

Questions for DRC – Comptroller of Maryland

1. Since the Dispute Resolution Committee's ("DRC") inception, how many disputes regarding member jurisdictions has it reviewed? [Seven](#)
2. Since the DRC's inception, how many disputes regarding jurisdictions' compliance with the Audit Manual has it reviewed? [Four](#)
 - a. Of those, how many pertained to the audit requirements in A250 and A260 of the Audit Manual? [Three](#)
 - b. Did the DRC use the Dispute Resolution Process ("DRP") in all those disputes, including those pertaining to A250 and A260? [Yes](#)
 - c. If it did not, please explain the instances when it did not use the DRP and describe any penalties or sanctions that were ordered or imposed?
 - d. Please provide copies of any decisions regarding decisions relating to compliance with the Audit Manual. [Maryland's commissioner has access to those documents on IFTA Inc's website](#)
3. Since the DRC's inception, how many times has it required disgorgement of money or restitution collected from a jurisdiction? [Three](#)
 - a. Of those identified above, how many times did that disgorgement or restitution pertain to a dispute regarding A250 and A260 of the Audit Manual? [Three](#)
 - b. What were the factors or other considerations the DRC considered before imposing such a penalty? [The DRC considered both aggravating and mitigating circumstances. The Respondent's failure to meet audit requirements over two consecutive audit cycles and the significant shortfall in high and low distance audits were viewed as serious violations. The DRC acknowledged that the organizational unit responsible for administering the IFTA program might not have full control over their funding and/or operational priorities. The DRC also acknowledged the role of Covid-19's impact on all jurisdictions. The membership made an allowance for this by allowing jurisdictions to remove 2020 from the compliance calculations. However, the prolonged non-compliance and the substantial shortfall in audits indicated a systemic issue that needed to be addressed.](#)
 - c. Of those pertaining to a dispute regarding A250 and A260 of the Audit Manual, in how many cases did you calculate the disgorgement or restitution amount based upon the purported average cost to perform an audit? [Three](#)
 - d. What language in any charter, the Articles of Agreement, the DRP, or any other IFTA manual do you rely upon for authority to support calculating the alleged unjust enrichment underlying the disgorgement or restitution ordered against Maryland based upon the average cost to perform an audit? [The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction\(s\) or licensee\(s\), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.](#)
 - e. How did the DRC determine the basis for measuring the alleged unjust enrichment? [To determine the proper disgorgement amount, the DRC estimated the amount the jurisdiction actually spent per audit over the 10-year period on its payroll, and then determined how much the jurisdiction would have spent had it fulfilled its audit obligations. The data for this calculation was](#)

provided to the Committee by the jurisdiction prior to the meeting. Has this method been employed previously against other states found to be not in compliance with IFTA's audit requirements? No

f. How did you determine the average cost to perform an audit? $10\text{-Year IFTA Audit Staff Costs/Audits Conducted} = \text{Cost Per Audit (Excluded 2020 Covid Year)}$ Please explain how you performed the calculation and any assumptions you made in that calculation. In reaching its disgorgement estimate, the DRC calculated the cost per audit completed and then multiplied that figure by the number of missing audits. The results estimated that the jurisdiction had underfunded its audit program by \$126,960 per year, averaged out over a 10-year period. Accordingly, the DRC concluded that over the 10-year period, the jurisdiction had wrongfully benefited by saving \$1,269,600 on its payroll, which resulted in the underfunding of its IFTA audit program.

g. If any such disputes did not relate to A250 and A260 of the Audit Manual, please describe the situation in which disgorgement or restitution was ordered. New Jersey's dues tripled for non-compliance, and they were required to make up the shortfall.

h. Please provide copies of any decisions where the DRC required disgorgement or restitution. Maryland's commissioner has access to these decisions on IFTA Inc's website

4. Since the DRC's inception, how many times has it ordered a fine or any other monetary penalty or sanction against a jurisdiction? Four

a. Of those instances, how many times did the imposition of a fine or any other monetary penalty or sanction pertain to a dispute regarding A250 and A260 of the Audit Manual? Three

b. What were the factors or other considerations the DRC considered before imposing such a penalty? The DRC considered both aggravating and mitigating circumstances. The Respondent's failure to meet audit requirements over two consecutive audit cycles and the significant shortfall in high and low distance audits were viewed as serious violations. The DRC acknowledged that the organizational unit responsible for administering the IFTA program might not have full control over their funding and/or operational priorities. The DRC also acknowledged the role of Covid-19's impact on all jurisdictions. The membership made an allowance for this by allowing jurisdictions to remove 2020 from the compliance calculations. However, the prolonged non-compliance and the substantial shortfall in audits indicated a systemic issue that needed to be addressed.

c. If any such disputes did not relate to A250 and A260 of the Audit Manual, please describe the situations in which a fine or any other monetary penalty or sanction was ordered. Multiple issues resulted in tripling New Jersey's membership due (old DRP) also ordered to make up the audit shortfalls.

d. In those cases identified above, what basis was used to determine the fine or any other monetary penalty or sanction's amount? New Jersey was out of compliance with A310 and A320 for multiple reviews; therefore, using the DRP at the time DRC ordered membership dues tripled and audit shortfalls to be made up.

e. Please provide copies of any decisions where the DRC ordered a fine or any other monetary penalty or sanction. Maryland's commissioner has access to these orders on IFTA Inc's website

5. Is every instance of non-compliance with A250 and A260 of the Audit Manual referred to the DRC for review? The Program Compliance Review Guide requires that any jurisdiction that is noncompliant for 2 review cycles must go to the DRC.

a. If not, is there a level any non-compliance must reach before the DRC will review it? N/A What is that level? N/A

6. Since the DRC's inception, did it ever decide not to penalize a non-compliant jurisdiction with a monetary sanction, including disgorgement, restitution, or a fine? [No](#)
 - a. If so, how many times and in what instance? [N/A](#)
 - b. What was the basis for the decision not to impose a monetary sanction? [N/A](#)
 - c. How many times did the decision not to impose a monetary sanction pertain to A250 and A260 of the Audit Manual? [N/A](#)
 - d. Is there a threshold with respect to compliance with A250 and A260 of the Audit Manual where a shortfall will not be penalized with a fine, disgorgement, restitution, or other form of sanction? [No](#)
 - e. Please provide copies of any decisions where the DRC did not decide to penalize a non-compliant jurisdiction with a monetary sanction, including disgorgement, restitution, or a fine. [Maryland's commissioner has access to DRC's entire archive of documents on IFTA's website](#)
7. When the DRC reviews a jurisdiction's non-compliance with IFTA's audit requirements, does the DRC consider deterrence to other jurisdictions as a factor in its decision? [Yes](#)
 - a. Was that a consideration with respect to Maryland in this instance? [Yes](#)
 - b. Is the DRC currently reviewing any jurisdictions other than Maryland, Connecticut, and Massachusetts regarding compliance with A250 and A260 of the Audit Manual? [At this time, no other jurisdictions have been referred to the DRC by the PCRC for review.](#)
8. When the DRC reviews a jurisdiction's non-compliance with IFTA's audit requirements, does it consider that jurisdiction's history of compliance as a factor in its decision? [No](#)
 - a. Was that a consideration with respect to Maryland in this instance? [No](#)
9. Why was there no request for relief in the Final Determination Finding of Non-Compliance for the State of Maryland? [It's mandatory after 2 review cycles for the PCRC to send to DRC](#)
 - a. Did you ask the PCRC for the relief it requested with respect to Maryland? If not, why not? [After the first review cycle the PCRC did ask Maryland for relief for making up the shortfall.](#)
10. Since the DRC's inception, how many times has the DRC resolved a matter pursuant to a Final Determination Finding of Non-Compliance from the Program Compliance Review Committee ("PCRC") when that Final Determination did not include a request for relief as required in Section II.B.5 of DRP? [Section II. B. 5 requires a "statement of the relief, resolution, or interpretation sought." MD was referred to the DRC for failing to comply with A250 of the Audit Manual in two consecutive Compliance Review Periods and failing to comply with the A260 High-Distance requirement during the most recent Review Period. PCRC is seeking "resolution".](#)
 - a. Of those, how many times did that circumstance (no request for relief) pertain to a dispute regarding A250 and A260 of the Audit Manual? [Four](#)
 - b. Of those matters resolved without a request for relief from the PCRC, how many included a monetary sanction, including, but not limited to, disgorgement, restitution, or a fine? [Four](#) How many of those pertained to a dispute regarding A250 and A260 of the Audit Manual? [Four](#)
 - c. Please provide copies of any decisions in matters where the Final Determination Finding of Non-Compliance did not include a request for relief from the PCRC. [Maryland's commissioner has access to all DRC archives on IFTA Inc's website](#)
11. Since its inception, how many times has the DRC ordered a monetary fine, the disgorgement of money, or any other form of monetary sanction from a jurisdiction without first ordering that

jurisdiction to bring its program into compliance pursuant to the remedies of Section V of the DRP?
[Four](#)

- a. Of those, how many times did that order pertain to a dispute regarding A250 and A260 of the Audit Manual? [Four](#)
- b. Explain those cases when the DRC took such action (ordered a fine, disgorgement, or any other form of monetary sanction without first ordering a return to compliance) regardless of whether the dispute related to A250 and A260 of the Audit Manual. [Review the FDFNC of each jurisdiction \(New Jersey, Maryland, Connecticut, and Massachusetts on IFTA Inc's website.](#)
- c. Please provide copies of any applicable decisions. [Maryland's commissioner has access to those documents](#)

12. Since its inception, how many times has the DRC resolved a matter pursuant to a Final Determination Finding of Non-Compliance from the PCRC when the PCRC did not finish and close its review of the jurisdiction for the subject period prior to issuing the Final Determination? [None, since the new DRP was ratified by membership it's mandatory that the PCRC send instances of non-compliance directly to the DRC.](#)

- a. Please provide copies of any applicable decisions. [All documents can be found on IFTA Inc's website on DRC's page.](#)

13. What language in any charter, the Articles of Agreement, the DRP, or any other IFTA manual does the DRC rely upon for its issuance of an order requiring disgorgement and the payment of a fine against the State of Maryland or any other jurisdiction? [The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction\(s\) or licensee\(s\), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.](#)

- a. What does the DRC rely upon to support its ordering disgorgement for each incomplete audit based upon the average cost to perform an audit? [The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction\(s\) or licensee\(s\), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.](#)

- b. Does the DRC have any evidence suggesting that the Comptroller benefitted or profited from, or was otherwise enriched, by the incomplete audits underlying the disgorgement? [Yes. If so, what is it? DRC's final order outlines how the jurisdiction benefitted.](#)

- c. Did the DRC include in its disgorgement calculation that the jurisdictions, including Maryland, were also being required to make up the audit shortfall in addition to the disgorgement? [Yes](#)

- d. Does the DRC take the position that it is appropriate to order a jurisdiction to disgorge funds to other jurisdictions that are also not compliant with the same requirements? [Yes. If so, what is the basis for that position: Jurisdictions are entitled to the missing collections.](#)

- e. Does the DRC take the position that it is appropriate to order a jurisdiction to disgorge funds that are estimated to be the full cost of completing 201 audits on

September 13, 2024 while also ordering that jurisdiction to complete those audits before December 31, 2025? **Yes** If so, what is the basis that supports that position? **The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction(s) or licensee(s), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.**

f. Does the DRC have evidence that motor fuel tax was not collected due to Maryland's non-compliance with A250 and A260 of the Audit Manual? **No.**

g. What does the DRC rely upon to support a fine or penalty of \$1,000.00 for each incomplete audit? How did the DRC settle upon \$1,000.00 as being the correct number? **The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction(s) or licensee(s), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.**

14. The Comptroller provided extensive information to the DRC regarding COVID's impact on its ability to meet its audit requirement. To what degree, if any, did DRC consider that in your decision? **Yes, IFTA Membership voted to allow jurisdictions to choose to exclude their 2020 audit data from the PCRC's review due to COVID pandemic and challenges faced during that time.**

a. Did the DRC consider whether IFTA's allowance to remove 2020 from the compliance calculations to account for COVID's impact may not have addressed the Comptroller of Maryland's ability to achieve compliance in light of Maryland's effort to address the COVID pandemic? **Yes, all of Maryland's comments were considered.**

b. On what basis does the DRC justify imposing a fine and disgorgement on Maryland when its Comptroller was abiding by a state of emergency in suspending audits until August 21, 2021? **The DRP. Members did not approve relief beyond the 2020 COVID period.**

c. Did the DRC consider whether, in light of the Maryland's COVID-related measures, the Comptroller of Maryland made a good faith effort to comply with its audit requirements? **No**

d. Does the DRC intend to require disgorgement and fines from other jurisdictions that were not compliant during the COVID pandemic? **All PCRC referred FDFNC's will follow the DRP (Ratified by membership).**

15. Prior to the DRC's decision against Maryland, did the DRC consider whether the DRP, which lists in Section V specific actions to be taken in progression, would lead states to believe the DRC would follow such guidance? **The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction(s) or licensee(s), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.**

a. Does the DRC consider its September 13, 2024 order consistent with the specific

actions outlined in Section V? **Yes**

16. Why did the DRC not apply the remedies outlined in the DRP, including the remedies outlined in Section V as used with respect to New Jersey's non-compliance as explained in the Board of Trustees' January 14, 2014 order? These remedies include the loss of voting power, the loss of Board of Trustees seats, the loss of standing committee seats, the increase of membership dues, and a resolution for expulsion. **Under the current DRP (ratified by membership) The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction(s) or licensee(s), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.**

17. Does the DRC concede that neither Maryland, Massachusetts, nor Connecticut would have a basis for knowing based on the DRP that penalties of the type the DRC imposed (disgorgement and fines) could be expected for non-compliance with audit requirements? **Membership voted and approved the DRP. Section reads: The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction(s) or licensee(s), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.**

18. Prior to the August 19, 2024 hearing, regarding Maryland, did the DRC consider whether Maryland should have been notified of the potential for a fine and disgorgement totaling \$1,470,600.00? **No decision was made until the hearing on Aug 19, 2024.**

a. Does the DRC consider the lack of notification regarding the potential for a fine and disgorgement proper? **DRC followed the DRP.**

19. Please identify all the factors that the DRC considered in imposing a fine and disgorgement totaling \$1,470,600.00 against Maryland. **In reaching its disgorgement estimate, the DRC calculated the cost per audit completed and then multiplied that figure by the number of missing audits. The results estimated that the jurisdiction had underfunded its audit program by \$126,960 per year, averaged out over a 10-year period. Accordingly, the DRC concluded that over the 10-year period, the jurisdiction had wrongfully benefited by saving \$1,269,600.00 on its payroll, which resulted in the underfunding of its IFTA audit program. The Respondent's non-compliance over a 10-year period and the shortfall of 201 (201 x \$1,000 = \$201,000.00) total audits constitute repeated and prolonged non-compliance. The DRC concluded that punitive actions against the Respondent are warranted to deter similar behavior in the future and ensure compliance with the IFTA Agreement.**

20. Did the DRC consider the actions the DRC and IFTA's Board of Trustees took in 2014 regarding New Jersey's non-compliance before making its decision with respect to Maryland? **No**

a. If so, how?

b. If not, why not? **The DRP (ratified by membership) has been updated since that review in 2012.**

c. How do Maryland's circumstances compare to those in the New Jersey's noncompliance? **Maryland's commissioner has access to all the orders on IFTA Inc's website.**