

Audit Report

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**Maryland Public Broadcasting Commission**

June 2020

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

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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber  
Executive Director

Gregory A. Hook, CPA  
Legislative Auditor

June 25, 2020

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

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Maryland Public Broadcasting Commission (MPBC) for the period beginning July 1, 2015 and ending June 17, 2019. MPBC is responsible for operating and maintaining a system of regional and local facilities to provide educational and cultural television and radio programs throughout the State. MPBC is also responsible for the preparation, content, and presentation of such programs to the public.

Our audit disclosed that MPBC lacked formal policies and procedures to address revenue generating activities of its affiliated foundation even though it is responsible for establishing these policies and procedures according to State law. Specifically, MPBC did not have procedures to address how its affiliated foundation collections should be safeguarded, invested, and transferred to MPBC. MPBC also did not have formal guidelines governing the rates to be charged by its affiliated foundation for sponsorships of MPBC programming and did not effectively monitor the sponsorship agreements of the foundation. In addition, MPBC could not document that it received and reviewed conflict of interest disclosures for affiliated foundation board members and officers.

Our audit also disclosed that MPBC's procurement policies and procedures were not sufficiently comprehensive and certain critical provisions were not approved by MPBC's governing Commission. In addition, MPBC did not obtain approval for certain exempt procurements and did not publish certain non-exempt contract awards on *eMaryland Marketplace*, as required. MPBC also did not obtain and review the required independent control review for its fundraising services vendor and, as a result, certain security concerns over fundraising data were not identified

by MPBC and addressed with the vendor timely. Finally, MPBC had either not performed or did not adequately perform monthly reconciliations of its donor collections to its donor database for the period from August 2018 to August 2019.

Our audit also included a review to determine the status of six findings contained in our preceding audit report. We determined that MPBC satisfactorily addressed five of these findings. The remaining finding is repeated in this report.

MPBC's response to this audit is included as an appendix to this report. In accordance with State law, we have reviewed the response and, while MPBC generally agrees with the recommendations in this report, we identified certain instances in which statements in the response conflict with or disagree with the report findings. In each instance, we reviewed and reassessed our audit documentation, and reaffirmed the validity of the finding. In accordance with generally accepted government auditing standards, we have included "auditor comments" within MPBC's response to explain our position. We will advise the Joint Audit and Evaluation Committee of any outstanding issues that we cannot resolve with MPBC.

We wish to acknowledge the cooperation extended to us during the audit by MPBC, and its willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,



Gregory A. Hook, CPA  
Legislative Auditor

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## **Background Information**

### **Agency Responsibilities**

The Maryland Public Broadcasting Commission (MPBC) is responsible for operating and maintaining a system of regional and local facilities to provide educational and cultural television and radio programs throughout the State. MPBC is also responsible for the preparation, content, and presentation of programs for the public. MPBC operates six television stations located in Annapolis, Baltimore, Frederick, Hagerstown, Oakland, and Salisbury. MPBC is governed by an 11-member Commission whose members are appointed by the Governor.

According to the State's records, during fiscal year 2019, MPBC's operating expenditures totaled approximately \$33.1 million. These expenditures consisted of approximately \$18.4 million in special funds (primarily from viewer and corporate contributions), \$11.6 million in State general funds, and \$3.1 million in federal funds.

### **Financial Statement Audits**

In compliance with the audit requirements established by the Corporation for Public Broadcasting (a federally funded, nonprofit organization that provides funds to MPBC as well as to other public broadcasting stations), MPBC engaged an independent accounting firm to perform audits of the combined financial statements of MPBC and the Maryland Public Television Foundation, Inc., an affiliated nonprofit foundation.

In the related audit reports for fiscal years ended June 30, 2016 and 2017, the firm stated that the combined financial statements presented fairly, in all material respects, the combined financial position of MPBC and the Foundation, and the respective changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

In the related audit report for fiscal years ended June 30, 2018 and 2019, the firm stated that the combined financial statements presented fairly, in all material respects, the combined financial position of MPBC and the Foundation, and the respective changes in net assets and cash flows for the years then ended in accordance with Financial Reporting Guidelines prescribed by the Corporation for Public Broadcasting.

## **MPBC's Affiliated Foundation**

State law authorized MPBC to create an affiliated foundation, which raises funds for the benefit of MPBC, in exchange for public acknowledgment of donors and underwriters on MPBC's website and televised programming. According to MPBC's audited financial statements, MPBC and the affiliated foundation are financially interrelated organizations. Legal advice from counsel to the Maryland General Assembly concluded that the affiliated foundation did not have to provide our Office with access to its records or operations. However, in accordance with MPBC's agreement with its affiliated foundation, MPBC is allowed to grant auditors or other external entities access to the foundation's records.

The affiliated foundation received revenue from corporate underwriters and sponsors totaling \$22.4 million during fiscal years 2016 through 2019 to specifically support MPBC's activity. Based on the level of integration between the affiliated foundation and MPBC (MPBC employees maintained the records on behalf of the affiliated foundation as delegated and the affiliated foundation reimbursed MPBC for its employees' work), we requested MPBC grant us access or provide us certain foundation financial records. MPBC denied us access to the related records citing the affiliated foundation status as an independent entity even though MPBC was authorized to grant us access based on its agreement with the affiliated foundation.

MPBC also denied us access to annual conflict of interest disclosures from its affiliated foundation board members and officers. These disclosures were required by MPBC's *Conflict of Interest Policy for Board of Directors and Officers of Affiliated Foundations*. Based on advice from counsel to the Maryland General Assembly, to the extent MPBC has received notices of a potential conflicts from foundation board members and officers under the aforementioned *Policy*, State law allows our Office to access those records. Since MPBC denied us access to the disclosures, we could not determine if the relationships of foundation board members and officers and their families and associates to organizations presented any conflicts of interest.

Finding 1 contains a summary of the conditions we found regarding the adequacy or comprehensiveness of the agreement between the affiliated foundation and MPBC, and regarding the adequacy of the procedures to ensure and document that potential or actual conflicts of interest existing for foundation board members and officers were identified and properly resolved.

## Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the six findings contained in our preceding audit report dated June 13, 2016. We determined that MPBC satisfactorily addressed five of these findings. The remaining finding is repeated in this report as noted in the following table.

### Status of Preceding Findings

Preceding Finding	Finding Description	Implementation Status
Finding 1	MPBC's procurement policy did not contain certain provisions required by State law for entities with procurement exemptions, and contracts awarded under its exemption were not always reported to or approved by MPBC's governing commission.	<b>Repeated</b> (Current Finding 2)
Finding 2	MPBC did not always comply with State procurement regulations for sole source and competitively bid contract awards that were not part of its procurement exemption.	Not repeated
Finding 3	MPBC significantly understated the approximate quantity of mailings in a procurement solicitation for direct marketing and fundraising services which could have affected the bid prices received.	Not repeated
Finding 4	MPBC did not adequately monitor contract terms and payments for three contracts related to fundraising services.	Not repeated
Finding 5	MPBC did not have an adequate process to evaluate the reasonableness of the amount it was charged by the Public Broadcasting Service for its annual subscription dues which exceeded \$3.0 million.	Not repeated
Finding 6	MPBC did not periodically review user access capabilities for critical fundraising systems, and numerous users had unnecessary access to information required to be kept confidential by State law.	Not repeated

# Findings and Recommendations

## Affiliated Foundation

### **Finding 1**

**MPBC did not establish formal policies and procedures to address revenue generating activities of its affiliated foundation. MPBC also did not effectively monitor the affiliated foundation and could not document that it received and reviewed conflict of interest disclosures for foundation board members and officers.**

### **Analysis**

MPBC did not establish formal policies and procedures to address revenue generating activities of its affiliated foundation. MPBC also did not effectively monitor the affiliated foundation and could not document that it received and reviewed conflict of interest disclosures for foundation board members and officers. As authorized by State law, MPBC created an affiliated foundation in 1981 to facilitate fundraising programs and contributions to support MPBC programming and operations. The affiliated foundation primarily obtains financial support through sponsorships and underwriters. According to MPBC's audited financial statements, the affiliated foundation collected \$22.4 million during fiscal years 2016 through 2019. Due to MPBC consistently citing the affiliated foundation's status as an independent entity, we were compelled to review the relationship of the parties as two stand-alone, independent entities and noted several concerns with MPBC's oversight.

### MPBC Lacked Formal Policies and Procedures to Address Revenue Generating Activities

MPBC did not establish formal policies and guidance to address the terms and conditions of revenue generating activities of its affiliated foundation. According to State law, MPBC is responsible for establishing policies and guidance for the operations of its affiliated foundation. However, the written agreement between MPBC and its affiliated foundation and associated guidelines only addressed overall operating policies (such as, governance and management, use of MPBC facilities and personnel, and requirements for annual financial audits) and not the specific procedures for the revenue generating activities.

- MPBC had no procedures to address how the affiliated foundation collections should be safeguarded, invested, and transferred to MPBC. Although we were advised that the affiliated foundation had a policy regarding the investment of its funds, we were not granted access to this policy and therefore could not

determine how it safeguarded and invested the funds it held. In addition, we could not determine if there was a policy for when the funds would be transferred to MPBC. As of June 30, 2019, only \$13.4 million of the \$22.4 million that the affiliated foundation had collected during fiscal years 2016 to 2019, had been transferred to MPBC. The remaining \$9 million was maintained by the affiliated foundation for investment. Although MPBC provided reasons to justify the retention of these funds by the affiliated foundation (such as the funds are retained until a predetermined amount is raised for a specific production), there were no formal policies and procedures to support the process. MPBC management advised us that the funds would be transferred at some point in the future to support its programming or be used by the affiliated foundation to offset its expenses.

- MPBC had no formal guidelines governing the rates to be charged for underwriting and sponsorship of MPBC programming. MPBC management advised us that each sponsor or underwriter is supposed to sign an agreement that is negotiated by the affiliated foundation which details the terms and conditions, including the amount to be paid. In return, MPBC provides services such as a “spot” on a program to acknowledge their support and to market their business. Although these “spots” are not called “commercials,” the intent is the same. Without policies and guidance, MPBC’s affiliated foundation had complete discretion on the structure of the underwriting and sponsorship arrangements. Since these underwritings and sponsorships provide revenue to support its programming and are acknowledged on its website and televised programs, MPBC should have formal policies and guidance to help ensure revenue is maximized.

For example, the pricing structure for each sponsorship can vary depending on the program (for example, a more popular program could demand a higher sponsorship fee than a less popular program). Therefore, a documented pricing methodology is critical to help ensure consistency and help avoid preferential treatment. We performed some limited research of seven other state public television stations and noted two stations with formal guidelines posted on their websites detailing rates to be charged to entities that wanted to sponsor a program. These rates were structured based on the airtime (both time of day and day of the week) and the type of program being aired.

#### MPBC Did Not Effectively Monitor the Affiliated Foundation’s Revenue Agreements

MPBC did not effectively monitor the affiliated foundation to ensure that the affiliated foundation collected all amounts due from the sponsorship and underwriting agreements. MPBC engaged an independent accounting firm to

inspect the affiliated foundation records when it conducts its financial statement audit on the combined basis (MPBC and affiliated foundation activities) and through a separate annual agreed-upon procedure review of the affiliated foundation. Although both the financial statement audit and the agreed-upon procedures review addressed certain affiliated foundation accounting, recordkeeping, and investment procedures, they were not designed to ensure that MPBC received all amounts due from the sponsorship and underwriting agreements. In addition, we were unable to determine whether the actual work of the independent accounting firm was sufficient and comprehensive to address amounts due MPBC from sponsorship and underwriting, because MPBC denied us access to certain of the work. Specifically, MPBC only allowed our Office to review the work of the accounting firm as it related to MPBC and denied us access to the work related to the affiliated foundation.

#### MPBC Did Not Document Receipt or Review of Certain Required Disclosures

MPBC did not document that it obtained and reviewed required annual conflict of interest disclosures from its affiliated foundation board members and officers. In order to ensure the integrity of the affiliated foundation's board and its processes, MPBC's governing Commission adopted the *Conflict of Interest Policy for Board of Directors and Officers of Affiliated Foundations* which was approved by the State Ethics Commission. The *Policy* requires disclosures to be completed by each foundation board member and officer annually, that are designed to identify board members, officers, and their families and associates that might have a conflict of interest with MPBC activities.

The *Policy* requires that whenever a disclosed conflict of interest exists, the board member or officers are required to provide written notification to the affiliated foundation's secretary (who is currently MPBC's Managing Director of Major and Planned Giving), and to MPBC's Chairman and President. Although the completed annual disclosures were considered records of the affiliated foundation, MPBC did not maintain a record to document that all required disclosures were received and reviewed by the affiliated foundation. Consequently, we were unable to obtain assurance that disclosures were received and appropriate action was taken for any conflicts of interest identified.

As of June 30, 2019, MPBC's affiliated foundation had twenty board members and officers, including seven individuals who were either employed by MPBC or a member of the Commission's board.

## Recommendation 1

We recommend that MPBC

- a. establish policies and procedures to address how the affiliated foundation collections should be safeguarded and invested, and when funds should be transferred to MPBC;
- b. establish procedures to control the terms of underwriting and sponsorship agreements arranged through its affiliated foundation;
- c. document its monitoring of its affiliated foundation revenue generating activities; and
- d. document its receipt and review of the annual conflict of interest disclosures by its affiliated foundation board members and officers.

## Contract Procurement and Disbursements

### Finding 2

**MPBC policies and procedures were not sufficiently comprehensive and certain critical provisions were not approved by MPBC's governing Commission. Our review disclosed that MPBC did not obtain approval for certain exempt procurements and did not publish certain non-exempt contract awards on *eMaryland Marketplace (eMM)* as required.**

### Analysis

MPBC policies and procedures were not sufficiently comprehensive and certain critical provisions were not approved by MPBC's governing Commission. Our review disclosed that MPBC did not obtain approval for certain exempt procurements and did not publish certain contract awards as required. State law exempts MPBC from State procurement regulations for certain services such as the procurement of artists for educational and cultural television productions. According to State records, during the period from July 1, 2015 to June 30, 2018, MPBC awarded contracts totaling approximately \$42.9 million, including \$31.5 million in contracts that were considered exempt from State procurement regulations based on this law.

### Exempt Procurements

MPBC policies did not require the review and approval of its Commission for contract modifications on its exempt contracts. MPBC also did not obtain approval from its governing Commission for all its procurement policies. Specifically, neither the policy requiring Commission approval of all MPBC contracts greater than \$500,000 nor the policy requiring the Commission be notified of all contracts valued between \$50,000 and \$500,000 had been approved by the Commission. State law provides that agencies that are exempt from State

procurement regulations have written policies and procedures that include provisions for the procurement methods to be used, the solicitation requirements, and the approval process. State law also requires these agencies to submit their policies and procedures to their board, commission, council, or authority for review and approval.

Our test of 10 contracts totaling \$3.9 million disclosed that for 3 contracts totaling \$1.3 million, MPBC either did not obtain Commission approval or notify the Commission as required by its policy. Specifically, MPBC did not obtain approval from the Commission for 2 contracts over \$500,000 that totaled \$1.1 million, nor did it notify the Commission of the procurement of 1 contract valued between \$50,000 and \$500,000. In addition, MPBC did not obtain approval from its Commission for a modification to exercise a \$900,000 option for one contract.

A similar condition regarding the failure to obtain the Commission's approval for MPBC policies, as required by State law, was commented upon in our preceding audit report.

#### Non-Exempt Procurements

MPBC did not publish certain contract awards as required. Our test of four non-exempt contract awards totaling \$2.3 million, disclosed that MPBC did not publish two awards totaling \$1.5 million on *eMM*. State procurement regulations require that *eMM* is to be used by State agencies to publish awards greater than \$50,000 within 30 days of the contract award. Publishing awards on *eMM* provides transparency over State procurements including information about winning bidders and the amount of the related awards. *eMM* is an Internet-based, interactive procurement system managed by the Department of General Services (DGS). Effective July 2019, DGS replaced *eMM* with *eMaryland Marketplace Advantage (eMMA)*.

#### **Recommendation 2**

**We recommend that MPBC ensure**

- a. its policies and procedures are sufficiently comprehensive and all critical provisions are approved by MPBC's governing Commission (repeat),**
- b. that required Commission approvals are obtained and notifications to the Commission are made, and**
- c. contract awards are published on *eMMA* as required.**

## Information Systems Security and Control

### **Finding 3**

**MPBC did not obtain and review the required independent control review of its fundraising services vendor and, as a result, certain security concerns over fundraising data were not identified by MPBC and addressed with the vendor timely.**

### **Analysis**

As of November 2019, MPBC had not obtained the most recent report on the results of the independent control review (referred to as a System and Organization Control – SOC 2 Type 2 review) of MPBC’s fundraising services that were contracted with a vendor. As a result, certain concerns with the security of certain related data were not identified by MPBC and addressed with the vendor timely. In October 2018, MPBC contracted with a vendor to provide fundraising services and manage a database containing sensitive information. This vendor contracted with another vendor to host the database. The contract with MPBC required the vendor to obtain an SOC 2 Type 2 review to ensure that the sensitive data were properly safeguarded.

At our request, in November 2019, MPBC obtained the most recent SOC 2 Type 2 review report, dated September 9, 2019. The report covered the period from November 2018 to April 2019 and identified certain concerns relating to data entry and compliance with policies for deleting sensitive information. MPBC was not aware of these concerns and had not addressed them with the vendor to ensure that sensitive information was properly safeguarded, as required by State law.

The American Institute of Certified Public Accountants has issued guidance for various reviews of service organizations. Based on this guidance, service organizations (like the aforementioned vendor) may contract for an independent review of controls and the resultant independent auditor’s report is referred to as a SOC report. The aforementioned SOC 2 Type 2 report includes the results of the auditor’s review of controls placed in operation and tests of operating effectiveness for the period under review and could include an evaluation of system security, availability, processing integrity, confidentiality, and/or privacy.

### **Recommendation 3**

**We recommend that MPBC timely obtain and review all SOC 2 Type 2 reports to ensure that sensitive information is properly safeguarded and that appropriate corrective action is implemented.**

## Cash Receipts

### **Finding 4**

**MPBC had not performed, or did not adequately perform, monthly reconciliations of its donor collections to its donor database for the period from August 2018 to August 2019.**

### **Analysis**

MPBC had not performed, or did not adequately perform, monthly reconciliations of its donor collections to its donor database for the period from August 2018 to August 2019. At the time of our review in August 2019, the most recent reconciliation that MPBC performed was for February 2019. Additionally, our review of that reconciliation disclosed several cumulative unsupported reconciling items totaling \$73,900. MPBC was unable to provide a reasonable explanation for the cause of these reconciling items.

The reconciliations provide assurance that all donations collected by third parties were received and that it has accurate donor records which are crucial for fundraising efforts. According to MPBC's audited financial statements, during fiscal year 2019, donor collections totaled \$6.8 million.

### **Recommendation 4**

**We recommend that MPBC timely reconcile its third party donor collection records to its donor database to ensure that it had received all collections.**

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

We have conducted a fiscal compliance audit of the Maryland Public Broadcasting Commission (MPBC) for the period beginning July 1, 2015 and ending June 17, 2019. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included purchases and disbursements, payroll, revenue and cash receipts, accounts receivable, and corporate purchasing cards. We also determined the status of the findings contained in MPBC's preceding audit report.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of MPBC's operations, and tests of transactions. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk. Unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, the results of the tests cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the State's Central Payroll Bureau (payroll data), as well as from the contractor administering the State's Corporate Purchasing Card Program (credit card activity). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

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

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

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

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect MPBC's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to MPBC that did not warrant inclusion in this report.

MPBC's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise MPBC regarding the results of our review of its response.

**APPENDIX**

MARYLAND PUBLIC TELEVISION

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June 17, 2020

Mr. Gregory A. Hook, CPA  
Legislative Auditor  
Office of Legislative Audits  
State Office Building, Room 1202  
301 West Preston Street  
Baltimore, Maryland 21201

Dear Mr. Hook:

Attached please find the agency response from the Maryland Public Broadcasting Commission.

Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Larry D. Unger', is written over a light blue horizontal line.

Larry D. Unger  
President & CEO  
Maryland Public Television

# Maryland Public Broadcasting Commission

## Agency Response Form

### Affiliated Foundation

#### **Finding 1**

**MPBC did not establish formal policies and procedures to address revenue generating activities of its affiliated foundation. MPBC also did not effectively monitor the affiliated foundation and could not document that it received and reviewed conflict of interest disclosures for foundation board members and officers.**

**We recommend that MPBC**

- a. establish policies and procedures to address how the affiliated foundation collections should be safeguarded and invested, and when funds should be transferred to MPBC;**
- b. establish procedures to control the terms of underwriting and sponsorship agreements arranged through its affiliated foundation;**
- c. document its monitoring of its affiliated foundation revenue generating activities; and**
- d. document its receipt and review of the annual conflict of interest disclosures by its affiliated foundation board members and officers.**

<b>Agency Response</b>	
<b>Analysis</b>	
<b>Please provide additional comments as deemed necessary.</b>	<p>Finding 1 appears to find fault with certain limited aspects of MPBC’s affiliated foundation, the MPT Foundation, Inc. (the “Foundation”). The core of the Finding, however, is not so much any alleged wrongdoing by the Foundation – indeed there is no allegation of any wrongdoing – but the key concern seems to be MPBC’s legally correct denial of access to the OLA of the Foundation’s books and records. The OLA understands that it is not legally entitled to these documents from a non-State entity and has been so advised repeatedly by the Office of the Attorney General. Instead, without the records for substantiation, it appears to surmise that certain policies and procedures are needed. On the contrary, the Foundation, and its relationship with MPBC, is strong, fiscally sound, and meets all legal requirements of the State of Maryland.</p> <p>OLA’s authority to access records in connection with an audit is found in State Government Article (“SG”) § 2-1223. In conducting an audit, OLA shall “have access to and may inspect the records, including those that are confidential by law, of any <i>unit of the State government</i> or of a person or other body receiving State funds, with respect to any matter under the jurisdiction of the Office of Legislative Audits,” except as prohibited by the Internal Revenue Code. SG § 2-1223(a)(1) (emphasis added). The Office of the Attorney General advised OLA that State law</p>

# Maryland Public Broadcasting Commission

## Agency Response Form

does not allow OLA to access records of the Foundation, since it is not a “unit” of State Government and does not receive any State funds. *See* 77 Opinions of the Attorney General 88, 96-97 (1992) (noting that the records of a private fundraising foundation affiliated with a public university that does not receive State money are inaccessible by OLA, notwithstanding that it raises money or otherwise generates revenue for the university); Letter from AAG Robert A. Zarnoch to Mr. Charles C. Piazza, Deputy Legislative Auditor, October 9, 1980 (concluding that State law does not authorize OLA to obtain private audit records of the Morgan State Foundation, Inc.).

The Foundation is a 501 (c) (3) nonprofit corporation that supports the mission of MPBC. It was established in 1981 by legislation that “encouraged” MPBC to establish relationships with affiliated foundations. Md. Education Article § 24-207 (b)(1). MPT is required by statute to have an annual audit by an independent certified public accountant. Copies of that audit are provided to the Department of Legislative Services, as well as to the Maryland Secretary of State. Md. Education Article §24-207 (b) (4) (i) (ii). The Maryland Secretary of State has regulations that govern private foundations affiliated with State agencies. COMAR 01.02.04.20-1. Those regulations require, among other things, foundations to conduct an annual audit with very detailed and specific requirements. That audit is filed with the Secretary of State and if there is an issue with the audit the Secretary of State may, among other potential remedies, refer the audit to the Office of the Attorney General for civil enforcement or to a State’s Attorney for prosecution. The Foundation has always complied with the law. It is audited annually by an independent CPA and copies of that audit have been provided to the OLA and to the Secretary of State. The Foundation’s audits have been clean with no issues raised by either the independent CPA or the Secretary of State.

Finding 1 maintains that the Foundation lacks certain policies and did not monitor or review certain aspects of its business. According to State law, the Foundation “shall operate subject to policies adopted by the Commission”. Md. Education Article § 24-207 (b)(2)(i). Neither the statute nor any other provision of State law specifies what policies, if any, the Commission should adopt. The Foundation has Bylaws, Guidelines, an Agreement with the Commission, Business Procedures, a Conflict of Interest Policy, an Investment Policy, and a Gift Acceptance Policy. These have served the Foundation well for 40 years. They also appear to be more detailed and extensive than the policies that other State affiliated agencies have. But the OLA opines that the Foundation should have more policies including a “revenue generating policy”. It is

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	<p>not clear exactly what that is but it does not appear that any other State affiliated foundation has such a policy.</p> <p>The Finding contends that the Foundation has no formal guidelines for sponsorships of MPBC programming and that formal policies and procedures would help “ensure revenue is maximized”. This is incorrect and contrary to the nature of the public television business. As challenging as it is to attract sponsorships or underwriting, MPBC would be operating at a distinct disadvantage if it were to follow the advice recommended and use some sort of standardized pricing for underwriting. Each underwriting transaction is as unique as the program that is being produced. Motorweek, Primal Grilling with Steven Raichlen, Maryland Farm and Harvest, and Star Spangled Spectacular, just to name a few, are vastly different programs, with different budgets, different audiences, and even different distributors (i.e., PBS, APT, or MPT). Manifestly, the one size fits all approach advocated in the Finding does not work for television and would not have the desired effect of maximizing revenue. Of course other State agencies that charge fees to the public must charge the same price to all. MPBC and the Foundation, however, do not and cannot operate that way.</p> <p>The Finding next contends that MPBC did not effectively monitor the Foundation’s revenue agreements. The Finding does not provide any actual support for this assertion but essentially speculates that this must be the case because the OLA cannot have access to Foundation records to confirm whether this is true. The Finding acknowledges that the Foundation has an independent CPA that performs an audit and certified the accuracy of the audit, but OLA apparently discounts these auditors and their professional certification that the audit they conducted of the Foundation was clean. Instead it contends that it cannot “determine whether the work of the independent accounting firm was sufficient and comprehensive because MPBC denied us access to certain work. Specifically MPBC only allowed our Office to review the work of the accounting firm as it relates to MPBC and denied us access to the work related to the affiliated foundation.” That is exactly correct. MPBC followed the law and provided access to MPBC records and not to the Foundation’s records. That does not mean that the audit of the Foundation was not performed properly nor does it mean that Foundation revenue agreements were not effectively monitored. It simply means that the OLA is not legally permitted to review the Foundation agreements and the work of the auditors of the Foundation because the Foundation is not a unit of the State and is not subject to audit by the OLA.</p>
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	The last allegation in Finding 1 states that MPBC did not document its receipt or review of conflict of interest disclosures from Foundation board members. The Foundation both received and reviewed the conflict of interest forms and there were no conflicts. That information was conveyed to MPBC. The Office of the Attorney General advised the OLA that it was not entitled to the disclosures but that if there was a conflict it would be entitled to that information. If there was an actual conflict, MPBC would have provided that information to OLA. But there was no conflict so OLA, pursuant to the advice from the Office of the Attorney General, was not entitled to any disclosures.		
<b>Recommendation 1a</b>	Disagree	<b>Estimated Completion Date:</b>	
Please provide details of corrective action or explain disagreement.	<b>MPBC disagrees with this Finding for the reasons stated above. Notwithstanding the foregoing it will review the policies of the Foundation to determine if any new ones need to be created.</b>		
<b>Recommendation 1b</b>	Disagree	<b>Estimated Completion Date:</b>	
Please provide details of corrective action or explain disagreement.	<b>MPBC disagrees with this Finding for the reasons stated above. Notwithstanding the foregoing it will review the policies of the Foundation to determine if any new ones need to be created.</b>		
<b>Recommendation 1c</b>	Disagree	<b>Estimated Completion Date:</b>	
Please provide details of corrective action or explain disagreement.	<b>MPBC disagrees with this Finding for the reasons stated above. Notwithstanding the foregoing MPBC continually monitors the Foundation’s revenue generating activities and will continue to do so.</b>		
<b>Recommendation 1d</b>	Disagree	<b>Estimated Completion Date:</b>	Winter 2021
Please provide details of corrective action or explain disagreement.	<b>MPBC disagrees with this Finding for the reasons stated above. Notwithstanding the foregoing it will document the receipt and review of the annual conflict of interest disclosures by foundation board members and officers.</b>		

**Auditor’s Comment:** MPBC’s disagreement is based primarily on the premise that the foundation is an independent legal entity. Although MPBC and its affiliated foundation are financially interrelated organizations, we acknowledge (and agree with MPBC) that the foundation is an independent legal entity, and that State law does not allow us to audit its activities. Therefore, we treated the foundation’s activities in a manner consistent with other third-party entities doing business with a State agency. MPBC takes issue with our approach and suggests that we discounted the certification of the independent accounting firm hired to audit the foundation. Since we were unable to assess the work

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performed by the accounting firm, auditing standards preclude us from relying on their work.

Considering the significant revenue provided to MPBC by the foundation from corporate underwriters and sponsors, MPBC should ensure that documented oversight of the foundation's activities are in place. During the course of the audit, we identified several conditions where we believe that MPBC's oversight of the foundation could be improved or enhanced based on our assessment of MPBC's procedures and policies.

We believe our finding is both accurate and appropriate, and that our recommendations will improve MPBC's transparency and accountability over its financial activities, including those arising from its relationship with the foundation. To that end, we do note that MPBC has agreed to review existing policies and implement new ones if needed.

### Contract Procurement and Disbursements

#### **Finding 2**

**MPBC policies and procedures were not sufficiently comprehensive and certain critical provisions were not approved by MPBC's governing Commission. Our review disclosed that MPBC did not obtain approval for certain exempt procurements and did not publish certain non-exempt contract awards on *eMaryland Marketplace (eMM)* as required.**

We recommend that MPBC ensure

- a. its policies and procedures are sufficiently comprehensive and all critical provisions are approved by MPBC's governing Commission (repeat),
- b. that required Commission approvals are obtained and notifications to the Commission are made, and
- c. contract awards are published on *eMMA* as required.

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	Finding 2 appears to have three parts. The first part relates to MPBC's policies. The second part involves failing to obtain approval from or provide notice of certain contracts to MPBC's governing Commission. The third part involves certain contracts that were not published on eMaryland Marketplace. MPBC does not dispute these issues but offers the following explanation.

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	<p>MPBC has certain procurement exemptions. The Finding notes that agencies that have procurement exemptions are required to have policies and procedures for those exemptions and those policies and procedures must be reviewed and approved by the agency's governing commission. MPBC has legally sufficient policies and procedures that have been approved by its Commission.</p> <p>In addition to MPBC's exemption policies, MPBC also maintains a separate procurement manual. The procurement manual serves as a guide for those persons at MPBC involved with procuring goods and services through the State procurement process. The manual draws closely from the State's procurement regulations set forth in COMAR. There is no legal requirement for MPBC to have a procurement manual. There is no legal requirement as to what the content should be in MPBC's procurement manual. And, there is no legal requirement that the manual be approved by MPBC's governing Commission.</p> <p>As part of the manual, MPBC identifies the approval process for certain contracts after they have been approved internally within MPBC. That process identifies control agencies and other entities, such as the Board of Public Works, that may have to approve certain contracts. Included in that section is the Commission. Decades ago, before the enactment of the law requiring agencies with procurement exemptions to have policies and procedures, MPBC enacted its own policy that contracts greater than \$500,000 required Commission approval and contracts valued between \$50,000 and \$500,000 should be reviewed by the Commission (the "Contract Approval Policy"). As noted above, this policy predates the exemption policies and is not part of the exemption policies because it is a general, overarching policy that applies to all contracts including exempt contracts. In a separate section in the manual, the procurement exemption policies and procedures are provided.</p> <p>The Finding contends that the Contract Approval Policy must be approved by the Commission because of the State law requiring exemption policies to be approved by the Commission. MPBC did not view the Contract Approval Policy, which applies to all contracts not just exempt contracts, as an exemption policy so it believed no Commission approval was required for that Policy.</p> <p>The Finding also contends that the Contract Approval Policy does not take into account contract modifications. MPBC agrees with that and can change the language to account for modifications. It should be noted, however, that in this case, the contract that apparently was not</p>
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	presented to the Commission was actually the exercise of an option for renewal, not a modification. That is different from a modification and would not and should not require contract approval.		
<b>Recommendation 2a</b>	Agree	<b>Estimated Completion Date:</b>	Fall 2020
<b>Please provide details of corrective action or explain disagreement.</b>	MPBC concurs with the recommendation and will ensure its policies and procedures are sufficient and are approved by its Commission.		
<b>Recommendation 2b</b>	Agree	<b>Estimated Completion Date:</b>	Spring 2020
<b>Please provide details of corrective action or explain disagreement.</b>	MPBC concurs with this recommendation and has already obtained the required notifications and approvals for the contracts in question.		
<b>Recommendation 2c</b>	Agree	<b>Estimated Completion Date:</b>	Spring 2020
<b>Please provide details of corrective action or explain disagreement.</b>	MPBC concurs with this recommendation and is publishing the contract awards in question on eMaryland Marketplace.		

### Information Systems Security and Control

**Finding 3**  
**MPBC did not obtain and review the required independent control review of its fundraising services vendor and, as a result, certain security concerns over fundraising data were not identified by MPBC and addressed with the vendor timely.**

We recommend that MPBC timely obtain and review all SOC 2 Type 2 reports to ensure that sensitive information is properly safeguarded and that appropriate corrective action is implemented.

Agency Response	
<b>Analysis</b>	
<b>Please provide additional comments as deemed necessary.</b>	<p>Although MPBC's contract with the fundraising services vendor commenced as of October 2018, MPBC was transitioning away from its previous vendor and was not up and running with the new vendor until April 1, 2019. From that timeframe when MPBC was truly converted to the vendor's system, MPBC received the SOC 2 within the required period.</p> <p>MPBC does not agree with the implication that the SOC 2 audit identified security concerns over fundraising data. MPBC's review of</p>

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	the SOC 2 audit finds that there were no security concerns that related to our data. The one finding was specifically regarding organizations cancelling their contracts which did not apply to MPBC data. The second finding was reviewed by the database management organization and confirmed by the auditors that no actual transactions out of compliance occurred.		
<b>Recommendation 3</b>	Agree	<b>Estimated Completion Date:</b>	Fall 2020
<b>Please provide details of corrective action or explain disagreement.</b>	MPBC concurs with this recommendation and will obtain the SOC-2 in a timely manner going forward.		

### Cash Receipts

<b>Finding 4</b> <b>MPBC had not performed, or did not adequately perform, monthly reconciliations of its donor collections to its donor database for the period from August 2018 to August 2019.</b>
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We recommend that MPBC timely reconcile its third party donor collection records to its donor database to ensure that it had received all collections.

Agency Response			
<b>Analysis</b>			
<b>Please provide additional comments as deemed necessary.</b>	Statements from the lockbox and credit card companies were reconciled to FMIS and the bank statements for every month. On April 1, 2019 MPBC switched databases and has worked diligently with the new vendor to reconcile the database to actual funds received. However, the reconciliation of bank statements to lockbox and credit card companies is complete and accurate. The variances for each month are minor. MPBC continues to find those variances unacceptable with the database vendor and continues to work through the issues.		
<b>Recommendation 4</b>	Agree	<b>Estimated Completion Date:</b>	Fall 2020
<b>Please provide details of corrective action or explain disagreement.</b>	MPBC concurs with this Recommendation that the reconciliations need to be completed and is working on completing the reconciliations monthly.		

AUDIT TEAM

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