is easy to navigate and contains complete, accurate information.

### **Auditee's Response**

*The HIC program's landing page provides a number of important resources for both homeowners and contractors. In addition to the "Massachusetts Homeowner's Guide to the Home Improvement Contractor (HIC) Program," there are a number of resources like the "HIC Contractors Guide," information and links regarding registration and renewal, links for homeowners to check an HIC registration and to file a complaint against a contractor, and much more. While OCABR disagrees that the website is difficult to navigate, we remain committed to providing homeowners and contractors with easily accessible, accurate information for all HIC*

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*programs. We will work with EOHED IT to review the HIC website to ensure accuracy and identify areas for enhancements and efficiencies.*

### **Auditor's Reply**

We agree that OCABR's website provides useful information. However, the process of looking up HIC registrations, arbitration cases, RCGF payments, and complaints is cumbersome. For example, as stated above, consumers must go through at least seven steps to determine whether an arbitration or RCGF case has been filed against an HIC.

Based on its reply, OCABR is taking measures to review the completeness and accuracy of the information on its website. We also recommend that OCABR review its website for opportunities to improve the ease of navigation.