



February 8, 2017

To: Finance and Administration Committee

From: Darrell Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit Department

Subject: Status of Coach Operator Health and Insurance Benefits Audit

Overview

The Internal Audit Department is unable to conduct a planned audit of Coach Operator Health and Insurance Benefits. The purpose of the audit was to determine whether monies paid by the Orange County Transportation Authority are used in compliance with Article 40 of the Coach Operator Agreement with Teamsters Local 952 and to determine compliance with the Affordable Care Act regarding waiting period limitations. To date, attempts to access records required for audit have been unsuccessful.

Recommendations

- A. Suspend the planned audit of Coach Operator Health and Insurance Benefits Audit pending upcoming negotiations with Teamsters Local 952.
- B. Direct staff to work with Teamsters Local 952 to amend language and requirements in Article 40: Health and Insurance Benefits, to ensure audit provisions extend to the contracted administrators.

Background

The Orange County Transportation Authority (OCTA) and Teamsters Local 952 (Teamsters) operate under Collective Bargaining Agreements (CBA), the most recent of which became effective in May 2013. Article 40 of the CBA requires OCTA to contribute a maximum monthly amount per eligible coach operator for the purpose of purchasing health and life insurance for the coach operator (and his/her spouse and eligible children).

In July 2004, Teamsters directed OCTA to begin making contributions to the Labor Alliance Managed Trust Fund (Labor Alliance) for the purpose of providing coach operators with health and insurance benefits. With that CBA, Article 40 was made operative for the purpose of outlining the requirements and obligations of the parties related to payments, accounting, administration, and provision of benefits. Labor Alliance oversees the benefits plan and utilizes DMC Insurance Administrators (DMC) to administer the plan.

Article 40 states that contribution payments will be made for the purchase of health and life insurance benefits, "...contingent upon the Authority's periodic verification that these contributions have been used exclusively only for the benefit of the bargaining unit employees, their spouses, and eligible children."

Article 40 also requires the administrator (DMC) to, "...keep a separate account of all money received..." and provides that, "...the Authority shall have the right at all times to audit and otherwise review said account in order to determine that all monies paid by the Authority are pursuant to the terms as outlined..."

Discussion

Audit of OCTA Payments by Labor Alliance

After notification of the intent to audit by OCTA, Labor Alliance responded, on July 6, 2016, by notifying OCTA of their intent to audit contribution payments to the Labor Alliance from March 2012 through the present. OCTA immediately complied with this request, provided requested records, and accommodated the audit team during their on-site visit in August 2016. In October 2016, the auditors notified OCTA that no discrepancies were found during the audit.

OCTA Audit Notification and Requests for Documentation

In June and July 2016, the Internal Audit Department (Internal Audit) notified Teamsters, Labor Alliance, and DMC, in writing, of the intent to conduct an audit and requested specific records to be provided. In the ensuing months, numerous phone calls and letters were exchanged between Internal Audit and representatives of Labor Alliance and DMC in an attempt to obtain the records requested. Ultimately, on September 1, 2016, the DMC representative indicated that detailed account records would not be provided because pricing information is proprietary.

Internal Audit notified Teamsters of DMC's refusal to provide records for audit. Subsequently, DMC notified Internal Audit that, subject to the execution of a

Confidentiality Agreement, records would be provided for inspection at their offices in Pleasanton, California. In October 2016, the proposed Confidentiality Agreement was forwarded to Internal Audit. Internal Audit forwarded the proposed agreement to OCTA legal counsel for review.

During November 2016, OCTA legal counsel and Labor Alliance's legal counsel attempted to negotiate language in the Confidentiality Agreement which would allow OCTA to review the pertinent records and provide a report to OCTA's Board of Directors while also addressing the Labor Alliance's concerns for protection of personal information. While initial discussions with counsel for the Labor Alliance indicated that a resolution could be reached, negotiations broke down once questions were raised as to whether a separate accounting is kept for OCTA contributions.

CBA Requirements and Provisions

The CBA provides that "If at any time...adequate information is not provided so a determination can be made (that payments have been used only for the benefit of the bargaining unit employees, their spouses, and eligible children), the Authority may immediately stop contributions to the existing Plan and purchase medical and life insurance benefits from a Provider(s) with substantially equivalent benefits to those provided by the existing plan, provided that there is no adverse impact upon the Bargaining Unit employees...".

While the CBA requires that the administrator keep a "separate account" of monies received, DMC and Labor Alliance legal counsel have indicated that providing records to OCTA internal auditors would result in the auditors having access to information about other employers and employees. Labor Alliance legal counsel has further indicated that there may be disagreement as to the definition of "a separate account of all money received."

While DMC is the administrator referred to in the CBA, they are not a party to the CBA.

Summary

Internal Audit is unable to conduct the planned audit of Coach Operator Health and Insurance Benefits Audit.

Attachment

None.

Prepared by:



Janet Sutter
Executive Director, Internal Audit
714-560-5591

Timeline Summary

June 28, 2016	Audit Notification letter sent
July 1, 2016	Letter from D. Costa, DMC, stating their intention to schedule an audit of OCTA
July 6, 2016	Letter to DMC, D. Costa, clarifying intent to audit and requesting information relating to the account used to collect contributions and make payments to insurance providers.
July 6, 2016	Letter from Lindquist (auditors for DMC) requesting information from OCTA for audit
July 21, 2016	Phone conversation: DMC refers Internal Audit to Lindquist to obtain records for audit
July 26, 2016	Phone conversation: Lindquist indicates they only perform audits of contributing agencies for DMC
August 8, 2016	Letter from D. Costa, DMC, requesting Internal Audit reissue the Audit Notification letter to the Board of Trustees, Labor Alliance for their consideration
August 9, 2016	Letter sent addressed to Board of Trustees, Labor Alliance by Internal Audit
August 9, 2016	Letter from D. Costa, DMC, stating the request for audit documents will be considered by the Board of Trustees at their next meeting in December 2016
August 12, 2016	Internal Audit contacted Teamsters to request assistance in obtaining records in a more timely fashion.
August 19, 2016	Teamsters notifies OCTA that records requested will be received by the end of the month
September 1, 2016	Documents received from DMC that are not responsive to the request; documents are for only selected months and do not include pricing and detailed accountings required for audit. Internal Audit contacted D. Costa to discuss records required for audit. D. Costa states that pricing information is proprietary and will not be shared.
September 9, 2016	Letter to Teamsters from Internal Audit advising that DMC has refused to provide documents required for audit.
September 21, 2016	Letter received from DMC advising that a decision has been made to allow Internal Audit to come on-site and “review everything present” concerning contributions and expenditures provided they sign a Confidentiality Agreement.
October 4, 2016	Internal Audit emailed D. Costa, DMC, to schedule an on-site audit
October 13, 2016	DMC advised that Confidentiality Agreement is being drafted.
October 18, 2016	Confidentiality Agreement received stating that auditors must treat information received in strict confidence and not disclose information. No definition of “information” is provided.

October 19, 2016 Internal Audit notifies DMC that, per legal counsel, the Confidentiality Agreement cannot be executed without a more limited definition of "information"

October 21, 2016 OCTA legal counsel contacts Labor Alliance legal counsel to negotiate language of Confidentiality Agreement. A proposal is made to exclude information related to specific premiums paid by DMC.

October 24, 2016 Labor Alliance legal counsel contacted OCTA legal counsel stating that the auditors will be exposed to information about other employer's and employee's that must be protected.

November 1, 2016 OCTA legal counsel proposed revised Confidentiality Agreement language. Labor Alliance legal counsel rejects proposal and requests OCTA to list all documents that may be required to be disclosed to the OCTA Board of Directors.

November 10, 2016 OCTA legal counsel cites CBA requiring a separate account be maintained; questions the need to expose auditors to information about other employers and employees.

November 11, 2016 Labor Alliance legal counsel responds and indicates there may be a difference in opinion as to what "a separate account" means.
Negotiations cease.