



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 21-047*

For business meeting on May 21, 2021

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**Title**

Judicial Branch Administration: Judicial  
Branch Workers' Compensation Program

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

N/A

**Effective Date**

May 21, 2021

**Recommended by**

Judicial Branch Workers' Compensation  
Program Advisory Committee  
Tania Ugrin-Capobianco, Chair  
Judicial Council staff  
Patrick Farrales, Supervising Analyst  
Human Resources

**Date of Report**

April 28, 2021

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### Executive Summary

The Judicial Branch Workers' Compensation Program Advisory Committee recommends approval of the workers' compensation cost allocation for fiscal year 2021–22 in the amount of \$17.6 million for the trial courts and \$1.25 million for the state judiciary, based on a 60 percent funding confidence level.

### Recommendation

The Judicial Branch Workers' Compensation Program Advisory Committee recommends that the Judicial Council, effective May 21, 2021:

1. Approve the proposal to increase trial court and state judiciary program funding confidence levels from 56 percent to 60 percent; and
2. At the 60 percent confidence level, approve the workers' compensation cost allocation for fiscal year 2021–22 of \$17.6 million for participating trial courts and \$1.25 million for the state judiciary.

The program premiums are available at Attachment A.

### **Relevant Previous Council Action**

At its meeting in May 15, 2020, the Judicial Council approved the Judicial Branch Workers' Compensation Program's (JBWCP's) workers' compensation premium for fiscal year (FY) 2020–21 for participating members. In addition, the Judicial Council:

- Adopted the revised JBWCP *Claims Settlement Authority Policy*, internal JBWCP procedures for Level III Settlement Authority requests, and the JBWCP *Settlement Authority Request/Notification* form; and
- Approved the consolidation of 12 monthly workers' compensation premium payments to two payments per year in August and September for trial court program members, on the basis that the deposit schedule may be modified if members have insufficient funding.

### **Analysis/Rationale**

#### **Workers' compensation in 2020**

The year 2020 presented its share of challenges across the state, but the JBWCP was not severely impacted, as was expected. Last year saw some of the lowest claims frequencies in recent times. An increasing number of workers were able to be treated via telemedicine, meaning they did not have to travel. Some injured workers, including COVID-19 claimants, delayed medical care treatment, but most others needed only limited treatment.

Employee claims resulting from COVID-19 ranged from no symptoms to critical care and hospitalizations, but the overall COVID-19 claims picture was not as dire as expected. Most cases seen by the program were small, requiring only that the injured worker miss work and quarantine or recover at home.

The pandemic has also accelerated the use of telemedicine in what could be a lasting change for the program. The most notable increase in telemedicine in workers' compensation has been for evaluation and management—steps historically taken via office visits. However, there is concern that delays in non-telemedicine medical treatments for injured workers could worsen symptoms for patients seeking treatment.

Overall, the decreases in non-COVID-19 loss dollars appear to have more than offset increases directly attributable to COVID-19 even as California issued directives and proposed legislation affecting workers' compensation. This outcome has led to positive development in member premiums for the upcoming fiscal year.

#### **2021 program financial status**

The JBWCP has carried a program deficit for each of the past 10 years, meaning that the program has not been fully funded relative to the expected liability. However, the program experienced major cost decreases during the COVID-19 pandemic. Coupled with a drop in

claims frequency, the program is now expected to end the fiscal year in a net positive position at \$245,000 (see table 1).

**Table 1: Financial Status**

	Prior Report June 30, 2020	Current Report June 30, 2021	Change
<b>Total Reserves</b>	\$76,260,000	\$71,444,000	(\$4,816,000)
<b>Assets</b>	64,620,000	71,689,000	7,069,000
<b>Deficit</b>	(\$11,640,000)	\$245,000	\$11,885,000

Furthermore, because of positive claims development, the program’s FY 2020–21 total funding need will decrease an average of –5.8 percent from the prior fiscal year (see table 2).

**Table 2: Program Funding Need**

<b>Ultimate Loss and ALAE (“Expected” Confidence Level)</b>
➤ \$14,668,000 (-7.1%)
<b>Third-Party Claims Administration Fees</b>
➤ \$2,682,000 (0.0%)
<b>Excess Insurance Premiums</b>
➤ \$633,000 (-0.5%)
<b>Consulting and Brokerage Expenses</b>
➤ \$433,000 (0.0%)
<b>Total</b>
➤ \$18,416,000 (-5.8%)

ALAE = allocated loss adjustment expenses.

These two factors have enabled the JBWCP Advisory Committee to reconsider an increase to the funding confidence level with minimal financial impact to members.

### **Funding confidence level**

Confidence levels are used by actuaries to determine the probability that the funding will be sufficient to cover the claims costs in a given program year. The “expected” level indicates that the funding should be adequate approximately half the time. Technically, the “expected” level refers to a confidence level of 55 percent, indicating that funding should be adequate in 55 out of 100 years. Similarly, funding at the 80 percent confidence level indicates that funding should be adequate in about 8 out of 10 years, or inadequate in about 2 of 10 years.

Because actuarial estimates of claims payments and ultimate costs are subject to uncertainty, the program's actuary generally recommends primary program funding at the 80 percent confidence level, with a recommended range of 75–85 percent confidence levels. The 70 percent confidence level is considered marginally acceptable, and the 90 percent confidence level is generally conservative. Most self-funded workers' compensation programs are funded within the 75–85 percent confidence level range because the probabilities are reasonably high that resulting funding will be sufficient to meet claim liabilities, yet the required risk margins are not so large that they will cause most self-insured entities to experience undue financial hardship.

### **The full-funding self-insurance model**

Funding for future claims at a confidence level greater than the expected level forms the basis for ensuring adequate risk pool funding levels in the long run. The self-insurance model works because confidence-level funding upfront helps build up savings (assets in excess of liabilities) to help the program endure adverse loss experience, which may arise from time to time. A higher confidence level helps to reduce volatility in the annual premium.

Increasing the JBWCP confidence level will:

- Increase the probability that funding will be sufficient to cover high-cost claims;
- Provide cushion to weather inevitable adverse years;
- Achieve asset growth, if claim experience remains stable; and
- Generate more investment income.

### **Policy Implications**

This proposal has no policy implications.

### **Comments**

The JBWCP Advisory Committee and staff presented this proposal to the clerk/executive officers of the state judiciary and members of the Court Executives Advisory Committee. Staff did not receive any comments or concerns regarding the change in confidence levels.

### **Alternatives considered**

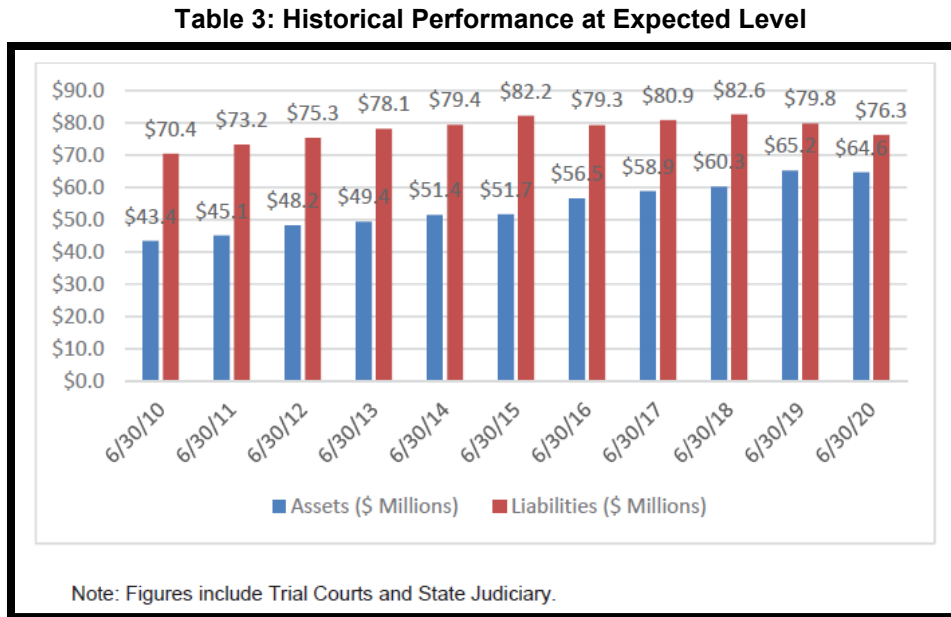
#### ***Maintain the confidence level at expected levels (56 percent)***

The current methodology creates a level of predictability for members and does not alter the current funding confidence level. The total cost for this option is valued at \$18.415 million, which is a –5.8 percent (or –\$1.1 million) reduction from the prior fiscal year's cost. At the expected level, 60.9 percent of all members will receive a premium reduction based on loss experience.

The program has maintained this level for at least the last 10 years. Although asset levels have improved somewhat over time, the pace of growth has been incremental at best. The program is expected to close its deficit gap at the end of this fiscal year. However, this fiscal improvement is primarily the result of reduced loss costs during the COVID-19 pandemic. As the state begins to

reopen, loss costs are once again expected to increase, and the program could return to a deficit gap in FY 2022–23.

As shown in table 3, this methodology is the base-level funding option for the program, with minimal asset improvement.



In February 2020, the JBWCP Advisory Committee approved a confidence level increase to 70 percent. Unfortunately, because of COVID-19 and the resulting fiscal uncertainty of the state, the recommendation was placed on hold until further review in 2021.

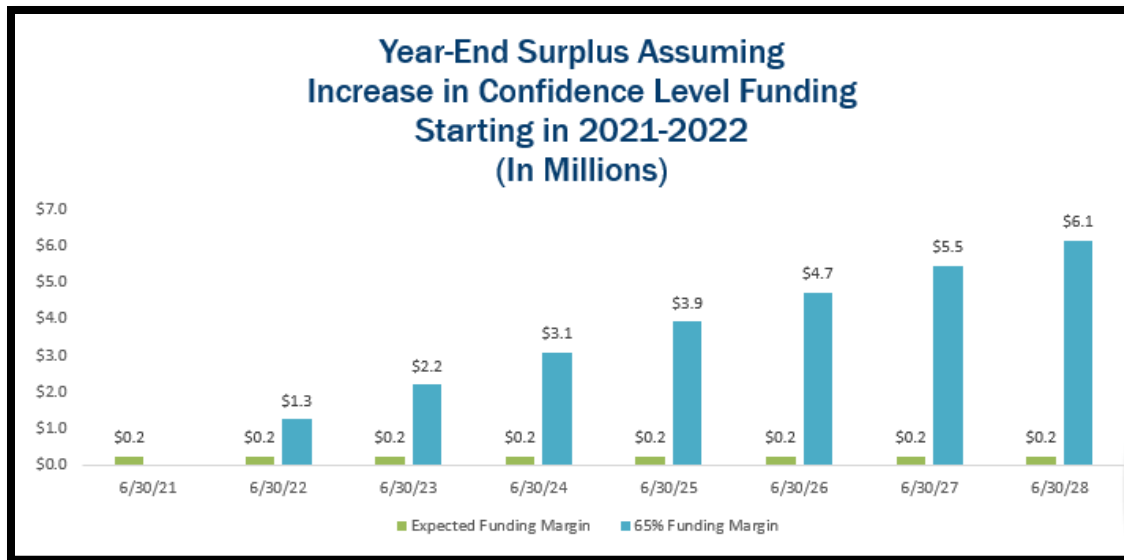
In 2021, the committee developed options to apply some or all of the cost savings realized in FY 2021–22 to offset the cost of increasing program confidence levels.

***Option 1: Use most FY 2021–22 program savings and increase the confidence level to 66 percent***

The total cost for this option is valued at \$19.54 million, which is a –0.02 percent (or –\$3,000) reduction from the prior fiscal year’s total premium cost. This option adds a 6.11 percent increase, on average, to member premiums. At the 66 percent confidence level, 36.2 percent of all members will continue to receive a premium reduction based on loss experience.

This option uses most savings gained from the prior year and keeps total funding costs at the prior year’s level. Table 4 shows a significant increase in program surplus levels through 2028, if claims experience remains stable. At the 66 percent level, the program is expected to continue to avoid the deficit gap, especially as workers return to work and begin to seek medical treatment that was delayed because of the pandemic.

**Table 4: Projected Year-End Funding at 66 Percent Confidence Level**



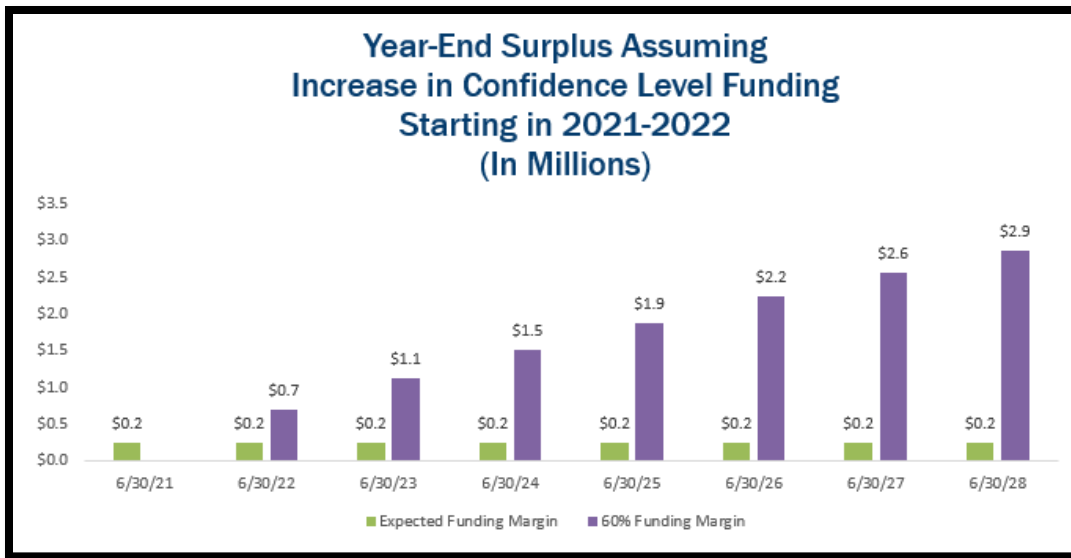
***Option 2: Use some FY 2021–22 program savings and increase the confidence level to 60 percent***

The total cost for this option is valued at \$18.87 million, which is a –3.46 percent (or –\$677,000) reduction from the prior fiscal year’s cost. This option adds a 2.45 percent increase, on average, to member premiums. At the 60 percent confidence level, 52.2 percent of all members will continue to receive a premium reduction based on loss experience.

This is the preferred option of the JBWCP Advisory Committee because it represents a careful and measured approach to addressing the unpredictable nature of workers’ compensation costs post-COVID, while minimizing the financial impact to members.

This option uses some savings gained from the prior year. Table 5 shows a continued increase in program surplus levels through 2028, if claims experience remains stable.

**Table 5: Projected Year-End Funding at 60 Percent Confidence Level**



### Reception from members

The spreadsheet of workers’ compensation total premiums, total differences, and percentage of change by county was posted to the JBWCP’s Advisory Committee meeting page on March 11, 2021, at *courts.ca.gov*, and is available as Attachment A. This posting was followed by a communication, sent to all members on March 11, announcing the committee meeting and agenda topics. Furthermore, after the JBWCP Advisory Committee approved the confidence level change at its meeting on March 12, JBWCP staff provided member premiums to each court on March 23 and invited members to discuss their premiums with program staff and actuaries. Staff have received only one request to discuss the changes thus far and will continue to meet with members as needed.

### Fiscal and Operational Impacts

Based on the summary in table 6, option 2—at a 60 percent confidence level—continues to maintain savings for approximately half the members of the program and creates a positive year-end balance. The program has been operating in a deficit position for many years and performing at a funding level far below the level of most other pooled programs.<sup>1</sup>

Before transitioning to the JBWCP, many courts participated in pooled programs through their counties. These counties provided workers’ compensation services through CSAC-EIA (now PRISM). The current target funding goal and confidence level for the counties, through PRISM, is 80 percent.<sup>2</sup>

<sup>1</sup> California Association of Joint Powers Authorities, *Accreditation Standards* (Jan. 1, 2021), p. 11, <https://cdn.ymaws.com/cajpa.site-ym.com/resource/resmgr/files/accreditation/AccrediationStandards0101202.pdf>.

<sup>2</sup> Public Risk Innovation, Solutions, and Management (PRISM), *Excess Workers’ Compensation Program Target Funding Guidelines* (Mar. 2020), p. 1, [www.prismrisk.gov/documents/other-docs/ewc-target-funding-policy/](http://www.prismrisk.gov/documents/other-docs/ewc-target-funding-policy/).

Increasing confidence levels from expected to 60 percent puts the program on a path to financial solvency and helps maintain workers' compensation funding stability for all program members.

**Table 6: Summary of Options and Costs**

	Expected Level (56%)	60% Confidence Level	66% Confidence Level
Total Premium Cost to Members	\$18.415 million	\$18.87 million	\$19.54 million
Comparison to Prior Year Cost	-\$1.1 million (-5.8%)	-\$677,000 (-3.5%)	-\$3,000 (-.02%)
Average Cost Increase (%) of Proposal to Member	0%	2.45%	6.1%
% of Members Who Will Receive a Premium Reduction Based on Loss Experience	60.9%	52.2%	36.2%
Projected Year End JBWCP Fund Surplus, Ending June 2028	200,000	\$2.9 million	\$6.1 million

### Attachments and Links

1. Attachment A: *Worker's Compensation Fiscal Year 2021–22 Premium*, [www.courts.ca.gov/documents/jbwcp-20210312-2021-22-funding-options.xlsx](http://www.courts.ca.gov/documents/jbwcp-20210312-2021-22-funding-options.xlsx)