Implementation of State Auditor's Recommendations

Audits Released in January 2002 Through December 2003

Special Report to

Assembly Budget Subcommittee #2—Education Finance

February 2004
Report No. 2004-406 A2

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CALIFORNIA STATE AUDITOR

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February 25, 2004 2004-406 A2

The Governor of California
Members of the Legislature
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

The Bureau of State Audits presents its special report for the Assembly Budget Subcommittee No. 2—Education Finance. This report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. This report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes appendices that summarize recommendations that warrant legislative consideration and monetary benefits that auditees could realize if they implemented our recommendations. This special policy area report is available on our Web site at www.bsa.ca.gov/bsa/reports/subcom2004-policy.html. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, we believe the State's budget process is a good opportunity for the Legislature to explore these issues and, to the extent necessary, reinforce the need for corrective action.

Respectfully Submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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INTRODUCTION

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2002 through December 2003, that relate to agencies and departments under the purview of the Assembly Budget Subcommittee No. 2—Education Finance. The purpose of this report is to identify what actions, if any, these auditees have taken in response to our findings and recommendations. We have placed this symbol ➲ in the left-hand margin of the auditee action to identify areas of concern or issues that we believe an auditee has not adequately addressed.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The Bureau of State Audits' (bureau) policy requests that auditees provide a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, we request the auditee to respond at least three times subsequently: at 60 days, six months, and one year after the public release of the audit report. However, we may request an auditee provide a response beyond one year or initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such actions are complete.

Unless otherwise noted, we have not performed any type of review or validation of the corrective actions reported by the auditees. All corrective actions noted in this report were based on responses received by our office as of February 2, 2004.

To obtain copies of the complete audit and investigative reports, access the bureau's Web site at **www.bsa.ca.gov/bsa/** or contact the bureau at (916) 445-0255 or TTY (916) 445-0033.

LOS ANGELES UNIFIED SCHOOL DISTRICT

Outdated, Scarce Textbooks at Some Schools Appear to Have a Lesser Effect on Academic Performance Than Other Factors, but the District Should Improve Its Management of Textbook Purchasing and Inventory

Audit Highlights . . .

Our review of the Los Angeles Unified School District (LAUSD) concludes that:

- ☑ *Although we found more classes in low-performing schools that did not have enough textbooks for each student, we cannot conclude that the higher prevalence of textbook shortages has a direct relation to their school performance.*
- ☑ *Factors such as the number of credentialed teachers, the level of parents' education, and students' transiency and socioeconomic status do appear to affect school performance.*
- ☑ *LAUSD does not always spend its restricted textbook and other instructional materials funds appropriately, and it spends, on average, less per student than other large districts in the State for these resources.*

REPORT NUMBER 2001-124, JUNE 2002

Los Angeles Unified School District's response as of September 2003 and the California Department of Education's response as of June 2003

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to determine whether Los Angeles Unified School District's (LAUSD) program and policies regarding textbooks and other instructional materials result in a disparity in the quantity and quality of textbooks for a sample of high- and low-performing schools. The audit committee also requested that we do the following:

- Use our sample to determine if a correlation exists between demographic data, such as socioeconomic status and race, and the quantity and quality of the textbooks used by LAUSD schools.
- Identify funding sources that are available and those LAUSD uses to purchase textbooks and other instructional materials, and identify the total amount LAUSD spent on textbooks and other instructional materials for the past two years, review its process for allocating funds, and assess the amounts actually allocated to the schools in our sample.
- Compare LAUSD's average amount spent per student over the past two years for textbooks and other instructional materials to the amount spent by a representative sampling of school districts and the statewide average for all school districts.

- Determine whether publishers are providing free instructional materials to the same extent to all school districts and review LAUSD's conflict-of-interest policy regarding the purchase of textbooks and other instructional materials to determine if it is consistent with the requirements of state law and whether LAUSD personnel follow the policy.

Although our audit of 16 LAUSD schools did not reveal any significant disparities in textbook quality and quantity among high- and low-performing schools, we did find students in both types of schools using outdated textbooks and that did not have a core subject textbook available for use in the classroom and at home. Moreover, other factors, such as teacher credentialing and student transiency, appear to have a greater impact on student academic performance. We also found that LAUSD can improve its management of textbook purchasing and inventories. Specifically, we found:

Finding #1: Students do not always have sufficient textbooks.

LAUSD policy requires that each student have a textbook in the core subjects for use in the classroom and at home. However, we found widespread use by LAUSD schools of textbooks restricted to the classroom and not available for students to take home, commonly referred to as class sets. Until LAUSD addresses its textbook shortages, it cannot ensure that each student in classes without textbooks receive the same instruction as their peers in classes that have textbooks for each student.

We recommended that to make sure that each student has the best opportunity to achieve academically, LAUSD enforce its existing policy.

LAUSD Action: Corrective action taken.

LAUSD reports that a checklist has been developed and that it is being used by textbook services staff to review the status of school sites in relation to the number of textbooks available. LAUSD assigned staff to ensure each school remains current with the policy of a textbook for each student in the core subject area.

Finding #2: LAUSD is not fully complying with state law requiring school districts to annually certify that students have sufficient textbooks and/or instructional materials.

State law requires school districts to hold a public hearing and to determine through a resolution, whether each student has or will have before the end of the fiscal year, in each subject area, sufficient textbooks and/or instructional materials that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education (state board). However, LAUSD's fiscal year 2000–01 certification was incomplete because LAUSD does not require its schools to certify for each subject adopted by the state board. Rather LAUSD has only required its schools to certify that that they have sufficient textbooks in subjects that are consistent with the state board's most recent adoption cycle. Until it requires schools to certify in accordance with state law, LAUSD will be out of compliance with the law and will be unable to ensure that its students have sufficient textbooks.

We recommended that LAUSD require its schools to certify annually that each student has, or will have prior to the end of that fiscal year, in each subject area, sufficient textbooks and/or instructional materials that are consistent with the content and standards of the curriculum framework adopted by the state board.

LAUSD Action: Corrective action taken.

LAUSD provided evidence indicating that new procedures are in place that requires all schools to certify that they have sufficient materials in all subject areas falling under the content and curriculum frameworks adopted by the State. LAUSD's certifications began in April 2003.

Finding #3: LAUSD's goal of a six to one student-to-computer ratio is inconsistent with its consultant's recommendation and best practices.

In May 2000, LAUSD adopted a five-year instructional technology plan, which includes a goal of moving toward a student-to-computer ratio of six to one. However, this goal is inconsistent with a recommendation made by its consultant in 1998 that LAUSD adopt the maximum student-to-computer ratio for ideal learning of five to one. A June 2001 report issued by the

Chief Executive Officer Forum on Education Technology also indicates that a reasonable goal for the number of students per instructional computer is five or less.

We recommended that LAUSD consider adopting a student-to-computer ratio of five to one.

➲ ***LAUSD Action: None.***

LAUSD stated that it has no plans to move toward a student-to-computer ratio of 5-to-1, but does plan to continue to move toward a 6-to-1 ratio.

Finding #4: LAUSD's low-performing schools have fewer teachers that possess a basic teaching credential than high-performing schools.

Our analysis of LAUSD data for about 560 elementary, middle, and high schools for fiscal years 1999–2000 and 2000–01 revealed that LAUSD's low-performing schools generally have fewer fully credentialed teachers than its high-performing schools. A November 1997 report by the California Commission on Teacher Credentialing (commission) states that the quality of teachers is the single most important determinant of student success and achievement in school. As part of its Teaching As a Priority Program, LAUSD plans to (1) increase the number of teachers in its low-performing schools who possess basic credentials by providing stipends directly to teachers assigned or transferring to Academic Performance Index rank-1 schools and (2) issue recruitment and retention grants to the local districts so that they can tailor their efforts to local conditions. LAUSD also plans to contract with an external evaluator to measure the effectiveness of its efforts in recruiting and retaining credentialed teachers in LAUSD's low-performing schools using data collected over a three-year period.

We recommended that to increase the number of teachers who possess basic credentials in its low-performing schools, LAUSD continue its current recruitment and retention efforts and expand those efforts to include all financial incentives offered by the State or federal government. Further, LAUSD should review

the recommendations of its outside evaluator and implement those recommendations that will further increase its ability to recruit and retain teachers in low-performing schools.

LAUSD Action: Partial corrective action taken.

LAUSD reported that in October 2002 it implemented a fast track process for considering credentialed teacher applications and created a new on-line teacher application. LAUSD also stated that it developed a Teacher Quality Strategic Plan, which was approved in concept by the Los Angeles City Board of Education in March 2003 and is being implemented. LAUSD stated that it held a summit on February 21, 2003, so that it can continue to work with universities and colleges to increase the number of credentialed teachers assigned to LAUSD. Moreover, LAUSD reported that through its ongoing efforts to expand the number of teacher recruits from Teach for America and the New Teacher Project (NTP), it has increased the number of NTP teachers to 750 for fiscal year 2003–04. Finally, LAUSD reported that in March 2002 two external evaluators made recommendations on ways to improve its human resource and recruitment practices; however, LAUSD did not provide specifics on its intent to implement these recommendations.

Finding #5: LAUSD does not always spend restricted textbook funds appropriately.

LAUSD allocated a total of $92 million in restricted Instructional Materials Fund (IMF) and Schiff-Bustamante Standards-Based Instructional Materials Program (Schiff-Bustamante) funds in fiscal year 2000–01 to its elementary, middle, and high schools. According to LAUSD accounting records, schools inappropriately spent $16.2 million of these funds to purchase other books that are not part of the core curriculum, such as library books or test preparation workbooks and instructional materials. Further, our review of a sample of eight invoices found that school staff are not always using the correct accounting codes, which suggests that LAUSD cannot ensure that funds designated for purchasing textbooks are spent appropriately.

We recommended that LAUSD provide training to school accounting staff to ensure that they are aware of the proper accounting for textbook funds and conduct periodic monitoring of the use of state-restricted textbook and IMFs to ensure the uses are appropriate.

LAUSD Action: Corrective action taken.

LAUSD stated that it has provided training to the Local District Business Managers on the accounting for and use of state textbook funding and that these managers will conduct periodic reviews of textbook purchases. Additionally, they are working with local school site staff to ensure compliance with appropriate expenditure guidelines. Further, LAUSD will send letters to publishers regarding its procurement procedures, has listed terms and conditions on its purchase orders, and has linked commodity codes to textbooks so that purchases are stopped during the ordering process if inappropriate materials are being ordered.

Finding #6: Publishers of textbooks and instructional materials are not treating all schools fairly.

State law requires publishers to provide any instructional materials free of charge to school districts in California to the same extent as they provide them to any school district nationwide. The California Department of Education (department) refers to this law as the "most-favored-nations clause." Some publishers are not equitably providing free instructional materials (commonly referred to as gratis items) to different schools within LAUSD, as state law requires. For example, during a review of only 15 invoices, we found two cases where schools did not receive the same gratis items from the same publisher for the same textbooks. In total, we found that four schools were shortchanged gratis items worth more than $60,000. Unfortunately, the disparate treatment shown in our examples, as well as in any other cases that may exist, would most likely not be detected because neither LAUSD nor the State conducts any monitoring to ensure that publishers comply with the most-favored-nations clause.

To ensure that publishers are treating all California schools equitably, we recommended that the department modify its regulations or seek legislation, if necessary, to require publishers and manufacturers to report, at a minimum, all offers of free instructional materials for Kindergarten through grade 12 within 30 working days of the effective date of the offer. The department should also maintain a comprehensive Web site that contains this information and require publishers to report to the department in a standard electronic format. Further, the department should establish a hotline to receive complaints regarding unfair treatment and instruct school districts to

contact the hotline if they receive textbook prices or free materials that differ from those posted on the department's Web site. Finally, when necessary, the department should pursue cost recovery for any violations of the most-favored-nations clause and work with school districts to identify and remove any other obstacles that prevent them from effectively monitoring the most-favored-nations clause.

To ensure that its schools are treated fairly by publishers, we recommended that LAUSD ensure that school and local district staff involved in purchasing textbooks and other instructional materials are aware of the state law that requires publishers to treat schools equitably and have access to current publisher price and gratis item lists when placing orders. In addition, LAUSD should modify its accounting system to include standard book numbers and should collect damages from the publishers identified in our report for noncompliance with the most-favored-nations clause. Moreover, LAUSD should conduct periodic monitoring of the prices and gratis items publishers offer its schools for similar purchases and pursue cost recovery for any exceptions found. Finally, LAUSD should work with the department to identify and remove any other obstacles that prevent it from effectively monitoring the most-favored-nations clause.

LAUSD Action: Partial corrective action taken.

LAUSD reported that it has taken several steps to increase awareness of the most-favored-nations clause. For example, it has provided training to Local District Business Managers, revised its price lists and order forms, and sent letters to publishers requiring them to provide current information to schools at the time of order. LAUSD also reported that it will consider including ISBN numbers during the development of its new financial systems that it plans to implement over the next five years. LAUSD negotiations with publishers identified in our report are continuing and thus far it has identified $1.8 million in gratis items discrepancies to schools. LAUSD reports that its Textbook Services Office, with the support of its general counsel and the department, are pursuing all exceptions found for cost recovery. LAUSD reported that it is participating in the department's Instructional Material Advisory Group on free and gratis items and is reporting violations to the State. To monitor publisher compliance with the most-favored-nations clause, LAUSD is implementing a process to periodically review a random sample of invoices.

Department Action: Partial corrective action taken.

Although the department did not address modifying its regulations or seeking legislation, it did report that it will continue to include a publishers' web link requirement in the Publishers' Invitations to Submit for future Kindergarten through grade eight adoptions. Due to reductions in its budget, the department stated that it has chosen to develop a complaint procedure form and place the form on its Web site instead of establishing a hotline. Further, the department stated that it plans to work with the state board to develop the appropriate legislation and administrative regulations to pursue cost recovery for any violations of the most-favored-nations clause. Finally, the department reported that it meets periodically with representatives of the Learning Resources Display Centers and has discussed the topic of improving information on gratis items. The department also stated that as no-cost improvements are identified and agreed to in these meetings they will be implemented.

Finding #7: Central administration of textbook purchases might resolve several shortcomings.

LAUSD might be able to resolve many of the shortcomings in its process for ordering textbooks if it centralizes this function. Specifically, LAUSD could reduce inappropriate charges against restricted state textbook funds, improve its payment record and ability to do business with preferred vendors, and ensure that schools receive the same gratis items from publishers.

We recommended that LAUSD consider centralizing its textbook-purchasing function at LAUSD or the local district level.

LAUSD Action: Corrective action taken.

In lieu of our recommendation, LAUSD stated that it has implemented new policies and procedures for ordering textbooks. Its Local District Purchasing Services Coordinators will oversee purchasing and ensure equitable treatment from publishers on gratis items. The coordinators will also track the timely delivery of shipments by publishers and the timely receipt of textbooks by schools.

Finding #8: LAUSD's textbook inventory system is not fully implemented.

Between May 1999 and August 2000, LAUSD purchased, for almost $2 million, an inventory system designed to monitor and account for textbooks and maintain data on textbook damage. Despite LAUSD's considerable cost and effort to help schools implement the inventory system, we found that the system is not widely used. Ensuring that schools implement the system would enable LAUSD to monitor and account for its textbooks adequately so that each student has a textbook for all subjects. LAUSD would also be able to begin complying with a state law requiring it to publicly report information regarding the quality and currency of textbooks and instructional materials so that parents can make meaningful comparisons between public schools before enrolling their children. Although LAUSD's Business, Finance, Audit, and Technology Committee lists the development of a centralized textbook inventory system as one of its technology projects, it reported in May 2002 that this project is not fully funded.

LAUSD should proceed with its plans to develop a centralized textbook inventory system. The system should include all texts and other instructional materials at each school and include ongoing standardized training and both implementation and technical support.

LAUSD Action: Partial corrective action taken.

LAUSD told us that it is proceeding with the implementation of a centralized inventory system and that three additional staff have been assigned to aid these efforts. LAUSD stated that the inventory system is being supported in the senior and middle schools. In addition, a temporary web-based central inventory system is in place and is being populated with inventory data until its new student information system, which will include textbook inventory data, is put in place.

Finding #9: LAUSD can improve the way it holds students and parents accountable for lost or damaged textbooks.

LAUSD's inadequate system for tracking textbooks also diminishes the ability of some schools to ensure that students or their parents are accountable for lost or damaged textbooks. In addition, during our testing of 16 schools, we found

varying degrees of compliance with LAUSD's policy for student accountability. Consequently, schools may not be recovering as many textbooks or as much money as they could.

LAUSD should make sure that schools and local district staff are aware of and are complying with its student accountability policy for lost or damaged textbooks, including the maintenance of an accounting or inventory system that clearly identifies the student and the type of school property issued to the student.

LAUSD Action: Pending.

LAUSD reported that it is developing an accountability process to reduce textbook loss and damage rates. LAUSD will provide its local district staff with training and will then work with schools on this issue. Baseline loss rates have been determined so that it can measure progress at the middle and senior high schools each spring.

Finding #10: LAUSD can strengthen its conflict-of-interest and disclosure code to include staff involved in textbook-purchasing decisions.

LAUSD can further improve its controls over textbook purchasing by modifying its conflict-of-interest and disclosure code to require principals and members of textbook evaluation committees to complete an annual disclosure statement that would reveal any potential conflicts with textbook publishers or manufacturers. LAUSD's ethics officer told us that he expects to submit the most recently proposed revisions to the disclosure code for approval by the end of June 2002, which will include adding principals to the designated employee list. In addition, he told us that future proposals would include the results of LAUSD's continuous review of other district and school positions and their changing responsibilities to see if it is appropriate to add them to the list of designated positions. By strengthening its code, LAUSD can further reduce the risk of bias or the appearance of impropriety in the textbook adoption and purchasing process.

We recommended that LAUSD revise its conflict-of-interest and disclosure code to include principals and textbook evaluation committee members in its list of designated positions. In addition, LAUSD should continue its plan to review other district and school positions for inclusion in the code as designated positions.

LAUSD Action: Partial corrective action taken.

On October 21, 2003, the Los Angeles County Board of Supervisors approved revisions to LAUSD's conflict of interest and disclosure code (code). LAUSD made revisions to its code to add, delete, and change the titles of numerous positions due to organizational changes since its last revision. The LAUSD also created a new disclosure category for positions involved in employee relations. Our review of the code found that although LAUSD did include principals in its list of designated positions, it did not include textbook committee members.

CALIFORNIA'S CHARTER SCHOOLS

Oversight at All Levels Could Be Stronger to Ensure Charter Schools' Accountability

Audit Highlights . . .

Oversight of charter schools at all levels could be stronger to ensure schools' accountability. Specifically:

- ☑ *The four chartering entities we reviewed do not ensure that their charter schools operate in a manner consistent with their charters.*
- ☑ *These chartering entities' fiscal monitoring of their charter schools is also weak.*
- ☑ *Some charter schools assess their educational programs against their charters' measurable student outcomes, but others do not.*
- ☑ *The Department of Education (department) could, but does not target its resources toward identifying and addressing charter schools' potential academic and fiscal deficiencies.*
- ☑ *Finally, although two new statutes attempt to add accountability, without the chartering entities and department increasing their commitment to monitoring, these new laws may not be as effective as they could be.*

REPORT NUMBER 2002-104, NOVEMBER 2002

Chartering entities' and the California Department of Education's responses as of January 2004

The California Legislature passed the Charter Schools Act of 1992 (Act) to provide opportunities for communities to establish and operate schools independently of the existing school district structure, including many of the laws that school districts are subject to. The Legislature intended charter schools to increase innovation and learning opportunities while being accountable for achieving measurable student outcomes. Before a charter school can open, a chartering entity must approve a petition from those seeking to establish the school. Under the Act, three types of entities—a school district, a county board of education, and the State Board of Education—have the authority to approve petitions for charter schools. As of March 2002, there were 360 charter schools serving approximately 131,000 students throughout California. More than 70 percent of the agencies chartering those schools have only one charter school. The Joint Legislative Audit Committee requested that we conduct a comprehensive audit of California's charter schools. We assessed the actions of the Fresno Unified School District (Fresno), Los Angeles Unified School District, Oakland Unified School District, San Diego City Unified School District, and the California Department of Education (department). Specifically, we found that:

Finding #1: Chartering entities do not ensure that charter schools meet targeted student outcomes.

In order to hold the charter schools accountable, the Legislature required that each charter petition contain certain elements, including measurable student outcomes proposed by the school to accomplish its educational program. These outcomes give the chartering entity criteria against which it can measure the school's academic performance and hold it accountable. Each

chartering entity we reviewed has interpreted its oversight responsibilities differently, typically developing some practices for overseeing charter schools. However, none of the chartering entities has adequately ensured that their charter schools are achieving the measurable student outcomes set forth in their charter agreements.

A school's charter represents an agreement between it and the chartering entity. The charter agreement is critical for accountability, as it outlines the standards the school is agreeing to be held to; therefore, we expected to find that chartering entities had established monitoring guidelines and activities to ensure that their charter schools were complying with their agreements. Although three of the four chartering entities we visited have chartered schools since 1993, and each has chartered at least eight schools, none had developed and implemented an adequate process to monitor their schools' academic performance. Without periodically monitoring their schools for compliance with the charter terms, the chartering entities cannot determine whether their charter schools are making progress in improving student learning as identified in their charters, nor are the chartering entities in a position to identify necessary corrective action or revocation.

To ensure that the chartering entities hold their charter schools accountable through oversight, the Legislature should consider amending the statute to make the chartering entities' oversight role and responsibilities explicit.

To ensure that charter schools are held accountable for the taxpayer funds they receive and demonstrate accountability for the measurable outcomes set forth in their charters, the chartering entities should consider developing and implementing policies and procedures for academic monitoring. At a minimum, the policies and procedures should outline the following:

- Types and frequency of the academic data charter schools should submit.

- Manner in which the chartering entity will review the academic data.

- Steps the chartering entity will take to initiate problem resolution.

Legislative Action: Unknown.

We are unaware of any legislative action implementing this recommendation.

Chartering Entity Action: Partial corrective action taken.

Fresno Unified School District (Fresno) said that it has continued to conduct a comprehensive annual review of its charter schools and sought to refine and improve its monitoring process with increased emphasis on academic outcomes. Fresno noted that it is improving its charter petition review process and is expecting its Board of Education to approve formalized and expanded policies and regulations in early spring 2004.

Los Angeles Unified School District (Los Angeles) reported that it is in the process of devising a system to include those charter schools that use Los Angeles' testing services in its district data collection and analysis of state-mandated testing programs. Charter schools that do not use Los Angeles' testing services must submit their data annually. In addition, its Program Evaluation and Research Branch (PERB) will develop a system for charter school monitoring consistent with the legislative intent. PERB will continue to conduct charter school evaluations that coincide with a school's charter renewal.

Oakland Unified School District (Oakland) said it has developed a Memorandum of Understanding (MOU) that it intends to execute with each charter school in January 2004. Oakland described the MOU as informing its charter schools of Oakland's policies and procedures, reminding the charter schools of their obligations under federal and state laws, and reinforcing the charter as a binding agreement. In addition, Oakland reported that for monitoring the charter schools' academic health it has analyzed existing charter schools' measurable goals and communicated with charter schools seeking charter renewal where academic improvement is needed. In January and February 2004, Oakland intends to conduct a planning session with the charter schools regarding how the schools will monitor themselves and Oakland will evaluate their performance.

San Diego City Unified School District (San Diego) stated it has reviewed certain aspects of its charter schools' performance including participation in the standardized testing and reporting program and compliance with state

intervention program guidelines. In addition, San Diego reported that it has instituted a timeplan and process for completing its accountability framework, which the charter school principals accepted in December 2003, and is focusing on academic achievement when assessing charter renewals.

Finding #2: Chartering entities do not ensure the schools' compliance with various legal requirements that are conditions of apportionment.

Although exempt from many statutes, charter schools are still subject to at least three legal requirements as conditions for receiving state funds. These requirements include (1) hiring teachers who hold a Commission on Teacher Credentialing permit, except for teachers of non-core, non-college-prep courses; (2) offering, at minimum, the same number of instructional minutes as noncharter schools; and (3) certifying that students have participated in state testing programs in the same manner as other students attending public schools. Requirements 1 and 2 became conditions of receiving state funds beginning January 2002, whereas requirement 3 has been a condition of receiving state funds since January 2000. Since these requirements are conditions of apportionment, we expected to find that the chartering entities had established guidelines and activities to ensure compliance with these legal provisions. Most of the chartering entities we reviewed lack policies and sufficient procedures to validate that all of their charter schools have met these conditions of apportionment. Moreover, although the charter school statute requires an annual audit, these audits do not address all of the conditions set forth in the statute. By not verifying that all of their charter schools comply with these legal requirements, the chartering entities cannot be assured that their charter schools have satisfied the conditions of apportionment.

To ensure that their charter schools are meeting statutory conditions for receiving state funding, the chartering entities should verify these conditions through the schools' independent financial audits or some other means.

Chartering Entity Action: Partial corrective action taken.

➲ Fresno did not address this recommendation.

Los Angeles noted that it will collect and assess its charter schools' academic testing data. In addition, Los Angeles is requiring its charter schools to submit their audited financial statements within four months of the fiscal year close and will review this information.

Oakland said that in October each year it collects teacher credential information and it is currently conducting a file review to ensure complete information. If Oakland's data is incomplete, it will send correction letters to the charter schools affected. Oakland expects to obtain in January 2004 from each charter school certification of the school's intent to comply with instructional requirements and a master schedule. Oakland plans to continue this process annually each October. With regard to statewide tests, Oakland reported that it provided its charter schools with detailed test information, and incorporated test requirements in its MOU. On an ongoing basis it will share test information and perform spot checks on testing days.

San Diego reported that it reviewed audits submitted to assess the degree to which attendance accounting is reviewed and presented a scope of audit template to its charter schools. San Diego also reported that it is revising its policy and guidelines for charters to incorporate more precise academic accountability language. In addition, San Diego has confirmed that all of its charter schools are participating in the standardized testing and reporting program and the credential status for all charter school teachers under contract for 2002–03.

Finding #3: Chartering entities lack policies and procedures for sufficient fiscal monitoring and have not adequately monitored their charter schools.

When chartering entities authorize the creation of a charter school, they accept the responsibility for monitoring its fiscal health. Without fiscal monitoring, charter schools are not held accountable for the taxpayer funds they receive nor will the chartering entity always know when they should require corrective action or revoke a charter. Despite the crucial need for consistent fiscal monitoring, we found that the chartering entities lacked policies and procedures for such monitoring and have not adequately monitored their charter schools' fiscal

health, even though some charter schools appear to have fiscal problems. The four chartering entities we reviewed could not demonstrate that they always receive the financial information they request. Moreover, although all four chartering entities asserted that they have procedures for reviewing fiscal data and identifying and resolving problems, none could provide evidence of such. Further, even though all four chartering entities recently developed or adopted new policies and procedures regarding charter schools, only two of those policies address fiscal monitoring and appear to provide for improved monitoring of the chartering entities' charter schools' fiscal health.

Having an audit and correcting noted deficiencies are ways charter schools demonstrate accountability for the taxpayer funds they are entrusted with. Although each charter must specify the manner in which annual independent financial audits shall be conducted, not all audit reports contain all the information relevant to school operations. We expected the chartering entities to have policies and procedures in place for reviewing the audit reports of their charter schools to determine the significance of any audit findings and for ensuring that the schools resolved reported problems. However, some entities did not adequately review the reports and ensure that reported problems were resolved.

To ensure that charter schools are held accountable for the taxpayer funds that they receive and that they operate in a fiscally sound manner, the chartering entities should consider developing and implementing policies and procedures for fiscal monitoring. At a minimum, the policies and procedures should outline the following:

- Types and frequency of fiscal data charter schools should submit, including audited financial statements, along with consequences if the schools fail to comply.

- Manner in which the chartering entity will review the financial data, including the schools' audited financial statements.

- Financial indicators of a school with fiscal problems.

- Steps the chartering entity will take to initiate problem resolution or to ensure that reported audit findings are adequately resolved.

Chartering Entity Action: Partial corrective action taken.

Fresno stated that its annual review includes monitoring of the charter schools' fiscal condition. Fresno also mentioned that it enforces MOUs with each charter school, which require a charter school to comply with fiscal monitoring processes. Fresno cited its charter petition review process, which includes a review of a charter school's initial fiscal plans and documents. Fresno noted that it is developing more formalized and expanded procedures, with board consideration and approval expected in early spring 2004.

Los Angeles' fiscal policies require the charter schools to submit audited financial statements and three fiscal reports. Los Angeles will review budget and fiscal data and require the school to respond appropriately to any concerns identified. If the school does not submit the required reports or address Los Angeles' concerns, Los Angeles will initiate charter revocation proceedings.

Oakland referred to its MOU and it outlined the types and frequency of fiscal data the charter schools should submit, including audited financial statements, proposed budgets, interim financial reports, and an unaudited full-year report. Oakland plans to implement these requirements in February 2004 following receipt of the signed MOUs. Oakland also stated that it is adapting another district's assessment grid that outlines financial indicators and Oakland will implement this in February 2004. Finally, Oakland stated that it would initiate a revocation process when necessary.

San Diego stated that its school board approved an MOU for all charter schools that articulates the type, frequency, content, and comprehensiveness of fiscal information each school must submit. In addition, San Diego has addressed certain schools' fiscal performance on a case-by-case basis, including implementation of a fiscal watch process.

Finding #4: Chartering entities cannot justify the oversight fees they charge and risk double-charging the State through mandated-costs claims.

For fiscal years 1999–2000 and 2000–01, the four chartering entities charged their charter schools more than $2 million in oversight fees. Nevertheless, none of the four chartering entities could document that the fees they charged corresponded to their actual

costs in accordance with statute, because they failed to track their actual oversight costs. As a result, the chartering entities may be charging their charter schools more than permitted by law.

Moreover, these chartering entities also participated in the State's mandated-costs reimbursement process, which reimburses entities for the costs of implementing state legislation. The chartering entities claimed costs in excess of $1.2 million related to charter schools for the two fiscal years we reviewed. However, because the chartering entities did not track the actual costs associated with overseeing their charter schools, they risk double-charging the State.

Although the statute is clear that the entities' oversight fee is capped at a certain percentage of a school's revenue based on actual costs, it is unclear regarding which revenues are subject to the oversight fee. Consequently, the chartering entities are interpreting the law differently and may be applying the percentage to more revenues than permitted or to fewer revenues than they could be to cover their oversight costs.

To ensure that chartering entities can justify the oversight fee they charge their charter schools and to minimize the risk of double-charging the State for the costs of charter school oversight, they should:

- Establish a process to analyze their actual costs of charter school oversight.
- Compare the actual costs of oversight to the fees charged and, if necessary, return any excess fees charged.
- Use the mandated-costs reimbursement process as appropriate to recover their unreimbursed costs of overseeing charter schools.

To ensure that the chartering entities charge their oversight fees appropriately, the Legislature should consider clarifying the law to define the types of charter school revenues that are subject to the chartering entities' oversight fees.

Chartering Entity Action: Partial corrective action taken.

Fresno said that it is verifying all allocated personnel time charges included in its oversight fee and its mandated cost claim. Fresno stated that it is reviewing mandate revenue it has received and will return to the State any funds it has received that were included in its charter school oversight fee.

Los Angeles reported that it will define specific oversight responsibilities and the estimated costs. In addition, it is setting up tracking systems to capture oversight expenditures and will compare these costs to the fees its charter schools pay. If appropriate, Los Angeles will use the mandated cost recovery process.

Oakland stated that it determined that the costs of past oversight far exceeded the revenue collected from its 1 percent oversight fee. In addition, Oakland said it plans to create a process by July 2004 to identify actual costs to present this information to its charter schools.

San Diego reported that it has established a process to verify and publish the actual costs of oversight and, where expenses are less than the percentage charged a charter school, San Diego has agreed to refund the possible excess.

Legislative Action: Unknown.

We are unaware of any legislative action implementing this recommendation.

Finding #5: The department could use existing data to identify fiscally or academically struggling charter schools and then question the responsible chartering entities.

The department plays a role in the accountability of charter schools. The department has the authority to recommend that the State Board of Education take action, including but not limited to charter revocation, if the department finds, for example, evidence of the charter school committing gross financial mismanagement, or substantial and sustained departure from measurably successful academic practices. Although the chartering entity is the primary monitor of a charter school's financial and academic health, the department has the authority to make reasonable inquiries and requests for information. It currently uses this authority to contact a chartering entity if it has received complaints about a charter school.

If the department reviewed the financial and academic information that it currently receives regarding charter schools and raised questions with the chartering entities regarding charter schools' fiscal or academic practices, the department could target its resources toward identifying and addressing potential academic and fiscal deficiencies. In this way, it would provide a safety net for certain types of risks related to charter schools. The concept of the State as a safety net is consistent with the California Constitution, which the courts have found places on the State the ultimate responsibility to maintain the public school system and to ensure that students are provided equal educational opportunities. However, the department does not target its resources toward identifying and addressing charter schools' potential academic and fiscal deficiencies.

To fulfill its role as a safety net, the department should review available financial and academic information and identify charter schools that are struggling. The department should then raise questions with the schools' chartering entities as a way of ensuring that the schools' problems do not go uncorrected.

Department Action: None.

➲ As stated in its initial response to our audit, the department continues to disagree with our audit's premise. In its one-year response to our audit report, the department stated that it is continuing to use its established complaint and inquiry process and will notify a charter-authorizing entity when information suggests a charter school may be struggling. The department described its action as a strategic and efficient method of intervention on a case-by-case basis.

Finding #6: The department does not plan to review audits submitted under Senate Bill 740 to identify fiscally deficient charter schools.

Senate Bill 740 (Chapter 892, Statutes of 2001) requires each charter school to submit to its chartering entity and the department, by December 15 of each year, an independent financial audit following generally accepted accounting principles. Although not specifically required by the law, we expected the department to plan to review the audits required by Senate Bill 740 in order to raise questions with chartering entities about how they were working with charter schools to

resolve the schools' fiscal deficiencies. However, the department does not plan to systematically review charter schools' audits for this purpose. The department will collect but not review the charter schools' audit reports, data which helps reflect the schools' accountability for taxpayer funds.

The department should take the necessary steps to fully implement Senate Bill 740, including reviewing audit exceptions contained in each charter school's audit report and taking the necessary and appropriate steps to resolve them.

Department Action: Partial corrective action taken.

The department stated that Senate Bill 740 does not require it to review charter schools' audit reports. The department said that it is implementing all statutorily required activities under this bill, including processing funding determinations, adjusting apportionments, administering the Charter Schools Facilities Grant program, staffing the Advisory Commission on Charter Schools, and ensuring the Kindergarten through grade 12 audit guide includes audit procedures for elements specified in Senate Bill 740. The department also noted that with the passage of Assembly Bill 2834 (Chapter 1124, Statutes of 2002), it received a position to review charter school audit reports and ensure audit findings are resolved.

Finding #7: The department cannot assure that apportionments to charter schools are accurate.

Although the department apportions charter school funds on the basis of average daily attendance (ADA), its apportionment process is faulty because it relies primarily on the certifying signatures of school districts and county offices of education—both of which lack the necessary procedures to ensure that charter schools comply with apportionment requirements. As a result, the department cannot be assured that charter schools have met the apportionment conditions the Legislature has established and receive only the public funds to which they are legally entitled.

So that it does not improperly fund charter schools, the department should work with the appropriate organizations to ensure that charter schools' reported ADA is verified through an independent audit or other appropriate means and that charter schools have met other statutory conditions of apportionment.

Department Action: None.

In its initial response to the audit report, the department said it disagreed with the finding related to this recommendation. Similarly, in its one-year response, the department said that it is relying on its processes, such as the certification process to verify ADA and that it follows up on concerns regarding charter schools' ADA. The department mentioned Senate Bill 740 and its requirement to ensure that the Kindergarten through grade 12 audit guide includes procedures for auditing charter schools related to nonclassroom-based instruction and that the department expects these procedures to be included in the audit guide for fiscal year 2003–04.

Finding #8: Statutory guidance for disposing of a revoked charter school's assets and liabilities is unclear.

In January 2002 Fresno revoked the charter for Gateway Charter Academy (Gateway). After its revocation action, Fresno sought the department's guidance regarding the disposition of Gateway's assets and liabilities. Fresno's concerns, covering a variety of financial issues, highlight a policy gap regarding a chartering entity's authority following a charter revocation—authority that statutes do not clearly address. For example, Fresno asked for clarification of its role in accounting for and recovering Gateway's assets, particularly since Gateway was no longer a public entity. In addition, Fresno lacked an understanding of how to respond to Gateway's creditors, who were seeking repayment of liabilities. Without established procedures for recovering public assets and addressing potential liabilities, including a clearly defined division of responsibilities assigned to the department and the chartering entity, the State may be unable to reclaim taxpayer-funded assets. Although the recent enactment of Assembly Bill 1994 (Chapter 1058, Statutes of 2002) requires a school's charter to specify closeout procedures, a policy gap remains regarding revoked or closed charter schools.

To ensure that a charter school's assets and liabilities are disposed of properly when it closes or its charter is revoked, the Legislature may wish to consider establishing a method for disposing of the school's assets and liabilities and requiring the department to adopt regulations regarding this process.

Legislative Action: Unknown.

In September, 2002, the Legislature passed and the governor signed Assembly Bill 1994 (Chapter 1058, Statutes of 2002). This bill amended the Education Code, Section 47605, to require charter petitions to include a description of the procedures to be used if the charter school closes, including plans for the disposition of any of the school's net assets. The department stated it has no statutory authority to dispose of a charter school's assets or pay its debts.

Finding #9: Recent changes to charter school law may not completely answer existing questions about accountability.

During its 2001–02 session, the Legislature approved two charter school bills that address some of the issues we raise in our report. Senate Bill 1709, signed into law on August 12, 2002, expands the number of entities to which charter schools—beginning in 2003—must submit by December 15 of each year copies of their annual independent financial audit reports for the preceding fiscal year. However, as we discussed earlier, the department's recent inclusion as a recipient of charter schools' audit reports may not necessarily lead to greater accountability or awareness of charter schools' fiscal health, unless the department reviews the audit reports.

Assembly Bill 1994, signed on September 29, 2002, provides both technical and substantive changes to the charter schools law. For example, this bill requires charter schools, through the county superintendent, to submit an annual statement of all receipts and expenditures (annual statement) from the preceding fiscal year. The annual statements must following a format prescribed by the department. Furthermore, the bill requires that each county superintendent verify the mathematical accuracy of the charter schools' annual statements before submitting them to the department. These annual statements provide both chartering agencies and the department with additional financial data to assess the fiscal health of charter schools. However, the chartering agencies are not adequately reviewing the financial records and audit reports they already receive. In addition, the department does not use currently available funding data to identify potentially struggling charter schools in order to raise questions with chartering agencies. As a result, without an increased commitment by chartering agencies and the department to monitor charter schools, the level of accountability will not reach its full potential as provided for in the statute.

CALIFORNIA DEPARTMENT OF EDUCATION

The Extensive Number and Breadth of Categorical Programs Challenges the State's Ability to Reform and Oversee Them

REPORT NUMBER 2003-107, NOVEMBER 2003

California Department of Education response as of January 2004

Audit Highlights . . .

Our review of the State's process for identifying, assessing, and overseeing education-related categorical programs concludes that:

- ☑ *The California Department of Education (CDE) did not take sufficient steps to implement a pilot project aimed at reforming categorical programs.*
- ☑ *CDE's allocation of categorical program funding needs improvement. Specifically, for three of the 12 categorical programs reviewed, CDE may not have accurately calculated allocation amounts in accordance with state law.*
- ☑ *CDE has yet to implement fully the Bureau of State Audits' previous recommendations aimed at strengthening its oversight methods.*
- ☑ *For a few categorical programs, such as the Lottery Education Fund program, CDE does nothing to review recipient's compliance with applicable requirements.*

The Joint Legislative Audit Committee directed the Bureau of State Audits (bureau) to review the State's process for identifying, assessing, and overseeing categorical programs. Our report concluded that the extensive number and breadth of categorical programs challenges the State's ability to reform and oversee them. For purposes of our audit, we defined "categorical funding" broadly so that we could identify allocations made by the California Department of Education (CDE) and the State Controller's Office (SCO) for programs providing funding over and above the basic funding provided to local education agencies (LEAs), typically referred to as revenue limit funding. Categorical funding is far-reaching. For fiscal year 2001–02, CDE and the SCO disbursed roughly $17 billion to various recipients for 113 categorical programs. In addition, for five of these categorical programs, the State delayed CDE's authority to allocate funding totaling $867 million until fiscal year 2002–03. We reported the following issues:

Finding #1: CDE could not demonstrate sufficient efforts to implement a pilot project giving flexibility to categorical program funding.

Chapter 369, Statutes of 2000, enacted in September 2000, required CDE to establish the Pilot Project for Categorical Education Program Flexibility (pilot project). Participating school districts would have flexibility in spending categorical funds among 24 programs within three clusters: (1) school improvement and staff development, (2) alternative and compensatory education, and (3) school district improvement. Only five school districts actually applied to participate in the pilot. However, CDE did not take sufficient steps to fully implement the project, failing to follow recommendations of the

project's advisory group and of state law. Having abandoned the pilot project, the State has lost valuable information to guide its reform of categorical programming.

To implement the pilot project as state law requires, we recommended that CDE provide direction to those school districts currently participating in the pilot project on how to capture and report information necessary to determine their pupils' academic progress. We also recommended that CDE report to the governor and the Legislature on the pilot project's status. Finally, we recommended that CDE survey nonparticipating school districts to assess their level of interest in the pilot project. If the survey results indicate a high level of interest, CDE should distribute its streamlined application packet to school districts. However, if the survey results indicate a low level of interest, CDE should consider seeking legislation to eliminate the provisions of Chapter 369, Statutes of 2000.

CDE Action: Pending.

CDE stated that it contacted each of the five districts that participated in the original pilot project. CDE sent a survey asking each district to summarize its activities, experiences, and recommendations concerning the pilot project. CDE stated that as of January 2004 it had received a completed survey from one district. Further, CDE stated that once all five districts respond to the survey, it will summarize the survey results and include them in a report to the governor and the Legislature. CDE also stated that it would include in the report the results from state assessments to determine whether the students in the participating districts benefited from the funding flexibility. Also, the rates of improvement in student test scores for the periods before and after the pilot project's implementation would be compared, along with additional analyses. Finally, CDE stated that it will develop and distribute a survey to nonparticipating school districts. Distribution options include incorporating questions into the categorical program application process, sending surveys to school districts, conducting a survey via the Internet, and conducting telephone surveys of school districts.

Finding #2: The State can learn from the federal government's previous attempts to implement block grants.

The U.S. Congress has demonstrated a strong interest in consolidating narrowly defined categorical grant programs for specific purposes into block grants for broader purposes. In the Omnibus Budget Reconciliation Act of 1981, Congress created nine block grants from about 50 of the 534 categorical programs in effect at that time. When Congress requested a report on federal block grant programs, the U.S. General Accounting Office (GAO) identified lessons learned from implementing federal block grant programs—lessons the State should consider in any categorical reform efforts it undertakes.

Across government services, the GAO has recommended a shift in focus of federal management and accountability toward program results and outcomes, with less emphasis on inputs and rigid adherence to rules. This focus on outcomes is particularly appropriate for block grants, given their emphasis on providing states the flexibility to determine the specific problems they want to address and the strategies they plan to employ.

The GAO also suggested that funding allocations based on formulas that target funds most effectively consider the following three variables: (1) state or local need, (2) differences among states in the costs of providing services, and (3) state or local ability to contribute to program costs. To the extent possible, equitable allocation formulas should rely on current and accurate data that measure need and ability to contribute.

We recommended that when the Legislature considers future reform proposals calling for the consolidation of categorical programs into block grants, it should ensure that proposals contain: accountability provisions that include a focus toward program results and outcomes; and allocation methods that reflect the recipient's need, ability to contribute to program costs, and cost of providing services.

Legislative Action: Unknown.

We are unaware of any legislative action implementing this recommendation.

Finding #3: Efforts to reform categorical programs should also consider the impact of constitutional and legal requirements.

Our legal counsel observes that federal law, federal and state constitutional principles, and court decisions may affect certain categorical programs. Thus, any decision to create block grants must consider any legal restraints on consolidating programs. For example, the State receives federal money under numerous federal programs. Federal law generally restricts states to using those funds for the purposes of the federal programs; and under some federal programs, each state must provide matching funds as a condition of receiving federal money. Consequently, reform efforts in California should carefully consider whether categorical programs involving federal funds are appropriate candidates for consolidation into block grants and whether moving state funds that support those federal programs into block grants would affect the State's eligibility for federal funds.

Reformers should also consider the impact of state constitutional principles on proposed block grants. The two landmark decisions of *Serrano v. Priest* required the State to remedy disparities in per-pupil spending between school districts but excluded spending on categorical programs for special needs from the requirement that funding be roughly equal across districts. In *Butt v. State of California,* the California Supreme Court held that the California Constitution makes public education a uniquely fundamental concern of the State and prohibits the maintenance and operation of the public school system in a way that denies basic educational equality to students of particular districts. Further, the court held that the State bears the ultimate responsibility to ensure that the public school system provides basic equality of educational opportunity. Therefore, any reform efforts should include mechanisms by which the State can ensure that block grants are distributed, administered, and overseen in a manner that fulfills this constitutional obligation.

Moreover, funding for categorical programs created by an initiative measure approved by the voters, such as the California Lottery Act of 1984, may be used only for the purposes that voters approved. For example, the California Lottery Act limits the use of funds to the education of students and expressly prohibits lottery funds from being spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose. Under the California Constitution, the voters must approve any changes to the

purposes for which those funds may be spent. Thus, if money from the Lottery Education Fund is consolidated into block grants, either the State must continue to spend it for the purposes specified in the act or reformers must obtain the voters' approval to expand or change those purposes.

In other instances, court decisions affect specific categorical programs. For example, the California Supreme Court, in *Crawford v. Board of Education,* held that school boards have an obligation under the California Constitution to take reasonably feasible steps, in addition to desegregation obligations under federal law, to alleviate racial segregation in public schools. Thus, school districts will be required to continue to fund that constitutional obligation from some revenue source.

We recommended that when the Legislature considers future reform proposals calling for the consolidation of categorical programs into block grants, it should determine whether categorical programs involving federal programs are appropriate candidates for consolidation. Further, the Legislature should consider whether the reform proposal (1) is consistent with any legal restrictions that may apply to any particular funds and the State's constitutional obligation to provide equal educational opportunities within the public school system and (2) includes mechanisms by which the State can monitor and ensure that it meets those obligations. Finally, the Legislature should determine whether state or federal court decisions govern the funding of particular programs and ensure that block grant proposals continue to meet those mandates.

Legislative Action: Unknown.

We are unaware of any legislative action implementing these recommendations.

Finding #4: Inconsistencies or errors exist in CDE's calculations for four categorical programs.

The Targeted Instructional Improvement Grant (TIIG) program combines funding to certain LEAs for their court-ordered desegregation and voluntary integration programs. LEAs include school districts, charter schools; county offices of education; special education local plan areas; regional occupational centers or programs; the State's three diagnostic centers; and in a few instances, joint powers authorities.

To calculate recipients' allocations, state law requires CDE to use both the LEA's actual average daily attendance (ADA) as reported on the apportionment for the period covering July through April and its total ADA. But state law does not define the term "total" ADA. CDE did not include the adult education ADA when calculating the fiscal year 2001–02 allocations for TIIG. Because state law does not define "total" ADA, it is unclear whether CDE's exclusion of adult ADA is appropriate. Our recalculation, including adult education ADA, of the allocations for three of the five LEAs tested found that Los Angeles Unified, San Bernardino City Unified, and Fresno Unified would have been increased by $3.9 million, almost $36,000, and $29,000, respectively. This exclusion of adult ADA had no effect on the other two districts because one did not have adult ADA data and the other received the minimum amount set by state law.

We recommended that if the Legislature concurs with CDE's exclusion of adult ADA when making allocations for the TIIG program, it should enact language to clarify its definition of "total" ADA.

Legislative Action: Unknown.

We are unaware of any legislative action implementing this recommendation.

The California Public School Library Act program provides funds for resources such as books, periodicals, computer software, CD-ROMs, and equipment enabling school library and on-line access. State law requires CDE to calculate allocations by using regular ADA reported for the period covering July through April of the prior fiscal year. However, state law does not specifically define the term "regular" ADA. In the absence of a definition, CDE defines "regular" ADA for this program as the regular elementary and high school ADA. CDE uses a different definition when calculating the apportionment for the period covering July through December. Specifically, staff responsible for this task define regular ADA as regular elementary and high school ADA plus extended-year ADA. Applying CDE's different definitions of regular ADA to our recalculation of the allocations for six LEAs results in different allocation amounts for some districts. For example, using the definition CDE applies to the principal apportionment, our recalculation of the allocations for certain LEAs under the California Public School Library Act program results in $30,000 more for one LEA and $665 less for another.

We recommended that if the Legislature desires CDE to properly calculate allocations the way the Legislature intends, it should define "regular" ADA for the California Public School Library Act program.

Legislative Action: Unknown.

We are unaware of any legislative action implementing this recommendation.

The School Improvement Programs funds school site councils' plans to improve instruction, services, and school environment. CDE's allocation method appears inconsistent with a literal reading of the statutory allocation formula found in state law. Currently, the School Improvement Programs are sunsetted by other provisions of state law, yet the Legislature continued to fund it in the annual budget act. Our legal counsel has advised us that CDE is required to comply generally with the purposes of the program and to continue allocating funds under the sunset statutory allocation formula.

State law specifies how CDE is to determine whether schools with Kindergarten through grade six (K-6) should receive a cost-of-living adjustment (COLA). Our review of CDE's calculation found that CDE has been multiplying the predetermined rate of $106 by the annual COLA percentage instead of the same percentage increase made in base revenue limits for unified school districts with more than 1,500 ADA. The Legislature's intent in enacting Education Code, Section 52048(a) (b), was to simplify and equalize the funding system for schools with K-6. Because CDE could not provide us with the percentage increase data for the unified school districts for fiscal years 1985–86 through 2000–01, we are unable to compute the overall effect that this apparent inconsistency has on meeting the Legislature's intent.

We recommended that if the Legislature continues to fund the School Improvement Programs in the annual budget and intends that CDE make adjustments to equalize the funding for schools with K-6 using the same percentage increase made in base revenue limits for unified school districts with more than 1,500 ADA, it should enact language that provides CDE with specific instructions on how to compute the percentage increase.

Legislative Action: Unknown.

We are unaware of any legislative action implementing this recommendation.

The Miller-Unruh Basic Reading Act program (Miller-Unruh) provides a school district an allowance for the salary of reading specialists, computed by multiplying the number of reading specialists the district employs by the statewide average salary for such a position. Districts must use their funds to pay for any difference between the allowance and the teachers' actual salaries. On June 30, 1987, Miller-Unruh was sunsetted by provisions of state law, yet the Legislature continued to fund it in the annual budget act.

State law allows CDE to adopt an allocation method but has requirements for prioritizing new Miller-Unruh funds. In calculating the number of reading specialists to allocate to applicants, CDE did not follow a 1999 state law requiring the use of Academic Performance Index (API) data to define underperforming schools and did not follow the requirement of the 2001 Budget Act to consider the financial ability of those districts with the lowest base revenue limit amounts. Instead, CDE relied only on factors such as mean reading scores below 565 on the Stanford 9 tests, the number of previously authorized reading specialists, and the number of elementary schools within a district. Moreover, although CDE calculated its fiscal year 2002–03 allocation using applicants' base revenue limit amounts, it still did not use their API data. As a result, for fiscal years 2001–02 and 2002–03, those school districts with underperforming schools or the lowest base revenue limits may not have received first priority for the reading specialist positions. The State did not appropriate funds for Miller-Unruh for fiscal year 2003–04.

CDE also failed to adhere to state law regarding the reallocation of unused reading specialist positions. For fiscal year 2001–02, LEAs reported to CDE that they did not use 66 Miller-Unruh reading specialist positions. However, in fiscal year 2002–03, CDE did not reallocate 54 of these unused positions, allowing 28 LEAs to retain them. Further, CDE's billing data for fiscal year 2001–02 indicates that eight of the 28 LEAs that did not even participate in Miller-Unruh continued to receive allocations in fiscal year 2002–03 for 9.5 positions. Because CDE did not follow state law to reallocate unused reading specialist positions, some districts that could have used the specialists went without them.

We recommended that if the Legislature continues to fund the Miller-Unruh Basic Reading Act program in the annual budget, it should ensure that CDE allocates Miller-Unruh reading specialist positions in a manner that gives first priority to school districts with underperforming schools and the lowest base revenue limits. Further, it should ensure that CDE reallocates unused positions in the following fiscal year.

Legislative Action: Unknown.

We are unaware of any legislative action implementing these recommendations.

Finding #5: CDE has yet to implement fully the bureau's previous recommendations aimed at strengthening its oversight methods.

CDE's oversight methods are similar to those it had in place when the bureau conducted its last audit of CDE's monitoring efforts. In January 2000 the bureau issued a report titled *Department of Education: Its Monitoring Efforts Give Limited Assurance That It Properly Administers State and Federal Programs*. The bureau found that CDE staff did not review fund recipients based on their risk for noncompliance, did not routinely use performance measures to assess quality and effectiveness, did not conduct the number of required program reviews, and did little to ensure that organizations took corrective actions or faced sanctions when CDE discovered deficiencies. The bureau recommended that CDE make several changes in its oversight of state and federal programs, for example, establish performance measures, direct staff to adhere to audit and review cycles, monitor LEAs' corrective action, and enforce fiscal and administrative penalties as needed. Yet CDE has not taken action on some of the bureau's recommendations, citing budget cuts as the cause. Consequently, CDE lacks assurance that recipients are properly spending the funds that these categorical programs provided.

We asked CDE to provide us with its current progress and planned action for implementing 15 of the bureau's recommendations from the January 2000 report. According to CDE, it fully implemented eight recommendations, partially implemented three, and is evaluating and reconsidering the remaining four. Our review of CDE's efforts showed that it did not always identify current progress and planned actions for all of its monitoring divisions and did not always specifically

address its implementation of the bureau's recommendations. For example, in our prior report the bureau recommended that CDE modify its underlying philosophy for administering state and federal programs to restore its accountability for monitoring entities receiving federal funds. However, even though in September 2003 CDE stated that it will revise the coordinated compliance review (CCR) monitoring process for fiscal year 2004–05, it is silent as to how it will modify its underlying philosophy for other monitoring divisions administering state and federal programs. In addition, the bureau recommended that CDE prepare a department-wide monitoring plan that includes, at a minimum, various elements such as monitoring goals and identifying mandated monitoring requirements. In its one-year response to our January 2000 report, CDE stated that it convened an external advisory committee to discuss the redesign of its monitoring and accountability system. However, CDE does not describe the results of the committee meeting in its September 2003 discussion on current progress and does not address how it has prepared a department-wide monitoring plan. The bureau also recommended that CDE direct all program reviewers to adequately document the monitoring procedures performed during site visits. CDE told us that it plans to develop a checklist for every program compliance area in the CCR process; reviewers will check "yes" or "no" to demonstrate whether they have reviewed the required documentation. However, because the proposed checklist will not require CCR reviewers to document exactly what they examine during site visits, the checklist may hinder a supervisor's ability to ensure that the CCR reviewer examined all required items. Finally, the bureau recommended that CDE establish a monitoring committee composed of various representatives such as executive management, audits division, CCR reviewers, and individual program reviewers. In its September 2003 discussion of its planned action for implementing the recommendation, CDE does not state whether it will establish a monitoring committee. Rather, CDE states that the CCR reviewers meet with CDE program staff to refocus the CCR monitoring process and that its Audits and Investigations Unit periodically meets with and distributes reports to the Nutrition Services and Child Development divisions as well as the Adult Education Office to discuss their monitoring efforts.

We recommended that CDE continue to implement the bureau's January 2000 recommendations aimed at strengthening CDE's oversight.

CDE Action: Pending.

CDE stated that ongoing budget deliberations are likely to have a substantial effect on categorical programs. As such, CDE will address the bureau's recommendations accordingly and consider programmatic changes as necessary. Further, CDE will consider the resources needed to address changes in monitoring requirements.

Regarding CCRs, CDE stated that its CCR Management Unit will implement a process to follow-up with LEAs not submitting proposed resolution of findings by the required 45-day timeframe. CDE states that its program consultants will contact those LEAs that have not submitted their proposed resolutions to determine the reason for delay and to provide technical assistance if needed.

Finding #6: CDE provides no assurance that funds are spent properly for two categorical programs totaling $1.8 billion.

For the TIIG program and the Lottery Education Fund, CDE provides no assurance that funds are spent properly. CDE stated that discussions with legislative staff led it to believe that TIIG was purposely kept ambiguous to allow previous participants greater flexibility in spending funds and using the funds to embark on new programmatic areas. Thus, in February 2002 CDE informed county and district superintendents of schools and district business officials that there would be no application process, claim audit, reporting requirements, or program plans for TIIG. Further, CDE points out that the second priority of TIIG—to provide instructional improvement for the "lowest-achieving pupils in the district"—would be almost impossible to monitor because state law does not define this term. CDE believes that legislative staff are fully aware that there is little reason for oversight given such broad terms. CDE also points out that the Legislature did not intend to establish fiscal oversight because the new law deletes previous audit requirements. Specifically, previous state law for the desegregation programs under court mandate required LEAs to submit a claim for reimbursement to the SCO for the costs of the program. The claims were subject to the audit and approval of the SCO prior to payment to ensure that the LEA was complying with state law. However, current state law creating TIIG makes no mention of SCO or CDE oversight.

We recommended that if the Legislature intends CDE to provide oversight for TIIG, it should enact language specifically requiring CDE to do so. It should also enact language to define the term "lowest-achieving pupils in the district."

Legislative Action: Unknown.

We are unaware of any legislative action implementing these recommendations.

The California Lottery Act of 1984 limits the use of lottery funds to the education of students and expressly prohibits lottery funds from being spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose. Under the California Constitution, the voters must approve any changes to the purposes for which lottery funds may be spent. For example, Proposition 20 restricts a small portion of the lottery funds for the purchase of instructional materials.

Control Section 24.60(b) of the 2001 Budget Act requires CDE to conduct a survey of a representative sample of 100 LEAs to determine patterns of use of lottery funds in those agencies and report the survey results to the Legislature and the governor. Yet CDE merely collects and reports the expenditure data and does not review expenditures to ensure that LEAs did not spend them for the acquisition of real property, construction of facilities, financing or research, or any other noninstructional purpose. According to CDE, it plans to propose changes to the *Standards and Procedures for Audits of California K-12 Local Education Agencies (K-12 Audit Guide),* which the SCO issues to assist certified public accountants and public accountants to determine whether these funds were being spent in compliance with the law. Nevertheless, these efforts will not be sufficient to ensure that lottery funds are not spent on acquisitions that state law expressly prohibits.

We recommended that CDE continue its plan to propose changes to the *K-12 Audit Guide* to determine whether Proposition 20 funds are being spent in compliance with state law. Additionally, it should propose a similar change to the *K-12 Audit Guide* to ensure that funds are not being spent for the acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose.

CDE Action: Pending.

CDE stated that on November 4, 2003, the SCO's Audit Committee agreed to revise the K-12 Audit Guide to include CDE's proposed steps for determining whether Proposition 20 funds are being spent in compliance with state law. CDE also stated that the proposed K-12 Audit Guide will be sent to the Education Audit Appeals Panel for adoption into regulations.

Further, CDE stated that it proposed a change to the K-12 Audit Guide to determine whether lottery funds are being spent for the acquisition of real property, construction of facilities, or financing of research. However, CDE states that it will not propose audit procedures to determine whether lottery funds are being spent for "non-instructional purposes" unless the term is defined in statute.

SCHOOL BUS SAFETY II

State Law Intended to Make School Bus Transportation Safer Is Costing More Than Expected

REPORT NUMBER 2001-120, MARCH 2002

The Commission on State Mandates response, State Controller's Office response, and most school district responses as of March 2003[1]

Audit Highlights . . .

Our review of the School Bus Safety II mandate found that:

- ☑ *The costs for the mandate are substantially higher than what was initially expected.*
- ☑ *The costs claimed by seven school districts varied significantly depending upon the approach taken by their consultants.*
- ☑ *The different approaches appear to result from the lack of clarity in the guidelines adopted by the Commission on State Mandates (commission).*
- ☑ *Most of the school districts we reviewed lacked sufficient support for the amounts they claimed.*
- ☑ *The commission could have avoided delays totaling more than 14 months when determining whether a state mandate existed and in developing a cost estimate.*

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits examine the claims under the School Bus Safety II mandate. Specifically, we were asked to review the Commission on State Mandates' (commission) guidelines to determine if they adequately define the mandate's reimbursable activities and provide sufficient guidance for claiming reimbursable costs. In addition to examining any prior reviews of the claims, we were asked to examine a sample of claims to determine if the costs met the criteria for reimbursement. Finally, the audit committee asked us to evaluate the commission's methodology for estimating the future costs of this mandate.

Finding #1: The commission's guidance regarding claims reimbursement lacks clarity.

The guidance issued by the commission does not provide sufficient clarity to ensure that school districts claim reimbursement for mandated activities in an accurate and consistent manner. Instead, the guidance established a broad standard that has allowed a variety of interpretations by school districts as to what costs to claim. The lack of clarity in the guidance appears to be the result of several factors, including the broad language in the statutes from which the guidelines were developed. In addition, the test claim process does not require the claimant to be specific when identifying activities to be reimbursed. Further, the commission's executive director states that the commission, as a quasi-judicial body, is limited in making changes to the guidelines. Finally,

[1] School districts responding to the audit were Ceres Unified School District, Dinuba Unified School District, Elk Grove Unified School District (Elk Grove), Fresno Unified School District, and San Dieguito Union High School District. Elk Grove's response was as of October 2002.

the fact that the school districts' interests appear to have been better represented in the process than the State's also may have contributed to the ambiguity on this issue.

We recommended the Legislature amend the parameters and guidelines through legislation to more clearly define activities that are reimbursable and to ensure that those activities reflect what the Legislature intended. The guidelines should clearly delineate between activities that are required under prior law and those that are required under the mandate. To ensure that the State's interests are fully represented in the future, we recommended the commission ensure that all relevant state departments and legislative fiscal committees be provided with the opportunity to provide input on test claims and parameters and guidelines. Further, we recommended the commission follow up with entities that have indicated they would comment, but did not. Finally, we recommended that the commission notify all relevant parties, including legislative fiscal committees, of the decisions made at critical points in the process, such as the test claim statement of decision, the adoption of the parameters and guidelines, and the adoption of the statewide cost estimate.

Legislative Action: Legislation passed.

On September 30, 2002, the governor approved Assembly Bill 2781 (Chapter 1167, Statutes of 2002). This new law requires the commission to specify that costs associated with implementation of transportation plans are not reimbursable claims and requires the amended parameters and guidelines to be applied retroactively as well as prospectively.

Commission Action: Corrective action taken.

In January 2003, the commission amended the parameters and guidelines as outlined in Chapter 1167, Statutes of 2002. Additionally, commission staff implemented new procedures to increase the opportunity for state agencies and legislative staff to participate in the mandates process; notify relevant parties of proposed statements of decision, parameters and guidelines, and statewide cost estimates; and follow up with entities that are late in commenting on claims. For example, in addition to a letter initially inviting state agency participation, commission staff now send a letter notifying all parties of the tentative hearing dates for each test claim. Additionally, they send e-mail notices of release of analyses of test claims, proposed parameters and guidelines, statewide

cost estimates, and proposed statements of decision to fiscal and policy committee staff. Further, commission staff contact state agencies, claimants, and other relevant parties when comments are late.

Finding #2: Most school districts we reviewed lacked sufficient documentation for their costs.

We found that many school districts did not maintain sufficient documentation to support their claims. In fact, of the more than $2.3 million total direct costs the seven districts we reviewed submitted for reimbursement in fiscal year 1999–2000, only $606,000 (26 percent) was traceable to documents that sufficiently quantified the costs. To support the remaining $1.7 million (74 percent), these school districts relied substantially upon incomplete supporting data. School districts are to follow the parameters and guidelines issued by the State Controller's Office (Controller) when claiming reimbursement under the mandate. The districts asserted they had sufficient support, yet the documentation we reviewed lacked crucial elements, such as corroborating data, and failed to substantiate the amounts claimed for reimbursement in many instances. In addition, some school districts claimed amounts for time increases to complete school bus routes, yet they failed to maintain corroborating evidence to support these increases. Further, one district based much of the costs it claimed on questionable assumptions and even claimed for activities that appear to be beyond the scope of the mandate. Only San Diego City Unified School District had support for all the $5,171 in direct costs it claimed. Additionally, San Jose Unified School District had sufficient documentation to support nearly all the $590,000 in direct costs that it claimed.

School districts should ensure that they have sufficient support for the costs they have claimed. In addition, the commission should work with the Controller, other affected state agencies, and interested parties to make sure the language in the guidelines and the claiming instructions reflects the commission's intentions as well as the Controller's expectations regarding supporting documentation.

School District Action: Partial corrective action taken.

Ceres Unified School District, Dinuba Unified School District, and Fresno Unified School District conducted time studies to support costs associated with the mandate. San Dieguito Union High School District has taken steps to ensure that its claimed activities are supported by sufficient documentation, including ensuring that it properly maintains training records in its computer system. Elk Grove Unified School District previously stated that when the commission came out with new rules, regulations, and guidelines regarding the mandate, it would follow them.

Commission Action: Corrective action taken.

Commission staff worked with the Controller and others to amend existing parameters and guidelines and adopt new parameters and guidelines that reflected its intention and the Controller's expectations regarding supporting documentation. In January 2003, the commission adopted the Controller's proposed language, as modified by commission staff, that requires claimants to maintain documentation developed at or near the time actual costs were incurred in order to support their reimbursement claims. The commission intends to address the language in all future parameters and guidelines, and in existing parameters and guidelines as they are amended.

Finding #3: The commission did not identify the true fiscal impact of the mandate until three years after the law was passed.

The Legislature was not aware of the magnitude of the fiscal impact of its action when it passed the 1997 law that comprises the majority of the School Bus Safety II mandate. Three different entities that analyzed the 1997 law before its passage believed that it would not be a state mandate and thus the State would not have to reimburse the districts' costs. Further, these entities advised the Legislature that annual costs would be no more than $1 million, considerably less than the $67 million in annual costs that the commission is now estimating. This misperception of the likely costs prevailed until January 2001, when the commission finally released a statewide cost estimate. Although the commission is required to follow a deliberate and often time-consuming process when determining whether a test claim is a

state mandate and adopting a statewide cost estimate, it appears that it could have avoided a delay of more than 14 months. Consequently, the Legislature did not have the information necessary to act promptly to resolve the issues of possible concern previously discussed in this report. Finally, commission staff believe that waiting for actual reimbursement claims reported to the Controller and using this data to estimate statewide costs for the mandate results in more accurate estimates. However, commission staff have not sought changes to the regulations to include sufficient time for waiting for the claim data.

We recommended the commission ensure that it carries out its process for deciding test claims, approving parameters and guidelines, and developing the statewide cost estimate for mandates in as timely a manner as possible. If the commission believes it necessary to use actual claims data when developing the statewide cost estimate, it should consider seeking regulatory changes to the timeline to include the time necessary to obtain the data from the Controller.

Commission Action: Corrective action taken.

Commission staff implemented new procedures to ensure that it carries out its process in as timely a manner as possible. Specifically, they now propose statewide cost estimates for adoption approximately one month after they receive initial reimbursement claims data from the Controller. They also close the record of the claim and start their staff analysis if claimant responses are not submitted timely. Claimants who choose to rebut state agency positions at a later time may provide rebuttal comments to the draft staff analysis. Further, the commission initiated a rulemaking package in February 2003 to incorporate the current methodology for developing statewide cost estimates into the commission's regulations.

CALIFORNIA'S EDUCATION INSTITUTIONS

A Lack of Guidance Results in Their Inaccurate or Inconsistent Reporting of Campus Crime Statistics

REPORT NUMBER 2002-032, DECEMBER 2003

California education institutions' and the California Postsecondary Education Commission's responses as of December 2003

Audit Highlights . . .

Our review of California's education institutions' compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) revealed the following:

- ☑ *The Clery Act does not always provide clear definitions.*
- ☑ *Institutions sometimes report inaccurate or incomplete statistics in their annual reports.*
- ☑ *Institutions have significant discretion in identifying reportable locations.*
- ☑ *Institutions do not always request sufficient detail on crimes from campus security authorities and police agencies to avoid duplication or exclusion of a reportable incident.*
- ☑ *Not all institutions disclose required campus security policies and notify current students and employees of the annual reports' availability.*

Chapter 804, Statutes of 2002, requires the Bureau of State Audits (bureau) to report to the Legislature the results of its audit of not less than six California postsecondary education institutions (institutions) that receive federal student aid. The bureau was also directed to evaluate the accuracy of the institutions' statistics and the procedures they use to identify, gather, and track data for publishing, disseminating, and reporting accurate crime statistics in compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). We evaluated compliance with the Clery Act at California State University, Sacramento (Sacramento); City College of San Francisco (San Francisco); San Diego State University (San Diego); University of California, Davis (Davis); University of California, Santa Barbara (Santa Barbara); and University of Southern California (USC).

Chapter 804, Statutes of 2002, also requires the California Postsecondary Education Commission (Commission) to provide on its Internet Web site a link to the Internet Web site of each California institution of higher education that includes on that Web site the institutions' criminal statistics information.

Finding #1: Institutions receive little guidance on converting California's definitions of crimes to Clery Act reportable crimes.

The Clery Act requires eligible institutions to compile crime statistics in accordance with the definitions used in the uniform crime reporting system of the United States Department of

Justice, Federal Bureau of Investigation (FBI). Definitions for crimes reportable under the Clery Act can be found in both the FBI's Uniform Crime Reporting Handbook (handbook) and federal regulations. If the United States Department of Education (Education) finds that institutions have substantially misrepresented their crime statistics, it may impose a civil penalty of up to $25,000 for each violation or misrepresentation and may suspend or terminate the institution's eligibility status for Title IV funding. Although some state and federal entities provide limited guidance to some institutions, it appears that no single governing body exists within California to provide guidance to all institutions required to comply with the Clery Act on such matters as converting California's definitions of crimes to those reportable under the Clery Act. This lack of comprehensive guidance can result in the inconsistent reporting of crime statistics by the institutions and exposes them to Educations' penalties.

To provide additional guidance to California institutions for complying with the Clery Act, the Legislature should consider creating a task force to perform the following functions:

- Compile a comprehensive list converting crimes defined in California's laws to Clery Act reportable crimes.
- Issue guidance to assist institutions in defining campus, noncampus, and public property locations, including guidelines for including or excluding crimes occurring at other institutions.
- Obtain concurrence from Education on all agreements reached.
- Evaluate the pros and cons of establishing a governing body to oversee institutions' compliance with the Clery Act.

Legislative Action: Unknown.

Finding #2: Some institutions do not maintain documentation of the incidents they include in their annual reports and others inaccurately report the number of incidents.

The six institutions we visited have established procedures to capture what each institution believes are reasonably complete crime statistics. Although the *Federal Student Aid Handbook* requires institutions to retain records used to create their annual reports, including the crime statistics, for three years after the

due date of the report, only Sacramento retained documentation to identify the specific incidents that were included in its 2002 annual report. San Diego was only able to provide documentation to identify the specific incidents it reported for calendar years 1999 and 2001. We were able to re-create the statistics for San Francisco using data from crime reports and other relevant documents. Davis, Santa Barbara, and USC did not maintain their documentation in a manner that would allow us to identify the specific incidents included in their annual reports; however, Davis and Santa Barbara chose to re-create their statistics. We were unable to re-create and verify the statistics for USC. According to our analysis, institutions mostly over-reported their crime statistics. However, except for Davis and San Francisco, the percentage of error was generally small.

To improve the accuracy and completeness of their data, we recommended that five of the six institutions retain adequate documentation that specifically identifies the incidents they include in their annual reports.

Institutions' Actions: Pending.

The education institutions generally agreed with our recommendation and included plans to implement either systems or methods to retain adequate documentation of the incidents they include in their annual reports.

Finding #3: Institutions do not always have an adequate process for accurately identifying crimes at reportable locations.

To comply with the Clery Act requirement for reporting the statistics for crimes occurring in or on noncampus buildings and property, and on public property, institutions must determine which locations meet the Clery Act definitions of noncampus and public property. Two of the six institutions we visited did not have a sufficient process for identifying all reportable noncampus locations in their statistics. Another institution did not differentiate in its annual report, crimes occurring on campus from those occurring at public property locations, such as streets surrounding the campus. When institutions do not adequately capture and report statistics for all noncampus and public property locations, they risk distorting actual levels of crime.

To improve the accuracy and completeness of their data, we recommended that four of the six institutions should establish procedures to ensure that they accurately identify all reportable locations and report all associated incidents.

Institutions' Actions: Pending.

The education institutions generally agreed with our recommendation and included plans to implement policies and procedures to ensure that they identify all reportable locations and report all associated incidents.

Finding #4: Collecting insufficient information from campus security authorities and police agencies can lead to other errors.

The Clery Act requires institutions to collect crime statistics from campus security authorities and state or local police agencies (police agencies). However, the institutions did not always collect sufficient detail, such as the time, date, location, and nature of an incident, to determine if the incidents are reportable. Specific details of an incident aid in verifying whether it is reportable and whether the same crime has been reported by more than one of its sources. Institutions that do not collect sufficient detail on an incident may over-report actual crimes by counting an incident more than once.

To improve the accuracy and completeness of their data, we recommended that three of the six institutions should establish procedures to obtain sufficient information from campus security authorities and police agencies to determine the nature, date, and location of incidents.

Institutions' Actions: Pending.

The education institutions generally agreed with our recommendation and included plans to request sufficient information on incidents, including the nature, date, and location of the incident.

Finding #5: Institutions do not always comply with Clery Act requirements.

The Clery Act outlines numerous campus security policies that institutions must disclose in their annual reports. Although most of the institutions make reasonable efforts to disclose their policies, they can do more to ensure compliance with all statutory requirements. The Clery Act and federal regulations also require institutions to distribute their annual reports to enrolled students and current employees and to notify prospective students and employees of the availability of the annual report. San Francisco is the only one of the

six institutions we reviewed that does not do so. In addition, the Clery Act requires that institutions make timely reports to the campus community on Clery Act reportable crimes considered a threat to other students and employees. However, only one of the six institutions established a time frame to report incidents to the campus community.

To improve the accuracy and completeness of their data, we recommended that three of the six institutions should establish procedures to include all required campus security policies in their annual reports. Further, we recommended that two institutions should establish procedures to notify all current and prospective students and employees of the reports' availability. Finally, we recommended that five of the six institutions should establish a policy to define timely warning and establish procedures to ensure that they provide timely warnings when threats to campus safety occur.

Institutions' Actions: Partial corrective action taken.

The education institutions generally agreed with our recommendations and stated that they will make the necessary changes to correct the deficiencies noted in our report.

However, only four of the five institutions agreed with our recommendation concerning timely warnings and included plans to implement a policy. Santa Barbara does not believe that it should establish a policy to define what it considers a timely response for disseminating information to the campus community on Clery Act reportable crimes considered to be a threat to other students and employees. This is because Education has stated that it is not necessary to define timely reports. However, Education also stated that campus security authorities should consult their local law enforcement agencies for guidance. Thus, nothing precludes Santa Barbara from implementing our recommendation to establish a policy to define timely warnings.

Finding #6: The Commission's Web site does not link users to the institutions' Web sites.

State law requires the Commission to provide a link to the Web site of each California institution containing criminal statistics information. However, as of September 4, 2003, the Commission's Web site did not include links to almost 300 campuses listed on the Web site of Education's Office of

Postsecondary Education. The Commission believes that it would need assistance from the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs to maintain a comprehensive list of institutions and their Web sites. Without such a list, the Commission is unable to provide links to the Web site of each institution, as state law requires.

To ensure that it provides links to the Web site of each California institution that includes on that Web site criminal statistics, the Commission should work with the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs to update its Web site. Additionally, the Commission should periodically reconcile its Web site to the federal Web site.

Commission Action: Partial corrective action taken.

The Commission stated that it is working with the Bureau for Private Postsecondary and Vocational Education to ensure that all links are included on the Commission's Web site. Further, the Commission reported that it will regularly check with Education to ensure that it has complete information. Finally, the Commission stated that it has updated its Web site to include links to all California institutions on Education's Web site.

CALIFORNIA STATE UNIVERSITY

Its Common Management System Has Higher Than Reported Costs, Less Than Optimal Functionality, and Questionable Procurement and Conflict-of-Interest Practices

REPORT NUMBER 2002-110, MARCH 2003

California State University response as of September 2003

Audit Highlights . . .

Our review of the California State University's (university) Common Management System (CMS) revealed the following:

- ☑ *The university did not establish a business case for CMS to define its intended benefits and associated costs and ensure that the expenditure of university resources is worthwhile.*
- ☑ *The university's previous cost projections understated the full costs of CMS over its now nine-year project period; these costs—including an estimated $269 million for maintenance and operations—are now expected to total $662 million.*
- ☑ *Problems exist that cast doubt on whether CMS will achieve all the objectives intended, nor offer what could have been achieved from a systemwide project.*

continued on next page

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the California State University's (university) Common Management System (CMS) project. Specifically, the audit committee asked that we identify the initial cost estimates and current projected costs for CMS including integration costs, consultant costs, data center costs, and the university's funding sources for these related expenditures. Additionally, the audit committee asked us to identify the university's needs, benefits, and return on investment from CMS and its supporting data center. The audit committee also asked us to review the university's management and oversight for CMS and its supporting data center, the university's process to select the software, hardware, and consultants contributing to the CMS project, and how implementation has affected growth in employee positions and workload. The audit found the following:

Finding #1: The university did not develop a business case for CMS.

The university did not establish a business case for CMS by preparing a feasibility study report that evaluated the need for and the costs and benefits of this new administrative computer system. Without such a feasibility study, the university lacks persuasive answers to the Legislature's questions about its use of state resources for CMS and its supporting data center.

The Public Contract Code requires state agencies to follow the State Administrative Manual (SAM) when acquiring information technology (IT) goods and services. To ensure compliance with the code's intent, the SAM procedures include a need and

- ☑ *Although the university followed recommended procurement practices to acquire data center services, its procurements for software and consultants on the project raise questions about the fairness and competitiveness of the university's practices.*
- ☑ *The university did not do enough to prevent or detect apparent conflicts of interest on CMS-related procurements.*

cost-benefit analysis. According to SAM, a feasibility study "must establish the business case for the investment of state resources in [an IT] project by setting out the reasons for undertaking the project and analyzing its cost and benefits." However, under Public Contract Code Section 12100.5, the university is exempt from certain state oversight and approval of its IT procurements. The university believes the Public Contract Code further exempts it from following SAM regarding feasibility study reports, although the statute requires the university to adopt policies and procedures that further the legislative policy expressed in the code.

Regardless of the applicability of SAM feasibility study procedures to its own practices, the university would have been in a stronger position to answer legislative and public questions concerning the need for CMS if it had performed a need and cost-benefit analysis consistent with SAM. Had the university conducted a feasibility study that mirrored the SAM requirements, it would have maintained sufficient documentation to support the project's intent, justification, nature, and scope. Additionally, performing such a feasibility study would have provided the university with an opportunity to quantify the increased business process efficiencies expected from CMS. Although the university has given various reasons for pursuing a systemwide implementation of CMS, individually and collectively they do not justify spending $662 million over the nine-year project period, an estimated $393 million in one-time costs and $269 million in maintenance and operations costs, without establishing the business case.

To ensure that the university's future IT projects are appropriate expenditures of state resources, the university should adopt policies and procedures that require a feasibility study before the acquisition and implementation of significant IT projects. Such a feasibility study should include at least a clearly defined statement of the business problems or opportunities being addressed by the project, as well as an economic analysis of the project's life-cycle costs and benefits compared with the current method of operation. The university should also establish quantitative measures of increased business process efficiencies to measure the benefits achieved through common management and business practices.

University Action: Partial corrective action taken.

The university stated that it issued an executive order establishing policies and procedures requiring feasibility studies for significant IT projects. Additionally, the university asserted that it worked with the Legislature on specific statutory requirements for feasibility studies regarding university IT projects and will revise its policies pending new statutory requirements and to provide the more comprehensive guidance we recommended in our May 2003 letter to the chancellor. The university further indicated that it would involve its existing quality improvement process to measure process efficiencies and would begin with producing a list of qualitative and quantitative measures of process efficiencies. It expected to put in place a structure for collecting these measurements by December 2003.

Finding #2: The university's CMS project costs exceed initial estimates, and its cost monitoring procedures are inadequate.

Recent project cost data indicate that the university's earlier 1998 and 1999 cost estimates of between $332 million to $440 million for its CMS project understated the project's costs. A more comprehensive review of actual CMS expenditures and projections in June 2002 revealed that total project costs for the types of expenses the university initially estimated—what it considers to be "new" costs—now total $482 million. Additionally, this $482 million excludes other project-related campus costs the university did not include in its estimates because its focus was only on "new" costs. These other project-related costs include $63 million in implementation costs charged to other campus budgets and $117 million in campus maintenance and operations costs over the now nine-year development and implementation period, bringing the total projected costs to $662 million.

Moreover, the university cannot accurately report on the project's expected systemwide costs because it has not established an ongoing process to capture and monitor the costs campuses actually are incurring or projecting to incur. Although it tracks central project costs, the chancellor's office does not track campus costs because it believes they are a campus responsibility. As a result, the university was not aware of its total systemwide costs for the CMS project until campuses had reported their actual and projected CMS costs in a June 2002 survey. Furthermore, the university has not reported

to the Legislature a clear picture of the project's financial status. In its November 2002 Measures of Success report to the Legislature, the university reported the project budget for fiscal years 2000–01 and 2001–02 at $30 million and $31 million, respectively, and the actual costs "at budget;" however, it did not report campus costs which totaled $29 million and $47 million in those respective fiscal years.

Additionally, although the university tracks central project costs, it did not use project status reports that periodically track variances between the actual and projected CMS costs on the one hand and the initial and revised CMS project budgets on the other. Prudent project management calls for establishing approved initial budgets and tracking actual costs, enabling managers to report and monitor project progress through periodic status reports that analyze variances between the planned budget and the actual costs. These variances measure project performance and assist management in controlling the project schedule and costs by predicting shortcomings and reducing the risk of exceeding the budget.

Similarly, the university does not have a comprehensive systemwide funding plan for the CMS project. The university's funding plan only addressed expected CMS expenditures at the chancellor's office, not any campuses' funding needs. The chancellor's office expected campuses to determine their own costs and funding necessary to implement CMS. However, our funding survey determined that only seven of 23 campuses were able to provide funding plans for their projected CMS costs. When it does not finalize funding for all CMS costs up front, the university lacks a clear understanding of how the CMS project funding needs may affect its ability to meet other priorities, such as academic needs.

To ensure that it adequately monitors and controls project costs, the university should determine the quarterly cost information it needs to adequately monitor the project. After making this determination, the university should establish a mechanism to collect and compile comprehensive and systemwide project cost information that includes campus costs. Further, the university should compare the collected cost information against the approved systemwide project budget, publishing this information in a quarterly status report. The university should also ensure that it includes all costs of the CMS project in its annual reports to the Legislature, as well as ensure that the CMS

project and all future IT projects have a systemwide funding plan that covers the entire scope of the project in place before beginning a project.

University Action: Partial corrective action taken.

The university stated that it was in the process of determining the campus cost information necessary to monitor the project and establishing a mechanism to collect and report this data on a systemwide basis. It expected to complete these tasks by the end of October 2003. Additionally, the university stated that it would implement annual reporting of campus and central expenditures in its annual Measures of Success Report to the Legislature beginning with the November 2003 report. Finally, the university asserted that it will ensure that future IT projects have comprehensive funding plans and will ensure that its CMS project funding plan includes both its central CMS and campus plans. It expected to establish a process for collecting and reporting CMS funding plans for each campus and combine these in a systemwide report by December 2003.

Finding #3: CMS may not achieve all of the university's business objectives due to the university's weak planning efforts early in the project and its limited expectations with regard to systemwide reporting.

The university expects to accomplish certain business objectives with its CMS project, but problems noted during our review indicate that CMS may neither fully achieve those objectives nor offer what could have been achieved from such a systemwide project. Doubts about CMS fully accomplishing its business objectives and achieving the potential of a systemwide implementation can be traced to the university's weak efforts early in the planning process and limited expectations with regard to systemwide reporting.

Although it initially planned to make as few modifications as possible to the PeopleSoft software, the university ultimately found that it needed to make about 200 modifications to the initial versions of the software applications to meet business requirements and other campus needs. Compounding the time and costs for modifications, PeopleSoft periodically releases new versions of the CMS software, and the university intends to keep current with those releases. Thus, the university will need to reapply many of the CMS modifications to the new

releases, adding potentially significant maintenance costs in reapplying, testing, and implementing these modifications. Although we recognize that not all modifications take the same amount of time and effort, we are unable to quantify which modifications were most costly because the university did not track modification costs. Moreover, before purchasing the software, the university did not sufficiently evaluate its specific business processes and software to understand up front which business processes the potential vendors' software products could accommodate and which software products would require modification to meet its business needs. Failing to make these evaluations up front, the university had no basis to anticipate the extent of software modifications it eventually would make or the loss of functionality some campuses would experience.

Furthermore, the university intended CMS to meet the business objectives of providing ready access to current, accurate, and complete administrative information, as well as establishing standards for common reporting processes. However, the university is not implementing the CMS software throughout the university in a manner that will maximize systemwide reporting. Instead of installing shared databases, the university has been installing separate and distinct databases for all but two campuses. Separate databases must be separately maintained and tested. Additionally, a wide variation in functionality across campuses will result because most campuses are not planning to implement all the modules or sub-modules (functionality elements) purchased under the PeopleSoft agreement and the functionality elements the university created for CMS, because the PeopleSoft software did not provide the needed functionality. This lack of uniformity raises the cost of implementing and maintaining the CMS software and limits its usefulness in producing systemwide reports.

The university has also experienced problems with fixing software errors and with information security. Although providing updates and fixing some minor software errors to its newly modified CMS software is expected, the university also needed to make corrections and redistribute some of these CMS software updates and fixes. When the university takes more than once to provide complete updates or fix some errors, campuses must spend more time and money redoing their work or assume the risk of potential system errors. Furthermore, the university has not fully addressed the lack of security around a search feature in the PeopleSoft software that apparently allows employees access to the confidential information of other

employees and students beyond what is needed to do their jobs. The university might have reduced the need to rework software fixes and improved information security had it established an effective quality assurance function. Also, hiring an independent oversight consultant may likely have assisted the university in identifying and addressing quality assurance and information security deficiencies earlier in the CMS project.

Finally, the university's procurement approach of identifying, procuring, and implementing its own solution caused it to assume substantially all the responsibility for the CMS project, sharing little if any project risk with vendors and consultants. The university procured the software for the CMS project in September 1998, ultimately agreeing to pay PeopleSoft $37 million to use the software for the next eight years and for an initial amount of training and consulting services. It then hired consultants on an hourly basis to help it identify campus business needs, to design and develop the modifications needed for the software, and to help implement this software at campuses throughout the university system. However, the university could have structured its procurement so that, in return for a fixed fee, the winning firm would be responsible primarily for the successful implementation of whatever software product the university decided to use. The university then could have entered into a contract that paid the firm only upon completion of key deliverables, such as the successful modification of functionality elements within the software to meet the university's needs. Structuring contracts to pay only after deliverables have been tested and accepted is a recommended procurement practice. Instead, the university chose to purchase only the software, and it is conducting the substantial amount of work, with the assistance of consultants paid through additional contracts, necessary to ensure that the software is modified and implemented properly. The university concluded that it was best for it to modify and implement the software, but it never performed sufficient analysis to determine that a university installation provided the best value. As a result, it assumed the considerable financial and business risk involved in ensuring that the software meets its business needs and is implemented successfully at campuses.

To ensure that it achieves its stated business objectives for CMS, the university should continue its recently established practice of tracking actual hours spent on software modifications and consider this information when estimating the cost and time associated with developing and applying future software

modifications. Also in the future, the university should evaluate its specific business processes against vendor products before procuring IT systems, so as to select the product that best accommodates the university's specific needs. The university should also reassess the design of CMS and evaluate the economies that can be achieved by reducing the number of separate CMS databases. Similarly, the university should define the scope and associated costs of CMS by identifying the specific functionality that is necessary and establish a minimum level of functionality that all campuses will implement to not only minimize costs, but also to facilitate common systemwide reporting.

Additionally, to ensure it adequately addresses CMS project quality and information security, the university should establish a quality management plan and continue its efforts to establish an effective quality assurance function for the CMS project. Such steps may include hiring an independent oversight consultant to perform various quality assurance functions and to evaluate the progress of the CMS project. The university should also establish a policy on sensitive information requiring that campuses implement the use of confidentiality agreements for all employees with access to the CMS system.

Finally, the university should plan future procurements to share project risk with vendors and consultants, such as allowing them to propose their own solutions and structuring contracts to protect the university's interest, including provisions to pay only after deliverables have been tested and accepted.

University Action: Partial corrective action taken.

The university stated that it established a practice to record the actual hours spent to develop modifications and that it will use the data for ongoing maintenance decisions and planning future upgrades. Additionally, it stated that in the requirement development phase of future projects, it will consider the impact of current business processes on vendor selection before procuring IT solutions or software when best practices warrant such a review and that it implemented a policy that requires this consideration of business processes related to vendor selection. Further, in response to our recommendation to reassess the design of CMS, the university indicated that it would evaluate the economies and benefits that could be achieved by alternative technology approaches.

It stated that it would solicit contractors for this assessment by December 2003. The university also stated that it defined and published the scope of the CMS baseline core functionality and that campuses will report costs based on this baseline core functionality, as well as report on the cost of planned functionality outside of this baseline. The university indicated it would adjust campus projections to reflect changes in campus implementation plans. The university stated that by December 2003 it would evaluate the opportunity for improvements in systemwide reporting using CMS and develop documentation for each area of systemwide reporting to identify the data required, the source of the data, the edits useful for quality assurance, and the schedule for data submissions.

The university also stated that it implemented a quality assurance function for CMS releases and is developing a quality assurance plan. Further, the university indicated that although it has conducted internal discussions on the need for oversight consulting on CMS, that by the end of October 2003, it would complete its determination of best practices in higher education regarding independent oversight consultants. The university also stated that it issued policy and a letter to campus presidents related to protection and control of confidential data, including the required use of confidentiality agreements. It indicated that it was collaborating with the software vendor to improve access security in the base software product and expected completion in late fall 2003. Finally, the university asserted that it would continue to use risk sharing with vendors when circumstances are consistent with industry best practices and when marketplace conditions make such an approach feasible, appropriate, and cost-effective. Additionally, it stated that it will revise its policies regarding risk sharing to comply with any new legislation and to provide the assurance of change we recommended in our letter to the chancellor in May 2003.

Finding #4: The processes the university used to select the software vendor and consultants on the project did not clearly demonstrate best-value procurements.

The university's process to select the software vendor and consultants for the CMS project did not clearly demonstrate best-value procurements that consider both quality of proposals

and overall costs. For example, the procurement process by which the university selected a single CMS software vendor raises questions about whether the university used a fair and objective competitive process. Specifically, its solicitation document did not provide for a method to select only one vendor, although the university decided late in the process that it needed such a method. Moreover, when the selection narrowed to two vendors, the university did not formally modify the procurement process nor use quantitative scoring to select a best-value vendor objectively. Likewise, the university could not demonstrate that it resolved issues that the procurement evaluation teams raised for the software ultimately selected. The university also could not show us how it determined that the cost differences between the competing vendors were immaterial. Further, the university's analysis comparing the finalist vendors' costs did not compare costs for a systemwide implementation and was based on a fraction of the actual maintenance and operations costs now estimated.

Additionally, the university's practice of employing consultants to work on the CMS project without appropriate competition raises more questions about the propriety of its business dealings. For instance, the university hired consulting firms under sole-source contracts for reasons that appear questionable. Further, although it recommends a discussion with consulting firms about scope of work and rates, the university does not require the solicitation of offers from more than one prequalified consultant with university-awarded master agreements. As a result, the university has not always solicited offers from multiple prequalified consultants before procuring their services and, therefore, cannot demonstrate that it procured best-value services.

To ensure it uses recommended practices in its future procurements, the university should use the procurement process appropriate to the procurement objective, restarting the process or formally modifying the process through written notification to vendors as the objectives change. The university should also establish a practice of using quantitative scoring to clearly demonstrate that it followed an objective evaluation process to identify the best-value vendor. It should also document the resolution of evaluation team concerns to demonstrate that it considered and addressed or mitigated these concerns. Finally, the university should enforce its policy that prohibits the use of sole-source contracts when multiple

vendors or consultants are available and establish a policy for the use of its master agreements to require the solicitation of offers from at least three prequalified vendors or consultants.

University Action: Partial corrective action taken.

The university stated that it issued a bulletin reminding campuses to use the procurement process appropriate to the procurement objective. Additionally, it indicated that it modified existing policies to require the use of quantitative scoring to identify the best-value vendor. However, although previously the university stated that it would further review its procedures for the resolution and documentation of concerns arising during evaluation processes, its September 2003 update did not address this topic. Further, the university stated that it reissued its sole source policy and guidance to campuses and revised and reissued its policy and guidelines for master agreements requiring campuses to solicit at least three offers when using these agreements.

Finding #5: Data center services have improved, but data warehousing needs remain.

Unlike its procurement of the CMS software, the university did use recommended procurement practices to select the outsourced data processing services needed to run CMS. The university conveyed its needs to potential vendors, asking them to propose solutions. The university also used an objective selection process with weighted criteria to evaluate potential vendors. Further, the university shared risk with the vendor by establishing contract terms aimed at holding the vendor accountable for meeting preestablished service levels. When it experienced inadequate service from the data center in the early months of the contract, the university used the procedures outlined in the contract to help raise the data center services to agreed levels. The service levels have improved in recent months, with the vendor achieving or coming within one percentage point of achieving targets in the five months ending in November 2002.

Although the university worked to address its CMS data processing needs and is implementing more efficient means for reporting, it only now is starting to address campus CMS data storage and retrieval (data warehousing) needs. The outsourced data center processes CMS transactions, but is not designed for data warehousing. Data warehousing can provide for optimum

data storage and reporting, such as enabling the production of reports that contain historical analysis of university operations. Largely because of concerns over CMS project resources, the university reportedly removed data warehousing from the CMS project scope early in the project and made this important component a campus responsibility, not including the costs as part of its CMS project costs. Now, with some campuses expressing an interest in data warehousing services, the university is addressing the data warehousing needs for a voluntary consortium of campuses and expected to release its final version of the data warehousing model in early 2003.

To ensure it continues to receive improved service levels from the data center vendor, the university should continue to monitor and take action to resolve problems with the vendor. The university should also ensure that it provides campuses with the means to effectively and efficiently store and retrieve data needed for management reporting by expediting the CMS data warehousing project, and it should include the CMS-related costs of data warehousing in its CMS project costs.

University Action: Partial corrective action taken.

The university stated that it would continue to monitor and manage the performance of the CMS data center and take appropriate and prompt action to assure appropriate service levels. Further, it indicated that it is in the process of determining the feasibility of data warehousing for the CMS project. The university stated that by December 2003 it would define the requirements for data warehousing on campuses and systemwide as a beginning step to a feasibility study regarding data warehousing as part of the CMS project.

Finding #6: The university's oversight over potential conflicts of interest needs improvement.

The university did not do enough to detect or prevent conflicts of interest by decision makers for CMS-related procurements. It did not identify all necessary employee positions in its conflict-of-interest code as designated positions required to file annual statement of economic interest forms (Form 700s) and did not always retain and make available certain required filings of these forms. Additionally, the university did not require consultants on the project to file Form 700s, although they performed duties similar to employees in designated positions. Further, the

university failed to provide for adequate disclosure processes to help ensure that individuals participating in the procurement process were free from conflicts. Also, it did not provide appropriate guidance to employees to identify potential conflicts using the Fair Political Practices Commission (FPPC) process for determining conflicts. Finally, it lacks a policy that spells out for university employees what constitutes "incompatible activities," such as accepting anything of value from anyone seeking to do business with the university, and does not require that employees in designated positions receive regular ethics training.

Our review of Form 700s found an employee who appeared to have a conflict of interest while participating in the CMS software procurement decision and an employee who possibly may have used nonpublic information to benefit personally. Conflicts of interest cast a shadow over the university's reputation for fair and honest business practices and undermine public confidence in the university's procurement decisions. Moreover, if an employee uses information not available to the general public for personal financial gain, it not only harms the university's reputation but also is unlawful.

To ensure that the university takes appropriate action to prevent potential conflicts of interest in the future, the Legislature should consider requiring the university to provide periodic ethics training to designated university employees similar to that required by the Government Code for designated state employees. Additionally, the Legislature should consider requiring the university to establish an incompatibles activities policy for university employees similar to that addressed in Government Code, Section 19990.

Similarly, the university should conduct periodic conflict-of-interest training, such as the ethics training required of state agencies for designated employees, and should establish an incompatible activities policy that it communicates to university employees. The university should also enhance its disclosure form to indicate what constitutes a conflict, identify all participating vendors, and state the prohibition of using nonpublic information to benefit personally; and it should require all employees to sign this form before participating in the procurement process. Additionally, the university should update its conflict-of-interest code to classify all positions responsible for evaluating or overseeing vendors or consultants and should require consultants that serve in a staff capacity

and that participate or influence university decisions to file Form 700s. Further, university human resources staff should be reminded of their responsibility to collect, retain, and make available filed Form 700s for the required seven-year period. Finally, the university should remind its employees of the prohibition against using information not available to the public to benefit financially, and discipline infractions if necessary.

Legislative Action: Legislation proposed.

The Legislature introduced and amended Senate Bill 971 which, among other items, would require the university to offer to each of the university's designated employees, on at least a semiannual basis, an orientation course on the relevant employee ethics statutes and regulations that govern official conduct. Additionally, the Legislature introduced and amended Assembly Bill 491, which, among other items, would require the university to develop guidelines for IT projects that are consistent with Section 19990 of the Government Code. Both bills were placed on inactive status in September 2003.

University Action: Partial corrective action taken.

The university stated that by December 2003 it would develop a comprehensive web-based conflict-of-interest and ethics training program for delivery to designated employees who will be required to certify completion of the training. The training includes coverage of the Fair Political Practices Commission (FPPC) eight-step process for assessing potential conflicts and employees' responsibility to seek the advice of counsel when questions exist. Additionally, the university stated that it presented a workshop in February 2003 to update university filing officers on the FPPC filing requirements and that its counsel reviewed conflict-of-interest issues and would fully cooperate with any action taken by the FPPC. The university also indicated that it distributed a memorandum identifying key laws that govern the behavior and activities of university employees in areas of incompatible activities, conflict of interest, and ethics.

The university stated that it revised and reissued requirements for procurement disclosure forms. The university reported it enhanced its procurement disclosure form to clearly indicate what constitutes a conflict of interest and state that evaluators are prohibited from using

nonpublic information to benefit personally. Further, the university stated that it would ensure that all participants understand the scope and nature of their commitments when participating in a procurement activity, and that, when possible, it would list on the disclosure form all vendors participating in the procurement. It also stated that it advised university officials to review carefully the existing designated position list to determine whether existing positions require incorporation and stated that in determining its designated positions, filing officers would identify employees in positions responsible for evaluating and overseeing vendors and contractors. It further indicated that it would require consultants to file Form 700s when they are hired to make or participate in making decisions that foreseeably will have a material effect in a university financial interest. The university asserted that it reminded filing officers in February 2003 of the requirement to collect, retain, and make available for the required seven-year period the filed Form 700s and that it would repeat this reminder each year. Finally, the university indicated that the memorandum identifying key laws that it distributed addresses the prohibition against employees using information not available to the public to benefit financially.

UNIVERSITY OF CALIFORNIA

Its Partnership Agreement Could Be Improved to Increase Its Accountability for State Funding

Audit Highlights . . .

Our review of the University of California's (university) partnership agreement revealed the following:

- ☑ *Of 22 objectives included in the agreement, 9 contain outcomes that identified quantifiable and clear targets to measure improved performance, and 13 do not. Thus, the university's ability to demonstrate its success in using state funds to achieve the objectives is limited.*
- ☑ *The university's expenditures for support salaries increased at a faster rate than its expenditures for academic staff salaries within instruction, research, and public service between 1997 and 2001—two years before and three years after the partnership agreement went into effect.*
- ☑ *Certain factors have an impact on the 4.8 primary course-to-faculty ratio the university agreed to maintain as part of the partnership agreement. For example, we found that 13 percent of the primary courses taught by regular-rank faculty had enrollments of two students or fewer.*

REPORT NUMBER 2001-130, JULY 2002

The University of California's response as of July 2003

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct a comprehensive audit of the University of California's (university) performance under the partnership agreement. As part of the audit, the audit committee asked that we evaluate the effectiveness of the methods the university has established to allocate the increased state funding it receives and the procedures it has developed to measure campuses' performance in meeting the goals of the partnership agreement. In addition, it requested that we compare university expenditures before and after the partnership agreement to determine how the university has allocated and expended its increased state funding. Further, we were to determine whether the university has implemented a state-supported summer term with services similar to the regular academic year, and we were to analyze the university's annual Undergraduate Instruction and Faculty Teaching Activities report (instructional report) for the past three years and present conclusions reached on any trends we identified.

Finding #1: The university cannot fully measure its accomplishments because the partnership agreement does not always establish measurable and clear targets.

In May 2000, the university and the governor entered into a four-year partnership agreement encompassing fiscal years 1999–2000 through 2002–03. The overall intent of the agreement was to provide the university with funding stability in exchange for its progress toward meeting certain objectives included in the partnership agreement. As a result, although the Legislature is not a party to the partnership agreement, the Legislature and the governor appropriated additional state funds during the first two years of the partnership agreement that they expected the university to use, in combination with

existing resources provided by the State, to accomplish objectives identified in the partnership agreement. However, although the partnership agreement contains clear and measurable targets for some of the objectives it outlines, it does not contain such targets for many others. Therefore, the university's ability to demonstrate its success in using state funds to achieve the partnership agreement's objectives is limited.

Specifically, in our review of the 22 objectives specified in the partnership agreement, we found that only 9 contain outcomes that identify quantifiable and clear targets to measure improved performance. For the other 13 objectives, the partnership agreement does not identify clear and measurable targets, even when the objectives lend themselves to the establishment of such targets. For example, 1 objective states that beginning in 2001, the university should increase the percentage of students from low-participating high schools who enroll in the university. A target for this objective might identify a specific percentage and establish a deadline for the university to reach it, while stating that the university could revise these goals as circumstance warranted. However, the agreement contains no such target.

We recommended that the university propose establishing clear and measurable targets when preparing future partnership agreements. These targets should allow the university to better assess its success in meeting the objectives of the partnership agreement. In addition, if the university is concerned that it will be expected to meet a measurable target when it has not received the related funds or when factors outside its control impede its progress, it should propose that as circumstances change it can revise the targets.

We also recommended that the university confer with the governor and the Legislature to determine whether having the Legislature provide input on objectives and measurable targets for future partnership agreements might be beneficial.

University Action: Pending.

The university indicated that it would consider our recommendations relating to future partnership agreements if a new agreement is negotiated.

Finding #2: The university has spent more of its increased state funding on support staff than on academic staff.

Although the university's primary mission is to teach and conduct research in a wide range of disciplines and to provide public services, it increased its expenditures for support staff salaries made out of its general operating funds at a greater rate than it increased its expenditures for academic staff salaries within instruction, research, and public service between 1997 and 2001. Only 44 percent of its increase in salary expenditures during this time related to these academic salaries, while 56 percent related to support staff salaries. Moreover, the proportion of employees that the university hired in certain support classifications using general operating funds over the five-year period was much greater than those it hired in certain academic positions, despite its nearly 13 percent growth in enrollment. The majority of the increases in the university's expenditures occurred in five job classifications, four of which were support classifications. The number of full-time equivalent (FTE) professorial-tenure employees at the university grew by 504, or 10 percent, while the number of its FTEs within advising services increased by 532, or 59 percent, and the number of its FTEs within fiscal, management, and staff services increased by 2,075, or 43 percent.

The hiring of both academic and support staff may have contributed to achieving the partnership agreement objectives, and the university's hiring decisions may have appropriately reflected its needs. However, because the partnership agreement does not contain objectives or measurable targets that identify the areas in which the university believes growth in positions is necessary, the Legislature and the governor may not be able to evaluate whether the university's decisions reflect the intent of the agreement. The addition of such targets to the partnership agreement would increase the university's accountability for its use of state funds and would enable both the State and the university to better monitor the proportion of increased funding spent on academic and support salaries.

We recommended that the university confer with the governor and the Legislature to determine whether it would be beneficial to establish targets to evaluate how the growth in academic and support positions and spending are consistent with the priorities of the partnership agreement. For example, the university could establish targets that address the growth and positions it believes are needed in such categories as professorial-tenure faculty, other faculty, fiscal staff, clerical staff, and managers to meet

the objectives of the partnership agreement. In addition, the university should confer with the governor and the Legislature to determine whether it is beneficial for the university to report on the actual growth that has occurred compared to the targets.

University Action: Pending.

The university indicated that it would consider our recommendations relating to future partnership agreements if a new agreement is negotiated.

Finding #3: Two factors have an impact on the primary course-to-faculty ratio.

The university compiles certain ratios involving the teaching activities of regular-rank faculty in its annual instructional report, which responds to inquiries made by the Legislature and also addresses one of the objectives included in the partnership agreement. According to that objective, the university in effect agrees to maintain an average workload of 4.8 primary courses per faculty FTE per year. The university defines primary course as a regularly scheduled, unit-bearing course usually labeled as a lecture or seminar. The university's instructional report states that for academic year 1999–2000, the university's primary course-to-faculty ratio was 4.9, exceeding the agreement's requirement.

However, two factors have an impact on the primary course-to-faculty ratio. First, our analysis shows that one- and two-student primary courses represented 0.7 of the university's 4.9 ratio in academic year 1999–2000. Although no requirement exists regarding the minimum number of students in a primary course, having a significant number of small-enrollment primary courses could affect a student's ability to graduate in four years. Second, because Berkeley's faculty apparently teach more primary courses than the faculty at any other campuses when Berkeley's data are converted from a semester to a quarter basis, the higher number of courses taught by Berkeley's faculty affects the university-wide ratio. However, in the instructional report, the university does not discuss the impact of Berkeley's faculty teaching more primary courses.

To ensure that the Legislature and the governor have a complete understanding of the factors influencing the primary course-to-faculty ratio included in the instructional report, we recommended that the university disclose in its instructional report the workload of its regular-rank faculty by the number of students

enrolled in courses. In addition, it should disclose that Berkeley's faculty teach more primary courses on a quarter basis than the faculty of other campuses and should communicate the impact that Berkeley's data has on the university-wide ratio.

University Action: Pending.

The university stated that it plans to report information about class sizes for regular-rank faculty. It also indicated that future instructional reports would address the impact on the universitywide ratios of converting semester data to quarter equivalents.

Finding #4: The campuses could not demonstrate that they correctly classified many of the one- to two-student primary courses we reviewed.

Our analysis of a sample of the one- to two-student courses offered by the university in academic year 1999–2000 found that the campuses were unable to demonstrate that they had correctly classified 33 percent of them as primary courses. As discussed previously, the university defines primary courses as a regularly scheduled, unit-bearing course usually labeled as a lecture or seminar. On the other hand, independent study course is defined as a unit-bearing activity for which students receive credit toward their degree, but it is not regularly included in the schedule of courses and usually focuses on independent study or special projects by arrangement between a student and faculty member. Seminars and lectures typically have higher enrollments, whereas independent study courses involve one student or a small group of students. The university calculated the primary course-to-faculty ratio by dividing the total number of primary courses by the number of regular-rank FTE faculty. Therefore, if the campuses incorrectly classify primary courses as independent study courses or vice versa, it affects the accuracy of the ratio.

Although nothing precludes the university from providing primary courses with enrollments of only one- to two-students, we focused our review on these courses because we believed these courses were likely to have the highest risk of misclassification because independent study courses generally have low enrollments. We reviewed 240 primary courses with enrollments of only one to two students at the eight campuses that are included in the university's instructional report. We found that the campuses

were unable to provide sufficient support to demonstrate that they correctly classified 79, or 33 percent, of the 240 courses in our sample.

When we asked the university whether it offers guidance to the campuses or verifies the data used in the instructional report, the director of policy analysis responded that the university annually provides instructions and definitions for the campuses' uses in classifying courses. The director of policy analysis also stated that the university trusts the campuses to provide accurate information and does not verify the data included in the tables. However, we found the guidance the university provides to the campuses to be very general and subject to interpretation.

We recommended that the university perform the following actions:

- Clarify the definitions of primary course and independent study course in the instructions it provides to the campuses.
- Ensure that the campuses consistently interpret the definitions of primary course and independent study course by periodically reviewing the campuses' data for accuracy and consistency.
- Review more closely the existing classifications of courses and make corrections where appropriate. This review should include, but not be limited to, primary courses with low enrollments.

University Action: Pending.

The university stated that based on the recommendations of its Task Force on Faculty Instructional Activities (task force), it plans to report each course using the following categories: faculty-designed instruction, faculty-supervised group instruction, and faculty-supervised tutorial instruction. An implementation task force, which will include the Academic Senate and campus representatives, will work with staff from the university's Office of the President to develop clear operational definitions for each category. Finally, the university also indicated that it will periodically review the campuses' data and categorization of courses under the new reporting scheme for accuracy and consistency.

Finding #5: The instructional report does not address the workload of non-regular-rank faculty and miscellaneous instructors.

Non-regular-rank faculty and miscellaneous instructors—adjunct professors, lecturers, teaching assistants, retired faculty, and others—teach a significant number of the university's primary and independent study courses. However, the partnership agreement does not address the workload ratios for non-regular-rank faculty and miscellaneous instructors, and the university does not address these staff in its workload-by-FTE table in the instructional report. We found that non-regular-rank faculty teach 30 percent of all primary courses and have a primary course-to-instructor ratio of 8.5. The miscellaneous instructors teach 16 percent of the primary courses, but we were unable to determine their workload ratio because the university's system was not designed to capture certain data used to calculate the ratio.

In light of the partnership agreement's objective of graduating students in four years or less, it would seem appropriate for the university to also provide the Legislature and the governor with information regarding the workload ratio for all of its instructors, not just its regular-rank faculty. In fact, the partnership agreement could be expanded to include objectives and measurable targets that specifically address the workload of these staff. The Legislature and the governor would then have a more complete picture of the workload of all instructors and could more appropriately evaluate that workload to determine whether fluctuations occur that may affect the ability of students to enroll in the classes they need to graduate.

We recommended that the university propose expanding future partnership agreements to include objectives and measurable targets that address workload ratios and course enrollment levels for all regular- and non-regular-rank faculty and miscellaneous instructors. Additionally, the university should disclose in its instructional report the course-to-faculty ratio for non-regular-rank faculty and the workload ratios for miscellaneous instructors. Similar to our recommendation for regular-rank faculty, the university should also disclose non-regular-rank faculty and miscellaneous instructor workloads by the number of students enrolled in courses.

Finally, to enable it to calculate and report the workload for miscellaneous instructors, the university should develop a method to capture the FTE data related to these instructors.

University Action: Pending.

The university stated that the recommendations relating to future partnership agreements will be a matter of negotiation with the governor. However, it indicated that in future reports on instructional activity, the university plans to include course-to-faculty ratios and information about class sizes for non-regular-rank faculty. Finally, the university stated that it considered carefully how best to capture the FTE associated with several groups of miscellaneous instructors and it has found that it can capture the FTE for some of the groups. However, it also indicated that for other individuals, such as professional staff researchers, it is impossible to determine the exact portion of their FTE related to instructional activities without an extensive audit of their time. Because of the expense associated with doing that, the university would prefer simply to report their instructional activities as a whole, rather than per FTE.

UNIVERSITY OF CALIFORNIA, SAN FRANCISCO

Investigations of Improper Activities by State Employees, February 2003 Through June 2003

ALLEGATION I2000-715 (REPORT I2003-2), SEPTEMBER 2003

University of California, San Francisco, response as of September 2003

Investigative Highlight . . .

The University of California, San Francisco, used proprietary bidding specifications that restricted fair competition for a contract totaling $495,000.

After investigating the allegation, we determined that the University of California, San Francisco (UCSF), used proprietary bidding specifications that restricted fair competition for several roofing projects under a contract totaling $495,000 and thus may have violated state law and Regents' policies.[1] The specifications placed unnecessary requirements on potential bidders, which limited the number of contractors able to submit competitive bids for the projects. Further, the specifications unnecessarily forced contractors to use a specific manufacturer's products and limited their ability to use substitute products, even if the substitute products were less expensive and superior in quality. As part of our investigation, we hired a roofing consultant to evaluate the bidding specifications.

Finding: UCSF used specifications that restricted competitive bidding for roofing projects.

In conflict with state law and Regents' policies, UCSF used specifications for roofing projects that restricted competitive bidding. According to our roofing consultant, the language used in UCSF's specifications primarily limited competition in three ways.

[1] The Louisiana Office of State Purchasing defines a "proprietary specification" as a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others. Stephen M. Phillips, who serves as counsel for the National Roofing Contractors Association and the National Roofing Legal Resource Center defines a "proprietary specification" (also known as a closed or restrictive specification) as any specification that is restrictive to a specific product.

First, the specifications included certain contractor requirements that served no purpose other than to limit the number of contractors competing for the work. For example, the specifications required contractors to list three projects in which they employed a similar type of roof system within a 50-mile radius of the project location. While requiring documentation of previous experience is valid, according to our consultant, specifying a 50-mile limitation served only to restrict competition.

Second, portions of the specifications forced potential bidders to use specific brand products produced by a single manufacturer. For example, the specifications' requirements differed from applicable industry standards in regard to two of the necessary products, so that only one brand of product could meet the specifications. The specifications also listed physical properties for the entire roof membrane. According to our roofing consultant, the only reason to impose such a requirement would be to limit contractors to using membrane products made by a single manufacturer.

Third, the specifications limited contractors' ability to use substitute products regardless of whether those substitutes were equal to or better than those products called for. In one instance, the specifications limited contractors' ability to submit alternative products, even if the substitute products were less expensive and had adequate or superior performance properties. In two instances, the specifications limited bidders' ability to fully assess the time and cost ramifications of providing substitute materials; in another instance, the specifications dictated that the contractor incur additional costs associated with submitting substitute products, costs, according to our consultant, the contractor should not bear. While using proprietary products and not allowing substitutions is appropriate in some instances, our consultant concluded in this instance it was not justified.

UCSF Action: Partial corrective action taken.

➲ UCSF reported that the contract in question contained detailed requirements that it believes are based on legitimate business needs to ensure contractor availability at the construction site, maintain the product warranty, and discourage substitutions of potentially inferior roofing products. UCSF agreed that the specifications relating to the

manufacturer's products were tightly written, but added that it was done so as to minimize any impact on patients in the buildings affected. However, UCSF reported that the bid specifications for more recent contracts have been prepared with assistance from independent roofing consultants to avoid any appearance of inappropriate proprietary specifications that would unduly limit competition.