

# Audit Report

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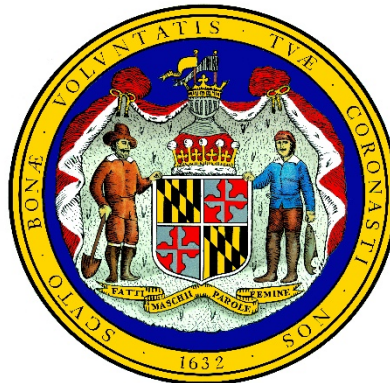
## Department of Commerce

December 2023

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### Public Notice

**In compliance with the requirements of the State Government Article Section 2-1224(i), of the Annotated Code of Maryland, the Office of Legislative Audits has redacted cybersecurity findings and related auditee responses from this public report.**



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**DEPARTMENT OF LEGISLATIVE SERVICES**  
**MARYLAND GENERAL ASSEMBLY**

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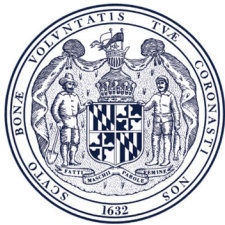
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Victoria L. Gruber  
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Gregory A. Hook, CPA  
Legislative Auditor

December 13, 2023

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee  
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee  
Members of Joint Audit and Evaluation Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Department of Commerce (DOC) for the period beginning December 19, 2017 and ending January 31, 2022. DOC's primary purpose is to stimulate and strengthen the Maryland economy by developing policies and implementing programs to help generate new jobs and retain existing jobs. DOC also helps develop policies and implements programs to help generate investments by attracting businesses to the State, by facilitating the expansion and retention of existing companies, and by promoting Maryland's strategic assets. DOC uses various financing programs and incentives, such as loans, grants, tax credits, and other financial investments to accomplish its purpose.

Our audit disclosed that DOC did not have an effective process to verify that institutions of higher education had secured private matching funds as required, and that expenditures were made only for eligible purposes when awarding research funds from the Maryland E-Innovation Fund, which totaled \$38.9 million in fiscal years 2019 through 2022. In addition, DOC did not have sufficient controls over the transfer of funds from the Small, Minority, and Women-Owned Businesses Account to fund manager accounts and for the subsequent disbursement of those funds, which totaled \$25.3 million during our audit period.

Our audit also disclosed that DOC had not established adequate procedures and controls over the award and disbursement of certain Maryland State Arts Council grants, such as verifying certain critical eligibility requirements. Those awards totaled \$15.2 million during fiscal year 2021.

Furthermore, our audit disclosed cybersecurity-related findings. However, in accordance with the State Government Article, Section 2-1224(i) of the Annotated Code of Maryland, we have redacted these findings from this audit report. Specifically, State law requires the Office of Legislative Audits to redact cybersecurity findings in a manner consistent with auditing best practices before the report is made available to the public. The term “cybersecurity” is defined in the State Finance and Procurement Article, Section 3.5-301(b), and using our professional judgment we have determined that the redacted findings fall under the referenced definition. The specifics of the cybersecurity findings were previously communicated to those parties responsible for acting on our recommendations.

Finally, our audit included a review to determine the status of the nine findings contained in our preceding audit report. For the non-cybersecurity-related findings we determined that DOC satisfactorily addressed six of those eight findings. The remaining two findings are repeated in this report.

DOC’s response to this audit is included as an appendix to this report. In accordance with State law, we have reviewed the response and, while DOC generally agrees with the recommendations in this report, we identified certain instances in which statements in the response conflict with or disagree with the report findings. In each instance, we reviewed and reassessed our audit documentation, and reaffirmed the validity of our finding. In accordance with generally accepted government auditing standards, we have included “auditor’s comments” within DOC’s Finding 3 response to explain our position. In addition, there are other aspects of DOC’s response which will require further clarification, but we do not anticipate that these will require the Joint Audit and Evaluation Committee’s attention to resolve. In addition, in accordance with our policy, we have edited DOC’s response to remove any vendor names or products mentioned by DOC in this document. Finally, consistent with State law, we have redacted the elements of DOC’s response related to the cybersecurity audit findings.

We wish to acknowledge the cooperation extended to us during the audit by DOC. We also wish to acknowledge DOC’s willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA  
Legislative Auditor

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\* Denotes item repeated in full or part from preceding audit report

## **Background Information**

### **Agency Responsibilities**

The Department of Commerce (DOC) is a principal department of Maryland State government and operates in accordance with the Economic Development Article of the Annotated Code of Maryland. DOC's mission is to stimulate and strengthen the Maryland economy by developing policies and implementing programs to help generate new jobs and retain existing jobs. It also develops policies and implements programs to help generate investment by attracting businesses to the State, by facilitating the expansion and retention of existing companies, and by promoting Maryland's strategic assets. DOC uses various financing programs and incentives, such as loans, grants, tax credits, and other financial investments to accomplish its mission.

DOC's fiscal year 2022 appropriation provided for 189 employee positions. According to the State's records, during fiscal year 2022, DOC's expenditures totaled approximately \$154.7 million (see Figure 1 on the following page).

**Figure 1**  
**DOC Positions, Expenditures, and Funding Sources**

<b>Full Time Equivalent Positions as of June 30, 2022</b>		
	<b>Positions</b>	<b>Percent</b>
Filled	173	91.5%
Frozen <sup>1</sup>	2	1.1%
Vacant	14	7.4%
<b>Total</b>	<b>189</b>	
<b>Fiscal Year 2022 Expenditures</b>		
	<b>Expenditures</b>	<b>Percent</b>
Salaries, Wages, and Fringe Benefits	\$ 22,241,561	14.4%
Technical and Special Fees	1,795,301	1.1%
Operating Expenses	130,673,834	84.5%
<b>Total</b>	<b>\$ 154,710,696</b>	
<b>Fiscal Year 2022 Funding Sources</b>		
	<b>Funding</b>	<b>Percent</b>
General Fund	\$ 86,423,701	55.9%
Special Fund	64,345,120	41.6%
Federal Fund	2,168,167	1.4%
Coronavirus Aid, Relief, and Economic Security Act	942,008	0.6%
American Rescue Plan Act of 21	831,700	0.5%
<b>Total</b>	<b>\$ 154,710,696</b>	

Source: State financial and personnel records

<sup>1</sup> Prior to December 1, 2021, a hiring freeze resulted in certain positions being frozen. Frozen positions were unauthorized to be filled according to budgetary instructions from the Department of Budget and Management. Any position that is currently marked as frozen has not been filled since the freeze was lifted; however, these positions now are available to be filled.

## **State Grants Audit**

On November 10, 2021, we issued a performance report on *State Grants* to assess the State's policies and guidance for advertising, awarding, and monitoring State-funded grants. The report contained two findings related to DOC.

- DOC did not use a competitive method to award discretionary tourism grants and documentation was not available to support the propriety of the awards, including one award which was not calculated properly.
- DOC did not obtain documentation for a \$373,200 payment to a local government for a tourism marketing grant, as required.

In response to the report, DOC agreed with these findings and related recommendations. Based on professional judgment (our assessment of risk and significance), we did not review tourism grants during our current audit, but we did review other selected grants based on materiality and risk and the related results of our review are included in this report.

## **Status of Findings From Preceding Audit Report**

Our audit included a review to determine the status of the nine findings contained on our preceding audit report dated September 4, 2019. As disclosed in Figure 2 on the following page, for the non-cybersecurity-related findings, we determined that DOC satisfactorily addressed six of those eight findings. The remaining two findings are repeated in this report.



**Figure 2**  
**Status of Preceding Findings**

<b>Preceding Finding</b>	<b>Finding Description</b>	<b>Implementation Status</b>
Finding 1	DOC had not established effective procedures to ensure that One Maryland Tax Credit applicants accurately reported their compliance with required new job creation numbers, and a tax credit was issued to one applicant based on ineligible project costs.	Not repeated
Finding 2	DOC did not have procedures to ensure biotechnology companies accurately reported employment and ownership information prior to being certified and the issuance of tax credits to investors. In addition, DOC did not establish procedures to identify tax credits subject to recapture.	Not repeated
Finding 3	DOC did not establish a sufficient process to verify loan recipients met employment requirements before forgiving conditional loans. In addition, DOC paid certain loan guarantees without obtaining, reviewing, and verifying adequate documentation to support lender claims.	Not repeated
Finding 4	DOC did not have an established process to ensure that MEIF recipients secured and deposited required private funding (donations), and that the related expenditures were made for qualified purposes.	<b>Repeated</b> (Current Finding 1)
Finding 5	DOC had not established effective procedures and controls over the MSAC's GFO program.	<b>Repeated</b> (Current Finding 3)
Finding 6	DOC did not have a process to ensure that fund manager agreements included critical details relating to loan underwriting processes.	Not repeated
Finding 7	DOC did not establish an effective process to verify fund manager compensation.	Not repeated
Finding 8	DOC did not verify data reported by fund managers relating to their efforts to meet certain specific program lending goals.	Not repeated
Finding 9	Certain purchasing and disbursement transactions and access to the State's Financial Management Information System (FMIS) were not sufficiently controlled.	Status Redacted <sup>2</sup>

<sup>2</sup> Specific information on the current status of this cybersecurity-related finding has been redacted from the publicly available report in accordance with State Government Article, Section 2-1224(i) of the Annotated Code of Maryland.

## Findings and Recommendations

### Maryland E-Nnovation Initiative Fund

#### Background

The Maryland E-Nnovation Initiative Fund (MEIF) provides State matching funds in support of research endowments at Maryland non-profit institutions of higher education (NPIHE). NPIHEs generally include any institution of postsecondary education that receives State funds in its annual operating budget and awards degrees at the associate, baccalaureate, or graduate level. State law requires the Governor to appropriate at least \$8.5 million annually for MEIF through fiscal year 2026.<sup>3</sup> According to its records, the Department of Commerce (DOC) awarded funds to 14 NPIHEs totaling approximately \$38.9 million during fiscal years 2019 through 2022.

To receive MEIF funds, an institution must submit an application that includes its research endowment plan and identify qualified donations in the form of cash or cash equivalents to match the amount of State funding requested. Within 90 days after approval, the institution must deposit into the endowment an amount of qualified donations equal to or greater than the total amount of MEIF funds it was allocated. State regulations allow the institution to use MEIF funds to establish new positions associated with the research endowment, such as research scientists, and to purchase research infrastructure, such as laboratory equipment.

#### Finding 1

**DOC did not have an effective process to ensure that MEIF recipients secured and deposited required private funding (donations), and that the related expenditures were made for qualified purposes.**

#### Analysis

DOC did not have an effective process to verify that MEIF recipients secured and deposited the required qualified donations, and that the related expenditures were for the purposes allowed by State regulations. We reviewed five awards totaling \$5.7 million made to five NPIHEs during fiscal years 2020 through 2022.

- DOC did not obtain sufficient support to ensure that matching funds were received and deposited into the appropriate endowment fund, as required. Specifically, DOC obtained gift receipts and investment statements showing

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<sup>3</sup> Chapter 14, Laws of Maryland 2021 extended the annual appropriation requirement from fiscal year 2021 to fiscal year 2026.

endowment fund balances but did not obtain supporting documentation that such receipts and balances represented matching qualified donations.

- DOC did not independently verify that State matching funds were used for permitted purposes. Specifically, DOC relied on annual unaudited reports prepared by each NPIHE, as well as a signed certification by each NPIHE, that the funds were spent in accordance with State regulations. DOC did not independently verify the amounts reported, by requesting supporting documentation or conducting periodic audits, as provided for in the grant agreements.

Similar conditions were noted in our preceding audit report. Although DOC expressed concerns during our prior audit with requiring additional support and conducting audits, its response to our prior report indicated that by December 31, 2019, its Office of Internal Audits would, on a test basis, periodically review MEIF documents for a sampled number of NPIHEs, to determine compliance with MEIF requirements. This review was not implemented during the current audit period.

#### **Recommendation 1**

**We recommend that DOC establish a process to verify, at least on a test basis, NPIHE compliance with MEIF requirements. Such a process could include on-site audits or obtaining appropriate documentation from MEIF recipients to ensure that qualified donations were deposited into the designated research endowment, and verifying that State funds were only used for purposes allowed by State regulations (repeat).**

### **Small, Minority, and Women-Owned Businesses Account**

#### **Background**

The Small, Minority, and Women-Owned Businesses Account (SMWOBA) provides investment capital and loans to small, minority, and women-owned businesses throughout Maryland. The SMWOBA has historically been funded by 1.5 percent of video lottery terminal (VLT) proceeds<sup>4</sup> collected by the State's six casinos with VLTs and State law provides that 50 percent of loans are to be allocated to businesses in the jurisdictions and communities surrounding these facilities. DOC has agreements with nine fund managers to provide investment

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<sup>4</sup> In accordance with State law, fiscal year 2019 and 2020 VLT proceeds were credited to the Education Trust Fund. In 2021 1.5 percent of VLT proceeds were again dedicated to the SMWOBA and an additional \$10 million was allocated to SMWOBA through the American Rescue Plan Act of 2021.

capital and loans to small, minority, and women-owned businesses. The agreements provide descriptions of the services and responsibilities of the fund managers, including making and servicing loans or investing in targeted businesses, and submitting certain reports and audited financial statements to DOC.

Fund managers request monies from the SMWOBA investment account up to the amount of their award, as funds are needed for investment and loan activity. Each manager maintains any funds received from DOC in a separate bank account established in trust for the benefit of the State. These funds, plus any repaid loan principal, are made available for new investment capital and loans. With the exception of fund manager compensation, all grants, loan assets, and related records remain the property of the State. Under the agreements, the fund managers are primarily compensated for program costs by origination and transaction fees paid by the businesses, and interest earned on loan assets.

Fund managers are required to have certain agreed upon procedures performed by an independent auditor to examine certain program activity, and the results of these examinations are reported to DOC. According to DOC records, during our audit period, approximately \$25.4 million was disbursed to fund managers from the investment account. The available SMWOBA balance as of June 30, 2022 was \$8.5 million.

## **Finding 2**

**DOC did not have sufficient controls over the transfer of funds from the SMWOBA to fund manager accounts, as well as the subsequent disbursement of those funds by managers.**

## **Analysis**

DOC did not have sufficient controls over the transfer of funds from the SMWOBA to fund manager accounts, or the subsequent disbursement of those funds. Specifically, one DOC employee was unilaterally responsible for verifying the propriety of transfer requests and supporting documentation, such as loan promissory notes, received from fund managers. This employee approved a memo to DOC's fiscal unit authorizing transfer of the funds. Although certain other employees also reviewed the transfer requests and signed the memo to the fiscal unit, they did so only to ensure and represent that the requested funds were available, not that the request was valid. Under these conditions, errors or other discrepancies could occur without timely detection.

Furthermore, we were advised by DOC that it relies on the aforementioned agreed upon procedures to ensure that all disbursements from fund manager accounts are

proper. However, the agreed upon procedures were not comprehensive as they did not include selecting and testing disbursements from independent documentation of all disbursements made, specifically the bank statements for fund manager accounts. Consequently, there was a lack of assurance that all disbursements were subject to testing.

## **Recommendation 2**

**We recommend that DOC establish sufficient controls over the transfer and disbursement of SMWOBA funds. Specifically, we recommend that DOC**

- a. implement a procedure to independently verify all transfers from the SMWOBA to a valid fund manager request and supporting documentation; and**
- b. modify the agreed upon procedures to ensure that all disbursements from fund manager accounts are subject to testing, by requiring selection and testing of disbursements from fund manager account bank statements.**

## **Maryland State Arts Council Grants**

### **Background**

The Maryland State Arts Council (MSAC), a unit under DOC's Division of Tourism, Film, and the Arts, administers the Grants for Organizations (GFO) program that provides annual unrestricted general operating funds to nonprofit and tax-exempt organizations and units of government that produce or present ongoing arts programming open to the public. According to MSAC's fiscal year 2022 annual report, MSAC disbursed \$16 million to 260 GFO grantees.

### **Finding 3**

**DOC had not established adequate procedures and controls over the award and disbursement of GFO program grants.**

### **Analysis**

DOC had not established adequate procedures and control over the award and disbursement of GFO program grants.

- DOC did not adequately ensure applicants were qualified to receive a grant. Specifically, DOC did not verify that applicants were incorporated in Maryland or had a significant presence in Maryland (such as by reviewing the State's Department of Assessments and Taxation website), which is required to be eligible for a grant. In addition, our judgmental test of nine GFO grants totaling approximately \$2.9 million, disclosed that DOC could not document that it conducted site visits for four grants with awards totaling approximately

\$440,000. GFO guidelines require the site visits to aid in the decision-making process by evaluating if potential grantees meet GFO guidelines.

- DOC did not have adequate documentation of the Secretary's final approval of grant awards as required by DOC guidelines for GFO grants. DOC could not provide a decision memo, which is required to document the Secretary's annual approval of the final funding for all grants, for fiscal year 2021. In addition, although a memo was provided for fiscal year 2022, it did not specifically include documentation of the Secretary's approval. We were advised by DOC that the Secretary verbally approved the grant funding for fiscal year 2022 during a MSAC meeting.
- DOC did not obtain documentation from GFO grantees, such as bank statements and invoices, to ensure that State funds were appropriately matched and were used for allowable expenditures. Grantees are required to provide matching funds of at least a three-to-one level and must use the funds for specific expenses (such as for artist salaries, theater sets, and marketing). DOC relied on a grantee self-certified report to show matching funds received and related expenditures, without obtaining and reviewing supporting documents to ensure the amounts reported were valid. The GFO grant agreements provide that DOC may inspect the grantee records at any time.

A similar condition was included in our preceding audit report. In response to that report, DOC indicated that a spot check of 1 in every 30 applications would be performed to ensure matching funds were provided. However, during our current audit period no spot checks were being conducted.

- DOC did not reconcile total GFO grant disbursements recorded in its grants management system with the State's accounting records to help ensure that only valid transactions had been processed and recorded. Our review disclosed that the \$11,120,768 of disbursements recorded in the grants management system for the period of July 1, 2021 through December 31, 2021 exceeded the disbursements recorded in the State's accounting records (\$10,895,362) by \$225,406. DOC could not readily explain the difference. A similar condition was commented upon in our preceding audit report. In response to that report, DOC had agreed to conduct a comprehensive reconciliation on a quarterly basis, however, no comprehensive reconciliations were performed during the audit period.

### **Recommendation 3**

**We recommend that DOC establish effective procedures and control over the award and disbursement of GFO program grants. Specifically, we recommend that DOC**

- a. takes steps prior to awarding a grant to ensure that an applicant is incorporated in Maryland, and perform a site visit as required;**
- b. ensure that the Secretary’s review of annual GFO awards is formally documented in writing;**
- c. obtain and review appropriate documentation, such as bank statements and invoices, at least on a test basis, to ensure that each grantee matched the grant funds received as required and that grant funds were used for allowable purposes (repeat); and**
- d. periodically reconcile grant disbursements in the grants management system with similar amounts in the State’s accounting records and investigate and resolve any differences noted (repeat).**

### **Information Systems Security and Control**

We determined that the Information Systems Security and Control section, including Findings 4 and 5 related to “cybersecurity”, as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore are subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Consequently, the specifics of the following findings, including the analysis, related recommendations, along with DOC’s responses, have been redacted from this report copy.

#### **Finding 4**

**Redacted cybersecurity-related finding.**

#### **Finding 5**

**Redacted cybersecurity-related finding.**

## **Audit Scope, Objectives, and Methodology**

We have conducted a fiscal compliance audit of the Department of Commerce (DOC) for the period beginning December 19, 2017 and ending January 31, 2022. The audit was conducted 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.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine DOC's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included financing programs, tax incentive programs, grant programs, COVID-19 relief funds, and the State's Financial Management Information System (FMIS) security and control. We also determined the status of the findings contained in our preceding audit report.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit period of December 19, 2017 and ending January 31, 2022, but may include transactions before or after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of DOC's operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.



We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from this source was sufficiently reliable for the purposes the data were used during this audit.

We also extracted data from DOC's automated grant management systems and automated financing programs monitoring system for the purpose of testing certain attributes and functions, such as grant awards, eligibility for financing, and DOC's monitoring efforts. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during the audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

DOC's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records; effectiveness and efficiency of operations, including safeguarding of assets; and compliance with applicable laws, rules, and regulations are achieved. As provided in Government Auditing Standards, there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to DOC, were considered by us during the course of this audit.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect DOC's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of

noncompliance with applicable laws, rules, and regulations. Other less significant findings were communicated to DOC that did not warrant inclusion in this report.

State Government Article Section 2-1224(i) requires that we redact in a manner consistent with auditing best practices any cybersecurity findings before a report is made available to the public. This results in the issuance of two different versions of an audit report that contains cybersecurity findings – a redacted version for the public and an unredacted version for government officials responsible for acting on our audit recommendations.

The State Finance and Procurement Article, Section 3.5-301(b), states that cybersecurity is defined as “processes or capabilities wherein systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation.” Based on that definition, and in our professional judgment, we concluded that certain findings in this report fall under that definition. Consequently, for the publicly available audit report all specifics as to the nature of cybersecurity findings and required corrective actions have been redacted. We have determined that such aforementioned practices, and government auditing standards, support the redaction of this information from the public audit report. The specifics of these cybersecurity findings have been communicated to DOC and those parties responsible for acting on our recommendations in an unredacted audit report.

DOC’s response to our findings and recommendations is included as an appendix to this report. Depending on the version of the audit report, responses to any cybersecurity findings may be redacted in accordance with State law. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise DOC regarding the results of our review of its response.

## APPENDIX



Wes Moore | Governor  
Aruna Miller | Lt. Governor  
Kevin A. Anderson | Secretary of Commerce  
Signe Pringle | Deputy Secretary of Commerce

November 16, 2023

Mr. Gregory A. Hook, CPA  
Legislative Auditor  
Office of Legislative Audits  
301 W. Preston Street  
Baltimore, MD 21201

Dear Hook:

Please find enclosed the Maryland Department of Commerce response to the Legislative Auditor's draft report for our fiscal/compliance audit for the period beginning December 19, 2017, and ending January 31, 2022.

I would like to personally thank you and your team for the work to complete the audit. I value your efforts to ensure the state government is run as efficiently and effectively as possible. The audit team partnered closely with the team here at Commerce and we appreciate the effort to support the quality of our department and its important work for the State of Maryland. I look forward to continued collaboration during my tenure.

We also appreciate the audit team meeting with the Commerce team to review findings and final recommendations. I will direct my team to continue to collaborate and partner with the auditors to implement recommendations to continue driving improvements to the productivity and efficiency of my department.

Should you have any questions, please contact David McDaniels at 410-767-6294.

Sincerely,

Kevin Anderson  
Secretary

OFFICE OF THE SECRETARY

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[commerce.maryland.gov](http://commerce.maryland.gov)

# Department of Commerce

## Agency Response Form

### Maryland E-Nnovation Initiative Fund

#### **Finding 1**

**DOC did not have an effective process to ensure that MEIF recipients secured and deposited required private funding (donations), and that the related expenditures were made for qualified purposes.**

**We recommend that DOC establish a process to verify, at least on a test basis, NPIHE compliance with MEIF requirements. Such a process could include on-site audits or obtaining appropriate documentation from MEIF recipients to ensure that qualified donations were deposited into the designated research endowment, and verifying that State funds were only used for purposes allowed by State regulations (repeat).**

Agency Response			
<b>Analysis</b>	<b>Factually Accurate</b>		
<b>Please provide additional comments as deemed necessary.</b>			
<b>Recommendation 1</b>	<b>Agree</b>	<b>Estimated Completion Date:</b>	<b>Complete</b>
<b>Please provide details of corrective action or explain disagreement.</b>	DOC has established a process to verify, at least on a test basis, NPIHE compliance with MEIF requirements. This process includes on-site audits or obtaining appropriate documentation from MEIF recipients to ensure that qualified donations were deposited into the designated research endowment, and verifying that State funds were only used for purposes allowed by State regulations.		

# Department of Commerce

## Agency Response Form

### Small, Minority, and Women-Owned Businesses Account

#### Finding 2

DOC did not have sufficient controls over the transfer of funds from the SMWOBA to fund manager accounts, as well as the subsequent disbursement of those funds by managers.

We recommend that DOC establish sufficient controls over the transfer and disbursement of SMWOBA funds. Specifically, we recommend that DOC

- a. implement a procedure to independently verify all transfers from the SMWOBA to a valid fund manager request and supporting documentation; and
- b. modify the agreed upon procedures to ensure that all disbursements from fund manager accounts are subject to testing, by requiring selection and testing of disbursements from fund manager account bank statements.

Agency Response			
Analysis	Factually Accurate		
Please provide additional comments as deemed necessary.			
Recommendation 2a	Agree	Estimated Completion Date:	01/01/2024
Please provide details of corrective action or explain disagreement.	DOC is implementing a control checklist for all SMWOBA disbursements to verify all transactions and to confirm the transfers were verified to a valid fund manager's request. The control checklist will be signed off by the accounting specialist and the program manager. The reviewers will verify previous disbursements by checking bank statements, check copies received when available, and other independent documentation. The reviewers will also check other independent documentation such as Commitment/Approvals uploaded into the database. Furthermore, at the end of the year, the reviewers will randomly select SMWOBA recipients to confirm the business received the funds from the fund manager.		
Recommendation 2b	Agree	Estimated Completion Date:	Complete
Please provide details of corrective action or explain disagreement.	DOC updated its Agreed Upon Procedures letter in December of 2022 to include tracing the disbursement from the bank statement to the actual borrower and comparing the amount of the loan from the promissory note to the fund manager's general ledger.		

# Department of Commerce

## Agency Response Form

### Maryland State Arts Council Grants

#### Finding 3

DOC had not established adequate procedures and controls over the award and disbursement of GFO program grants.

We recommend that DOC establish effective procedures and control over the award and disbursement of GFO program grants. Specifically, we recommend that DOC

- a. takes steps prior to awarding a grant to ensure that an applicant is incorporated in Maryland, and perform a site visit as required;
- b. ensure that the Secretary's review of annual GFO awards is formally documented in writing;
- c. obtain and review appropriate documentation, such as bank statements and invoices, at least on a test basis, to ensure that each grantee matched the grant funds received as required and that grant funds were used for allowable purposes (repeat); and
- d. periodically reconcile grant disbursements in the grants management system with similar amounts in the State's accounting records and investigate and resolve any differences noted (repeat).

Agency Response	
Analysis	Factually Inaccurate
Please provide additional comments as deemed necessary.	DOC offers the following clarification: A reconciliation procedure was created in response to a previous finding and was performed. Reconciliations were provided to the audit team on 3/17/22, 3/22/22, 3/31/22, and 10/12/22. The discrepancies found by the audit team most likely reflect the difference between the invoices submitted for payment (reflected in the report from the grants platform) and the payments made in the same period (reflected in the report from FMIS). Because of the time State payments take to process, these discrepancies are expected and addressed as part of the reconciliation.

**Auditor's Comment:** DOC disagreed that reconciliations were not performed. Although DOC provided us examples of the two most recent semi-annual reconciliations, they were not sufficiently comprehensive since they only reconciled a percentage of the grant awards. Based upon follow-up correspondence to our preceding audit report, DOC agreed to implement a comprehensive reconciliation encompassing all disbursements.

# Department of Commerce

## Agency Response Form

<b>Recommendation 3a</b>	<b>Agree</b>	<b>Estimated Completion Date:</b>	<b>Complete</b>
<b>Please provide details of corrective action or explain disagreement.</b>	<p>Beginning with FY25 applications, MSAC staff is taking steps to check SDAT records for incorporation in Maryland for new applicants before awarding a Grants for Organizations grant. Staff will continue to check for a significant presence in Maryland for all applicants as indicated within the required activities chart in the application as part of initial eligibility reviews.</p> <p>Site visits are performed for all on-year GFO applicants. Since the FY22 grant cycle, documentation of site visits (in the form of panelist notes) is retained within MSAC's grants system, and recordings of panel meetings include verbal reports, which provide additional confirmation of site visits by panelists.</p>		
<b>Recommendation 3b</b>	<b>Agree</b>	<b>Estimated Completion Date:</b>	<b>Complete</b>
<b>Please provide details of corrective action or explain disagreement.</b>	<p>DOC has implemented a procedure to ensure documentation of the Secretary's review of GFO awards. MSAC's executive director records the Secretary's (or designee's) email acknowledgments and approvals of departmental briefing and decision memos and retains the documentation.</p>		
<b>Recommendation 3c</b>	<b>Agree</b>	<b>Estimated Completion Date:</b>	<b>Complete</b>
<b>Please provide details of corrective action or explain disagreement.</b>	<p>DOC agrees with the auditor's recommendations and believes current procedures ensure that State funds were appropriately matched and were used for allowable expenditures. Under current procedures, program directors review financial statements of organizations against self-reported financials included in reporting and application materials for all grantees for allowable use of funds and matching income. Beginning in FY23, staff have documented meeting the matching fund requirement in an internal spreadsheet. If any questions were to arise as to whether a grantee did not meet the match requirement or use GFO funds for allowable purposes, DOC would exercise its right in its grant agreement to obtain and review appropriate documentation.</p>		

**Auditor's Comment:** Although the response indicates "Agree", it also states that appropriate documentation will only be obtained and reviewed if questions arise from DOC's review of self-reported information from the grantees. The use of self-reported information in this instance is not an adequate approach to ensure that matching funds were received and that actual expenditures were proper.

# Department of Commerce

## Agency Response Form

Recommendation 3d	Agree	Estimated Completion Date:	Complete
Please provide details of corrective action or explain disagreement.	MSAC's fiscal officer reconciles grant disbursements in the grants management system with similar amounts in the State's accounting records and investigates and resolves any differences quarterly.		



# Department of Commerce

## Agency Response Form

### Information Systems Security and Control

The Office of Legislative Audits (OLA) has determined that the Information Systems Security and Control section, including findings 4 and 5 related to “cybersecurity”, as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore are subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Although the specifics of the following findings, including the analysis, related recommendations, along with DOC’s responses, have been redacted from this report, DOC’s responses indicated agreement with the findings and related recommendations.

**Finding 4**  
**Redacted cybersecurity-related finding.**

**Agency Response has been redacted by OLA.**

**Finding 5**  
**Redacted cybersecurity-related finding.**

**Agency Response has been redacted by OLA.**

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