CALIFORNIA STATE AUDITOR

Bureau of State Audits

Implementation of State Auditor's Recommendations

Audits Released in January 2009 Through December 2010

Special Report to
Assembly Budget Subcommittee #4—State Administration

SPECIAL REPORT

March 2011 Report 2011-406 A4

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March 7, 2011 2011-406 A4

The Honorable Joan Buchanan, Chair
Assembly Budget Subcommittee No. 4
State Capitol
Sacramento, California 95814

Dear Assemblymember Buchanan:

The State Auditor's Office presents this special report for the Assembly Budget Subcommittee No. 4—State Administration. The report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. Additionally, the report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations. To facilitate the use of the report, we have included a table that summarizes the status of each agency's implementation efforts based on its most recent response.

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 a table that identifies monetary values that auditees could realize if they implemented our recommendations, and is available on our Web site at www.bsa.ca.gov. 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, CPA
State Auditor

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Introduction

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2009 through December 2010, that relate to agencies and departments under the purview of the Assembly Budget Subcommittee No. 4—State Administration. 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 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 State Auditor's Office (office) policy requests that the auditee provide a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, state law requires 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 to provide a response beyond one year or we may 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 January 2011. The table below summarizes the number of recommendations along with the status of each agency's implementation efforts based on its most recent response related to audit reports the office issued from January 2009 through December 2010. Because an audit report and subsequent recommendations may cross over several departments, they may be accounted for on this table more than one time. For instance, the Dymally-Alatorre Bilingual Services Act report, 2010-106, is reflected under the Employment Development Department, Department of Housing and Community Development, and State Personnel Board.

Table
Recommendation Status Summary

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
California Recovery Task Force									
Reporting of Recovery Act Jobs Report 2010-601	●						2		3
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State Mandates Report 2009-501				●	2	1			5
Employment Development Department									
Investigations Report I2009-1 [I2008-0699]			●		2				9
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		11
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General Services, Department of									
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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
Health Facilities Financing Authority									
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High Risk Update—American Recovery and Reinvestment Act of 2009

The California Recovery Task Force and State Agencies Could Do More to Ensure the Accurate Reporting of Recovery Act Jobs

REPORT NUMBER 2010-601, DECEMBER 2010

California Recovery Task Force's response as of December 2010

California Government Code, Section 8546.5, authorizes the Bureau of State Audits (bureau) to establish a government agency audit program to identify state agencies that are at high risk for potential waste, fraud, abuse, and mismanagement, or that have major challenges associated with their economy, efficiency, or effectiveness. On April 22, 2009, the bureau designated California's administration of the American Recovery and Reinvestment Act of 2009 (Recovery Act) as a high-risk statewide issue. Since then, the bureau has specifically identified the Recovery Act, Section 1512, jobs data as an area of high sensitivity to federal officials.

Finding #1: The California Recovery Task Force and state agencies could do more to ensure that recipients are following guidance for reporting data on jobs created and retained.

Although California reported that more than 57,000 jobs were funded with Recovery Act dollars for the period April through June 2010, our analysis of the process state and local agencies use to report the number of jobs created and retained each quarter (jobs data) indicates that more can be done to assure the accuracy of the reports submitted to the federal government. Four of the five state agencies for which we reviewed recipient-level jobs data did not report such data accurately. These inaccuracies occurred because the agencies did not follow guidance provided by the federal Office of Management and Budget (OMB) and the California Recovery Task Force (task force). Specifically, some triple-counted some jobs, some reported data for the wrong months, and some failed to include all hours in their calculations of full-time equivalent positions.

We recommended that the task force provide targeted technical assistance and training to state agencies that are not calculating their jobs data in accordance with OMB's guidance. Further, the task force should issue clarifying guidance to state agencies to ensure they do not triple-count jobs, report data for the correct months, use the correction period to revise reported jobs data as needed, and understand the task force's guidance for including paid time off.

Task Force's Action: Pending.

The task force states that it intends to implement our recommendations.

Audit Highlights . . .

Our review of the State's administration of jobs data reporting at the recipient level under the American Recovery and Reinvestment Act of 2009 (Recovery Act) revealed the following:

» *Of the five state agencies we reviewed that reported recipient-level jobs data, two did not follow federal or state guidance resulting in overstatements of full-time equivalent positions totaling 617.*

» *Only one of the agencies we reviewed followed the California Recovery Task Force recommendation to review subrecipients' calculation methodologies and none reviewed supporting documentation to verify the accuracy of the jobs data.*

» *Two federal audit agencies and one state audit agency that have reviewed California's administration of jobs data reporting under the Recovery Act have reported errors or concerns in subrecipient data reporting.*

Finding #2: The task force should clarify its expectations that state agency recipients ensure the accuracy of their local subrecipients' jobs data.

The task force could do more to ensure that state agencies verify the accuracy of their local subrecipients' jobs data. Although OMB explicitly states that its guidance does not establish specific requirements for documentation or other written proof to support reported estimates on jobs data, it does advise recipients to be prepared to justify their estimates. Further, the task force issued guidance with specific recommendations for how to ensure the accuracy of subrecipient data. We found that all of the agencies we reviewed issued guidance to their local subrecipients and conducted high-level assessments of the reasonableness of their reported data, one agency reviewed its subrecipients' calculation methodologies, but none reviewed supporting documentation to verify the accuracy of the jobs data as recommended by the task force. In fact, one state agency reported triple the actual number of jobs. Also, when we tested subrecipient jobs at seven subrecipient agencies, we found errors in jobs data calculations for two of them.

We recommended that the task force instruct state agencies to review their subrecipients' methodologies for calculating jobs data and, at least on sample basis, review supporting documentation to ensure the accuracy of the subrecipients' jobs data reported, or use alternative procedures that mitigate the same risks before certifying their jobs data report.

Task Force's Action: Pending.

The task force states that it intends to implement our recommendation.

State Mandates

Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and in Controlling Costs and Liabilities

REPORT NUMBER 2009-501, OCTOBER 2009

Responses from the Commission on State Mandates and State Controller's Office as of October 2010; Department of Finance's response as of November 2009

The California Constitution requires that whenever the Legislature or any state agency mandates a new program or higher level of service for a local entity, the State is required to provide funding to reimburse the associated costs, with certain exceptions. The Commission on State Mandates (Commission), the State Controller's Office (Controller), the Department of Finance (Finance), and local entities are the key participants in California's state mandate process. The Bureau of State Audits (bureau) examined the state mandates process under its authority to conduct both follow-up audits and those addressing areas of high risk. To follow up on our prior audits, we reviewed the status of the Commission's work backlogs and assessed how processing times had changed over the years. We also reviewed the Controller's efforts for using audits to identify and resolve problems in state mandate claims. Further, we evaluated how the State's mandate liability had changed from June 2004 to June 2008. Finally, we assessed the effect of recent structural changes on the state mandate process and summarized possible ways to accomplish the process more effectively.

Finding #1: The Commission still has lengthy processing times and large backlogs.

A test claim from a local entity begins the process for the Commission to determine whether a mandate exists. Although the Commission's test claim backlog dropped from 132 in December 2003 to 81 in June 2009, 61 test claims filed before December 2003 are still pending. In addition, between fiscal years 2003–04 and 2008–09, the Commission did not complete the entire process for any test claims within the time frame established in state law and regulations. In fact, during this period, the Commission's average elapsed time for completing the process was more than six years, and between fiscal years 2006–07 and 2008–09, the average time increased to more than eight years. Both the test claim backlog and the delays in processing create significant burdens on the State and on local entities. At the state level, these conditions keep the Legislature from knowing the true costs of mandates for years; as a result, the Legislature does not have the information it needs to take any necessary action. Additionally, as the years pass, claims build, adding to the State's growing liability.

In addition, the Commission has not addressed many incorrect reduction claims, which local entities file if they believe the Controller has improperly reduced their claims through a desk review or field audit. The Commission has only completed a limited number of these claims, and consequently its backlog grew from 77 in December 2003 to 146 in June 2009. The Commission's inability to resolve these claims

Audit Highlights . . .

Our review of state mandate determination and payment processes found that:

- ***The Commission on State Mandates (Commission) still has a large backlog of test claims, including many claims from 2003 or earlier.***
- ***The Commission's backlog of incorrect reduction claims has significantly increased and creates uncertainty about what constitutes a proper claim.***
- ***The high level of audit adjustments for some mandates indicates that the State could save money if the State Controller's Office filled 10 vacant audit positions.***
- ***The State's liability for state mandates has grown to $2.6 billion in June 2008, largely because of insufficient funding.***
- ***Recent reforms that could relieve the Commission of some of its workload have rarely been used.***
- ***A number of state and local entities have proposed mandate reforms that merit further discussion.***

leaves local entities uncertain about what qualifies as reimbursable costs. Conversely, the Commission has processed most requests for amendments to state mandate guidelines, completing 61 of 70 requested amendments between January 2004 and June 2009. Nevertheless, it did not address an amendment submitted by the Controller in April 2006 that requests the incorporation of standardized language into the guidelines for 49 mandates determined before 2003. Commission staff said that pending litigation caused them to suspend work on the boilerplate request. Although the court's February 2009 decision is on appeal, Commission staff have scheduled 24 mandates for review in 2009 and 25 for review in early 2010.

We recommended that the Commission work with Finance to seek additional resources to reduce its backlog, including test claims and incorrect reduction claims. We also recommended that the Commission implement its work plan to address the Controller's amendment.

Commission's Action: Partial corrective action taken.

The Commission said that it did not file a budget change proposal seeking additional resources because Budget Letter 10-23 required departments to provide monetary reductions when submitting budget change proposals for fiscal year 2011–12. Related to the Controller's amendment request, the Commission says it has completed amendments for all 49 mandates, determined before 2003, that were included in the request.

Finding #2: The Controller appropriately oversees mandate claims, but vacant audit positions, if filled, could further ensure that mandate reimbursements are appropriate.

The Controller uses a risk-based system for selecting the state mandate claims for reimbursement that it will audit, has improved its process by auditing claims earlier than in the past, has sought guideline amendments to resolve identified claims issues, and has undertaken outreach activities to inform local entities about audit issues. Nevertheless, continuing high reduction rates, reflecting large audit adjustments for some mandates, indicate that filling vacant audit positions and giving a high priority to mandate audits could save money for the State. The Controller has reduced 47 percent of the cumulative dollars it has field-audited for all mandate audits initiated since fiscal year 2003–04, cutting about $334 million in claims. Audit efforts were greatly aided by a 175 percent increase in audit staff positions in the Controller's Mandated Cost Audits Bureau (from 12 to 33) in fiscal year 2003–04. However, the Controller was not able to take as much advantage of an additional increase of 10 staff positions two years later, and has had 10 or more authorized field-audit positions unfilled since fiscal year 2005–06. Given the substantial amounts involved, filling these positions to maximize audits of mandate claims is important to better ensure that the State makes only appropriate reimbursements.

We recommended that to ensure it can meet its responsibilities, including a heightened focus on audits of state mandates, the Controller work with Finance to obtain sufficient resources and increase its efforts to fill vacant positions in its Mandated Cost Audits Bureau.

Controller's Action: Partial corrective action taken.

The Controller said it lost 11 positions and related spending authority effective June 30, 2010, but worked closely with Finance to restore 10 positions in the fiscal year 2010–11 budget. The Controller also stated that it is working on allocating General Fund resources to fill vacant positions.

Finding #3: New mandate processes have been rarely used, and the State has done little to publicize these alternative processes.

New processes intended to relieve the Commission of some of its work have rarely been used. One of these options allows Finance and the local entity that submitted the test claim to notify the Commission of their intent to pursue the jointly developed reasonable reimbursement methodology process (joint process), within 30 days of the Commission's recognition of a new mandate. In this process, Finance

and the local entity join to create a formula for reimbursement rather than basing it on detailed actual costs. Although Commission participation is not eliminated, the joint process greatly reduces the Commission's workload related to establishing a mandate's guidelines and adopting a statewide cost estimate. As of August 2009, the joint process had only been implemented once, and the legislatively determined mandate process, another new process, had not generated any new mandates. Additionally, the Commission can work with Finance, local entities, and others to develop a reimbursement formula for a mandate (Commission process) instead of adopting guidelines for claiming actual costs in the traditional way. Between 2005 and 2008, the Commission had to assure that reimbursement formulas following the Commission process considered the costs of 50 percent of all potential local entities, a standard Commission staff said was difficult to meet. Since the elimination of the 50 percent criterion, the Commission process has been used twice as of August 2009. One factor that may be contributing to the lack of success of the new and revised processes is the State's limited efforts to communicate them to local entities. In particular, we noted that as of July 2009 neither Finance nor the Commission had provided information on their Web sites publicizing the existence of the alternative processes.

We recommended that the Commission add additional information in its semiannual report to inform the Legislature about the status of mandates being developed under joint and Commission processes, including delays that may be occurring. We also recommended that the Commission and Finance inform local entities about alternative processes by making information about them readily available on their Web sites.

Commission's Action: Corrective action taken.

In September 2010 the governor approved Chapter 699, Statutes of 2010, requiring that the Commission's semiannual report to the Legislature include information on the status of mandates being developed under joint and Commission processes, and any related delays in their development. The Commission also added information about alternative processes to its Web site.

Finance's Action: Corrective action taken.

To provide information regarding reimbursable state mandates, including the processes for seeking a mandate determination, Finance added links on its Web site to the Commission's and Controller's Web sites.

Finding #4: A recent court case overturned revised test claim decisions.

In March 2009 a state court of appeal held that the Legislature's direction to the Commission to reconsider cases that were already final violates the separation of powers doctrine. The court stated that it did not imply that there is no way to obtain reconsideration of a Commission decision when the law has changed, but that the process for declaring reconsideration was beyond the scope of its opinion. In April 2009 an Assembly Budget Subcommittee recognized the importance of reforming the reconsideration process and, according to Commission staff, directed Finance, the Legislative Analyst, and Commission and legislative staff to form a working group to develop legislation to establish a mandate reconsideration process consistent with the court decision. Until a new reconsideration process is established, mandate guidelines may not reflect statutory or other relevant changes. Thus, the State could pay for mandate activities that are no longer required.

We recommended that the Commission continue its efforts to work with the legislative subcommittee and other relevant parties to establish a reconsideration process that will allow mandates to undergo revision when appropriate.

Commission's Action: Corrective action taken.

In October 2010 the governor approved Chapter 719, Statutes of 2010, authorizing the Commission to adopt new test claim decisions upon a showing that the State's Liability for a previously adopted decision has been modified on a subsequent change in law.

Employment Development Department

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2008-0699 (REPORT I2009-1), APRIL 2009

Investigative Highlight . . .

An employee of the Employment Development Department sent inappropriate e-mail messages to other state employees. Management then failed to take corrective action despite noting similar behavior in the past.

Employment Development Department's response as of November 2009

An employee of the Employment Development Department (Employment Development) misused his state computer and state e-mail account for personal purposes, including sending inappropriate messages to other state employees. In addition, he engaged in incompatible activities by failing to devote his full time, attention, and efforts to his job when he was at work. Furthermore, management at Employment Development failed to take appropriate action concerning the employee's inappropriate activities despite noting similar behavior for several years.

Finding #1: The employee misused state resources for personal purposes and engaged in activities that were incompatible with his job.

The employee misused his state computer and e-mail account for activities unrelated to his work at Employment Development. As part of the duties of his job, the employee is to ensure that claims are promptly paid, routed, or reissued. His duties require him to use a state computer and Employment Development data systems. However, in an eight-day sampling of e-mail messages from February 15, 2008, through April 16, 2008, the investigation revealed that the employee sent 256 e-mails that were personal, some of which were inappropriate in nature. An analysis of the e-mails on these days indicated that the employee spent periods from nearly an hour to eight hours sending e-mails that were unrelated to his duties. For example, on one day in April 2008 during a roughly seven-hour period, the employee sent 75 e-mails, all of which were personal and thus not related to his work. In addition, during an interview, the employee admitted that he sent multiple e-mail messages to an employee in another department that contained vulgar language. He also admitted that he kept three e-mails with sexually explicit photos on his state computer.

The investigation also found that the employee misused his state computer in other ways. He regularly accessed the Internet beyond minimal and incidental use. For example, on three days in April 2008, he spent from one to two hours each day browsing the Internet even though his duties do not require such access. In addition, he used his state computer to send and receive e-mails about his external employment during his work hours at Employment Development. Further, on two occasions the employee got into an Employment Development database without authorization to assist external business associates with claims. Finally, besides using his state computer for these personal purposes, the employee engaged in discourteous behavior when he used his computer and e-mail account to send several inappropriate messages

to employees at Employment Development and other state agencies. As a result of all of these actions, the employee engaged in incompatible activities when he failed to devote his full time and attention to his state employment during his work hours.

After the completion of the investigation, Employment Development informed us in December 2008 that it suspended the employee for 30 days.

We recommended that Employment Development monitor the employee's use of state resources after his return to work after the 30-day suspension.

Employment Development's Action: Corrective action taken.

Employment Development notified us that it continues to monitor the employee's use of state equipment to ensure he only conducts state business while on duty.

Finding #2: Management failed to take appropriate action despite their noting years of similar behavior.

The employee's inappropriate use of his state computer and e-mail account were just the latest installment in a series of improprieties. Since 2001 the employee had repeatedly misused his state time, telephone, and computers to engage in personal business during his workdays. In addition, he inappropriately used his state computer for personal e-mails and to access the Internet. Moreover, the employee had unexcused absences and attendance problems.

Despite the employee's long history of disciplinary problems, Employment Development did not adequately resolve these problems. From January 2001 through November 2007, Employment Development issued 10 written notifications to the employee—and held several formal discussions with him—about his unacceptable behavior. The notifications consistently cited the employee's excessive use of his state telephone, computer, and e-mail account for personal purposes. In addition, on one occasion Employment Development ordered the employee to "cease and desist" contact with another state employee through his state telephone and computer. In at least eight of the 10 written documents the employee received since January 2001, Employment Development specifically stated that the incidents discussed in the respective notifications could form the basis of an adverse action.

Even with these written notices and formal discussions spanning several years, Employment Development did not escalate either its corrective or disciplinary actions against the employee. The State Personnel Board has repeatedly ruled that agencies have the right to proceed with progressive disciplinary actions against employees where it is well documented and when lesser sanctions—such as written reprimands and memos—fail to positively influence the employee. Repeated incidents by the employee over a period of several years demonstrate a measured level of sustained inappropriate behavior. Furthermore, the employee's ongoing misuses demonstrate that his behavior did not change as a result of Employment Development's written notifications and discussions.

We recommended that Employment Development conduct training at regular intervals for its management and branch staff on methods of progressive discipline.

Employment Development's Action: Corrective action taken.

Employment Development indicated to us that all of its new managers and supervisors are required to attend a two-week course that covers managerial and supervisory roles and responsibilities, including the proper administration of the progressive discipline process. Further, refresher training is also provided on the progressive discipline process for managers and supervisors when labor contract changes are made resulting from a new collective bargaining agreement.

Dymally-Alatorre Bilingual Services Act

State Agencies Do Not Fully Comply With the Act, and Local Governments Could Do More to Address Their Clients' Needs

REPORT NUMBER 2010-106, NOVEMBER 2010

Responses from 11 audited state agencies as of November 2010 and three local agencies as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to determine whether state and local agencies comply with the Dymally-Alatorre Bilingual Services Act (Act). The Act is intended to ensure that individuals who do not speak or write English or whose primary language is not English, referred to in our report as limited-English-proficient (LEP) clients, are not prevented from using public services because of language barriers. For a sample of state and local agencies, the audit committee asked us to determine the procedures and practices that the agencies use to identify the need for language assistance, to evaluate whether these processes accurately identify actual need, and to determine the effectiveness of the methods that the agencies use to monitor their own compliance with the Act. We selected a sample of 10 state agencies for our review, and we surveyed 25 counties and cities throughout the State. The audit committee also asked us to review the policies and procedures used by the State Personnel Board (Personnel Board) to monitor and enforce state agencies' compliance with the Act.

Finding #1: The Personnel Board does not inform all state agencies about their responsibilities under the Act.

The Personnel Board is not meeting the Act's requirement that it inform all state agencies of their duties under the Act. The Act requires the Personnel Board to notify state agencies of such responsibilities, including the need to conduct a language survey at each of their field offices by October 1 of each even-numbered year to identify languages other than English that 5 percent or more of the state agencies' LEP clients (substantial LEP populations) speak. In its efforts to meet this requirement, the Personnel Board created a master list to identify and track the agencies that were potentially required to comply with the Act during the 2008 biennial language survey and the 2009 biennial implementation plan cycle (2008–09 biennial reporting cycle). One of the sources for its master list is a report of state entities that it creates from a file it receives from the State Controller's Office. However, the Personnel Board's chief information officer explained that the Personnel Board is unsure of the parameters that determine which entities that file includes. He asserted that the file would include all major agencies but that some smaller boards or commissions might be omitted. We identified at least nine entities that the Personnel Board should have informed about their responsibilities under the Act but did not.

Audit Highlights . . .

Our review of state and local agencies' compliance with the Dymally-Alatorre Bilingual Services Act (Act) revealed that the State Personnel Board (Personnel Board):

» *Has not effectively implemented key recommendations from our 1999 report.*

» *Is not meeting most of its responsibilities under the Act, including:*

- *Informing state agencies of their responsibilities and ensuring they assess their clients' language needs.*
- *Evaluating compliance with the Act and ordering deficient state agencies to take corrective action.*
- *Ensuring complaints are resolved timely.*

» *Further, our review of 10 state agencies' compliance with the Act revealed the following:*

- *Nine conducted required language surveys, yet four reported erroneous results and two could not adequately support their results.*
- *None had adequate procedures in place to determine compliance with requirements for translation of certain written materials.*
- *Some are not maximizing opportunities to reduce their bilingual services costs by leveraging existing California Multiple Award Schedules or the Personnel Board's contracts.*

continued on next page . . .

Moreover, our survey of administrators and department managers in 25 cities and counties throughout California disclosed the following:

- *Some are not fully addressing their clients' bilingual needs.*
- *Several have not translated materials explaining their services.*
- *Many are not aware of the Act and do not have formal policies for providing bilingual services.*

To ensure that all state agencies subject to the Act are aware of their potential responsibilities to provide bilingual services, we recommended that the Personnel Board improve its processes to identify and inform all such state agencies of the Act's requirements.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it has obtained the Department of Finance's Uniform Codes Manual to create a comprehensive state agency listing. In addition, the Personnel Board reported that its bilingual services program's processes will also include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language surveys and implementation plans.

Finding #2: The Personnel Board does not sufficiently monitor state agencies' participation in language surveys.

The Personnel Board does not always ensure that state agencies conduct language surveys to identify their clients' language needs. The Personnel Board identified 151 state agencies as potentially subject to the Act in 2008; however, only 58 of these agencies conducted language surveys. Further, the Personnel Board's records also indicate that three of the 58 agencies did not follow through and submit implementation plans after completing their language surveys. Records also show that 33 of the 151 state agencies did not take part in the surveys, even though the Personnel Board did not exempt them from doing so. Finally, the Personnel Board exempted the remaining 60 agencies from participating in the 2008 biennial language survey, but the Personnel Board did not always adhere to the Act's exemption criteria when granting these exemptions. If the Personnel Board does not make certain that state agencies conduct language surveys and prepare implementation plans, or if the Personnel Board inappropriately grants exemptions, it is not ensuring that state agencies that provide services to the public are aware of and address the language needs of their LEP clients. The Personnel Board's bilingual services program manager acknowledged that the Personnel Board does not have formal procedures for following up with state agencies that do not submit language surveys or implementation plans, and also agreed that the Personnel Board's exemption process needs improvement.

We recommended that the Personnel Board make certain that every state agency required to comply with the Act conducts language surveys and submits implementation plans unless the Personnel Board exempts them from these requirements. The Personnel Board should also ensure that it adheres to the specific criteria contained in the Act when exempting agencies from conducting language surveys or preparing implementation plans.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with this recommendation and stated that its bilingual services program's processes will include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language

surveys and implementation plans. The Personnel Board also indicated that it has incorporated accurate exemption language as specified in the Act into the forms for the language survey and implementation plan. Finally, the Personnel Board reported that its bilingual services program has instituted a tracking mechanism and review process for each exemption approval to reduce the risk of error.

Finding #3: The Personnel Board does not require state agencies to submit key information.

The Personnel Board does not require state agencies to submit critical information that it needs to assess whether the agencies are meeting all of their responsibilities to serve their LEP clients. The Personnel Board receives state agencies' language survey results and implementation plans electronically through an online system that it has designed for this purpose. However, the Personnel Board does not require state agencies to identify their deficiencies in providing translated written materials, to provide detailed descriptions of how they plan to address any deficiencies in written materials or staffing, or to identify when they will remedy any noted deficiencies. Because the Personnel Board does not solicit all required information from state agencies, it cannot fulfill its monitoring and enforcement responsibilities.

The Personnel Board's bilingual services program manager agreed that the limited information the Personnel Board collects inhibits its ability to monitor and enforce state agencies' compliance with the Act. She also said that the Personnel Board does not adequately review agencies' implementation plans or conduct other formal monitoring activities to evaluate whether the state agencies are complying with the Act's staffing and written materials requirements. Additionally, she acknowledged that the Personnel Board does not order agencies to make changes to their implementation plans or to provide periodic progress reports on their efforts to comply with the Act, and it does not otherwise order state agencies to comply with the Act. Finally, she told us that the bilingual services unit currently has only four staff, which she asserts is not enough to address all of the Personnel Board's responsibilities under the Act.

We recommended that the Personnel Board require state agencies to provide all of the information required by the Act. For example, the Personnel Board should ensure that state agencies identify their deficiencies in staffing and translated written materials and that the state agencies' implementation plans detail sufficiently how and when they plan to address these deficiencies.

In addition, we recommended that the Personnel Board assess the adequacy of state agencies' language surveys and implementation plans. If it determines that implementation plans do not address deficiencies in staffing or written materials adequately, the Personnel Board should order the agencies to revise or supplement their plans accordingly. The Personnel Board should also require state agencies to report to it every six months on their progress in addressing their deficiencies. If the Personnel Board determines that state agencies have not made reasonable progress toward complying with the Act, we recommended that it consider ordering them to comply with the Act. These actions could include ordering state agency officials to appear before the Personnel Board to explain why their agencies have not complied. If these actions or its other efforts to enforce the Act are ineffective, the Personnel Board should consider asking a court to issue writs of mandate under Section 1085 of the Code of Civil Procedure, to require agencies to perform their duties.

Finally, we recommended that the Personnel Board seek enough additional staff to fulfill its obligations under the Act, or seek changes to the Act that would reduce its responsibilities and make them commensurate with its staffing levels.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with these recommendations and reported that it has revised its forms to capture all of the information required by the Act. In addition, the Personnel Board stated that if it determines that state agencies' implementation plans do not adequately address deficiencies,

its bilingual services program staff will follow up with the agencies to supplement their plans. The Personnel Board also indicated that it has revised its bilingual services program's procedures to incorporate a six-month progress report by deficient agencies. Further, the Personnel Board agreed that its five-member board should order noncompliant agencies to appear before the board to explain their noncompliance, and stated that its bilingual services program revised its procedures accordingly. The Personnel Board also indicated that it will consider additional appropriate measures to enforce compliance. Finally, the Personnel Board stated that it will consider options such as legislative changes and/or budget change proposals to increase staffing.

Finding #4: The Personnel Board generally does not ensure that language access complaints are resolved.

In identifying other practices the Personnel Board uses to monitor state agencies' compliance with the Act, the bilingual services program manager stated that the Personnel Board implemented a toll-free complaint line with mailbox options for the top 12 languages other than English reportedly encountered by state agencies. At that time, it sent both a memorandum informing state agencies of the complaint line and posters for the agencies to display in their field offices. The posters display a message in all 12 languages that informs clients of their right to receive services and information in their native languages and that directs them to call the Personnel Board's complaint line if state agencies do not meet the clients' language needs.

The Personnel Board intends its complaint process to ensure that clients' issues are directed to the appropriate government agency for resolution; consequently, in most cases the Personnel Board forwards the complaints to relevant state agencies for them to resolve. However, it generally does not follow up with the responsible state agencies to ensure that language access complaints are resolved; therefore, the Personnel Board does not have assurance that state agencies are addressing the language needs of these clients. In one instance, an individual repeatedly called the Personnel Board's complaint line over a period of nearly three weeks to report that he had not received language assistance from a state agency. If the Personnel Board had followed up with the agency to ensure that it resolved the initial complaint, the Personnel Board might have eliminated the need for this individual to make subsequent calls.

We recommended that the Personnel Board follow up with the responsible state agencies to ensure that the agencies resolve the language access complaints it receives in a timely manner.

Personnel Board's Action: Corrective action taken.

The Personnel Board revised the bilingual services program's procedures to incorporate additional fields to its tracking system to capture the date that a complaint was resolved and how it was resolved.

Finding #5: The Personnel Board's biennial report lacks substance.

The Act requires the Personnel Board to identify significant problems or deficiencies and propose solutions where warranted in its reports to the Legislature. We reviewed the most recent report, which the Personnel Board issued in March 2010, and we found that it does not clearly identify whether state agencies have the number of qualified bilingual staff in public contact positions that is sufficient to serve the agencies' substantial populations of LEP clients. As in the case of staffing deficiencies, the Personnel Board's March 2010 report also does not clearly address whether state agencies are meeting the Act's requirements for translating written materials. In addition, the Personnel Board's March 2010 report does not identify specific agencies that may not be complying with the Act. For example, it states that 13 state agencies accounted for 90 percent of the reported bilingual position deficiencies, but it does not identify these agencies by name. Further, although state agencies often have field offices located throughout the State, the report does not show these deficiencies by field office.

We recommended that the Personnel Board improve the content of its biennial report to the Legislature to identify problems more clearly and to propose solutions where warranted. Specifically, the report should clearly indicate whether state agencies have true staffing deficiencies or deficiencies in translated materials. In addition, the report should identify any agencies that are not complying with the Act and should present key survey and implementation plan results by state agency and field office to better inform policymakers and the public about the language needs of residents in certain areas of the State and about state agencies' available resources to meet those needs.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it will revise the format and content of future biennial reports to reflect more comprehensive and meaningful data.

Finding #6: State agencies do not fully comply with the Act.

Although nine of the 10 agencies we reviewed conducted language surveys in 2008, four reported erroneous survey results for one or more of their local offices, and two did not have sufficient documentation to support their survey results. If agencies use inaccurate survey data or do not retain documentation supporting their survey results, they compromise their ability to evaluate their potential need for additional bilingual staff and to identify written materials they need to translate. The tenth agency we reviewed, the California Emergency Management Agency (Emergency Management), failed to conduct the 2008 biennial language survey. Additionally, only one of the state agencies we reviewed formally analyzed its survey results to determine whether the use of other available options, in addition to qualified bilingual staff in public contact positions, was serving the language needs of its clients, as the Act requires. None of the state agencies we reviewed had adequate procedures in place to determine whether they met the Act's requirements to translate certain written materials for their substantial LEP populations. Furthermore, most of the state agencies we reviewed have not developed plans to address their deficiencies in staffing and translated written materials.

To ensure that they meet their constituents' language needs, we recommended that state agencies do the following:

- Make certain that they accurately assess and report their clients' language needs to the Personnel Board.
- Analyze formally their language survey results and consider other available bilingual resources to determine their true staffing deficiencies.
- Establish procedures to identify the written materials that the Act requires them to translate into other languages and ensure that such materials are translated or made accessible to the agencies' LEP clients.
- Develop detailed corrective action plans describing how and when the state agencies will address their staffing and written materials deficiencies. In addition, they should submit these corrective action plans to the Personnel Board as part of the state agencies' overall implementation plans.

Emergency Management's Action: Partial corrective action taken.

Emergency Management stated that it will participate in the language survey that is held every even-numbered year, and will submit its language survey results to the Personnel Board by the due date. Emergency Management conducted its 2010 biennial language survey and submitted the results to the Personnel Board in October 2010. Based on its language survey results, Emergency Management indicated that it was able to determine which divisions may require the services of a bilingual employee within a specific program. Emergency Management also asserted that it will

ensure that translated written materials in the appropriate languages are made accessible for its LEP clients. In addition, Emergency Management stated that it is in the process of updating its bilingual services policy, which includes creating a bilingual services handbook that explains the responsibilities and requirements of the Act. Finally, Emergency Management reported that it is in the process of developing an implementation plan showing the corrective actions to be taken to ensure there are no staffing or translated written materials deficiencies, and it will submit this implementation plan to the Personnel Board by the October 2011 due date.

California Highway Patrol's Action: Pending.

The California Highway Patrol (Highway Patrol) stated that it will continue to assess its clients' language needs and to report accurate information to the Personnel Board. In addition, it will continue to enhance and formalize methods of analyzing language survey results and monitoring bilingual staff deficiencies. Highway Patrol also asserted that it will develop a list of documents that are required to be translated and compare this list to existing translations to identify any remaining translated material needs. Finally, Highway Patrol stated that it will submit to the Personnel Board corrective action plans that address any staffing and written materials deficiencies by April 2011.

Department of Corrections and Rehabilitation's Action: Pending.

The Department of Corrections and Rehabilitation (Corrections) agreed that there are deficiencies with regard to compliance with the Act, and stated that it will evaluate the deficiencies identified in our audit further and take corrective action. Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

Department of Food and Agriculture's Action: Partial corrective action taken.

The Department of Food and Agriculture (Food and Agriculture) reported that it enhanced its training processes and provided education and guidance for all language survey reporting assistants prior to the commencement of its 2010 biennial language survey. In addition, its bilingual services program coordinator worked closely with its reporting assistants to ensure that they have a better understanding of their role and responsibilities, and are following the appropriate standards and procedures in tallying LEP contacts. Further, at the conclusion of the 2010 biennial language survey, its bilingual services program coordinator reviewed all the tally sheets from every participating division to make sure that the information gathered and reported will yield accurate survey results. In addition, Food and Agriculture stated that it has engaged in a dialogue with the Personnel Board and other state agencies to collaboratively share ideas, efforts, and resources to address the requirements of the Act. Finally, Food and Agriculture reported that its equal employment opportunity officer recently invited other equal employment opportunity professionals to form a collaborative group that will discuss and work together in defining and implementing the provisions of the Act.

Department of Housing and Community Development's Action: Partial corrective action taken.

The Department of Housing and Community Development (Housing) reported that beginning with the 2010 biennial language survey, it assigned responsibility for the survey to its equal employment opportunity officer, who also serves as its bilingual services program coordinator. This individual is responsible for coordinating, implementing, and overseeing the language survey, analyzing completed survey tally sheets, reporting the results of the analysis to the Personnel Board, and maintaining sufficient documentation. Housing also indicated that it will continue to formally analyze its language survey results, including considering other available options for bilingual services in determining staffing deficiencies. In addition, Housing indicated that by June 2011, it will begin to formally document such analyses. Housing also stated that by June 2011 it will confer with the Personnel Board and other Act-compliant departments to identify best practices for determining which written materials need to be translated. Furthermore, Housing indicated that it will develop procedures for identifying written materials to be translated, create a list of written materials that require translation,

and establish dates for the translation and distribution of written materials by June 2012. However, we believe that Housing should develop these procedures much earlier so that its LEP clients have access to this information sooner. In fact, we believe that Housing should develop these procedures and describe how and when it will address any written materials deficiencies in its next biennial implementation plan, which is due in October 2011. Housing also reported that by June 2011, it will submit a memorandum to the Personnel Board informing it that a detailed corrective action plan relative to staffing deficiencies is not required because its 2010 biennial language survey revealed that Housing no longer has staffing deficiencies. Finally, Housing indicated that by June 2011 it will also prepare and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written deficiencies. As noted above, Housing will need to develop procedures for identifying materials requiring translation before it will be in a position to develop a detailed corrective action plan for addressing any written materials deficiencies.

Department of Justice's Action: Partial corrective action taken.

The Department of Justice (Justice) reported that it has recently appointed a new bilingual services program coordinator to monitor the program, the biennial language survey, and the subsequent implementation plan. Justice also indicated that it has adopted and implemented new procedures that provide a higher level of quality control regarding reviewing and analyzing the language survey data in order to avoid future reporting errors. In addition, Justice stated that it carefully analyzed its 2008 biennial language survey results and determined that its true staffing deficiencies were significantly less than originally reported. Justice indicated that these findings were included in an implementation plan follow-up report it submitted to the Personnel Board. Furthermore, Justice reported that it has made draft revisions to the bilingual services program portion of its administrative manual to detail the procedures used to identify written materials that require translation under the Act. Finally, Justice stated that the implementation plan follow-up report that it submitted to the Personnel Board in August 2010 included a corrective action plan to address the deficiencies of the 2008–09 biennial reporting cycle. Furthermore, Justice plans to take corrective actions to address any future identified staffing or written materials deficiencies.

Department of Motor Vehicles' Action: Partial corrective action taken.

The Department of Motor Vehicles (Motor Vehicles) reported that it implemented improved procedures and incorporated additional checks and balances for the 2010 biennial language survey to ensure that it accurately assesses and reports its LEP clients' language needs to the Personnel Board. Motor Vehicles formally analyzes its language survey results and considers other available bilingual resources to determine its true staffing deficiencies. Motor Vehicles will establish a taskforce and create a list of printed materials that require translation by April 2011. Finally, Motor Vehicles indicated that it will develop and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written materials deficiencies by October 2011.

Department of Public Health's Action: Pending.

The Department of Public Health (Public Health) reported that it will continue to ensure that it accurately assesses and reports its client's language needs to the Personnel Board. Public Health will also analyze the language survey results and its available bilingual resources to determine its true staffing deficiencies by February 2011. Public Health also stated that it will develop procedures for identifying written materials needing translation for its LEP clients by March 2011. Finally, Public Health will submit an implementation plan to the Personnel Board that includes corrective action plans addressing any staffing and written materials deficiencies by October 2011.

Department of Toxic Substances Control's Action: Pending.

The Department of Toxic Substances Control (Toxic Substances Control) accurately assessed and reported its client's language needs to the Personnel Board. Toxic Substances Control also reported that it performs an internal analysis of its language survey results to determine whether it has true staffing deficiencies. However, it recognizes that it needs to formally document this analysis, and

thus it will ensure that all future analyses of its language survey results and resulting conclusions are formally documented and retained. Toxic Substances Control also indicated that it will develop procedures to identify the materials the Act requires to be translated, as well as a process to ensure that those materials are translated or made accessible to its LEP clients. Finally, Toxic Substances Control will develop a corrective action plan describing how and when it will address its staffing and written material deficiencies and it will include this plan in the implementation plan it submits to the Personnel Board.

Employment Development Department's Action: Partial corrective action taken.

The Employment Development Department (Employment Development) reported that it designed and implemented corrective actions for the recently completed 2010 language survey to ensure it collected all hard-copy documentation from all public contact employees so there would be no questions about the accuracy of data provided to the Personnel Board. In addition, Employment Development stated that it added controls over data collection, tabulation, and submission so that all information could be traced back to hard-copy documentation. Employment Development stated that it does not consider it cost-effective to implement procedures that require extensive analysis of how to remedy minor staffing deficiencies, but it will update its procedures to have managers document their analyses for significant deficiencies. We believe that Employment Development could determine whether it has sufficient alternative resources (i.e., certified staff from other units, contract staff, etc.) to mitigate the staffing deficiencies identified in its biennial language survey without having to perform an "extensive analysis." Employment Development also reported that it will supplement its existing policy and procedures to provide further guidance about translating materials into other languages. This guidance will include steps to identify and maintain lists of materials that need translation, and procedures to ensure that identified materials are translated.

Finally, Employment Development stated that it will obtain operational managers' reasons for choosing a particular remedy for a staffing deficiency along with implementation details should a significant staffing deficiency occur, and will submit that information to the Personnel Board. Likewise, Employment Development stated that if future language surveys identify any materials that need translation, it will identify its corrective action steps and timeline and submit that information to the Personnel Board.

Finding #7: State agencies are not maximizing opportunities to reduce the costs of providing bilingual services.

Some state agencies are not maximizing opportunities to reduce their costs to provide bilingual services by leveraging existing California Multiple Award Schedules (CMAS) contracts with the Department of General Services (General Services) and the Personnel Board's contracts for interpretation and translation services. For example, both Employment Development and Food and Agriculture entered into separate agreements with a contractor to translate documents into Spanish at a cost of 30 cents per word; however, this service is available from a CMAS vendor for 17 cents per word. If these departments purchase these services up to their maximum contracted amounts, they will collectively end up paying approximately $47,400 more than if they purchased these services from the CMAS vendor. Moreover, the savings could be greater because the prices listed in CMAS vendors' contracts represent the maximum rates they may charge for a given service; thus, General Services strongly encourages agencies to negotiate more favorable rates with these vendors.

The Personnel Board maintains one contract for sign language interpretation services and another contract for over the telephone interpretation services and written translation services. We found that these contracts contained rates that were sometimes lower than the rates negotiated by other state agencies. Thus, state agencies needing contract interpreters or translators should check with the Personnel Board to identify the vendors with which the Personnel Board contracts and the associated rates it is paying. State agencies can use this information as leverage when negotiating prices with CMAS or other vendors.

We recommended that state agencies leverage General Services' and the Personnel Board's contracts for interpretation and translation services to potentially reduce the costs of providing bilingual services.

Emergency Management's Action: Pending.

Emergency Management reported that it will research the possibility of utilizing General Services' and the Personnel Board's contracts as a cost-effective tool to provide written translation and interpretation services for its LEP clients, and will outline this process in its 2011 implementation plan.

Highway Patrol's Action: Corrective action taken.

Highway Patrol reported that it complies with this recommendation and will continue to negotiate the lowest possible rates for bilingual services while ensuring quality deliverables.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services.

Food and Agriculture's Action: Pending.

Food and Agriculture reported that its equal employment opportunity office will further educate all of its divisions regarding the availability of CMAS contracts for language access services. Food and Agriculture also indicated that in upcoming training sessions and workshops, the equal employment opportunity office will promote the utilization of CMAS contracts and the importance of negotiating with CMAS vendors as a cost-effective way of providing language access services.

Housing's Action: Pending.

In an effort to achieve the best service at the lowest cost possible, Housing's equal employment opportunity officer will contact the Personnel Board to obtain information and pricing on its bilingual services contracts, and will compare those prices to the rates of the CMAS and other vendors that it currently uses for its bilingual services needs. Housing reported that these activities will occur by June 2011.

Justice's Action: Pending.

Justice reported that it will consider exploring the bureau's recommendation to leverage General Services' and the Personnel Board's contracts when its current language interpretation and translation service contract expires.

Motor Vehicles' Action: Corrective action taken.

Motor Vehicles reported that it already complies with this recommendation, and therefore, no further action is required.

Public Health's Action: Pending.

Public Health reported that it will issue a contract bulletin by March 2011 outlining the usage of CMAS contracts to procure interpretation and translation services. Public Health indicated that this bulletin will also inform department employees that utilizing CMAS contracts could provide leverage to reduce costs.

Toxic Substances Control's Action: Pending.

Toxic Substances Control reported that it will consider General Services' and the Personnel Board's contracts for interpretation and translation services when appropriate in an effort to reduce the costs of providing bilingual services.

Employment Development's Action: Pending.

Employment Development asserted that it leverages all of General Services' master and statewide contracts, including CMAS contracts, when appropriate for use. However, Employment Development stated that before contracting out for personal services with a private vendor, as is available through CMAS, it first considers an agreement with another state agency. Nonetheless, the Employment Development contract described previously illustrates that state agencies have opportunities to reduce their costs of providing bilingual services by leveraging CMAS contracts.

Finding #8: Two state agencies did not follow contracting rules to pay for their bilingual services.

During the course of our audit, we discovered some inappropriate contracting practices at Public Health and Corrections. The Public Contracts Code generally requires state agencies to obtain a minimum of three bids when contracting for services valued at $5,000 or more. In addition, the State Contracting Manual prohibits state agencies from splitting into separate tasks, steps, phases, locations, or delivery times to avoid competitive bidding requirements any series of related services that would normally be combined and bid as one job.

Despite these requirements, during fiscal year 2007–08, Public Health used four individual service orders for $4,999.99 each to one vendor for interpreting services. Instead of executing multiple service orders having an aggregate value exceeding $5,000 with one vendor for the same service, Public Health should have combined the services into one job and solicited competitive bids. Public Health has a decentralized procurement process and does not track centrally the service orders that exist for language access services; thus, it places itself at risk for violating the State's contracting rules.

Corrections established five individual service orders for $4,999.99 each to purchase interpretation services from one vendor during fiscal year 2009–10. It agrees that these five service orders should have been consolidated into a single competitively bid contract. According to Corrections' service contracts chief, it inadvertently used the five service orders in this case to purchase services from one vendor because its headquarters office received these service orders from different parole regions at different times, and it did not identify the need for a single contract.

We recommended that Public Health and Corrections develop procedures to detect and prevent contract splitting.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services. In addition, Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

Public Health's Action: Pending.

Public Health reported that it will strengthen its oversight of service orders by providing semi-annual reminders to its staff on the use of service orders to ensure that programs are complying with the guidelines of its service order manual. In addition, Public Health stated that its internal auditors will perform periodic inspections to ensure compliance with contract requirements, prevent splitting of service orders, and to ensure service orders do not exceed the maximum allowed amount of

$4,999.99 per service type and contractor in one fiscal year. Finally, Public Health indicated that it will issue a policy memo by January 2011 that outlines the appropriate and inappropriate uses of service orders and the tracking log that each program must keep for auditing purposes.

Finding #9: Some local agencies have no formal process for clients to complain about any lack of bilingual services.

Our survey of local government administrators and department managers revealed that residents in the cities of Fremont, Santa Ana, and Garden Grove may have insufficient means of voicing their need for bilingual services. Specifically, these jurisdictions reported that they do not have a complaint process at the city's administration offices or at the individual local department included in our survey that would allow the public to notify them about a lack of available bilingual staff or translated written materials. Local agencies without a formal complaint process that would allow their LEP clients to report formally any lack of bilingual services may not hear or address such complaints appropriately.

We recommended that the cities of Fremont, Santa Ana, and Garden Grove should consider establishing complaint processes through which the public can report the absence of bilingual services or resources.

City of Fremont's Action: Pending.

The city of Fremont reported that it is currently researching the complaint processes that other jurisdictions have in place and plans to adopt a complaint procedure in early 2011.

City of Santa Ana's Action: Pending.

The city of Santa Ana (Santa Ana) reported that it plans to provide complaint forms regarding bilingual services and resources at all of its public counters and on its Web site, and that these forms will be available in each of the primary languages spoken in Santa Ana. In addition, Santa Ana stated that it will ensure that a central department is responsible for addressing all complaints. Finally, Santa Ana asserted that it will ensure that any complaints are addressed in a timely manner.

City of Garden Grove's Action: Pending.

The city of Garden Grove (Garden Grove) reported that it will establish a central point of contact for complaints related to the Act. In addition, Garden Grove stated that over the next few months, it will draft a formal complaint process as an administrative regulation. When this regulation is adopted, the formal complaint process will be made available to the public in all of the city's public facilities and on its Web site, in each of the city's major languages.

Department of Finance

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2008-0633 (REPORT I2009-1), APRIL 2009

Investigative Highlight . . .

The Department of Finance improperly saved a vacant position by transferring an employee from one position to another.

Department of Finance's response as of April 2010

Our investigation revealed a sequence of events indicating that the Department of Finance (Finance) improperly kept a vacant position from elimination; thus, it circumvented a state law intended to abolish long-vacant positions.

Finding: Finance circumvented state law and improperly prevented a vacant position from being abolished.

During the seven month period from June 2006 through January 2007, three Finance employees occupied one position at various times. However, this position was not filled by anyone for a full five-month period from July through November 2006. Had the position remained unfilled through December 31, 2006, it would have been deemed vacant according to California Government Code, Section 12439, and therefore would have been abolished. However, based on our review of employment records from the State Controller's Office (Controller), Finance manually keyed Employee B's transfer into this position on December 21, 2006, and made it effective December 1, 2006. Finance then transferred Employee B to another unit on January 17, 2007. Employee B informed us that he requested the transfer to another unit in January 2007, but he was not aware he had been transferred to the vacant position in December 2006. Finance appointed another employee, Employee C, to the vacant position on January 18, 2007. When Finance manually keyed in Employee B's transfer into this position effective December 1, 2006, for a period of 49 days, it prevented the position from being abolished by the Controller. As a result, Finance circumvented state law governing the abolishment of vacant positions.

To ensure the laws governing vacant positions are followed, we recommended that Finance transfer employees from one position to another only when there is a justified business need.

Finance's Action: Corrective action taken.

Finance issued a memoranda to its executive management and its chief of human resources to stress the importance of strict compliance with the law governing vacant positions and to require that any circumvention of this law be reported to its management. Finally, Finance issued a counseling memorandum to the manager who directed staff to move an employee in order to save the vacant position.

Department of Corrections and Rehabilitation and Department of General Services

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2007-0891 (REPORT I2009-1), APRIL 2009

Department of Corrections and Rehabilitation's response as of March 2010 and Department of General Services' response as of September 2009

The Department of Corrections and Rehabilitation (Corrections) and the Department of General Services (General Services) wasted $580,000 in state funds by continuing to lease 5,900 square feet of office space that Corrections left unoccupied for more than four years. Delays and inefficient conduct by both state agencies contributed to the waste of state funds.

Investigative Highlight . . .

Because of multiple delays and inefficient conduct, the Department of Corrections and Rehabilitation (Corrections) wasted $580,000 in state funds from January 2005 through June 2008, and the Department of General Services has taken more than four years to complete Corrections' request for office space.

Finding #1: Corrections failed to adequately describe its need for space and to promptly fulfill its responsibilities in the leasing process.

Over the four-year period that Corrections was seeking office space, it failed to give General Services an accurate description of its space needs and to promptly provide required information and approvals that were necessary to facilitate the lease process. Its failures contributed to General Services' delays in meeting Corrections' space needs and caused Corrections to waste state funds.

We recommended that Corrections require its employees to confirm leasing needs before submitting a request to General Services to ensure that accurate information is communicated, and to promptly review and approve required lease information to facilitate the process. In addition, we recommended that Corrections obtain training from General Services about the leasing process and General Services' expectations of Corrections' staff in charge of requesting leasing services.

Corrections' Action: Corrective action taken.

Corrections informed us that it moved into the office space in May 2009. Corrections indicated subsequently that it initiated several improvements to its leasing procedures and lease project management. In particular, Corrections reported that it had refined its lease project processes to include conducting field reviews of its leased space. In addition, it stated that it had completed a business plan to standardize leasing processes, ensure quality assurance, and strengthen lease inventory records management. Further, in September 2009 Corrections completed a lease process flow diagram. Finally, in March 2010 it noted that its remaining leasing staff attended a General Services' training course on the State's leasing process. Corrections also notified us that its project tracking system allowed it to track and monitor the status, schedule, and budget of leasing projects and that it still had plans to develop a formal leasing database but was considering new software options.

Finding #2: General Services failed to properly exercise its project management responsibilities.

General Services was slow to act on Corrections' request for a reduction of its leased space, and it allowed the negotiation of a new lease to drag on for an unreasonable amount of time while the State continued to pay for unused space. Furthermore, its leasing actions failed to ensure that Corrections' request was efficiently processed without wasting state funds and time.

We recommended that General Services establish reasonable processing and completion timelines for lease activities. We also recommended General Services strengthen its oversight role to prevent state agencies from unnecessarily using leased space when state-owned space is available and to create guidelines for leasing representatives. Finally, we recommended that General Services develop a procedure to evaluate all costs incurred in the processing of a request, including any rent paid on unoccupied space, to ensure that it makes cost-effective decisions when considering the feasibility of a space request.

General Services' Action: Corrective action taken.

In May 2009 General Services confirmed Corrections' occupancy of the office space. In addition, General Services updated its timelines for its lease activities to extend to 36 months from 24 months the maximum time to complete leasing projects. Furthermore, General Services stated that the addition of 15 space planning staff has allowed for a more manageable distribution of its workload to improve the efficiency of planning activities and for timely resolution of critical issues associated with lease projects. It also provided us with its two new policies that, effective May 1, 2009, established procedures for its staff in resolving lease project disputes and in monitoring lease project progress. In addition, to strengthen its enforcement over using state-owned space, General Services indicated that it established policies and practices requiring it to address conflicts with state agencies regarding the use of available state-owned space. Finally, in August 2009 General Services provided us with a policy that, effective June 1, 2009, established its initial processing of lease requests as not to exceed 18 days.

Department of General Services

It No Longer Strategically Sources Contracts and Has Not Assessed Their Impact on Small Businesses and Disabled Veteran Business Enterprises

REPORT NUMBER 2009-114, JULY 2010

Department of General Services' response as of December 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) review the Department of General Services' (General Services) strategically sourced contracting practices and the effects these practices have on California small businesses and disabled veteran business enterprises (DVBEs). Specifically, the audit committee asked that we evaluate General Services' procedures for establishing strategically sourced contracts and determine how General Services ensures that small businesses and DVBEs are given an equitable opportunity to be chosen as strategically sourced contractors. We were asked to select a sample of strategically sourced contracts and determine if the justification for the contract met the applicable and established criteria; if General Services followed applicable laws, regulations, and policies and procedures when entering into contracts; and how General Services evaluated contractor compliance with laws related to providing commercially useful functions. The audit committee also requested that we evaluate General Services' policies and procedures to ensure compliance with contract terms of strategically sourced contracts.

If General Services tracks such information, the audit committee asked the bureau to calculate the ratio of strategically sourced contracts awarded to small businesses and DVBEs compared with all strategically sourced contracts. It further requested that we compare the number of small business and DVBE contracts for the two years before the implementation of strategic sourcing with the number of small business and DVBE contracts since General Services implemented strategic sourcing. The audit committee also asked us to compare the number of strategically sourced contracts during fiscal years 2007–08 and 2008–09 with all contracts entered into during the same period.

We also were asked to review and assess General Services' process for evaluating and estimating benefits to the State of strategically sourced contracts, as well as to determine whether General Services compares the ultimate cost savings of the strategically sourced contracts with preliminary estimates of cost savings from its analysis. Finally, the audit committee requested that we identify the changes in the number of staff in General Services' Procurement Division since the inception of the strategic sourcing initiative and determine the reasons for any increase in staffing.

Audit Highlights . . .

Our review of the Department of General Services' strategically sourced contracting practices revealed that it:

» ***Awarded 33 statewide sourced contracts for 10 categories of goods between February 2005 and July 2006. Further, it:***

- ***Accrued at least $160 million in net savings as of June 30, 2007.***
- ***Paid the consultant that assisted in implementing the strategic sourcing initiative 10.5 percent of the accrued savings realized through these contracts.***
- ***Did not continue to formally calculate the savings after June 2007 when its consulting contract expired.***

» ***Has not strategically sourced 20 other categories of goods or services, which were recommended by the consultant, and had not prepared an analysis to document its rationale for not strategically sourcing.***

» ***Incurred significant costs to train staff and to develop written procedures on strategic sourcing, yet has not awarded any new strategically sourced contracts using the procedures or reviewed comprehensive purchasing to identify new opportunities.***

» ***Lacks data to determine the impact of strategic sourcing on the participation by small businesses and Disabled Veteran Business Enterprises (DVBEs).***

continued on next page . . .

- *Does not monitor small business and DVBE subcontractors to ensure that they perform commercially useful functions in providing goods or services once a contract has been awarded.*
- *Does not have standard procedures to recover any overcharges identified despite its new automated process designed to monitor compliance with contract pricing terms.*

Finding #1: General Services' initial strategic sourcing efforts resulted in significant savings.

General Services awarded a contract in June 2004 to CGI-American Management Systems (CGI) to assist it in identifying and creating strategically sourced contracts in response to a recommendation of the California Performance Review. General Services' documents indicate that the State realized at least $160 million in net savings through June 2007 as a result of the initial strategic sourcing efforts with the help of CGI. Those savings exceeded the estimates for eight of the 10 categories implemented. General Services paid CGI 10.5 percent of the savings gained under the strategically sourced contracts, and the State continued to use strategically sourced contracts after CGI's contract expired. After the end of CGI's contract, however, General Services changed the way it tracked savings, and as a result the total amount of savings, estimated by General Services to be substantial, is unknown.

Further, 28 of the original 33 strategically sourced contracts have expired, and the remaining five were scheduled to expire by July 2010. Although General Services has rebid or extended 26 of the 28 contracts that have expired, its management acknowledges that the historical information used by CGI in recommending strategically sourcing various goods and services and measuring related savings may no longer be relevant because that information was based on purchases during fiscal years 2002–03 and 2003–04. As a result, General Services would need to examine the State's recent purchasing patterns to determine the expected future savings for the various items.

We recommended that General Services ensure that it determines savings to the State going forward for strategically sourced contracts by examining the State's recent purchasing patterns when determining whether to rebid or extend previously strategically sourced contracts and when estimating expected savings. It should subsequently compare the savings it achieves to the expected savings for those contracts.

General Services' Action: Partial corrective action taken.

General Services states that it has developed standards for implementing and documenting the evaluation of recent purchase patterns when determining whether to extend, rebid, or retire previously sourced contracts. It notes that it did so in July 2010 by updating its procedures manual to incorporate detailed requirements for the development of opportunity assessments and sourcing work plans. General Services also states that it is piloting the use of a work plan template that contains detailed information on savings expected from the proposed sourced contract. It expects to complete the pilot project and incorporate lessons learned into a final work plan template in June 2011. General Services reports that subsequently it will compare the baseline savings amounts to the actual pricing obtained under an executed contract to calculate achieved savings.

Finding #2: General Services has not entered into new strategically sourced contracts.

General Services has strategically sourced no new contracts, even though it has created a unit that is tasked with, among other duties, identifying additional strategic sourcing opportunities and even though it paid for training and a procedures manual to do so. In addition to the 10 categories for which General Services originally awarded strategically sourced contracts, CGI had identified an additional 20 categories as good candidates for strategic sourcing. When we inquired about strategic sourcing efforts after CGI's contract ended, we learned that although its Intake and Analysis Unit (IAU) performs opportunity assessments for statewide contracts, General Services has not awarded any new contracts using the strategic sourcing procedures it developed. Further, when we looked into General Services' specific progress on CGI's recommendations, we found that it had not prepared any kind of comprehensive analysis documenting its attempts to strategically source the additional categories or its rationale for not strategically sourcing. General Services indicated it has awarded various contracts to address many of the categories recommended by CGI. However, none of these contracts were based on analyses prepared by the IAU, which is responsible for strategic sourcing efforts.

Further, management stated that although strategic sourcing has yielded significant results, GeneralServices has achieved similar benefits through the use of more traditional, less resource-intensive methods. However, General Services has not determined whether its traditional methods have resulted in the maximum savings possible through strategic sourcing. Further, it is not reviewing comprehensive purchasing data that would allow it to effectively identify new opportunities. Instead, when it performs opportunity assessments to determine if strategic sourcing is warranted, General Services primarily considers the usage information it receives for existing statewide contracts. It is not considering other purchases made by state agencies. However, General Services noted that it plans to use its eProcurement system, which includes the State Contracting and Procurement Registration system (SCPRS), for strategic sourcing purposes.

We recommended that General Services conduct its planned review of CGI-recommended categories that it did not strategically source to determine if there are further opportunities to achieve savings to ensure that it has maximized the savings for these categories. Further, General Services should follow the procedures for identifying strategic sourcing opportunities included in the IAU's procedures manual to maximize the savings to the State for future purchases. In addition,to effectively identify new strategic sourcing opportunities, General Services should work to obtain comprehensive and accurate data on the specific items that state agencies are purchasing, including exploring options for obtaining such data for agencies that do not have enterprise-wide systems and therefore would not be using the additional functionality of the eProcurement system. Until it obtains such data, General Services should work with state agencies to identify detailed purchases for categories that it identifies through SCPRS as viable opportunities forstrategically sourcing. For example, if based on its review of SCPRS data, General Services identifies a particular category that it believes is a good candidate for strategic sourcing, it should work with those state agencies that accounted for the most purchases within the category to determine the types and volume of specific goods purchased to further analyze the types of goods to strategically source. General Services should assess any need for additional resources based on the savings it expects to achieve.

General Services' Action: Partial corrective action taken.

General Services reported that it completed its review of CGI-recommended categories that it did not strategically source and concluded that none of the 20 categories warranted additional strategic sourcing contracting efforts. General Services noted that its review confirmed that it used other traditional acquisition techniques to acquire those goods or services that accomplished the same goal as strategic sourcing. It noted that for the remaining categories, such as architectural and engineering services, electricity, and leased real property, the review determined that the categories were of such a broad nature that strategic sourcing techniques could not be applied. Inresponse to our request for documentation of the analysis performed that resulted in its conclusions, General Services provided a document of about three pages. The document commented on the results of each of the categories for which it or others conducted traditional (nonstrategic sourcing) acquisition methods. For many of the categories, General Services indicated that either savings would be measured by individual contract or savings were not measured. Additionally, General Services described the factors that it believes prevent strategic sourcing of other categories.

Further, General Services indicates that it periodically reviews databases, including the SCPRS data, for items that may indicate a strategic sourcing opportunity. It states that, in consultation with its customers, it uses available data on purchasing patterns to identify if strategic sourcing or another procurement vehicle should be used. General Services believes that these steps are sufficient to allow it to obtain comprehensive and accurate data on the specific items that state agencies are purchasing that are of a volume that warrant an opportunity for strategic sourcing. General Services states that it goes through an extensive search for purchasing data using all available sources and that it requests copies of purchase orders from state agencies to obtain more detailed purchasing data. However, it is unclear to what extent General Services implemented new procedures since the audit, nor was it able to provide, within the time frames needed for this report, information that would allow us to fully substantiate the actions it reported taking.

Finding #3: Effects of strategic sourcing on small businesses and DVBEs are not known.

Although strategic sourcing achieves lower prices by consolidating state expenditures into fewer contracts, consolidating state contracts also can result in fewer contracting opportunities for small businesses and DVBEs. To determine any change in small business and DVBE participation, General Services would need participation data, including the number of small businesses and DVBEs participating in state contracts, for these contracts both before and after it strategically sources the goods. However, General Services currently has only some of the small business and DVBE participation data necessary to measure the impact of strategic sourcing. General Services recognized that strategic sourcing could affect state agencies' ability to reach small business and DVBE participation goals; for these contracts it provides state agencies with the alternative of contracting directly with small businesses and DVBEs in order to mitigate this effect. This alternative is referred to as an "off ramp." General Services does not know how often state agencies use the off ramp, however, so it cannot evaluate its effectiveness in providing opportunities for small business and DVBE participation.

To provide decision makers with the information necessary to determine the true costs and benefits of strategic sourcing, we recommended that General Services evaluate any impact strategic sourcing has on small business and DVBE participation in terms of the number of contracts awarded and amounts paid to small businesses and DVBEs within the categories being strategically sourced. Specifically, for goods that were strategically sourced, General Services should compare the number of contracts awarded to small businesses and DVBEs before they were strategically sourced with those awarded through such contracts after they were strategically sourced. This effort

should include contracts awarded by General Services and other state agencies. Further, we recommended that General Services track the number and dollar amounts of contracts that state agencies award through the use of off ramps in strategically sourced and other mandatory statewide contracts to evaluate the effectiveness of the off ramp in providing opportunities for small business and DVBE participation. Its evaluation also should consider the extent to which an off ramp affects the monetary benefits that result from statewide contracts designed to leverage the State's purchasing power.

General Services' Action: Partial corrective action taken.

General Services states that before performing an acquisition, it includes an assessment of the number of small businesses and DVBEs that participated in the previous solicitation and the potential number of small businesses and DVBEs that will be participating in the new solicitation. As for tracking the use of small business and DVBE firms after a strategically sourced contract has been awarded, General Services has decided to capture and track that information for each statewide contract under its purview. General Services states that it is maintaining a database for tracking purposes of approved small business or DVBE off-ramp purchases, which includes pricing information. It plans to use this information to assess the impact on small businesses and DVBEs after strategic sourcing. General Services is piloting the new off-ramp usage tracking process using one statewide contract and anticipates completing the pilot phase and finalizing procedures within the first quarter of the 2011 calendar year.

Finding #4: General Services does not monitor for ongoing commercially useful function compliance.

State law requires that small business and DVBE contractors and subcontractors participating in state contracts must provide a commercially useful function in furnishing services or goods that contributes to the fulfillment of the contract requirements. When awarding the contract, General Services relies on contractor declarations that the small business and DVBE subcontractors will perform activities that comply with these requirements. Although General Services might request clarification on the proposed role of these subcontractors, it does not verify the role they play once the contract is awarded. Management stated that the individual state agency making the purchase is responsible for validating that subcontractors complied with commercially useful function requirements by obtaining from the contractors the necessary information that includes subcontractor name and dollar amount that can be claimed. Management pointed to a specific section in the State Contracting Manual as addressing the state agencies' responsibilities in this area. However, the State Contracting Manual section states only that state agencies can claim purchases toward their small business or DVBE goals whenever a contractor subcontracts a commercially useful function to a certified small business or DVBE. It also states that the contractor will provide the ordering state agency with the name of the certified small business or certified DVBE used and the dollar amount the ordering agency can apply toward its small business or DVBE goal. However, the State Contracting Manual does not provide specific guidance on how state agencies are expected to verify that small business and DVBE subcontractors actually performed commercially useful functions.

We recommended that General Services develop guidance for state agencies on how to ensure that subcontractors perform commercially useful functions if it believes state agencies making the purchases through statewide contracts should be responsible for this task. In addition, General Services should monitor, on a sample basis, whether state agencies are ensuring compliance with these requirements. General Services could leverage its efforts by working with other state agencies to ensure that subcontractors claiming to have provided the goods and services to the purchasing agency did, in fact, perform the work for which they are invoicing the state agencies.

General Services' Action: Partial corrective action taken.

General Services states that it will ensure that user instructions for future statewide contracts contain provisions that fully inform the user state agency of commercially useful function requirements. Further, General Services notes that it is in the process of implementing the use of contract management plans that clearly document the responsibilities of its contract administrators. Where applicable, these plans are to include a requirement for ensuring, on at least a sample basis, contractor compliance with commercially useful function requirements. General Services reports that policies and procedures for implementing the contract management plan process are currently in draft form with finalization expected within the first quarter of the 2011.

Finding #5: General Services' new process for verifying pricing compliance needs further attention.

Although General Services now has a process to identify noncompliance with contract pricing terms for statewide goods contracts, it does not always follow up on the identified noncompliance to ensure prompt recovery of overcharges and does not have a process to help ensure the accuracy of the purchasing data contractors report. General Services believes that individual state agencies making the purchases are responsible for ensuring that contractors comply with the contract's pricing terms. Nevertheless, it has implemented a new process as an additional tool for ensuring compliance with pricing terms. General Services began an automated process of ensuring contractors' compliance with contract pricing terms in August 2008 when it implemented the Compliance and Savings Administration (CASA) system. Our review of selected items found that although the CASA system appropriately processed usage data reported by contractors and identified discrepancies between the prices in usage reports and the respective contract's pricing terms, General Services has not yet developed standard procedures to recover overcharges. Further, General Services does not verify the accuracy of the purchasing data that contractors report. Thus, it cannot be certain that contractors always charge the agreed-upon prices.

We recommended that General Services implement standard procedures to recover overcharges identified by the CASA system. General Services' new procedures should specify the amount of time it considers reasonable to recover funds due back to the State. We further recommended that General Services improve the integrity of its monitoring of pricing compliance by implementing procedures to help ensure that usage reports reflect the actual items received and prices paid by the state agencies that purchased the items. For example, on a periodic basis, it could select a sample of purchases from the usage reports and work with purchasing state agencies to confirm that the prices and quantity of items reported reconcile with the invoices submitted by the contractor.

General Services' Action: Partial corrective action taken.

General Services is developing standard procedures to recover any overcharges, including the amount of time considered reasonable to recover funds due back to the State. The procedures are to provide for the prompt issuance of a "cure letter" upon identification of an overcharge amount. General Services states that it will also promptly follow up to collect any delinquent amounts. It reports that the procedures are in the final stages of completion and anticipates implementation within the first quarter of 2011. Additionally, General Services plans to implement procedures to assist in ensuring the accuracy of the usage reports submitted by contractors. The contract management plan process mentioned in General Services' comments

on Finding 4 is to include steps for the contract administrator to work with state agencies to confirm the accuracy of contractor reported pricing and other relevant data. To ensure the validity of the contractor's usage reporting, the steps are to include sampling purchasing agency documents and reconciling that data with usage report information.

Children's Hospital Program

Procedures for Awarding Grants Are Adequate, but Some Improvement Is Needed in Managing Grants and Complying With the Governor's Bond Accountability Program

REPORT NUMBER 2009-042, MAY 2009

California Health Facilities Financing Authority's response as of August 2010

The Children's Hospital Bond Act of 2004 (2004 act) established the Children's Hospital Program (program) and authorized the State to sell $750 million in general obligation bonds to fund it. The purpose of the program is to improve the health and welfare of California's critically ill children by funding capital improvement projects for qualifying children's hospitals. The California Health Facilities Financing Authority (authority) is authorized by the 2004 act to award grants for the purpose of funding eligible projects. The 2004 act also states that the Bureau of State Audits may conduct periodic audits to ensure that the authority awards bond proceeds in a timely fashion and in a manner consistent with the requirements of the 2004 act, and that grantees of bond proceeds are using funds in compliance with applicable provisions.

Finding #1: The authority does not always ensure that it receives interest earned on advances of program funds to grantees.

The authority's regulations state that children's hospitals not within the University of California (UC) system may receive advances of program funds, and the authority is required to recover any interest earned on these advanced funds by reducing subsequent disbursements. However, the authority does not always comply with this requirement. For example, we noted that the authority did not recover interest from two hospitals, totaling more than $34,000, even though the two hospitals reported the interest earnings to the authority. According to the authority's program manager, the authority should be recovering such earned interest, and it plans to do so by reducing future grant disbursements to the two hospitals by the amount of the interest earnings.

In addition, although the authority's grant agreements with children's hospitals require that the grantees establish separate bank accounts or subaccounts for grant funds and provide to the authority copies of all statements for these accounts, the authority has not ensured that hospital grantees not in the UC system submit all bank statements. Periodic collection of these bank statements would assist the authority in identifying interest that may have been earned, allowing it to credit this interest against future disbursements or to collect the interest from the hospitals.

Finally, the authority's current regulations do not require that grantees deposit advanced grant funds in an interest-bearing account, although some grantees have done so. Given the amount of bond proceeds

Audit Highlights . . .

Our review of the administration and use of bond proceeds from the Children's Hospital Bond Act of 2004 (2004 act) revealed the following:

- ***The 2004 act's restrictive requirements limit the number of hospitals that can use the funds.***
- ***The California Health Facilities Financing Authority (authority) did not always recover interest earnings on funds paid to the hospitals in advance of actual expenditures—we identified more than $34,000 of interest due to the State.***
- ***The authority's regulations do not require grantees that are not in the University of California system to deposit fund advances in interest bearing accounts.***
- ***The authority has not finalized and implemented procedures to close out program grants.***
- ***Although the authority desires to voluntarily comply with the governor's 2007 executive order regarding accountability for bond proceeds, it is uncertain of its timeline to do so.***

earmarked for hospitals not in the UC system, the potential interest earnings on funds advanced to grantees may be significant. According to the program manager, he knows of no legal prohibition against such a requirement and intends to seek an opinion from the program's staff counsel.

We recommended that the authority verify that it has the legal authority to require grantees that are not in the UC system to deposit grant funds paid in advance of project expenditures in an interest bearing account and, if it has such authority, require that grantees earn interest on grant funds. In addition, the authority should develop and implement procedures to ensure that it promptly identifies and collects interest earned on those advances.

Authority's Action: Corrective action taken.

According to the authority, its legal counsel advised that there are no legal impediments to requiring hospitals not in the UC system to establish interest-bearing accounts. As such, the authority indicated it formed a working group, which has met, to determine how best to implement this recommendation. The authority decided it is not going to pursue regulations at this time, but is now advising grantees to establish interest-earning accounts. However, the authority indicated that it has internally agreed to remain flexible in this area in that, to the extent a grantee demonstrates extenuating circumstance to justify the use of noninterest-bearing accounts, it will consider their position on a case-by-case basis.

Additionally, regulations that became effective in November 2009 for the Children's Hospital Program require that credit for investment earnings on any previously released portion of a grant should be paid to the authority prior to the final release of grant funds to the grantee. The authority stated that, at the time of the final disbursement of grant funds, it determines the total interest earned on the advances and that amount is deducted from the final disbursement, thereby effectively collecting the interest earned. In addition, the authority indicated that staff routinely collect and review bank statements to identify the interest earned over the course of the grant.

Finding #2: The authority has not promptly and effectively closed out grants for completed projects.

The authority has not yet finalized and implemented procedures to close out program grants. Although it has received some documentation from grantees regarding project completion, it does not ensure that all required information is received and has not determined all the steps it needs to perform to close out grants after projects are completed. The authority's regulations contain requirements for completed projects that include items such as a certification that the project is complete and documentation clearly showing that grant awards do not exceed the cost of the project. The authority has developed a checklist to use in gathering and evaluating information regarding completed projects. However, the authority does not always promptly complete the checklist. In addition, the checklists showed no evidence of review by program management. One of the items not completed on the checklist was whether the grantee provided a final report referred to as the Completion Certificate and Final Report. The authority requires grantees to submit this report to document, under penalty of perjury, the uses of funds expended on the project; estimated total cost of the project; interest earned on advanced grant funds; whether the hospital received a notice of completion for the project; the results of the project and the performance measures used; and any follow-up implementation actions such as equipment, staffing, or licensing. At the time of our fieldwork, March 2009, the authority still had not received a Completion Certificate and Final Report from two hospitals even though their projects had completion dates of October 2007 and September 2008.

Finally, according to the program manager, the authority may need to take additional steps to achieve final closeout of the grants for completed projects, however, the authority has not yet identified the additional steps it would need to take to officially close out an award.

We recommended that to ensure that the authority meets the objectives contained in the program regulations for the completion of grant-funded projects, including obtaining certification that projects are completed and grants do not exceed project costs, it should take the steps necessary to ensure that it

promptly executes its project completion checklist, determines any additional steps it needs to perform to close out grants, and finalizes and implements the necessary steps to ensure that grant closeout procedures are followed.

Authority's Action: Corrective action taken.

The authority stated that after it receives certification by the grantee that the project is complete and receives the supporting documents required by the regulations, the authority begins execution of the project completion checklist within 10 business days of receiving these documents from the grantee. When completing the checklist, the authority determines whether any additional steps are needed to close out the grant. The authority stated that it employs its best efforts to close out grants within 90 days of receiving the closing documents. To the extent that the grantees' ability to supply documents or information delays closure of the grant beyond 90 days, the authority will take all steps necessary to close the grant as soon as is reasonably practicable.

Finding #3: The authority is uncertain of its timeline to voluntarily implement the governor's bond accountability program.

Although the authority is not required to comply with the governor's January 2007 executive order regarding accountability for bond proceeds, according to the program manager, the authority desires to voluntarily comply with the bond accountability standards and is working with the Department of Finance (Finance) to implement the executive order. We believe that the information required by the executive order regarding the use of the bond proceeds will benefit interested members of the public. However, the authority's program manager indicated that he is uncertain whether the authority has sufficient staff time available to ensure compliance in the near future. He stated that even though the authority plans to hire one additional staff member, a considerable amount of time and effort will be needed to address existing program needs, as well as to implement the additional funding for the children's hospital program authorized by the voters in November 2008.

We recommended that since the authority has decided it desires to comply with the governor's executive order to provide accountability for the use of bond proceeds, it should develop and submit to Finance an accountability plan for its administration of the program bonds. In addition, it should take the necessary steps to periodically update Finance's bond accountability Web site to provide public access to information regarding its use of the bond proceeds.

Authority's Action: Corrective action taken.

According to the authority, Finance approved the authority's bond accountability plan in March 2010. However, it also indicated that the bonds authorized by the 2004 act are not eligible for the governor's bond accountability Web site because the site is intended for bonds approved by voters in 2006 and later. According to the program manager for the Children's Hospital Program, Finance told her that it is in the process of programming its bond accountability Web site to include additional bonds, such as those authorized by the Children's Hospital Bond Act of 2008; however, Finance was unable to provide the authority with an estimate of when the programming will be completed. In the interim, the authority has posted its bond accountability plan for the Children's Hospital Bond Act of 2008 on its Web site, which includes a list of approved projects and a map showing the location of the projects.

Department of Housing and Community Development

Housing Bond Funds Generally Have Been Awarded Promptly and in Compliance With Law, but Monitoring Continues to Need Improvement

REPORT NUMBER 2009-037, NOVEMBER 2009

Responses from the Department of Housing and Community Development and California Housing Finance Agency as of November 2010

In 2002 and 2006 California voters passed the Housing and Emergency Shelter Trust Fund acts to provide bonds (housing bonds) for use in financing affordable housing for low- to moderate-income Californians. The Department of Housing and Community Development (HCD) and the California Housing Finance Agency (Finance Agency) primarily award, disburse, and monitor the housing bond funds received by various programs.

The California Health and Safety Code requires the Bureau of State Audits (bureau) to conduct periodic audits of housing bond activities to ensure that proceeds are awarded in a manner that is timely and consistent with legal requirements and that recipients use the funds in compliance with the law.

Finding #1: HCD and the Finance Agency generally undertake appropriate monitoring procedures during the disbursement phase.

For disbursement of housing bond awards, both agencies generally have processes in place to ensure that recipients meet legal requirements. However, HCD did not always follow its procedures when issuing advances to sponsors receiving CalHome Program bond funds. For example, it has continued to advance funds to recipients at amounts greater than the limit set in their standard agreements, a practice that we previously reported in September 2007 during our initial audit of these bond programs. In response to that audit, HCD implemented procedures that establish criteria for issuing advances constituting more than 25 percent of the total award. However, HCD did not follow these procedures for two of the 10 recipients we tested that received advances exceeding the limit. Establishing limits on the amounts advanced to recipients helps ensure that projects are, in fact, progressing before all funds are disbursed, and it also allows the State to maximize interest earnings.

In addition, HCD did not always ensure that recipients submitted quarterly status reports for its CalHome Program, as required in its CalHome regulations. HCD uses these reports, in part, to assess the performance of program activities. Also, the Finance Agency did not always ensure that its sponsors, comprising local entities qualified to construct or manage housing developments, had a regulatory agreement in place. These agreements provide assurance that developments being built using funds from the Residential Development Loan Program remain affordable to low- and moderate-income households.

Audit Highlights . . .

Our review revealed the following for the Housing and Emergency Shelter Trust Fund acts of 2002 and 2006:

- *As of December 2008 the Department of Housing and Community Development (HCD) and the California Housing Finance Agency (Finance Agency) had awarded nearly all the November 2002 bond funds.*
- *Although both HCD and the Finance Agency awarded housing bond funds authorized in November 2006 for eight of 10 programs in a timely fashion, HCD has not yet issued any awards for the remaining two programs.*
- *Both HCD and the Finance Agency have established and generally adhered to policies intended to ensure that only eligible applicants receive awards.*
- *For disbursement of the housing bond awards, both agencies generally have processes in place to ensure that recipients meet legal requirements; however, as we reported in September 2007, HCD continues to advance funds to recipients at amounts greater than the established limit for its CalHome Program.*
- *Because of state budget difficulties, HCD restricted travel, beginning in July 2008, for performing on-site monitoring visits. Thus, it has not met the goals it established for conducting such visits for its Emergency Housing, CalHome, and Supportive Housing programs.*

We recommended that HCD follow its procedures on restrictions of bond fund advances that exceed 25 percent of the total award under the CalHome Program. In addition, HCD should ensure that it receives and reviews required status reports from recipients of funds under its CalHome Program. We also recommended that the Finance Agency obtain signed copies of recorded regulatory agreements before disbursing funds to its recipients of the Residential Development Loan Program.

HCD's Action: Corrective action taken.

HCD explained that CalHome Program's ability to grant an advance in excess of 25 percent under special circumstances is important to mitigate risks to participants (occupants) who might otherwise lose an opportunity to own and occupy a home. Therefore, HCD developed procedures for granting advances in excess of 25 percent to recipients of its CalHome Program that requires the following: substantiation from the recipient, addition of the request to the tracking report, and review and approval by the manager. The request is then documented, processed, and filed in the recipient's file. HCD believes this procedure ensures that the appropriate controls are in place. Further, HCD asserted that the two instances of noncompliance identified by the bureau were traced back to two staff members who no longer work for HCD. To ensure that subsequent infractions of the procedure do not occur, HCD indicated it has reissued the procedure to all CalHome Program staff members.

Further, according to HCD, status reports from recipients of its CalHome Program are due 30 days after the end of every quarter. HCD provided us with a copy of its report-tracking log that it currently uses to record the dates it receives and reviews quarterly status reports from CalHome recipients. If the reports are late, HCD stated that its staff will call or email the contractor and note on the log who called, who the contact was, date called, and the result. It also indicated that the log will be reviewed periodically by the manager and follow-ups performed as necessary.

Finance Agency's Action: Corrective action taken.

According to the Finance Agency, it now requires awardees to submit the recorded regulatory agreement before it disburses any funds to them. It also indicated that 11 of the 12 awardees have submitted the regulatory agreement and it has suspended any additional disbursements to the one that has not submitted the agreement until it complies.

Finding #2: HCD needs to improve its efforts to monitor during the completion phase.

We reviewed the completion phase monitoring for three programs: the CalHome Program, the Emergency Housing and Assistance Program (Emergency Housing Program), and the Multifamily Housing Program-Supportive Housing Program (Supportive Housing Program). All three had processes in place that should assist in ensuring compliance during the completion phase. In fact, HCD has improved its processes for the CalHome and Emergency Housing programs, which our 2007 audit identified as having weak or nonexistent monitoring during the completion phase. Both programs now have monitoring procedures in place to ensure that sponsors are using bond funds to help their intended populations. However, because of state budget difficulties, HCD restricted the amount of travel for performing on-site visits beginning in July 2008; thus, it has not met the goals it established for conducting on-site visits for these three programs. In fact, HCD did not perform any on-site monitoring reviews for its Supportive Housing and CalHome programs during fiscal year 2008–09.

However, HCD did perform on-site monitoring for its Emergency Housing Program, focusing on those sponsors it considered a higher risk. We believe focusing review efforts on the higher-risk sponsors for the Emergency Housing Program is a reasonable approach that HCD should consider adopting for the other two programs. By not monitoring at least the higher-risk sponsors, HCD cannot ensure that sponsors use funds in accordance with housing bond requirements or that the programs are benefiting the intended populations. Moreover, for the on-site visits HCD performed for its CalHome Program prior to fiscal year 2008–09, it did not always communicate its findings and concerns to the sponsors in a timely manner or ensure that sponsors provided appropriate responses. As a result, HCD cannot ensure that sponsors take timely and appropriate corrective action.

We recommended that when practical, HCD adopt a risk-based, on-site monitoring approach for its CalHome and Supportive Housing programs similar to the monitoring methodology used for the Emergency Housing Program. In addition, HCD should ensure it promptly communicates concerns and findings identified during on-site visits conducted for its CalHome Program and ensure that recipients provide a timely response to the concerns and findings.

HCD's Action: Corrective action taken.

HCD stated that it has adopted a risk-based, on-site monitoring approach for its CalHome and Supportive Housing programs similar to the monitoring methodology used for the Emergency Housing Program and it provided a copy of its risk assessment tool. Further, HCD's current manager developed and implemented a centralized tracking log for the site monitoring, which contains the name of the recipient (contractor) and the dates of the following: site visit and completion, letter of findings, and clearance of findings. In addition, on April 1, 2010, HCD began tracking this same information in the Consolidated Automated Program Enterprise System (CAPES).

Finding #3: HCD has not yet completed its verification of data transferred to a new system.

HCD continues to lack sufficient internal controls over its information technology system. Specifically, we noted during our September 2007 audit that HCD did not ensure the accuracy and completeness of the data converted into its Consolidated Automated Program Enterprise System (CAPES), which it uses to administer and manage various housing programs. In August 2008 HCD indicated that it expected all converted data would be validated and, where necessary, corrected by April 2009. However, as of September 2009, HCD still had not completed the data validation process, and it indicated that it does not expect to do so until March 2010.

We recommended that HCD complete its review of the accuracy of the data transferred to CAPES and ensure that its clean-up efforts are thoroughly documented and retained for future reference.

HCD's Action: Pending.

HCD concurs with the necessity to complete its review of the accuracy of the data transferred to CAPES. According to HCD, as a result of completing its review of the converted data as we had recommended, it isolated several areas in the system where the data is corrupted and is pursuing corrective improvements to the system to address these areas. HCD indicated that it anticipates completing the first improvement by June 2011. After completing this phase, HCD plans to evaluate the system and determine the remaining corrective actions required to complete the necessary system improvements and establish a time frame for completing these actions.

Department of Housing and Community Development

Despite Being Mostly Prepared, It Must Take Additional Steps to Better Ensure Proper Implementation of the Recovery Act's Homelessness Prevention Program

LETTER REPORT NUMBER 2009-119.3, FEBRUARY 2010

Department of Housing and Community Development's response as of August 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct a review of California's preparedness to receive and administer funds from the American Recovery and Reinvestment Act of 2009 (Recovery Act). Using selection criteria contained in the audit request, we chose to examine the preparedness of the Department of Housing and Community Development (department) to administer Recovery Act funds for the Homelessness Prevention and Rapid Re-housing Program (Homelessness Prevention program). Specifically, the audit committee requested that we review and evaluate applicable laws, rules, and regulations and test the internal controls the department intends to use to administer Recovery Act funds. The audit committee also requested that we identify any critical issues and recommend any areas in which the department needs to improve to ensure that it is prepared to comply with federal requirements when administering Recovery Act funds.

Finding #1: The department has not established policies to ensure that subrecipients do not maintain excessive balances of federal funds.

Although the department has taken steps to help ensure that subrecipients comply with applicable Homelessness Prevention requirements, it has not established policies to ensure that subrecipients do not maintain excessive balances of Homelessness Prevention funds. The Recovery Act states that the funds authorized should be spent to achieve the act's purposes as quickly as possible, consistent with prudent management. Because federal regulations require the department to minimize how long it holds onto federal funds, we believe it prudent that the department require its subrecipients to do the same. Otherwise, the department unnecessarily increases the risk of having difficulty in recovering funds it has advanced to a subrecipient should the subrecipient be unable to fulfill its Homelessness Prevention obligations. The department approved drawdown schedules as part of the application process for each subrecipient that set the amounts of quarterly draws. However, the program manager indicated that the department does not impose a time frame within which subrecipients must spend their advances of grant funds. Moreover, the department advanced 15 percent or more of the individual award amounts to seven of the 31 subrecipients, of which two received more than 20 percent. Because a proportionate distribution of the program funds over 12 quarters would result in quarterly advances averaging 8.3 percent, the proportion of the department's advances to these seven subrecipients seems excessive to us. Although the department plans to reduce the amount of additional Homelessness Prevention funds that subrecipients request for a quarter by the amount of their grant funds remaining from the previous quarter, it has not established procedures to monitor spending to ensure that subrecipients do not maintain excessive cash balances of federal funds. We question whether a subrecipient's ability to maintain relatively large balances of federal funds in its accounts is consistent with prudent management.

We recommended that the department develop and implement policies for ensuring that subrecipients limit the time that elapses between receiving federal funds and disbursing them, as well as policies for ensuring that subrecipients maintain an appropriate level of federal cash balances.

Department's Action: Partial corrective action taken.

The department stated that to help limit the time from when the subrecipients receive the Homelessness Prevention funds to when they disburse them, it requires subrecipients to submit expenditure reports no later than 30 days after the end of each quarter. The department indicated that it reviews these quarterly expenditure reports to determine the amount of the subrecipient's

next cash advance. Specifically, the department plans to reduce the amount of additional Homelessness Prevention funds that subrecipients request for a quarter by the amount of their grant funds remaining from the previous quarter. Although we understand how the new policy may help the department identify instances when subrecipients are not minimizing the time between receipt and disbursement of federal funds, the new policy did not address what amounts or proportions constitute an appropriate level of federal cash balances.

Finding #2: The department has not finalized and implemented processes that are currently in draft form.

Although it has taken steps to help ensure that subrecipients comply with applicable Homelessness Prevention requirements, the department should finalize and implement the processes that it currently has in draft form. Specifically, the department should finalize and implement its guidelines for monitoring its subrecipients, as well as develop a written plan for performing site visits or desk audits of subrecipients. The department expects to issue guidelines for monitoring subrecipients that include steps for conducting risk assessments, performing site visits and desk audits, and issuing letters to subrecipients that identify any findings. Through monitoring of its subrecipients the department seeks to ensure that they meet all applicable program requirements, including limiting the types of services provided to those allowed by law, limiting the federal cash balances that subrecipients maintain, ensuring that spending deadlines are met, ensuring that information in required reports is accurate and complete, and ensuring that subrecipients comply with requirements stated in federal communications. The department expects to develop forms for performing risk assessments and issue its final monitoring guidelines by the end of March 2010. Because subrecipients have started to spend their Homelessness Prevention advances, the department should finalize and implement its monitoring guidelines as soon as possible to help it better ensure that the program's requirements are properly met.

Further, the department has not yet developed a written plan to ensure that it can perform site visits or desk reviews for all 31 subrecipients within 12 months. The program manager stated that the department intends to make available 2.5 positions to conduct either site visits or desk reviews for all 31 subrecipients between April 2010 and the end of March 2011. However, according to the program manager, a monitoring timeline does not exist because risk assessments have not been completed to determine which subrecipients should receive site visits and which should receive desk audits. We question whether the department will be able to meet its goal of conducting a site visit or desk audit on all 31 subrecipients between April 2010 and the end of March 2011 with only 2.5 staff available to perform these reviews. Further, the absence of a written plan, including a timeline, is troubling. We believe that a written plan offers several advantages, including identifying a stated goal, documenting all facts and assumptions used in identifying how to achieve the goal, and allowing management to review the plan before it is implemented to identify any errors and offer corrections.

We recommended that the department finalize and implement its draft guidelines for monitoring subrecipients, including its plans to conduct quarterly surveys of subrecipients and to perform risk assessments of the subrecipients. We also recommended that the department finalize and implement its draft plan to perform site visits or desk audits of subrecipients between April 2010 and the end of March 2011.

Department's Action: Corrective action taken.

The department finalized and implemented its guidelines for monitoring subrecipients, including guidelines for reviewing quarterly expenditure reports to ensure subrecipients expended program funds on only those services allowed by law, and a quarterly subrecipient questionnaire to solicit contract management information and identify possible red flags. Additionally, to help ensure that subrecipients meet spending deadlines, the guidelines also include a policy and procedure for monitoring subrecipients no later than 120 days before the deadlines. The guidelines also include procedures to review information included in quarterly expenditure reports to ensure accuracy and completeness, as well as procedures for performing site monitoring and desk audits of subrecipients

that incorporate the requirements identified in federal guidance. Moreover, in July 2010, the department finalized and implemented its schedule for performing site monitoring visits and desk audits. The new schedule indicates that the department plans to complete its site visits and desk audits of all subrecipients by the end of September 2011 rather than the end of March 2011, as originally planned.

Finding #3: The department has not developed written policies for practices that it states it currently follows.

The department should put into writing certain unwritten practices that it currently follows, such as its periodic review of administrative costs; its procedures for minimizing the time between when it receives federal funds and when it disburses those funds; and its procedures for preparing, reviewing, and submitting required federal reports. The department states it currently has in place a system to monitor its administrative costs for other federal programs and plans to implement the same system for the Homelessness Prevention program beginning at the end of February 2010. However, these reviews are not part of a written policy.

Also, although the department has taken steps to help ensure that it quickly provides funds to its subrecipients, it has not put its processes in writing. Federal regulations require the department to minimize the time period between the drawdown of federal funds and disbursement to subrecipients. Although the department's effort to minimize the time period from drawdown to disbursement has so far been successful, we believe the department should put its process in writing to better ensure that staff who implement it have a consistent approach to follow.

Further, the department has also not put into writing processes it follows to prepare, review, and submit required federal reports accurately. Both the U.S. Department of Housing and Urban Development (HUD) and the Recovery Act require the department to submit reports containing certain information regarding its use of the funds. Although the procedures it described verbally to us seem appropriate, the department should put its policies for preparing, reviewing, and submitting required federal reports into writing. Nonexistent, draft, and unwritten processes can inhibit the prevention or detection of instances of noncompliance, which in turn can lead to remedial actions being taken by the federal government against the department. These remedial actions can include penalties up to withholding funds, suspension, debarment, and termination.

We recommended that the department put into writing its procedures for minimizing the time from the date it draws down federal funds to the date it disburses the funds to subrecipients; management's periodic review of the department's level of spending for administrative costs; and its procedures for preparing, reviewing, and submitting required federal reports.

Department's Action: Corrective action taken.

The department has put into writing the current practices it states it follows. Specifically, in March 2010 the department developed written procedures for minimizing the time between the date it draws down federal funds and the date it disburses those funds to the subrecipients, and for its periodic review of administrative cost spending. Moreover, it also developed procedures for preparing, reviewing, and submitting its required federal reports.

Finding #4: The department does not document actions it takes while administering the Homelessness Prevention program.

Although the department has taken some steps to periodically review its administrative costs and to help it submit federally required reports on time, it does not document these actions. Specifically, the department does not maintain documentation to demonstrate its review of administrative costs charged to the program. Documentation of management's periodic reviews provides assurance that the reviews actually occurred and that any concerns identified were resolved.

Moreover, the department does not maintain documentation of the date it submits federally required reports. The Recovery Act requires the department to submit reports containing specific information no later than 10 days after the end of each quarter. The department was unable to provide documentation demonstrating that it submitted these reports by the required deadlines. In response to our requests for this information, the department provided documents supporting the dates the federal reporting Web site acknowledged receiving the reports. Because submission and receipt dates may differ, the department should maintain documents showing submission dates.

We recommended that the department document the results of management's periodic review of the department's level of spending for administrative costs, and the date on which it submits its quarterly reports required by the Recovery Act.

Department's Action: Corrective action taken.

The department indicated that it documents management's periodic review of administrative costs and the date it submits required federal reports. As a part of its budget review procedure, the department implemented a method for management to document its periodic review of administrative cost spending. The department also provided evidence that it now documents the date it submits its quarterly reports required by the Recovery Act.

Finding #5: The department did not provide all required information to subrecipients.

The department has not provided all required information to its subrecipients of the Homelessness Prevention program. Under the terms of the Office of Management and Budget (OMB) Circular A-133, the department is required to notify subrecipients of specific award information, such as the Homelessness Prevention program's Catalog of Federal Domestic Assistance title and number, the award name and number, and the name of the federal awarding agency. Although the department provided most of this information, it did not identify the federal award number as required. When we asked how the department supplied its subrecipients with the federal award number, the program manager said the federal award number was not applicable to subrecipients. This statement is not in keeping with OMB Circular A-133, however, which requires providing the award number to subrecipients.

We recommended that the department notify its subrecipients of the federal award number for the Homelessness Prevention program.

Department's Action: Corrective action taken.

The department notified its subrecipients of the federal award number for the Homelessness Prevention program in February 2010.

State Bar of California

It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs

REPORT NUMBER 2009-030, JULY 2009

State Bar of California's response as of July 2010

The California Business and Professions Code requires the State Bar of California (State Bar) to contract with the Bureau of State Audits to audit the State Bar's operations every two years, but it does not specify topics that the audit should address. For this audit, we focused on and reviewed the State Bar's disciplinary system. To determine the efficiency and effectiveness of this system, we examined the State Bar's discipline costs, the method by which the State Bar accounts for its discipline expenses, the outcomes of cases, the length of time that the State Bar takes to process cases, and the recovery of discipline expenses. We also evaluated the State Bar's attorney probation system and its audit and review unit. Further, we reviewed the State Bar's progress in addressing recommendations from reviews of its operations and the circumstances surrounding an alleged embezzlement by a former State Bar employee. Finally, we reviewed the status of the State Bar's implementation of recommendations made in our 2007 audit titled *State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration*. This report summarizes our assessment of the State Bar's strategic planning efforts, projected General Fund deficit, legal services trust fund, and certain aspects of the attorney disciplinary system.

Finding #1: The State Bar does not account for discipline costs so that it can measure efficiency.

The State Bar does not track the costs of the disciplinary system according to its various functions and therefore cannot be certain that it is using its resources as efficiently as possible, nor can it determine whether policy changes affect the costs of the disciplinary functions. The State Bar's total costs for its attorney disciplinary system have risen from $40 million in 2004 to $52 million in 2008, or 30 percent over five years. This upsurge in expenses has outpaced both inflation and the growth in the State Bar's active membership, and it does not match the changes in caseload size in most stages of the system for disciplining attorneys who violate professional standards. Although the State Bar accounts for the expenses for the intake and the State Bar Court functions separately, it combines expenses of other functions such as investigations, trials, and audit and review. Consequently, the State Bar could not readily differentiate the cost of its investigation and trial functions.

Additionally, we found that the State Bar's offices in San Francisco and Los Angeles do not track their disciplinary expenses in the same manner, which further contributes to the difficulty of identifying actual expenses by function. Therefore, not only is the State Bar unable to separately track and monitor what it spends on key aspects of its disciplinary system, such as investigations and trials, it cannot

Audit Highlights . . .

Our audit of the State Bar of California revealed the following:

- *The costs of its disciplinary system have escalated by $12 million from 2004 to 2008, while the number of disciplinary inquiries opened has declined.*
- *It cannot measure its efficiency or identify where to reduce costs because it does not track expenses by key disciplinary function.*
- *Its offices in San Francisco and Los Angeles calculate discipline costs differently.*
- *Because of the methodology it uses to calculate the average time it spends to close investigations, it reported a decrease of 11 days from 2004 to 2007 when the average investigation time has actually increased by 34 days.*
- *Relatively simple changes to its billing procedures would probably yield additional revenue that could offset some of its increased discipline costs.*
- *Its probation office's workload has increased from 791 cases in 2004 to 867 cases in 2008, yet the number of probation deputies was only recently increased by one.*
- *It discovered an alleged embezzlement of nearly $676,000 by a former employee and is taking measures to strengthen its internal controls.*
- *It still needs to fully implement recommendations made in a consultant's report, in the periodic audits conducted by its internal audit and review unit, and in our prior audit.*

even make meaningful comparisons between the two offices because it has no consistent method of accounting for its operations. This fact inhibits the State Bar's ability to identify specific reasons for cost increases, and if warranted, to take appropriate actions to contain them.

Because the State Bar does not track costs separately for each of its key functions within the disciplinary system, it cannot measure the cost impact of policy changes. In 2005 the California Supreme Court criticized the State Bar for failing to bring all possible charges against an attorney who was ultimately disbarred and for failing to follow its internal guidelines that delineate the appropriate actions that the State Bar must take against attorneys who have repeatedly violated professional or legal standards. The former chief trial counsel provided guidance to staff to ensure consistency in applying sanction standards and to take cases to trial if they warrant more severe discipline than the respondent is willing to accept in a stipulation. Before this policy shift, according to the former chief trial counsel, the State Bar settled before trial about 90 percent of cases in which the accused attorney participated. However, he recently estimated that this percentage has decreased to about 75 percent.

The recent trend in the number of cases going to trial is consistent with these policy changes. The former chief trial counsel said that he does not track the average costs of a case that proceeds to trial, and explained that the decisions to prosecute are based on the merits of the cases and not the costs. Although decisions may not be based primarily on financial considerations, we believe the State Bar would benefit from at least understanding roughly how much it spends on trials—especially since the number of trials has nearly doubled in the past few years. Specifically, the number of trials commenced in the State Bar Court each year has increased from 65 in 2004 to 127 in 2008.

We recommended that the State Bar account separately for the expenses associated with the various functions of the disciplinary system, including its personnel costs. This can be accomplished through a study of staff time and resources devoted to a specific function. We also recommended that the State Bar ensure that all its offices track expenses consistently.

State Bar's Action: Corrective action taken.

In its 60-day response, the State Bar stated that beginning with its 2010 budget it will adjust its methodology to track the component costs of its disciplinary system separately and consistently. In its one-year response, the State Bar indicated that it retained a consulting firm to assist in the study of staff time and resources. Based on subsequent inquiry, the State Bar provided us with documentation summarizing the results of its efforts to track staff time for a five-week period in March 2010. The State Bar gathered data across the budgeted component functions of the discipline systems, i.e., Intake, Investigation, Trials, Audit and Review, and Management. According to the State Bar, the data gathered supports the budget allocation methodology the Office of Finance adopted in response to our recommendation to track and report costs, particularly including personnel costs, by discipline system function. The hours allocated to each function by the time study correlates closely to the budget dollars allocated to the same functions.

Finding #2: The State Bar was unaware that its investigation case processing time has increased.

Our analysis demonstrated that the length of time to process cases proceeding beyond intake is generally increasing. Specifically, in 2004 the State Bar staff took more than 360 days to process 378 of 3,853 cases received in the investigation and trial unit, or 10 percent. In 2007 the proportion of cases taking longer than 360 days had increased to 13 percent. Additionally, from 2004 to 2005, although the number of cases taking more than 360 days to resolve in the State Bar Court decreased from 172 to 131, or 5 percent, the number of cases already pending for more than 360 days increased from 160 to 209 cases, or 31 percent.

When we asked the State Bar why it is taking longer to process cases beyond the intake stage, the former chief trial counsel noted that according to the State Bar's analysis of investigation processing time, the trend has decreased over the past five years except for a slight increase in 2008. After

discussing with the State Bar its methodology for calculating its average investigation processing time, we determined that it is not calculating this average in a way that fully represents yearly trends. According to the program/court systems analyst (systems analyst), the State Bar combines average processing time to compute a single average for all cases closed since 1999 as opposed to calculating a separate average based on cases closed for a particular year. However, this is not a meaningful measure of current yearly investigative case processing times because the number of cases from which the State Bar generates the averages continues to grow and includes data from years that do not apply to the relevant reporting year.

Using the State Bar's method to calculate the average processing times for closed investigations resulted in average processing times that ranged from a high of 197 days in 2004 to a low of 186 in 2007. In contrast, when we used what we believe to be a more representative method that only considers the time investigations remained open during a given year, whether eventually closed or forwarded to the next stage, average processing times were generally longer. Using this method, the average processing times for the State Bar's investigations ranged from a low of 168 days in 2004 to a high of 205 days in 2006 before declining to 202 days in 2007.

We recommended that the State Bar adjust its methodology going forward for calculating case processing times for investigations so that the calculations include time spent to process closed and forwarded cases for the relevant year only. For example, for its 2009 annual discipline report, the State Bar should report the average processing time for only cases it closed or forwarded to the State Bar Court in 2009.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar provided a copy of its 2009 Annual Discipline Report demonstrating that it had begun including this information. The State Bar stated that it will include this information in each subsequent annual discipline report.

Finding #3: The State Bar could better inform the Legislature by including all relevant information when it reports its backlog.

In its annual discipline report, the State Bar reports a case as part of its backlog when its staff has not resolved the case within six months of its receipt or when the State Bar designates the case as complex and has not resolved it within 12 months of receiving the complaint. However, the State Bar does not include seven other types of cases when it reports its backlog. Specifically, the State Bar only reported 1,178 of the 3,020 total cases, or 39 percent, that were not resolved within six months from 2005 through 2008.

Additionally, the number of complex cases over 12 months old has increased from 2005 through 2008 from 74 to 95, or 28 percent. Because the State Bar designates cases as complex and does not include them in the backlog until they are over 12 months old, separately identifying them from noncomplex cases would allow stakeholders to better understand reasons for fluctuations. Further, the State Bar does not count inquiries in the intake unit that do not move on to the investigations unit—even though these issues could remain in intake for more than six months. Because the annual discipline report notes that the investigation and trial unit strives to complete investigations within six months after receipt of the complaint (or 12 months if they are designated as complex), the State Bar is not providing complete and clear information regarding its backlog when it does not identify or explain its reason for not including inquiries.

Over the past five years, the State Bar has also changed the types of cases that it includes in its annual discipline report, which makes year-to-year comparisons difficult. Additionally, beginning in 2008, the State Bar excluded cases in its backlog that were being handled by special deputy trial counsels, who are outside examiners. Although the State Bar noted this change in its 2008 discipline report, it did not explain the reason for the revision. Finally, the State Bar reports its backlog by case and not by member,

which further decreases the number of cases that could be included in the backlog count. In some circumstances, multiple attorneys can be named on the same complaint, but the State Bar only includes one in its backlog calculation, even if separate cases are opened that would otherwise be included. The interim chief trial counsel believes that it is appropriate to report backlog by case and not by member because the complaint, whether it alleges misconduct by one or more attorneys, is generated from a single complaint made by one complaining witness and, for the most part, the issues and evidence are the same. However, the backlog table in the State Bar's annual discipline report does not indicate that the backlog is reported by case rather than by member.

We recommended that the State Bar include additional information regarding backlog in its annual discipline report to the Legislature. Specifically, the State Bar should identify the number of complex cases over 12 months old in its backlog. Additionally, we recommended that it identify in its annual discipline report the types of cases that it does not include in its calculation of backlog and explain why it chooses to exclude these cases. Specifically, the State Bar should identify that it presents its backlog by case rather than by member, and that it does not include intake, nonattorney, abated, and outside examiner cases. Finally, we recommended that the State Bar identify the composition of each year's backlog to allow for year-to-year comparisons, as the law requires.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar provided a copy of its 2009 Annual Discipline Report demonstrating that it had begun including this information. The State Bar stated that it will include this information in each subsequent annual discipline report. Additionally, the State Bar stated that reporting the backlog composition is a work-in-progress and it continues to refine its methods for presenting the data to provide more clarity.

Finding #4: The State Bar has not updated the formula it uses to bill disciplined attorneys and it does not consistently include due dates on bills.

For those costs it is allowed to recover from disciplined attorneys, the State Bar uses a formula—a fixed amount primarily based on how far the case proceeds through the disciplinary system before resolution—to bill attorneys who are publicly disciplined. Although discipline costs have increased 30 percent during the last five years, the State Bar has not updated this formula since it became effective beginning in 2003.

Additionally, undermining any attempt to track the billing and payment of attorneys' disciplinary expenses is the fact that the State Bar does not consistently include due dates for when payments must be made when billing disciplined attorneys. Our review of 28 bills sent to attorneys in 2006 and 2007 found that attorneys promptly paid their discipline bills at a much greater rate if the due date was explicitly stated on the bill. For the 15 bills with specific due dates, 14 attorneys, or 93 percent, paid their bills in full by the due date. For the 13 bills we reviewed with no specific due date, only one attorney paid by the end of the next fiscal year. By not including specific due dates on its bills to disciplined attorneys, the State Bar is much less likely to recover costs as promptly as it could.

Further, according to the assistant supervisor of membership billing, the State Bar cannot reasonably predict the amount of recovery costs it expects to receive from disciplined attorneys in a given year because in many cases the bills do not include any set due date for when payments must be made. Consequently, the State Bar cannot adequately evaluate its discipline cost recovery collection efforts or fully budget for such collections. According to a summary report of amounts billed and received, in 2007 and 2008, the State Bar collected an average of 63 percent of the amount it billed. Although these percentages provide some context about collections, they are somewhat misleading and not necessarily a useful measure of the effectiveness of the State Bar's efforts. This is because the State Bar does not match the percent collected with the corresponding amount billed. In fact, payments often are

received years after they are billed. Using detailed payment information provided by the State Bar, we determined that of the $1.1 million billed for recovery costs in 2008, only $229,000 was collected in that year, or about 21 percent.

We recommended that the State Bar update annually its formula for billing discipline costs and include due dates on all bills so that it maximizes the amounts it may recover to defray the expense of disciplining attorneys. Additionally, to report accurately its collection amounts and to analyze the effectiveness of its collection efforts, we recommended that the State Bar track how much it anticipates receiving against how much it actually receives in payments for discipline costs each year.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar indicated that its consultant reviewed the State Bar's discipline cost formula and methodology for updating the cost formula. In subsequent documentation provided in December 2010, the State Bar provided a copy of its consultant's report recommending that the State Bar increase the discipline cost formula and adjust it annually based on the U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index. The State Bar stated that these recommendations will be presented to the State Bar's Board of Governors for consideration in January 2011.

Additionally, the State Bar adjusted its billing system to include due dates on all notices to disciplined members and reported to us that it has adjusted its cost recovery database application to track how much it anticipates receiving against how much it actually receives in payments each year.

Finding #5: The State Bar does not track how much it spends on cost recovery efforts.

Before April 2007 the State Bar's efforts to recover costs associated with disciplined attorneys typically included billing the disciplined attorneys through annual membership bills and contracting with a collection attorney. Effective April 1, 2007, the State Bar received California Supreme Court approval of a rule to enforce as a money judgment, disciplinary orders directing payments of costs. A money judgment is an order entered by a court that requires the payment of money. The State Bar contracted with a collection attorney to pursue collections from disciplined attorneys owing the largest unpaid amounts to the Client Security Fund. The State Bar agreed to pay the collection attorney 25 percent of the net funds recovered. Also, if no recovery was obtained, the State Bar agreed to pay the expenses the collection attorney incurred. According to its discipline payments summary report, the collection attorney collected $11,600 for the State Bar in 2007, but he was paid $19,400 in recovery fees and expenses. For 2006 through 2008, the collection attorney collected $156,600, and the State Bar received $63,900, or 41 percent, of the total amount recovered.

According to the State Bar's acting general counsel, the legal work required to prepare a money judgment is labor intensive, and in an effort to avoid having the collection agency conduct this legal work, the State Bar is currently using its own in-house staff. However, when we asked about the cost of the efforts of its in-house staff, the general counsel told us that the State Bar does not specifically track all of these costs. After our request, the State Bar identified some estimates of in-house costs to prepare the money judgments, and the general counsel acknowledged that paying the higher 25 percent of recovered costs might be more cost beneficial than having the State Bar staff conduct this work.

The State Bar's discipline payments summary shows that for 2006 through 2008, it collected $3 million in discipline costs and Client Security Fund recoveries from its in-house billing efforts, but it does not track its costs associated with making these recoveries. We acknowledge that because of statutory restrictions on the amount of discipline costs that can be recovered, the State Bar is limited to recovering substantially less than its costs. However, conducting a cost-benefit analysis of its collections efforts would allow the State Bar to evaluate and determine whether more cost-effective alternatives exist that could potentially increase the net amount that it recovers.

In an effort to provide the State Bar with some alternative best practices regarding cost recovery efforts, we asked two state agencies about methods they use for collecting money owed to them. A representative told us about the Franchise Tax Board's (Tax Board) Interagency Intercept Collections Program (intercept program) that offsets a debtor's state tax refund by the amount owed to a state entity. According to the intercept program participation booklet for 2009, the cost for the program is approximately 25 cents per account.

We recommended that the State Bar complete a cost-benefit analysis to determine whether the benefits associated with using collection agencies outweigh the costs. If it determines that the collection agencies are, in fact, cost-effective, the State Bar should redirect in-house staff to other disciplinary activities. Finally, the State Bar should also research the various collection options available to it, such as the Tax Board's intercept program.

State Bar's Action: Partial corrective action taken.

In its one-year response, the State Bar stated that its consultant hired to review the measures and categories of data and assist in the completion of the cost-benefit analysis is nearing completion. The State Bar stated that it expects that its preliminary analysis will be confirmed and is prepared to direct collection of all delinquent discipline cost accounts to an outside collection agency. The State Bar also reported that it is seeking a new vendor to replace the current collection agency, which has elected not to renew its contract.

In November 2010 the State Bar stated that it will explore legislative support for introducing legislation next year authorizing the State Bar to participate in the Franchise Tax Board's Intra-agency Intercept program, which it stated was previously rejected by the Legislature.

Finding #6: The State Bar's office of probation has not determined appropriate workload levels for staff to monitor probationers effectively.

Over the past five years, the probation office's caseload has increased nearly 10 percent, making it more difficult for its staff to manage disciplined attorneys effectively. The probation office believes that it is understaffed, but it is unsure whether its recent request for an additional probation deputy position will fulfill its needs.

In a memo to the deputy executive director requesting an additional probation deputy position, the former chief trial counsel noted that with existing caseloads, it has become increasingly difficult, if not impossible, for probation deputies to oversee probation in a timely, effective manner. The memo further notes that an additional probation deputy will reduce the current caseload and increase the probation office's ability to effectively fulfill its function. However, the additional probation deputy will only decrease the overall caseload to around 175 cases per deputy. According to the supervisor of the probation office, because of increases in alternative discipline cases and other changes to the probation office's responsibilities, she is still in the process of monitoring staff workloads and determining the appropriate caseload. Until the State Bar determines that its probation deputies have reasonable workloads, it cannot be sure that they are devoting the amount of attention necessary to effectively monitor probationers.

We recommended that the State Bar continue its efforts to determine the appropriate caseload level for its staff to effectively monitor probationers and adjust staffing as appropriate.

State Bar's Action: Partial corrective action taken.

In its 60-day response, the State Bar stated that it recently hired an additional probation deputy and will continue to monitor caseload levels to evaluate appropriate staffing levels for effective monitoring of probationers. Additionally, in November 2009, the State Bar informed us that it is in the process of retaining a measurement consultant to evaluate the office of probation's appropriate workload.

In its one-year response, the State Bar indicated that it continues to monitor work and caseloads in the Probation Unit. Specifically, the State Bar stated that it included the Probation Unit in the time and resource study discussed previously and that data from that study has been included in an ongoing evaluation of the allocation of time and resources in the Probation Unit. The State Bar reported that currently it appears that staffing at the probation deputy level is adequate, considering budget limitations. The State Bar stated that it will continue to monitor and evaluate staffing needs in this area.

In November 2010 the State Bar stated that after review of data on staffing and available resources, its consultants found that the current allocation is adequate considering budget limitations. The State Bar stated that with the filling of a vacant position it has five probation deputies and the caseload for each deputy has been reduced to 174 cases. The State Bar stated that it is continuing to monitor performance and evaluate the effectiveness of this new caseload and will make any additional adjustments as appropriate and permitted by the budget.

Finding #7: The office of probation is not fully meeting its strategic goals to help attorneys successfully complete probation and to protect the public.

The probation office has not fully met its mission of assisting attorneys to successfully complete probation and of protecting the public because it did not always promptly communicate attorneys' probation terms and did not refer probation violations to the Office of the Chief Trial Counsel consistently or promptly. Specifically, for eight of the 18 initial probation letters that we reviewed from cases closed in 2008, the probation office sent the initial letters communicating the terms of probation to disciplined attorneys between eight and 72 days after it received the related court orders. Although the probationer is ultimately responsible for meeting the terms of probation, the State Bar's probation deputy manual requires its probation deputies to send a letter to the affected attorney within seven days of receiving the court order.

The probation office has also not promptly referred attorneys who have violated their probationary terms to the Office of the Chief Trial Counsel, and in some cases, referred the same type of violation inconsistently. Related to eight of the 20 probation case files we reviewed that the State Bar closed in 2008, probation office deputies had prepared 11 referrals of probation violations to the Office of the Chief Trial Counsel. For five of the 11 referrals, probation deputies took well over a month after the violation occurred to refer the violation. In fact, the timing of these five referrals ranged from 96 days to 555 days after the violation occurred, with probation deputies taking more than 500 days for two of the referrals.

Because attorneys are still often able to practice law during their probationary period, unnecessary delays in making referrals for violations may allow an errant attorney to continue to practice law and represent clients. Further, when the probation office does not make referrals promptly, it is not meeting its goal of protecting the public. Finally, when staff are not consistent or prompt in referring violations, it may create a perception of favoritism or leniency, and could undermine the efforts of the Office of the Chief Trial Counsel to enforce disciplinary standards.

We recommended that the State Bar ensure that it effectively communicate with and monitor attorneys on probation by ensuring that staff comply with procedures for promptly sending initial letters reminding disciplined attorneys of the terms of their probation. We also recommended that to make certain that it does not create a perception of favoritism or leniency, the State Bar increase compliance

with its goal to improve timeliness and consistency of probation violation referrals to the Office of the Chief Trial Counsel. If the State Bar believes instances occur when probation staff appropriately deviate from the 30-day goal, it should establish parameters specifying time frames and conditions acceptable for a delay in the referral of probation violations and clearly document that such conditions were met.

State Bar's Action: Corrective action taken.

In its 60-day response, the State Bar stated that it will review its procedures for notifying disciplined attorneys of the terms of their probation and will take steps to ensure greater compliance and prompt notice to probationers. In November 2010 the State Bar stated that the probation office worked with the State Bar Court to assure receipt of copies of disciplinary orders within two weeks after filing.

In its one-year response, the State Bar stated in order to increase compliance with its goal to improve timeliness and consistency of probation violation referrals to the Office of the Chief Trial Counsel, the probation staff is implementing a tiered system for violation referrals. According to the State Bar's new policy, this system maintains the standard 30-day goal but also establishes 60-day and 90-day deviations. The tiered system of referral also establishes conditions for deviation from the 30-day goal and the documentation in each case that such conditions were met.

Finding #8: The State Bar has not fully addressed concerns identified in a review of its cost recovery process.

Although the State Bar contracted with a consultant in September 2007 to review interdepartmental processes surrounding its cost recovery processes, including its planned cost recovery system, the State Bar did not fully address recommendations for improving internal control weaknesses that the consultant identified. In response to some of the concerns raised in the consultant's review, the State Bar indicated that it would achieve corrective action through various functions and processes associated with the new cost recovery system it was developing. Although it anticipated that the new cost recovery system would resolve the deficiencies, the State Bar did not obtain the new system immediately and is still in the process of fully implementing it.

We recommended that the State Bar fully implement recommendations from audits and reviews of the State Bar and its functions. Further, we recommended that the State Bar ensure that its new cost recovery system and related processes address the issues identified in the consultant's 2007 report on its cost recovery process.

State Bar's Action: Corrective action taken.

In its 60-day response, the State Bar indicated that it had completed this recommendation. According to the response to the audit report, the State Bar stated that it had implemented changes in its manual and automated processes and controls to address issues raised in the 2007 report on its cost recovery process. These processes and controls apply to the new cost recovery system. Because it did not inform us of these changes until after it had received a draft copy of our report, we were not able to verify whether these changes fully address our concerns. As part of our next statutorily required audit, we plan to review the cost recovery system to determine whether the new system corrects the identified issues.

The State Bar retained a consultant that reports directly to the Board's Audit Committee, to perform an internal audit function. The State Bar's internal auditors began a review of all internal audit functions to assess risks associated with its organization-wide internal control functions, provide training to staff, and recommend improvements to strengthen internal controls. The consultant completed internal audits of the State Bar's payroll, accounts payable, procurement, and budget control functions in July 2010. According to the State Bar it will implement all recommendations contained in the audit reports before the end of 2010.

Finding #9: The State Bar's audit and review unit does not ensure its recommendations are implemented.

In keeping with one of its goals to enhance the quality of the Office of the Chief Trial Counsel's investigations and prosecutions the State Bar's audit and review unit has identified some recurring deficiencies and recommended providing training during its periodic audits of case files. However, it could do more to ensure that staff receive appropriate training in areas that need improvement. According to State Bar policy, twice each year staff in its audit and review unit review at least 250 recently closed disciplinary cases and complete a checklist to determine whether staff followed specific requirements and whether the files include appropriate documentation. After each audit, the audit and review unit prepares a summary report of the deficiencies found and submits it to the Office of the Chief Trial Counsel for consideration. The summary also identifies training opportunities. According to the audit and review manager, she makes such recommendations in areas where errors could be avoided by training staff to properly follow policies and procedures.

We reviewed five audit summaries covering September 2005 through February 2008 and noted several recurring deficiencies and related recommendations for training. When we asked the State Bar for documentation that it had followed up on these and other recommendations from its audits, the audit and review manager told us no documentation of the implementation of recommendations exist. She further stated that the managers within the units generally address concerns through a combination of discussing specific issues with the State Bar staff, discussing general issues at their unit meetings, informally reminding unit staff, or raising the issues with supervisors. However, the number of recurring deficiencies present in the summaries suggests the need for a more formal process of ensuring corrective action. Without a formal process to ensure that its recommendations from the audit summaries are implemented, the audit and review unit is not maximizing the value it can add to improve the quality of investigations and prosecutions.

We recommended that the State Bar's audit and review unit establish a formal process to follow up on and ensure implementation of recommendations from its twice yearly audits.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar provided a copy of its Office of the Chief Trial Counsel's policy directive issued in January 2010 creating a formal process for the Audit and Review Unit to follow up on and ensure implementation of recommendations from its twice-yearly audits. The formal process includes the preparation of a memorandum summarizing the overall findings of the audit. The memorandum is then shared with and discussed by the Office of the Chief Trial Counsel's management team and used as the basis for an all-staff meeting and training.

Finding #10: The State Bar has partially implemented three and fully implemented seven of our 2007 audit recommendations.

Our April 2007 report titled *State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration* (2007 030), included 10 recommendations to the State Bar. The State Bar has fully implemented seven of the recommendations related to improvement of its strategic plans and tracking and monitoring grant recipients under its legal services trust fund program. However, it has only partially implemented the three other recommendations related to improving the State Bar's disciplinary system, which is also the subject of the current report.

In 2007 we recommended that, after the Supreme Court's approval, the State Bar should complete its cost recovery database and input all available information on the Client Security Fund and on disciplinary debtors, implement its proposed policy for pursuing debtors, and complete its assessment of the costs and benefits of reporting judgments to credit reporting agencies. Although the State Bar has implemented its pursuit policy and obtained a new database that will capture amounts owed and

payments received from individual debtors, it has not yet entered all of the Client Security Fund and disciplinary debtors' information. In May 2009 the State Bar's acting general counsel stated that he expects the new database to be fully online within 60 days.

Additionally, the State Bar has only partially implemented our 2007 recommendation related to its reduction of backlogged cases. Although the State Bar reported in its annual report that it has decreased its disciplinary case backlog from 327 cases in 2007 to 311 cases in 2008, it has still not reached its most recent goal of having no more than 250 backlogged cases. Finally, the State Bar has not fully implemented the recommendations from our 2007 audit related to its compliance with two State Bar policies established to improve its processing of disciplinary cases.

We recommended that the State Bar continue acting on recommendations from our 2007 report related to continuing its efforts to enter all of the Client Security Fund and disciplinary debtor information into its database, taking steps to reduce its inventory of backlogged cases, and improving its processing of disciplinary cases by more consistently using checklists and performing random audits.

State Bar's Action: Partial corrective action taken.

In its 60-day response, the State Bar stated that it has completed the uploading of Client Security Fund and disciplinary debtor information required for tracking it cost recovery efforts from its existing database into its new database and application.

In its six-month response, the State Bar stated that it continues to develop evolving strategies for backlog management in an effort to keep the backlog as low as possible. In its one-year response, the State Bar indicated there was a substantial increase in new client complaints arising out of the recession, mortgage crises and resultant misconduct by attorneys offering loan modification services, coupled with the absence of additional staff resources, that has made backlog management more challenging. As a result, the State Bar has not been able to reduce its backlog. However, the State Bar indicates that despite challenging workloads, it continues to take steps to manage case inventory. Specifically, the State Bar states that on a monthly basis, it tracks existing backlog of matters in investigation as well as cases expected to roll into backlog within the next 30, 60, and 90 days. Staff target these cases to ensure the lowest possible statutory backlog at all times consistent with office priorities, resources and public protection.

In its one-year response, the State Bar stated that it continues to conduct its monthly random audit of open investigations and ensure that checklists are being used consistently and effectively so that all significant case processing tasks are completed, as appropriate. In late December 2009, the Office of the Chief Trial Counsel issued a new policy directive implementing new case file checklists for trials and investigations. Additionally, the State Bar reported that it is still in the process of automating its intake checklist and that staff will continue to use the manual checklist until the automated one is available. The State Bar stated that implementation of the automated checklist is expected by the end of 2010.

Finding #11: The State Bar cannot implement the information technology portion of its strategic plan without additional resources.

Although the State Bar implemented the four recommendations from our 2007 audit related to updating its strategic plan, it has only secured funding for a portion of its planned technology initiatives. In our 2007 audit, we recommended that the State Bar should either take the steps necessary to ensure that its information technology systems can capture the required performance measurement data to support the projects needed to accomplish strategic planning objectives or devise alternative means of capturing this data. During our current review we found that departments within the State Bar currently use Microsoft Excel spreadsheets or other methods to capture this information. The manager of planning and administration indicated that the State Bar plans to implement a new information technology system that will capture this strategic planning data and allow centralized

access to the departments' performance indicators. In reviewing the State Bar's Information Technology Strategic Plan (IT plan), which outlines the State Bar's strategic goals and objectives for information technology, we noted that its IT plan included an implementation plan that identified steps the State Bar determined were necessary to attain its vision for information technology. Although the planning efforts related to its information technology needs are detailed, the State Bar has yet to secure funding for all of its plans.

We recommended that the State Bar follow its IT plan to ensure that it can justify requests to fund the remaining information technology upgrades.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar stated that it is fully utilizing its internal information technology resources for project, program and information technology infrastructure support. Additionally, in November 2010, the State Bar provided copies of its status in implementing various portions of its IT plan and continues to implement portions of the plan as resources become available.

State Compensation Insurance Fund

Investigations of Improper Activities by State Employees July 2008 Through December 2008

ALLEGATION I2007-0909 (REPORT I2009-1), APRIL 2009

State Compensation Insurance Fund's response as of April 2010

An employee of the State Compensation Insurance Fund (State Fund) failed to report 427 hours of absences. Consequently, State Fund did not charge the employee's leave balances for these absences, and it paid her $8,314 for hours that she did not work.

Investigative Highlight . . .

An employee of the State Compensation Insurance Fund (State Fund) failed to report 427 hours of absences. Consequently, State Fund did not charge the employee's leave balances for these absences, and it paid her $8,314 for hours that she did not work.

Finding: The employee failed to report 427 hours of absences.

During the 12-month period we reviewed, the employee submitted only eight monthly attendance reports instead of 12, and none of those reports were accurate. By comparing what the employee stated on the reports with other information about her actual attendance—including building access logs, telephone records, and computer activity records—we determined that the employee was absent for full or partial days on which the employee reported that she was present. These absences occurred in February through June, and in August, September, and December 2007. Moreover, by not submitting attendance reports for January, July, October, and November 2007, she received credit for perfect attendance for two months even though State Fund records described above show that the employee was absent. For the remaining two months, the same records indicate that the hours charged against the employee's leave balances were not sufficient to cover her absences.

In addition, the employee's supervisor exerted lax or nonexistent oversight over her attendance reporting, which raises concerns about the attendance reporting of other employees in the unit. Furthermore, when the supervisor discovered in March 2008 that the employee had not submitted an attendance report for November 2007, the supervisor attempted to resolve the matter by submitting a report for processing. However, when she did so, the supervisor added to the inaccurate reporting because the document stated that the employee was at work on two days that other records indicate she was absent. Further, the supervisor failed to capture eight hours of absences resulting from the employee arriving late or leaving early during the month.

To address the time and attendance abuse by the employee and potential abuse by other employees, we recommended State Fund do the following:

- Fully account for the employee's time by charging her leave balances for the hours she did not work or by seeking reimbursement from the employee for the wages she did not earn.
- Take appropriate disciplinary action for the employee's time and attendance abuse and the lax oversight by her supervisor.

- Provide training to the employee and her supervisor on proper time reporting and supervisory requirements.

- Examine the accuracy of the time and attendance reporting by other employees who report to the same supervisor.

- Establish a process for increased scrutiny of the time and attendance reporting by all members of the employee's unit to ensure that State Fund resolves the reporting abuses discovered during this investigation.

State Fund's Action: Partial corrective action taken.

State Fund reported that it dismissed the employee in June 2009 and demoted the supervisor in July 2009. However, it indicated that the employee appealed her dismissal and the supervisor appealed her demotion. State Fund also reported that it would seek reimbursement from the employee for the wages she did not earn. Further, State Fund identified eight other employees who work for the supervisor, reviewed records establishing their attendance, and found no discrepancies in the employees' time reporting. Finally, in October 2009, State Fund notified us that it began requiring its supervisors to complete a weekly attendance report to ensure that employees' approved absences are properly recorded, tracked, and monitored.

Departments of Health Care Services and Public Health

Their Actions Reveal Flaws in the State's Oversight of the California Constitution's Implied Civil Service Mandate and in the Departments' Contracting for Information Technology Services

REPORT NUMBER 2009-103, SEPTEMBER 2009

Responses from the Departments of Health Care Services and Public Health and the State Personnel Board as of September 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine the use of information technology (IT) consulting and personal services contracts (IT contracts) by the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health). The audit committee specifically asked the bureau to review and assess the two departments' policies and procedures for IT contracts to determine whether they are consistent with state law. The audit committee also requested that we identify the number of active IT contracts at each department and—for a sample of these contracts—that we determine whether the departments are complying with California Government Code, Section 19130, and with other applicable laws, rules, and regulations. For the sample of contracts, the committee also requested that we collect various data and perform certain analyses, including determining whether the two departments are enforcing the knowledge-transfer provisions contained in the contracts.

The audit committee also asked us to identify the number, classification, and cost of IT positions budgeted at each department for each of the most recent five fiscal years. In addition, we were to determine the number of vacant IT positions, the turnover rate, and any actions that the departments are taking to recruit and retain state IT employees.

For a sample of contracts under review by the State Personnel Board (board), the audit committee asked us to identify the California Government Code section that the departments are using to justify an exemption from the implied civil service mandate emanating from Article VII of the California Constitution. For the contracts overturned by the board, we were asked to review the two departments' responses and determine whether corrective action was taken. Finally, the audit committee requested that we review and assess any measures that the two departments have taken to reduce the use of IT contracts.

Audit Highlights . . .

Our review of the personal services and consulting contracts for information technology (IT contracts) used by the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health) revealed the following:

- *Over the last five years, the State Personnel Board (board) has disapproved 17 of 23 IT contracts challenged by a union.*
- *Many of the board's decisions were moot because the contracts had already expired before the board rendered its decisions.*
- *Of the six IT contracts still active at the time of the board's decisions, only three were terminated because of board disapprovals.*
- *Health Care Services did not comply with state policy regarding the use of blanket positions and was disingenuous with budgetary oversight entities.*
- *Neither Health Care Services nor Public Health has a complete database that allows it to identify active IT contracts and purchase orders.*
- *The departments complied with many, but not all, state procurement requirements.*
- *The departments did not obtain the requisite financial interest statements from half the sampled employees responsible for evaluating contract bids and offers.*

Finding #1: The board disapproved most of the departments' challenged IT contracts, but these decisions had limited impact.

Over the last five years, the board has disapproved 17 IT contracts executed by Health Care Services, Public Health, and their predecessor agency—the Department of Health Services (Health Services).[1] The board disapproved the IT contracts because the departments, upon formal challenges from a union, could not adequately demonstrate the legitimacy of their justifications for contracting under the California Government Code, Section 19130(b), which provides 10 conditions under which state agencies may contract for services rather than use civil servants to perform specified work. These conditions include such circumstances as the agencies needing services that are sufficiently urgent, temporary, or occasional, or the civil service system's lacking the expertise necessary to perform the service.

Although the union prevailed in 17 of its 23 IT contract challenges, many of the board's decisions were moot because the contracts had already expired before the board rendered its decisions. This situation occurred primarily because the union raised challenges late in the terms of the contracts and because the board review process was lengthy. The board's former senior staff counsel stated that if the board disapproves a contract, the department must immediately terminate the contract unless the department obtains from the superior court a stay of enforcement of the board decision. However, as the board's executive officer explained, the board's decisions usually do not state that departments must immediately terminate disapproved contracts, and she is unaware of the historical reasons behind this practice. Of the six IT contracts that were active at the time of the board's decisions, only three were terminated because of board disapprovals. For each of the other three IT contracts, the departments either terminated the contract after a period of time for unrelated reasons or allowed it to expire at the end of its term. We found that one contract was not terminated because the department was unaware of the board's decision and another because of miscommunications between the department's legal services and program office managing the contract. Because the board lacks a mechanism for determining whether state agencies comply with its decisions, the departments experienced no repercussions for failing to terminate these contracts.

Additionally, our legal counsel believes that uncertainties exist about whether or not a contract disapproved by the board is void and about the legal effect of a void contract. However, if a court were to find that the disapproved contract violated public contracting laws, the contractor may not be entitled to any payment for services rendered.[2] Because the legal effect of a board-disapproved contract is uncertain, it may be helpful for the Legislature to clarify when payments to the related contractors must cease and for what periods of service a vendor may receive payments.

To provide clarity to state agencies about the results of its decisions under California Government Code, Section 19130(b), we recommended that the board explicitly state at the end of its decisions if and when state agencies must terminate disapproved contracts. Additionally, we recommended that the board obtain documentation from the state agencies demonstrating the terminations of disapproved contracts.

To vet more thoroughly the Section 19130(b) justifications put forward by the departments' contract managers, to ensure the timely communication of board decisions to the contract managers, and to make certain that disapproved contracts have been appropriately terminated, we recommended that legal services in both departments take these actions:

- Review the Section 19130(b) justifications put forward by the contract managers for proposed personal services contracts deemed high risk, such as subsequent contracts for the same or similar services as those in contracts disapproved by the board.

[1] Only July 1, 2007, Health Services became Health Care Services, and Public Health was established. All contracts disapproved by the board were originally executed by Health Services. However, the management of these contracts was performed by Health Services, Health Care Services, or Public Health.

[2] *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal. 4th 228, 234, upholding *Miller v. McKinnon* (1942) 20 Cal. 2d 83, 89, and *Zottman v. San Francisco* (1862) 20 Cal. 96, 101, 105-106.

- Notify contract managers of the board's decisions in a timely manner and retain records in the case files showing when and how the notifications were made.

- Require documentation from the contract managers demonstrating the termination of disapproved contracts and retain this documentation in the case files.

Board's Action: Pending.

The board stated that all of its future decisions disapproving a contract will include a deadline for when the contract should be discontinued and a requirement that the affected department submit written confirmation of the discontinuation of the contract to it and the interested labor organizations.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that its legal services is available to review personal services contracts identified by its contract managers as high risk but—as of November 2010—its instructions as to how its contract managers would identify contracts as high risk had only been verbal. Health Care Services added that it is in the process of developing training for its contract managers regarding Section 19130 of the California Government Code requirements and what types of contracts need review by legal services.

Health Care Services also stated that notifying contract managers of relevant board decisions is in accordance with its current practices and that it would request notifications from program managers of contract terminations related to board-disapproved contracts and document them in the case files.

Public Health's Action: Corrective action taken.

Public Health issued a policy effective November 3, 2009, that requires its program staff to obtain approval from its legal services before entering into personal services contracts. Public Health stated that it has developed procedures to ensure that contract managers receive timely notification of board decisions and to maintain documentation for all notices of contract terminations in legal services' case files.

Finding #2: Although it saved the State $1.7 million by replacing IT consultants with state employees, Health Care Services failed to follow budgetary instructions and rules.

Partly in response to the disapproved contracts, the two departments sought to replace IT contractors with state IT employees. For this purpose, in January 2009, the Department of Finance (Finance) approved the creation of an additional 28 IT positions within the information technology services division (IT division) of Health Care Services and 11 IT positions within the IT division of Public Health. Health Care Services began the process of converting IT contractor positions into state positions as early as October 2006, but it did not clearly disclose this effort in its budget change proposal (BCP) requesting additional positions. Specifically, despite language in Health Care Services' January 2009 BCP stating that the 28 requested positions "will replace contractors *currently* providing IT support functions" and that these conversions will occur over three fiscal years, it had already replaced nine contractors, and the termination dates for the contracts associated with these nine contractors had already expired.

Because permanent positions had not yet been approved in the state budget, Health Care Services funded the new employees—who were hired as permanent civil servants—using temporary-help positions authorized in the budget as *blanket positions*, which are positions in the approved budget that an agency may use for short-term or intermittent employment needs when expressing those needs as classified positions has proven impracticable. According to the *State Administrative Manual*, an agency may not use temporary—help positions provided under its blanket authority to fund permanent employees. Although it did not comply with state policy regarding the use of blanket positions and was disingenuous with budgetary oversight entities, we estimate that Health Care Services saved the State more than $1.7 million when it converted IT contracts to IT positions. Public Health stated that it will not be able to replace its IT contracts with state employees until fiscal year 2010–11, which is when it anticipates it will be able to hire and train employees who have the appropriate skill sets to make the transition successful.

To ensure that Finance and relevant legislative budget subcommittees are able to assess its need for additional IT positions, we recommended that Health Care Services prepare BCPs that provide more accurate depictions of the department's existing conditions.

To comply with requirements in the *State Administrative Manual*, we recommended that Health Care Services refrain from funding permanent full-time employees with the State's funding mechanism for temporary-help positions.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that it strives to provide clear and precise BCPs and that it would continue to provide training to staff on the preparation of BCPs, based on guidance from Finance, that are accurate and complete. Health Care Services also stated that it moved all of the individuals identified by the audit out of temporary-help positions and into newly authorized positions and provided us with a report indicating the same.

However, we requested that Health Care Services provide this report for the department as a whole and found—as of November 2010—other permanent full-time employees in temporary-help positions. Four of these employees had been in these positions for more than one year. Health Care Services stated that it will endeavor to limit the use of temporary-help positions to those instances that meet the definition in the *State Administrative Manual*.

Finding #3: The two departments cannot readily identify active IT contracts.

Neither Health Care Services nor Public Health has a complete database that allows it to identify active IT contracts and purchase orders. Consequently, the departments cannot readily identify such procurements. The best source of information for the purposes of this audit was the contracts database maintained by the Department of General Services (General Services) and populated with self-reported data from state agencies. However, we found errors in the data reported by Health Care Services and Public Health indicating that the information in General Services' database is incomplete and inaccurate for these departments.

Public Health stated that it is in the process of developing a new database that will identify all contracts that are active and IT-related. The database will include this information for all completed contracts and those in progress. Public Health anticipates implementing its database in October 2009. The chief of its Contracts and Purchasing Support Unit stated that Health Care Services is monitoring the development of Public Health's database, and Health Care Services will consider its options for creating a similar database if the implementation of Public Health's database is successful.

To readily identify active IT and other contracts, we recommended that Public Health continue its efforts to develop and implement a new contract database. Additionally, we recommended that Health Care Services either revise its existing database or develop and implement a new contract database.

To ensure that reporting into General Services' contracts database is accurate and complete, we recommended that both departments establish a review-and-approval process for entering their contract information into the database.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that it completed an assessment of the feasibility of creating a new contract database, but determined that it is not economically feasible at this time. Health Care Services also stated that it provided training and instructions to staff on the importance of entering accurate information into the General Services database and that a supervisor regularly reviews reports from the database to ensure the accuracy and completeness of the data.

Public Health's Action: Partial corrective action taken.

Public Health stated that it plans to fully implement its new contract database by December 2010. Public Health added a reminder for entering information into General Services' database to its procurement checklists and indicates that it has and will continue to regularly conduct reviews to ensure staff enter the information appropriately.

Finding #4: The departments generally complied with the procurement requirements that we tested.

The departments complied with many, but not all, state procurement requirements we reviewed. For a sample of 14 contracts, the departments obtained the requisite number of supplier responses, encouraging competition among suppliers. The departments also complied with requirements related to maximum dollar amounts and allowable types of IT personal services, except in one instance. In this instance, Public Health procured some unallowable printer maintenance services under its contract with Visara International (Visara). Visara's master agreement with General Services allows it to provide maintenance on numerous printer types. However, 13 of the 17 printer types listed in Public Health's contract with Visara are not included in General Services' master agreement. Therefore, the prices negotiated between Public Health and Visara for maintenance on these 13 printer types were not subject to the required level of scrutiny that is designed to ensure that Public Health is not paying too much.

To make certain that it procures only maintenance services allowed in the State's master agreement with Visara, we recommended that Public Health either make appropriate changes to its current Visara contract or have General Services and Visara make appropriate changes to Visara's master agreement.

Public Health's Action: Corrective action taken.

Public Health processed an August 2009 amendment to remove noncovered printers from its Visara contract and, after working with General Services to add these printers to its Visara master agreement, executed a January 2010 amendment to add these printers back into its VIsara contract.

Finding #5: The departments have not provided suppliers with selection criteria.

The *State Contracting Manual* establishes the requirements for departments to follow when conducting supplier comparisons, and it provides a request-for-offer template. The request-for-offer template states that if departments use the best-value method to select suppliers, they should detail their selection criteria and the corresponding points that will be used to determine the winning offer.[3] The best-value

[3] The *State Contracting Manual* provides departments with limited discretion regarding policy requirements prefaced by the term "should." It states that such policies are considered good business practices that departments need to follow unless they have good business reasons for deviating from them.

method, which is the basis for all California Multiple Award Schedules (CMAS) contracts, refers to the requirements, supplier selection, or other factors used to ensure that state agencies' business needs and goals are met effectively and that the State obtains the greatest value for its money.

Three of the requests for offer associated with the five CMAS contracts we reviewed contained only brief, vague statements regarding how the departments would determine the winning offers. Further, none of the requests for offer for these five contracts included information on the corresponding points. Without specific selection criteria, potential suppliers are left to guess the criteria and their relative importance using what they can glean from the departments' requests for offer.

To promote fairness and to obtain the best value for the State, we recommended that the two departments demonstrate their compliance with General Services' policies and procedures. Specifically, in their requests for offer, they should provide potential suppliers with the criteria and points that they will use to evaluate offers.

Health Care Services' Action: Corrective action taken.

Health Care Services modified its request-for-offer template to include evaluative criteria that it will use on all CMAS procurements.

Public Health's Action: Pending.

Public Health stated that by November 2010 it plans to develop and distribute to staff a new form they can use to inform potential suppliers of the criteria it will use to evaluate their offers.

Finding #6: The departments did not obtain some required approvals and conflict-of-interest information for the contracts that we reviewed.

The departments did not always obtain prior approvals from their agency secretary, directors, and—in the case of Public Health, IT division—as required by state procurement rules and departmental policies. In particular, we found that the departments did not obtain the appropriate agency secretary's or director's approvals for three of the seven CMAS and master agreement contracts for which the requirement was applicable. Additionally, despite a policy requiring its IT division to review all IT contracts, we found that Public Health's IT division did not review two of the 14 Public Health contracts we reviewed.

The departments also did not consistently obtain requisite annual financial interest statements from bid or offer evaluators. Health Care Services failed to obtain this statement from one employee and Public Health failed to obtain the financial interest statement from six of its employees. For three of the six employees, Public Health stated that the employees were not in positions designated in the department's conflict-of-interest code as needing to file the financial interest statement. Our review raised questions about whether Public Health's conflict-of-interest code appropriately designated all employees engaged in procurement. We believe that state employees who regularly participate in procurement activities may participate in the making of decisions that could potentially have a material financial effect on their economic interests. To maintain consistency with the Political Reform Act, state agencies should designate such employees in their conflict-of-interest codes. Without the approvals mentioned earlier and these financial interest statements, the departments are circumventing controls designed to provide high-level purchasing oversight and to deter and expose conflicts of interest.

To ensure that each contract receives the levels of approval required in state rules and in their policies and procedures, we recommended that the departments obtain approval by their agency secretary and directors on contracts over specified dollar thresholds. In addition, we recommended that Public Health obtain approval from its IT division on all IT contracts, as specified in departmental policy.

To make certain that it fairly evaluates offers and supplier responses, Public Health should amend its procedures to include provisions to obtain and retain annual financial interest statements from its offer evaluators. Further, both departments should also ensure that they obtain annual financial interest statements from all designated employees. Finally, Public Health should ensure that its conflict-of-interest code is consistent with the requirements of the Political Reform Act.

Health Care Services' Action: Corrective action taken.

Health Care Services stated that it would obtain the necessary approvals, as required. Health Care Services did not indicate that any revision of policy or procedure would be necessary. Health Care Services also stated that in February 2010 it provided specific instructions to staff regarding the disclosure categories related to offer evaluators. Health Care Services provided documents showing that its contracts management unit added language to its user guides stating that disclosure requirements apply to all persons involved in contractor selection.

Public Health's Action: Corrective action taken.

Public Health revised its IT Manual and provided us with training material demonstrating its efforts to make procurement staff aware of the IT approval policies.

Effective November 3, 2009, Public Health issued a policy that requires each staff member who participates in the procurement process to file a conflict-of-interest and confidentiality statement it created. To its procurement checklists, Public Health added a reminder that each member of the evaluation team must complete conflict-of-interest and confidentiality statements.

Finding #7: Health Care Services could not always demonstrate fulfillment of contract provisions requiring IT consultants to transfer knowledge to IT employees.

Health Care Services and Public Health did not always include specific contract provisions in their contracts with IT consultants to transmit the consultants' specialized knowledge and expertise (knowledge transfer) to the State's IT employees because these knowledge-transfer provisions were not always applicable. However, when its IT contracts included knowledge-transfer provisions, Public Health was generally able to demonstrate that the department met these provisions, while Health Care Services had difficulty doing so for all three of its contracts in our sample that contained knowledge-transfer provisions.

To verify that its consultants comply with the knowledge-transfer provisions of its IT contracts, and to promote the development of its own IT staff, we recommended that Health Care Services require its contract managers to document the completion of knowledge-transfer activities specified in its IT contracts.

Health Care Services' Action: Corrective action taken.

Health Care Services stated that it would remind all managers and supervisors who are responsible for managing IT contracts to document the completion of knowledge-transfer activities. Health Care Services did not indicate that any revision of policy or procedure would be necessary.

California Department of Veterans Affairs

Although It Has Begun to Increase Its Outreach Efforts and to Coordinate With Other Entities, It Needs to Improve Its Strategic Planning Process, and Its CalVet Home Loan Program Is Not Designed to Address the Housing Needs of Some Veterans

REPORT NUMBER 2009-108, OCTOBER 2009

California Department of Veterans Affairs' response as of October 2010

The Joint Legislative Audit Committee (audit committee) requested the Bureau of State Audits (bureau) to provide information related to the California Department of Veterans Affairs' (department) efforts to effectively and efficiently address the needs of California's veterans. As part of our audit, we were asked to do the following:

- Review the goals and objectives in the department's current strategic plan to determine whether they adequately address the needs and issues in the veteran community, such as mental health and housing. Examine the methods the department uses to measure its performance and the extent to which it is meeting its goals and objectives.
- Determine the methods the department currently uses to identify and serve veterans, including performing a review of its interactions and agreements with other state departments and agencies that serve veterans.
- Identify the number of California veterans that received benefits from the CalVet Home Loan Program (CalVet program) for the most recent year that statistics are available and, to the extent possible, determine whether this program specifically benefits homeless veterans or veterans in need of multifamily or transitional housing.
- Review the programs administered by the department's Veterans Services division (Veterans Services), including whether it operates a program for homeless veterans, and determine the extent to which the department assists with the administration of these programs.
- Identify the federal disability benefits that qualifying veterans can receive and, for the last five years, determine the number of California veterans who annually applied for and received federal disability compensation and pension benefits (C&P benefits).
- Identify any barriers veterans may face when applying for federal disability benefits, the services the department offers to help veterans overcome such barriers, and the methods used by the department to improve the State's participation rate.

Audit Highlights . . .

Our review of the California Department of Veterans Affairs' (department) efforts to address the needs of California's veterans revealed the following:

» ***The department sees its role as providing few direct services to address issues California's veterans face, such as homelessness and mental illness. Instead, it relies on other entities to provide such services and its Veterans Services division (Veterans Services) is responsible for collaborating with these different entities.***

» ***The department has only recently shifted its attention from its primary focus on veterans homes, deciding that Veterans Services should take a more active role in informing veterans about available benefits and coordinating with other entities.***

» ***One of the department's primary goals for Veterans Services is to increase veterans' participation in federal disability compensation and pension benefits (C&P benefits). However, its ability to meet this goal is hampered by various barriers, including veterans' lack of awareness of the benefits, the complexity of the claims process, and delays at the federal level in processing these claims.***

continued on next page . . .

» *Both Veterans Services and the County Veterans Service Officer programs (CVSOs) assist veterans to obtain C&P benefits. However, better coordination with the CVSOs and the use of additional data may enhance Veterans Services' ability to increase veterans' participation in these benefits.*

» *The department did not formally assess veterans' needs or include key stakeholders such as the CVSOs in its strategic planning process, nor did it effectively measure its progress toward meeting the goals and objectives identified in its strategic plan.*

» *As of March 2009 the CalVet Home Loan program served 12,500 veterans. However, the program is generally not designed to serve homeless veterans or veterans in need of multifamily or transitional housing.*

Finding #1: Veterans Services provides minimal direct services to veterans, and is just beginning to improve its outreach activities.

Outside of the services provided by its veterans homes and CalVet Home Loan program (CalVet program), the department provides few direct services to meet the needs of California's veterans. Instead, Veterans Services is responsible for collaborating with the different agencies that provide services to veterans. However, it receives minimal funding for its operations—approximately 2 percent of the department's total budget—most of which is allocated to support a portion of the County Veterans Service Officer programs' (CVSOs) operations, as required by the State's budget act. With its remaining funding, Veterans Services does not administer formal programs that provide direct services to homeless veterans or those with mental health needs, but instead allocates limited funding for local activities that, in part, aim to increase veterans' awareness of benefits available for those with such needs. For instance, it provided $41,000 in fiscal year 2008–09 to support Stand-Downs, one- to three-day events that provide services such as food, shelter, and clothing to homeless veterans. Veterans Services also provided $270,000 of its Proposition 63 (Mental Health Services Act) funding to five of the CVSOs in fiscal year 2008–09 for the purpose of providing mental health information to veterans and referring them for services. However, Veterans Services distributed the funds to the five CVSOs it selected without entering into formal contracts that specify how the funds should be used. Without formal contracts, Veterans Services is limited in its ability to ensure that the funds it provided to the CVSO will be used for their intended purposes.

Under the department's direction, Veterans Services has recently taken a more active role in reaching out to veterans to inform them about available benefits. However, it has been hindered in this effort because the department lacks contact information for most veterans in the State. To improve its contact information, Veterans Services has recently begun using a reintegration form that asks veterans to list their contact information and identify the services they may be interested in pursuing. Veterans Services has also started to gather contact information from federal, state, and county entities to increase the department's ability to inform veterans about available benefits, and is working to improve the department's Web site. For example, in June 2009, Veterans Services added a new resource directory to the department's Web site and initiated an effort to increase the amount of information available to veterans on the Web site. However, despite these recent efforts, many of which began after the current deputy secretary of Veterans Services started in his position in July 2008, the department's prior lack of outreach may have contributed to veterans' lack of awareness of and failure to apply for available benefits.

To ensure that Mental Health Services Act funding is used for the purposes intended in its formal agreement with the Department of Mental Health, we recommended that the department, before awarding additional funds, enter into formal agreements with the respective CVSOs specifying the allowable uses of these funds. Further, we recommended the department ensure that Veterans Services continues to pursue its various initiatives related to gathering veterans' contact information and increasing veterans' awareness of the benefits

and services available to them. Additionally, we recommended that the department pursue efforts to update its Web site to ensure that it contains current, accurate, and useful information for veterans' reference.

Department's Action: Corrective action taken.

The department has entered into formal agreements specifying the allowable uses of Mental Health Services Act funds with the six CVSOs it selected to receive these funds.

In its one-year response, the department also reported that Veterans Services is continuing its efforts to gather veterans' contact information. Specifically, the department stated that in January 2010 it launched Operation Welcome Home, which is the governor's initiative to help veterans transition to civilian life once their military service ends. The department indicated that this effort formalizes and strengthens the initiatives discussed in the bureau's audit report to ensure contact information is collected from active duty and veterans attendees at outreach activities such as Transitional Assistance Program classes, Yellow Ribbon Program events, and other outreach events. The department reported that Veterans Services now has approximately 28,000 contacts in its veterans reintegration management system database. The department stated that Operation Welcome Home has formalized the department's relationship with the Employment Development Department and other state and local agencies to ensure that Veterans Services receives veterans' contact information. The department explained that Operation Welcome Home uses the veterans' contact information to make structured personal contact with veterans to assist them in receiving the services and benefits they have earned. Finally, the department has updated its Web site.

Finding #2: Veterans Services' efforts to collaborate with other state entities are largely in the beginning stages, and it has not strategically assessed which entities to work with.

The department's deputy secretary of Veterans Services acknowledged that the department has only recently stepped up its efforts to collaborate with other state entities. Focusing on the department's collaboration efforts, excluding any collaborations undertaken by the individual veterans homes, department officials provided documentation to show that as of August 2009 the department had five formal agreements with four other state entities, of which three started in June 2007 or later. In addition to its formal agreements, the department has made efforts to informally collaborate with nine other state entities. All but one of these efforts are overseen by Veterans Services and are in the early stages of development. Prior to hiring the deputy secretary of Veterans Services in July 2008, the department had three informal collaborations with other state entities, two of which were related to providing educational opportunities to veterans. Since that time, the department has begun working to collaborate with six additional state entities. Three of these collaborations—with the California Labor and Workforce Development Agency, the California Department of Consumer Affairs, and the California Volunteers—were in the very early stages, with no explicit agreements, timelines, or plans in place, as of August 2009.

Veterans Services recent efforts to work with other state entities highlights the need for it to develop a formal process to ensure that it is identifying agencies that can assist it to better serve veterans. According to the deputy secretary of Veterans Services, in selecting which state entities to approach, he and the department's executive team selected those that they knew offered services to veterans or believed could be helpful in fulfilling the department's goals. The deputy secretary of Veterans Services explained that there was no formal process for deciding which entities to approach and no lists indicating any established priorities. Unfortunately, because it did not engage in a formal approach to these efforts, Veterans Services may have missed key entities that it could work with to increase veterans' awareness of available benefits or enhance the services available to veterans. For example, a 1994 state law requires that state licensing boards consult with the department to ensure that the education, training, and experience that veterans obtain in the armed forces can be used to meet

licensure requirements for regulated businesses, occupations, or professions. The department's current administration discovered this law in 2009 and has only recently contacted the California Department of Consumer Affairs to address this requirement.

To adequately identify the service providers and stakeholders that could assist Veterans Services in its efforts to increase veterans' awareness of available benefits, we recommended that the department ensure that Veterans Services implement a more systematic process for identifying and prioritizing the entities with which it collaborates. Further, we recommended that the department ensure that, where appropriate, it enters into formal agreements with state entities Veterans Services collaborates with to ensure that it and other entities are accountable for the agreed-upon services and that these services continue despite staff turnover, changes in agency priorities, or other factors that could erode these efforts.

Department's Action: Corrective action taken.

Veterans Services has developed criteria for identifying and prioritizing the entities with which it collaborates and, according to the department, these criteria were approved by its secretary. The department stated that the high-priority entities are part of the coordinated effort under the auspices of Operation Welcome Home.

Further, the department has established formal agreements with the Department of Mental Health, the Department of Health Care Services, the Department of General Services, the Department of Alcohol and Drug Programs, the California Volunteers, and the Department of Motor Vehicles. The department reported that Operation Welcome Home established an overarching structure to further solidify the relationships. The department indicated that its implementation of this recommendation will be ongoing as it establishes new working relationships with state and local entities such as the agreement it recently executed with the Department of Motor Vehicles.

Finding #3: Veterans face various barriers in applying for C&P benefits and the department could more effectively communicate its concerns about these barriers to the U.S. Department of Veterans Affairs.

California's veterans participate in C&P benefits at rates that are significantly lower than those in other states with large veteran populations, and the department has made increasing veterans' participation in these benefits a primary goal for Veterans Services. However, Veterans Services' ability to influence participation in these benefits is affected by various barriers veterans may face in applying for C&P benefits, such as the complexity of the claims process and the U.S. Department of Veterans Affairs' (federal VA) delay in processing the claims. Although the department is aware that the claims process may pose various barriers to veterans applying for these benefits, it could not provide documentation demonstrating that it had communicated these concerns to the federal VA. Nevertheless, the former secretary of the department explained that the length of time it takes the federal VA to process claims is believed to be a problem experienced by veterans in all states, and that it was a subject at meetings held by the National Association of State Directors of Veterans Affairs (NASDVA). He stated that he and the other NASDVA members directly addressed this issue by meeting with the federal VA's deputy undersecretary for benefits, and that they pressed this issue very hard. He further stated that the federal VA consistently answered that it was experiencing unprecedented increases in claim submissions and was hiring and training more staff to address the increase in claims.

Additionally, according to the secretary for administration, Veterans Services has met informally with the federal VA's regional leadership at the CVSO training sessions, which are held three times a year, and informed them of the department's concerns regarding the claims process, including its complexity. He also stated that department staff periodically meet with federal VA staff at the VA's regional offices to communicate their concerns. To the extent these barriers continue to exist, it is increasingly important for the department to continue to communicate its concerns regarding the claims process to ensure that veterans can receive their benefits in a timelier manner.

To ensure that the federal VA is aware of the barriers veterans face in applying for C&P benefits, such as the complexity of the claims process, we recommended that the department continue its efforts, and formalize these efforts as necessary, to communicate these concerns to the federal VA.

Department's Action: Corrective action taken.

In its one-year response, the department reported that it continues to participate in the more effective and influential efforts with national organizations such as the National Association of State Directors of Veterans Affairs. Additionally, in April 2010, the department sent a letter to the secretary of the federal VA outlining its concerns with the claims process for federal benefits and providing suggestions for change.

Finding #4: Veterans Services and the CVSOs do not specifically share the same goal of increasing veterans' participation in C&P benefits.

Although both the CVSOs and Veterans Services can assist veterans in applying for C&P benefits, the CVSOs play a key role in informing veterans about all available benefits and do not specifically share the same goal of increasing veterans' participation in these benefits. In particular, the six officers of the CVSOs that we interviewed tended to have more general goals, such as reaching out to as many veterans and veterans' groups as possible and providing veterans with the best possible service. Some CVSOs have numeric goals specific to processing claims for other types of benefits or for increasing overall productivity. These differing goals may hinder Veterans Services' efforts to increase veterans' participation in C&P benefits.

As part of its efforts to coordinate with the CVSOs, Veterans Services communicates the department's goals at conferences and sends e-mails to the CVSOs about the department's commitment to be at or above the national average in terms of veterans' participation in C&P benefits, according to the deputy secretary of Veterans Services. Further, the deputy secretary for administration stated that the department informs the CVSOs where each county stands in the number of veterans receiving C&P benefits by forwarding participation reports from the NASDVA. However, part of the challenge Veterans Services faces is that the presence of a CVSO in each county is an optional function and the CVSOs exist solely under the control of their respective county's board of supervisors. Thus, according to the deputy secretary of Veterans Services, the department would be overstepping its authority by setting goals for the CVSOs relating to C&P benefits and outreach. As a result, to the extent that the counties' board of supervisors establish goals for the CVSOs that differ from the department's goals, the department may be limited in its ability to increase veterans' participation in C&P benefits.

To better coordinate efforts to increase the number of veterans applying for C&P benefits, we recommended that Veterans Services formally communicate its goals to the CVSOs and work with them to reach some common goals related to serving veterans.

Department's Action: Corrective action taken.

The department distributed copies of its Strategic Plan to the CVSO community at a training conference in October 2009 and told us that it specifically discussed its goal of increasing veterans' participation in C&P benefits during a presentation to the CVSOs at this training conference. In January 2010 the department conducted a survey of the CVSOs in the State to determine what the most important needs of veterans are and how services to veterans can be enhanced. The department stated that 87 percent of the CVSOs that responded agreed that Veterans Services' goal of increasing veterans' participation in C&P benefits is appropriate. In its one-year response, the department stated that this finding is contrary to the finding reported in the bureau's audit report. However, the department is mistaken as we did not ask the CVSOs we interviewed whether they believed Veterans Services' goal of increasing veterans' participation in C&P benefits is appropriate.

Additionally, the department entered into a formal agreement with the California Association of County Veterans Service Officers (association) in December 2009. The agreement is for an indefinite period of time and summarizes agreements reached by the association and the department to establish a process by which both parties may seek input into the development of their respective strategic plans. In the agreement, both parties recognized that neither has direct control over the goals and objectives set by individual counties, but agreed to consider each other's input in the development of goals and objectives set by individual counties, and agreed to foster common goals in order to provide a more consolidated effort to meet the needs of California's veterans. The department's executive staff met with the association's strategic planning committee four times between October 2009 and October 2010 to discuss veterans' needs and progress on accomplishing specific objectives, among other things, and the department told us that it plans to continue to hold these meetings three times per year. Finally, the department stated that representatives from the association participated in the annual update of its strategic plan as it related to Veterans Services' goals, strategies, objectives, and plans of action.

Finding #5: Additional information could enhance the department's ability to increase veterans' participation in C&P benefits.

The department relies heavily on the CVSOs to initiate and develop veterans' claims, including claims for C&P benefits, and to inform veterans about available benefits. However, the department has missed the opportunity to obtain key information from the CVSOs that could help Veterans Services better assess the State's progress in increasing veterans' participation in C&P benefits. In connection with the $2.6 million in annual funding that the department provides to the CVSOs, a state regulation requires the CVSOs to submit workload activity reports to the department within 30 days of reporting periods established by the department. In implementing this state regulation, the department has required the CVSOs to submit workload activity reports to Veterans Services that include the number of claims they filed that they believe have a reasonable chance of obtaining a monetary or medical benefit for veterans, their dependents, or their survivors. The department uses these data to allocate funding to the CVSOs. However, these workload activity reports do not separately identify the total number of claims filed for C&P benefits by each CVSO, and the department has not required the CVSOs to include this information in the reports.

Further limiting Veterans Services' ability to influence the State's rate of participation in C&P benefits is that it has minimal information on the effectiveness of the CVSOs' outreach activities, as it does not monitor or review these activities. As a result, it has minimal assurance that these efforts are sufficient to increase the State's participation in C&P benefits. However, Veterans Service may have an opportunity to assess the adequacy of the CVSOs' outreach efforts as part of an annual report the department is required to submit to the Legislature. Specifically, state law requires the department to report annually on the CVSOs' activities and authorizes it to require the CVSOs to submit the information necessary to prepare the report. Veterans Services is responsible for compiling this report, and the department could require the CVSOs to submit information on their outreach activities. In part, Veterans Services could use this information to assess the adequacy of the CVSOs' outreach activities and determine where and how it could target its own outreach efforts in counties with greater need—such as those lacking resources to conduct adequate outreach. In doing so, Veterans Services could increase veterans' awareness of C&P benefits and potentially increase their participation in these benefits.

Additionally, Veterans Services could make use of data from the NASDVA and U.S. Census Bureau to better focus its outreach efforts and coordination with the CVSOs. For example, among the six counties we reviewed, Los Angeles may have the greatest potential for increasing veterans' participation in C&P benefits. Specifically, veterans in this county have the lowest rate of participation in C&P benefits—almost 2 percentage points lower than the State's average of 11.77 percent as of September 2007—and the largest number of veterans not receiving C&P benefits. Los Angeles County also has the greatest number of veterans with disabilities, which is an indicator of veterans' potential need for disability compensation benefits. Specifically, more than 32,000 veterans were

receiving disability compensation benefits as of September 2007, while the U.S. Census Bureau data indicate that there were nearly 100,000 veterans with disabilities in the county in 2007. This analysis suggests that if Veterans Services were to focus its efforts toward increasing veterans' participation in disability compensation benefits in Los Angeles County, it could generate the highest value for its efforts. Performing a similar analysis of all California counties and including other data that Veterans Services could obtain from the CVSOs, such as the number of claims filed for C&P benefits, may allow Veterans Services to focus its limited resources on the areas with the highest potential for increasing veterans' participation in C&P benefits.

To ensure that it has the information necessary to track progress in increasing veterans' participation in C&P benefits, and to identify where and how best to focus its outreach efforts, we recommended that Veterans Services require the CVSOs to submit information on the number of claims filed for C&P benefits and information on their outreach activities. Further, we recommended that as Veterans Services expands its efforts to increase veterans' participation in C&P benefits, it use veterans' demographic information, such as that available through the U.S. Census Bureau, to focus its outreach and coordination efforts on those counties with the highest potential for increasing the State's rate of participation in C&P benefits.

Department's Action: Partial corrective action taken.

In its one-year response, the department stated that it is still in the process of implementing the Statewide Administration Information Management system (SAIM system), which it now refers to as the Subvention Accounting Information System (SAIS). The department stated that the SAIS will give it the ability to identify the number, quality, and success of the claims filed at the CVSOs, and will allow it to influence the quality of the claims and track outreach activities. According to the department, 15 counties have voluntarily agreed to use SAIS, and the department estimates that these counties will begin using the system by the fall of 2010. The department projected that an additional 23 counties will be converted by the summer of 2011, assuming the counties volunteer for the conversion. The department reported that SAIS will also allow it to track the new veterans being discharged, which will expand its ability to contact the veterans to update them on federal VA benefits rules and regulations.

Additionally, the department told us that it has implemented the recommendation to use veterans' demographic information to focus its outreach and coordination efforts on counties with the highest potential for increasing veterans' participation in C&P benefits through Operation Welcome Home. Specifically, the department told us that Operation Welcome Home focuses on the areas that have the most impact—San Diego, the Bay Area, the Central Valley, and Los Angeles. The department stated that this will be an ongoing effort as it implements other programs, or distributes future funding.

Finding #6: A new system may improve the collection and review of CVSO data, including information on claims for C&P benefits.

Recognizing that it lacks an effective means to monitor the processing of claims by CVSOs and to collect information on veterans' demographics, Veterans Services initiated a joint effort with the CVSOs in 2009 to create the SAIM system. According to the deputy secretary of Veterans Services, the SAIM system will enhance the department's ability to track the number and quality of claims for C&P benefits processed by the CVSOs and submitted to the federal VA. Specifically, the SAIM system will allow department staff to review the claims to ensure that they include certain items, such as any attached documentation and medical records used to substantiate the claims. Well-substantiated claims receive quicker rating decisions in the federal VA claims processing system. According to the deputy secretary of Veterans Services, an additional benefit of the SAIM system is that the department will have access to counties' contact information for the veterans they serve, to use for outreach purposes. The department is in the beginning stages of the process necessary to implement the SAIM system and

has developed a budget change proposal requesting funding to cover the administrative costs of such a system. The proposal, according to the deputy secretary of Veterans Services, has been submitted to the Department of Finance (Finance) for review.

Department officials also indicated that the SAIM system would enable it to meet its legal requirements regarding auditing CVSO workload reports and verifying the appropriateness of college fee waivers. Although the audit committee did not specifically ask us to evaluate the department's auditing of CVSOs, when we inquired about the SAIM system we learned that the department is not auditing the CVSOs' workload reports, described previously, as required by state law. Department officials stated that the department is currently unable to audit these reports due to resource constraints and the amount of time that would be required to conduct audits at the CVSOs.

Because the department is not verifying the accuracy of the college fee waivers processed by the CVSOs as required by state law, the State may be granting too many college fees. Under the College Fee Waiver program, veterans' dependents who meet the eligibility criteria may have their college tuition waived if they attend a California Community College, a California State University, or a University of California campus. According to the deputy secretary of Veterans Services, in fiscal year 2007–08, the CVSOs processed 15,000 fee waiver applications, which resulted in the granting of $42 million in fee waivers. Department officials acknowledged that the department did not verify the appropriateness of the fee waivers as required by state law, and recognized that this places the State at risk of waiving college fees erroneously.

We recommended Veterans Services continue its efforts to pursue the SAIM system to enable it to monitor the quantity and quality of claims processed by the CVSOs, and ensure it meets legal requirements regarding auditing CVSO workload reports and verifying the appropriateness of college fee waivers. To the extent that Veterans Services is unsuccessful in implementing the SAIM system, the department will need to develop other avenues by which to meet its legal requirements.

Department's Action: Partial corrective action taken.

In its one-year response, the department stated that it is currently deploying the SAIS, which the department previously referred to as the SAIM system. The department has executed an MOU with the vendor for the SAIS software, and it reported that 15 counties are voluntarily migrating from their current software application to the SAIS. The department projected that these 15 counties will be migrated by fall 2010. It stated that this migration will bring the total number of counties in the SAIS to 33 out of the 56 counties that it oversees, and indicated that the remaining 23 counties should be converted by summer 2011, assuming all 23 volunteer for the conversion. The department did not comment on whether it will develop other avenues by which to meet its legal requirements to audit CVSO workload reports and verify the appropriateness of college fee waivers during its deployment of the SAIS, or in the case that one of more counties do not volunteer for the conversion.

Finding #7: The department did not adequately assess veterans' needs in preparing its strategic plan.

The department missed two steps critical to ensuring that it provides services appropriate to meet veterans' needs in developing its strategic plan covering fiscal years 2007–08 through 2011–12. Specifically, it did not formally assess veterans' needs and concerns, and it did not formally involve the CVSOs when developing the plan. According to its deputy secretary for administration, the department did not perform a structured, formal assessment of veterans' needs as part of its strategic planning process. Such an assessment might include a process, such as surveying veterans and organizations that serve veterans, for identifying key needs and prioritizing how the department will address the identified needs. Instead, the deputy secretary for administration explained that the department obtains information about the needs of veterans through a variety of interactions with the veteran community and veteran stakeholders, such as staff participation in national forums and conventions. He indicated that the department believes its current methods are sufficient to get a good sense of the needs in the veteran community. Although these interactions may provide department officials with some

information on the needs of veterans, a formal assessment to identify veterans' needs would minimize the risk that the department is overlooking, or that it is undertaking inappropriate efforts to address, the key needs of the veteran community.

Further, although the department stated that it partners with CVSOs to ensure that veterans and their families are served and represented, the deputy secretary for administration stated that the department did not formally survey the CVSOs or other stakeholders to identify and prioritize the needs of the veteran community as part of its strategic planning process. However, guidelines for strategic planning developed by Finance—which provide a framework to assist state agencies in developing their plans—say the first step in a successful strategic planning process includes soliciting input from external stakeholders. Formally involving the CVSOs in the strategic planning process would allow the department to more completely evaluate the needs of the veteran community, given the department's reliance on the CVSOs to perform direct outreach to veterans.

Only three of the six CVSO officers that we interviewed were familiar with the department's strategic plan and none of those three were involved in the plan's development. The remaining three were not familiar with the plan at all. Of the three that responded to the question regarding whether the plan addressed veterans' needs, only the CVSO officer in Solano County responded that it did address veterans' needs. The CVSO officer in San Diego County expressed concern that the plan placed too much emphasis on the veterans homes, stating that the potential efforts of Veterans Services were not given sufficient attention. Similarly, the CVSO officer in Los Angeles County stated that although the plan primarily addressed veterans' needs related to the CalVet program and the veterans homes, more attention and resources were needed to expand the information on benefits and to address homelessness and unemployment among veterans. The officers of the six CVSOs identified for us a range of needs and concerns in the veteran community, including some not listed in the department's strategic plan, such as concerns about access to health care.

To ensure that it properly identifies and prioritizes the needs of the veteran community, we recommended that the department conduct a formal assessment of those needs, including soliciting input from the CVSOs.

Department's Action: Partial corrective action taken.

The department provided documentation to demonstrate that it has implemented three processes to assess veterans needs for use during its strategic plan development. The first is a series of public hearings, known as "All Hands Meetings", that have been held throughout the State to hear directly from veterans, families, local service providers, and others as to their perception of veterans needs. The department held seven of these meetings in various locations throughout the State from February through September 2010. The department stated that the planning and execution of the meetings involved local veterans organizations and local governmental agencies that provide veterans services, and indicated that it intends to hold future meetings, subject to budget and travel restrictions.

The department's second effort was a statewide survey, conducted from February to mid-May 2010 to seek input from the community on veterans needs. This survey sought input on veterans needs from three primary sub-groups: (1) active duty and veterans, (2) veterans family members, and (3) any resident interested in veterans issues. The department published an initial evaluation of the results in June 2010. The department also executed an MOU with the county of San Bernardino to provide professional statistical analysis, and projected that it will issue another report on its statewide survey in early November based on this statistical analysis.

The department's third effort was to conduct a survey of CVSOs in January 2010, which identified health care, benefit advocacy, and employment as the top three needs of veterans. According to the department, it may conduct a more formal survey of the CVSOs in the future, depending on the fiscal environment.

Finding #8: The department's strategic plan does not specify how goals will be met and lacks adequate measures for assessing progress.

Although the department has identified certain needs and concerns of the veteran community in its strategic plan covering fiscal years 2007–08 through 2011–12, the plan's goals and objectives do not sufficiently identify the steps the department will take to address these needs. The plan describes 12 critical issues and challenges the department believes it faces. According to the deputy secretary for administration, these issues and challenges represent the department's priorities and include veterans' critical needs that the department identified in its strategic planning process. Five of the 12 critical issues and challenges identified in the strategic plan relate to the veterans homes, but the department also identified homelessness among veterans and the need for services to meet the needs of newly returning combat veterans.

Despite this, the goals and objectives expressed in the strategic plan, which relate to the successful delivery of programs and services to California's veterans and their families, do not include any mention of these needs. By not sufficiently aligning its goals and objectives with all of the needs it has identified, the department risks being unable to ensure that its activities sufficiently address them. Further, Finance's strategic planning guidelines indicate that goals and objectives are key components of strategic planning. They also state that goals represent the general ends toward which agencies direct their efforts, and that objectives should be measurable, time-based statements of intent, linked directly to these goals, that emphasize the results of agency actions at the end of a specific time. However, the department's five strategic goals and many of the 29 related objectives do not provide this level of guidance.

Additionally, in its strategic plan, the department specifies that divisions will develop, track, and report detailed action plans and performance measures. According to the deputy secretary for administration, to operationalize its strategic plan, the department asked each division and support unit to develop action plans for meeting the strategic plan's goals and objectives. Because the strategic plan's objectives fail to mention how the department will address the needs of homeless veterans or of newer veterans, we expected that the action plans would clearly specify how the divisions' activities would meet these needs. However, the action plans we reviewed do not do so. For example, the July 2007 action plan for Veterans Services—the division responsible for conducting the department's outreach activities related to increasing veterans' awareness of available benefits—does not include specific reference to the homeless among veterans or the needs of newer veterans returning from Iraq and Afghanistan who may be in need of mental health services or health care benefits.

Further, according to the department's deputy secretary for administration, the activities included in each division's annual action plan are, in fact, the performance measures called for by the department's strategic plan. These action plans, however, do not allow the department to effectively gauge its progress in accomplishing its goals and objectives. The deputy secretary for administration indicated that there was no short list of critical activities in the action plans that were identified as the key performance measures for each division. According to Finance's strategic planning guidelines, to retain focus on only the most significant objectives in the plan, the agency should select only the most pertinent measures for each objective for which data can be collected. In contrast, the department has identified every activity in its 40-page set of action plans as a performance measure, reducing its ability to focus on those with the highest priority.

To ensure that its strategic plan identifies how the department will address the needs and concerns of veterans, we recommended that the department develop measurable goals and objectives, as well as specific division action plans that directly align with the needs of the veteran community that it identifies in the plan.

Department's Action: Corrective action taken.

The department published its new strategic plan in August 2009, and published a formal implementation plan that includes measurable goals, objectives, and plans of action in October 2009. According to the department, these plans of action directly align with the goals identified in its strategic plan. The department completed an update to its strategic plan in July 2010, and plans to annually refine its strategic plan through incorporation of information developed through improvements in identifying the needs of California's veterans.

Finding #9: The department has not followed key monitoring procedures suggested by its strategic plan and Veterans Services' strategic plan does not align with the department's plan.

The department has not followed key monitoring procedures called for by the strategic plan, such as conducting quarterly progress assessments and publishing annual performance measure reports. The strategic plan states that the department will assess its progress quarterly toward achieving predetermined goals and objectives and publish a performance measure report annually. Our review found that the department did not consistently perform these quarterly assessments, did not publish an annual performance report, and did not assess its progress toward meeting its strategic plan's goals and objectives. The department's failure to monitor its progress and remain actively engaged in its strategic planning process limits its ability to measure whether it is meeting its goals, to evaluate how effectively it is meeting the needs of veterans, to adjust its activities to changing circumstances, and to inform itself and stakeholders about its progress.

Additionally, the Veterans Services' strategic plan is not linked to the department's plan. In addition to participating in the department's strategic planning process, Veterans Services has developed its own independent strategic plan. Although it developed action plans as part of the department's overall strategic planning process, Veterans Services also continued to update its own strategic plan, which includes separate action plans. The most recent version of Veterans Services' strategic plan covers fiscal years 2009–10 through 2013–14. According to the deputy secretary of Veterans Services, this plan is the one to which it holds itself accountable. He noted that Veterans Services develops specific items in its strategic plan independently, without the direct input of the department's acting secretary or the executive team, although the executive team receives copies of Veterans Services' strategic plan, is aware of its activities, and assists with its goals where appropriate. The existence of multiple, competing plans reduces the department's ability to ensure that its divisions and support units are undertaking activities that contribute to the department's overarching goals and objectives.

We recommended that to ensure it effectively measures progress toward meeting key goals and objectives, the department follow the provisions in its strategic plan requiring it to establish performance measures, conduct and document quarterly progress meetings, and publish annual performance measure reports. Further, to ensure coordination in its efforts to achieve key goals and objectives, we recommended that the department eliminate Veterans Services' strategic plan or ensure that the plan is in alignment with the department's strategic plan.

Department's Action: Corrective action taken.

In its one-year response, the department stated that it has established quarterly meetings to review progress in completion of a business plan, which forms the basis for accomplishing its strategic goals. The department told us that it held meetings in January and April to review fiscal year 2010–11 quarterly progress on implementing its business plan and it has posted the results of these meetings on its Web site. The department has also published an annual report on major

progress in implementing its objectives on its Web site. Additionally, the department stated that it has assigned a staff member to implement and track this quarterly reporting process, as well as the development of the annual strategic plan update and publication of the annual report. The department has published its annual update to the strategic plan and its companion business plan on its Web site. Further, the department has incorporated Veterans Services' strategic plan into the department's strategic plan; there is no longer a separate strategic plan for Veterans Services.

Finding #10: Despite recent declines, Veterans' participation in the CalVet program may increase in the future.

Although the number of veterans participating in the CalVet program has declined each year since June 30, 2006, the deputy secretary of the program expects more veterans to participate in the future. The number of veterans with CalVet program loans decreased from about 14,600 as of June 30, 2006, to approximately 12,500 as of March 31, 2009. According to the deputy secretary of the CalVet program, the decline can be attributed to several factors, including that the CalVet program's interest rates have become less competitive than those offered by other lending institutions. However, the deputy secretary of the CalVet program believes opportunities exist to lower these interest rates in the future and increase participation in the program.

Nationally, market interest rates generally declined during 2006 through 2008, and information compiled by the CalVet program shows that during the period between July 2006 and November 2008, the CalVet program offered interest rates that were lower than the average interest rates offered by the Federal Home Loan Mortgage Corporation.[1] However, beginning in December 2008, the interest rates offered by the CalVet program became less competitive, providing an economic incentive for veterans to obtain new loans, or to refinance their existing loans, outside of the program. In spite of this, the deputy secretary of the CalVet program anticipates that veterans' participation in the program will substantially increase in the future because the department is attempting to decrease the interest rates it offers on loans by becoming an approved lender with the Federal Housing Administration (FHA). He explained that as an approved lender, the CalVet program will be able to work with the Government National Mortgage Association (Ginnie Mae) to guarantee CalVet program loans, and that in working with the Ginnie Mae, the department may attract more veterans to the program by offering lower interest rates on its loans.

In order to attract more veterans to the CalVet program, we recommended that the department continue working with the FHA and the Ginnie Mae to lower its interest rates on loans.

Department's Action: Pending.

The department provided documentation demonstrating that the FHA has approved its application for loan servicing and its application for loan originations. However, in its one-year response, the department stated that the FHA has denied its request to begin originating FHA guaranteed loans. The department explained that its attorneys have prepared a legal rebuttal to the FHA denial.

[1] The Federal Home Loan Mortgage Corporation is a shareholder-owned company created by the U.S. Congress in 1970 to stabilize the nation's mortgage markets and expand opportunities for homeownership and affordable rental housing.