



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

*Making government work better*

Official Audit Report – Issued November 21, 2016

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## Massachusetts Gaming Commission

For the period July 1, 2013 through June 30, 2015





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

*Making government work better*

November 21, 2016

Mr. Stephen Crosby, Chair  
Massachusetts Gaming Commission  
101 Federal Street, 12th Floor  
Boston, MA 02110

Dear Mr. Crosby:

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, 2013 through June 30, 2015. 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 "SMBump".

Suzanne M. Bump  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
DOR	Department of Revenue
GPAC	Gaming Policy Advisory Committee
MGC	Massachusetts Gaming Commission
MMARS	Massachusetts Management Accounting and Reporting System
MOU	Memorandum of Understanding
MSRC	Massachusetts State Racing Commission
OSA	Office of the State Auditor

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## EXECUTIVE SUMMARY

The Massachusetts Gaming Commission (MGC) was established in March 2012. It is a successor to the Massachusetts State Racing Commission, which existed from 1934 to 2012. MGC was established to ensure public confidence in the process of licensing gaming establishments and to provide oversight of ongoing compliance with related laws and regulations.

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 MGC for the period July 1, 2013 through June 30, 2015. This audit was undertaken to determine MGC's compliance with respect to certain oversight responsibilities required by law.

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

<b>Finding 1</b> <b>Page <a href="#">7</a></b>	MGC did not ensure that the Plainridge Park Casino reached its stated goals for workforce development and diversity.
<b>Recommendation</b> <b>Page <a href="#">8</a></b>	MGC should develop internal controls to ensure that Plainridge meets all the requirements of its workforce development and diversity plan within a reasonable time. Such controls could include establishing, in collaboration with Plainridge, implementation of further milestone dates and a target date by which all the goals need to be met, as well as developing and implementing monitoring policies and procedures to track Plainridge's compliance.
<b>Finding 2</b> <b>Page <a href="#">13</a></b>	MGC did not ensure that Plainridge intercepted and remitted approximately \$65,000 of delinquent taxes and child-support payments.
<b>Recommendations</b> <b>Page <a href="#">14</a></b>	<ol style="list-style-type: none"><li>1. MGC should work with Plainridge and the state Department of Revenue (DOR) to resolve the \$65,000 of missed intercepts.</li><li>2. MGC should develop policies and procedures to monitor Plainridge's compliance with the reporting requirements of the law and its Memorandum of Understanding with DOR and MGC.</li></ol>
<b>Finding 3</b> <b>Page <a href="#">16</a></b>	MGC did not correct funding errors in certain racing trust funds.
<b>Recommendation</b> <b>Page <a href="#">17</a></b>	MGC should make the correcting adjustments necessary to properly allocate licensee assessments to funds as required by Chapter 128A of the General Laws.

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## 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, horse racing, and related operations in support of Chapter 194 of the Acts of 2011 (An Act Establishing Expanded Gaming in the Commonwealth).

This act was designed to provide benefits to the Commonwealth in job creation and economic development. It permits the competitive awarding of licenses for up to three resort casinos and a single slot facility. The gaming facilities are to be located in three regions of the state. Revenue generated by the act is used for local aid, healthcare payment reform, education and community colleges, transportation infrastructure, manufacturing, debt reduction, tourism, public health, addiction services, and community and cultural mitigation. Gaming income is also used to provide funds for a Race Horse Development Fund to support purses, breeding programs, and insurance benefits that help ranches and other agribusinesses in the Commonwealth.

MGC consists of five full-time commissioners who are responsible for overseeing and implementing the licensing and regulation process for the casinos and the slot facility. According to its website, its mission is “to create a fair, transparent, and participatory process for implementing the expanded gaming law.” MGC can issue up to three Category 1 licenses<sup>1</sup> and one Category 2 license.<sup>2</sup> It is advised by the Gaming Policy Advisory Committee (GPAC) on gaming policy, including addiction services and public-safety issues related to the development of gaming facilities.

GPAC was established by Section 68 of Chapter 23K of the General Laws. It includes the Governor, the chair of MGC, two members of the state Senate, two members of the state House of Representatives, and the commissioner of the state Department of Public Health, or designees for any of those parties. It also includes eight people appointed by the Governor, including representatives of gaming licensees, organized labor, and a federally recognized Native American tribe in the Commonwealth, as well as representatives of the vicinity of each gaming establishment.

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1. A Category 1 licensee is a gaming establishment with table games and slot machines.

2. A Category 2 licensee is a gaming establishment with fewer than 1,250 slot machines and no table games.

MGC's offices are located in Boston, Massachusetts, and had 68 full-time employees as of June 2015. MGC is a self-sustaining entity. Its operating costs are funded by the Massachusetts gaming industry through various assessments. Initial funding of \$15 million for startup and operational costs was provided by the Commonwealth Stabilization Fund<sup>3</sup> and was repaid to the Commonwealth during fiscal year 2015. As of the end of our audit period, MGC had awarded two Category 1 licenses (one to Blue Tarp Redevelopment LLC, doing business as MGM Resorts International, in Springfield and one to Wynn MA LLC in Everett) and one Category 2 license (to Plainville Gaming and Redevelopment LLC, doing business as Plainridge Park Casino, in Plainridge).

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3. The Commonwealth Stabilization Fund, also known as the "rainy day" fund, represents sums calculated in accordance with Section 5C of Chapter 29 of the General Laws and is used to provide for the Commonwealth's fiscal stability.

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## 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 Massachusetts Gaming Commission (MGC) for the period July 1, 2013 through June 30, 2015. For our review of MGC's monitoring of the reporting of gaming winnings in excess of \$1,200 to the Massachusetts Department of Revenue (DOR), we found it necessary to expand our audit period through March 2016.

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. Did MGC ensure that the Plainridge Park Casino achieved its workforce goals, including hiring minorities as 10% of its workforce and hiring people from its host community and surrounding communities as 90% of its workforce?	No; see <a href="#">Finding 1</a>
2. Did MGC ensure that licensees complied with Section 51 of Chapter 23K of the General Laws regarding the reporting of winnings of more than \$1,200 to DOR?	No; see <a href="#">Finding 2</a>
3. Did MGC ensure that revenue from licensees was properly calculated and remitted in accordance with Chapter 23K of the General Laws and applicable provisions of the Code of Massachusetts Regulations (CMR)?	Partially; see <a href="#">Finding 3</a>
4. Did MGC obtain the required certification of controls over cash as required by 205 CMR 138.02(3) and 138.02(4)(h)(i)?	Yes
5. Were select management, consulting, and administrative expenses appropriate to the operation of MGC?	Yes
6. Did MGC comply with applicable open-meeting laws?	See <a href="#">Other Matters</a>

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of controls for expenditures and open-meeting laws.

To assess the reliability of the data reviewed during the audit period, we relied on OSA's most recent data reliability assessment of the state's Massachusetts Management Accounting and Reporting System (MMARS). In addition, we compared source documentation with MMARS information. Further, to assess the reliability of the data from CHRIMS (the horse-racing/reporting billing system MGC uses), we reviewed the 2014–2015 Statement on Standards for Attestation Engagements reports, which discussed general information-technology controls within CHRIMS. These controls included, but were not limited to, user access to programs and data, program changes, and computer operations. We also reviewed data reliability assessment reports prepared by Gaming Laboratories International that discussed general information-technology controls within CHRIMS, including, but not limited to, user access to programs, and we determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit work.

In addition, we performed the following audit procedures:

- We reviewed all laws, regulations, policies, and procedures relevant to our audit objectives.
- We reviewed daily remittance reports from Plainridge showing gross gaming revenue and the related tax assessments.
- We reviewed MGC's accounting for gaming revenue to ensure that taxes and assessments were computed and deposited in accordance with 205 CMR 140.
- We randomly selected 30 out of the 490 racing revenue reports prepared during our audit period to determine proper allocation of amounts under Chapter 128A of the General Laws.
- We reviewed all application fees to determine whether fees collected from licensees were as provided for by Section 15 of Chapter 23 of the General Laws and were allocated in accordance with 205 CMR 114.
- We reviewed license-fee agreements to determine whether fees for awarded gaming licenses were collected in accordance with 205 CMR 121 and allocated in accordance with Section 93(a) of Chapter 194 of the Acts of 2011.
- We examined the certification by Plainridge's chief legal officer of the system of internal controls over cash in accordance with 205 CMR 138.02(3) and 138.02(4)(h)(i).

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- We randomly selected 5 out of 31 payments from track escrow funds maintained by MGC during our audit period and reviewed them for accuracy and approval.
  - We reviewed calculations of the bond required of Category 1 licensees according to 205 CMR 122.
  - We obtained all Plainridge's reports of intercepts of winnings in excess of \$1,200 during the period June 24, 2015 through March 2016 to determine compliance with DOR reporting requirements.
  - We reviewed the workforce development and diversity plan that Plainridge filed in connection with its license application to determine whether it had met its stated workforce goals.
  - We interviewed MGC's director of Workforce Development to determine MGC's procedures for monitoring Plainridge's compliance with this plan.
  - We reviewed reports provided to MGC detailing Plainridge's workforce development activities and accomplishments.
  - We randomly selected 50 out of 612 management, consulting, and administrative expenditures (e.g., management consultants, credit-card expenses) from our audit period and reviewed them for applicability to MGC's operations and mission.
  - We examined all credit-card expenditures greater than \$5,000 from our audit period; we also randomly selected 5 out of 33 credit-card expenditures that were less than \$5,000 and reviewed them for applicability to MGC's operations.
  - We judgmentally selected the 13 largest travel expenditures in fiscal year 2014 (representing \$56,050 of a total of \$97,646) and the 13 largest travel expenditures from fiscal year 2015 (representing \$29,333 of a total of \$97,311) and reviewed them for applicability to MGC's operations and mission.

With regard to compliance with open-meeting laws, we performed the following procedures:

- We interviewed MGC's legal counsel regarding public-notice policies.
- We reviewed the minutes of a random sample of 15 of MGC's 74 public meetings held during our audit period to determine compliance with open-meeting laws.

We reviewed a report by the Massachusetts Attorney General's Office, issued after our audit period, regarding MGC's compliance with open-meeting laws.

Whenever sampling was used, we applied a nonstatistical approach, and as a result, we were not able to project our results to the population.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### **1. The Massachusetts Gaming Commission did not ensure that the Plainridge Park Casino reached its goals for workforce development and diversity.**

The Massachusetts Gaming Commission (MGC) did not ensure that the Plainridge Park Casino complied fully with the workforce development and diversity plan it submitted as a condition of obtaining its gaming license. Allowing Plainridge to not accomplish its plan goals could result in less economic benefit to the community than was intended by the law that created MGC. In addition, Plainridge's noncompliance with its plan could expose it to revocation or nonrenewal of its license.

As part of its application for a Category 2 gaming license, Plainridge was required under Section 18(4) of Chapter 23K of the Massachusetts General Laws to "implement a workforce development plan that utilizes the existing labor force." Further, under Section 21(a)(1) of Chapter 23K of the General Laws, Plainridge has "an affirmative obligation to abide by every statement in its application."

Plainridge is obligated to comply with the workforce development and diversity plan filed with its application, but the plan did not include specific timeframes for the achievement of its goals. Subsequently, in August 2014, Plainridge presented an additional "Strategic Plan to Engage and Recruit the Diverse, Under and Unemployed Workforce Population." The new strategic plan included timeframes extending through February 2015, focused on job creation, but did not include specifics related to general workforce development.

The new strategic plan indicated that the casino would achieve certain workforce diversity goals, including the hiring of "90% of our workforce from our host and designated surrounding communities; and that 10% of our workforce be comprised of individuals from ethnic minority groups." In addition, the plan provided for general workforce development, including career advancement programs, continuing education assistance, and daycare facilities. However, as of June 15, 2015, Plainridge stated that it had hired only 36% of its employees from its host community and surrounding communities. Plainridge further stated that 14% of its staff was from ethnic minority groups, but did not provide detail in support of that calculation.

## Authoritative Guidance

MGC's obligation to monitor Plainridge's activities is provided for under Section 1 of Chapter 23K of the General Laws, which states that "ensuring public confidence of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme is the paramount policy objective" of this law, which created MGC.

## Reasons for Issue

MGC personnel indicated that they had the authority to audit Plainridge's hiring records to determine whether it had met its workforce development and diversity goals but to date had chosen not to do so because they believed the data would not be meaningful. They stated that this was because the typical turnover rate at a new 24-hour facility such as Plainridge was significantly higher in the first year or two and therefore they believed Plainridge had not had adequate time to comply with these provisions of its plan. There is no documentation to substantiate that MGC suggested any alternative deadline after Plainridge established the February 2015 deadline in its additional plan. MGC also had no policies or procedures to track Plainridge's compliance, with or without a deadline.

## Recommendation

MGC should develop internal controls to ensure that Plainridge meets all the requirements of its workforce development and diversity plan within a reasonable time. Such controls could include establishing, in collaboration with Plainridge, implementation of further milestone dates and a target date by which all the goals need to be met, as well as developing and implementing monitoring policies and procedures to track Plainridge's compliance.

## Auditee's Response

*MGC is deeply committed to workforce development and diversity, and as such continuously monitors the licensees' progress in this area. We are compelled to note that the Commission has established oversight procedures and works closely with multiple stakeholders to ensure licensee compliance.*

*While Plainridge Park Casino (PPC) has not achieved its ambitious 90% goal of local workforce hiring, we are pleased that 65% of current employees comes from a 20 mile radius to the property.*

*The auditor's report states that the Workforce and Diversity Plan submitted by PPC did not include a timeframe for achievement of such goals. We note that the goals for vendor and workforce diversity consist of two phases, and within each phase there are vendor (i.e., contracts) and*

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*workforce (i.e., employees) components. As such, each licensee has submitted two plans, one for each phase (design & construction and operations). While the construction phase has a definite timeframe (i.e., end of construction), the operations phase is clearly an on-going phase. It is precisely with that in mind that both the licensee and the MGC regard the goals for the operations phase as an on-going obligation, and one that is not necessarily met at a specific time without potentially having an impact on other competing priorities.*

*The diversity goals for the construction phase for vendors were all met or exceeded. The diversity goals for the construction phase for workforce were met, with the exception of women (women in the trades is a notoriously challenging benchmark).*

*In the operations phase, the goals for vendors were met or exceeded. For workforce, the results were as follows: regarding diversity, the Licensee has consistently exceeded their 10% goal for ethnic minorities. However, regarding local hiring at the time of opening 65% of the licensee's hires came from a 20 mile radius of the site and 77% of the employees were MA residents, falling short of the 90% local hiring goal.*

*The report recommends that the Commission develop internal controls to ensure PPC meets all requirements within a reasonable timeframe. The Commission has such internal controls and continuously works to improve them. The Commission and staff constantly monitor and ensure compliance with the multiple statutory requirements and licensing conditions of licensees.*

In its response, MGC also provided the following relevant background information:

*In accordance with MGC regulations and licensing conditions, Penn National Gaming [the owner and operator of Plainridge] provided to the Commission Vendor and Workforce Plans including an affirmative action program of equal opportunity for both the Design and Construction Phase and the Operations Phase. . . .*

***Diversity Plan for the Operations Phase:***

*The Commission discussed several times at different public meetings the efforts, plans and goals that would guide the diversity and local hiring goals for the operations phase.*

*At the June 26, 2014 public meeting, the Commission discussed and gave preliminary approval to the Licensee's best faith efforts to reach the goals and plans to ensure that unemployed/underemployed Massachusetts residents in close proximity to the host and surrounding community of the project could benefit should the licensee not be able to reach the goals despite their best efforts.*

*At the August 7, 2014 public meeting, the Commission approved the Plainridge Park Casino Strategic Plan to Engage & Recruit the Diverse, Under & Unemployed Workforce Population. The plan for the operations phase outlined the following hiring goals:*

- 10% for ethnic minority operations employees*
- There is no stated goal for women employees, but regularly report on this metric*

- *90% local hiring goal (local hiring is defined below)*

*PPC stated that they would use best efforts to hire 90% of individuals from the host community of Plainville and designated surrounding communities of Foxborough, Mansfield, Wrentham and North Attleboro. The plan further stated that, "Should efforts fall short of the 90% local hiring goal, we would expand our scope in concentric circles, within the Commonwealth of Massachusetts, from our facility location to incorporate neighboring towns and cities, including the Greater Boston area. Additional recruitment focus will be given to towns and cities within these concentric circles that have a higher than average unemployment rate, specifically Attleboro, Fall River and Brockton."*

*As part of their plan, the Licensee would focus hiring on communities in MA experiencing high unemployment if they had trouble meeting the goals. This was important given the additional goal of providing employment opportunities to the unemployed and underemployed.*

*At the June 19, 2015 public meeting, PPC presented to the Commission all efforts taken to meet their employment and supplier goals. The Commission reviewed the following information to determine if the Licensee had made best efforts to reach the hiring goals:*

- *The total populations of the host and surrounding communities, including the unemployment rates and diversity composition of the area.*
- *The newspaper ads advertising job openings in local papers.*
- *Information about the new Plainridge Park Casino Career Center opened September 2014 and staffed by the casino in Plainville five days/week prior to the business opening.*
- *Information about the Job Fairs held in Foxborough, North Attleboro, Wrentham, and Mansfield.*
- *Information about the Plainridge Park Casino on-site job fair in Plainville in November 2014 and the culinary job fair on property in May 2015.*
- *The partnership between Licensee [human resources] staff and consortium of workforce leaders including the Commonwealth's Career Centers that serve that region to identify and recruit local/unemployed individuals. The partnership included training staff from MA Career Centers of Fall River, Attleboro and Framingham regarding company culture, positions available and licensure and position requirements. PPC held Job Information Sessions, and provided the centers with job postings of available positions.*

*Prior to the time of opening (June, 2015) the composition of the workforce was as follows:*

- *14% for ethnic minority operations employees, currently exceeding the goal*
- *77% for Massachusetts residents, currently falling short of the host community goal*
- *65% of the licensee's hires came from a 20 mile radius of the site*

*The Commission considered that PPC hired 77% MA residents taking into account that at least for some initial period of time, certain key employees were brought in from out of state given their experience in gaming. The commission also considered that although the Licensee is currently*

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*falling short of their goal to hire 90% of employees from host and surrounding communities, 65% of their hires come from a 20 mile radius of the site.*

*The Licensee had hired 32 Plainville residents, the second highest percentage hired from any town in MA. (Attleboro/North Attleboro was the highest with a larger population and over 1,000 applicants.)*

*While we recognize that the efforts described have not yet resulted in achievement of the 90% local hiring goal, we are pleased with the on-going efforts. . . .*

***Existing Compliance Procedures for Verification of Diversity and Workforce Goals. . . .***

*We believe we have developed internal controls that allow us to monitor and ensure such compliance. We further believe in an environment and culture of continuous improvement and will continue to look for ways to efficiently and effectively conduct all of our activities. Below are existing aspects of these efforts as they relate to compliance with workforce and diversity.*

***1. Quarterly Reports***

*Each licensee is required to submit a quarterly report to the Commission. The Commission reviews these progress reports, the status of the projects and operations as well as the results and compliance with licensing conditions of each licensee. Each licensee provides a quarterly report that is presented, reviewed and discussed publicly at Commission meetings.*

***2. Implementation of a Licensing Management System***

*The MGC licenses and registers every employee of the casino. As part of this licensing effort, the MGC is developing and about to implement a web-based system to compile all required information of employees. Although we do not currently track ethnicity as part of the manual licensing process, the Licensing Management System (or LMS), will include demographic fields for applicants to self-identify their race and ethnicities. This will serve as a means of verification of applicant's hiring diversity statistics.*

***3. Oversight Project Manager***

*As part of our duty to verify progress of the projects and compliance to and adherence with licensing conditions, the Commission established a robust Oversight Project Management program. Initially staffed with project managers from two consulting firms ([Project Management Advisors] and Pinck & Co.), those responsibilities have now been placed under the Ombudsman's office with a full time project oversight manager. This office also serves as an important coordinator of information, documentation and updates between the Commission, the licensees and other stakeholders (additional consultants, permitting and local authorities, etc.). Supplier diversity and workforce development is a permanent item on the list of activities for this office.*

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#### **4. On-going Research and Evaluation**

*As part of large research and evaluation initiatives, the MGC requires a PPC—Employee Background Survey at the time of employee licensure by the Commission; the data is compiled and reported by [the University of Massachusetts] into independent reports. A revised survey is underway and will also include a question about ethnic identification of the employee applicants.*

#### **5. Internal Audit, Risk Assessment and Compliance Group**

*As part of the Internal Control environment and on-going self-assessment process, we have established an "Internal Audit, Risk Assessment and Compliance Group." The group is comprised of the Commission's Treasurer, the Executive Director, the General Counsel, the Director of the Investigations and Enforcement Bureau and the Chief Financial Officer. The group will have periodic discussions and analyses of risk-assessment compliance topics in all areas and divisions of the Commission (for internal operations, as well as the operations of the casinos). As such the group may include directors and members from other departments on an ad-hoc basis. The group will also serve as the initial review of any audits performed by or commissioned by the agency. This group started meeting on March of 2016 and is expecting to meet monthly.*

### **Auditor's Reply**

In its response, MGC asserts that it has developed internal controls and oversight procedures to ensure that Plainridge meets all the requirements of its workforce development and diversity plan within a reasonable time. However, MGC did not give the Office of the State Auditor (OSA) any documentation, either during or after our audit, to substantiate that it had developed any formal written policies or procedures for meeting these requirements. Moreover, as stated in our report, MGC officials told us that although the commission had the authority to audit Plainridge's hiring records to determine whether it had met its workforce development and diversity goals, MGC had chosen not to do so to date. Further, specific milestones and final timeframes for Plainridge to meet the goals of its workforce development and diversity plan have yet to be established.

In its response, MGC describes how, through its public-meeting process, it has reviewed Plainridge's efforts to achieve its workforce development and diversity goals. MGC also mentions that, as part of its monitoring activities, it requires Plainridge to submit quarterly reports. However, MGC has not established any mechanism to verify the information in these reports. Although OSA does not dispute that quarterly reporting and public-meeting discussions on this subject are appropriate and informative for both MGC and other attendees, we believe that these monitoring activities alone do not constitute an effective internal control process to ensure that Plainridge meets its goals within a reasonable time.

Our audit focused on assessing the implementation of Plainridge's workforce development and diversity plan during the operations phase, not the construction phase, of the project. MGC asserts that both it and Plainridge regard the goals for the workforce development and diversity plan for this phase as an "on-going obligation, and one that is not necessarily met at a specific time without potentially having an impact on other competing priorities." However, since Plainridge's receipt of a gaming license was based in part on its meeting all of its specified workforce development and diversity goals as required by law, OSA believes that it would be prudent of MGC to hold Plainridge accountable for meeting these goals within a reasonable, specified time and to work with Plainridge on developing further milestone dates and a target date by which all the goals must be met.

Finally, in its response, MGC refers to an oversight project manager and an Internal Audit, Risk Assessment and Compliance Group as part of its monitoring controls. These did not exist during our audit period, and therefore OSA cannot comment on them.

## **2. MGC did not ensure that Plainridge intercepted and remitted approximately \$65,000 of delinquent taxes and child-support payments.**

MGC did not effectively monitor Plainridge to ensure that it withheld, or intercepted, \$65,000 of unpaid child support and/or back taxes from certain jackpot winners and remitted the money to the state's Department of Revenue (DOR). The commission also did not ensure that Plainridge submitted required monthly jackpot reports to DOR.

Under a Memorandum of Understanding (MOU) entered into by MGC, DOR, and Plainville Gaming and Redevelopment LLC (doing business as Plainridge Park Casino), Plainridge is required to determine whether each individual who is entitled to a gambling payout of \$1,200 or more owes delinquent child support and/or back state taxes by conducting an information check with a DOR database before making the payout. If s/he does, Plainridge is required to withhold the owed amount/s from his/her payout and remit the withheld funds to DOR. However, according to DOR, Plainridge did not conduct any intercepts of funds from August 21, 2015 through October 4, 2015. This resulted in 39 missed intercepts: \$37,097 of delinquent taxes and \$27,894 of child support. Not collecting these past-due amounts can result in lost revenue to the Commonwealth and/or lost support for children who are entitled to the funds.

**Inadequate oversight by MGC allowed this situation to go undetected and unresolved for six weeks.**

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Additionally, Section 51 of Chapter 23K of the General Laws requires Plainridge to submit a monthly report to DOR showing people who have been awarded jackpots in excess of \$1,200, and Section 52 of Chapter 23K requires a report of all intercepts during the month. That report is intended to be used by DOR for comparison with intercepted funds that DOR received from Plainridge during the prior month to verify that no intercepts were missed. However, Plainridge did not file this report until March 2016, even though it began operating on June 24, 2015.

### **Authoritative Guidance**

The MOU entered into by MGC, DOR, and Plainridge states, "In furtherance of MGC's oversight responsibilities, MGC agrees to work with DOR and [Plainridge] to ensure [Plainridge's] adherence to sections 51 and 52 of Chapter 23K."

### **Reasons for Lack of Monitoring**

MGC did not have specific policies and procedures in place for tracking the timely filing of the reports required by law and did not verify with DOR that the latter received them each month, and therefore the tardy reports went unnoticed. As a result, MGC did not identify the missed intercepts, which it attributes to malfunctions in the intercept system used by Plainridge and DOR.

### **Recommendations**

1. MGC should work with Plainridge and DOR to resolve the \$65,000 of missed intercepts.
2. MGC should develop policies and procedures to monitor Plainridge's compliance with the reporting requirements of the law and the MOU.

### **Auditee's Response**

*We agree that there was a temporary technological error in the software that DOR and PPC designed to identify and prevent payment of casino winnings to patrons with delinquent taxes and child-support payments. We further agree that the period of malfunction resulted in approximately \$65,000 in monies that should have been identified and intercepted.*

*Although the law and a Memorandum of Understanding (signed by PPC, DOR and MGC) does not impose an obligation on the Commission to administer this process, the Commission has worked with PPC and DOR from the beginning of the implementation of this intercept.*

*After discovery of the technological issue by DOR, the Commission, DOR and PPC have corrected the issue and monies have been restored to the satisfaction of the parties.*

In its response, MGC also provided the following background information:

*The gaming act (c.23K, §51a) obligates the gaming licensee to report to DOR for purposes of ensuring that past-due tax and child support obligations are addressed as part of the process of payment of certain prizes at the gaming establishment.*

*Prior to the opening of PPC, Commission staff worked collaboratively with Plainridge and DOR to develop and implement measures addressing PPC's obligations under c.23K §51. In furtherance of this collaboration the parties (DOR and Plainridge, with acknowledgement by the Commission) executed a Memorandum of Understanding in which the duties and obligations of each party are outlined. The Commission's responsibilities under the Memorandum of Understanding are limited to its role as the ultimate permit granting authority.*

*Despite best efforts by DOR and Plainridge in the implementation of a real-time software program to help verify debts to the State prior to paying out jackpots, the parties identified a technological failure in the system. This failure was beyond the control of DOR and PPC; in fact neither party understood for some weeks that the failure had occurred. When PPC queried the intercept system as required under the Memorandum of Understanding, PPC did not receive a response indicating that an intercept was required even when such a response should have been indicated. Once the system failure was identified by DOR, the situation was addressed by DOR and PPC with the involvement of the Commission. The Commission, DOR and PPC have been fully engaged in this process. The immediate issue has been resolved between DOR and PPC to the satisfaction of the Commission.*

*As stated above, responsibility for compliance with the intercept requirement in the first instance under §51(a) rests with the gaming licensee. However, as the ultimate permitting authority under the Memorandum of Understanding if a compliance issue arises, the Commission will work with both the gaming licensee and DOR to find an appropriate resolution. Further, the Commission is continuing to work closely with DOR and PPC to create a fully functional infrastructure that will ensure that past due taxes and child support obligations are properly addressed at gaming establishments in the Commonwealth at the time they occur. This long term solution requires changes in infrastructure, processes and procedures by both PPC and DOR.*

*In addition to its work on this issue, the Commission is developing a robust compliance program to supplement the processes already in place regarding compliance by gaming licensees with all legal requirements. The compliance program will incorporate measures to confirm that the gaming licensees are properly attending to their obligation G.L. c.23K, §51.*

## **Auditor's Reply**

We disagree that the MOU "does not impose an obligation on the Commission to administer this process."

To the contrary, it specifically states, "The Massachusetts Gaming Commission is responsible for implementing, administering and enforcing M.G.L. c. 23K." However, based on its response, MGC has taken measures to address our concerns in this area.

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### **3. MGC did not correct funding errors in certain racing trust funds.**

MGC identified errors in allocation of racing revenue to certain racing trust funds but did not correct them. Misallocation of funds can prevent trust funds from accomplishing their statutory roles. For example, an underfunded capital-improvement fund may result in delayed funding of grants for capital improvements at racetracks.

On May 20, 2012, MGC assumed all the duties and responsibilities formerly performed by the Massachusetts State Racing Commission (MSRC). When MGC absorbed MSRC, it performed a reconciliation of the revenue MSRC received from racing licensees from January 1, 2013 through June 30, 2014 and of the allocation of that revenue to the trust funds that are required by law to receive specific percentages of racing revenue. The reconciliations disclosed errors in the amounts of this revenue transferred to certain trust funds:

- The Racing Development Fund was underfunded by \$387,613.
- The Running Horse Capital Improvements Trust Fund was underfunded by \$105,952.
- The Running Horse Promotional Trust Fund was underfunded by \$18,019.
- The Harness Horse Promotional Trust Fund was overfunded by \$182,605.
- The Racing Stabilization Fund was overfunded by \$47,667.
- The Harness Horse Capital Improvements Trust Fund was overfunded by \$24,754.

When MGC discovered these errors, it authorized adjustments to these trust funds in December 2014 to correct these errors and ensure that the proper amounts of revenue were deposited, but these correcting adjustments were never made.

#### **Authoritative Guidance**

Section 5 of Chapter 128A of the General Laws defines the requirements for the distribution of specific percentages of assessments from gaming licensees. The licensees perform the initial allocation calculations, which MGC reviews for accuracy. MGC also assumes the responsibility of distributing the funds, since individual licensees do not have access to the Commonwealth's accounting systems and therefore cannot distribute money to specific trust funds.

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## Reasons for Uncorrected Errors

After MGC approved the correcting adjustments in December 2014, it overlooked the actual recording of the adjusting entries until we brought it to management's attention.

## Recommendation

MGC should make the correcting adjustments necessary to properly allocate licensee assessments to funds as required by Chapter 128A of the General Laws.

## Auditee's Response

*We agree with the finding that certain racing trust fund adjustments were identified and approved by the Commission but not effectuated until the state auditor identified that the correcting entries were not entered into MMARS.*

*We appreciate the auditors' due diligence in identifying this administrative error. After learning of this matter, the Commission took immediate steps to resolve it. Accordingly the entries have been entered and adjusted.*

In its response, MGC also provided the following relevant background information:<sup>4</sup>

*We agree the amounts [in the finding] are consistent with the amounts reported to the Commission on December 4, 2014. We also agree with the office of the state auditor's discovery that the adjusting entries were not entered into MMARS by the time the audit staff left MGC offices.*

*To correct the identified problems on April 27, 2016 and June 8, 2016 MGC staff made the following transfers:*

- \$47,667.28 from Racing Stabilization Account to the Running Horse Capital Trust Fund.*
- \$58,284.81 from the Harness Horse Promotional Fund to the Running Horse Capital Improvement Fund. This made the Running Horse Capital Improvement fund whole.*
- \$18,018.59 from the Harness Horse Promotional Trust Fund to the Running Horse Promotional Trust Fund.*

*The transfers above ensured that licensee funds that were owed money are made whole. In addition we made the following transfers:*

- \$24,754.43 from the Harness Horse Capital Improvement Fund to the Racing Oversight Development Fund.*

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4. MGC officials also explained to OSA that all accounts listed in the finding as underfunded are now whole. MGC stated that it had received all funds for these accounts and that they had been distributed appropriately after the audit period.

- *\$11,522.01 from the Harness Horse Promotional Fund to the Racing Oversight Development Fund.*

*The Harness Horse Promotional Trust Fund was overpaid by \$182,604.54. As of 4/27/2016 the Harness Horse Promotional Trust Fund only had a balance of \$87,825.41 in uncommitted revenues. That amount was transferred to other funds as detailed above, leaving a balance of \$94,779.13 to be paid to the Racing Oversight Development Fund as money comes into the Harness Horse Promotional Trust Fund.*

*The transfers above were made to limit impact to licensee funds. With the exception of the Racing Oversight and Administration fund, where MGC pays the costs of its own staff and supplies needed to regulate racing, all other funds owed money were made whole.*

*MGC's finance office will continue to review racing revenues on a monthly basis during its reconciliation processes, and will meet at least annually with the MGC's office of the General Counsel to make sure that the takeout percentages used to calculate monthly transfers of racing revenues to licensee and MGC trust funds are consistent with the most recent racing legislation.*

## OTHER MATTERS

One of our audit objectives was to determine whether the Massachusetts Gaming Commission (MGC) complied with open-meeting laws. At the beginning of our audit, we became aware of an ongoing investigation by the Massachusetts Attorney General's Office that was being conducted at the request of MGC. The purpose of the investigation was to clarify the status of certain informal gatherings of commissioners, and certain staff meetings, as public or nonpublic meetings under the Commonwealth's open-meeting laws (Sections 18–25 of Chapter 30A of the Massachusetts General Laws). Under Section 29.06 of Title 940 of the Code of Massachusetts Regulations (CMR), the Attorney General's Office is responsible for investigating potential violations of this law.

Because of this ongoing investigation, we limited our review of MGC's open-meeting procedures to those related to compliance with the posting requirements for public meetings under 940 CMR 29.03. We determined that MGC complied with those posting requirements.

After our audit period, on December 23, 2015, the Attorney General's Office issued a report concluding that certain violations of the open-meeting laws had occurred and advised caution regarding future informal meetings. In addition, it was recommended that the commissioners and their staff receive training from the Attorney General's Office on the open-meeting laws.

### **Auditee's Response**

*As noted in the auditor's report, one of the audit objectives was to determine whether the Commission complied with the Open Meeting Law. The report correctly states that the Attorney General's Office is responsible for investigating compliance with the Open Meeting Law.*

*On July 7, 2015, the Commission requested the Attorney General's Office to do a review of the Commission's Open Meeting Law compliance. After an exhaustive review that involved meetings with commissioners and review of documents, on December 23, 2015 the Attorney General issued a letter outlining the results of its review. The Commission provided a copy of this letter to the audit staff.*

*The Attorney General's review provided guidance to the Commission on Open Meeting Law compliance and recommended training to commissioners and staff. On January 27 2016 in an open public meeting, the Attorney General's office came to the Commission and provided training.*