U.S. OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF THE INSPECTOR GENERAL
OFFICE OF AUDITS

Final Audit Report

AUDIT OF THE FEDERAL EMPLOYEE HEALTH BENEFIT OPERATIONS AT UPMC HEALTH PLAN, Inc.

Report Number 1C-8W-00-20-017
June 28, 2021

EXECUTIVE SUMMARY

Audit of the Federal Employees Health Benefits Program Operations at UPMC Health Plan, Inc.

Report No. 1C-8W-00-20-017 **June 28, 2021**

Why Did We Conduct the Audit?

The primary objective of the audit was to determine whether UPMC Health Plan, Inc. (Plan) complied with the provisions of its contract and the laws and regulations governing the Federal Employees Health Benefits Program (FEHBP). To accomplish this objective, we verified whether the FEHBP premium rates were developed in accordance with contract regulations and rating instructions established by the U.S. Office of Personnel Management (OPM) and whether the Plan met the Medical Loss Ratio (MLR) requirements and thresholds established by OPM.

What Did We Audit?

Under Contract CS 2856, the Office of the Inspector General (OIG) completed a performance audit of the FEHBP premium rate developments and FEHBP MLR filings for contract years 2014 through 2016. Our audit fieldwork was conducted from July 13, 2020, through December 11, 2020, at the Plan's offices in Pittsburgh, Pennsylvania and in our OIG offices.

Michael R. Esser
Assistant Inspector General for Audits

What Did We Find?

We determined that the 2014 through 2016 FEHBP premium rate developments and MLR filings were not prepared in accordance with the laws and regulations governing the FEHBP and the requirements established by OPM. As such, this report questions a total of $13,786,995 in contract years 2014 through 2016 for premium rate findings, which includes $12,174,183 due to defective pricing and a lost investment income amount of $1,612,812 calculated through May 31, 2021. Additionally, due to the defective pricing questioned costs, the FEHBP MLR filings were misstated for contract years 2014 through 2016 and contain other procedural errors.

Specifically, our audit identified the following:

- The premium rate developments included errors related to: tax loadings, pharmacy rebates, vision benefit loadings, retention loadings, and benefit factor changes.
- The MLR filings included overstated premiums due to defective pricing, as well as errors related to tax and expense allocations that were procedural in nature.
- The Plan paid FEHBP claims to providers that did not have valid contracts, including two providers that were not appropriately credentialed.
- The Plan's internal controls surrounding FEHBP processes were insufficient in identifying and preventing the issues discussed in this report.

Comments on UPMC's Draft Report Responses

We submitted a draft audit report to our audit point-of-contact (POC) at UPMC Health Plan, Inc. (Plan) in order to elicit comments on our findings, conclusions, and recommendations. In response, we received two sets of comments, a full version and a short version, to our draft report from UPMC. Both versions of the Plan's draft report comments (Appendices A and B) were considered in preparing this final report since they contain varying content.

We note that the Plan did not agree with the majority of findings presented in our report, not because the findings were inaccurate or lacked merit, but rather based on its belief that the Office of the Inspector General (OIG) operated under a flawed audit methodology, by using historical experience data and Plan applied discounts when quantifying audit findings. We address these assertions and other Plan responses throughout this comment section and the final report, and maintain that all findings, conclusions, and recommendations were developed based on information provided by the Plan's subject matter experts (SME) during meetings and walk-throughs, as well as documentation provided by the Plan's POC. Furthermore, we developed audit steps and conducted our audit based on the Generally Accepted Government Auditing Standards, OPM Contract CS 2856 (Contract), the Federal Employees Health Benefits Acquisition Regulations (FEHBAR), and the Office of Personnel Management (OPM) Community Rating Guidelines. Finally, the basis for the findings presented in this final report is the laws, regulations, and guidance, as well as the answers and documentation, or lack thereof, received from the Plan.

The OIG initiated the audit with a notification letter sent to the Plan on January 14, 2020. This letter discussed our plan to begin a performance audit (including survey work), with the objective being to verify that the Plan's 2014 through 2016 FEHBP Medical Loss Ratio (MLR) calculations and FEHBP premium rate developments were accurately and reasonably completed in accordance with the Contract and OPM's Community Rating Guidelines. On April 6, 2020, and July 13, 2020, we conducted a survey introduction meeting and an entrance conference, respectively, to initiate both the audit survey and audit fieldwork processes. At these meetings, we discussed the scope and approach of our survey and audit as well as the reporting process. As we progressed through fieldwork, we issued 34 information requests to collect applicable documentation and clarify the Plan's responses and position on potential audit issues. Furthermore, we issued 10 notices of findings and recommendations (NFRs) to solicit the Plan's response and provide them an opportunity to resolve audit issues prior to the reporting phase. Of these 10 NFRs, the Plan was able to sufficiently document one potential finding, resulting in the resolution of that audit issue (NFR #2) prior to the draft report.

On December 11, 2020, we held an exit conference with Plan personnel to discuss the results of our audit. The draft audit report was issued on December 18, 2020, reporting the results of the audit and soliciting the Plan's feedback. The Plan's response to the draft report, dated February 12, 2021, arrived with both a full response and a short version response which

contained varying points on the issues presented in the draft report. It is also worth noting that the Plan did not provide any documentation to substantiate their position that our audit findings were inaccurate based on the Contract, applicable regulations, OPM's Community Rating Guidelines, or documentation provided by the Plan during the audit. The corrective action plan (CAP) provided in response to the draft report was not well defined, lacked appropriate implementation timelines, did not include updated policies referenced in the CAP, nor did the Plan differentiate the personnel tasked with implementing and evaluating the corrective actions.

Our comments to the Plan's position on each of our audit findings can be found in the Audit Findings and Recommendations section of this final report. However, there are issues that the Plan raised in their responses to the draft report that we did not address in the Findings and Recommendations section of this report because they are either not within our purview, fall outside the scope of the Contract, do not relate to the audit findings, or do not correlate with the regulations under which the audit was conducted. Specifically, the Plan discusses rate reconciliation audits, discretionary discounts the Plan offered the FEHBP, the legal entity through which the High Deductible Health Plan (HDHP) option was underwritten, criteria applicable to community-rated carriers, and defective pricing, which we address below.

Audits Conducted by the OIG

The Plan states in section B of their full draft response (Appendix B) that "The Plan underwent Rate Reconciliation Audits (RRAs) for 2014-2016, providing OPM with all requested support underlying the rates for those years. The rates audited by OPM in the draft audit report are the rates resulting from those RRAs." The Plan's statement indicates a misunderstanding of OPM's Community Rating Guidelines under the term Rate Reconciliation Audits (RRAs). The Community Rating Guidelines state, "Each year, beginning in May, OPM's ***Office of the Inspector General*** [emphasis added] (OIG) audits the rate reconciliation of ***some*** [emphasis added] carriers."

The last time an RRA was conducted at the Plan by the OIG was contract year 2006 (Report #1C-8W-00-06-070). Contract years 2007 through 2013 were also audited by the OIG in four [1] additional full scope audits conducted in contract years 2011 through 2017. Our current audit scope starts with the oldest unaudited contract year and covers a three-year audit scope, contract years 2014 through 2016. OPM, via the Contracting Office and the Office of Actuaries, does perform cursory reviews during the rate proposal and reconciliation process. The reviews conducted by OPM do not prohibit the OIG from conducting an audit of the submitted rates and any other information as authorized by the Contract. As such, the Plan's argument that these audit scope years were already audited is invalid.

[1] Audit Reports: #1C-8W-00-11-007, #1C-8W-00-13-040, #1C-UW-00-15-023, #1C-8W-00-16-041

Discount Application

In both the full draft response and short draft response the Plan expresses how the application of the discretionary discounts the Plan applied to the FEHBP rates during the proposal and reconciliation process exacerbated the findings and should be accounted for by the OIG. However, these discounts were reviewed and confirmed by the OPM Office of the Actuaries in the rate confirmation letters to the Plan each year stating, "The rates above include an FEHB discount of [value] which will not be allowed to decrease during the [contract year] reconciliation." It is not within the purview of the OIG to adjust previously agreed upon premium rate discounts certified with OPM and considered part of the contracted rates. As such, this issue should be raised to OPM during the audit resolution process.

Contracted Legal Entity and Community Rating Standards

UPMC Health Plan, Inc., is the legal entity that held the Contract with OPM in years 2014 through 2016. Per the FEHBP benefit brochure, which is part of the Contract, the Plan offered FEHBP members three product options: a High option, a Standard option, and an HDHP option. The High and HDHP products share plan code #8W, and the standard option is designated under its own plan code, #UW. The Plan certified the 2014 through 2016 FEHBP contract premium rates under the legal name of UPMC Health Plan, Inc.

The Plan states in both draft responses that they consistently rated the FEHBP with its other commercial products; however, the FEHBP is the only large group in the commercial book of business for UPMC Health Plan, Inc. in contract years 2015 and 2016. Since other large commercial groups were not available for comparison in those years, the OIG requested supporting documents for applied rating factors, which is a standard audit method and does not indicate the application of criteria applicable to experience-rated carriers, as alleged by the Plan. Audit findings resulted when the Plan documentation for those factors was not in compliance with the Contract and OPM's Community Rating Guidelines.

Furthermore, the Plan raises the argument that the FEHBP HDHP product is part of a corporate legal entity that paid the Health Insurance Providers Fee (HIF) tax and as such the other commercial group standards under the HDHP option legal entity should be used when evaluating rating consistency and applied to all FEHBP options. However, it is clear that the Plan marketed the HDHP option as a UPMC Health Plan, Inc. product to the FEHBP members, even though the FEHBP HDHP option was a UPMC Health Network, Inc. product for contract years 2014 through June 2015, then was assumed as a UPMC Health Options, Inc. product in the middle of the 2015 contracted rate year. UPMC Health Network, Inc. was also exempt from paying the HIF tax. UPMC Health Plan, Inc. is neither a parent nor subsidiary of UPMC Health Network, Inc. or UPMC Health Options, Inc. As such, the FEHBP HDHP members are not currently covered by the Plan's contract with OPM under either legal entity, although the Plan's brochure led FEHBP members to believe that they were covered by UPMC Health Plan, Inc.

We based the scope of our audit on the Contract in years 2014 through 2016, which is held between OPM and UPMC Health Plan, Inc. Per Contract Section 1.13, the benefit brochure is considered part of the contract and the Plan bears full responsibility for the brochure accuracy, including the marketing of the HDHP option as a UPMC Health Plan, Inc. product. Additionally, we included the FEHBP HDHP benefit option in our audit because it was part of the 2014 through 2016 proposal and reconciliation process and FEHBP MLR submissions designated under the legal entity UPMC Health Plan, Inc. Our procedures followed Government Auditing Standards and met the requirements under OPM's Community Rating Guidelines and the terms of the Contract.

Defective Pricing Terminology

In both Plan responses to the draft report, it is stated that several of the OIG findings include an inappropriate use of the term "defective pricing". However, the Federal Employee Health Benefits Acquisition Regulation (FEHBAR) 1652.215-70(a) defines the term defective pricing as follows, "If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.804-70)…or (4) the Carrier submitted or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current – then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.".

During the course of the audit, evidence was gathered to support our conclusions that some of the pricing data used to determine the 2014 through 2016 FEHBP premium rates was not complete, accurate and current. Those audit findings are documented in this report and meet the qualification of defective pricing by the standards of FEHBAR 1652.215-70(a).

Conclusion

It was not until quantifying the monetary amounts related to the findings in the draft report that the Plan decided to rescind their agreement with some of the NFRs and found the overall audit process insufficient. Contrary to the Plan's statements, it did not supply any additional supporting documentation in its responses to the draft report. Furthermore, the audit team provided multiple opportunities for the Plan to supply requested documentation and address audit findings over the course of the audit, many times granting extensions so that the Plan received the time it needed to respond appropriately. Our additional comments to the Plan's draft responses are in the Audit Findings and Recommendations section of this final report.

ABBREVIATIONS

ACA	**Patient Protection and Affordable Care Act**
ACR	**Adjusted Community Rating**
CFR	**Code of Federal Regulations**
CL	**FEHBP Program Carrier Letter**
Contract	**OPM Contract CS 2856**
CRNA	**Certified Registered Nurse Anesthetists**
ESI	**Express Scripts Inc.**
FEHB	**Federal Employees Health Benefits**
FEHBAR	**Federal Employees Health Benefits Acquisition Regulation**
FEHBP	**Federal Employees Health Benefits Program**
FIT	**Federal Income Tax**
HDHP	**High Deductible Health Plan**
HIA	**Health Incentive Account**
HIF	**Health Insurance Providers Fee**
LII	**Lost Investment Income**
MLR	**Medical Loss Ratio**
MM	**Member Months**
OIG	**Office of the Inspector General**
OOP Max	**Out-of-Pocket Maximum**
OPM	**U.S. Office of Personnel Management**
PCORI	**Patient-Centered Outcome Research Institute**
Plan	**UPMC Health Plan, Inc.**
SSSG	**Similarly-Sized Subscriber Group**
TRF	**Transitional Reinsurance Fee**

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I. BACKGROUND

This final report details the audit results of the Federal Employees Health Benefits Program (FEHBP) operations at UPMC Health Plan, Inc. (Plan). The audit was conducted pursuant to the provisions of Contract CS 2856; 5 United States Code (U.S.C.) Chapter 89; and 5 Code of Federal Regulations (CFR) Chapter 1, Part 890. The audit covered contract years 2014 through 2016, and was conducted at the Plan's offices in Pittsburgh, Pennsylvania, as well remotely by U.S. Office of Personnel Management (OPM) Office of the Inspector General (OIG) staff.

The FEHBP was established by the Federal Employees Health Benefits Act (Public Law 86-382), enacted on September 28, 1959. The FEHBP was created to provide health insurance benefits for Federal employees, annuitants, and dependents, and is administered by the OPM Healthcare and Insurance Office. The provisions of the Federal Employees Health Benefits Act are implemented by OPM through regulations codified in 5 CFR Chapter 1, Part 890. Health insurance coverage is provided through contracts with health insurance carriers who provide service benefits, indemnity benefits, or comprehensive medical services.

In April 2012, OPM issued a final rule establishing an FEHBP-specific Medical Loss Ratio (MLR) requirement to replace the similarly-sized subscriber group (SSSG) comparison requirement for most community-rated FEHBP carriers (77 Federal Register 19522). The MLR is the proportion of FEHBP premiums collected by a carrier that is spent on clinical services and quality health improvements.

The MLR was established to ensure that health plans are meeting specified thresholds for spending on medical care and health care quality improvement measures, and thus limiting spending on administrative costs, such as executive salaries, overhead, and marketing of the health plan. However, in our opinion the FEHBP MLR is not as transparent as intended and does not provide an assessment of the fairness of the premium paid for benefits received. As this continues to be a significant Program concern for us, we are addressing this issue with OPM through other channels.

The FEHBP-specific MLR rules are based on the MLR standards established by the Affordable Care Act (P.L. 111-148) and defined by the U.S. Department of Health and Human Services in 45 CFR Part 158. In 2012, community-rated FEHBP carriers could elect to follow the FEHBP-specific MLR requirements, instead of the SSSG requirements. However, beginning in 2013, the MLR methodology was required for all community-rated carriers, except those that are state-mandated to use traditional community rating. State-mandated traditional community-rated carriers continue to be subject to the SSSG comparison rating methodology.

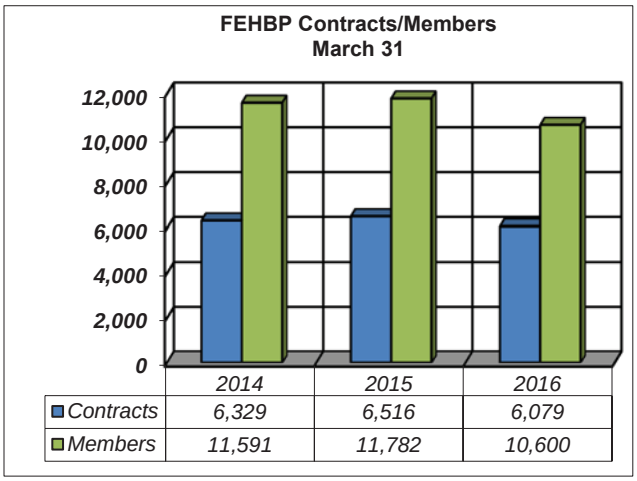
Starting with the pilot program in 2012 and for all non-traditional community-rated FEHBP carriers in 2013, OPM required the carriers to submit an FEHBP-specific MLR. This FEHBP-specific MLR calculation required carriers to report information related to earned premiums and expenditures in various categories, including reimbursement for clinical services provided to enrollees, activities that improve health care quality, and all other non-claims costs. If a carrier

fails to meet the FEHBP-specific MLR threshold, it must make a subsidization penalty payment to OPM within 60 days of notification of amounts due.

Furthermore, the premium rates charged to the FEHBP under the MLR methodology are to be developed in accordance with OPM Rules and Regulations and the Plan's state-filed standard rating methodology (or if the rating method does not require state filing, the Plan's documented and established rating methodology). A Rating Methodology is defined as a series of well-defined procedures a carrier follows to determine the rates it will charge to its subscriber groups. Further, an independent professional must be able to follow the carriers' procedures and reach the same conclusion. OPM negotiates benefits and rates with each Plan annually and all rate agreements between OPM and the carrier are subject to audits by the OPM OIG. The results of such audits may require modifications to previous agreements and subsequent rate adjustments.

Community-rated carriers participating in the FEHBP are subject to various Federal, state and local laws, regulations, and ordinances. In addition, participation in the FEHBP subjects the carriers to the Federal Employees Health Benefits Act and implementing regulations promulgated by OPM.

The number of FEHBP contracts and members reported by the Plan as of March 31 for each contract year audited is shown in the chart to the right.



	2014	2015	2016
Contracts	6,329	6,516	6,079
Members	11,591	11,782	10,600

The Plan has participated in the FEHBP since 1988 and provides health benefits to FEHBP members in Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, and Westmoreland Counties in Pennsylvania. The Plan is a health maintenance organization that offers FEHBP members enrollment choices in High, Standard, and High Deductible Health Plan (HDHP) benefit options. A prior MLR and Rate Build-Up audit of the Plan was conducted by the OPM OIG and covered contract years 2012 and 2013. The report identified an overstated MLR credit for contract year 2013 resulting from insufficient controls surrounding the MLR. The final audit report was issued on May 3, 2017. Issues related to the audit were resolved by OPM; however, during our audit we found repetitive issues as described in Section D below. These issues were considered in the planning and completion of this audit.

The preliminary results of this audit were discussed with Plan officials at an exit conference and in subsequent correspondence. A draft report was also provided to the Plan for review and

comment. The Plan's comments were considered in preparation of this report and are included, as appropriate, as Appendices to the report.

II. OBJECTIVES, SCOPE, AND METHODOLOGY

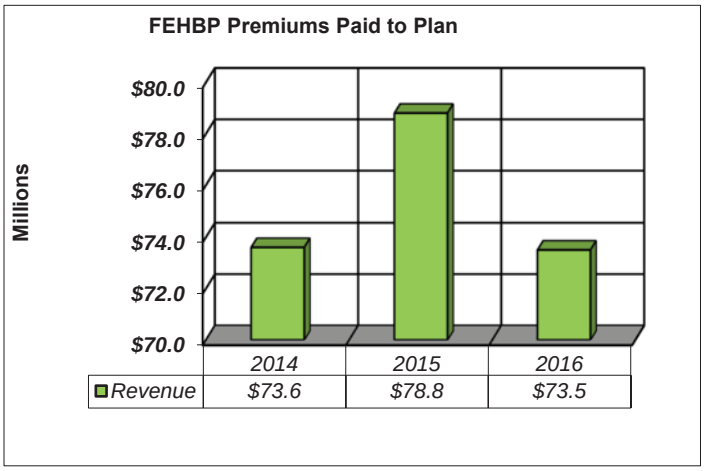
OBJECTIVES

The primary objective of this performance audit was to determine whether the Plan complied with the provisions of its Contract and the laws and regulations governing the FEHBP. Specifically, we verified whether the Plan met the MLR requirements and thresholds established by OPM and determined if the Plan developed its FEHBP premium rates in accordance with the applicable regulations and rating instructions established by OPM.

SCOPE

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.

This performance audit covered contract years 2014 through 2016. For these years, the FEHBP paid approximately $225.9 million in premiums to the Plan.



The OIG's audits of community-rated carriers are designed to test carrier compliance with the FEHBP contract, applicable laws and regulations, and the rate instructions. These audits are also designed to provide reasonable assurance of detecting errors, irregularities, and illegal acts.

We obtained an understanding of the Plan's internal control structure, but we did not use this information to determine the nature, timing, and extent of our audit procedures. Our review of internal controls was limited to the procedures the Plan has in place to ensure that:

- the FEHBP MLR and premium rate calculations were accurate, complete, and valid;
- medical claims were processed accurately;
- appropriate allocation methods were used; and
- any other costs associated with its MLR and premium rate calculations were appropriate.

In conducting the audit, we relied to varying degrees on computer-generated billing, enrollment, and claims data provided by the Plan. We did not verify the reliability of the data generated by the various information systems involved. However, nothing came to our attention during our audit utilizing the computer-generated data to cause us to doubt its reliability. We believe that the available data was sufficient to achieve our audit objectives. The audit was conducted in

accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States.

We conducted our audit fieldwork from July 13, 2020, through December 11, 2020, at the Plan's office in Pittsburgh, Pennsylvania, as well as remotely by OPM OIG staff.

METHODOLOGY

We examined the Plan's MLR submissions, premium rate calculations, and related documents as a basis for validating the MLR and the premium rates. Further, we examined medical claim payments, pharmacy rebates, completion factors, benefit factors, trends, administrative expenses, and any other applicable expenses considered in the calculation of the MLR and premium rates to verify that the cost data used was accurate, complete, and valid. Finally, we used the Contract, the Federal Employees Health Benefits Acquisition Regulations (FEHBAR), the OPM rate instructions, and applicable Federal regulations to determine the propriety of the Plan's MLR and premium rate calculations.

To gain an understanding of the internal controls over the Plan's MLR and premium rate processes as well as its claims processing system, we reviewed the Plan's policies and procedures related to these areas. We also interviewed appropriate Plan officials regarding the controls in place to ensure that the MLR and premium rate calculations and claims pricing were completed accurately and appropriately. Other auditing procedures were performed as necessary to meet our audit objectives.

The tests performed for medical claims, along with the methodology, are detailed in Exhibit E at the end of this report.

III. AUDIT FINDINGS AND RECOMMENDATIONS

A. Premium Rate Review

Carriers proposing rates to OPM are required to submit a Certificate of Accurate Pricing certifying that the cost or pricing data submitted in support of the FEHBP rates were developed in accordance with the requirements of 48 CFR, Chapter 16 and the FEHBP Contract CS 2856 (Contract). We found during our premium rate review that the Certificates of Accurate Pricing that UPMC Health Plan, Inc. (Plan) signed for contract years 2014 through 2016 were defective. In accordance with Federal regulations, the FEHBP is, therefore, due a rate reduction for contract years 2014 through 2016 of $12,174,183 and Lost Investment Income (LII) of $1,612,812, for a total amount due to OPM of $13,786,995 (see Exhibit A).

1. Defective Pricing $12,174,183

During the 2014 through 2016 contract years, the Plan submitted premium rates for the FEHBP with High, Standard, and HDHP benefit options; however, we identified several defective pricing issues that resulted in lower audited premium rates for each option (see Exhibit B). Specifically, application of the defective pricing remedy shows that the FEHBP is due $12,174,183 for contract years 2014 through 2016 (see Exhibit A).

Numerous defective pricing issues resulted in questioned costs of $12,174,183 due to the FEHBP.

The specific issues that resulted in a monetary rate reduction of the FEHBP premium rates under the provisions of OPM Contract Section 3.3 are discussed in detail in paragraphs A.1.a. through A.1.f. of this report.

Recommendation 1

We recommend that the Plan return $12,174,183 to the FEHBP for defective pricing in contract years 2014 through 2016.

Plan Response

The Plan concurs with $1,761,301 of the defective pricing questioned costs which pertain to the 2016 benefit adjustment errors presented in Table IV of this report. The Plan does not agree with many of the other findings, including the OIG's methodology used to quantify audit findings and the OIG's use of actual historical data in the audited calculations. These issues are addressed specifically throughout the report.

OIG Comment

During the course of our audited fieldwork, we afforded the Plan the opportunity to officially respond to the audit findings discussed throughout this report. Although the Plan disagrees with our approach, the Plan's own documentation and the OPM contract, FEHB regulations,

and guidelines substantiate the defective pricing of $12,174,183 in contract years 2014 through 2016. Details surrounding the OIG's position are further discussed in each finding.

a. ACA § 9010 Health Insurance Providers Fee (HIF) Loading Error

The Plan erroneously included a loading in the 2014 through 2016 premium rates to account for the Health Insurance Providers Fee (HIF) established under the Patient Protection and Affordable Care Act (ACA), Section 9010. Although OPM Carrier Letter (CL) 2013-14 allows carriers to allocate a portion of this fee specifically related to FEHB business, OPM also expects carriers to assess their status as a covered entity required to make an HIF payment. The Department of Treasury, Internal Revenue Service (IRS) has oversight of the ACA Section 9010 assessments and requires all carriers to file Form 8963 "Report of Health Insurance Provider Information," which is available to the public and identifies insurance carrier premiums applicable to the HIF. We reviewed the Plan's Form 8963 data for contract years 2014 through 2016 and traced the premiums to the HIF fee invoiced on the IRS Letter 5067C.

As such, we found that the Plan did not report any premium for UPMC Health Plan, Inc.; therefore, the legal entity that contracts with OPM was not invoiced by the IRS for an HIF. 26 CFR 57.2(b)(2)(iii) exempts the Plan from paying an HIF due to their status as a State of Pennsylvania non-profit corporation and as an insurance carrier that received more than 80 percent of their gross revenue from Medicare products during contract years 2014 through 2016. As such, the Plan was not required to pay an HIF and did not pay an HIF; therefore, HIF loadings are not applicable to the 2014 through 2016 FEHBP premium rate developments. The Plan's oversight of this exemption and ultimate inclusion of the HIF in the premium rates is evidence of insufficient internal controls surrounding the rate developments. As such, we removed the HIF premium rate loadings of [redacted] percent, [redacted] percent, and [redacted] percent from the 2014 through 2016 FEHBP rate developments, respectively. The monetary impact of this finding is included as part of the total defective pricing questioned costs.

Recommendation 2

We recommend that the Plan remove all HIF loadings from the FEHBP premium rate developments and MLR filing denominators (as applicable) that have been submitted to OPM under Contract CS 2856.

Plan Response

The Plan states that they consistently included the HIF tax loading in its rate development for all commercial groups. As such, "The Plan does NOT concur that this finding meets the criteria of defective pricing under FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data."

"Moreover, at the time of premium development and reconciliation, the Plan had not determined whether it would be required to pay or if it would be exempt from the HIF tax."

OIG Comment

We afforded the Plan the opportunity to officially respond to this finding in our Notice of Findings and Recommendations (NFR) process during fieldwork. In response to the related NFR on June 10, 2020, the Plan agreed with the factual accuracy that it incorrectly applied an HIF loading to the 2014 through 2016 FEHBP premium rates. Furthermore, the Plan contacted OPM to discuss updating their 2020 premium rate developments to remove the HIF loading since the Plan was exempt from paying the fee.

Although the Plan rescinded their agreement to this finding, the Plan, which contracts with OPM as UPMC Health Plan, Inc., did not pay an HIF. Although the Plan states that they had not determined whether they would be required to pay the HIF, the Plan's audited financial statements, for the years ended December 31, 2013 and 2012, state, "As of December 31, 2013, the Company has written health insurance subject to the ACA assessment, expects to conduct health insurance business in 2014, and estimates their portion of the annual health insurance industry fee of $0 to be payable on September 30, 2014, due to UPMC Health Plan being exempt under the law."

Based on our review, it is clear that the Plan was aware that UPMC Health Plan, Inc., would not have to pay an HIF in 2014 and beyond due to their exempt status. If the Plan submitted their 2014 proposed rates before the recognition of the HIF exemption, the Plan was required by the OPM Community-Rating Guidelines to report the HIF loading error to OPM and amend their proposals and reconciliations, as applicable, at the time they discovered the error. As such, the OIG maintains the position that the Plan's insufficient internal controls created an environment that allowed the loading of the HIF to the FEHBP premium rates that was not applicable.

b. Pharmacy Rebate Error

The Plan did not apply all pharmacy rebates attributable to the FEHBP in the 2014 through 2016 premium rate developments. OPM's Community-Rating Guidelines stipulate that claims must be reduced by income attributed to FEHB enrollees from sources such as prescription drug rebates for both the MLR and premium rate developments.

We identified that the Plan developed the FEHBP premium rates using a pharmacy rebate amount significantly lower than the amount used to reduce claims in the FEHBP MLR calculations during contract years 2014 through 2016. When we compared the FEHBP MLR and FEHBP rate development pharmacy rebate amounts, we found that the pharmacy

rebates used in the FEHBP MLR were tracked in the Plan's general ledger, were net of administrative expenses, and included actual Express Scripts Inc. (ESI) pharmacy rebates and NON-ESI pharmacy rebates. Conversely, the Plan utilized an InPharmative report to reduce claims experience in the FEHBP rate development. The InPharmative report was already net of administrative expenses, but the Plan reduced the amount by administrative expenses again. Furthermore, the InPharmative report did not include ESI rebates.

The Plan's duplicative removal of administrative expenses and the exclusion of ESI rebates in the FEHBP premium rate developments is evidence of human error and weak internal controls. As such, we recalculated the FEHBP premium rate development pharmacy rebates using the general ledger amounts and the Plan's pharmacy rebate methodology (see Table I). The monetary impact of this finding is included as part of the total defective pricing questioned costs.

Table I: Pharmacy Rebates

Contract Year	Plan's Pharmacy Rebates	OIG Audited Pharmacy Rebates	Variances
2014	[redacted]	[redacted]	[redacted]
2015	[redacted]	[redacted]	[redacted]
2016	[redacted]	[redacted]	[redacted]
Total			[redacted]

Recommendation 3

We recommend the Plan amend all future FEHBP premium rate developments in which the pharmacy rebates were incorrectly reported.

Plan Response

In the Plan's response to OPM OIG's draft report they stated, "The Plan does not concur with OPM's assertions that pharmacy rebates were incorrectly reported, nor does it concur with OPM's assertion that the Plan developed the FEHB premium rates using pharmacy rebate amounts significantly lower than the amount used to reduce claims in the FEHB MLR calculations." Additionally, the Plan disagrees that it deducted administrative expenses twice from the amounts used to reduce FEHBP claims experience in the rate developments.

Furthermore, the Plan asserts, "At the time of certification, the Plan utilized actual pharmacy rebate data available for Q1-Q3 of the prior calendar year (e.g., 2014 rates were developed in 2013, so the available pharmacy rebate data available was Q1-Q3

of 2012), and projected the following quarters based on Q3 utilization. OPM however, auditing several years after the fact, had access to actual data past Q3, more data than what the Plan had available at the time of rate development. OPM used this actual data to calculate the questioned costs instead of using the data the Plan had at the time it developed the rates."

OIG Comment

During the course of our audited fieldwork, we issued the related NFR to provide the Plan with an opportunity to officially respond to this finding. On August 28, 2020, the Plan agreed that administrative charges were removed twice from the FEHBP pharmacy rebates prior to deducting them from the paid claims experience, although they disagreed with the amount. Furthermore, contrary to the Plan's statement above, the OIG utilized the Plan's methodology of using actual Quarter 1 through Quarter 3 pharmacy rebates from the prior calendar year (experience period) to project a full four quarters of pharmacy rebate data deductible from the FEHBP premium rate developments.

The audited calculation differs from the Plan's because we utilized the pharmacy rebate data that included both ESI and non-ESI rebates, which was net of administrative expenses. This data was provided by the Plan, from their general ledger, in support of the pharmacy rebates deducted from the FEHBP MLR claims (years 2012 through 2014), which overlapped with the premium rate experience periods for 2014 through 2016. It was necessary to utilize the general ledger data to ensure that all the pharmacy rebates were captured (both ESI and non-ESI). Furthermore, the Plan could not provide the InPharmative report for contract year 2013, which was its basis for the pharmacy rebates calculation in the 2015 rate development.

Since the Plan did not retain the documentation to support their FEHBP premium rate calculations and they excluded applicable pharmacy rebates, we utilized the Plan's general ledger pharmacy rebate totals and the Plan's applied rating methodology to recalculate the pharmacy rebates. Since the data we utilized for this calculation was available to the Plan when they originally developed the FEHBP rates, we maintain that our audited calculation of the pharmacy rebates best captures the applicable cost of the FEHBP (see Table I).

c. Vision Benefit Loading Error

The Plan overstated the FEHBP vision loading in contract years 2014 through 2016, due to unavailable historical pricing information and the inclusion of non-FEHBP benefits.

During our review of the vison benefit charged to the FEHBP in contract years 2014 through 2016, we found and the Plan confirmed that they did not maintain the historical information and support for the vision loadings as required under the provisions of the

Contract. Specifically, Contract Section 1.11(b) states, "The Contractor shall make available at its office at all reasonable times those books and records for examination and audit for the record retention period specified in the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), 48 CFR 1652.204-70." Additionally, OPM directs Carriers to "Provide all backup calculations and clearly indicate all utilization and cost assumptions" for each benefit loading.

Additionally, the "UPMC Vision Advantage/Basic PPO (56)" rider, which the Plan provided as the basis for the FEHBP vision loading, contained some vision benefits not available to the FEHBP in 2014 and other vision benefits in 2015 and 2016 benefit brochures specifically excluded from the FEHB contract or premium. As specified in Contract section 1.13, "(a) OPM and the Carrier shall agree upon language setting forth the Benefits, exclusions and other language of the Plan. The Carrier bears full responsibility for the accuracy of its FEHB brochure."

Due to these issues, we recalculated a per member per month (PMPM) vision loading for contract years 2014 through 2016 based on FEHBP vision claims experience, provided by the Plan, that solely covered routine eye examinations as specified in the FEHBP benefit brochure, and which were not covered by other FEHBP benefits. The results of our calculation are exhibited in Table II below and were used in the audited premium rate calculation. The monetary impact of this finding is included as part of the total defective pricing questioned costs.

Table II: Vision Loading				
Contract Year	**Tier**	**Plan's PMPM Vision Loading**	**OIG Audited PMPM Vision Loading**	**Variance**
2014	Self	[redacted]	[redacted]	[redacted]
	Family	[redacted]	[redacted]	[redacted]
2015	Self	[redacted]	[redacted]	[redacted]
	Family	[redacted]	[redacted]	[redacted]
2016	Self	[redacted]	[redacted]	[redacted]
	Self + 1	[redacted]	[redacted]	[redacted]
	Family	[redacted]	[redacted]	[redacted]

Recommendation 4

We recommend that the Plan amend all future premium rate developments to appropriately account for actual agreed upon FEHBP vision benefits.

Plan Response

The Plan does not concur with this finding and maintains that, "The Plan appropriately included the vision benefit premium loads that pertained to eye examinations covered under the FEHB program." The Plan also expressed that the vision benefit loadings were based on the best information at the time and reasonably estimated the cost of the vision benefits loading.

OIG Comment

The Plan could not support their position that the vision benefit applied to the FEHBP premium rates included only covered FEHBP benefits since the Plan did not maintain the historical data used to develop the vision loadings. Furthermore, Contract section 1.13 places the onus on the Plan to include accurate language in the FEHBP benefit brochure. In this specific case, the UPMC Vision Advantage benefit is listed as a "Non-FEHBP benefit available to Plan members" which are not part of the Contract or benefits in the 2015 and 2016 FEHBP benefit brochure. For these reasons, we maintain that the audited calculation of the vision rates best captures the applicable cost of the FEHBP vision benefit (see Table II).

d. Retention Rate Loading Error

We found that the Plan did not follow the Contract and OPM's Community Rating Guidelines when determining the retention loading for the FEHBP premium rates. Per the Community Rating Guidelines, loadings for administrative expenses utilizing an Adjusted Community Rating (ACR) methodology must be a flat community PMPM, a standard percentage of claims, or a method consistently applied to the FEHBP and other insured groups and documented in the carrier's rating methodology. Furthermore, Contract section 5.4 states that contingent fees (brokerage fees) are unallowable FEHBP premium rate expenses.

When assessing the Plan's application of retention to the FEHBP, we found that the Plan's commercial large group rating model contained a retention amount of [redacted] percent. Specifically, the retention amount included [redacted] percent standard profit margin and [redacted] percent administrative loading, including brokerage fees. When notified that the retention loading contained brokerage fees that were inappropriately applied to the FEHBP, the Plan stated that brokerage fees were not charged to the FEBHP; however, the Plan applied an FEHBP-specific profit margin of [redacted] percent. Since the FEHBP is considered a commercial large group product in the Plan's fully insured commercial business, the FEHBP should receive the standard [redacted] percent profit margin. Furthermore, the remaining administrative expense portion of the retention fee should be net of all brokerage fees.

We recalculated the FEHBP administrative percentage using the fully-insured financial data for the contracted legal entity, UPMC Health Plan, Inc., and removed unallowable broker commissions. We then added the standard [redacted] percent commercial product profit margin to arrive at the audited FEHBP retention loading. As such, we questioned the variance, as illustrated in Table III. The monetary impact of this finding is included as part of the total defective pricing questioned costs.

Table III: RETENTION LOADING					
Contract Year	Plan's Retention Loading (a)	OIG Audited Administrative Loading (b)	OIG Audited Profit Margin Loading (c)	OIG Audited Retention Loading (b + c)	Variance
2014	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2015	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2016	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Recommendation 5

We recommend that the Plan utilize data from the FEHBP contracting entity (UPMC Health Plan Inc.), net of any unallowable contingent fees, when determining the FEHBP administrative fee loading.

Recommendation 6

We recommend that the Plan remove unallowable contingent fees from all future FEHBP premium rate developments submitted to OPM.

Recommendation 7

We recommend that the Plan apply a profit margin percentage to the FEHBP that is consistent with other fully insured commercial groups.

Plan Response

The Plan does not concur with this finding and stated the [redacted] percent target was consistent for all commercial groups and there was no specific split of the percentage between fee and administrative costs, only the [redacted] percent retention.

Furthermore, the Plan asserts that the contract cost principles in FEHBAR, and by extension FAR Part 31, are not applicable to the Plan as a community rated carrier. Specifically, "That is, prices for community rated carriers are not determined on the

basis of actual costs incurred. OPM's audit attempts to adjust the Plan's admin loading based on an actual cost calculation that the Plan is not required to perform, and as a result did not perform, at the time of rate development. The Plan provided actual cost incurred data in response to OPM's audit requests and questions … , however the Plan did not originally determine its admin fee and profit loading in this manner."

OIG Comment

We do not agree with the Plan's position. The OIG's requests and review of the Plan's retention was due to conflicting documentation and responses provided by the Plan, in which it was clear that brokerage fees, specifically excluded in the Contract, were included in the Plan's calculation. Although the Plan states in their draft response that it did not originally determine its administrative fee and profit loading in the manner used to determine the audited retention, we did in fact use the Plan's methodology provided to us in audit requests and meetings. Furthermore, by contract year 2015, the FEHBP was the only large commercial group under UPMC Health Plan, Inc. So when the Plan states that the retention was used consistently for all commercial groups, it is evident that they are not referring to other community-rated large groups under UPMC Health Plan, Inc.

Since we received varying responses to our requests for clarification related to this issue, we stand by our initial assessment that the FEHBP retention loading is not compliant with the terms of the Contract and is overstated. As such, we utilized the OIG Audited Retention Loadings, illustrated in Table III, in our audited calculations.

e. 2016 FEHBP Rate Development Benefit Adjustment Errors

The Plan did not correctly adjust the 2016 rate development experience period claims for applicable benefit changes between contract years 2014 and 2015. The Plan used 2014 calendar year claims experience as the basis of the 2016 ACR premium rate development. To correctly account for changes in benefits, the Plan must adjust the 2014 claims experience first to the 2015 benefit level, then to the 2016 benefit level; however, the Plan did not account for the deductible, Out-of-Pocket Max (OOP Max), and the Health Incentive Account (HIA) changes from 2014 to 2015.

Per OPM's Community Rating Guidelines, benefit loadings for ACR methodologies are to include benefits (and adjust for benefits) not included in the claims data. Specifically, for contract year 2016, the Plan did not account for the High and Standard options' deductible and OOP Max change from Embedded in 2014 to Aggregate in 2015 in the experience period of the 2016 premium rates. We followed up with the Plan, and they revised the benefit factors to account for this change (see Table IV).

Additionally, we identified that the Plan did not adjust the HIA benefit in 2014 to the updated HIA benefit in 2015 as part of the experience period of the 2016 premium rate development. In the prior year 2015 premium rate development, the Plan assessed and included this HIA benefit change as a [redacted] percent reduction.

As a result of our review, we utilized the Plan's revised 2015 benefit factors (see Table V) plus the Plan calculated [redacted] percent HIA benefit reduction to determine the audited benefit factors. We applied these audited benefit factors to the experience period claims in the 2016 rate development. The monetary impact of these findings is included as part of the total defective pricing questioned costs.

Table IV: 2016 Experience Period Benefit Adjustment Factors

Benefit Options	Plan's 2015 Benefit Factors	Plan's Revised 2015 Benefit Factors	OIG Audited 2015 Benefit Factors
HIGH	[redacted]	[redacted]	[redacted]
STANDARD	[redacted]	[redacted]	[redacted]
HDHP	[redacted]	[redacted]	[redacted]

Recommendation 8

We recommend that the Plan adjust for all applicable benefit changes from the experience period through the renewal period when developing FEHBP premium rates.

Plan Response

The Plan agrees with this finding and stated, "The Plan transitioned to a standardized template factor tool that consistently incorporates the Embedded vs Aggregate adjustment, as well as all other requirements … ."

f. 2016 HIA Utilization Error

The Plan inaccurately calculated the 2016 renewal benefit factors by assuming 100 percent utilization on the HIA benefit even though actual utilization was materially less. Specifically, the Plan deducted the entire HIA benefit of $250 self and $500 family from the deductible and OOP Max using the assumption of 100 percent utilization, prior to calculating the FEHBP benefit change factors. We determined that the FEHBP's utilization of the HIA benefit was approximately [redacted] percent for the Standard Option and approximately [redacted] percent for the High Option for contract year 2016, which indicates that the Plan inappropriately deducted the HIA benefit from the deductible and OOP Max prior to determining the 2016 benefit change factors.

Although we followed-up with the Plan on this issue, the Plan's response did not provide a full recalculation appropriately accounting for the HIA benefit, and only included the single tier, even though the family tier had an OOP Max change in 2016 and would be most impacted by this issue. As such, we could not evaluate the monetary impact of this issue; however, an assumption of 100 percent utilization when the actual HIA utilization is a third of that total could materially impact the calculation of benefit adjustment factors and ultimately the FEHBP premium rates. We believe these oversights are a result of the Plan's insufficient internal controls surrounding the development of the 2014 through 2016 FEHBP premium rates.

Recommendation 9

We recommend that the Plan develop FEHBP benefit change factors based on the Contract and actual FEHBP utilization, when available.

Plan Response

The Plan submitted a corrective action plan that states, "Company policies and procedures will be reviewed and updated to appropriately reflect the current process."

OIG Comment

We recognize that the Plan intends to review and update their company policies and procedures appropriately; however, we have not received any documentation that indicates policy and procedure updates have been made to resolve the recommendation.

2. Lost Investment Income $1,612,812

In accordance with the FEHBP regulations and the contract between OPM and the Plan, the FEHBP is entitled to recover Lost Investment Income (LII) on the defective pricing finding in contract years 2014 through 2016. We determined that the FEHBP is due $1,612,812 for LII, calculated through May 31, 2021 (See Exhibit C). In addition, the FEHBP is entitled to lost investment income for the period beginning June 1, 2021, until all defective pricing finding amounts have been returned to the FEHBP.

The FEHBP is due $1,612,812 for LII resulting from the defective pricing issues.

The FEHBAR 1652.215-70 provides that if any rate established in connection with the FEHBP contract was increased because the carrier furnished cost or pricing data that was not complete, accurate, or current as certified in its Certificate of Accurate Pricing, the rate shall

be reduced by the amount of the overcharge caused by the defective data. In addition, when the rates are reduced due to defective pricing, the regulation states that the government is entitled to a refund and simple interest on the amount of the overcharge from the date the overcharge was paid to the carrier until the overcharge is liquidated.

Our calculation of LII is based on the United States Department of the Treasury's semiannual cost of capital rates.

Recommendation 10

We recommend that the Plan return $1,612,812 to the FEHBP for LII, calculated through May 31, 2021. We also recommend that the Plan return LII on amounts due for the period beginning June 1, 2021, until all defective pricing finding amounts have been returned to the FEHBP.

Plan Response

The Plan agrees to $199,820 in Lost Investment Income that it calculated on concurred amounts.

OIG Comment

We maintain that the Plan return lost investment income to the FEHBP, based on the reported questioned costs, through the periods previously mentioned until all defective pricing amounts have been returned to OPM.

B. MEDICAL LOSS RATIO REVIEW

The Certificates of Accurate Medical Loss Ratio (MLR) that the Plan signed for contract years 2014 through 2016 were defective. Starting in contract year 2013, all carriers proposing rates to OPM and utilizing an ACR or Community Rating by Class rating methodology must also submit an MLR filing. The Certificate of Accurate MLR, that is submitted with the MLR filing, states that the FEHBP-specific MLR is accurate, complete, and consistent with the methodology in Sec. 1615.402(c)(3)(ii). In accordance

The Plan's certified MLR filings were defective in contract years 2014 through 2016.

with Federal regulations and the OPM Community Rating Guidelines, our audit identified the following issues:

1. **MLR Credit Adjustments**

The Plan calculated unadjusted MLRs of 93.58 percent, 93.15 percent, and 88.33 percent for contract years 2014, 2015, and 2016 respectively. Since contract years 2014 and 2015 ratios exceeded the OPM established threshold of 89 percent, the Plan received OPM credits of [redacted] and [redacted] respectively. However, during our review of the FEHBP MLR filings, we adjusted the MLR denominators in each audit scope year to reflect the defective pricing discussed in section A.1. of this report, as shown below in Table V.

Although Table V illustrates the MLR variances due to the defective pricing findings, these values are specifically related to the amounts documented in this report. All credit adjustments will be calculated by OPM after the defective pricing findings are resolved and collected. Any adjustments to the defective pricing findings in this report will also impact the amount of credit adjustment due. The specific issues that led to the credit adjustments and defective Certificates of Accurate MLR are discussed throughout the remainder of the report.

Table V - MLR Credit Adjustments

Year	Plan's MLR Ratio	Audited MLR Ratio	Plan's Current Credit	Adjustment Due to Defective Pricing Finding	Variance
2014	93.58%	96.42%	[redacted]	[redacted]	[redacted]
2015	93.15%	98.55%	[redacted]	[redacted]	[redacted]
2016	88.33%	95.94%	[redacted]	[redacted]	[redacted]

Recommendation 11

We recommend that the Contracting Officer adjust the Plan's MLR credit for contract years 2014 through 2016 once the defective pricing findings discussed in this report are resolved.

Plan Response

"The [P]lan recalculated the MLR credit based on the amounts concurred to by the Plan herein and concurs with an MLR Credit Adjustment of $1,073,755."

OIG Comment

We maintain that OPM adjust the Plan's MLR credit based on the resolution of the defective pricing findings identified throughout this report.

a. Allocation Errors

We identified the Plan used varying FEHBP member month (MM) amounts when allocating FEHBP MLR expenses during contract years 2014 through 2016. Additionally, the MLR filings lacked the required methodology descriptions relating to the expense allocations.

The Plan did not comply with 45 CFR 158.170(b) and (c), which requires plans to provide detailed descriptions of the allocation methodologies for incurred claims, quality health improvement expenses, and taxes reported on the MLR submissions, including how these expenses are allocated to states and specific markets. Moreover, it did not comply with instructions on the MLR forms themselves that specify Part 4 (2014 and 2015 MLR Forms) or Part 6 (2016 MLR Form) should include descriptions of allocation methods. These issues are indicative of insufficient internal controls surrounding the FEHBP MLR process (see D.1.). Although the MM variance did not materially affect the MLR and resulted in no adjustments to the Plan's MLR calculation, continued non-compliance may materially affect future FEHBP MLR filings and outcomes.

Recommendation 12

We recommend that the Plan report the expense allocation methodologies used for the FEHBP MLR as required by 45 CFR 158.170 and Part 4 and Part 6 of the FEHBP MLR submission.

Plan Response

The Plan provided a corrective action plan in response to the draft report which states, "As a best practice, the Company understands the need for periodic review of existing policies and procedures in maintaining adequate and effective internal control over financial reporting. Therefore, UPMC Health Plan, Inc. agrees with this recommendation and is subsequently reviewing its policies and procedures surrounding the calculation and reporting of its MLR filings, making revisions as necessary, to maintain and improve upon its existing internal controls."

OIG Comment

The corrective action plan provided by the Plan offers no evidence of a clearly defined process or identified actions needed to resolve this deficiency. Furthermore, the Plan did

not provide any revised policy and procedure documents to substantiate improvements to the internal controls. As such, we cannot determine if any of the issues identified in this finding were addressed by the Plan.

b. MLR Tax Reporting Errors

The Plan erroneously omitted Federal Income Tax (FIT) expenses from the 2014 FEHBP MLR filing and incorrectly reported FIT expenses on the 2015 and 2016 MLR filings. Specifically, the Plan materially misstated deferred tax assets in their 2015 and 2016 financial statements that led to a restatement of their FIT expenses in those years that was not captured in the 2015 and 2016 FEHBP MLR filings. Additionally, our review disclosed that the Plan omitted the reporting of the Transitional Reinsurance Fee (TRF) tax expenses on the 2014 through 2016 FEHBP MLR filings and the Patient-Centered Outcomes Research Institute (PCORI) tax expenses on the 2014 and 2015 FEHBP MLR filings.

For the scope of our audit, OPM Community Rating Guidelines refer Plans to use the HHS MLR guidelines for determining FEHBP MLR reportable tax expenses. 45 CFR 158.162 requires both Federal and state taxes to be reported on the MLR form, including all Federal taxes and assessments allocated to health insurance and excluding income tax on investment and capital gains. Further, 45 CFR 158.161 stipulates that carriers are required to report licensing and regulatory fees, which include the TRF and PCORI. The errors identified indicate that the Plan has insufficient internal controls surrounding the development and reporting of the FEHBP MLR tax expenses, resulting in noncompliance with the criteria set forth in 45 CFR 158.162 and 158.161.

Although the overall dollar impact of these tax errors was immaterial and did not warrant an adjustment to the FEHBP MLR calculations in 2014 through 2016, continued non-compliance with applicable regulations could materially impact the FEHBP MLR in future years.

Recommendation 13

We recommend that the Plan amend any future MLR filings to accurately comply with the tax provisions under the Contract.

Plan Response

The corrective action plan provided by the Plan in response to the draft report states, "As a best practice, the Company understands the need for periodic review of existing policies and procedures in maintaining adequate and effective internal control over financial reporting. Therefore, UPMC Health Plan, Inc. agrees with

this recommendation and is subsequently reviewing its policies and procedures surrounding the calculation and reporting of its MLR filings, making revisions as necessary, to maintain and improve upon its existing internal controls."

OIG Comment

The corrective action plan provided by the Plan offers no evidence of a clearly defined process or identified actions needed to resolve this deficiency. Furthermore, the Plan did not provide any revised policy and procedure documents to substantiate improvements to the internal controls. As such, we cannot determine if any of the issues identified in this finding were addressed by the Plan.

C. MEDICAL CLAIMS PROCESSING ERRORS

We reviewed a sample of 75 FEHBP medical claims from contract year 2014 to determine if the claims were priced and paid for eligible members, according to applicable criteria. Based on our observations we identified three providers that lacked valid contracts with the Plan, two of which were not active in the Plan's credentialing system. We expanded our review and identified a total of 244 FEHBP claims that were paid for these three providers in contract years 2014 through 2016. Specifically, the Plan processed 155 FEHBP claims for the credentialed physician that lacked a valid contract under the provider group name in the claims system. Furthermore, the Plan processed 16 and 73 FEHBP claims for two other physicians, respectively, that lacked both a valid contract and active credentialing in the Plan's system.

The Plan processed and paid FEHBP claims with providers that were not appropriately contracted or credentialed.

The overall dollar impact of the 244 FEHBP claims was immaterial during the scope of the audit; however, the issues identified within the claims processing system and the provider credentialing process is evidence of insufficient internal controls over provider contracting and credentialing and noncompliance with Contract sections 1.9 and 5.64. Although no adjustment was made to the claims data due to materiality, continued noncompliance could impact FEHBP members, future FEHBP MLR filings, and FEHBP premium rate developments.

Recommendation 14

We recommend that the Plan only pay FEHBP claims for providers with valid contracts that are appropriately credentialed.

Plan Response

The Plan disagrees with this finding and stated with respect to the provider who submitted 155 claims, the provider was a participating provider through another group; therefore,

the provider held a valid contract, was credentialed and listed in the provider directory as participating. The provider also submitted claims through another participating group during at that time. Since the provider held a contract with a Plan contracted group practice and was credentialed, the Plan is in compliance with Contract Section 1.9(f) for this provider.

"With respect to the provider who submitted 16 claims, the provider is a [Certified Registered Nurse Anesthetist] CRNA performing services at a participating facility. Per the Plan's Credentialing policy, the Plan does not credential hospital-based physicians such as anesthesiologists, emergency room physicians, hospitalists, intensivists, pathologists, and radiologists or their extenders. As providers within a participating facility, they are 'invisible' or 'hidden' to the member as they are not listed in member materials or provider directories."

Finally, the Plan states that the provider that generated the 73 claims was a radiologist and therefore exempt under the Plan's credentialing policy previously mentioned.

OIG Comment

We maintain that the Plan paid claims to three physicians that did not hold current contracts with the Plan under the provider groups and facilities with which the claims were billed. Without a valid contract, FEHBP members run the risk of receiving services from a non-contracted provider operating under a provider group the member selected for service. In general, FEHBP members should not be receiving services by providers whom do not hold valid contracts and lack provider credentialing, which the Plan referred to as "invisible" or "hidden" providers. The Contract does not stipulate credentialing for CRNAs or any other physicians rendering services to the FEHBP as valid exemptions. Specifically, Contract Section 1.9 requires Carriers to credential all of its physicians, whether it be an internal function or conducted by a secondary organization. Should the secondary organization used for credentialing be a hospital, UPMC should maintain the credentialing documents the hospital provided, as required under OPM Contract Section 3.4.

D. INSUFFICIENT INTERNAL CONTROLS OVER FEHBP PROCESSES

Based on the errors identified throughout this report, we determined the Plan's internal controls over the FEHBP premium rate development process, the FEHBP MLR process, and provider contracting and credentialing processes were insufficient. Per Contract Section 5.64, Contractor Code of Business Ethics and Conduct, "(c) … The Contractor shall establish the following within 90 days after the contract award … (2) An internal controls system.

The Plan's internal controls over FEHBP processes were insufficient to meet the terms of the Contract held with OPM.

(i) The Contractor's internal control system shall-- (A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and (B) Ensure corrective measures are promptly instituted and carried out. (ii) At a minimum, the Contractor's internal control system shall provide for … (A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system."

We found that the Plan's internal controls system did not sufficiently meet the contractual criteria due to insufficient and lacking written and FEHBP-specific policies and procedures surrounding the development of the FEHBP premium rates, the FEHBP MLR, and the contracting and credentialing of providers submitting FEHBP member claims for payment. As such, inappropriate expenses and inconsistent and undocumented rating processes were used to develop the FEHBP premium rates in 2014 through 2016 (see A.1.a through A.1.f). Additionally, the Plan did not adhere to applicable criteria when allocating and reporting expenses within the FEHBP MLR calculation (see B.1.a through B.1.b). Finally, the Plan paid FEHBP claims to providers that did not hold a valid contract, two of which were not appropriately credentialed to provide services. These issues resulted in defective pricing, questioned costs, and potential risks to FEHBP members.

If updated and enhanced policies and procedures are not immediately implemented to strengthen internal controls, the Plan will continue to be in non-compliance with the contract and FEHBP rules and regulations, resulting in inflated premiums, skewed MLR results, and potential FEHBP member safety issues.

Recommendation 15

We recommend that the Plan immediately establish written policies and procedures to strengthen internal controls over the development of the FEHBP premium rates, including but not limited to the application of ACA fees, pharmacy rebates, retention, and the calculation and loading of benefit factors/changes including the vision rider.

Recommendation 16

We recommend that the Plan immediately establish written policies and procedures to strengthen internal controls over the FEHBP-specific MLR filing, including but not limited to the expense allocation process and reporting of tax expenses.

Recommendation 17

We recommend that the Plan strengthen their provider credentialing process to ensure FEHBP member services and claims are completed and paid for actively credentialed providers and the credentialed providers hold valid contracts with the Plan.

Plan Response

The Plan does not agree with the internal controls findings underlying the ACA fees, retention, vision rider, or the provider contracts and credentialing related to the claims review. However, the Plan's corrective action plan indicates the Plan will review existing policies and procedures to identify areas in which internal controls can be strengthened over the development of the FEHBP premium rates and the processing of FEHBP claims. Additionally, the Plan stated that the MLR policy, "FIN 003 FEHB MLR Annual Filing 9.20" was revised to provide more detail regarding the expense allocation process and tax reporting expense.

OIG Comment

Although the Plan disagrees with the OIG's characterization of insufficient internal controls as the cause of the conditions discussed in this report, the Plan has not put forward any other explanation for the numerous issues found within both the FEHBP premium rate developments and the FEHBP MLR filings in our audit scope. As such, we believe that the root cause of the rating inconsistencies, human errors, and undocumented processes and procedures is insufficient internal controls. The corrective action plan subsequently provided by the Plan provides no evidence of a clearly defined process to resolve the deficiencies cited throughout this report nor does it demonstrate an outline of distinct steps and timeline to prevent future errors.

Furthermore, on May 3, 2017, the OPM OIG issued a final audit report on UPMC Health Plan, report number #1C-8W-00-16-041, discussing findings identified in the scope of our audit, which covered the contract year 2012 and 2013 premium rate developments and MLRs. Recommendation 4 of that report stated, "We recommend that the contracting officer require the Plan to institute internal controls to mitigate the use of incorrect and unsupported data in the MLR calculation prior to filing it with OPM." Although the timing of this report only covers the 2016 FEHBP MLR filing in our current audit, it is evident that an internal control issue on the FEHBP MLR persists. As such, the Plan must sufficiently address the internal control issues, including written and detailed policies and procedures, which will deter the Plan from making the same types of mistakes on future FEHBP rate developments and FEHBP MLR filings. Although the Plan indicated that they revised their MLR policy FIN003, it was not provided for our review and we cannot comment if the policy updates are sufficient to address the ongoing concerns. Therefore, if the Plan does not immediately remedy the issues identified in this report, they will also be non-compliant with Contract section 5.64(c) which states that Plans shall establish an internal controls system that ensures corrective measures are promptly instituted and carried out.

EXHIBIT A

UPMC Health Plan, Inc.

Summary of Defective Pricing Questioned Costs

Contract Year 2014	$2,166,234
Contract Year 2015	$4,175,626
Contract Year 2016	$5,832,323

Total Defective Pricing Questioned Costs	$12,174,183
Lost Investment Income (LII)	$1,612,812
Total Amount Due to OPM	**$13,786,995**

EXHIBIT B

UPMC Health Plan, Inc.
2014 Defective Pricing Questioned Costs

Contract Year 2014	**High Option**	
	Self	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate		
Bi-weekly Overcharge		
To Annualize Overcharge:		
March 31, 2014 enrollment	[redacted]	[redacted]
Pay Periods		
Subtotal		
2014 High Option Total		**$1,785,447**

	Standard Option	
	Self	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate		
Bi-weekly Overcharge		
To Annualize Overcharge:		
March 31, 2014 enrollment	[redacted]	[redacted]
Pay Periods		
Subtotal		
2014 Standard Option Total		**$342,835**

	HDHP Option	
	Self	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate		
Bi-weekly Overcharge		
To Annualize Overcharge:		
March 31, 2014 enrollment	[redacted]	[redacted]
Pay Periods		
Subtotal		
2014 HDHP Option Total		**$37,952**
Total 2014 Questioned Costs		**$2,166,234**

EXHIBIT B - continued

UPMC Health Plan, Inc.
2015 Defective Pricing Questioned Costs

Contract Year 2015	**High Option**	
	Self	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate		
Bi-weekly Overcharge		
To Annualize Overcharge:		
March 31, 2015 enrollment	[redacted]	[redacted]
Pay Periods		
Subtotal		
2015 High Option Total		**$3,170,826**

	Standard Option	
	Self	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate		
Bi-weekly Overcharge		
To Annualize Overcharge:		
March 31, 2015 enrollment	[redacted]	[redacted]
Pay Periods		
Subtotal		
2015 Standard Option Total		**$887,473**

	HDHP Option	
	Self	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate		
Bi-weekly Overcharge		
To Annualize Overcharge:		
March 31, 2015 enrollment	[redacted]	[redacted]
Pay Periods		
Subtotal		
2015 HDHP Option Total		**$117,327**
Total 2015 Questioned Costs		**$4,175,626**

UPMC Health Plan, Inc.
2016 Defective Pricing Questioned Costs

Contract Year 2016	High Option		
	Self	Self + 1	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate			
Bi-weekly Overcharge			
To Annualize Overcharge:			
March 31, 2016 enrollment			
Pay Periods			
Subtotal			
2016 High Option Total			**$3,108,063**

	Standard Option		
	Self	Self + 1	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate			
Bi-weekly Overcharge			
To Annualize Overcharge:			
March 31, 2016 enrollment			
Pay Periods			
Subtotal			
2016 Standard Option Total			**$2,481,884**

	HDHP Option		
	Self	Self + 1	Family
FEHBP Line 5 - Reconciled Rate	[redacted]	[redacted]	[redacted]
FEHBP Line 5 - Audited Rate			
Bi-weekly Overcharge			
To Annualize Overcharge:			
March 31, 2016 enrollment			
Pay Periods			
Subtotal			
2016 HDHP Option Total			**$242,376**

Total 2016 Questioned Costs **$5,832,323**

EXHIBIT C

UPMC Health Plan, Inc.
Lost Investment Income

Contract Years	2014	2015	2016	2017	2018	2019	2020	May 31, 2021	Total
High Option Defective Pricing:	$1,785,447	$3,170,826	$3,108,063						
Standard Option Defective Pricing:	$342,835	$887,473	$2,481,884						
HDHP Option Defective Pricing:	$37,952	$117,327	$242,376						
Total Defective Pricing:	$2,166,234	$4,175,626	$5,832,323	$0	$0	$0	$0		$12,174,183
Totals (per year):	$2,166,234	$4,175,626	$5,832,323	$0	$0	$0	$0	$0	$12,174,183
Cumulative Totals:	$2,166,234	$6,341,860	$12,174,183	$12,174,183	$12,174,183	$12,174,183	$12,174,183	$12,174,183	$12,174,183
Average Interest (per year):	2.063%	2.250%	2.188%	2.438%	3.063%	3.125%	1.625%	0.875%	
Interest on Prior Years Findings:	$0	$48,740	$138,728	$296,746	$372,834	$380,443	$197,830	$44,385	$1,479,706
Current Years Interest:	$22,339	$46,976	$63,791	$0	$0	$0	$0	$0	$133,106
Total Cumulative Interest Calculated Through May 31, 2021:	$22,339	$95,716	$202,519	$296,746	$372,834	$380,443	$197,830	$44,385	**$1,612,812**

EXHIBIT D

UPMC Health Plan, Inc.

2014 Medical Loss Ratio Credit Adjustment

	Per Plan	Per Audit
2014 FEHBP MLR Lower Threshold (a)	85%	85%
2014 FEHBP MLR Upper Threshold (b)	89%	89%
Adjusted Incurred Claims	[redacted]	[redacted]
Quality Health Improvement Expenses	[redacted]	[redacted]
Numerator [Total Adjusted Incurred Claims]	[redacted]	[redacted]
Premium Income	[redacted]	[redacted]
Taxes and Regulatory Fees	$0	$0
Less: Premium Rate Defective Pricing Questioned Costs		$2,166,234
Denominator [Total Adjusted Premium (c)]	[redacted]	[redacted]
FEHBP Unadjusted Medical Loss Ratio Calculation (d)	93.58%	96.42%
Credit Calculation (If (d) is greater than (b), ((d-b)*c)	[redacted]	[redacted]
Penalty Calculation (If (d) is less than (a), ((a-d)*c)	$0	$0
2014 MLR Credit Adjustment		[redacted]

EXHIBIT D - continued

UPMC Health Plan, Inc.

2015 Medical Loss Ratio Credit Adjustment

	Per Plan	Per Audit
2015 FEHBP MLR Lower Threshold (a)	85%	85%
2015 FEHBP MLR Upper Threshold (b)	89%	89%
Adjusted Incurred Claims	[redacted]	[redacted]
Quality Health Improvement Expenses	[redacted]	[redacted]
Numerator [Total Adjusted Incurred Claims]	[redacted]	[redacted]
Premium Income	[redacted]	[redacted]
Taxes and Regulatory Fees	$2,483,887	$2,483,887
Less: Premium Rate Defective Pricing Questioned Costs		$4,175,626
Denominator [Total Adjusted Premium (c)]	[redacted]	[redacted]
FEHBP Unadjusted Medical Loss Ratio Calculation (d)	93.15%	98.55%
Credit Calculation (If (d) is greater than (b), ((d-b)*c)	[redacted]	[redacted]
Penalty Calculation (If (d) is less than (a), ((a-d)*c)	$0	$0
2015 MLR Credit Adjustment		[redacted]

EXHIBIT D - continued

UPMC Health Plan, Inc.

2016 Medical Loss Ratio Credit Adjustment

	Per Plan	Per Audit
2016 FEHBP MLR Lower Threshold (a)	85%	85%
2016 FEHBP MLR Upper Threshold (b)	89%	89%
Adjusted Incurred Claims	[redacted]	[redacted]
Quality Health Improvement Expenses	[redacted]	[redacted]
Numerator [Total Adjusted Incurred Claims]	[redacted]	[redacted]
Premium Income	[redacted]	[redacted]
Taxes and Regulatory Fees	$70,607	$70,607
Less: Premium Rate Defective Pricing Questioned Costs		$5,832,323
Denominator [Total Adjusted Premium (c)]	[redacted]	[redacted]
FEHBP Unadjusted Medical Loss Ratio Calculation (d)	88.33%	95.94%
Credit Calculation (If (d) is greater than (b), ((d-b)*c)	[redacted]	[redacted]
Penalty Calculation (If (d) is less than (a), ((a-d)*c)	[redacted]	[redacted]
2016 MLR Credit Adjustment		[redacted]

EXHIBIT E

UPMC Health Plan

Medical Claims Sample Selection Criteria/Methodology

Universe Criteria	Universe (Number)	Universe (Dollars)	Sample Criteria and Size	Sample Type	Results Projected to the Universe?
Medical claims incurred from 1/1/2014 through 12/31/2014	222,960 Claims	$50,543,873	Utilized RAT-STATS[1] (90% Confidence Level/50% Anticipated Rate of Occurrence/20% Desired Precision Range), which generated a sample size of 75. Then utilized SAS[2] to randomly select 75 incurred, unadjusted medical claims.	Statistical	No

[1] RAT-STATS is a statistical software designed by the U.S. Department of Health and Human Services OIG to assist in selecting random samples.
[2] SAS Enterprise Guide is a software used to analyze data allowing users to access and manipulate data quickly.

UPMC HEALTH PLAN

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www.upmchealthplan.com

February 12, 2021

United States Office of Personnel Management
Matthew R. Knupp
Chief, Community-Rated Audits Group

Re: Federal Employees Health Benefits program Operations at UPMC Health Plan
Dear Mr. Knupp:

First, thanks to you and your colleagues for your collaboration with us throughout the audit process, we appreciate it. Among other things, we appreciate the extension of time provided to respond. While we realize that this audit took place over a period of time during which we provided input, having a final opportunity to respond to the draft audit findings allowed us to bring in additional corporate resources and to be better positioned to understand and to respond appropriately to the audit findings. While we disagreed previously with many of the findings, we did not provide all of the relevant, responsive data to support our positions during the initial audit discussions. Also, to the extent we agreed previously with certain audit findings, after conducting additional research and reviewing the full panoply of supporting data, we have in certain instances changed our response and now disagree with the proposed audit finding. With this response, we are providing more complete and accurate responses to the audit findings, as well as appropriate supporting documentation. Accordingly, these responses should replace any previously submitted partial responses or inaccurate.

Second, the enclosed audit response including attachments contains proprietary, trade secret information that UPMC routinely protects from disclosure. Accordingly, we have marked our submission with a confidential and proprietary legend. In accordance with the Trade Secrets Act, we ask that you treat this response appropriately and protect it from disclosure. Because we understand and appreciate that some portion of our audit response must be available for public review, we have also drafted and attached a shorter version of our response, which we believe to be appropriate for posting. We are submitting both redacted and unredacted versions of the longer, more comprehensive audit response. If you determine that the short version is

insufficient for posting purposes, we respectfully ask that only the redacted version of the longer, comprehensive response be made public.
And, in the event the Government intends to make public any other aspect of our submission, we request that we be given the chance to weigh in on the disclosure of any other part of our audit response prior to release.

Finally, and as indicated above, there are three attachments to our audit response. These include: Attachment A (Lost Investment Income), B (MLR Credit Adjustment), and Attachment C (UPMC FEHB Corrective Action Plan). All three attachments are designated as proprietary and confidential, and UPMC requests that all information be treated appropriately in accordance with the Trade Secrets Act.

Please let us know whether you have any questions or concerns and whether you need additional information. Thank you again.

Sincerely,
Sheryl Kashuba
Digitally signed by Sheryl Kashuba
Date: 2021.02.12 13:50:04 -05'00'
Sheryl Kashuba

UPMC Health Plan, Inc. Response to Audit Report Number 1C-8W-00-20-017 – Abbreviated [Short] Version

The Plan's Draft responses to specific audit findings:

1. **Defective Pricing**

   OPM Recommendation #1: ***We recommend that the Plan return $12,174,183 to the FEHBP for defective pricing in contract years 2014 through 2016. (See Exhibit B; detailed findings are #2-9 below)***

   Plan Updated Response:

   The Plan has assessed each of the specific audit findings identified by OPM and will address each of the findings separately below.

   In addition to the specific findings below, the Plan does not concur with OPM's methodology for quantifying audit findings, which holds constant the fixed dollar amount used to price discounts in its calculations of questioned costs. The Plan's premium rate model is based on a discount percentage, and accordingly a percentage should have been applied to the "audited" rates instead of a fixed dollar amount for discounts. Updating OPM's calculations to use the Plan's discount percentages, instead of the fixed dollar amounts used by OPM, results in a reduction to the questioned costs.

2. **HIF Loadings (ACA Fee)**

   OPM Recommendation #2: ***We recommend the Plan remove all HIF loadings from the FEHBP premium rate developments and MLR filing denominators (as applicable) that have been submitted to OPM under Contract CS 2856.***

   Plan Updated Response:

   The Plan does not concur with this finding. The Plan reasonably included the HIF tax loading in its rate development and reconciled rates, consistent with the method used to price all commercial groups. Moreover, at the time of premium development and reconciliation, the Plan had not determined whether it would be required to pay or if it would be exempt from the HIF tax. The HIF tax is paid by the entity housing the HDHP Plan. T**he Plan does NOT concur that this finding meets the criteria of defective pricing** under FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

3. **Pharmacy Rebate Errors**

   Recommendation #3: ***We recommend the Plan amend all future FEHBP premium rate developments in which the pharmacy rebates were incorrectly reported.***

Plan Updated Response:

The Plan does not concur that its pharmacy rebate methodology results in any duplicative administrative expense being included in the FEHB premiums. This practice is commensurate with that used for other commercial groups. The expense represents a reasonable allocation for activities performed in connection with the FEHB Pharmacy program and reporting. Furthermore, as a community rated plan, the Plan is not required to either true-up its administrative expenses based on actual costs, nor is it required to provide a detailed breakdown of administrative expenses within its retention load or elsewhere in the premium development process.

4. Vision Benefit Loading Error

OPM Recommendation #4: ***We recommend the Plan amend all future premium rate developments to appropriately account for the FEHBP vision benefits.***

Plan Updated Response:

The Plan does not concur with this finding. The Plan appropriately included the vision benefit premium loads that pertained to eye examinations covered under the FEHB program. The Plan relied on the best information it had at the time and reasonably estimated the cost of the vision benefits loading. The overall questioned costs for this finding are immaterial, demonstrating that this was not a material difference between the Plan's estimates for rate development and OPM's calculations based on actual after-the-fact data. For these reasons, **the Plan does NOT concur that this finding meets the criteria of defective pricing** under FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

5. Retention Rate Loading Error (Admin fee)

OPM Recommendation #5: We recommend the Plan utilize data from the FEHBP contracting entity (UPMC Health Plan Inc.), net of any unallowable contingent fees, when determining the FEHBP administrative fee loading.

Plan Updated Response:

The Plan does not concur with this finding. The Plan used a standard retention rate, a methodology that is acceptable pursuant to the FEHBAR for community rated carriers, is consistent with the guidance in the Community Rating Guidelines, was consistently applied to all commercial plans, and that was accepted by OPM during the annual Rate Reconciliation Audit. Accordingly, **the Plan does NOT concur that this finding meets the criteria of defective**

pricing as defined in FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

6. Retention Rate Loading Error

OPM Recommendation #6: We recommend the Plan remove unallowable contingent fees from all future FEHBP premium rate developments submitted to OPM.

Plan Updated Response:

The Plan does not concur with this finding, as OPM is applying standards and regulatory requirements that are applicable only to experience rated plans, which the Plan is not. As discussed in #5 above, the Plan is a community rated plan, and is not required to substantiate its "administrative expenses" or other costs that may be included in the retention rate loading factor.

7. Retention Rate Loading Error

OPM Recommendation #7: We recommend the Plan apply a profit margin percentage to the FEHBP that is consistent with all fully insured commercial groups.

Plan Updated Response:

See response to #5. the Plan does not concur with this finding, as OPM is applying standards and regulatory requirements that are applicable only to experience rated plans, which the Plan is not, as a community rated plan. The Plan's retention rate loading factor was included in FEHB pricing at a rate consistent with that used for its fully insured commercial groups. The retention rate loading factor was not based on an actual cost buildup; accordingly, the administrative fee/ profit % split is not relevant to the Plan's retention rate methodology as it is consistent with its commercial group practices.

8. 2016 FEHBP Rate Development Benefit Adjustment Errors

OPM Recommendation #8: We recommend that the Plan adjust for all applicable benefit changes from the experience period through the renewal period when developing FEHBP premium rates.

Plan Updated Response:

The Plan concurs with this finding. The Plan transitioned to a standardized template factor tool that consistently incorporates the Embedded vs Aggregate adjustment, as well as all other requirements which resolves this error.

9. 2016 HIA Utilization Error

OPM Recommendation #9: ***We recommend that the Plan develop FEHBP benefit change factors based on the Contract and actual FEHBP utilization, when available.***
Plan Updated Response:

The plan has incorporated this recommendation in its corrective action plan, provided separately to OPM.

10. Lost Investment Income

OPM Recommendation #10: ***We recommend the Plan return $1,568,427 to the FEHBP for lost investment income, calculated through December 30, 2020. We also recommend that the Plan return lost investment income on amounts due for the period beginning January 1, 2021, until all defective pricing finding amounts have been returned to the FEHBP. (See Exhibit C)***
Plan Updated Response:

The Plan recalculated the Lost Investment Income based on the amounts concurred to by the Plan herein and concurs with this recalculated amount. The detailed calculation will be provided separately to OPM.

11. MLR Credit Adjustments

OPM Recommendation #11: ***We recommend that the Contracting Officer adjust the Plan's MLR credit for contract years 2014 through 2016 once the defective pricing findings discussed in this report are resolved. (See Exhibit D)***

Plan Updated Response:

The plan recalculated the MLR credit based on the amounts concurred to by the Plan herein and concurs with this recalculated amount. The detailed calculation will be provided separately to OPM.

12. Allocation Error

OPM Recommendation #12: ***We recommend that the Plan report the expense allocation methodologies used for the FEHBP MLR as required by 45 CFR 158.170 and Part 4 of the FEHBP MLR submission.***
Plan Updated Response:

The plan has incorporated this recommendation in its corrective action plan, provided separately to OPM.

13. MLR Tax Reporting Errors

OPM Recommendation #13: ***We recommend the Plan amend any future MLR filings to accurately comply with the tax provisions under the Contract.***
Plan Updated Response:

The plan has incorporated this recommendation in its corrective action plan, provided separately to OPM.

14. Medical Claims Processing Errors

OPM Recommendation #14: ***We recommend that the Plan only pay claims for providers with valid contracts that are appropriately credentialed.***
Plan Updated Response:

The Plan does not concur with the findings underlying this recommendation as previously communicated with OPM; however, the Plan will evaluate opportunities to strengthen policies and processes around processing of FEHBP claims.

15. Insufficient Internal Controls

OPM Recommendation #15: ***We recommend the Plan immediately establish written policies and procedures to strengthen internal controls over the development of the FEHBP premium rates, including but not limited to; the application of ACA fees, pharmacy rebates, retention, and the calculation and loading of benefit factors/changes including the vision rider***
Plan Updated Response:

The plan has incorporated this recommendation in its corrective action plan, provided separately to OPM.

16. Insufficient Internal Controls

OPM Recommendation #16: ***We recommend the Plan immediately establish written policies and procedures to strengthen internal controls over the FEHBP-specific MLR filing, including but not limited to the expense allocation process and reporting of tax expenses.***
Plan Updated Response:

The plan has incorporated this recommendation in its corrective action plan, provided separately to OPM.

17. Insufficient Internal Controls

<u>OPM Recommendation #17:</u> We recommend that the Plan strengthen their provider credentialing process to ensure member services and claims are completed and paid for actively credentialed providers and the credentialed providers hold valid contracts with the Plan.

<u>Plan Updated Response:</u>

The plan has incorporated this recommendation in its corrective action plan, provided separately to OPM.

APPENDIX B

Received February 12, 2021, along with Appendix A

UPMC Health Plan, Inc. [Full] Response to Audit Report Number 1C-8W-00-20-017

Executive Summary

UPMC Health Plan, Inc. ("the Plan") concurs with some, but not all findings in the draft audit report. In general, we do not concur with the findings on the following basis:

- In several of its audit findings OPM is using actual, after-the-fact data that was not available to the Plan at the time of rate development; consequently, these adjustments are inaccurate and do not constitute defective pricing because the Plan reasonably relied on the information it had available at the time.
- In many of its audit findings OPM has assessed the Plan using the standards and regulations applicable to experience rated carriers, even though the Plan is a community rated carrier. These standards are inappropriate for application to community rated carriers.
- Many issues raised in the audit report were addressed in multiple rate reconciliations, and OPM is now finding exceptions to previously accepted and agreed upon methodologies.
- The MLRs resulting from OPM's audit demonstrate that the audit findings in whole are unreasonable, as they would result in significant annual losses to the Plan on the FEHB group insurance. These losses would undermine the validity and enforceability of the contract and are antithetical to the policy and regulatory underpinnings of the program.

A. OPM's Audit Findings Result in a Substantial Loss to the Plan for the FEHB Group. This is Contradicted by the Entire Regulatory Framework and Philosophy for Community Rated Health Plans.

Exhibit D of the OPM audit report demonstrates the impact of the asserted audit findings on the Plan's MLR. This table summarizes the audit report Exhibit D by comparing the MLRs "Per Plan" and "Per Audit":

Medical Loss Ratio (MLR)	Per Plan (based on reconciled rates)	Per Audit (based on OPM draft audit report)
2014	93.58%	96.42%
2015	93.15%	98.55%
2016	88.33%	95.94%

The above table demonstrates that the Plan's FEHB group pricing for 2014 to 2016 was, based on the Plan's originally submitted MLR calculations, priced at a loss for the 2014-2016 periods. OPM's audit findings exacerbate the resulting MLR and would place the Plan further into a loss position, inconsistent with the rest of its commercial group business. Over time, this would create a non-sustainable business position, such that the Plan would not have agreed to the contract in the first place under these draconian terms. Additionally, the Plan offered generous discounts in its premium rates, and had the Plan adopted some of OPM's now recommended practices at the time of rate development, the discounts would have been reduced accordingly to meet targeted goals, likely resulting in similar premium rates.

As we explain in more detail below, the Plan reasonably relied on its commercial pricing methodologies to offer fair and reasonable pricing on the FEHB plan and executed the contract on this basis. Not only do several of OPM's audit findings not rise to the level of defective pricing as defined in FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data, but they undermine the integrity of the Government's pre-contract negotiating position.

B. OPM's Rate Reconciliation Audit Process Provides for Final Rate Pricing. Through This Reconciliation Audit, Rates Are Deemed Final. The MLR Serves as the Final Check on Reasonable Pricing.

The following excerpt from the 2014 Community Rating Guidelines published by OPM provides guidance on the annual Rate Reconciliation Audits (RRA). This same language is also in the 2015 and 2016 Community Rating Guidelines:

"Rate Reconciliation Audits (RRAs)

Each year, beginning in May, OPM's Office of the Inspector General (OIG) audits the rate reconciliations of some carriers. Although these audits focus on the current year's rate reconciliation, the audit staff may need to analyze rate information for the Federal group and other groups from previous years. Keep all documentation used to develop the rates available for review by the audit staff.

Upon completion of the RRA, the Office of the Actuaries (OA) will discuss the results with the carrier. It is the carrier's responsibility to inform the OA of any disagreement they have with the RRA results and/or final rates before they are finalized. Once the OA and the carrier agree on the final reconciled rates and final rates are set for the upcoming year, OPM will not accept any new or additional rate information from the carrier regarding the audited year. OIG will not conduct subsequent audits of that year's rates for these plans. OIG may audit the MLR calculation after the RRA is finalized.

The only condition under which rates finalized in conjunction with an RRA will be changed is when OPM determines it is justified."

The Plan underwent Rate Reconciliations Audits (RRAs) for 2014-2016, providing OPM with all requested support underlying the rates for those years. The rates audited by OPM in the draft audit report are the rates resulting from those RRAs. Based on the RRA rates, the Plan had Medical Loss Ratios well above the 89% upper MLR threshold, demonstrating that the Plan's rates were reasonable both at the time the rate reconciliation audits were completed, as well as at the time of audit. OPM has presented absolutely no justification for the need for this audit, nor has it justified why the Plan should sustain even greater losses on the FEHB business, resulting from these audit results and the impact on the Plan's MLRs.

The Plan's Draft responses to specific audit findings:

1. **Defective Pricing**

OPM Recommendation #1: ***We recommend that the Plan return $12,174,183 to the FEHBP for defective pricing in contract years 2014 through 2016. (See Exhibit B; detailed findings are #2-9 below)***

Plan Updated Response:

The Plan has assessed each of the specific audit findings identified by OPM and will address each of the findings separately below.

OPM's audit methodology is flawed in several overall respects. First, OPM utilizes actual historical experience data in many instances to compare to the Plan's premium rates, which, at the time they were developed, were based upon the most accurate forecasted data available, not after-the-fact actual experience. The use of historical actual data to quantify audit findings is not an appropriate measure of potential defective pricing and overstates each of the audit findings. The Plan has appropriately recast OPM's audit adjustments using its available forecasted data in assessing the validity of these audit findings.

Second, the Plan does not concur with OPM's methodology for quantifying audit findings, which holds constant the fixed dollar amount used to price discounts in its calculations of questioned costs. The Plan's premium rate model is based on a discount percentage, and accordingly a percentage should have been applied to the "audited" rates instead of a fixed dollar amount for discounts. This discount percentage methodology is consistent with the rate reconciliation methodology in which a percentage is applied. For examples, please see the excerpts below from the 2014 Reconciled Rates/ Counter Proposed 2015 Rates Letter from OPM, dated August 12, 2014:

> The rates above include an FEHB discount of [redacted] self and [redacted] family which will not be allowed to decrease during the 2015 reconciliation.

> The rates above include an FEHB discount of [redacted] self and [redacted] family which will not be allowed to decrease during the 2015 reconciliation.

Updating OPM's calculations to use the Plan's discount percentages, instead of the fixed dollar amounts used by OPM, results in a reduction of $969,767 to the questioned costs, for a revised total of $11,204,416 in questioned costs. This revised total and discount % methodology will be the starting point for the remainder of the Questioned Cost calculations presented herein.

Defective Pricing Questioned Costs	$12,174,183
Less: Adjustment for Discounts	(969,767)
Adjusted Defective Pricing QCs	**$11,204,416**

The Plan concurs with $1,761,301 of the questioned costs as summarized in the table below and discussed in more detail in our responses to specific findings below.

OPM Audit Finding	Questioned Costs	Concurred	Not Concurred
Defective Pricing Questioned Costs	$ 12,174,183		
Discount Methodology	$ 969,767	$ -	$ 969,767
HIF Loadings	$ 6,084,999		$ 6,084,999
Pharmacy Rebate Errors	$ 1,194,250	$ -	$ 1,194,250
Vision Benefit Loading Error	$ 44,695	$ -	$ 44,695
Retention Rate Loading Error	$ 2,300,898	$ -	$ 2,300,898
2016 FEHBP Rate Development Benefit Adjustment Errors	$ 1,761,301	$ 1,761,301	$ -
HIF & RR on other QC's	$ (185,299)	$ -	$ (185,299)
Rounding and Immaterial Variances	$ 3,572	$ -	$ 3,572
Subtotal Defective Pricing Findings	**$ 12,174,183**	**$ 1,761,301**	**$ 10,412,882**
Lost Investment Income	**$ 1,568,427**	$ 199,820	$ 1,368,607
MLR Credit Adjustments	**$ (10,341,219)**	$ (1,073,755)	$ (9,267,464)

2. HIF Loadings (ACA Fee)

OPM Recommendation #2: ***We recommend the Plan remove all HIF loadings from the FEHBP premium rate developments and MLR filing denominators (as applicable) that have been submitted to OPM under Contract CS 2856.***

Plan Updated Response:

This recommendation pertains to the following findings from NFR #1:

> *We identified that UPMC Health Plan, Inc. applied a HIF tax loading to the 2014 through 2016 FEHBP premium rate developments even though the Plan was exempt from paying a HIF under IRS regulations. Due to this exemption, the HIF tax loading is not applicable to the certified 2014 through 2016 FEHBP premium rates submitted by UPMC Health Plan, Inc.*

On May 13, 2013, OPM issued Letter No. 2013-14 to Carriers, "Health Insurance Providers Fee under the Affordable Care Act (ACA)". This letter contained guidance for carriers "to assess their status as 'covered entities,' and if they are covered entities, to make the required payment."

The letter also provided the following guidance:

> ***Community Rated Carriers***
>
> *Community-rated (CR) plans may include this fee in the community rate purchased by the FEHB Program. If a community rated carrier's rating methodology includes adding a load for these fees, the carrier is allowed to include the load in the rate build up for FEHB in accordance with the methodology. If a carrier does not load the rate for other groups subject to the fees, the carrier cannot load the FEHB rate.*

The Plan developed its 2014 FEHB rates in 2013 and submitted them in May 2013, with reconciled rates submitted in April 2014. When the rates were originally developed prior to the May 2013 submission, the rates were based on the data available to the Plan at the time. At that point in time it was not clear whether or not the UPMC entities that held the FEHBP contract would be subject to the HIF tax. As a result, the Plan developed a policy to apply the HIF tax loading uniformly to all commercial plans as allowed by the May 13, 2013 OPM letter. The Plan consistently has applied this same methodology through all years 2014-2016, for both its commercial plans as well as FEHB.

Furthermore, during the rate reconciliation process for plan years 2015 and 2016, OPM audited the premiums which included these tax loadings, and obtained from the Plan further support on the HIF tax loadings. OPM ultimately accepted the Plan's HIF loadings in the reconciliations for all three years, 2014-2016, with no reductions or adjustments.

2015 Reconciliation Question from OPM (per email 6/8/15):

8. Are the PCORI fee of [redacted] PMPM and the Health Insurance Tax of [redacted] standard and applied consistently to all groups?

2016 Reconciliation Question from OPM (per email 5/18/16):

9. Please show the calculations for the Transitional Reinsurance fee, HIP fee, and PCORI fee adjustment for Medicare primary members. Does this occur for all groups?

Since the Plan was not aware at the time of rate development that certain of its entities it would be exempt from the HIF tax, and OPM accepted the HIF loadings in the reconciliation process, the Plan reasonably included the HIF tax loading in its rate development and reconciled rates, consistent with the method used to price all commercial groups. **The Plan does NOT concur that this finding meets the criteria of**

defective pricing under FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

3. Pharmacy Rebate Errors

Recommendation #3: ***We recommend the Plan amend all future FEHBP premium rate developments in which the pharmacy rebates were incorrectly reported.***

Plan Updated Response:

The Plan does not concur with OPM's assertions that pharmacy rebates were incorrectly reported, nor does it concur with OPM's assertion that the Plan developed the FEHB premium rates using pharmacy rebate amounts significantly lower than the amount used to reduce claims in the FEHB MLR calculations. OPM's audit findings assert that the pharmacy rebates were erroneously reduced by duplicative administrative expense charges and that they failed to include ESI rebates.

During the audit period, the FEHB premium rates were consistently prepared incorporating forecasted pharmacy rebates specifically attributable to FEHB, **net** of a standard expense offset factor, representing the expenses involved in managing the pharmacy programs/processes. The FEHB methodology for pharmacy rebate pricing is consistent with the methodology used for commercial groups, whereby **net** pharmacy rebates are included in determining commercial group premiums. Said differently, commercial group pricing includes pharmacy rebates, net of the standard expense offset factor. Again, this net rebate pricing methodology is consistently used for commercial groups and FEHB. This practice has been reviewed and upheld by OPM during each rate reconciliation audit over the entire audit period.

The Plan does not concur that this pharmacy rebate methodology results in any duplicative administrative expense being included in the FEHB premiums. In fact, the Pharmacy department has been required to implement processes and provide special reporting to FEHB in connection with the pharmacy program that exceed the normal and customary activities provided to other commercial groups. The rebate expense offset has not been adjusted to reflect these over and above requests by FEHB, such as:

- Maintaining the FEHB dedicated weblink(s) through UPMC, containing several documents specific to the FEHB program
- Working with ESI to configure and test the OE website, used all year long, for both prospective and current FEHB employees to review pharmacy benefits, drug pricing, pharmacy look-up, etc.

- Compliance bulletins are reviewed as they are released to ensure compliance with the request of the client.
- Pharmacy attends semi-regular meetings with compliance and account management teams to review any updated guidance required for this client.

Furthermore, as a community rated plan, the Plan is not required to either true-up its administrative expenses based on actual costs, nor is it required to provide a detailed breakdown of forecasted administrative expenses within its retention load or elsewhere in the premium development process. For the plan years 2014 – 2016, the Plan's MLR filings demonstrate that the Plan did not earn the full retention load that was included in the FEHB premium, given that the MLR %'s each exceed the 89% target corresponding to the Plan's anticipated [redacted] retention loading. Consequently, the Plan was not reimbursed at its targeted retention, and therefore was not even fully reimbursed at amounts commensurate with a full administrative expense allocation.

Last, OPM's questioned cost calculations relied on actual pharmacy rebate data for 2014 – 2016, information that was neither available to the Plan nor utilized for rate development. The FEHB contract does not contain a provision requiring that inputs to its rate buildups must be trued-up to actual costs after the fact. Rather, the Plan is held to the standard of 1615.406-2, Certificates of accurate cost or pricing data for community-rated carriers, in which the Plan certifies to complete, accurate, and current data in its Certificate of Accurate Cost or Pricing Data for Community Rated Carriers.

At the time of certification, the Plan utilized actual pharmacy rebate data available for Q1-Q3 of the prior calendar year (e.g., 2014 rates were developed in 2013, so the available pharmacy rebate data available was Q1-Q3 of 2012), and projected the following quarters based on Q3 utilization. OPM however, auditing several years after the fact, had access to actual data past Q3, more data than what the Plan had available at the time of rate development. OPM used this actual data to calculate the questioned costs instead of using the data the Plan had at the time it developed the rates.

The Plan does NOT concur that this finding meets the criteria of defective pricing under FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

4. Vision Benefit Loading Error

OPM Recommendation #4: ***We recommend the Plan amend all future premium rate developments to appropriately account for the FEHBP vision benefits.***

Plan Updated Response:

The Plan does not concur with this finding. The Plan appropriately included the vision benefit premium loads that pertained to eye examinations covered under the FEHB program. OPM's audit report states "we recalculated a per member per month (PMPM) vision loading for contract years 2014 through 2016 based on FEHBP vision claims experience, provided by the Plan, that solely covered routine eye examinations as specified in the FEHBP benefit brochure."

Here, similar to other questioned costs, OPM relies on actual, after-the-fact data not known to the Plan at the time of rate development. The Plan relied on the best information it had at the time and reasonably estimated the cost of the vision benefits loading. The overall questioned costs are approximately $45k for all 3 years (2014-2016), demonstrating that this was not a material difference between the Plan's estimates for rate development and OPM's calculations based on actual after-the-fact data. For these reasons, **the Plan does NOT concur that this finding meets the criteria of defective pricing** under FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

5. Retention Rate Loading Error (Admin fee)

OPM Recommendation #5: We recommend the Plan utilize data from the FEHBP contracting entity (UPMC Health Plan Inc.), net of any unallowable contingent fees, when determining the FEHBP administrative fee loading.

Plan Updated Response:

The following is an excerpt from the Community Rating Guidelines published by OPM regarding administrative fees:

Audit Year	Community Rating Guidelines: Administrative Expense Loading
2014	Loadings for administrative expenses must be either: a) a flat community rated pm/pm amount; b) a standard percentage of claims; or c) a method consistently applied to the FEHBP and should be used for other insured groups and must be documented in the carrier's rating methodology.

2015	Same as 2014 Guidelines
2016	Same as 2014 Guidelines
Source: Community Rating Guidelines available at: *https://www.opm.gov/healthcare-insurance/healthcare/carriers/#url=Archive*	

As disclosed in its 2014-2016 rate reconciliations, the Plan uses the "percentage of claims" method, and also disclosed that this retention percentage was [redacted]. For example, the following is from the 2014 Rate Reconciliation:

QA7. What kind of administrative loading did you use?

[ ] A flat community rated pm/pm administrative charge

[X] A percentage of claims

[ ] Other

Explain how you computed the administrative charge.

Component	Value
Retention	[redacted]
Commission	[redacted]
Large Claim Pooling (3% of Medical Claims)	[redacted]
Net MLR	[redacted]

The Plan's methodology is appropriate pursuant to FEHBAR Subpart 1631.2 "Contracts With Commercial Organizations" and is not required to use actual costs incurred to true-up these costs or other costs included in pricing. As stated in the FEHBAR:

> *The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of* ***experience rating****, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.*

The Plan is a **community rated carrier**, and accordingly the contract cost principles in FEHBAR, and by extension FAR Part 31, are not applicable to the Plan. That is, prices for community rated carriers are not determined on the basis of actual costs incurred. OPM's audit attempts to adjust the Plan's admin loading based on an actual cost calculation that the Plan is not required to perform, and as a result did not perform, at the time of rate development. The Plan provided actual cost incurred data in response to

OPM's audit requests and questions (see IR 22, 27, 31, and NFR #8), however the Plan did not originally determine its admin fee and profit loading in this manner.

The Plan's rate models clearly evidence that the Plan used 89% as its "Target MER", which effectively results in the [redacted] admin fee and profit loading. Additionally, the Plan provided the underwriting models for the FEHB plan for the response to IR #31, B.2., which also show the rates were developed using a target retention of [redacted].

From the 2014 Rate Model (Reconciled Rates):

2014 FEHBP Rate Proposal												
			High Option			Standard Option			HDHP			
			Medical	Pharmacy	Total	Medical	Pharmacy	Total	Medical	Pharmacy	Total	
3. Required Premium	3.1	Target MER (before ACA load)		[redacted]			[redacted]			[redacted]		

From the 2014 Underwriting model:

FEHB	
1/1/2014	
12	
Fully Insured	
OPT	
None (Default)	
	[redacted]
Pooling	
Commission	

This [redacted] target was consistently used for all commercial plans, including FEHB. The specific split of this [redacted] between fee and admin was not a set amount, only the total [redacted] retention. The Plan consistently used this methodology for plan years 2014-2016 as documented in its rate buildups but also as reviewed and upheld by OPM during the annual rate reconciliation process. For example, in 2014 (email chain with OPM, provided to OPM on 7/18/14):

> 6. Could you explain how you came up with the retention rate of [redacted] (or target MLR of 89%)?
> **OPM requires the actual MLR to be no less than 85%. We decided to use 89% as a target so our actual MLR will be over 85%.**

OPM took no exception to this methodology in the reconciliation process, and the Plan continued this same methodology in following years. FEHBAR even contemplates that

carriers will use this MLR methodology, in FEHBAR 1652.216-70 "Accounting and price adjustment":

> *(4)* ***If rates are determined by comparison with the FEHB-specific MLR threshold****, then if the MLR for the carrier's FEHB plan is found to be lower than the published FEHB-specific MLR threshold, the carrier must pay a subsidization penalty equal to the difference into a subsidization penalty account.*

OPM is now trying to assert that the Plan had defective pricing because its administrative fees were not supported by actual incurred cost information. However, that is not the standard a community rated carrier is held to. The Plan used a methodology that is acceptable pursuant to the FEHBAR for community rated carriers, is consistent with the guidance in the Community Rating Guidelines, was consistently applied to all commercial plans, and that was accepted by OPM during the annual Rate Reconciliation Audit. Accordingly, **the Plan does NOT concur that this was defective pricing** as defined in FEHBAR 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

6. Retention Rate Loading Error

OPM Recommendation #6: We recommend the Plan remove unallowable contingent fees from all future FEHBP premium rate developments submitted to OPM.

Plan Updated Response:

OPM took exception to "brokerage fees" included in the Plan's administrative expense data requested by and provided by the Plan during the audit. The Plan does not concur with this finding, as OPM is applying standards and regulatory requirements that are applicable only to experience rated plans, which the Plan is not. As discussed in #5 above, the Plan is a community rated plan, and is not required to substantiate its "administrative expenses" or other costs that may be included in the retention rate loading factor. Moreover, the Plan is not subject to the FEHBAR Part 1631 Contract Cost Principles, nor FAR part 31 cost principles with respect to its premium pricing. In fact, FEHBAR 1631.2 explicitly states such as follows:

> *The cost principles under this subpart apply only to contract in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.*

The audit findings identify requirements that are not supported by the regulations for community rated plans. In summary, the retention rate loading factor was not based on an actual cost buildup and was priced appropriately consistent with the commercial group practices used by the Plan. Furthermore, the Plan has not paid contingent fees related to the FEHB plan, pursuant to the requirements of its Standard Contract.

7. Retention Rate Loading Error

OPM Recommendation #7: We recommend the Plan apply a profit margin percentage to the FEHBP that is consistent with all fully insured commercial groups.

Plan Updated Response:

See response to #5. The Plan does not concur with this finding, as OPM is applying standards and regulatory requirements that are applicable only to experience rated plans, which the Plan is not, as a community rated plan. The Plan's retention rate loading factor was included in FEHB pricing at a rate consistent with that used for its fully insured commercial groups. The retention rate loading factor was not based on an actual cost buildup; accordingly, the administrative fee/ profit % split is not relevant to the Plan's retention rate methodology which uses a target MLR of [redacted] and is consistent with its commercial group practices.

8. 2016 FEHBP Rate Development Benefit Adjustment Errors

OPM Recommendation #8: We recommend that the Plan adjust for all applicable benefit changes from the experience period through the renewal period when developing FEHBP premium rates.

Plan Updated Response:

The Plan concurs with this finding. The Plan transitioned to a standardized template factor tool that consistently incorporates the Embedded vs Aggregate adjustment, as well as all other requirements. The use of this tool to perform the rate premium calculation simplifies the process, builds in accuracy of assumptions, and ensures the Plan incorporates appropriate assumptions, including Embedded vs. Aggregate, in an accurate manner.

9. 2016 HIA Utilization Error

OPM Recommendation #9: We recommend that the Plan develop FEHBP benefit change factors based on the Contract and actual FEHBP utilization, when available.

Plan Updated Response:

The Plan has incorporated this recommendation in its corrective action plan, see Attachment C.

10. Lost Investment Income

OPM Recommendation #10: ***We recommend the Plan return $1,568,427 to the FEHBP for lost investment income, calculated through December 30, 2020. We also recommend that the Plan return lost investment income on amounts due for the period beginning January 1, 2021, until all defective pricing finding amounts have been returned to the FEHBP. (See Exhibit C)***

Plan Updated Response:

The Plan recalculated the Lost Investment Income based on the amounts concurred to by the Plan herein and concurs with $199,820 in lost investment income. The detailed calculation is provided in Attachment A.

11. MLR Credit Adjustments

OPM Recommendation #11: ***We recommend that the Contracting Officer adjust the Plan's MLR credit for contract years 2014 through 2016 once the defective pricing findings discussed in this report are resolved. (See Exhibit D)***

Plan Updated Response:

The Plan recalculated the MLR credit based on the amounts concurred to by the Plan herein and concurs with an MLR Credit Adjustment of $1,073,755. The detailed calculation is provided in Attachment B.

12. Allocation Error

OPM Recommendation #12: ***We recommend that the Plan report the expense allocation methodologies used for the FEHBP MLR as required by 45 CFR 158.170 and Part 4 of the FEHBP MLR submission.***

Plan Updated Response:

The Plan has incorporated this recommendation in its corrective action plan, see Attachment C.

13. MLR Tax Reporting Errors

OPM Recommendation #13: ***We recommend the Plan amend any future MLR filings to accurately comply with the tax provisions under the Contract.***

Plan Updated Response:

The Plan has incorporated this recommendation in its corrective action plan, see Attachment C.

14. Medical Claims Processing Errors

OPM Recommendation #14: ***We recommend that the Plan only pay claims for providers with valid contracts that are appropriately credentialed.***

Plan Updated Response:

The Plan does not concur with the findings underlying this recommendation as previously communicated with OPM; however, the Plan will evaluate opportunities to strengthen policies and processes around processing of FEHBP claims.

With respect to the provider who submitted 155 claims, OIG did not provide a reason that it did not accept the Plan's initial response. At the time of submission of the 155 claims, the provider at issue was both a contracted and credentialed participating provider with the Plan. This provider held a valid contract, was credentialed and listed in the provider directory as participating, albeit through another group practice. This provider did offer services at more than one participating provider group practice. As such, the Plan was in compliance with the FEBHP Contract Section 1.9(f) with respect to this Provider.

With respect to the provider who submitted 16 claims, as previously indicated the provider at issue is a CRNA, physician extender, performing services at a participating facility. Per the Plan's Credentialing policy, the Plan does not credential hospital-based physicians such as anesthesiologists, emergency room physicians, hospitalists, intensivists, pathologists, and radiologists or their extenders. As providers within a participating facility, they are "invisible" or "hidden" to the member as they are not listed in member materials or provider directories. Section 1.9(f) of the contract states that alternatively, a Carrier may demonstrate that credential checks are performed by a secondary source, such as a hospital. Hospitals perform such credential checks when granting hospital privileges. As such, it is standard industry practice for payors to consider such providers and their extenders "invisible" or "hidden" providers exempt from credentialing.

As OIG states, the Plan did not receive an opportunity to respond to the finding related to a provider that generated 73 claims. For the reasons previously given, this radiologist was exempt from credentialing per the Plan's policy. However, for ease of claims processing, the Plan did contract with this radiologist, a copy of which was provided during the audit.

15. Insufficient Internal Controls

OPM Recommendation #15: ***We recommend the Plan immediately establish written policies and procedures to strengthen internal controls over the development of the FEHBP premium rates, including but not limited to; the application of ACA fees, pharmacy rebates, retention, and the calculation and loading of benefit factors/changes including the vision rider***

Plan Updated Response:

The Plan has incorporated this recommendation in its corrective action plan, *see* Attachment C.

16. Insufficient Internal Controls

OPM Recommendation #16: ***We recommend the Plan immediately establish written policies and procedures to strengthen internal controls over the FEHBP-specific MLR filing, including but not limited to the expense allocation process and reporting of tax expenses.***

Plan Updated Response:

The Plan has incorporated this recommendation in its corrective action plan, *see* Attachment C.

17. Insufficient Internal Controls

OPM Recommendation #17: ***We recommend that the Plan strengthen their provider credentialing process to ensure member services and claims are completed and paid for actively credentialed providers and the credentialed providers hold valid contracts with the Plan.***

Plan Updated Response:

The Plan has incorporated this recommendation in its corrective action plan, *see* Attachment C.

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