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Bureau of State Audits

Implementation of State Auditor's Recommendations

Audits Released in January 2009 Through December 2010

Special Report to
*Assembly and Senate
Standing/Policy Committees*



March 2011 Report 2011-406

SPECIAL REPORT

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March 1, 2011

2011-406

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

Dear Governor and Members of the Legislature:

The California State Auditor's Office presents its special report for the legislative standing/policy committees, which summarizes audits and investigations we issued from January 2009 through December 2010. This report includes the major findings and recommendations along with the corrective actions auditees reportedly have taken to implement our recommendations. In the reports issued during the past two years, we made 210 recommendations, of which state agencies asserted that they have fully implemented 89 and partially implemented 63; however, for the remaining 58 recommendations, we determined that agencies have taken no action for five, and corrective action is pending for 53 recommendations. To facilitate use of this report, we have included a table (Table 2) that summarizes the status of each agency's implementation efforts by audit report.

Our audit efforts bring the greatest return when the auditee acts upon our findings and recommendations. This report includes another table (Table 1) that summarizes the monetary value associated with certain findings from reports we issued during the period January 1, 2003, through December 31, 2010. We have grouped the monetary value into various categories such as cost recovery, cost savings, lost revenue, increased revenue, and wasted funds. We estimate that if auditees implemented our recommendations contained in these reports, they could realize more than \$1.2 billion in monetary value by reducing costs, increasing revenues, or avoiding wasteful spending.

The information in the report will also be available in 10 special reports specifically tailored for each Assembly and Senate budget subcommittee on our Web site at www.bsa.ca.gov. 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. Finally, we notify all affected auditees of the release of these special reports.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Introduction

This report summarizes the major findings and recommendations from audit and investigative reports that we issued from January 2009 through December 2010. 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's action to identify areas of concern or issues that we believe an auditee has not adequately addressed. We have compiled and summarized the recommendations we directed to the Legislature in a separate report we issued in December 2010 (report number 2010-701).

This report is organized by policy areas that generally correspond to the Assembly and Senate standing committees. Under each policy area we have included audit report summaries that relate to an area's jurisdiction. Because an audit or investigation may involve more than one issue or because it may cross the jurisdictions of more than one standing committee, a report summary could be included in more than one policy area. For example, the Commission on State Mandates' report summary is listed under three policy areas—Appropriations; Business, Professions and Economic Development; and Local Government.

As shown in the Figure, the California State Auditor's Office (office) made 210 recommendations in audit reports and investigations that we issued from January 2009 through December 2010. Of those, agencies asserted that they have fully implemented 89 and partially implemented 63; however, for the remaining 58 recommendations we determined that agencies have taken no action for five, and corrective action is pending for 53 recommendations. Our audit efforts bring the greatest return when agencies act upon our findings and recommendations. As a result, we will continue to monitor these agencies' efforts to implement the recommendations that have not been fully implemented.

Figure
Overview of Recommendation Status

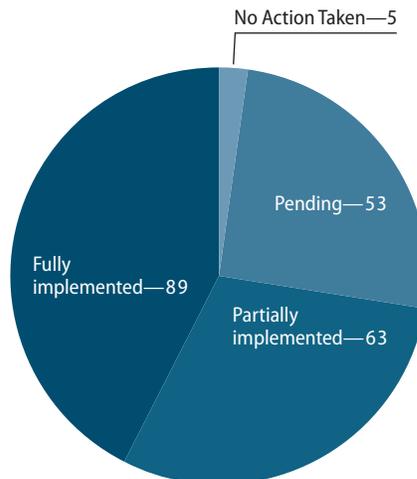


Table 1 beginning on page 3, summarizes the monetary value associated with certain findings from reports we issued during the period January 1, 2003, through December 31, 2010. We have grouped the monetary value into various categories such as cost recovery, cost savings, lost revenue, increased revenue, and wasted funds. We estimate that if auditees implemented our recommendations contained in these reports, they could realize more than \$1.2 billion in monetary value either by reducing costs, increasing revenues, or avoiding wasteful spending. For example, in June 2010, we identified several opportunities for the Department of Public Health (Public Health) to increase revenue for the State and Federal Health Facilities Citation Penalties Accounts by seeking changes to state law and by ensuring it adheres to current law. The monetary penalty amounts specified in state law have not been updated regularly to reflect the rate of inflation. We determined that Public Health could have collected nearly

\$3.3 million more between July 1, 2003 and March 15, 2010, if the penalty amounts were updated regularly to reflect the rate of inflation. Additionally, current state law grants facilities an automatic 35 percent reduction in the monetary penalty amounts imposed by Public Health, if the facilities do not contest and pay the penalty amounts within time frames specified by law. Public Health inappropriately granted the reduction to some facilities that paid their monetary penalties after the time frame specified by law, depriving the state account of roughly \$70,000 in revenues that it was otherwise due.

Another example where revenue could be increased includes delays in taking steps to claim millions of dollars in overpayments counties have received from food stamp recipients. Specifically, the Department of Social Services (Social Services) delayed in seeking the State's \$12.5 million share of the \$42.1 million in food stamp overpayments that counties collected as of November 2009. In addition, because neither Social Services nor the federal government addressed this issue over a six-year period, we estimate that the State lost the opportunity to earn approximately \$1.1 million in interest on its share of the funds. As a result of our audit, Social Services indicates that it collected an adjusted total of \$39.8 million in food stamp overpayments as of June 2010. Further, Social Services recovered interest of \$466,000 by December 2010, and is working with counties to recover the remaining interest.

The office's policy requests that the auditees 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 that an auditee provide a response beyond one year or initiate a follow-up audit if deemed necessary. In addition, California Government Code, Section 8548.9, requires us to produce an annual report regarding recommendations that state agencies have not fully implemented within a year of issuance. Accordingly, for those state agencies we determine have not fully implemented one or more recommendations within one year of the issuance of an audit report, we will follow up and request an update of each respective agency's plans to implement outstanding recommendations.

In addition to our audits, we issue investigative reports that include instances of improper governmental activities we have substantiated. The investigations publicly reported during 2009 and 2010 identified \$1.1 million of improper activities, including wasteful spending, improper overtime payments, improper gifts, and mismanagement of state resources and funds. For example, in April 2009 we reported that a high-ranking official formerly working for the Office of Spill Prevention and Response—part of the Department of Fish and Game (Fish and Game)—incurred \$71,747 in improper travel expenses. We recommended that Fish and Game seek to recover the amount it reimbursed the official for her improper travel expenses. In that same investigative report we reported that the Department of Corrections and Rehabilitation (Corrections) and the Department of General Services (General Services) wasted a total of \$580,000 in state funds by failing to terminate a lease for 5,900 square feet of office space that Corrections had left unoccupied for more than four years. We recommended that Corrections require its employees to confirm its leasing needs before submitting a request to General Services, and to review and approve required lease information to facilitate the process. We also recommended that General Services strengthen its oversight role to prevent state agencies from unnecessarily using leased space when state-owned space is available.

By making recommendations to shore up control weaknesses such as these in our investigations, it is our intent that state agencies avoid wasting state funds and resources in the future. Departments are required to report on the status of their corrective actions 60 days after we notify them of the improper activities related to an investigation, and every 30 days thereafter until all such corrective 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. Table 2 beginning on page 15, summarizes the status of agencies' efforts to implement our recommendations based on the most recent response received from each agency. Because an audit report's recommendations may apply to several policy areas, the agency's

status on implementing our recommendations may be represented in Table 2 more than once. For instance, the recommendations made to postsecondary educational institutions regarding their crime disclosure requirements are reflected under the policy areas for Higher Education and Public Safety.

Summary of Monetary Value Identified in Audit Reports Released From January 1, 2003, Through December 31, 2010

The following table shows approximately \$1.3 billion of monetary value associated with findings and recommendations we made in audits or investigations completed during the period January 1, 2003, through December 31, 2010. The table provides a brief description of the monetary values we found, such as potential cost recoveries, cost savings, increased revenues, lost revenues and funds wasted. Finally, many of the monetary values we have identified are not only one-time benefits, but could be realized each year for many years to come. This table reflects the cumulative impact of the monetary values identified.

Table 1
Monetary Values
January 1, 2003, Through December 31, 2010

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
July 1, 2010, through December 31, 2010		
2009-114 (July 2010)	<i>Department of General Services: It No Longer Strategically Sources Contracts and Has Not Assessed Their Impact on Small Businesses and Disabled Veteran Business Enterprises</i> Cost Savings—The Department of General Services (General Services) should identify new strategic sourcing opportunities and maximize savings to the State for future purchases. The savings for the state is currently unknown, but if General Services implements our recommendation, the savings will be quantifiable in the future.	
2010-106 (November 2010)	<i>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</i> Cost Savings—Some state agencies are not maximizing opportunities to reduce their costs to provide bilingual services by leveraging California Multiple Award Schedules contracts for interpretation and translation services.	\$47,000
Annualized carry forward for July 1, 2010, through December 31, 2010		\$86,360,500
2002-101 (July 2002)	California Department of Corrections	\$29,000,000
2002-009 (April 2003)	California Energy Markets	14,500,000
2002-118 (April 2003)	Department of Health Services	10,000,000
2003-106 (October 2003)	State Mandates	3,800,000
2003-125 (July 2004)	California Department of Corrections	10,350,000
2003-124 (August 2004)	Department of Health Services	2,300,000
I2004-2 (September 2004)	Department of Health Services	4,500
I2004-2 (September 2004)	Military Department	32,000
2004-105 (October 2004)	California Department of Corrections	145,000
I2005-1 (March 2005)	California Department of Corrections and Rehabilitation	59,500
2004-113 (July 2005)	Department of General Services	18,000
2004-134 (July 2005)	State Athletic Commission	16,500
2004-125 (August 2005)	Department of Health Services	5,150,000
I2005-2 (September 2005)	California Department of Corrections and Rehabilitation	96,500
I2006-1 (March 2006)	Department of Fish and Game	4,150,000
2007-037 (September 2007)	Department of Housing and Community Development	19,000
I2008-1 (April 2008)	California Department of Corrections and Rehabilitation	25,000

continued on next page . . .

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
I2008-1 (April 2008)	Department of Social Services	6,500
2007-122 (June 2008)	Department of Health Care Services	6,500,000
2008-103 (November 2008)	California Unemployment Insurance Appeals Board	30,500
2009-043 (November 2009)	Board of Pilot Commissioners For the Bays of San Francisco, San Pablo and Suisun	15,000
2009-030 (July 2009)	California State Bar	142,500
Total for July 1, 2010, through December 31, 2010		\$86,407,500
July 1, 2009, through June 30, 2010		
2009-112 (May 2010)	<i>Department of Health Care Services: It Needs to Streamline Medi-Cal Treatment Authorizations and Respond to Authorization Requests Within Legal Time Limits</i> Cost Avoidance—If the Department of Health Care Services performed cost-benefit analyses on treatment authorizations requests (TAR) with very low denial rates, it could ascertain which TAR's administrative costs equaled or exceeded its savings. By performing this analysis we estimate that it could save \$4,800,000 annually by identifying which TARs are not cost-effective to process and remove authorization requirements for these services.	\$4,800,000
2010-108 (June 2010)	<i>Department of Public Health: It Reported Inaccurate Financial Information and Can Likely Increase Revenues for the State and Federal Health Facilities Citation Penalties Accounts</i> Increased Revenue—The Department of Public Health (Public Health) inappropriately granted a 35 percent reduction to health facility penalties totaling \$70,000. This error was largely because the database that Public Health uses to calculate penalty reductions was not programmed to reflect the correct dates to calculate penalties. Also, Public Health could have generated \$95,000 if it had assessed interest on penalties stalled in the appeals process. It also could have increased revenue by \$3.3 million during the period of fiscal year 2003–04 through March 2010 if it had updated the monetary penalties amounts based on inflation rates. Finally, Public Health could have generated \$101,220 if it had included certain accounts in the Surplus Money Investment Fund as opposed to the Pooled Money Investment Account.	3,566,000
I2010-1 (June 2010) (Allegation I2008-1066)	<i>Department of Industrial Relations: Investigations of Improper Activities by State Employees</i> Cost Recovery—An inspector at the Department of Industrial Relations, Division of Occupational Safety and Health misused state resources and improperly engaged in dual employment during her state work hours, for which she received \$70,105 in inappropriate payments	70,000
I2010-1 (June 2010) (Allegation I2008-0920)	<i>Department of Corrections and Rehabilitation: Investigations of Improper Activities by State Employees</i> Wasted Funds—A supervisor at Heman G. Stark Correctional Facility misused the time of two psychiatric technicians by assigning them to perform the tasks of a lower-paid classification. This misuse of the employees' time resulted in a loss to the State of \$110,797.	111,000
I2010-1 (June 2010) (Allegation I2008-1037)	<i>California State University, Northridge: Investigations of Improper Activities by State Employees</i> Cost Recovery—An employee of California State University, Northridge (Northridge), improperly allowed a business owner and associates to use a university laboratory facility, equipment, and supplies without compensating Northridge. After this investigation Northridge received payment of \$20,709 from the business owner.	21,000
2009-030 (July 2009)	<i>California State Bar: It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs</i> Lost Revenue/Increased Revenues—The State Bar has not updated the formula it uses to bill disciplined attorneys, although the discipline costs have increased thirty percent during the last five years. We estimate that if it had updated the billing formula, it could have billed an additional \$850,000 for the past three years. Additionally, if the State Bar updates the formula, we estimate that it could increase revenue in future years by approximately \$285,000 annually.	850,000
2009-101 (November 2009)	<i>Department of Social Services: For the CalWORKs and Food Stamp Programs, It Lacks Assessments of Cost-Effectiveness and Misses Opportunities to Improve Counties' Antifraud Efforts</i> Cost Recovery—Since December 2003 counties have received millions of dollars in overpayments recovered from food stamp recipients. However, the Department of Social Services (Social Services) has been delayed in taking the steps needed to claim its share of these overpayments—approximately \$12.45 million. As a result of the six-year delay in addressing this issue, we estimate Social Services lost approximately \$1.1 million in interest on its share of the funds.	12,450,000 1,100,000

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
I2009-0702 (November 2009)	<i>Department of Corrections and Rehabilitation: Its Poor Internal Controls Allowed Facilities to Overpay Employees for Inmate Supervision</i>	35,000
	Cost Recovery— We identified almost \$35,000 in overpayments made to 23 employees, and we recommended that the Department of Corrections and Rehabilitation recuperate the overpayments from the employees. This is a one-time cost recovery for the state.	
2009-043 (November 2009)	<i>Board of Pilot Commissioners For the Bays of San Francisco, San Pablo and Suisun: It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies With Legal Requirements</i>	
	Increased Revenue—The Board of Pilot Commissioners (board) did not receive all revenues for the surcharge to fund training new pilots, as required by law. By collecting these fees, we calculated that the board will collect an additional \$8,640 annually based on the current surcharge of \$9 per trainee.	9,000
	Cost Savings— The board offers free parking to employees, which may constitute a misuse of state resources. By cancelling its lease for parking, the board will save the total value of the lease, \$4,760 over the course of a year. Additionally, if the board ceases reimbursing pilots for business-class airfare when they fly for training, we believe that it will incur a savings in the future. We believe these future savings will be approximately \$30,000 annually.	5,000 30,000
Annualized carry forward for July 1, 2009, through June 30, 2010		\$172,406,000
2002-101 (July 2002)	California Department of Corrections	\$58,000,000
2002-009 (April 2003)	California Energy Markets	29,000,000
2002-118 (April 2003)	Department of Health Services	20,000,000
2003-106 (October 2003)	State Mandates	7,600,000
2003-125 (July 2004)	California Department of Corrections	20,700,000
2003-124 (August 2004)	Department of Health Services	4,600,000
I2004-2 (September 2004)	Department of Health Services	9,000
I2004-2 (September 2004)	Military Department	64,000
2004-105 (October 2004)	California Department of Corrections	290,000
I2005-1 (March 2005)	California Department of Corrections	119,000
2004-113 (July 2005)	Department of General Services	36,000
2004-134 (July 2005)	State Athletic Commission	33,000
2004-125 (August 2005)	Department of Health Services	10,300,000
I2005-2 (September 2005)	California Department of Corrections and Rehabilitation	193,000
I2006-1 (March 2006)	Department of Fish and Game	8,300,000
2007-037 (September 2007)	Department of Housing and Community Development	38,000
I2008-1 (April 2008)	California Department of Corrections and Rehabilitation	50,000
I2008-1 (April 2008)	Department of Social Services	13,000
2007-122 (June 2008)	Department of Health Care Services	13,000,000
2008-103 (November 2008)	California Unemployment Insurance Appeals Board	61,000
Total for July 1, 2009, through June 30, 2010		\$195,453,000
July 1, 2008, through June 30, 2009		
2007-040 (September 2008)	<i>Department of Public Health: Laboratory Field Services' Lack of Clinical Laboratory Oversight Places the Public at Risk</i>	\$1,020,000
	Increased Revenue—Net effect of Clinical Laboratory misstatement. If fee adjustments are properly made, this should be a one time monetary value.	
I2008-2 (October 2008) (Allegation I2006-0826)	<i>California Department of Corrections and Rehabilitation: Investigations of Improper Activities by State Employees</i>	17,000
	Cost Recovery—Recover improper payments that were made to employees for which they were not entitled. This is a one-time cost recovery for the state.	

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AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
I2008-2 (October 2008) (Allegation I2008-0678)	<i>California Environmental Protection Agency: Investigations of Improper Activities by State Employees</i> Cost Recovery—The California Environmental Protection Agency paid an employee for 768 hours for which she was not at work and for which no leave balance was charged or used.	23,000
I2008-2 (October 2008) (Allegation I2007-1049)	<i>Department of Housing and Community Development: Investigations of Improper Activities by State Employees</i> Cost Recovery—Recover improper payments that were made to employees for which they were not entitled. This is a one-time cost recovery for the state.	35,000
I2008-2 (October 2008) (Allegation I2007-0917)	<i>Department of Corrections and Rehabilitation: Investigations of Improper Activities by State Employees</i> Cost Recovery—Recover improper overtime payments that were made to employees at San Quentin State Prison for which they were not entitled. This is a one-time cost recovery for the state.	108,000
I2008-2 (October 2008) (Allegation I2007-0771)	<i>State Personnel Board: Investigations of Improper Activities by State Employees</i> Wasted Funds—The State Personnel Board approved contracts with a retired annuitant without providing reasonable justification for the contract or the contract amount. Although three different contracts were entered into, the amount of the contracts either varied, or the amount of work was unspecified.	14,000
2008-103 (November 2008)	<i>California Unemployment Insurance Appeals Board: Its Weak Policies and Practices Could Undermine Employment Opportunity and Lead to the Misuse of State Resources</i> Cost Savings—We identified parking spaces maintained by the Unemployment Insurance Appeals Board (board) for which the board had little assurance were being used for their intended and allowable purposes. In March 2009 the board eliminated 31 of its 35 parking spaces, which will save \$61,000 annually. We are showing a benefit of \$20,000 for the remainder of fiscal year 2008–09.	20,000
I2009-1 (April 2009) (Allegation I2006-1125)	<i>Department of Fish and Game, Office of Spill Prevention and Response: Investigations of Improper Activities by State Employees</i> Cost Recovery—A high level official formerly with the Office of Spill Prevention and Response of the Department of Fish and Game incurred \$71,747 in improper travel expenses she was not entitled to receive. This is a one-time cost recovery to the state.	72,000
I2009-1 (April 2009) (Allegation I2007-0909)	<i>State Compensation Insurance Fund: Investigations of Improper Activities by State Employees</i> Cost Recovery—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 she did not work. This is a one-time cost recovery to the state.	8,000
I2009-1 (April 2009) (Allegation I2007-0891)	<i>Department of Corrections and Rehabilitation and Department of General Services: Investigations of Improper Activities by State Employees</i> Wasted Funds—The Departments of Corrections and Rehabilitation and General Services wasted \$580,000 in state funds by continuing to lease 5,900 square feet of office space that was left unoccupied for more than four years. This monetary value does not carry forward into future years.	580,000
2009-042 (May 2009)	<i>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</i> Lost Revenue—We identified interest revenues totaling \$34,000 the California Health Financing Authority (authority) did not recover from grantees on advanced funds. The authority can recover a currently unidentifiable amount of revenue if it requires grantees to place future advances of funds in interest bearing accounts. The amount of future funds that will be advanced, as opposed to disbursed for reimbursement expenditures, as well as the associated interest earnings are not predictable.	34,000
Annualized carry forward from prior fiscal years:		\$173,495,000
2002-101 (July 2002)	California Department of Corrections	58,000,000
2002-009 (April 2003)	California Energy Markets	29,000,000
2002-118 (April 2003)	Department of Health Services	20,000,000

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
2003-106 (October 2003)	State Mandates	7,600,000
2003-125 (July 2004)	California Department of Corrections	20,700,000
2003-124 (August 2004)	Department of Health Services	4,600,000
I2004-2 (September 2004)	Department of Health Services	9,000
I2004-2 (September 2004)	Military Department	64,000
2004-105 (October 2004)	California Department of Corrections	290,000
I2005-1 (March 2005)	California Department of Corrections and Rehabilitation	119,000
2004-113 (July 2005)	Department of General Services	1,186,000
2004-134 (July 2005)	State Athletic Commission	33,000
2004-125 (August 2005)	Department of Health Services	10,300,000
I2005-2 (September 2005)	California Department of Corrections and Rehabilitation	193,000
I2006-1 (March 2006)	Department of Fish and Game	8,300,000
2007-037 (September 2007)	Department of Housing and Community Development	38,000
I2008-1 (April 2008)	California Department of Corrections and Rehabilitation	50,000
I2008-1 (April 2008)	Department of Social Services	13,000
2007-122 (June 2008)	Department of Health Care Services	13,000,000
Total for July 1, 2008, through June 30, 2009		\$175,426,000
July 1, 2007, through June 30, 2008		
I2007-2 (September 2007) (Allegation I2006-1099)	<i>Department of Mental Health: Investigations of Improper Activities by State Employees</i> Wasted Funds—Misuse of state funds designated to purchase two law enforcement vehicles by using the vehicles for non-law enforcement purposes. This misuse resulted in a one-time loss to the state.	\$19,000
2007-037 (September 2007)	<i>Department of Housing and Community Development: Awards of Housing Bond Funds Have Been Timely and Complied With the Law, but Monitoring of the Use of Funds Has Been Inconsistent</i> Lost Revenue—Excessive advances are provided without consideration for interest earnings the State could receive. Without corrective action, this loss could continue for the life of the program.	38,000
I2007-2 (September 2007) (Allegation I2007-0715)	<i>California Highway Patrol: Investigations of Improper Activities by State Employees</i> Cost Avoidance—Purchase cost of \$881,565 for 51 vans it had not used for their intended purposes. We calculated that California Highway Patrol lost \$90,385 in interest because it bought the vans two years prior to when it needed them. This is a one-time loss to the state.	972,000
2007-109 (November 2007)	<i>DNA Identification Fund: Improvements Are Needed in Reporting Fund Revenues and Assessing and Distributing DNA Penalties, but Counties and Courts We Reviewed Have Properly Collected Penalties and Transferred Revenues to the State</i> Increased Revenue—Counties did not always assess and collect all required DNA penalties.	32,000
I2008-1 (April 2008) (Allegation I2006-0665)	<i>Department of Corrections and Rehabilitation: Investigations of Improper Activities by State Employees</i> Wasted Funds—Corrections leased 29 parking spaces at a private parking facility but did not use them. This is a one-time loss to the state.	50,000
I2008-1 (April 2008) (Allegation I2006-1040)	<i>Department of Social Services: Investigations of Improper Activities by State Employees</i> Cost Recovery—Recover improper payments that were made to contractors. Cost Savings—The Department of Social Services will avoid these improper payments totaling about \$13,000 annually in the future.	26,000
I2008-1 (April 2008) (Allegation I2007-0958)	<i>Department of Justice: Investigations of Improper Activities by State Employees</i> Cost Recovery—The Department of Justice paid compensation to five employees that they may not have earned over a nine-month period. This is a one-time cost recovery for the state.	18,000

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AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
2007-122 (June 2008)	<i>Department of Health Care Services: Although Notified of Changes in Billing Requirements, Providers of Durable Medical Equipment Frequently Overcharge Medi-Cal</i>	13,000,000
	<p>Cost Recovery—The Department of Health Care Services (department) has identified over billing to Medi-Cal by equipment providers. We estimated the department has overpaid providers by approximately \$13 million during the period from October 2006 through September 2007. This is a one-time cost recovery to the department if they collect all overpayments.</p> <p>Cost Savings—If the department implements our recommendation to identify more feasible Medi-Cal reimbursement monitoring and enforcement, we estimate that it could continue to avoid \$13 million in overpayments annually.</p>	
Annualized carry forward from prior fiscal years:		\$147,044,000
2002-101 (July 2002)	California Department of Corrections	\$43,500,000
2002-009 (April 2003)	California Energy Markets	29,000,000
2002-118 (April 2003)	Department of Health Services	20,000,000
2003-106 (October 2003)	State Mandates	7,600,000
2003-125 (July 2004)	California Department of Corrections	20,700,000
2003-124 (August 2004)	Department of Health Services	4,600,000
I2004-2 (September 2004)	Department of Health Services	9,000
I2004-2 (September 2004)	Military Department	64,000
2004-105 (October 2004)	California Department of Corrections	290,000
I2005-1 (March 2005)	California Department of Corrections and Rehabilitation	119,000
2004-113 (July 2005)	Department of General Services	2,336,000
2004-134 (July 2005)	State Athletic Commission	33,000
2004-125 (August 2005)	Department of Health Services	10,300,000
I2005-2 (September 2005)	California Department of Corrections and Rehabilitation	193,000
I2006-1 (March 2006)	Department of Fish and Game	8,300,000
Total for July 1, 2007, through June 30, 2008		\$161,199,000
July 1, 2006, through June 30, 2007		
I2006-2 (September 2006) (Allegation I2006-0663)	<i>Department of Forestry and Fire Protection: Investigations of Improper Activities by State Employees</i>	\$18,000
	Cost Recovery—Between January 2004 and December 2005 an employee with the Department of Forestry and Fire Protection improperly claimed and received \$17,904 in wages for 672 hours he did not work in violation of state law.	
2006-035 (February 2007)	<i>Department of Health Services: It Has Not Yet Fully Implemented Legislation Intended to Improve the Quality of Care in Skilled Nursing Facilities</i>	6,100,000
	Cost Recovery—A contractor consultant authorized long-term care Medi-Cal duplicate payments. Health Services will recoup approximately \$5.3 million from facilities that received duplicate payments and an additional \$780,000 for duplicate or overlapping payments made to one or more different provider entities. Since authorization for the duplicate payments occurred because of a flawed procedure, the error may have caused other duplicate payments outside those we identified.	
I2007-1 (March 2007) (Allegation I2006-0945)	<i>California Exposition and State Fair: Investigations of Improper Activities by State Employees</i>	6,000
	Cost Recovery—An official within the California Exposition and State Fair (Cal Expo) sold his personal vehicle to Cal Expo. Because he was involved in the decision to make this purchase while acting in his official capacity and because he derived a personal financial benefit, this official violated the Political Reform Act of 1974 and Section 1090 of the California Government Code. Cal Expo has indicated that it has reversed the transaction regarding the vehicle, resulting in the reimbursement of \$5,900 to Cal Expo and the return of the vehicle to the prior owner.	
I2007-1 (March 2007) (Allegation I2006-0731)	<i>Department of Health Care Services: Investigations of Improper Activities by State Employees</i>	8,000
	Cost Recovery—An employee violated regulations covering travel expense reimbursements and payment of commuting expenses resulting in overpayments.	

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
Annualized carry forward from prior fiscal years:		\$148,464,000
2001-128 (April 2002)	Enterprise Licensing Agreement	\$8,120,000
2002-101 (July 2002)	California Department of Corrections	29,000,000
2002-009 (April 2003)	California Energy Markets	29,000,000
2002-118 (April 2003)	Department of Health Services	20,000,000
2003-106 (October 2003)	State Mandates	7,600,000
2003-125 (July 2004)	California Department of Corrections	20,700,000
2003-124 (August 2004)	Department of Health Services	4,600,000
12004-2 (September 2004)	Department of Health Services	9,000
12004-2 (September 2004)	Military Department	64,000
2004-105 (October 2004)	California Department of Corrections	290,000
12005-1 (March 2005)	California Department of Corrections and Rehabilitation	119,000
2004-033 (May 2005)	Pharmaceuticals	7,800,000*
2004-113 (July 2005)	Department of General Services	2,336,000†
2004-134 (July 2005)	State Athletic Commission	33,000
2004-125 (August 2005)	Department of Health Services	10,300,000
12005-2 (September 2005)	California Department of Corrections and Rehabilitation	193,000
12006-1 (March 2006)	Department of Fish and Game	8,300,000
Total for July 1, 2006, through June 30, 2007		\$154,596,000
July 1, 2005, through June 30, 2006		
2004-113 (July 2005)	<i>Department of General Services: Opportunities Exist Within the Office of Fleet Administration to Reduce Costs</i>	\$1,115,000
	Cost Savings/Avoidance—The Department of General Services (General Services) expects that the new, more competitive contracts it awarded for January 2006 through December 2008 should save the State about \$2.3 million each year. Cost savings reflect six months—January through June 2006.	
	Increased Revenue—General Services identified 49 parkers it was not previously charging. By charging these parkers, General Services will experience increased revenue totaling \$36,000 per year.	36,000
	Cost Recovery—General Services reports it has recovered or established a monthly payment plan to recover \$45,000 in previously unpaid parking fees. This is a one-time cost recovery for the state.	45,000
2004-134 (July 2005)	<i>State Athletic Commission: The Current Boxers' Pension Plan Benefits Only a Few and Is Poorly Administered</i>	33,000
	Increased Revenue—If the commission raises the ticket assessment to meet targeted pension contributions as required by law, we estimate it will collect an average of \$33,300 more per year.	
2004-125 (August 2005)	<i>Department of Health Services: Participation in the School-Based Medi-Cal Administrative Activities Program Has Increased, but School Districts Are Still Losing Millions Each Year in Federal Reimbursements</i>	10,300,000
	Increased Revenue—We estimate that California school districts would have received at least \$53 million more in fiscal year 2002–03 if all school districts had participated in the program and an additional \$4 million more if certain participating schools had fully used the program. A lack of program awareness was among the reasons school districts cited for not participating. By stepping up outreach, we believe more schools will participate in the program and revenues will continue to increase. However, because participation continued to increase between fiscal years 2002–03 and 2004–05, the incremental increase in revenue will be less than it was in fiscal year 2002–03. Taking into account this growth in participation and using a trend line to estimate the resulting growth in revenues, we estimate that revenues will increase by about \$10.3 million per year beginning in fiscal year 2005–06.	

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AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
2004-126 (August 2005)	<i>Off-Highway Motor Vehicle Recreation Program: The Lack of a Shared Vision and Questionable Use of Program Funds Limits Its Effectiveness</i> Cost Recovery—Of the \$566,000 in grant advances we identified as outstanding from Los Angeles County, the division reports receiving a \$226,000 refund and determining that the remaining \$340,000 was used in accordance with grant guidelines. This is a one-time cost recovery to the state.	226,000
I2005-2 (September 2005) (Allegation I2004-0710)	<i>California Military Department: Investigations of Improper Activities by State Employees</i> Cost Recovery—A supervisor at the Military Department embezzled \$132,523 in public funds; a court has subsequently ordered restitution of these funds. This is a one-time cost recovery for the state.	133,000
I2005-2 (September 2005) (Allegations I2004-0649, I2004-0681, I2004-0789)	<i>Department of Corrections: Investigations of Improper Activities by State Employees</i> Cost Recovery—The Department of Corrections and Rehabilitation (Corrections) failed to properly account for the time that employees used when released from their regular job duties to perform union-related activities. In addition to recovering past payments totaling \$365,500, Corrections can save \$192,500 annually by discontinuing this practice.	558,000
I2006-1 (March 2006) (Allegation I2005-0781)	<i>Department of Corrections and Rehabilitation: Investigations of Improper Activities by State Employees</i> Cost Recovery—The Department of Corrections and Rehabilitation failed to exercise its management controls, resulting in gifts of public funds of \$70,255 in leave not charged. This is a one-time cost recovery for the state.	70,000 [‡]
I2006-1 (March 2006) (Allegations I2005-0810, I2005-0874, I2005-0929)	<i>Department of Forestry and Fire Protection: Investigations of Improper Activities by State Employees</i> Cost Recovery—Several employees of the Department of Forestry and Fire Protection received \$61,466 in improper overtime payments.	61,000
I2006-1 (March 2006) (Allegations I2004-0983, I2005-1013)	<i>Victim Compensation and Government Claims Board: Investigations of Improper Activities by State Employees</i> Cost Recovery—The Department of Corrections and Rehabilitation (Corrections) improperly awarded payments to a physician at Corrections totaling \$25,950.	26,000
I2006-1 (March 2006) (Allegation I2004-1057)	<i>Department of Fish and Game: Investigations of Improper Activities by State Employees</i> Increased Revenue—The Department of Fish and Game allowed several state employees and volunteers to reside in state-owned homes without charging them rent, consequently providing gifts of public funds. A subsequent housing review conducted by the Department of Personnel Administration demonstrated that all 13 state departments that own employee housing may be underreporting or failing to report housing fringe benefits. As a result, the State could increase revenues as much as \$8.3 million by charging fair-market rents.	8,300,000
2005-120 (April 2006)	<i>California Student Aid Commission: Changes in the Federal Family Education Loan Program, Questionable Decisions, and Inadequate Oversight Raise Doubts About the Financial Stability of the Student Loan Program</i> Cost Savings/Avoidance—We recommended that the Student Aid Commission amend its operating agreement to require EDFUND to establish a travel policy that is consistent with the State's policy and that it closely monitor EDFUND expenses paid out of the Operating Fund for conferences, workshops, all-staff events, travel, and the like. By implementing policy changes as recommended, we estimate EDFUND could save a minimum of \$45,000 annually.	45,000 [§]
Annualized carry forward from prior fiscal years:		\$112,802,000
2001-128 (April 2002)	Enterprise Licensing Agreement	\$8,120,000
2002-101 (July 2002)	California Department of Corrections	14,500,000
2002-009 (April 2003)	California Energy Markets	29,000,000
2002-118 (April 2003)	Department of Health Services	20,000,000
2003-106 (October 2003)	State Mandates	7,600,000
2003-125 (July 2004)	California Department of Corrections	20,700,000
2003-124 (August 2004)	Department of Health Services	4,600,000

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
I2004-2 (September 2004)	Department of Health Services	9,000
I2004-2 (September 2004)	Military Department	64,000
2004-105 (October 2004)	California Department of Corrections	290,000
I2005-1 (March 2005)	California Department of Corrections and Rehabilitation	119,000
2004-033 (May 2005)	Pharmaceuticals	7,800,000 ^{II}
Total for July 1, 2005, through June 30, 2006		\$133,750,000
July 1, 2004, through June 30, 2005		
2003-125 (July 2004)	<p><i>California Department of Corrections: More Expensive Hospital Services and Greater Use of Hospital Facilities Have Driven the Rapid Rise in Contract Payments for Inpatient and Outpatient Care</i></p> <p>Cost Savings—The potential for the Department of Corrections and Rehabilitation (Corrections) to achieve some level of annual savings appears significant if it could negotiate cost-based reimbursement terms, such as paying Medicare rates, in its contracts with hospitals. We estimated potential savings of at least \$20.7 million in Corrections' fiscal year 2002–03 inmate hospital costs. Specifically, had Corrections been able to negotiate contracts without its typical stop-loss provisions that are based on a percent discount from the hospitals' charges rather than costs, it might have achieved potential savings of up to \$9.3 million in inpatient hospital payments in fiscal year 2002–03 for the six hospitals we reviewed that had this provision. Additionally, had Corrections been able to pay hospitals the same rates as Medicare—which bases its rates on an estimate of hospital resources used and their associated costs—it might have achieved potential savings of \$4.6 million in emergency room and \$6.8 million in nonemergency room outpatient services at all hospitals in fiscal year 2002–03. Recognizing that Corrections will need some time to negotiate cost-based reimbursement contract terms, we estimate that it could begin to realize savings of \$20.7 million annually in fiscal year 2005–06.</p>	
2003-124 (August 2004)	<p><i>Department of Health Services: Some of Its Policies and Practices Result in Higher State Costs for the Medical Therapy Program</i></p> <p>Cost Savings— Represents the savings the Department of Health Services (Health Services) would have achieved in fiscal year 2002–03 had it paid only the amount specifically authorized by law for the Medical Therapy Program. Of the total, \$3.6 million relates to the full funding of county positions responsible for coordinating services provided by special education programs; \$774,000 relates to Health Services' method for sharing Medi-Cal payments with counties; and \$254,000 relates to Health Services' failure to identify all Medi-Cal payments made to certain counties. This monetary cost savings value will carry forward through fiscal year 2011–12.</p>	4,600,000
I2004-2 (September 2004) (Allegation I2002-0853)	<p><i>Department of Health Services: Investigations of Improper Activities by State Employees</i></p> <p>Cost Savings—We found that managers and employees at the Department of Health Services' (Health Services) Medical Review Branch office in Southern California regularly used state vehicles for their personal use. We estimate Health Services could save an average of \$9,260 each year because its employees no longer use state vehicles for personal use.</p>	9,000
I2004-2 (September 2004) (Allegation I2002-1069)	<p><i>Military Department: Investigations of Improper Activities by State Employees</i></p> <p>Cost Savings—We found that the California Military Department (Military) improperly granted employees an increase in pay they were not entitled to receive. Because Military has returned all the overpaid employees to their regular pay levels, it should be able to save approximately \$64,200 each year.</p>	64,000
2004-105 (October 2004)	<p><i>California Department of Corrections: Although Addressing Deficiencies in Its Employee Disciplinary Practices, the Department Can Improve Its Efforts</i></p> <p>Cost Savings—The Department of Corrections could save as much as \$290,000 annually by using staff other than peace officers to fill its employment relations officer positions.</p>	290,000

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AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
I2005-1 (March 2005) (Allegation I2003-0834)	<i>Department of Corrections: Investigations of Improper Activities by State Employees</i>	357,000
	Cost Recovery/Cost Savings—In violation of state regulations and employee contract provisions, the Department of Corrections (Corrections) paid 25 nurses at four institutions nearly \$238,200 more than they were entitled to receive between July 1, 2001, and June 30, 2003. In addition to recovering past overpayments, Corrections can save \$119,000 annually by discontinuing this practice. Although Corrections now contends that the payments to 10 of the 25 nurses were appropriate, despite repeated requests, it has not provided us the evidence supporting its contention. Thus, we have not revised our original estimate.	
2005-030 (April 2005)	<i>State Bar of California: It Should Continue Strengthening Its Monitoring of Disciplinary Case Processing and Assess the Financial Benefits of Its New Collection Enforcement Authority</i>	24,000 [#]
	Cost Recovery—As a result of our recommendation that it prioritize its cost recovery efforts to focus on attorneys who owe substantial amounts, the State Bar sent demand letters to the top 100 disciplined attorneys and has received \$24,411 as of April 2006. This is a one-time cost recovery for the state.	
2004-033 (May 2005)	<i>Pharmaceuticals: State Departments That Purchase Prescription Drugs Can Further Refine Their Cost Savings Strategies</i>	5,100,000 ^{**}
	Cost Savings/Avoidance—In a prior audit, we had noted that opportunities existed for the Department of General Services (General Services) to increase the amount of purchases made under contract with drug companies, and we recommended in this audit that General Services continue its efforts to obtain more drug prices on contract by working with its contractor to negotiate new and renegotiate existing contracts with certain manufacturers. General Services reports that it has implemented contracts that it estimates will save the State \$5.1 million annually.	
	Cost Recovery—As we recommended, the Department of Health Services identified and corrected all of the drug claims it paid using an incorrect pricing method. It expects to recoup the nearly \$2.5 million in net overpayments that resulted from its error.	2,469,000
Annualized carry forward from prior fiscal years:		\$64,720,000
2001-128 (April 2002)	Enterprise Licensing Agreement	\$8,120,000
2002-009 (April 2003)	California Energy Markets	29,000,000
2002-118 (April 2003)	Department of Health Services	20,000,000
2003-106 (October 2003)	State Mandates	7,600,000
Total for July 1, 2004, through June 30, 2005		\$77,633,000
July 1, 2003, through June 30, 2004		
2002-121 (July 2003)	<i>California Environmental Protection Agency: Insufficient Data Exists on the Number of Abandoned, Idled, or Underused Contaminated Properties, and Liability Concerns and Funding Constraints Can Impede Their Cleanup and Redevelopment</i>	\$1,000,000
	Increased Revenue—The California Environmental Protection Agency received \$1 million in revenues after it applied for a one-time federal grant. This is a one-time increase in revenue for the state.	
2003-106 (October 2003)	<i>State Mandates: The High Level of Questionable Costs Claimed Highlights the Need for Structural Reforms of the Process</i>	
	Cost Savings—If the local entities we audited file corrected claims for the errors we identified, the State will save \$675,000 related to the Animal Adoption mandate.	675,000 ^{††}
	Cost Recovery— We recommended that the State Controller's Office (Controller's Office) audit Peace Officers Procedural Bill of Rights (POBOR) claims that had been paid. In 2010, the Controller's Office informed the State Auditor that it had audited \$225 million in Peace Officers Procedural Bill of Rights Program claims and found \$194 million (86 percent of claims reviewed) in unallowable costs had been claimed. This cost recovery benefit will be claimed in the fiscal year 2010–11 as a one-time benefit.	194,000,000 ^{††}
Cost Savings—Additionally, the Controller's Office indicated that while implementing our recommendation to review POBOR claims, it calculated that the amounts claimed under this program have dropped substantially resulting in a realized cost savings to the state of \$53 million over a seven year period (fiscal years 2003–04 through 2010–11).	7,600,000 ^{††}	

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
2003-102 (December 2003)	<i>Water Quality Control Boards: Could Improve Their Administration of Water Quality Improvement Projects Funded by Enforcement Actions</i>	301,000
	Increased Revenue—We identified 92 violations that require fine issuance and collection of the fines, and three fines that were issued but not collected. The State Water Resources Control Board could increase its revenue if it collected these fines.	
2003-117 (April 2004)	<i>California Department of Corrections: It Needs to Ensure That All Medical Service Contracts It Enters Are in the State's Best Interest and All Medical Claims It Pays Are Valid</i>	96,000
	Cost Recovery/Avoidance—Recovery of overpayments to providers for medical service charges in the amount of \$77,200 and the establishment of procedures to avoid lost discounts and prompt payment penalties totaling \$18,600.	
2003-138 (June 2004)	<i>Department of Insurance: It Needs to Make Improvements in Handling Annual Assessments and Managing Market Conduct Examinations</i>	7,000,000
	Increased Revenue—We estimate a one-time increase of revenue totaling \$7 million from the Department of Insurance's ability to make regulation changes that will result in capturing more specific data from insurers about the number of vehicles they insure. Future increases in revenue are undeterminable.	
Annualized carry forward from prior fiscal years:		\$57,177,000
2001-128 (April 2002)	Enterprise Licensing Agreement	\$8,120,000
2002-009 (April 2003)	California Energy Markets	29,000,000
2002-118 (April 2003)	Department of Health Services	20,057,000
Total for July 1, 2003, through June 30, 2004		\$267,849,000
January 1, 2003, through June 30, 2003		
2002-009 (April 2003)	<i>California Energy Markets: The State's Position Has Improved, Due to Efforts by the Department of Water Resources and Other Factors, but Cost Issues and Legal Challenges Continue</i>	29,000,000
	Cost Savings—In response to an audit recommendation, the Department of Water Resources (Water Resources) renegotiated certain energy contracts. Water Resources' consultant estimates that the present value of the potential cost savings due to contract renegotiation efforts as of December 31, 2002, by Water Resources and power suppliers, when considering replacement power costs, to be \$580 million. For the purpose of this analysis, we have computed the average annual cost savings by dividing the \$580 million over the 20-year period the savings will be realized.	
2002-118 (April 2003)	<i>Department of Health Services: Its Efforts to Further Reduce Prescription Drug Costs Have Been Hindered by Its Inability to Hire More Pharmacists and Its Lack of Aggressiveness in Pursuing Available Cost-Saving Measures</i>	
	Cost Savings—For two drugs we found that the net costs of the brand names were higher than those of the generics because the Department of Health Services (Health Services) failed either to renegotiate the contract or to secure critical contract terms from the manufacturer—errors we estimated cost Medi-Cal roughly \$57,000 in 2002. Additionally, Health Services estimated that it could save \$20 million annually by placing the responsibility on the pharmacists to recover \$1 copayments they collect from each Medi-Cal beneficiary filling a prescription. We estimate the State could begin to receive these savings each year beginning in fiscal year 2003–04.	
Total for January 1, 2003, through June 30, 2003		\$29,000,000
Total for January 1, 2003, through December 31, 2010		\$1,281,313,500
Benefits identified prior to 2003, but have annualized carry forward values		
2001-128 (April 2002)	<i>Enterprise Licensing Agreement: The State Failed to Exercise Due Diligence When Contracting With Oracle, Potentially Costing Taxpayers Millions of Dollars</i>	
	Cost Savings—The State and Oracle agreed to rescind the contract in July 2002. As a result, we estimate the State will save \$8,120,000 per year for five years starting in fiscal year 2002–03.	

continued on next page...

AUDIT NUMBER/DATE RELEASED	AUDIT TITLE/BASIS OF MONETARY VALUE	MONETARY VALUE
2002-101 (July 2002)	<p><i>California Department of Corrections: A Shortage of Correctional Officers, Along With Costly Labor Agreement Provisions, Raises Both Fiscal and Safety Concerns and Limits Management's Control</i></p> <p>Cost Savings—We estimate that the Department of Corrections and Rehabilitation (Corrections) could save \$58 million if it reduces overtime costs by filling unmet correctional officer needs. This estimate includes the \$42 million we identified in our November 2001 report (2001-108). Corrections stated in its six-month response to this audit that, following our recommendation to increase the number of correctional officer applicants, it has submitted a proposal to restructure its academy to allow two additional classes each year. This action could potentially allow Corrections to graduate several hundred more correctional officers each year, thereby potentially contributing to a reduction in its overtime costs. However, any savings from this action would be realized in future periods. We estimate that Corrections could realize savings of \$14.5 million beginning in fiscal year 2005–06, with savings increasing each year until reaching \$58 million in fiscal year 2008–09.</p>	
Totals for benefits identified prior to 2003, and that carry forward beyond an eight-year period		
Total for January 1, 2003, through December 31, 2010		\$1,281,313,500

* Based on our follow-up work (Report 2007-501), we will discontinue claiming \$7.8 million as of fiscal year 2007–08 because General Services two new pharmaceutical contracts will expire November 2007. (See related footnote below.)

† Based on our follow-up audit 2007-502, issued May 2007, we reduced General Services' expected \$3 million of cost savings we reported in 2005 to \$2.3 million of potential savings.

‡ This monetary value was previously listed at \$66,000. Additional audit work resulted in additional cost recovery of more than \$4,000 and based on updated information from the Department of Corrections and Rehabilitation, we eliminated the improper holiday accruals we reported in 2007.

§ We will discontinue claiming \$45,000 as of this fiscal year. Recent changes to state law may impact the role previously performed by the Student Aid Commission (commission). Senate Bill 89 (SB 89), an emergency measure enacted as Chapter 182, Statutes of 2007, and signed by the governor on August 24, 2007, took effect immediately, and may affect the ownership of EDFUND, and impact the commission's oversight role.

|| This monetary value was previously listed at \$5.1 million. However, according to General Services, its strategic sourcing contractor assisted it in negotiating two new pharmaceutical contracts for the period of November 2005 to November 2007 that General Services believed would result in increased savings to the State. Our follow-up report indicates that the State appears to have achieved savings of \$7.8 million during the first 10 months of these two new contracts. See report number 2007-501 (June 2007).

This monetary value was previously listed as \$2,700. The State Bar reported that it has since received an increased amount of cost recovery.

** This monetary value was not previously reported because General Services had not yet implemented the contracts resulting in this savings.

†† The total monetary value for this report was updated in the 2011 monetary values table based on additional follow-up information provided by the State Controller's Office.

Table 2
Recommendation Status Summary

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Accountability and Administrative Review									
Employment Development Department									
Investigations Report I2009-1 [I2008-0699]			●		2				25
Department of Corrections and Rehabilitation									
Investigations Report I2009-1 [I2007-0891]				●	1				27
Investigations Report I2009-0702				●	1	1			45
Department of General Services									
Investigations Report I2009-1 [I2007-0891]				●	1				27
Department of Fish and Game									
Investigations Report I2009-1 [I2006-1125]				●		1	1		29
Department of Parks and Recreation									
Investigations Report I2009-1 [I2008-0606]		●			1				33
Department of Justice									
Investigations Report I2009-1 [I2007-1024]				●	2				35
State Compensation Insurance Fund									
Investigations Report I2009-1 [I2007-0909]				●		1			37
Department of Social Services									
Investigations Report I2009-1 [I2007-0962]				●	1	1			39
Department of Finance									
Investigations Report I2009-1 [I2008-0633]				●	1				43
California State University, Chancellor's Office									
Investigations Report I2007-1158				●	1	1		1	47
Appropriations									
Commission on State Mandates									
State Mandates Report 2009-501				●	2	1			51
State Controller									
State Mandates Report 2009-501				●		1			51
Department of Finance									
State Mandates Report 2009-501		●			1				51
Investigations Report I2009-1 [I2008-0633]				●	1				43

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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Banking, Finance and Insurance									
Health Facilities Financing Authority									
Children's Hospital Program Report 2009-042				●	3				55
Business, Professions, Economic Development and Consumer Protection									
California Prison Health Care Services									
Investigations Report I2008-0805				●	1				59
IT Goods and Services Report 2008-501				●	3				61
Operations and Management Report 2009-107.1				●		1			77
Department of Corrections and Rehabilitation									
Investigations Report I2008-0805				●	1				59
Investigations Report I2009-1 [I2007-0891]				●	1				27
Operations and Management Report 2009-107.1				●		2	2		77
Department of General Services									
Investigations Report I2009-1 [I2007-0891]				●	1				27
Sourced Contracts 2009-114			●			5			115
Department of Parks and Recreation									
Investigations Report I2009-1 [I2008-0606]		●			1				33
Health Facilities Financing Authority									
Children's Hospital Program Report 2009-042				●	3				55
State Bar of California									
State Bar Report 2009-030				●	8	3			65
Department of Health Care Services									
Information Technology Contracting Report 2009-103				●	3	3			85
Department of Public Health									
Information Technology Contracting Report 2009-103				●	3	1	1		85
State Personnel Board									
Information Technology Contracting Report 2009-103				●			1		85
Commission on State Mandates									
State Mandates Report 2009-501				●	2	1			51
State Controller									
State Mandates Report 2009-501				●		1			51
Department of Finance									
State Mandates Report 2009-501		●			1				51

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Board of Pilot Commissioners									
Operations and Finances Report 2009-043				●	6	5			93
High-Speed Rail Authority									
Planning and Management Report 2009-106			●		4	1	5		105
Department of Resources Recycling and Recovery									
Beverage Container Recycling Program Report 2010-101			●			3	2		111
Education									
California State University, Chancellor's Office									
Investigations Report I2007-1158				●	1	1		1	47
California Community Colleges Chancellor's Office									
Crime Disclosure Report 2009-032			●		1				123
California State University, Fresno									
Crime Disclosure Report 2009-032			●		1				123
Mt. San Antonio Community College									
Crime Disclosure Report 2009-032			●		1				123
Ohlone Community College									
Crime Disclosure Report 2009-032			●			1			123
University of California, Riverside									
Crime Disclosure Report 2009-032			●		1				123
Western Career College—Sacramento									
Crime Disclosure Report 2009-032			●		1				123
Western University of Health Sciences									
Crime Disclosure Report 2009-032			●			1			123
Department of Education									
Meal Program Eligibility Report 2010-104		●				1	2		129
Energy, Utilities and Communications									
Energy Resources Conservation and Development Commission									
Recovery Act Funds Letter Report 2009-119.1				●		2			135
Governmental Organization									
Department of Mental Health									
State Overtime Costs Letter Report 2009-608				●	4		1		139
Department of Developmental Services									
State Overtime Costs Report 2009-608				●	3				139

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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Regional Centers Report 2009-118		●			1	4	1	1	155
California Emergency Management Agency									
Recovery Act Funds Letter Report 2009-119.4			●		3	1			147
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Public Health									
Every Woman Counts Program Report 2010-103R			●			2	1		151
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						3		163
State Personnel Board									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1	2	2		163
California Highway Patrol									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1		1		163
Department of Corrections and Rehabilitation									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						3		163
Department of Food and Agriculture									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Housing and Community Development									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Justice									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Motor Vehicles									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1	1			163
Department of Toxic Substances Control									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						2		163
Employment Development Department									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
City of Fremont									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						1		163
City of Santa Ana									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						1		163

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
City of Garden Grove									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						1		163
California Recovery Task Force									
Reporting of Recovery Act Jobs Report 2010-601	●						2		175
Health									
California Prison Health Care Services									
IT Goods and Services Report 2008-501				●	3				61
Three Strikes Law and Health Care Costs Report 2009-107.2			●			1	3		177
Department of Corrections and Rehabilitation									
Three Strikes Law and Health Care Costs Report 2009-107.2			●				3	1	177
Department of Health Care Services									
Medi-Cal Treatment Authorizations Report 2009-112			●				2	1	185
Department of Public Health									
Citation Penalty Accounts Report 2010-108			●		1	4			189
Every Woman Counts Program Report 2010-103R			●			2	1		151
Higher Education									
California State University, Chancellor's Office									
Investigations Report I2007-1158				●	1	1		1	47
California Community Colleges Chancellor's Office									
Crime Disclosure Report 2009-032			●		1				123
California State University, Fresno									
Crime Disclosure Report 2009-032			●		1				123
Mt. San Antonio Community College									
Crime Disclosure Report 2009-032			●		1				123
Ohlone Community College									
Crime Disclosure Report 2009-032			●			1			123
University of California, Riverside									
Crime Disclosure Report 2009-032			●		1				123
Western Career College—Sacramento									
Crime Disclosure Report 2009-032			●		1				123
Western University of Health Sciences									
Crime Disclosure Report 2009-032			●			1			123

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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Housing and Community Development									
Department of Housing and Community Development									
Housing Bond Funds Report 2009-037				●	2		1		195
Homeless Prevention Program Letter Report 2009-119.3			●		4	1			205
Housing Finance Agency									
Housing Bond Funds Report 2009-037				●	1				195
Department of Community Services and Development									
Weatherization Program/ Recovery Act Funds Letter Report 2009-119.2				●	2	2			199
Human Services									
Department of Social Services									
CalWORKs & Food Stamps Programs Report 2009-101			●			1	4	1	209
Department of Developmental Services									
Regional Centers Report 2009-118		●			1	4	1	1	155
Judiciary									
State Bar of California									
State Bar Report 2009-030				●	8	3			65
Labor, Employment and Industrial Relations									
Department of Mental Health									
State Overtime Costs Report 2009-608				●	4		1		139
Department of Developmental Services									
State Overtime Costs Report 2009-608				●	3				139
Local Government									
Contra Costa County									
Temporary Workers Report 2008-107				●	2				215
Riverside County									
Temporary Workers Report 2008-107				●	1				215
San Joaquin County									
Temporary Workers Report 2008-107				●	1				215
City of Escondido									
Temporary Workers Report 2008-107				●	1				215
Commission on State Mandates									
State Mandates Report 2009-501				●	2	1			51
State Controller									
State Mandates Report 2009-501				●		1			51

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Department of Finance									
State Mandates Report 2009-501		●			1				51
City of Fremont									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						1		163
City of Santa Ana									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						1		163
City of Garden Grove									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						1		163
California Emergency Management Agency									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Public Health									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						3		163
State Personnel Board									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1	2	2		163
California Highway Patrol									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1		1		163
Department of Corrections and Rehabilitation									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						3		163
Department of Food and Agriculture									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Housing and Community Development									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Justice									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163
Department of Motor Vehicles									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1	1			163
Department of Toxic Substances Control									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						2		163
Employment Development Department									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		163

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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
San Dieguito Union High School District									
Financial Audit Report 2009-116			●		3		1		221
Natural Resources and Water									
Energy Resources Conservation and Development Commission									
Recovery Act Funds Letter Report 2009-119.1				●		2			135
Department of Resources Recycling and Recovery									
Beverage Container Recycling Program Report 2010-101			●			3	2		111
Public Employees and Retirement									
Contra Costa County									
Temporary Workers Report 2008-107				●	2				215
Riverside County									
Temporary Workers Report 2008-107				●	1				215
San Joaquin County									
Temporary Workers Report 2008-107				●	1				215
City of Escondido									
Temporary Workers Report 2008-107				●	1				215
Employment Development Department									
Investigations Report I2009-1 [I2008-0699]			●		2				25
Department of Fish and Game									
Investigations Report I2009-1 [I2006-1125]				●		1	1		29
Department of Justice									
Investigations Report I2009-1 [I2007-1024]				●	2				35
State Compensation Insurance Fund									
Investigations Report I2009-1 [I2007-0909]				●		1			37
Department of Social Services									
Investigations Report I2009-1 [I2007-0962]				●	1	1			39
Department of Health Care Services									
Information Technology Contracting Report 2009-103				●	3	3			85
Department of Public Health									
Information Technology Contracting Report 2009-103				●	3	1	1		85
State Personnel Board									
Information Technology Contracting Report 2009-103				●			1		85

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Department of Mental Health									
State Overtime Costs Report 2009-608				●	4		1		139
Department of Developmental Services									
State Overtime Costs Report 2009-608				●	3				139
Department of Corrections and Rehabilitation									
Investigations Report I2009-0702				●	1	1			45
California State University, Chancellor's Office									
Investigations Report I2007-1158				●	1	1		1	47
Public Safety									
Department of Corrections and Rehabilitation									
Operations and Management Report 2009-107.1				●		2	2		77
Three Strikes Law and Health Care Costs Report 2009-107.2			●				3	1	177
California Prison Health Care Services									
Operations and Management Report 2009-107.1				●		1			77
Information Technology Goods and Services Report 2008-501				●	3				61
Three Strikes Law and Health Care Costs Report 2009-107.2			●			1	3		177
California Community Colleges Chancellor's Office									
Crime Disclosure Report 2009-032			●		1				123
California State University, Fresno									
Crime Disclosure Report 2009-032			●		1				123
Mt. San Antonio Community College									
Crime Disclosure Report 2009-032			●		1				123
Ohlone Community College									
Crime Disclosure Report 2009-032			●			1			123
University of California, Riverside									
Crime Disclosure Report 2009-032			●		1				123
Western Career College—Sacramento									
Crime Disclosure Report 2009-032			●		1				123
Western University of Health Sciences									
Crime Disclosure Report 2009-032			●			1			123

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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
California Emergency Management Agency									
Recovery Act Funds Letter Report 2009-119.4			●		3	1			147
Revenue and Taxation									
State Bar of California									
State Bar Report 2009-030				●	8	3			65
Department of Public Health									
Citation Penalty Accounts Report 2010-108			●		1	4			189
Transportation									
Board of Pilot Commissioners									
Operations and Finances Report 2009-043				●	6	5			93
High-Speed Rail Authority									
Planning and Management Report 2009-106			●		4	1	5		105
Veterans Affairs									
Department of Veterans Affairs									
Veterans Programs Report 2009-108				●	6	3	1		225

Employment Development Department

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

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

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

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.

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.

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.

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.

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 #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 Fish and Game, Office of Spill Prevention and Response

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

ALLEGATION I2006-1125 (REPORT NUMBER I2009-1), APRIL 2009

Department of Fish and Game's response as of April 2010

A high-level official formerly with the Office of Spill Prevention and Response (spill office) of the Department of Fish and Game (Fish and Game), incurred \$71,747 in improper travel expenses she was not entitled to receive.

Finding #1: The official routinely claimed expenses to which she was not entitled, and other spill office officials allowed the official to receive reimbursements for travel expenses that violated state regulations.

From October 2003 through March 2008, Official A, a high-level official who subsequently left the spill office, improperly claimed \$71,747 for commute and other expenses incurred near her home and headquarters. Specifically, for more than four years, Official A improperly claimed expenses associated with commuting between her residence and her headquarters, in violation of state regulations that disallow such expenses. Throughout the period we investigated, Official A resided in Southern California. Documents from Official A's personnel files and records from the State Controller's Office indicate that her official headquarters was in Sacramento. In addition, Official A was assigned office space in Sacramento and a state-issued cell phone with a Sacramento area code, and she regularly worked in the Sacramento spill office. However, Official A also claimed she worked from her residence—a practice that spill office officials apparently allowed—in an effort to legitimize expenses that otherwise she was not entitled to incur. Despite her claims, we found no legitimate business reason that required Official A to work from her home. The table summarizes the improper expenses that Official A claimed.

Table

Improper Travel Expenses Official A Claimed From October 2003 Through March 2008

TYPE OF IMPROPER EXPENSE	AMOUNT
Commute expenses for trips between residence and headquarters	\$45,233
Commute-related parking and other expenses	7,608
Lodging within 50 miles of headquarters	10,286
Meals and incidentals incurred within 50 miles of headquarters	6,970
Lodging within 50 miles of residence	486
Meals and incidentals incurred within 50 miles of residence	236
Other improper expenses	928
Total	\$71,747

Source: Bureau of State Audits' analysis of Official A's travel expense claims, vehicle logs, and flight records.

Investigative Highlights . . .

An official with the Department of Fish and Game (Fish and Game) claimed travel expenses to which she was not entitled:

» *The official improperly claimed travel expenses associated with commuting between her residence and headquarters for more than four years.*

» *The official contended that as a condition of her employment, another former high level official with the Office of Spill Prevention and Response allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento.*

» *Fish and Game staff never questioned the official about the actual location of her headquarters even though for the vast majority of the travel expense claims submitted, the official listed her residential address and wrote "same" for her headquarters address.*

We determined that Official A improperly claimed \$52,841 for expenses related to traveling between her home and headquarters (commute expenses). These expenses consisted of \$45,233 for flights between Sacramento and Southern California, \$6,922 in parking expenses, and \$686 for other commute-related expenses.

State travel regulations allow employees to seek reimbursement for parking expenses when going on travel assignments as part of their state duties; however, the trips we identified were part of Official A's commute. In addition, violating prohibitions in a state regulation, Official A improperly claimed \$17,978 in lodging and meal expenses incurred within 50 miles of her home or headquarters. Furthermore, for 21 months during the period we reviewed, Official A improperly claimed \$928 for Internet services at her residence.

Official A contended that as a condition of her employment, a former high-level official with the spill office, Official B, allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento. She therefore asserted that she was allowed to use state vehicles or state funded flights for commutes between her Southern California home and her Sacramento headquarters. In addition, Official A stated that she was allowed to claim lodging and per diem expenses in Sacramento, her official headquarters location. After Official B left state employment in 2003, other spill office officials, including officials C and D, approved Official A's travel claims. Officials C and D also allowed her to continue to commute at the State's expense and to receive reimbursements for expenses incurred near her official headquarters.

When we spoke with officials C and D, they indicated that they were aware that officials A and B had some form of informal agreement that allowed Official A to receive reimbursements for expenses incurred near her Sacramento headquarters. However, it appears that officials A and B never documented this arrangement. Even if the agreement had been formally documented, these actions violated state regulations, which do not allow state employees to receive payments for travel expenses incurred near their headquarters or for their commute between home and headquarters. We were unable to contact Official B to confirm his arrangement with Official A, but we believe that such an informal agreement likely existed. Nevertheless, Official B lacked the authority to make such an arrangement.

We recommended Fish and Game seek to recover the amount it reimbursed Official A for her improper travel expenses. If it is unable to recover all of the reimbursement, Fish and Game should explain and document its reasons for not seeking recovery.

Fish and Game's Action: Pending.

Fish and Game responded that it is investigating the activities related to this case and determining the appropriate legal and administrative actions warranted, including taking necessary corrective measures or disciplinary actions. In addition, after we provided Fish and Game with a draft copy of this report in April 2009, it produced a document signed by Official B in 2002 that requested Official A's position to be moved from Sacramento to a regional spill office location in Southern California. Fish and Game personnel approved this request; however, it appears this document was not forwarded to the Department of Personnel Administration (Personnel Administration) as required for approval. Thus, the position change was never properly formalized. Further, Official B lacked the authority to allow Official A to receive payments for travel expenses incurred near her official headquarters in Sacramento or for her commute between home and headquarters. In January 2010 Fish and Game notified us that it had completed a review of Official A's expenses. However, as of April 2010, it had yet to determine if it would seek to recover reimbursement from Official A for the improper commute and travel expenses.

Finding #2: Fish and Game should have been aware that Official A's travel expenses were improper.

Our investigation determined that Fish and Game should have been aware that Official A's travel expenses did not adhere to state regulations and were therefore improper. After Official A's travel claims were reviewed and approved by other high-ranking spill office officials, the spill office routed the travel claims to Fish and Game's accounting department for processing and reimbursement. For the vast majority of the travel expense claims that Official A submitted for reimbursement for the period we reviewed, Official A listed on the claim forms her residential address and wrote "same" for her headquarters address. However, Fish and Game accounting staff never questioned Official A about the actual location of her headquarters. Nevertheless, we found eight examples among Official A's travel claims on which Fish and Game accounting employees asked Official A either to clarify the purpose of her trips or to provide other information. Although Fish and Game accounting staff did not question Official A specifically about the location of her headquarters, she responded at least twice to them that she had an office in Southern California and one in Sacramento. Because state regulations define headquarters as a single location, accounting staff should have elevated this issue to Fish and Game management to ensure that Official A's travel claims were appropriate.

We recommended that Fish and Game take the following actions to improve its review process for travel expense claims:

- Require all employees to list clearly on all travel expense claims their headquarters address and the business purpose of each trip.
- Ensure that the headquarters address listed on travel expense claims matches the headquarters location assigned to the employees position.
- For instances in which the listed headquarters location differs from the location assigned to the employee's position, require a Fish and Game official at the deputy director level or above to provide a written explanation justifying the business need to alter the headquarters location. This justification must also include a cost-benefit analysis comparing the two locations and should be forwarded to Personnel Administration for approval.

Fish and Game's Action: Partial corrective action taken.

Fish and Game stated in January 2010 that it had updated its employee training to ensure that employees identify the addresses of their headquarters and the purposes of their trips on travel expense claims. According to Fish and Game, it required employees to complete a form designating either a state office address or home address as their headquarters so that supervisors could confirm that correct addresses were listed on employees' travel expense claims. However, we believe this truncated process of certification and approval of an employee's home address as headquarters severely limits the internal controls necessary for Fish and Game to monitor telecommuting assignments and to ensure travel expenses are in the State's best interest. The headquarters designation should be based on an employee's position and not the preference of an employee or supervisor, and Fish and Game should have procedures in place to ensure that the designation of an employee's residence as his or her headquarters is appropriate, necessary, and position-specific. Such designations should be limited strictly to instances in which Fish and Game can clearly show that they are in the State's best interest.

Regarding our recommendation that Fish and Game require justification of the business need to alter a headquarters location identified on travel expense claims, Fish and Game was less comprehensive. In its January 2010 update, Fish and Game stated it would require certification and justification for a headquarters designation that differed from the location assigned for the employee's position. However, it did not specify that the justification should require the approval of a deputy director; that it should include a cost-benefit analysis, and that it should be forwarded to Personnel Administration for approval. Thus, Fish and Game has failed to take appropriate action to address the lack of oversight that led to Official A claiming \$71,747 in improper travel expenses. As a result, Fish and Game is susceptible to further instances of its employees incurring improper commute and travel expenses.

Department of Parks and Recreation

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

ALLEGATION I2008-0606 (REPORT I2009-1), APRIL 2009

Department of Parks and Recreation's response as of July 2009

We investigated and substantiated that a supervisor at the Department of Parks and Recreation (Parks and Recreation) failed to ensure that he paid a fair and reasonable price for goods costing \$4,987 in violation of state law. Consequently, Parks and Recreation overpaid for the items by at least \$1,253.

Finding: A supervisor did not solicit competitive bids from suppliers of goods and failed to pay a fair and reasonable price for goods he purchased.

The supervisor purchased a storage container in December 2007 to store supplies for several parks that he oversaw at the time. However, the supervisor did not obtain two price quotes using any of the five techniques described in the State Contracting Manual to ensure that the cost of the storage container was fair and reasonable, as required by state law. The supervisor later asserted to us that he contacted other suppliers but apparently did not document the price quotes he obtained. He also admitted to us that he had not obtained the "best possible price" for the storage container. As proof that the supervisor did not obtain a fair and reasonable price, just three weeks later another Parks and Recreation employee who worked for him obtained a price quote of \$3,734 for a similar storage container. Thus, if the supervisor had obtained and documented fair and reasonable price quotes, Parks and Recreation could have avoided spending an additional \$1,253 for the storage container.

The supervisor provided various reasons why he did not document other price quotes. According to the supervisor, he did not have sufficient staff and was overwhelmed by his workload. In addition, he stated that he had not received sufficient training at the time of the purchase. Parks and Recreation promoted the supervisor in January 2007. However, he indicated that he did not complete his three weeks of supervisor training until June 2008, six months after the purchase of the container.

We recommended that Parks and Recreation require its employees to adequately document their efforts to obtain price quotes to ensure that they obtain a fair and reasonable price for the purchase of goods under \$5,000. We also recommended that Parks and Recreation provide timely training for new supervisors.

Parks and Recreation's Action: Corrective action taken.

In June 2009 Parks and Recreation reported that it gave the supervisor a letter of reprimand for failing to ensure that it paid a fair and reasonable price for the goods costing \$4,987. In July 2009 Parks and Recreation provided a copy of its existing procurement

Investigative Highlight . . .

The Department of Parks and Recreation paid at least \$1,253 more than necessary on a \$4,987 purchase without obtaining competitive price quotes.

policy that addressed the requirement that its employees adequately document their efforts to obtain price quotes to ensure that they obtain a fair and reasonable price for the purchase of goods under \$5,000. Parks and Recreation also stated that it provides courses on purchasing policies and procedures, which are required for all employees that make purchases, not just supervisors. Parks and Recreation noted that the supervisor received the training in April 2004 yet he still failed to ensure that he paid a fair and reasonable price for the goods previously cited.

Department of Justice

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

ALLEGATION I2007-1024 (REPORT I2009-1), APRIL 2009

Department of Justice's response as of April 2010

A Department of Justice (Justice) regional office employee failed to properly report her time worked and leave taken from June through August 2007. In addition, she claimed travel expenses that she did not incur during the same period. Further, the employee's manager did not ensure that the employee accurately reported her time and travel expenses. Consequently, Justice paid the employee \$648 in unearned compensation and reimbursed her \$497 for travel expenses not incurred.

Finding #1: The employee failed to properly account for overtime worked and absences taken, and claimed travel expenses she did not incur. In addition, Justice's management failed to ensure that the employee properly reported her time, attendance, and travel expenses.

Our investigation determined that the employee failed to properly account for 77 hours of overtime she worked in June and July 2007. Had the employee properly accounted for the 77 hours of overtime on her time sheets, she would have earned 116 hours of compensated time off. In addition, she failed to properly account for 136 hours—or 17 days—of absences she took in July and August 2007. The employee acknowledged that she was absent on the 17 days and that she did not charge her leave balances for the absences because she used the informal time off to account for the uncompensated overtime she worked in June and early July 2007. However, the employee's 136 hours of absences exceeded the 116 hours of uncompensated overtime by 20 hours. Therefore, by taking more time off than she actually earned in hours of uncompensated overtime, Justice essentially paid the employee \$648 in estimated compensation she did not earn for the excess 20 hours of leave she failed to charge against her leave balances.

At the same time the employee worked the unrecorded overtime in June and early July 2007, she claimed reimbursement for more travel expenses than she actually incurred. Specifically, the employee overstated her mileage by 62 miles on each of 19 days she drove her personal vehicle to an off-site location to conduct her work. Because she claimed more mileage than she actually traveled in violation of state regulations, Justice overpaid her \$497 for travel expenses she did not incur.

We recommended that Justice properly modify the employee's leave balances to reflect the 116 hours of overtime that she earned in June and July 2007. We further recommended that Justice charge to the employee's leave balances the 136 hours for her absences on 17 days in July and August 2007, thus eliminating the need to seek reimbursement of unearned compensation. Finally, we recommended that it seek reimbursement from the employee for the travel expenses she did not incur.

Investigative Highlight . . .

An employee's time sheets did not reflect overtime worked. She was later absent from work for 136 hours—or 17 days—and these absences were not reflected on her time sheets. Further, the Department of Justice overpaid her \$497 for travel expenses she did not incur.

Justice's Action: Corrective action taken.

Justice reported in June 2009 that the employee revised her time sheets to account for the hours of overtime she worked and the hours she was absent. As of November 2009 the employee had reimbursed Justice for the overpayment of travel expenses.

Finding #2: Justice's management failed to ensure that the employee properly reported her time, attendance, and travel expenses.

Justice's management in the regional office did not ensure that the employee properly reported the time she worked and the absences she took, and it similarly failed to ensure that the employee properly reported her travel expenses. In particular, the employee's manager allowed her to disregard time-reporting requirements prescribed in state regulations and Justice's policies. Further, managers at the regional office engaged in administrative practices that failed to effectively ensure the accuracy of her time sheets, in violation of state laws and regulations, and her manager failed to scrutinize the appropriateness of her travel claim reimbursements.

We recommended that Justice prohibit the regional office employees and managers from engaging in informal timekeeping arrangements, require them to use time sheets and its overtime request form, and provide training to these employees regarding the proper time-reporting and travel claim requirements.

Justice's Action: Corrective action taken.

Justice reported in June 2009 that it issued a memorandum to the regional office employees, as well as legal staff at other Justice regional offices in the division, reminding them of the proper time-reporting policies and procedures that it previously discussed at meetings with these employees. It also informed us that it issued a memorandum of instruction to the employee and her manager about their failure to follow time-reporting and travel expense claim policies and procedures. In September 2009 Justice reported that it provided travel expense claim policy training to the subject and other regional office employees, followed by training in proper time reporting in December 2009.

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.

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.

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.

- 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.

Department of Social Services

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

ALLEGATION I2007-0962 (REPORT I2009-1), APRIL 2009

Department of Social Services' response as of March 2010

The Department of Social Services (Social Services) failed to follow the requirements imposed by state civil service laws when a high ranking official arranged for the selection of a subordinate employee to fill a field analyst position. Social Services further violated state civil service laws by appointing the employee to a field analyst position even though she continued to perform the duties of a lower level analyst. As a result, Social Services paid the employee \$6,444 more than what is permitted by the State for the duties she performed.

Finding #1: The official's actions to reserve a field analyst position for her assistant were improper.

In 2005 the official decided that she wanted to promote her assistant to a higher paying position in Sacramento where they both were headquartered. The official located an unoccupied field analyst position in the San Jose field office she felt would be suitable for her assistant. She then contacted the regional manager at that field office and advised the regional manager that she wanted to reserve the position for her assistant in Sacramento but that she would have another field analyst position transferred to the San Jose office soon to make up for the position she was reserving.

Apparently, Social Services had already begun the recruiting process for the unoccupied field analyst position in San Jose when the official contacted the regional manager and reserved the position. After the official contacted the regional manager, who was on the interview panel for the position, the panelists understood that the position had already been reserved for the official's assistant. Subsequently, the panelists selected the assistant to fill the first position, and then presumably they selected the candidate they considered the best of the other candidates to fill the later position.

We recommended that Social Services take corrective action against the official for her improper actions and provide training to management and other key staff regarding the laws, regulations, and policies governing the hiring process.

Social Services' Action: Corrective action taken.

In April 2009 Social Services informed us that the official had since retired but still worked at its headquarters as a retired annuitant. In May 2009 Social Services informed us that it had hired a replacement for the official, and that it no longer employed her as a retired annuitant. Nevertheless, Social Services stated that it discussed the findings of our investigation with the official along with the personnel policies and procedures that should have been

Investigative Highlight . . .

A high-ranking Department of Social Services (Social Services) official arranged for the selection of a subordinate employee to fill a field analyst position. However, the employee continued to perform the duties of a lower-level analyst, and Social Services paid her \$6,444 more than what is permitted for the duties she performed.

followed. Social Services also commented that it might hire the official as a retired annuitant in the future, but that she would not be placed in a supervisory position with the authority to hire or promote. In addition, Social Services stated that in its supervisor and manager training classes it would incorporate and emphasize the laws, regulations, and policies governing the hiring process and the need to ensure that employees are performing the duties described in their duty statements. Finally, in a June 2009 memo it reminded all supervisors of these rules.

Finding #2: The official's appointment of her assistant to a field analyst position, when she did not intend for the assistant to perform the duties of that position, was also improper.

After the assistant was selected for the field analyst position, the official directed her formal appointment to this higher paying position. The documentation for the appointment reflected that the assistant would be serving as a field analyst in San Jose. However, after the appointment, the official did not change the assistant's assigned duties but instead directed her to continue performing the same duties that she had performed previously. Moreover, after the appointment, the assistant continued working in Sacramento, even though her assigned position number and Social Services' organizational charts indicated that she was now headquartered in San Jose.

After we inquired about the employee's duties, Social Services reported to us in February 2008 that it had determined the employee was not performing the essential duties of a field analyst as described in the duty statement for the position, such as performing inspections in the field. Social Services then offered the assistant the option of either remaining as a field analyst and performing the duties of that position or transferring into an office analyst position and continuing to perform primarily the same duties she had been assigned as the official's assistant. In June 2008 the employee chose to maintain her current duties and transfer into the office analyst position. The transfer became effective retroactive to May 2008. Regarding the assistant having been assigned a San Jose position number even though she was performing her work in Sacramento, Social Services reported that this resulted from a "poor administrative practice."

We recommended that Social Services seek retroactive cancellation of the assistant's appointment to the field analyst position and seek repayment from the assistant of the \$6,444 that it improperly paid her. In addition, we recommended that Social Services take steps to ensure that its position numbers and organization charts accurately reflect where employees are headquartered.

Social Services' Action: Partial corrective action taken.

In April 2009 Social Services reported that it consulted with the State Personnel Board (Personnel Board). Social Services stated that the Personnel Board determined that the appointment should not be rescinded and the overpayment should not be collected because the employee accepted that appointment in good faith more than one year prior to discovery. However, we learned subsequently that Social Services misled us about the Personnel Board's determination. Social Services had not shared any of the findings detailed in our report with the Personnel Board. Instead, it merely told the Personnel Board that when it had appointed the employee to the field analyst position, it had mistakenly appointed her to an incorrect salary range. Social Services stated subsequently it disagreed that it misled us. However, the facts remain that it did not provide the full details of our investigation to the Personnel Board. As a result of Social Services' failure to provide vital information, the Personnel Board was unable to make a sound determination regarding whether the employee's appointment to the field analyst position was made and accepted in good faith. Therefore, we still conclude that neither the employee nor Social Services acted in good faith in the appointment since evidence showed that the employee never intended to relocate to San Jose or to perform the primary duties associated with the field analyst position.

In addition, as part of the employee's incorrect classification, Social Services stated that it erred in its salary determination when the employee was appointed as an office analyst in May 2008. Thus, it had overpaid the employee by \$1,516. As of March 2010 Social Services had collected the \$1,516 overpayment it made to the employee from May 2008 through December 2008.

Finally, in its June 2009 memo, Social Services reminded all supervisors of the need to ensure that the department's position numbers and organization charts accurately reflect where employees are headquartered.

Department of Finance

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

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

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.

Investigative Highlight . . .

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

Department of Corrections and Rehabilitation

Its Poor Internal Controls Allowed Facilities to Overpay Employees for Inmate Supervision

REPORT NUMBER I2009-0702, NOVEMBER 2009

Department of Corrections and Rehabilitation's response as of November 2010

Many of the Department of Corrections and Rehabilitation's (Corrections) employees receive extra pay called a pay differential for supervising inmates who perform the work that a civil servant would typically perform. To receive the pay differential, the employees must supervise at least two inmates who collectively work at least 173 hours. We examined Corrections' payments for inmate supervision to 153 employees at six correctional facilities using a random sample of payments made from March 2008 through February 2009.

Finding #1: Corrections overpaid employees for inmate supervision and failed to collect overpayments it previously made.

Our investigation concluded that Corrections had overpaid 23 of the employees we reviewed a total of \$34,512. The overpayments to the individual employees ranged from \$380 to \$3,900. Based on our sample, we estimated that Corrections may have overpaid its employees as much as \$588,376 statewide during the 12-month period we reviewed. In addition, we found that for the most part Corrections had not initiated collection efforts to recover the improper payments it had identified after we reported on an investigation at another correctional facility in October 2008.

We recommended that Corrections initiate accounts receivable for the employees identified as receiving improper payments and begin collection efforts for these accounts.

Corrections' Action: Partial corrective action taken.

In October 2009 Corrections inferred that we applied the requirements for receiving the pay differential too strictly and supplied some information it received from the Department of Personnel Administration (Personnel Administration). However, we concluded that much of the information from Personnel Administration did not affect our investigation. In addition, we disagreed with a Personnel Administration opinion that inmates did not necessarily need to work the required number of hours for the employees to qualify for the pay differential.

Corrections subsequently stated that it established a task force of key staff to fully review the information received from Personnel Administration. It also noted that some grievances had been filed about establishing accounts receivable and that the grievances were put on hold pending the outcome of task force's actions and direction from its legal staff.

Investigative Highlights . . .

Our investigation of inmate supervision payments made by the Department of Corrections and Rehabilitation (Corrections) revealed the following:

» *Corrections overpaid 23 employees a total of \$34,512 over a 12-month period at five of the six correctional facilities we visited.*

» *Based on our sample, Corrections may have improperly paid as much as \$588,376 to its employees statewide during the same 12-month period.*

» *Corrections failed to implement sufficient controls to ensure that employees who received inmate supervision pay met the requirements.*

» *Except in a few instances, Corrections had not initiated collection efforts to recover improper payments it identified subsequent to our initial investigation.*

Corrections reported in June 2010 that it decided not to pursue collection efforts against the employees whom we identified as receiving improper payments. It explained that it did not believe it would prevail in an arbitration hearing since it had not established a formal operating procedure at the time of our investigation and it lacked documentation to demonstrate that the payments were improper.

Finding #2: Corrections lacked sufficient controls to ensure that only employees satisfying the inmate supervision requirements received the pay differential.

Five of the six facilities we visited had few or no policies in place during the period we reviewed to ensure that employees receiving the pay differential for supervising inmates met the necessary requirements each month. The remaining facility had implemented a policy requiring employees to submit inmate time sheets along with their own time sheets each month. However, the policy did not apply to all employees who received the pay differential. In addition, we noted weaknesses in document retention at the facilities in our review and found that many employees' personnel files did not contain certain required documents related to inmate supervision.

We recommended that employees at all of its facilities submit copies of the supervised inmates' time sheets to their personnel offices each month along with their own time sheets so personnel staff can use these documents to verify each employee's eligibility to receive the pay differential. We also recommended that Corrections take steps to develop clearer requirements that specifically define what constitutes "regular" supervision of inmates. Finally, we recommended that Corrections provide adequate training and instruction to its employees who supervise inmates and the personnel staff reviewing time sheets regarding the requirements for receiving the pay differential and proper documentation.

Corrections' Action: Corrective action taken.

Corrections reported that in May 2010 it issued a department-wide operational procedure that clarified and defined the criteria for receiving inmate supervision pay, identified documentation and training needs, and established an internal audit process. Corrections also reported that in June 2010 it had conducted training with its personnel officers and personnel staff regarding its new department-wide procedure. In November 2010 Corrections stated that it was still developing an internal audit process to examine compliance with the operating procedure and that it anticipated scheduling its first annual audit between July and September 2011.

California State University, Chancellor's Office

Failure to Follow Reimbursement Policies Resulted in Improper and Wasteful Expenditures

REPORT NUMBER I2007-1158, DECEMBER 2009

California State University, Chancellor's Office response as of November 2010

A former official at the California State University (university), Chancellor's Office, received \$152,441 in improper expense reimbursements over a 37-month period from July 2005 through July 2008. The improper reimbursements included expenses for unnecessary trips, meals that exceeded the university's limits, the official's commute expenses between his home in Northern California and the university's headquarters in Long Beach, living allowances, home office expenses, duplicate payments, and overpayments of claims. The official consistently failed to follow university policies in submitting requests for reimbursement. In addition, the official's supervisor and the university failed to adequately review the official's expense reimbursement claims and follow long-established policies and procedures designed to ensure accuracy and adequate control of expenses. As a consequence, the university allowed the official to incur expenses that were unnecessary and not in the best interest of the university or the State.

Finding #1: The official received improper reimbursements for expenses related to travel, business meals, commute, and personal expenses.

Our investigation found that the official often engaged in travel that appeared to offer few tangible benefits or advantages to the university and was not in the State's best interest. The official traveled regularly throughout the 37-month period we analyzed. Much of his travel related to his duties in the university's Chancellor's Office. However, reimbursements for some of the official's trips were not for university events and resulted in \$39,135 in unnecessary costs to the State.

In addition, the official regularly organized, hosted, and attended meals involving a variety of university staff, as well as other individuals serving on working groups or boards with the official. Over the period we examined, the official claimed \$26,455 in reimbursements for these meals, which exceeded the amounts allowed for meal reimbursements.

We also calculated that the official improperly received reimbursements totaling \$43,288 in expenses resulting from commuting between his home in Northern California and headquarters in Long Beach, despite university policies clearly prohibiting employees from claiming reimbursement for expenses incurred within 25 miles of their designated headquarters or at their residence. The \$43,288 represents a variety of prohibited expenses, including dozens of flights on commercial airlines between his

Investigative Highlights . . .

Our investigation of expense reimbursement claims made by an official at the California State University (university), Chancellor's Office, revealed the following:

- » *The official received \$152,441 in improper expense reimbursements over a 37-month period from July 2005 through July 2008.*
- » *The official consistently failed to follow university policies in submitting requests for reimbursements.*
- » *The official's supervisor and the university failed to adequately review the official's expense reimbursement claims and follow long-established policies and procedures.*

residence in Northern California and his headquarters in Long Beach, hotel lodging, airport parking, rental car charges, and reimbursement for the personal use of his vehicle between his home and the airport.

Finally, the official improperly received reimbursements totaling \$17,053 for personal expenses incurred while purportedly conducting university business from his home in Northern California. Many of these expenses appeared to be for equipment, supplies, and services to his residence, including multiple telecommunications services often totaling hundreds of dollars per month. The university no longer employs the official.

We recommended that the university take the following actions:

- Reexamine its preapproval and reimbursement review process for all high-level university employees, and require staff at all organizational levels to submit correct and complete claims along with detailed documentation supporting those claims, subject to thorough and appropriate review by the university accounting staff.
- Specify upper monetary limits for its food and beverage policy and specify when this policy applies.
- Revise its travel policy to establish defined maximum limits for reimbursing the costs of lodging and to establish controls that allow for exceptions to such limits only under specific circumstances.

Chancellor's Office Action: Partial corrective action taken.

The university agreed that it should reexamine its reimbursement procedures for high-level employees, as well as require complete and thorough documentation of the expenses for which reimbursement is being sought. Regarding its food and beverage policy, the university failed to indicate whether it would specify monetary limits for the policy—particularly for business meals—and clarify when the policy applies. Consequently, we have received no indication that the university intends to address the waste of public funds for the unnecessary expenditures that we identified in our report. Further, the university commented that, given the variety of locations around the world where it does business, it would be “impractical” to establish defined limits for reimbursing the costs of lodging. However, the university has failed to grasp the enormity of the problem created by its lack of defined limits on lodging costs. Without defined limits—and a control that allows for exceptions to the limits—the university has abdicated its oversight responsibility.

Finding #2: The university paid the official for long-term living expenses he was not entitled to receive.

We found that the official requested and received a \$748 monthly payment for 33 of the 37 months we examined, totaling \$24,676. These payments were referred to as “long-term subsistence” payments on the official’s travel expense claims and contained no additional supporting documentation or justification. University policy allows for the payment of per diem expenses an employee incurs from the use of establishments that cater to long-term visitors. To qualify for this allowance, the employee must be on a long-term field assignment. However, the official was not on a long-term field assignment as defined by university policy, so he should not have received \$24,676 for long-term subsistence costs. When we asked university executive management why the official was allowed to claim long-term subsistence for such an extended length of time, even though he also was being reimbursed for commuting expense between his home and university headquarters, we were told that such an arrangement was necessary to retain the official.

We recommended the university terminate any agreements with university employees that allow them to work at a location other than their headquarters and expressly prohibit the making of such agreements.

Chancellor's Office Action: None.

The university did not agree with our recommendation. Instead, it responded that it needed flexibility to recruit and retain highly skilled employees; thus, it would be counterproductive to terminate its flexibility in allowing employees to work from locations other than their headquarters. However, the university's response did not address the finding of our investigation that it allowed an employee to work from home, at considerable expense, without having any obvious business need for the university to permit the arrangement.

Finding #3: The university paid the official for duplicate payment and overpayments.

The official improperly received reimbursements totaling \$1,834 that resulted from duplicate payments and overpayments made by the university. In particular, our analysis found that the official received \$1,072 in payments for which the university had reimbursed him previously and \$762 in payments that exceeded the amounts the university owed him.

We recommended that the university recover from the official the \$1,834 in duplicate payments and overpayments.

Chancellor's Office Action: Corrective action taken.

The university collected from the former official \$1,903—consisting of the \$1,834 we identified and \$69 it identified later—in duplicate payments or overpayments.

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.

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.

California Prison Health Care Services

Improper Contracting Decisions and Poor Internal Controls

REPORT I2008-0805, JANUARY 2009

Responses from the California Prison Health Care Services and Department of Corrections and Rehabilitation as of January 2010

When California Prison Health Care Services (Prison Health Services) discovered that some of its information technology (IT) acquisitions had been made with a single vendor in 2007 and 2008 without complying with either the state contracting process or the alternative contracting processes established by a federal court, it requested that we investigate the matter.

Finding: Prison Health Services acquired \$26.7 million in IT goods and services in a noncompetitive manner from November 2007 through April 2008.

We found that staff at Prison Health Services ignored state contracting laws, as well as the alternative contracting requirements, when it acquired \$26.7 million in IT goods and services in a noncompetitive manner from November 2007 through April 2008. Specifically, Prison Health Services used 49 purchase orders to acquire \$23.8 million worth of IT goods from a single vendor when it should have sought competitive bids. It also contracted with the same vendor to provide \$2.9 million in IT services again without using a competitive process. Further, staff at the Department of Corrections and Rehabilitation (Corrections) helped to execute the purchase orders for Prison Health Services after initially questioning the propriety of the process used. Consequently, the State cannot be certain that Prison Health Services spent \$26.7 million in public funds prudently or that it received the best value for the money spent.

To ensure consistent application of proper contracting procedures for acquiring IT goods and services, we recommended that Prison Health Services do the following:

- Require employees with procurement and contracting responsibilities to attend training at regular intervals regarding state contracting processes.
- Formally communicate to purchasing and contracting staff at Prison Health Services and Corrections the meaning of the federal court's waiver order and the correct procedures that must be followed to use the alternative contracting processes approved by the court.
- Develop and document contracting procedures for staff to follow when acquiring IT goods and services under existing state processes.
- Develop and document the contracting procedures for staff to follow when acquiring IT goods and services under each of the alternative contracting processes approved by the federal court.

Investigative Highlights . . .

California Prison Health Care Services' (Prison Health Services) staff violated legal requirements and bypassed internal controls by noncompetitively acquiring \$26.7 million in information technology (IT) goods and services. Specifically, Prison Health Services:

- » *Used 49 purchase orders to acquire \$23.8 million of IT goods from a single vendor without inviting competitive bids.*
- » *Contracted with the same vendor to provide \$2.9 million in IT services without using a competitive process.*

Staff at the Department of Corrections and Rehabilitation ultimately executed purchase orders after initially questioning the propriety of the process used.

- Specify in writing who at Prison Health Services has authority to sign contracts and purchase orders under the state and alternative contracting processes, and distribute this information to employees who have responsibilities regarding procurement.
- Establish internal procedures to ensure there is documentation of approval from the receiver or his designee to make an acquisition under each of the alternative contracting processes.
- Ensure that prior to staff selecting a method for acquiring an IT good or service, the proposed acquisition is reviewed by an appropriate staff member to evaluate whether the method of acquisition is proper.
- Ensure that when contracts and purchase orders are being processed by staff at either Prison Health Services or Corrections for IT goods and services, an appropriate staff member will evaluate the proposed acquisition to determine whether it is proper and has the authority to halt the acquisition until any suspected impropriety has been resolved.

To ensure that the State follows applicable contracting laws, Corrections should establish a protocol for communicating with Prison Health Services' executive management when it becomes aware of any potential violations of state contracting laws.

Prison Health Services' Action: Corrective action taken.

Prison Health Services reported that it obtained approval from the Department of General Services to use a noncompetitively bid contract to continue to use the vendor that was the subject of this report. It also reported that it adopted a formal policy governing the use of the federal court's waiver of state contracting laws. In addition, Prison Health Services notified us subsequently that employees in its IT acquisitions unit attended training about state contracting processes. Prison Health Services also indicated that it distributed its policy on the use of the federal court's waiver. Further, Prison Health Services stated that it began to route all IT procurements to its procurement office to ensure the propriety of the purchasing method used. It also noted that it gave that office the authority to halt any procurement that does not meet state laws and regulations. Moreover, Prison Health Services told us in May 2009 that it developed a training policy for staff with purchasing responsibilities. In addition, it developed procedures for staff to follow when acquiring IT goods and services under state processes as well as under contracting processes approved by the federal court. Finally, it established a policy to ensure that authority to sign purchasing documents is limited to authorized individuals.

Corrections' Action: Corrective action taken.

Corrections reported that its managers will continue to review contract documentation and abort any transactions that violate applicable contracting requirements.

California Prison Health Care Services

It Lacks Accurate Data and Does Not Always Comply With State and Court-Ordered Requirements When Acquiring Information Technology Goods and Services

REPORT NUMBER 2008-501, JANUARY 2009

California Prison Health Care Services' response as of August 2009¹

State law gives the Bureau of State Audits (bureau) the authority to audit contracts involving the expenditure of public funds in excess of \$10,000 entered into by public entities at the request of the public entity. The current court-appointed receiver requested that the bureau conduct an audit of contracts for information technology (IT) goods and services initiated by California Prison Health Care Services (Prison Health Services) for the improvement of prison medical health care services.

Finding #1: Prison Health Services does not have accurate data for contracts it initiates.

Prison Health Services does not have sufficiently reliable data to allow it to identify all contracts it initiates, including IT contracts, and related information. When entering into contracts through the state contracting process, Prison Health Services typically performs all necessary work to identify the preferred vendor for its IT contracts. The contracting office of the Department of Corrections and Rehabilitation (Corrections) executes the contract with the preferred vendor, and its accounting office is responsible for making payments on these contracts. While Corrections maintains two databases that contain various information related to contracts, including those initiated by Prison Health Services and approved through the state contracting process, these databases often contain inaccurate and incomplete data. Prison Health Services noted that its staff use reports generated from these databases to identify the number of contracts it initiates and to assess appropriate future staffing levels to support its operational efforts internally instead of relying on Corrections. Its chief information officer stated that Prison Health Services was in the process of implementing a new enterprise-wide business information system that would house future contract information and would have appropriate controls to limit inaccurate data. Corrections noted that data related to some existing contracts has been migrated to the new system from the existing contracts database. Therefore, even though Prison Health Services intends to limit inaccurate data, the new system may already contain inaccurate or incomplete data.

We recommended that Prison Health Services ascertain that the internal controls over the data entered into the new enterprise-wide business information system work as intended. We further recommended that for contract-related data that has already been

¹ Prison Health Services' six-month response dated August 2009 indicated that corrective action was complete for all recommendations. We have since reviewed the support for Prison Health Services' assertions regarding its status in implementing our recommendations and agree all corrective action is complete. Thus, a one year response due in January 2010 was not required.

Audit Highlights . . .

Our review of California Prison Health Care Services' (Prison Health Services) contracts for information technology (IT) goods and services revealed the following:

- » *Prison Health Services does not have reliable data to identify all IT contracts it initiates—current databases contain inaccurate or incomplete data.*
- » *The new enterprise-wide business information system may already contain inaccurate or incomplete data, migrated from the old databases.*
- » *Eight of 21 contracts we reviewed lacked required certifications justifying the purchase and four service contracts did not have evidence of compliance with all bidding and contract award requirements.*
- » *Prison Health Services has not complied with all provisions of the federal court's order when using alternative contracting methods—two contracts did not contain justification for an expedited formal bid method.*

migrated from old databases to the new system, Prison Health Services needs to ensure the accuracy of key fields such as the ones for contract amount, service type, and the data fields that identify contracts initiated by Prison Health Services by comparing the data stored in its new database to existing hard-copy files.

Prison Health Services' Action: Corrective action taken.

Prison Health Services stated that it has implemented the processes required to ensure complete and accurate contract information. It has also established one certified trainer and two certified power users to ensure the new enterprise-wide system is used to its highest potential. Further, according to Prison Health Services, to ensure that complete and accurate IT contract information has been migrated to the new enterprise-wide system, it has established various internal controls such as comparing the hard-copy contracts to an internal tracking log in the enterprise-wide system and reviewing key fields in the new enterprise-wide system upon receiving a copy of an executed agreement.

Finding #2: Prison Health Services does not consistently follow state contracting requirements to purchase information technology goods and services.

Prison Health Services failed to consistently adhere to state contracting requirements, including Corrections' and its own internal policies, when entering into contracts for IT goods and services. State laws and regulations outline the process that Corrections must follow when making such purchases. Because the receiver acts in place of the secretary of Corrections for all matters related to providing medical care to adult inmates, Prison Health Services must adhere to the same contracting requirements as Corrections, except to the extent that the federal court has waived those requirements. Our review of 21 contract agreements related to IT goods and services executed between January 1, 2007, and June 30, 2008, found that Prison Health Services did not have required documentation to justify the purchases for eight contracts, failed to ensure the contractor agreed to the various required provisions for one contract, and could not demonstrate it complied with appropriate bidding and bid evaluation requirements for four contracts. Prison Health Services' failure to comply with these requirements could be attributed to its lack of adequate controls to ensure that appropriate individuals reviewed these contracts.

We recommended that Prison Health Services ensure that all responsible staff are aware of and follow processing and documentation requirements, including evidencing the review and approval of contracts.

Prison Health Services' Action: Corrective action taken.

Prison Health Services stated that it has developed policies, procedures, guides, checklists, and flowcharts related to proper processing, execution, and documentation of service agreements and made them available to all staff involved with contract practices. In addition, its policies require that contracts are routed through various internal stakeholders to ensure compliance. According to Prison Health Services, it provides training to its staff on the processing of all purchase and service agreements on a continuous basis.

Finding #3: Prison Health Services cannot be assured that it met all court-ordered provisions related to alternative contracting methods.

Although Prison Health Services uses the alternative contracting methods authorized by the federal court that established the receivership, it has not fully complied with all provisions of the court's order for using such methods. To better fulfill Prison Health Services' mission to raise the quality of inmate medical care, the court approved the receiver's request to use streamlined alternative contracting methods in lieu of the state contracting process. The court outlined specific requirements that are to be met when applying any one of the three alternative methods and affirmed that the underlying principles of accountability and transparency called for in state contracting law should

be maintained. However, Prison Health Services has not developed internal policies and procedures to ensure the appropriate implementation of the court-approved alternative contracting methods. We found that Prison Health Services did not comply with the explicit requirements imposed by the court in executing five of six IT-related contracts approved since January 1, 2007, that used alternative contracting methods. In addition, Prison Health Services cannot support that it reported all required information to the court because of weak internal controls and poor record keeping and retention practices.

We recommended that Prison Health Services develop policies to support its use of alternative contracting methods. These policies should include a requirement that Prison Health Services develop clear and specific criteria and guidelines for determining when the waiver authority should be used and how the requirements of the waiver are to be met and documented. Further, Prison Health Services should clearly identify the value of all contracts it executes and ensure that all contracting documents are maintained in a central location. We also recommended that Prison Health Services develop a system of tracking all contracts executed under alternative contracting methods and retain all bids it receives for each contract. To better track its contracts, Prison Health Services should assign a sequential contract number or other unique identifier to each contract executed using alternative contracting methods.

Prison Health Services' Action: Corrective action taken.

Prison Health Services has developed a policy that outlines when the waiver authority may be used for entering into new contracts. The policy includes identifying which distinct project efforts such contracts may support and provides specific guidance on obtaining approval for using alternative contracting methods. The procedure includes specific criteria for the selection of contractors using one of the three processes authorized by the federal court. It also contains a checklist for ensuring that certain requirements are met and guidance for the retention of appropriate documentation in a centralized contract file, including all solicitations and bids. Prison Health Services stated that it has distributed the policy and procedure to management and staff and it has provided related training.

Prison Health Services noted that all contracts processed using standard state contracting procedures clearly identify the value of the agreement by the use of standard forms. It has instructed staff to ensure that contracts developed without the use of standard forms contain all pertinent information found on the standard forms. Further, Prison Health Services noted that it identifies the value of all executed contracts by the establishment of an internal tracking log that identifies key data elements for each executed agreement.

Prison Health Services maintains a log for tracking key data elements, such as funding amount and vendor name, for each executed contract using the alternative methods. In addition, Prison Health Services maintains a tracking log of the type of agreement to be executed, services to be solicited, bidders list for solicitation purposes, bidder responses, and awarded vendor information. Further, solicitation and bids for acquisitions using alternative contracting methods are centrally housed. Prison Health Services also noted that it assigns a unique identifier to contracts executed using the alternative methods.

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 its 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.

California Department of Corrections and Rehabilitation

It Fails to Track and Use Data That Would Allow It to More Effectively Monitor and Manage Its Operations

REPORT NUMBER 2009-107.1, SEPTEMBER 2009

Responses from the California Department of Corrections and Rehabilitation and California Prison Health Care Services as of September 2010

The Joint Legislative Audit Committee requested that the Bureau of State Audits evaluate the effect of California's rapidly increasing prison population on the state budget. We were asked to focus on specific areas of the Department of Corrections and Rehabilitation's (Corrections) operations to provide the Legislature and the public with information necessary to make informed decisions. Specifically, we were asked to do the following:

- Review the current cost to house inmates; stratify the costs by their security level, age, gender, or any other relevant category tracked by Corrections; and determine the reasons for any significant cost variations among such levels and categories.
- Determine the number of inmates Corrections has sent to other states and calculate the State's cost and impact on Corrections' budget.
- Analyze Corrections' budget to determine the amounts allocated to vocational training, rehabilitation, and education programs.
- For a sample of institutions offering vocational training, rehabilitation, and education programs, review Corrections' system for determining the number of instructors and custody staff needed for inmates to participate in these programs. If such staffing is inadequate, determine if any inmates have been denied access to these programs.
- To the extent possible, determine the costs for incarceration under the three strikes law. At a minimum, determine the incarceration cost for each of the following three scenarios:
 - The third strike was not a serious and violent felony.
 - One or more of the strikes was committed as a juvenile.
 - Multiple strikes were committed during one criminal offense.
- Calculate annual overtime pay since 2002 for Corrections' employees, including correctional officers and custody staff, and investigate the reasons for significant fluctuations.

Audit Highlights . . .

Our review of California's increasing prison cost as a proportion of the state budget and the California Department of Corrections and Rehabilitation's (Corrections) operations revealed the following:

- » *While Corrections' expenditures have increased by almost 32 percent in the last three years, the inmate population has decreased by 1 percent during the same period.*
- » *Corrections' ability to determine the influence that factors such as overcrowding, vacant positions, escalating overtime costs, and aging inmates have on the cost of operations is limited because of a lack of information.*
- » *The cost of housing an inmate out of state in fiscal year 2007–08 was less per inmate than the amount Corrections spent to house inmates in some of its institutions.*
- » *Overtime is so prevalent that of the almost 28,000 correctional officers paid in fiscal year 2007–08, more than 8,400 earned pay in excess of the top pay rate for officers two ranks above a correctional officer.*
- » *Over the next 14 years, the difference between providing new correctional officers with enhanced retirement benefits as opposed to the retirement benefits many other state workers receive, will cost the State an additional \$1 billion.*

continued on next page . . .

- » *Nearly 25 percent of the inmate population is incarcerated under the three strikes law. We estimated that the increase in sentence length due to the three strikes law will cost the State an additional \$19.2 billion over the duration of the incarceration of this population.*
- » *Although Corrections' budget for academic and vocational programs totaled more than \$208 million for fiscal year 2008–09, it is unable to assess the success of its programs.*
- » *California Prison Health Care Services' ability to transition to using telemedicine is impeded by a manual scheduling system and limited technology.*

- Review the number of vacant positions during the last five years and determine whether they affect the annual overtime costs and whether filling vacancies would save Corrections money.
- Determine the extent to which Corrections currently uses and plans to use telemedicine. Further, determine if by using telemedicine Corrections is reducing inmate medical and custody costs and the cost to transport and guard inmates outside the prison environment.

In a subsequent report we plan to provide additional information on several of the subjects we were asked to review, including the size and additional costs of specific portions of the population of inmates sentenced under the three strikes law. We also plan to provide additional information on medical specialty visits similar to the types of consultations that California Prison Health Care Services (Health Care Services) is currently providing through its use of telemedicine and their associated costs. Finally, we plan to provide additional information related to vacant positions.

Finding #1: Corrections cannot determine the impact of inmate characteristics on incarceration costs.

Although Corrections spent more than \$8 billion in fiscal year 2007–08 to incarcerate inmates in various security levels at its 33 institutions, it did not track costs by individual inmate or by specific inmate populations such as security level or age. While Corrections' accounting records identify cost categories at each institution related to inmate housing, health care, and program costs, Corrections does not specifically track the costs of institution characteristics such as the physical design or the presence of specialized units that increase costs, and therefore its ability to compare the costs to operate one institution versus another is limited. At the time of our audit, Corrections was in the process of developing a new automated solution that will allow for statewide data analysis, according to the chief of its Program Support Unit, and may be used to analyze various characteristics related to the operation of an institution. According to the project advisor, the new system will replace the assignment and scheduling systems currently used by the institutions and was initially scheduled to be implemented by June 2009 but has been delayed after testing revealed that the system was not complete and fully ready.

We recommended that in order to help it assess the effect of policy changes and manage operations in a cost-effective manner, Corrections should ensure that its new data system will address its current lack of data available for statewide analysis, specifically data related to identifying the custody staffing cost by inmate characteristics such as security level, age, and custody designations. We further recommended that if the implementation of this new system continues to be delayed or if Corrections determines that the new system will not effectively replace the current assignment and scheduling systems used by the institutions, it should improve its existing data related to custody staffing levels and use the data to identify the related costs of various inmate populations.

Corrections' Action: Pending.

In its one-year response, Corrections stated that to meet the requirements of the recommendation, it will need to fully implement its new Business Information System (BIS), a phase of the new Strategic Offender Management System (SOMS), and a statistical analysis package with an external reporting component to analyze the data from the new systems. Currently, it expects the BIS to be fully deployed by April 2011, and expects the SOMS to be fully deployed by August 2012. Corrections indicated that its Enterprise Information Services and its Office of Research are working together to implement a data warehouse to conduct correlative analysis of the data contained within BIS and SOMS. According to Corrections, the basic infrastructure has been procured and its Enterprise Information Services and its Office of Research have agreed to continue to work together so that as the new SOMS information systems are developed and implemented, data on assignments, waiting lists, and recidivism can be captured and archived in the enterprise data warehouse for program management and evaluation purposes. Despite the somewhat lengthy time frame for the deployment of these new systems, Corrections indicates that it does not intend to develop a method to utilize existing information as it would be duplicative of the other information systems. However, until Corrections has finished implementing its new data systems and performed this suggested analysis, we are unable to assess its success in addressing this recommendation.

Finding #2: Corrections' overtime costs for custody staff have increased significantly over the last five years.

Corrections spent \$431 million on overtime for custody staff in fiscal year 2007–08, and these overtime costs have risen significantly over the last five years. This increase in overtime costs was caused by various factors including salary increases, vacant positions, and the need for additional guarding for increased medical care required by the receiver. However, the cost to recruit and train new correctional officers, combined with the significant increases in the cost of benefits in recent years has made hiring a new correctional officer slightly more expensive than paying overtime to those currently employed by Corrections. Some of the increase in overtime costs may also be related to the way in which hours worked were classified in the past. Corrections' implemented labor agreement allowed leave credit to be counted as time worked when calculating the amount of overtime an officer earns. For example, a correctional officer could hypothetically take 40 hours of leave during his or her regularly scheduled work period, then work an eight-hour shift in a previously unscheduled period and be paid for the eight hours at the overtime rate. In February 2009 state law was added specifying the way in which overtime is calculated, removing leave of any kind from being considered in determining the total hours worked and thus when overtime hours commence. However, state law leaves open the possibility for future labor agreements to override these provisions.

A state law effective August 2003 requires Corrections to establish a standardized overtime limit for correctional officers, not to exceed 80 hours each month. However, the law also indicates that the State is not relieved of any obligation under a memorandum of understanding relating to hours of work, overtime, or alternative work schedules. The current implemented labor agreement for correctional officers dated September 2007 allows them to exceed the 80-hour overtime limit in certain circumstances. Additionally, a Corrections' policy memorandum dated February 2008 requires each institution to track and immediately report all instances in which the 80-hour overtime limit is exceeded and states that the institution is responsible for limiting the instances in which the 80-hour overtime limit has been or will be exceeded to operational needs or emergencies. During the course of our analysis of the overtime hours worked by correctional officers, we found errors in the overtime data. Specifically, we found that personnel specialists at some institutions improperly keyed retroactive overtime salary adjustments as new overtime payments. Although we have no reason to believe they were not paid the proper amounts, by coding the adjustments improperly, Corrections' payroll data misrepresented the nature of the overtime worked, inadvertently inflating the number of overtime hours it indicated correctional officers had worked, and deflating the average hourly amount it indicated that they received for working those hours. After removing these adjustments, we determined that over

4,700 correctional officers were each paid for more than 80 hours of overtime in at least one month during fiscal year 2007–08. Employees working such a high number of overtime hours causes concern regarding the safety of officers, supervisors, and inmates.

To ensure that the State is maximizing the use of funds spent on incarcerating inmates, we recommended that Corrections communicate to the Department of Personnel Administration the cost of allowing any type of leave to be counted as time worked for the purposes of computing overtime compensation. Additionally, in an effort to more closely align its operations with state law, make certain that inmates are provided with an adequate level of supervision, and protect the health and safety of employees; we also recommended that Corrections encourage the Department of Personnel Administration to not agree to provisions in bargaining unit agreements that permit any type of leave to be counted as time worked for the purpose of computing overtime compensation.

We also recommended that Corrections encourage the Department of Personnel Administration to negotiate a reduction in the amount of voluntary overtime a correctional officer is allowed to work in future collective bargaining unit agreements in order to reduce the likelihood that involuntary overtime will cause them to work more than 80 hours of overtime in total during a month. Further, we recommended that Corrections should better ensure that it prevents the instances in which correctional officers work beyond the voluntary overtime limit in a pay period.

Finally, to ensure that overtime hours are accurately reported, we recommended that Corrections provide training to its personnel specialists to ensure they properly classify retroactive overtime salary adjustments according to the *Payroll Procedures Manual*.

Corrections' Action: Partial corrective action taken.

In its 60-day response, Corrections stated that it will partner with the Department of Personnel Administration on an ongoing basis to ensure the department's intent of not exceeding the current provisions, and that it is committed to future memorandums of understanding that require an employee to physically work more than 40 hours in a pay period/work week. However, Corrections did not address the portion of our recommendation regarding communicating the cost of allowing any type of leave to be counted as time worked. We are concerned that without stakeholders understanding the cost component, they may not fully understand the impact when negotiating future memorandums of understanding.

In addition, Corrections stated that in future negotiations, its office of labor relations will recommend that a memo be sent to the Department of Personnel Administration recommending a reduction in the work period overtime cap to 60 hours, in an attempt to ensure that it stays within the 80 hour limit.

Finally, Corrections stated that it will provide direction to institution personnel offices via a memorandum regarding the proper procedure for coding salary adjustments. In its one-year response, Corrections stated that it had finalized the Personnel Information Bulletin related to this issue and in February 2010 sent the bulletin to its personnel officers. Corrections also stated that it discussed the bulletin with institution personnel officers in March 2010.

Finding #3: Although Corrections budgeted more than \$200 million for academic and vocational inmate programs in fiscal year 2008–09, it lacks a staffing plan based on inmate needs.

In reviewing the adequacy of staffing for Corrections' education and vocational programs, we found that it does not have a current staffing plan based on inmate needs. According to the acting superintendent of the Office of Correctional Education (acting superintendent), Corrections does not have a staffing plan for allocating teachers and instructors based on inmates needs. Instead, she indicated that teacher and instructor positions are initially allocated in the institution's activation package when the institution is first opened. She stated that an institution can augment their staffing

plans through a budget change proposal, when an institution changes missions, or because of overcrowding. When we asked Corrections why it has not developed a staffing plan based on inmate needs, the acting superintendent stated that Corrections recognizes that the current staffing packages for rehabilitative programs are not based on inmate needs and the need for change has become apparent as Corrections has begun to deactivate gymnasiums and other nontraditional beds and has lost teachers and other program staff due to these reductions.

We recommended that Corrections develop a staffing plan that allocates teacher and instructor positions at each institution based on the program needs of its inmate population to ensure that it is addressing the program needs of its inmate population in the most cost-effective manner.

Corrections' Action: Partial corrective action taken.

In its six-month response, Corrections stated that due to significant budget reductions it was in the process of revising the way in which it provides educational services consistent with our recommendation. Specifically, Corrections stated that it was developing a staffing plan that allocates educational staff based on the target population at each institution using: (1) California Static Risk Assessment scores of moderate to high risk to recidivate, (2) Criminogenic need, including COMPAS and Test of Adult Basic Education scores, and (3) length of time left to serve. However, Corrections stated that its allocations were limited by funding.

Finding #4: Corrections does not currently track individual inmate participation in education programs and therefore cannot assess program effectiveness or compliance with state law.

During our review of Corrections' administration of its education and vocational programs, we found that while Corrections collects aggregate data, such as the total number of inmates participating in a program and the total number of inmates who successfully complete a program, it does not maintain data for individual inmate's participation in education programs once the inmate leaves the institution. As a result, Corrections cannot demonstrate whether or not inmates have been denied access to programs. When inmates are assigned to a program that is full, they are placed on a waiting list, and while awaiting placement they are usually placed in a work assignment. Corrections told us that it does not maintain historical waiting list or program assignment data. It also stated that it maintains data on program assignments as long as an inmate remains at an institution, but that once an inmate leaves the institution—by being paroled or transferred to another institution, for example—the program participation data are not kept. Therefore, Corrections cannot determine the length of time inmates are on a waiting list for a program, whether inmates are paroled before being assigned to a program, whether inmates are assigned to the programs their assessments indicated they should attend, or the length of time inmates are in programs. Additionally, because Corrections does not maintain historical waiting list and program assignment data for individual inmates, it does not have sufficient data to determine whether it has made literacy programs available to at least 60 percent of eligible inmates in the state prison system, in compliance with state law.

Finally, we found that Corrections' policy regarding education programs is outdated and does not align with state laws regarding prison literacy. State law requires Corrections to implement literacy programs in every state prison designed to ensure that upon parole, inmates are able to achieve a ninth-grade reading level and to make these programs available to at least 60 percent of eligible inmates. Corrections' policy states that the warden is responsible for ensuring that inmates who are reading below the sixth-grade reading level are assigned to adult basic education and that the warden shall make every effort to assign 15 percent of the inmate population to academic education. Despite the differences between Corrections' policy and state law, it appears that Corrections' programs are more closely aligned with state law. Nevertheless, because Corrections has not updated its policy regarding adult education programs since 1993, staff may not be clear on the relevant requirements that should be met.

We recommended that Corrections track, maintain, and use historical program assignment and waiting list data by inmate to allow it to determine its compliance with state law and the efficacy of its programs in reducing recidivism. We also recommended that Corrections update its adult education program policies to ensure that staff are aware of the relevant requirements that should be met related to prison literacy.

Corrections' Action: Pending.

In its one-year response, Corrections stated that it is in the process of developing a number of items that will address this issue, including phases of the SOMS, a risk assessment tool, and a statistical analysis tool. Corrections expects completion of the risk assessment and statistical analysis tools by July 2011 and expects the relevant portions of the SOMS will be deployed at the institutions in August 2012. However, until this system is implemented, we are unable to assess Corrections' success in addressing this recommendation.

In addition, in its one-year response, Corrections stated that it plans to update Chapter 10 of its *Adult Programs Administrative Manual* and associated regulations according to the Office of Administrative Law Rule Making schedule in fiscal year 2010–11.

Finding #5: Health Care Services has limited information regarding the cost-effectiveness of telemedicine consultations.

In 2006 a federal court appointed a receiver to provide leadership and executive management over the California prison medical health care system. The receiver uses the name Health Care Services to describe the organization he oversees. Health Care Services currently uses telemedicine—two-way video conferencing between an inmate and a health care provider—to furnish some medical specialty care to inmates housed in the adult institutions run by Corrections. Although Health Care Services has expanded the use of telemedicine in the last three years, according to the federal receiver's *Turnaround Plan of Action* and the *Telemedicine Project Charter*, insufficient telemedicine infrastructure exists to support the plan to vastly expand the telemedicine program.

The use of telemedicine reduces the costs to transport and guard inmates who otherwise may need to be taken out of the institution to visit medical specialty care providers. However, Health Care Services has gathered only limited data related to the cost savings of using telemedicine. Also, Health Care Services has limited information available regarding the effectiveness of telemedicine use. The expansion of telemedicine is in its early stages and although the receiver planned to transition additional medical care to telemedicine, progress in doing so has been impeded by a manual scheduling system and limited technology. Without systemwide improvements, it is unlikely that significant amounts of additional care could be provided via this delivery method. A 2008 review of the telemedicine program, which Health Care Services contracted with a consultant to provide, identified numerous shortcomings and recommended significant revisions to program management policies, existing hardware and technology, and related human resources.

We recommended that Health Care Services review the effectiveness of telemedicine consultations to better understand how to use telemedicine to minimize costs. In addition, we recommended that Health Care Services perform a more comprehensive comparison between the cost of using telemedicine and the cost of traditional consultations, beyond the guarding and transportation costs, so that it can make informed decisions regarding the cost-effectiveness of using telemedicine. We further recommended Health Care Services increase the use of the telemedicine system by continuing to move forward on its initiative to expand the use of telemedicine in Corrections' institutions, implement the recommendations that it has adopted from the consultant's review of telemedicine capabilities, and maintain a focus on developing and improving its computer systems to increase the efficiency of using telemedicine.

Health Care Services' Action: Partial corrective action taken.

In its one-year response, Health Care Services stated that it completed its eight-month long project to increase telemedicine in selected institutions. According to Health Care Services, this strategy evaluated the need for additional services at each institution and identified and addressed needed resources and existing barriers. Lessons learned will be applied in ongoing expansion efforts. Additionally, Health Care Services stated that it is beginning another pilot project to implement primary care via telemedicine at selected institutions. Health Care Services stated that its goals are to increase telemedicine, decrease off-site specialty consultations and follow-ups, and expand telemedicine at all Corrections' adult institutions. Although Health Care Services identified these projects to expand telemedicine, it did not provide us with information on how these initiatives will address its understanding of the effectiveness of telemedicine consultations or provide further information on how to use telemedicine to minimize costs. In fact, in this most recent response Health Care Services states that the historic emphasis on telemedicine potential for clinical cost savings should be transitioned to its utility in transportation/guarding costs and public safety.

Regarding our recommendation that it continue to implement the recommendations adopted from the consultant's review of telemedicine capabilities, in its one-year response Health Care Services stated that it no longer planned to implement the consultant's recommendations but was instead developing an alternative plan for expanding telemedicine. Health Care Services expects to complete its alternative plan by March 2011. Also, Health Care Services stated that it continues its efforts to incrementally implement an interim scheduling system for telemedicine and in July 2010 the system was upgraded to its first major version. Health Care Services indicated that there is still work to be done to enhance performance of the interim system, and to provide reports.

Finally, Health Care Services stated that it is continuing its efforts to implement a Health Care Scheduling System, which it expects to complete by December 2011. Health Care Services stated that it is working with the Health Care Schedule System team to help them understand all of Health Care Services' business requirements. However, Health Care Services stated that all of the functionality required by telemedicine will not be available until subsequent releases of the system, which may not be available until 2012 or later.

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.

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies With Legal Requirements

REPORT NUMBER 2009-043, NOVEMBER 2009

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun's response as of November 2010

The California Harbors and Navigation Code, Section 1159.4, requires the Bureau of State Audits to complete a comprehensive performance audit of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) by January 1, 2010, and a comprehensive financial audit by December 1, 2009. Our report combined both audits. Because state law does not specify the topics these audits should address, we identified and reviewed applicable state laws and regulations related to the form and function of the board and identified five areas on which to focus our review. Specifically, we focused on the licensing of pilots, investigations of incidents involving pilots, pilot training, board structure and administration, and the board's finances.

Finding #1: The board does not consistently adhere to requirements in state law when licensing pilots.

The board did not always ensure that applicants seeking original licensure as pilots completed the application process called for in state law before granting them pilot licenses. The application process requires that applicants seeking an initial pilot's license first receive a physical examination from a board-appointed physician. However, of the seven pilots seeking first-time licenses that we reviewed, the board issued licenses to three before the pilots had undergone the physical examination the law requires. In fact, one of these three piloted vessels 18 times before receiving the required physical examination. According to the board's president, there was a disconnect between the board and board staff regarding the application process and the necessary paperwork to be filed before licensure. He explained that in the past, the board had assumed that board staff were ensuring that all licensing requirements had been addressed before issuing a license. He stated that in the future, board staff will use a checklist to ensure that all application requirements are complete, and indicated that he or the board's vice president will review the checklist and supporting documentation to ensure that all requirements for licensure have been met. To the extent that the board does not adhere to this new process, it risks licensing an individual who does not meet the qualifications for a pilot, including being able to physically perform the job. This may increase the risk of injury to pilots and crews or damage to vessels and the environment.

Audit Highlights . . .

Our review of the form, functions, and finances of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) revealed the following:

- » *The board did not consistently adhere to state law when licensing pilots. In one case, it licensed a pilot 28 days before he received a required physical examination; he piloted vessels 18 times during this period.*
- » *The board renewed some pilots' licenses even though the pilots had received physical examinations from physicians the board had not appointed and, in one case, renewed a license for a pilot who had not had a physical examination that year.*
- » *Of the 24 investigations we reviewed, 17 went beyond the 90-day statutory deadline for completion.*
- » *The board did not investigate reports of suspected safety standard violations of pilot boarding equipment, as required by law.*
- » *The board failed to ensure that all pilots completed required training within specified time frames.*
- » *The board lacked a procedure, required in state law, for access to confidential information, and it released information to the public that included a pilot's home address and Social Security number.*

continued on next page . . .

- » *The board did not ensure that some of its members and investigators filed required statements of economic interests.*
- » *The board did not approve several changes to the rates pilots charge for their services, as required by law.*
- » *The board paid for business-class airfare for pilots attending training in France, which may constitute a misuse of public funds.*

We also reviewed files of seven pilots whose licenses the board renewed and found that, contrary to state law, the board renewed one pilot's license even though the pilot had not undergone a physical examination that year. In part, this may have occurred because board regulations are inconsistent with state law, as they require less frequent physicals for younger pilots. According to the board's regulations, which have been in place since 1988, a medical examination is required annually only for pilots who are renewing a state license and who will be at least age 50 when the license expires. The regulations require less frequent medical examinations for pilots who are younger than age 50. However, state law changed in 1990 to require annual physicals for all pilots, regardless of age, and the board has not updated its regulations to reflect this change. According to the board's president, although the board was aware of the changes made to state law in 1990, it failed to interpret those changes to mandate that younger pilots must have more frequent physicals than those required under existing board regulations. By not ensuring that pilots receive their annual physical examinations as required by law, the board risks licensing an individual who is not fit to perform the duties of a pilot.

Further, the board could not provide documentation demonstrating that it had followed the law by appointing all the physicians it used to conduct physical examinations of pilots during the period of our review. As a result, the board granted six out of the 14 new licenses or license renewals we reviewed even though it had not appointed the physicians who conducted the physicals. If the board allows physicians that it has not appointed to examine pilots, it is not only out of compliance with its regulations but it also risks that physicians conducting annual physicals will not be familiar with the standards the board has adopted for pilot fitness. These standards outline conditions that would render a pilot permanently or temporarily not fit for duty. For example, suicidal behavior would result in a pilot being permanently excluded from duty, while cataracts would require that a physician reevaluate the condition before a pilot was allowed to return to duty.

We recommended that the board follow its recently established procedure to complete a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure, including the physical examination, before the board issues or renews a license. Also, we recommended that the board establish and implement a procedure for approving and monitoring board-appointed physicians. Finally, we recommended that the board review and update its regulations regarding the frequency of pilot physical examinations to ensure they are consistent with state law.

Board's Action: Partial corrective action taken.

The board has developed a pilot license renewal checklist and stated it has been used in all original and renewal license processes and preserved in the individual licensing files. Further, the board reported that it adopted minimum qualifications for board-appointed physicians in August 2010. However, according to the board, a draft of a study by the University of California at San Francisco Medical Center suggests that substantial changes to board procedures for pilot fitness determination may be part of the

final report. According to the board, administrative rulemaking for implementing board physician operations may start in February 2011, followed by a competitive procurement for board physician services. The board projects this process will be complete by September 30, 2011. Similarly, the board reports it has directed staff to proceed with formal regulatory amendments regarding the frequency of pilot physical examinations; the amended recommendations are currently awaiting public comments. The board projects this process will be complete by December 31, 2010.

Finding #2: The board did not fully comply with state law regarding investigations.

Some of the board's investigations of incidents involving pilots were not timely or failed to follow specified procedures for granting extensions to the 90-day deadline required by state law. The board's Incident Review Committee is responsible for investigating, with the assistance of one or more investigators, navigational incidents, misconduct, and other matters involving pilots and presenting reports on these incidents to the board. We reviewed the 24 incidents reported by the port agent to the board between January 1, 2007, and March 31, 2009, and investigated by the Incident Review Committee, and we noted that 17 required extensions because the Incident Review Committee did not complete its investigation within 90 days. Of these 17, the board did not grant an extension in two cases and granted an extension after the 90-day deadline in another five. After reviewing the seven cases we identified, the board's president stated that beginning in October 2009, the board's agenda for its monthly meetings will include the 90-day deadline to help remind the Incident Review Committee and the board of the need to either present the results or make a timely request for an extension. Without timely investigations, the board risks having additional incidents occur, because pilots are generally allowed to continue working while the board completes its investigation.

Further, the board did not consistently report the reasons for granting extensions for an investigation. We noted that, of the 17 investigations requiring an extension, eight were extended because the investigations were incomplete, while four were extended with no reason or justification given. The board extended the remaining five for other reasons, including an Incident Review Committee member being unavailable and the board asking for additional information. If the board had requested the reasons for the delays from the Incident Review Committee, it would have been better able to assess the cause of the delay and determine how to mitigate such delays in the future.

Also, the board has not yet developed the regulations describing qualifications for its investigators, as required by law. In February 2009 the board approved draft standards for use in contracting with investigators. In August 2009 the board approved a version of the standards and directed staff to begin the rulemaking process to adopt these standards. Until the board adopts and enforces standards for its investigators in accordance with state law, it may risk retaining investigators who are not qualified to conduct thorough and timely investigations.

Finally, the board has not complied with a state law requiring the inspection of pilot boarding equipment, such as pilot ladders or hoists, in response to reports of suspected safety standard violations. The board's president stated that the former executive director—the board's executive director resigned effective October 30, 2009, and thus, we refer to him as the "former executive director"—acknowledged that he had not dispatched investigators to inspect pilot boarding equipment that had been reported to be in violation of safety standards during the period of our review. He explained that the former executive director had instead relied upon information provided by the pilots regarding the reported equipment. The board president explained that as of October 2009, he has requested the chair of the board's Rules and Regulations Committee to study the issue and make recommendations to the board, which may result in the board seeking changes to state law as it relates to investigating suspected violations. Nevertheless, pursuant to the California Constitution, unless or until an appellate court invalidates the law requiring the board to inspect suspected safety standard violations of pilot boarding equipment, the board must comply with the statute.

We recommended that the board implement procedures to track the progress of investigations, including a procedure to identify those investigations that may exceed the 90-day deadline established in law, and ensure that there is proper justification and appraisal for investigations that require more

than 90 days to complete. We also recommended that the board develop and enforce regulations establishing minimum qualifications for its investigators, as state law requires, and investigate reports of safety standard violations regarding pilot boarding equipment.

Board's Action: Partial corrective action taken.

The board stated that it has implemented a system of tracking the progress of open investigations by requiring a monthly report on the status of each open investigation and the expected reporting date and by tracking the expiration of the 90-day period in which investigation reports are to be presented, absent a timely extension for good cause. Further, the board reported that it will review any requests for an extension to determine the reason and whether the underlying cause for the request can be addressed to avoid unnecessary delays in the future. The reasons for the request for an extension will be recorded in the board's minutes. Moreover, in August 2010, the board adopted minimum qualifications for investigators in its regulations and filed those regulations with the Office of Administrative Law for final approval. The board stated it will initiate a competitive process for contracting with investigators upon final approval. The board expects this process to be complete by December 31, 2010. The board is investigating reports of safety standard violations it receives concerning pilot boarding equipment.

Finding #3: The board has not ensured that all pilots completed the required training within specified time frames.

The board's regulations require every pilot to attend a combination course, which must include topics relating to emergency maneuvering, emergency medical response, ship handling in close quarters, and regulatory review, at least every three years. We reviewed the training records of seven pilots whose licenses had been renewed at least three times as of April 30, 2009, and determined that two had last attended the required training in April 2005 and did not attend again until October 2009, more than four years later. According to the board's former executive director, at the time these pilots were originally scheduled for training, the board was pursuing a regulatory change that would have allowed pilots to attend the required training every five years instead of every three. He explained that the board had relied on the proposed change to regulations and delayed the attendance of these two pilots. According to the board's president, changing the requirement to every five years would have been more in line with the training cycles of other pilotage grounds around the country. However, he stated that the board chose not to reduce its training requirements because the change might have been perceived by members of the public as potentially reducing the safety of pilotage on the waters in the board's jurisdiction. Because these regulatory changes were only proposed, the board inappropriately delayed training for these pilots beyond the existing legal deadline.

Additionally, state law mandates that the board require the institutions it selects to provide continuing education for pilots to prepare an evaluation of the pilots' performance and to provide a copy to the Pilot Evaluation Committee (to the board beginning in 2010). We reviewed the contracts between the board and the continuing education institutions but did not identify a requirement for the institutions to provide evaluations of pilot performance to the Pilot Evaluation Committee. The board's president asserted that the Continuing Education Committee will negotiate with the training institutions to develop an appropriate evaluation process. To comply with state law, the board must follow through with its intention to require training institutions to prepare and submit evaluations of pilots' performance. Without these evaluations, the board lacks assurance as to whether a pilot successfully completed the required training program or whether that pilot will need additional training before being allowed to navigate vessels as a licensed pilot.

To ensure that all pilots complete the required training within the specified time frames, we recommended that the board schedule pilots for training within the period specified in state law and board regulations and include in its contracts with institutions providing continuing education for pilots a provision requiring those institutions to prepare an evaluation of pilots' performance in the training.

Board's Action: Partial corrective action taken.

The board implemented a checklist to track each pilot's training cycle and the expiration dates for the three-year and five-year training periods to ensure timely attendance at board-mandated training. The board told us that it directed staff to begin the formal rulemaking process to amend regulations to require all pilots to complete both combination and manned-model training courses once in every five years. The proposed amendments are awaiting public comments. Further, the board states it initiated a contract amendment to include the requirement that pilots receiving manned-model training are evaluated upon completion of the training and that the completed evaluation be forwarded to the board for review. The amended contract is under review by the Department of General Services. The board expects to complete these activities by December 31, 2010.

Finding #4: The board risks not having enough pilot trainees to replace retiring pilots.

To help it forecast the need for additional trainees, the board conducted six surveys between June 2006 and July 2009, asking all pilots to indicate when they intend to retire. Of the 58 pilots who responded to the board's most recent survey, which it conducted in June 2009, three indicated that they plan to retire by January 1, 2010, and an additional five stated that they plan to retire by January 1, 2011. However, because the length of time it takes a trainee to complete the pilot training program is typically much longer than the length of time between a pilot's retirement announcement and the effective date when the pilot may begin receiving a pension, the board runs the risk that the number of licensed pilots will decrease if more pilots choose to retire than the number of trainees completing the training program.

To ensure that it is able to license the number of pilots it has determined it needs, we recommended that the board continue to monitor its need for additional trainees to replace those who retire.

Board's Action: Corrective action taken.

The board stated that it has developed a comprehensive process for evaluating future pilotage needs and will continue to conduct regular retirement surveys of existing pilots. The board also stated that it conducted a trainee selection examination in June 2010 and that 12 applicants qualified for the board's trainee training program. The board contracted with two applicants to begin the training program on January 1, 2011.

Finding #5: The board lacks controls over confidential information.

A state law effective January 1, 2009, requires the board to develop procedures for access to confidential or restricted information to ensure that it is protected. However, as of September 2009, the board had not yet established such procedures. Meanwhile, without such procedures, the board could inadvertently share confidential information with the public. In fact, the board did release confidential information when the board's president requested that board staff fax certain information about one of its pilots to an independent, nonprofit association's counsel. This information included the pilot's home address on one document and Social Security number on another.

Also, until October 2009, board staff, as well as board members, used nonstate e-mail accounts to conduct state business, which could jeopardize the board's ability to respond to requests for public records and to protect confidential information. According to the board's president, board staff used nonstate e-mail accounts beginning in 1994. Additionally, he stated that board members and board staff who had previously used nonstate e-mail accounts have not transferred old data into their new state accounts.

We recommended that the board create a process, as state law requires, for accessing confidential information, such as board records containing confidential information on board members, board staff, or pilots and that it consistently use state-based e-mail accounts when conducting board business, including transferring old e-mail records to their new accounts.

Board's Action: Corrective action taken.

The board developed a written protocol for access to confidential or restricted information in board records. Further, as of November 2009, board members and staff are using state e-mail accounts. Specifically, after joining the Business, Transportation and Housing Agency, the board started a step-by-step technical infrastructure change. In that process, the board obtained state-based e-mail accounts for all board members and staff.

Finding #6: The board lacks controls over filings of statements of economic interests and required ethics training.

We identified several instances in which the board did not comply with legal requirements regarding the filing of statements of economic interests. We examined the files for the 10 board members and two board staff who served from January 1, 2007, through March 31, 2009, and found four instances in which the board did not comply with this regulation. According to the board's president, the board's staff have not consistently followed up to ensure that all required statements of economic interests have been completed and that board files include a copy. Without complete statements of economic interests, neither the board nor the public has access to information that would reveal whether board members may have conflicts of interest.

Additionally, according to the board's president, the board did not require its investigators to file statements of economic interests. Board regulations require consultants to file statements of economic interests, although the executive director may make a determination in writing that a particular consultant does not meet the regulatory criteria necessary to file a statement. None of the four investigators under contract during all or part of the period we reviewed filed statements of economic interests, nor did the former executive director determine in writing that board investigators are not required to comply with the disclosure requirement. The former executive director explained that he recalled discussing this issue with legal counsel and that they had determined that investigators are not consultants; rather, they are "finders of facts" and therefore do not participate in the Incident Review Committee's decision-making process. Therefore, he explained, they do not need to file statements of economic interests, and no written exemption is required. However, the board's regulations require a written exemption from the executive director if consultants, such as investigators under contract to the board, are not required to file statements of economic interests. According to the board's president, the board did not seek formal advice on this determination from the Fair Political Practices Commission, the state authority in this area.

Until recently some board members and staff had not received training in state ethics laws and regulations, as required by law. However, according to the board's president, not all board members or board staff had received such training prior to 2009. He stated that the board members were not aware of the requirement. Subsequent to our inquiry, all of the board members and staff received ethics training by August 2009.

We recommended that the board establish a formal procedure to complete and maintain copies of required statements of economic interests and complete the process of ensuring that investigators complete statements of economic interests. When there are questions as to whether other consultants should file such statements, the board should seek advice from the Fair Political Practices Commission. Finally, the board should develop procedures to ensure that board members and designated staff continue to receive required training, such as training in state ethics rules.

Board's Action: Corrective action taken.

The board developed a checklist to ensure that annual, as well as assuming and leaving office, statements of economic interest are filed and that copies are maintained in office files in accordance with the state's political reform laws and the conflict-of-interest code provisions. The board also requires investigators to file statements of economic interests and developed an ethics orientation program for those required to file such statements.

Finding #7: The board did not adhere to some requirements regarding administrative processes.

We observed that the board did not properly provide notice on its Web site of two recent meetings at least 10 days in advance, as the Bagley-Keene Open Meeting Act (act) requires. On June 16, 2009, the board's Web site indicated that the next board meeting would be held on June 25—nine days later—but the agenda posted to the board's Web site was for the prior month's meeting on May 28. Subsequently, on July 15, 2009, the board's Web site announced the board meeting held in June, even though a July meeting was scheduled for July 23, 2009—less than 10 days from the date we reviewed the Web site. The board has a contract with the Association of Bay Area Governments to maintain, in part, the board's Web site. However, one provision of the contract enables board staff to update meeting information on the board's home page and to post agendas, minutes, and news items through an administrative page. According to the board's assistant director, the board had been using the administrative page until a staffing change in March 2009. Subsequently, the board requested that the Association of Bay Area Governments update the board's meeting and agenda notices on the Web site. However, in both June and July, board staff made this request on the last day the board would have been in compliance with state law. The assistant director stated that in October 2009, board staff received training in how to update the Web site using the administrative page, and she explained that the board intends to reinstate its previous practice of having board staff, rather than a contractor, update meeting information on the Web site. Without proper notice, members of the public may not be aware of upcoming board meetings or of the topics the board will discuss at those meetings.

Further, until recently the board had not complied with state law requiring it to formally review the executive director with respect to his or her performance on the Incident Review Committee at least once each year. According to the board's president, the evaluation covering the former executive director's performance on the committee during July 1, 2007, through June 30, 2008, was the first the board had conducted, yet the board had employed the former executive director since 1993. Subsequent to the first evaluation, the board conducted two additional evaluations of the former executive director for the periods covering July 1, 2008, through December 31, 2008, and January 1, 2009, through June 30, 2009. The board's president explained that the board has not formalized its process for reviewing the performance of the executive director, but he expects the board to settle on a formal process and document it appropriately within six months after hiring a new executive director. If the board does not have a process in place when it hires a new executive director, it will not have the mechanism to provide formal feedback on his or her performance on the Incident Review Committee.

We recommended that the board establish processes to ensure that its Web site contains timely and accurate information about its meetings, as required by law, and that it formalize a procedure for evaluating the executive director's performance on an annual basis.

Board's Action: Corrective action taken.

The board stated that it has implemented training of its staff in the update and maintenance of the board's Web page displaying notices of its meetings. Further, the board stated it has provided direct access to update meeting information on its Web site. Finally, the board adopted a procedure to evaluate the executive director on an annual basis.

Finding #8: The board's recordkeeping needs improvement.

The board does not always maintain adequate records to demonstrate that it complies with state law. During the period of our review, January 1, 2007, through March 31, 2009, there were 24 reported incidents. Of the 24 incidents, we judgmentally selected four to determine whether their respective files contained the required information and noted that one did not contain the Incident Review Committee's opinions and recommendations or the board's actions based on these recommendations.

Additionally, we determined that the board is inconsistent in announcing pilots whose licenses the board renewed. Further, board staff did not maintain copies of licenses issued after 2000 in the pilots' files. We found that the board reported license renewals in its minutes for meetings held in February and April of 2007 and 2008 but did not report any renewals in board minutes for February or April 2009. Nevertheless, several pilots had licenses up for renewal in those months. According to the board's president, the board generally announces renewals at board meetings and stated that the two instances we found in which such announcements were not recorded in meeting minutes were due to an inexperienced staff person not reporting such announcements in the minutes. Without a proper record in the board's minutes or copies of each pilot's annual license renewal in the files, however, the board may not be able to demonstrate that a pilot held an active license during a given year.

We recommended that the board establish formal procedures related to document retention in files regarding investigations, determine and document what it needs to include in minutes of the board's meetings, and ensure that copies of license renewals are placed in the pilots' files.

Board's Action: Corrective action taken.

The board stated that, beginning in October 2009, the Incident Review Committee reports contain all the data elements required by statute. Further, the board has put into service checklists for board meeting agendas and minutes of board meetings. The board stated it directed staff to compare draft agendas and meeting minutes with the checklists during document preparation. Finally, the board developed a pilot license renewal checklist.

Finding #9: The board lacks internal policies and controls over pilotage rates and its revenues.

State law sets the rates vessels must pay for pilotage service in San Francisco, San Pablo, Suisun, and Monterey bays, but allows a portion of the rate, called the "mill rate," to change each quarter, based on the number of pilots licensed by the board. According to the Bar Pilots' rate sheet, the mill rate changed five times between January 2007 and June 2009. We expected to find that the board had authorized the changes to this rate; however, the board's minutes do not reflect any such activity. Instead, according to the board's president, the board receives a copy of the Bar Pilots' rate letter each quarter, and these rates reflect changes to the mill rate. The board's president stated that the law does not require the board to take action to approve these rate changes. However, we disagree, as the law clearly states that rate adjustments will take effect quarterly "as directed by the board." By not reviewing and approving such adjustments, the board is not in compliance with the law and risks that the Bar Pilots may miscalculate the rate.

The board also does not consistently ensure that an independent audit of the pilot pension surcharge is conducted, and there is no audit in place for the pilot boat surcharge. Although an independent auditor completed an audit of the pilot pension surcharge for 2007, it did not complete an audit of the pilot pension surcharge for 2008, according to the board's president, due to the auditor's staffing changes and to a lack of communication between the board and the independent auditor. Further, the board's president explained that the board had not considered having a similar audit conducted of the pilot boat surcharge, which state law established to recover the costs of obtaining new pilot boats or extending the service life of existing pilot boats. Without such annual audits, the board lacks assurance that the Bar Pilots are collecting and spending funds from these surcharges in accordance with state law.

The board also lacks a process to verify the accuracy of the surcharge amounts the Bar Pilots collect and remit to the board on a monthly basis. State law requires pilots to submit to the board, and the board to maintain, a record of accounts that includes the name of each vessel piloted and the amount charged to or collected for each vessel. Each month, the Bar Pilots remit the total amount of the board operations, continuing education, and training surcharges collected and include a report detailing all of the pilotage fees and surcharges billed and collected. We reviewed eight monthly reports and determined that they did not contain all information required by law and, in one case, the report was missing pages. The board's president explained that a review of the monthly reports was not done in the past because the board had limited staff to conduct such reviews. However, given that the board is required to maintain complete records of accounts, we believe it needs to take the steps necessary to ensure that the Bar Pilots' reports contain the required information, such as information pertaining to the three surcharges the Bar Pilots collect and remit to the board.

Additionally, the board did not receive all revenues for the surcharge to fund training new pilots (training surcharge), as required by law. We determined that the inland pilot, the one pilot who is not a member of the Bar Pilots and who guides vessels between the bays and the ports of West Sacramento and Stockton, was not collecting the training surcharge on the vessels he piloted. According to the board's president, it was both the inland pilot's and the board staff's understanding that the training surcharge does not pay for the training of future inland pilots. However, state law requires the training surcharge to be applied to each movement of a vessel using pilot services, and therefore the inland pilot should collect this surcharge.

We recommended that the board review and approve any quarterly changes made to that portion of the pilot fee based on the mill rate. Further, the board should establish a requirement for an annual, independent audit of the pilot boat and pilot pension surcharges and establish a monthly review of the revenue reports it receives from the Bar Pilots. Additionally, we recommended that the board instruct the inland pilot to collect and remit the training surcharge and report these collections to the board.

Board's Action: Corrective action taken.

The board stated it developed a process involving approval of mill rate changes involving a recommendation to the board by the Finance Committee and then formal board approval. The board processed the 2010 mill rate at its December 2009 meeting. Further, the board has contracted with a certified public accounting firm to conduct a comprehensive audit of all surcharges for 2009, 2010, and 2011. Additionally, the board developed verification worksheets to compare San Francisco Bar Pilots' monthly actual cash collections with remittances of surcharge moneys due to the board. Moreover, the board demonstrated that it instructed the inland pilot to begin collecting and remitting the pilot trainee training surcharge and the inland pilot is doing so. The inland pilot has acknowledged the instruction and will commence collection of the surcharge beginning with his next trip.

Finding #10: The board lacks internal policies and controls over its expenditures.

We determined that the board does not track its expenditures in a manner that is consistent with state law. In its financial statements, the board tracks expenditures in only two categories—operations and training—combining expenditures for the training program and for pilots' continuing education. However, state law requires that the board spend the money collected from the continuing education and training surcharges only on expenses directly related to each respective program. Additionally, the board maintains a reserve balance, but its financial statements do not specify the amounts of this balance that relate to its operations, training, and continuing education surcharges. According to the board's president, for many years the board wanted to establish different categories in its formal accounting records in order to track the expenditures related to each surcharge independently. However, he added that neither the Department of Consumer Affairs nor the Department of

Finance tracked the expenditures as the board desired and thus, in order to generate the information necessary to comply with statutory requirements, the board maintained its own internal accounting of expenditures within each surcharge. He stated that this internal recordkeeping system is not reconciled to state reports. Unless it tracks expenditures relevant to each surcharge separately in its formal financial reports, the board cannot demonstrate that it is complying with the law and risks miscalculating the rate of the surcharges in the future.

In addition, the board does not have written contracts with the physicians it has appointed to conduct physical examinations of pilots. Written contracts between the board and its appointed physicians would outline the duties of the physicians under contract and ensure consistency in the physical examinations of pilots. Additionally, because these contracts would be subject to competitive bidding as described in state law, the board would have to solicit bids for these contracts. For example, we reviewed board payments to one medical clinic and determined that they totaled more than \$14,000 and \$26,000 in fiscal years 2007–08 and 2008–09, respectively, amounts equal to or greater than the \$5,000 that is exempt from competitive bidding under state law. According to the board's president, the board has not contracted with the physicians; however, as of October 2009, he stated that the board is defining criteria for the approval of physicians and for use in the contracting process in the future. He added that the board's Pilot Fitness Committee began to address this issue in April 2009 and hopes to be able to recommend criteria to the board by the end of 2009.

We recommended that the board develop procedures to separately track expenditures relevant to the operations, training, and continuing education surcharges. Additionally, we recommended that the board competitively bid contracts with physicians who perform physical examinations of pilots.

Board's Action: Partial corrective action taken.

The board reported that a new accounting system is in place. Representatives of the California Highway Patrol—who provide administrative services to the board—addressed the board in September 2010 and confirmed the new system was in place and would reliably track transactions involving the board's operations, trainee training, and continuing education surcharges. Further, the board stated that, while it has adopted minimum qualifications for board-appointed physicians, the competitive bidding process for board physician services will follow promulgation of regulations concerning criteria for selection of board physicians. The board plans to complete this process by September 2011.

Finding #11: The board made some expenditures that could constitute a misuse of state resources.

According to state law, state agencies cannot use state funds to pay for expenses used for personal purposes. However, in a contract between the board and the Bar Pilots covering July 1, 2006, through June 30, 2011, the board requires that the Bar Pilots purchase round-trip, business-class airline tickets for pilots attending training in Baltimore, Maryland, and at the Centre de Port Revel in France, and it requires that the board reimburse the Bar Pilots for these expenses. Business-class air travel provides the same basic service as economy class, but with added amenities of value to the traveler. We reviewed one invoice from the Bar Pilots requesting reimbursement for travel to the Centre de Port Revel in France and noted that business-class airfare cost an average of \$6,200 for each pilot in August 2007. Using similar travel dates in August 2009, including the airline used by the pilots, we determined that, on average, purchasing economy-class tickets offered by three airlines to Lyon, France—the airport five of the six pilots in our sample used—could reduce costs by roughly 40 percent. According to the board's president, it is private industry practice to fly a mariner first class—which offers amenities beyond business class—when he or she must travel internationally to transfer onto another vessel. For example, a mariner leaving a vessel in Hong Kong to join a vessel in San Francisco would fly first class. However, the board is a regulatory agency and not a private shipping company. Such an expense, when an equivalent and less expensive alternative is available, is not appropriate and may constitute a misuse of state resources, which the state Constitution prohibits.

Also, the board's provision of free parking to current employees raises questions as to whether the parking expenditures, which are primarily for private benefit, constitute a misuse of state resources.

We recommended that the board cease reimbursing pilots for business-class airfare when they fly for training and amend its contract with the Bar Pilots accordingly; and cancel its lease for parking spaces or require its staff to reimburse the board for their use of the parking spaces.

Board's Action: Partial corrective action taken.

The board states that it has initiated an amendment to the contract with the San Francisco Bar Pilots to specify that the board would reimburse the cost of travel not to exceed the cost of the most economical refundable travel. The amended contract is under review at the California Highway Patrol and the board expects the process to be complete in December 2010. Further, the board reports that its office lease has been cancelled. Establishment of a new lease for board offices and other facility services will be implemented by the Department of General Services pursuant to state facilities rules and requirements. The Department of General Services is now seeking for the board a new facility not owned by the Port of San Francisco. The board anticipates completion by March 2011.

High-Speed Rail Authority

It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management

REPORT NUMBER 2009-106, APRIL 2010

High-Speed Rail Authority's response as of October 2010

The High-Speed Rail Authority (Authority), created in 1996, is charged with the development of intercity, high-speed rail service that is fully integrated with existing intercity rail and bus networks. In 2008 voters approved Proposition 1A, which authorized the State of California to sell \$9 billion in general obligation bonds for planning, engineering, and construction of a high-speed rail network. The Joint Legislative Audit Committee (Audit Committee) asked the Bureau of State Audits to assess the Authority's readiness to manage funds authorized for building the high-speed rail network.

Finding #1: The Authority's financial plans indicate heavy reliance on federal funds but lack details.

Although the Authority's 2009 business plan contains the elements required by the Legislature, it lacks detail regarding how it proposes to finance the program. For example, the Authority estimates it needs \$17 billion to \$19 billion in federal grants. The business plan, however, specifies only \$4.7 billion in possible funds from the American Recovery and Reinvestment Act of 2009 (Recovery Act) and two other small federal sources. According to its communications director, the Authority has no definite commitments from the federal government other than Recovery Act funding, which actually amounted to \$2.25 billion when awards were announced in January 2010. The program risks significant delays without more well-developed plans for obtaining or replacing federal funds.

Further, the Authority's plan relies heavily on federal funds to leverage state bond dollars through 2013. Proposition 1A bond funds may be used to support only up to 50 percent of the total cost of construction of each corridor of the program. The remaining 50 percent must come from other funding sources. Thus, the award of up to \$2.25 billion in Recovery Act funds allows for the use of an equal amount of state bond funds for construction, for a total of about \$4.5 billion. However, the Authority's spending plan includes almost \$12 billion in federal and state funds through 2013, more than 2.5 times what is now available.

We recommended that the Authority develop and publish alternative funding scenarios that reflect the possibility of reduced or delayed funding from the planned sources. These scenarios should detail the implications of variations in the level or timing of funding on the program and its schedule.

Audit Highlights . . .

Our review of the High-Speed Rail Authority (Authority) revealed the following:

- » *The Authority's 2009 business plan estimates it needs \$17 billion to \$19 billion in federal funds. However, the Authority has no federal commitments beyond \$2.25 billion from the American Recovery and Reinvestment Act of 2009 (Recovery Act), and other potential federal programs are small.*
- » *The Authority's plan for spending includes almost \$12 billion in federal and state funds through 2013, more than 2.5 times what is now available.*
- » *The Authority does not have a system in place to track expenditures according to categories established by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, its largest source of committed funding.*
- » *The Authority has not completed some systems needed to administer Recovery Act funds, for example, a system to track jobs created and saved.*
- » *Some monthly progress reports, issued by the Authority's contracted Program Manager to provide a summary of program status, contain inconsistent and inaccurate information.*
- » *Authority staff paid at least \$4 million of invoices from regional contractors received after December 2008 without having documented written notification that the Program Manager had reviewed and approved the invoices for payment.*

continued on next page . . .

» *The Authority paid contractors more than \$268,000 for services performed outside of the contractors' work plans and purchased \$46,000 in furniture for one of its contractor's use, based on an oral agreement contradicted by a later written contract.*

Authority's Action: Pending.

The Authority stated that it is currently in the process of hiring new financial consultants. The Authority said that the new consultants will assist it in developing alternative funding scenarios and that it plans to provide a full set of alternative scenarios in its one-year response to the audit.

Finding #2: The Authority's plans for private funding are vague.

Private investors have expressed interest in the program, but they have made no commitments and the Authority expects they will require a revenue guarantee to participate. The Legislative Analyst expressed concern that a revenue guarantee might violate state law prohibiting an operating subsidy for the program. In a February 2010 memo, the Authority's financial consultant provided clarification, indicating that the revenue guarantee would not be used as an operating subsidy but would be a limited-term contingent liability used to support up-front capital investment. The consultant also stated that the guarantee would be of a limited duration, from five to 10 years. Therefore, a guarantee could increase costs to the public sector. The business plan does not make clear which government would be responsible for the guarantee or how much it might cost.

We recommended that the Authority further specify the potential costs of planned revenue guarantees and who would pay for them.

Authority's Action: Pending.

The Authority stated that it continues to work with financial and legal consultants to provide a discussion of revenue guarantees.

Finding #3: The Authority is working to improve its approach to risk management.

The Authority's 2009 business plan identifies a number of risks associated with the program, but it provides little detail on how it will manage those risks. In March 2010 the contractor that serves as the Authority's program management team (Program Manager) completed a major revision to its risk management process to include a "Risk Register Development Protocol." This protocol details how the Program Manager, regional contractors, and Authority staff will collaborate to identify, assess, analyze, manage, and monitor risk. The protocol also includes a description of a process for developing broadly accurate estimates of potential impact and probability of risks, and expectations for personnel assigned risk management responsibilities. Further, its consultant providing program management oversight, hired in January 2010, will review the risk management plan. Also, the Authority's risk insurance manager, hired in February 2010, will provide services aimed at reducing exposure to project liabilities. The Authority must ensure that these actions for managing risk are fully implemented so it can respond effectively to circumstances that could significantly delay or even halt the program.

We recommended that the Authority ensure that it implements planned actions related to managing risk.

Authority's Action: Pending.

The Authority stated that on July 7, 2010, the Legislature added an additional management position designated by the Authority as Deputy Director, Risk Management. The Authority said that this position will assume responsibility for risk management for the entire project. Further, the Authority indicated that it will move forward with the steps necessary to fill the position once the state budget is approved. The Authority also stated that it has developed a duty statement for one of two audit positions it plans to fill. However, due to a lack of a state budget and the current freeze on hiring, the Authority has not begun the hiring process for these positions.

Finding #4: Selection of the peer review group has not been completed, and it may be subject to open meeting requirements.

State law requires the Authority to establish an eight-member, independent peer review group (review group) that is to assess various plans the Authority may develop. The review group is also to issue independent judgments as to the feasibility of funding plans and the appropriateness of the Authority's related assumptions. State law directs the Authority to establish this group, but it leaves appointment of the group's members to four other agencies. As of March 2010 only five of the eight members had been appointed.

The Bagley-Keene Open Meeting Act (Meeting Act) prohibits a majority of members of a state body from discussing, deliberating, or taking action on items of business outside of an open meeting. Thus, according to our legal counsel, the review group must hold a meeting that is properly announced and open to the public when it analyzes and evaluates the Authority's plans. The Authority received informal advice from its legal counsel, a lawyer with the Office of the Attorney General, stating that the review group is not subject to the Meeting Act because it is not similar to a board or commission in that it is not expected to make collective decisions. State law, however, requires the review "group" to analyze and evaluate the Authority's plans and to report to the Legislature. Therefore, our legal counsel does not see any basis in law to conclude that the review group is not expected to make collective decisions. Moreover, the Meeting Act is explicit in applying to multimember bodies created by state law and allowing for very specific exceptions, which do not apply to the review group. Without clarity on whether the review group is subject to the Meeting Act, the Authority risks having the group act in a manner contrary to state law, potentially voiding its analyses, such as those related to the viability of the Authority's funding plans.

We recommended that the Authority ensure that the review group adheres to the Meeting Act or seek a formal opinion from the Office of the Attorney General regarding whether the review group is subject to this act.

Authority's Action: Pending.

The Authority reports that its staff is working with legislative contacts to obtain clarification of the law. It asserts that it will obtain adequate clarification in time for the final audit response.

Finding #5: The Authority lacks systems to comply with state law and federal grant requirements.

The Authority does not have a system in place to track expenditures funded by Proposition 1A to ensure compliance with statutory limitations on administrative and preconstruction task costs. Only 2.5 percent (\$225 million) of the Authority's portion of Proposition 1A bond funds may be used for administration (the Legislature may increase this to 5 percent), and only 10 percent (\$900 million) may be used for preconstruction tasks. Until such a process is in place, the Authority cannot accurately

report on its expenditures in each category, cannot create an accurate long-term spending plan, and risks not knowing when or whether it has run out of bond funds available for administration or preconstruction task costs.

Furthermore, the Authority still needs to develop some systems to track and report on the use of Recovery Act funds. Because of its \$2.25 billion federal award, the Authority will be required to comply with both the Recovery Act reporting requirements and with the readiness requirements of the California Recovery Task Force. Nevertheless, a proposed database does not allow the Authority to track the number of jobs created or saved, as the Recovery Act requires; nor has the Authority developed an alternative mechanism to track this information. In addition, we recently issued a report on the State's system for administering Recovery Act funds, which includes a recommendation that agencies incorporate Recovery Act provisions into their policies and procedures. According to its December 2009 Financial Integrity and State Manager's Accountability Act (Accountability Act) report, the Authority has not developed basic operational policies and procedures to which Recovery Act provisions could be added.

We recommended that the Authority track expenditures for administrative and preconstruction activities and develop a long-term spending plan for them. It also should develop procedures and systems to ensure that it complies with Recovery Act requirements.

Authority's Action: Pending.

The Authority stated that it enhanced its computer system to include systems for tracking administrative versus project expenditures and for compliance with Recovery Act requirements. However, while the system enhancements went online on May 28, 2010, the Authority continues to work with the contractor to resolve issues with the system. In addition, the Authority states that it has not been able to provide sufficient policy guidance to staff regarding key elements of the system. The Authority expects full system operability by the time it submits its final response to the audit in April 2011.

Finding #6: The Authority is working to increase its involvement.

Until recently, Authority members had not provided significant oversight to the program. State law requires this group of nine appointees to direct the development and implementation of high-speed rail service. However, the Authority's involvement thus far has been limited. For example, it did not have an opportunity, as a body, to discuss or approve the revised business plan issued in December 2009. Also, the Authority has been only minimally involved in creating the strategic plan. Unless the Authority exercises oversight of plans and activities, it risks being unaware of significant issues that could disrupt or delay the program.

In addition, the Authority has not always followed the policies and procedures it develops. In June 2009 it adopted policies and procedures related to its members' communications with Authority staff and contractors. For example, the policies and procedures require Authority members to communicate with contractors only through the executive or deputy director. However, the Authority's former executive director claims that member-to-contractor contact has occurred often and provided us with documentation showing that subsequent to the policy adoption, a board member met directly with a contractor to receive an update on program issues. According to the former executive director, when individual members express opinions to contractors, the contractors may be unsure if they should consider the opinions to be direction from the Authority or just comments. Such conduct also might affect the public's perception of openness and accountability, and create expectations for contractors to respond directly to Authority members' requests that staff may not know about.

We recommended that the Authority participate in the development of key policy documents, such as its business and strategic plans. Further, Authority members should adhere to their policies and procedures, including those outlining how they may communicate with contractors.

Authority's Action: Corrective action taken.

The Authority added language to its policies and procedures stating that it is responsible for developing key policy documents, including approving business plans and strategic plans. The Authority also added language to its policies and procedures requiring that its members communicate with contractors through the Authority's CEO.

Finding #7: A primary tool for communicating the status of the program contains inaccurate and inconsistent information.

Contractors accounted for 95 percent of the program's total expenditures over the past three fiscal years. Although the Authority generally followed state requirements for awarding contracts, its processes for monitoring the performance and accountability of its contractors—especially the Program Manager—are inadequate. The Program Manager's monthly progress reports, a primary document summarizing monthly progress on a regional and program level, have contained inaccurate and inconsistent information. For example, the July 2009 report indicated that the regional contractor working on the Los Angeles-to-Anaheim corridor had completed 81 percent of planned hours but had spent 230 percent of planned dollars. In addition, although the progress reports described actions taken or products created, they did not compare those actions and products to what the contractors promised to complete in their work plans. The work plan for a consultant the Authority recently hired to oversee the Program Manager does not include a review of the monthly reports.

We recommended that the Authority amend the oversight consultant's work plan to include a critical review of the progress reports for accuracy and consistency. Authority staff also should request that the Program Manager revise its progress reports to include information on the status of contract products and services.

Authority's Action: Partial corrective action taken.

The Authority stated that the Program Manager revised its progress report format to ensure that its reports accurately reflect project status. However, the program management oversight consultant said that it did not have sufficient information to assess the Earned Value Analyses in the Program Manager's reports. These analyses are designed to express the value of work produced for the cost paid. The consultant stated that it would prefer to focus on physical deliverables and their actual level of completion.

Finding #8: The Authority paid invoices without ensuring that they accurately reflected work performed.

The Authority does not generally ensure that invoices reflect work performed by contractors. According to the chief deputy director, the Program Manager should review each regional contractor's invoice to ensure that the work claimed actually has been performed and then notify Authority staff whether the invoice should be paid. The chief deputy director further stated that staff should not pay invoices without notifications. However, Authority staff paid at least \$4 million of invoices from regional contractors received after December 2008—when the Authority's fiscal officer says she was informed that such notifications were required—without documenting notification. The Authority only recently adopted written policies and procedures related to invoice payment. However, those policies and procedures do not adequately describe its controls or their implementation.

We recommended that the Authority ensure that staff adhere to controls for processing invoices. For example, staff should not pay invoices from regional contractors until they receive notification from the Program Manager that the work billed has been performed, or until they have conducted an independent verification.

Authority's Action: Corrective action taken.

The Authority asserts that it developed an invoice review, verification, and approval process. In addition, it provided evidence showing that invoices now include cover sheets requiring signatures from both the Program Manager and Authority staff. Furthermore, this process is detailed in the Authority's *Contract Administration Manual* (contract manual).

Finding #9: The Authority made some payments that did not reflect the terms of its agreements.

The Authority also made some payments that did not reflect the terms of its agreements, risking its ability to hold contractors accountable for their performance. For example, it spent \$46,000 on furniture for its Program Manager's use based on an oral agreement, despite the fact that its written contract expressly states that oral agreements not incorporated in the written contract are not binding. The written contract requires the Program Manager to provide its own furniture, equipment, and systems. Additionally, the Authority paid a regional contractor more than \$194,000 to subcontract for tasks not included in the regional contractor's work plan and paid the Program Manager \$53,000 for work on Recovery Act applications, which was also outside the Program Manager's work plan.

We recommended that the Authority adhere to the conditions of its contracts and work plans, and make any amendments and modifications in writing.

Authority's Action: Corrective action taken.

The Authority amended its contract with the Program Manager to require use of an audit-adjusted field rate for staff co-located with the Authority and using Authority facilities. The "audit adjusted field rate" is a discounted overhead rate used when consultants use client facilities. The Authority also amended its contract with a regional contractor to include work that was not part of the original contract.

Finding #10: The Authority lacks adequate written policies and procedures for invoice review.

The Authority recently adopted written policies and procedures related to invoice payment, however, they do not adequately describe its controls or their implementation. In December 2008 the Authority's Accountability Act report identified its need to ensure that contract payments are accurate and to develop adequate control procedures. The Authority completed a contract manual in September 2009, which includes a description of the process for reviewing and paying invoices, but it does not reflect all the controls Authority staff say are in place. For example, the contract manual states that a contract manager must conduct a technical evaluation of each invoice, based on promised goods and services, to determine the reasonableness of charges; however, it does not discuss the review the Program Manager is to perform on regional contractors' invoices or the need for Authority staff to hold payments until they receive written notification from the Program Manager. The Authority's 2009 Accountability Act report, issued December 2009, noted that, although it had performed some work on standardized policies and procedures, it had not yet developed basic operational policies and procedures. Without adequate written policies and procedures, the Authority cannot ensure that its staff understand how to implement internal controls over payments or guarantee that they implement them consistently.

We recommended that the Authority ensure that its written policies and procedures reflect intended controls over invoice processing and offer sufficient detail to guide staff. These procedures should include steps for documenting implementation of invoice controls.

Authority's Action: Corrective action taken.

The Authority amended its contract manual to include detailed procedures for implementation of invoice review and documentation of invoice controls.

Department of Resources Recycling and Recovery

Deficiencies in Forecasting and Ineffective Management Have Hindered the Beverage Container Recycling Program

REPORT NUMBER 2010-101, JUNE 2010

Department of Resources Recycling and Recovery's response as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to review the Department of Resources Recycling and Recovery's (department) management of the Beverage Container Recycling Program (beverage program) and the financial condition of the Beverage Container Recycling Fund (beverage fund). The audit committee wanted us to determine how the department forecasts revenues and expenses as well as the methodology it used to calculate the reductions in payments and fee offsets. In addition, the audit committee requested that we evaluate the department's procedures for ensuring that all fees are collected from beverage distributors and how it investigates potential fraud. Further, we were asked to review a sample of grant award expenditures for the past five years and determine how the department monitored these funds. Finally, the audit committee requested that we evaluate the department's ability to assess the efficiency and effectiveness of the beverage program.

Finding #1: Deficiencies exist in forecasting revenues and expenditures of the beverage fund.

Because of deficiencies in its forecasting process, the department is not always able to reliably project the revenues and expenditures for the beverage fund. We noted that over the past five fiscal years, its forecasting model has produced results that differ by between 3 percent and 15 percent from the actual revenues and expenditures. Ineffective supervisory oversight and lack of review of the accuracy of the forecasts have also weakened the value of the forecasting model. For example, the department failed to detect errors in its forecasting of the beverage fund condition, which resulted in a \$158.1 million overstatement of the fund balance in the 2009–10 Governor's Budget. Moreover, the department incorrectly calculated a reduction in payments to recyclers and others due to an error in computing its reserve for the projected fund balance in its May 2009 forecast. Further, the Department of Conservation did not include prior-year adjustments and incorrectly presented the actual fund balances of the beverage fund for three fiscal years—2004–05 to 2006–07.¹

We recommended that the department implement a new forecasting model in time for it to be used for the fiscal year 2011–12 Governor's Budget. We also recommended that appropriate controls be put in place to monitor the reliability of the model and that the department

¹ Until January 1, 2010, the Department of Conservation administered the Beverage Container Recycling Program.

Audit Highlights . . .

Our audit of the Beverage Container Recycling Program (beverage program) at the Department of Resources Recycling and Recovery (department) revealed the following about the department:

- » *Its forecasting process is outdated and not able to reliably project revenues and expenditures.*
- *Over the past five years, projections have differed from actuals by between 3 percent and 15 percent.*
- *Errors in forecasting the condition of the Beverage Container Recycling Fund resulted in a \$158.1 million overstatement in the 2009–10 Governor's Budget.*
- *A projected fund balance deficit in May 2009 prompted the department to reduce payments to beverage program participants.*
- » *Significant lags exist between the completion of an audit of redemption payments and billing for any identified underpayments.*
- *For one audit with identified underpayments of \$941,000, including interest, the department took six months to bill the distributor.*
- *In two instances, the department could not collect a total of \$324,000 because it exceeded the two-year statute of limitations on collecting underpayments.*

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- » *It may be missing opportunities to detect fraud because it lacks a systematic and documented methodology for analyzing data regarding the volume of recycled containers.*
- » *It does not always perform key steps to monitor grants awarded to private entities and local governments and ensure that funds are properly used by visiting grantees and obtaining project status reports.*
- » *It did not ensure grantees met their commitments for six completed market development and expansion grants that we reviewed—ultimately costing the State nearly \$2.2 million.*

continue with its effort to hire an economist to lead its forecasting efforts. In addition, we recommended that the department ensure that the contingency reserve for the beverage fund not exceed the statutory limit specified in the Public Resources Code. Finally, we recommended that the department ensure that the actual fund balance of the beverage fund reflect actual revenues and expenditures from its accounting records in future governor's budgets.

Department's Action: Partial corrective action taken.

The department redesigned its forecasting methodology, which it used for the October 2010 fund projection. In addition, the department implemented review procedures, including a process to compare actual sales and return values with prior projections. Further, the department stated that it will follow the Public Resources Code when calculating the contingency reserve and will propose a change in the fund reserve statute to ensure the recycling fund's ability to pay consumer deposits when they recycle. The department also developed a procedure to reconcile its records with the State Controller's Office data to ensure correct information is presented to the Department of Finance for preparing the governor's budget. Finally, following the August 2010 hiring freeze, the department indicated that it had to suspend its process for hiring an economist to assist in revising the forecasting model.

Finding #2: The department audits beverage distributors inconsistently and could do more to pursue underpayments.

The department is required to establish an auditing system to ensure that redemption payments that are made to the beverage fund comply with state law. However, the department has not followed its three-year plan to audit the top 100 beverage distributors, who provide 90 percent of revenues for the beverage fund, and a sample of mid-sized distributors and others that pose a risk to the beverage fund. Moreover, when audits were conducted, a significant lag existed between the audit's completion and billing for identified underpayments, which increased its risk for failing to collect underpayments before the two-year statute of limitations expired. In fact, for one audit with identified underpayments of \$941,000, including interest, the department took six months to bill the distributor. Further, we identified two instances in which the department exceeded the two-year statute of limitations and lost the opportunity to collect a total of \$324,000, and a third instance in which it did not complete an audit, losing the opportunity to collect \$431,000. We also identified that the department is actively pursuing regulatory changes to require beverage distributors to register with it, and it is also pursuing regulatory changes to require registered distributors to notify the department if another entity has agreed to make payments on behalf of that beverage distributor.

We recommended that the department take steps to better follow its three-year plan to audit beverage distributors by considering the inclusion of a risk assessment process and policies to identify and terminate low risk audits. In addition, we recommended that the department strive to complete the fieldwork for audits in a more timely fashion and to bill for collections sooner to avoid exceeding the statute

of limitations for collecting underpayments. Further, the department should take steps to implement policies to shorten the time needed to review completed audits before billings are made, and should also develop policies to expedite reviews when an audit identifies a significant underpayment. We also recommended that the department continue with its efforts to implement regulation changes that will require beverage distributors to register with the department and notify the department if another entity has agreed to make payments on behalf of that beverage distributor.

Department's Action: Partial corrective action taken.

The department has included a risk-based evaluation in its audit program to determine whether there is material harm to the fund and to terminate audits based on initial assessments. The department updated its current three-year audit plan to reflect this change, and its auditors received training on this risk-based process. Also, the department indicated that its Division of Recycling Integrated Information System (DORIIS) will include functions to track audit activity while also paying specific attention to the statute of limitations for each audit. In addition, the department indicated that it is working to develop criteria to rank findings and prioritize the review and completion of audits. The department did provide statute of limitations training for audit staff in its investigations and audits units in December 2010. Finally, the department stated that it is pursuing regulatory changes to regulate reporting of agreements where an entity has agreed to make payments on behalf of that beverage distributor.

Finding #3: Weaknesses exist in the department's investigation of potential recycling fraud.

The department conducts investigations of recyclers that collect used beverage containers from consumers to ensure that they do not commit fraud when claiming reimbursements from the beverage fund. Although the department tracks the status of the investigations that have been initiated or completed, it does not track all fraud leads received, nor does it record how it determined that no follow-up was needed on fraud leads that were not investigated. Further, because the department does not have a systematic and documented methodology for analyzing beverage program data regarding the volume of recycled containers, it is potentially missing opportunities to detect fraud. We also noted that in response to concerns over unusually high recycling rates, particularly for plastics, in October 2009 the department began an enhanced effort to detect and prevent fraud before it occurs. This effort, called the fraud prevention project, is intended to significantly increase the presence of department staff at recycling and processing centers. However, as of May 2010 the department had not yet fully evaluated the effectiveness of the fraud prevention project.

To improve management of its fraud investigations, we recommended that the department track all fraud leads that the investigation unit receives and the disposition of those leads. We also recommended that the department formalize the approach used to analyze recycling data for potential fraud and to develop criteria to use when deciding whether to refer anomalies for investigation. Finally, we recommended that the department continue to evaluate the effectiveness of the fraud prevention project to determine whether it is a cost-beneficial activity.

Department's Action: Partial corrective action taken.

The department drafted procedures for analyzing fraud tips and now uses DORIIS to track, assign, and follow up on fraud tips. Further, the department implemented the fraud detection modules in DORIIS that will use data collected from beverage manufacturers, beverage distributors, recyclers, and processors to analyze indicators of potential fraud. The department acknowledged that systematic and defined documentation of its current practices and methodology for reviewing recycling data for potential fraud would be valuable, but it has not yet developed and documented these procedures. The department indicated that it has developed a methodology to evaluate the effectiveness of the fraud prevention project, but it is awaiting completion of a data library in DORIIS before it can determine whether it is a cost-beneficial activity.

Finding #4: The department's grant management is generally effective, except for conducting certain monitoring activities.

To encourage and support recycling activities, state law authorizes the department to award grants to private entities and local governments, which totaled approximately \$67.5 million in fiscal year 2008–09. Although it has a process to monitor grantees to ensure that funds are used properly, the department does not always perform key steps, such as visiting grantees and obtaining status reports on how projects are progressing. When funding market development and expansion (market development) grants, which are intended to encourage new and innovative recycling techniques, the department accepts a level of risk that financial institutions would not accept. However, for six completed market development grants we reviewed, the department did not ensure that grantees met their commitments, which ultimately cost the State nearly \$2.2 million. For two of the grants, the department's failure to promptly process grant extensions contributed to the problems.

To allow the department to more effectively monitor the grant funds it awards, we recommended that the department conduct site visits and require regular status reports from grantees. We also recommended that the department require that cities and counties report how they spend grant funds. Further, we recommended that the department more closely scrutinize the risks associated with market development grants and maintain contact with recipients that are unable to meet the goals of their grants to determine if the goals may ultimately be achieved. Finally, we recommended that the department approve grant extensions in a timely manner.

Department's Action: Pending.

The department indicated that it has drafted changes to how it will conduct and document site visits of grantees. In addition, the department indicated that it will ensure regular status reports are submitted by grantees on time, which will include withholding payments when status reports are not current. The department further indicated that it is working to implement a reporting requirement for cities and counties. The department also indicated it is developing a process to do a risk analysis of each new market development grant. The department stated that it has already begun to review past market development grants to determine factors contributing to their success and sustainability, and that the evaluation will be expanded to contact with grantees. Finally, the department implemented a review schedule to determine, at least three months prior to the end of a grant agreement, whether an extension is required.

Finding #5: The department is taking steps to assess the efficiency and effectiveness of the beverage program.

Although the department's strategic plan for the beverage program includes high-level goals and outcomes, it does not have specific criteria that would allow it to measure the effectiveness of the beverage program.

To better measure its progress in meeting the goals of the beverage program, we recommended that the department weave benchmarks, coupled with metrics to measure the quality of its activities, into its strategic plan. Further, we recommended that the department include all relevant activities of the beverage program in the strategic plan.

Department's Action: Pending.

The department stated that as it refines its strategic plan, relevant beverage program activities such as metrics to achieve audit plans, inspections, and enforcement objectives as well as other program activities will be incorporated along with the means to measure the quality of the outcomes.

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).*

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- » *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, General Services 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 for strategically 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. In response 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.

California's Postsecondary Educational Institutions

More Complete Processes Are Needed to Comply With Clery Act Crime Disclosure Requirements

REPORT NUMBER 2009-032, JANUARY 2010

Responses from the California Postsecondary Educational Institutions and the California Community Colleges Chancellor's Office as of October 2010

Chapter 804, Statutes of 2002, which added Section 67382 to the California Education Code (statute), requires the Bureau of State Audits (bureau) to report to the Legislature every three years on the results of our audit of not fewer than six institutions that receive federal student aid. The statute requires us to evaluate the accuracy of the statistics and the procedures institutions use to identify, gather, and track data for reporting, publishing, and disseminating accurate crime statistics in compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). We selected a sample of six institutions at which we would perform detailed audit work related to the accuracy of the crime statistics and the disclosure of campus security policies. The six institutions we visited and their locations were: California State University, Fresno (Fresno); Mt. San Antonio Community College in Walnut (Mt. San Antonio); Ohlone Community College in Fremont (Ohlone); University of California, Riverside (Riverside); Western Career College—Sacramento (Western Career-Sacramento); and Western University of Health Sciences in Pomona (Western Health). Additionally, we surveyed 10 institutions that reported no criminal offenses to determine whether their procedures for compiling and distributing crime statistics were sufficient. Six of the 10 institutions we surveyed were community colleges while four were private.

Finding #1: Educational institutions do not always comply with federal crime reporting requirements.

None of the institutions we visited fully complied with federal law or regulations related to campus crime reporting. The Clery Act requires eligible institutions to issue annual security reports that disclose campus security policies and campus crime statistics to all current students and employees. Institutions must also provide a notice to any prospective student or employee that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. When institutions do not comply with the reporting requirements of the Clery Act, they inhibit the ability of students and others to make informed decisions about campus security. Further, not complying with Clery Act requirements can subject institutions to financial penalties from the federal government.

Audit Highlights . . .

Our review of a sample of postsecondary educational institutions' (institutions) compliance with the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) revealed that:

- » *One of the six institutions we visited did not provide us with a copy of the required annual security report.*
- » *Three institutions did not properly notify students and staff of the availability of certain crime statistics or security policies.*
- » *Four institutions either did not disclose or had not addressed all 19 security policies required by the Clery Act.*
- » *All six institutions reported inaccurate crime statistics to varying degrees for 2007.*
- » *Most of the 10 institutions we surveyed, which reported no crimes for 2007, did not have sufficient processes in place to ensure that they report accurate crime statistics under the Clery Act.*
- » *The California Community Colleges Chancellor's Office could increase its role in helping community colleges improve their compliance with the Clery Act.*

Specific concerns we identified at the six institutions we visited include:

- One institution (Ohlone) did not issue an annual security report in 2008.
- Three institutions (Mt. San Antonio, Ohlone, and Western Health) did not properly notify students and staff of the availability of their crime statistics or security policies. Although Mt. San Antonio and Ohlone each provided crime statistics and policies on their Web sites, they did not distribute the information or notify students and employees of its availability using proper methods. Further, Western Health stated it provided the annual security report to incoming new students and new employees only; it therefore did not inform current students and employees of the report's availability.
- Four institutions (Mt. San Antonio, Ohlone, Western Career-Sacramento, and Western Health) did not disclose or had not addressed all 19 security policies required by the Clery Act. The number of missing or only partially disclosed policies ranged from one at Mt. San Antonio to 12 at Western Career-Sacramento.
- The crime statistics reported by all six institutions were inaccurate to varying degrees. For instance, four institutions (Fresno, Mt. San Antonio, Ohlone, and Western Health) either overreported or risked overreporting crimes because they obtained crime statistics from local law enforcement agencies for areas that are not required under the Clery Act. Further, differences in definitions of some types of crimes contributed to mistakes by two institutions (Mt. San Antonio and Riverside).

Finally, for the 10 institutions we surveyed, we observed that most did not have sufficient processes in place to ensure that they reported accurate crime statistics, and several did not properly distribute an annual security report detailing these statistics. For instance, three institutions stated that they did not request information about off-campus crimes from local or state law enforcement agencies. Additionally, two institutions did not use or were unaware of written guidance available that should be followed when compiling and distributing annual crime statistics and four institutions stated that they have not been provided any formal training regarding Clery Act compliance.

To ensure that they provide students and others with a single source of information related to campus security policies and crime statistics, and to help avoid financial penalties, we recommended that institutions comply with the requirements of the federal Clery Act. Specifically, institutions should:

- Issue annual security reports.
- Properly notify all students and employees of the availability of their annual security reports.
- Include all required policy disclosures in their annual security reports.

To help ensure that they comply with the Clery Act's disclosure requirements, we recommended that institutions:

- Review and adhere to applicable guidance related to the Clery Act, including the handbook and tutorial issued by the U.S. Department of Education's Office of Postsecondary Education (OPE), as well as the Uniform Crime Reporting (UCR) Handbook issued by the Federal Bureau of Investigation.
- Identify and provide sufficient training to those employees responsible for compiling crime statistics and distributing annual security reports.

To ensure that they correctly report all applicable crimes in accordance with the Clery Act, we recommended that institutions request crime information from campus security authorities and local or state law enforcement agencies. Further, they should carefully review all information for errors. Additionally, institutions should develop a clear understanding of the definitions of Clery Act crimes. For example, they could create or obtain a conversion list for crimes with differing definitions under the state Penal Code and the Clery Act, such as battery and aggravated assault.

To ensure that they include only reportable crimes from reportable areas in their annual security reports, we recommended that institutions request specific information from local or state law enforcement agencies. Such information can include addresses and details of specific crimes. If institutions wish to disclose crime statistics for areas outside those required by federal law, they should clearly distinguish those statistics from the ones required under the Clery Act.

Fresno's Action: Corrective action taken.

Fresno stated that it reviewed the reportable areas per Figure 2 in our report and informed the Clovis Police Department of the necessary changes to ensure accurate reporting. Further, Fresno stated that it formed a Clery Review Team comprised of the public information officer, a crime analyst, and a lieutenant to review reported burglaries to help ensure accurate reporting.

Mt. San Antonio's Action: Corrective action taken.

A review of its current annual security report showed that Mt. San Antonio included all required policy disclosures in its report or links to where the information could be found. Also, Mt. San Antonio created a Notification of Availability Statement to comply with the notification requirement of the Clery Act. The campus stated that it provides the Notification of Availability Statement to all students or prospective students as well as employees or prospective employees using various methods such as a "portal system" and campus-wide email, and during Senior Day events. To ensure that crime statistics are reported accurately, Mt. San Antonio developed a conversion chart allowing comparison of Penal Code definitions to UCR handbook definitions of all Clery Act reportable crimes. In addition, Mt. San Antonio purchased Clery Act training reference guides and provided them to members of the Public Safety Department responsible for drafting and distributing the annual security report. Finally, Mt. San Antonio stated it has created a three member team made up of Public Safety Department management staff that will review all incident reports involving a crime.

Ohlone's Action: Partial corrective action taken.

Ohlone stated that it trained employees responsible for compiling the crime statistics to ensure that they properly record and report data. It also stated that it notified the U.S. Department of Education of its 2007 reporting errors and that it corrected those entries. However, although Ohlone included additional required policy disclosures on its Web site, it has yet to produce a single annual security report that includes all required policy disclosures and all required crime statistics. As noted in our report, the OPE's Handbook for Campus Crime Reporting states that the report must be contained within a single document and that if the report is posted on the institution's Web site, it must be clearly identified in a single, separate part of the site. Further, Ohlone did not separate the crime statistics in its recent annual security report by campus, non-campus, and public property as required.

Riverside's Action: Corrective action taken.

Riverside stated that it will continue its process of evaluating the data per the Clery Act requirements, using the crime conversion list provided by the U.C. Office of the President as necessary, and reviewing the report for accuracy. Also, Riverside included definitions of Clery Act reportable crimes on its Web site.

Western Career–Sacramento’s Action: Corrective action taken.

A review of its current annual security report showed that Western Career–Sacramento included all required policy disclosures in its report. Also, Western Career–Sacramento stated that to ensure its crime statistics are correct, it is in regular contact with local law enforcement agencies and it is reviewing the crime statistics to be included in the annual security report.

Western Health’s Action: Partial corrective action taken.

Western Health stated that it notifies students of the annual security report through quarterly email notifications. It also stated that it notifies all students and employees of a link to the report on its Web site. However, Western Health did not mention how it notifies prospective students and employees of the annual security report as required. Further, Western Health stated that it updated its annual security report with the required policy disclosures. Western Health’s Web site, however, did not provide an updated annual security report. When reviewing its Web site in December 2010 we noticed the annual security report is dated fall 2009 and includes the crime statistics for 2008, 2007, and 2006. Western Health should be reporting crime statistics for 2009, 2008, and 2007. Finally, although Western Health stated that it makes a reasonable, good faith effort to obtain crime statistics from local enforcement agencies and is entitled to rely upon those statistics, it will reevaluate whether its current practice of including all the crime statistics provided by local law enforcement agencies is reasonable.

Finding #2: The California Community Colleges Chancellor’s Office (Chancellor’s Office) needs to provide guidance related to the Clery Act.

In light of the nature and extent of the exceptions we noted that relate to the two community colleges we visited and the six we surveyed, we believe that the Chancellor’s Office should take an increased role in helping community colleges improve their compliance with the Clery Act. The chancellor is the chief executive officer appointed by the Board of Governors of the California Community Colleges (board). The Education Code requires the board to advise and assist the governing boards of community college districts on the interpretation and implementation of state and federal laws affecting community colleges. We saw no evidence that the community colleges included in our review had received guidance from the Chancellor’s Office related to complying with the Clery Act. The Chancellor’s Office informed us that although it currently does not provide any guidance to its community colleges on the Clery Act, it would consider it reasonable to provide limited guidance in the future.

To improve compliance among California’s community colleges, we recommended that the Chancellor’s Office provide direction to the institutions regarding the provisions of the Clery Act. This direction should include a discussion of the need to review and adhere to currently available Clery Act guidance such as OPE’s handbook and tutorial, as well as the UCR handbook. The Chancellor’s Office should also inform institutions of training opportunities for those employees responsible for compiling Clery Act crime statistics and distributing annual security reports. Finally, the Chancellor’s Office should inform community colleges of the negative effects of not complying with the Clery Act.

Chancellor’s Office Action: Corrective action taken.

In its six-month response, the Chancellor’s Office stated that it manages a Web site with emergency management resources, where it included a “toolbox” with links to Clery Act guidance such as the OPE handbook and other resources. Further, the Chancellor’s Office stated that it created a peer support network by asking employees responsible for compiling Clery Act crime statistics to be available to each other to compare and suggest best practices. Contact information for the peer support network can be found on the emergency management resources Web site. In addition, the Chancellor’s Office stated that the Director of Emergency Planning and Preparedness (director) maintains a comprehensive email contact list of college employees involved in emergency management. The director used this list to notify the colleges of an upcoming Clery Act training

opportunity. Finally, the Chancellor's Office stated that it plans to offer Clery Act training specific to community colleges in early 2011. One resource available to colleges is the California Colleges and Universities Police Chief's Association, which includes Clery Act training and refresher courses at its annual conference.

California's Charter Schools

Some Are Providing Meals to Students, but a Lack of Reliable Data Prevents the California Department of Education From Determining the Number of Students Eligible for or Participating in Certain Federal Meal Programs

REPORT NUMBER 2010-104, OCTOBER 2010

California Department of Education's response as of January 2011

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) conduct an audit of how the nutritional needs of charter school students are met, so that the Legislature can make future decisions regarding the health and education of California's children.

Finding #1: California Department of Education's (Education) data on the number of schools and their students' eligibility for free and reduced price meals are not sufficiently reliable.

Part II of Education's Consolidated Application for Funding Categorical Aid Programs (ConApp) obtains information from local educational agencies and direct-funded charter schools regarding the number of students eligible for free and reduced-price meals. Specifically, the page titled October 20XX School Level Free and Reduced Price Meals Eligibility Data Collection has three data fields designed to capture the number of students enrolled at the school level, the number of enrolled students who are eligible to receive free meals, and the number of enrolled students who are eligible to receive reduced-price meals. Education instructs the local educational agencies and direct-funded charter schools to include students between the ages of five and 17, to define eligibility as pertaining to students with a household income that meets the income eligibility criteria for receiving free or reduced-price meals in the breakfast or lunch program, and to capture the data on a preselected information day in October of each year. Education uses the information in these three data fields to determine eligibility and funding allocations for a variety of categorical programs, such as the Title I Grants to Local Educational Agencies that benefit children who are failing, or are most at risk of failing, to meet the State's academic standards.

Because the ConApp database is a paperless system, meaning the local educational agencies and direct-funded charter schools enter the data directly into the database, we expected Education to have an internal control process, such as a systematic audit or review of their supporting documentation, for the three data fields that are relevant to our audit. However, Education has not established an internal control process to ensure the accuracy of these three data fields.

Because the data fields are used to determine eligibility and funding allocations for a variety of categorical programs, we contacted staff in Education's School Fiscal Services Division, Categorical Allocation and Audit Resolution Office (fiscal services division),

Audit Highlights . . .

Our review of the California Charter Schools and how the nutritional needs of their students are being met, revealed the following:

- » *The California Department of Education's (Education) databases are not sufficiently reliable to identify the number of charter schools and their students participating in the federal School Breakfast Program (breakfast program) or the National School Lunch Program (lunch program).*
- » *It lacks an internal control process to ensure the accuracy of certain data in its paperless consolidated application database.*
- » *It does not verify certain codes and the site type on the schools' site applications and we found errors.*
- » *It allows school food authorities to combine information for their sites before entering it into the child nutrition database and thus, it cannot differentiate between charter school students and students from traditional schools who participate in the programs.*
- » *Despite Education's data limitations, we identified 815 charter schools active in California. Of these, 451 were participating in the breakfast or lunch program and 151 do not provide meals because instruction is provided outside the classroom—either online or independently.*

continued on next page . . .

» *We surveyed the remaining 213 charter schools, and of the 133 that responded, 46 stated they offer their students an alternative meal program and have varying methods of providing meals and a range of meal costs; 39 stated they do not provide meals to their students mainly because they lack resources such as funding, staff, and a kitchen, cafeteria, or other facility to prepare and deliver meals; and 41 stated that they do in fact participate in the programs.*

which is responsible for, among other things, allocating funds to local educational agencies. An administrator in the fiscal services division stated that the ConApp database is currently the only database Education uses to collect information on the number of students eligible for free and reduced-price meals. The administrator also stated that the fiscal services division does not review the local educational agencies' and direct-funded charter schools' supporting documentation for the three data fields they enter into the ConApp database. The administrator further stated that Education requires the local educational agencies and direct-funded charter schools to certify that the data they submit are accurate and that it must place some confidence in their certifications. Finally, the administrator stated that local educational agencies and direct-funded charter schools are supposed to have documentation to support the information they enter into the ConApp database. Nevertheless, although Education's ConApp database instructions require the local educational agencies and direct-funded charter schools to electronically certify that they have fulfilled the requirements listed on the page, the instructions do not state that they should retain the documentation.

In addition to the concerns we have with the accuracy of the three data fields that are relevant to our audit, we question the completeness of the data for the purpose of our audit. Education requires local educational agencies applying for categorical aid program funds to submit their information into the ConApp database. However, according to an administrator in its data division, there is no state or federal law that gives Education the authority to require charter schools to submit the ConApp. Therefore, complete data on the number of charter schools and their students eligible for free and reduced-price meals may not be available. Our concerns with both the accuracy and completeness of the data in the three data fields prevent us from concluding that the data are sufficiently reliable to reach an audit conclusion related to the number of traditional and charter schools and their students eligible for free and reduced-price meals.

To ensure the reliability of the ConApp database fields related to the number of students enrolled at the school level, the number of those enrolled students who are eligible to receive free meals, and the number of those students who are eligible to receive reduced-price meals, we recommended that Education modify its ConApp database instructions to require local educational agencies and direct-funded charter schools to retain their documentation supporting the three data fields for a specified period of time. We also recommended that Education establish an internal control process such as systematic review of a sample of the local educational agencies' and direct-funded charter schools' supporting documentation.

Education's Action: Partial corrective action taken.

Education modified its ConApp instructions to require local educational agencies and direct-funded charter schools to retain documentation supporting reported data in accordance with state and federal records retention requirements. However, Education has yet to implement an internal control process such as a systematic review of a sample of local educational agencies' and direct-funded

charter schools' supporting documentation. Education stated it may review a sample of the local educational agencies' and direct-funded charter schools' supporting documentation if it is determined to be cost effective.

Finding #2: Education's nutrition services division is unable to accurately identify charter schools participating in the breakfast and lunch programs.

The Child Nutrition Information and Payment System (CNIPS) database administered by Education's Nutrition Services Division (nutrition services) did not identify all charter schools participating in the breakfast and lunch programs as of October 31, 2009. Consequently, the CNIPS database cannot be used to accurately identify all charter school students participating in the programs.

When applying to participate in the breakfast and lunch programs, a school food authority must complete an application for each of its school sites, and in doing so must indicate the type of site—such as a public school district, direct-funded charter school, or locally funded charter school. A direct-funded charter school may apply to participate in the breakfast and lunch programs as its own school food authority. In contrast, a locally funded charter school must apply to participate in the programs through its chartering entity and must be listed as a site on the application of an approved school food authority. In our comparison of Education's Charter Schools Database and its CNIPS database, we identified 115 direct and locally funded charter schools that were participating in the breakfast or lunch program, but were not identified as participating in these programs because the school food authorities had not identified them as charter schools in the CNIPS database. Nutrition services does not review the applications the school food authorities enter into CNIPS to ensure the accuracy of the information. Further, federal law allows sites to be combined for the purposes of participating in the breakfast and lunch programs if the programs are under the same administrative jurisdiction and are on the same campus. Consequently, it is impossible to determine whether a particular charter school is participating in the breakfast and lunch programs, because it is part of a combined site.

Due to the school food authorities' reporting errors and their ability to combine sites on the same campus, we found that the CNIPS database is not sufficiently reliable to determine the exact number of charter schools or their students participating in the breakfast and lunch programs. However, the database was the only source available to us to use to identify schools that provide alternative meal programs to their students as well as schools that do not provide any meals to their students. Therefore, using the Charter Schools Database and the CNIPS database, we determined that 213 charter schools did not appear to be participating in the breakfast or lunch program. To identify any additional reporting errors, we added a question on our survey asking the 213 charter schools to verify Education's information indicating that they were not participating in the breakfast or lunch program.

Although identified as not participating in the breakfast or lunch program in the CNIPS database, 41 of the 133 charter schools responding to our survey stated that they are in fact participating in the programs. Various reasons exist for this discrepancy. We found that 10 of the schools enrolled in the programs after October 2009 and thus were appropriately excluded from the October 31, 2009, list we generated using the CNIPS database. Eighteen of the schools shared a campus with another school and were reported as combined sites, which is allowable under federal law, as described previously.

Nutrition services requires the school food authorities to enter the county district school (CDS) codes for their public school district sites but not for other site types, such as the charter schools. The remaining discrepancies were related to errors in the CDS codes and the site type. Nutrition services performs reviews of a sample of the schools under the jurisdiction of the school food authorities each year, in accordance with federal regulations, to ensure that the requirements of the lunch program are being met. However, nutrition services' review tool does not include a procedure for verifying the accuracy of the CDS code or the site type reflected on the schools' site applications.

To ensure the accuracy of the CNIPS database, we recommended that Education direct the school food authorities to establish internal control procedures to ensure the accuracy of the application information they enter into the CNIPS database. We also recommended that Education direct nutrition services to modify the tool used to review a sample of the school food authorities' schools to include a procedure for verifying the accuracy of the CDS code and site type reflected on the schools' applications.

Education's Action: Pending.

Education stated each CNIPS application includes a "certification" check box that school food authorities must check in order to submit the application. In addition, Education stated it posted a notice on the first screen of the CNIPS advising sponsors of their responsibility to ensure that they report accurate information. Education also stated it will include a clause in the annual instructions to remind school food authorities of their responsibility to ensure that they report accurate CNIPS information and to suggest that a second person review the information for accuracy before the school food authorities submit the information to Education. Further, Education stated it will clarify that charter schools should be identified as such and not as public schools.

Finally, Education stated nutrition services plans to run monthly data matches against the public school directory at both the school food authority and site level to identify and report anomalies. However, Education did not include in its response the internal controls it has in place to ensure the information in the public school directory is accurate, particularly the CDS code and site type that are found in the CNIPS database.

Finding #3: Education's nutrition services cannot differentiate between charter school students and traditional school students participating in the breakfast and lunch programs.

The CNIPS database has data fields for school food authorities to enter information such as the number of students approved for free and reduced-price meals at each site under their jurisdiction. However, Education allows the school food authorities to combine the information for their sites before entering it into the CNIPS database. Thus, the CNIPS database cannot be used to identify the number of charter school students participating in the breakfast and lunch programs.

Each month the school food authorities must submit a Claim for Reimbursement to nutrition services using the CNIPS database. Education's claim reimbursement procedures require the school food authorities to enter a claim for each site under their jurisdiction as well as a consolidated claim. Both claim types are required to include information such as the number of students approved to receive free and reduced-price meals, total enrollment, and the number of free and reduced-price meals served during the month. In addition, prior to submitting the Claim for Reimbursement, school food authorities are required by federal regulations to review the meal count data for each site to ensure that the site claim accurately reports the number of free and reduced-price meals served to eligible students.

However, nutrition services does not require the school food authorities to report monthly claims for each of their sites separately. For example, the Natomas Pacific Pathways Preparatory Schools, which has a charter middle school and high school, participates in the breakfast and lunch programs through the Natomas Unified School District, which acts as a school food authority for both traditional schools and charter schools. The Natomas Unified School District enters into the CNIPS database the combined number of charter school and traditional school students at all of its sites who are approved to receive free and reduced-price meals. Therefore, although Education can report the total number of students, it cannot differentiate between charter school students and traditional school students who are participating in the breakfast or lunch program.

To ensure that it maximizes the benefits from the State's investment in the CNIPS database, we recommended that Education require the school food authorities to submit a monthly Claim for Reimbursement for each site under their jurisdiction in addition to their consolidated claims. We also recommended that Education establish a timeline for the school food authorities to comply with the requirement.

Education's Action: Pending.

Education stated that, effective January 2011 it began requiring site-level reporting for all school districts. Education also stated that some school food authorities do not have the capability to upload large amounts of site-level data without manually keying in the data for each site and that it would continue to work with them to transition to site-level reporting before the current school year ends. In addition, Education stated that, effective January 3, 2011, it began requiring all new school food authorities to use site-level reporting. However, Education was unable to provide documentation to demonstrate it informed the school food authorities of this requirement. Specifically, Education stated it had not yet provided anything in writing to the school food authorities.

California Energy Resources Conservation and Development Commission

It Is Not Fully Prepared to Award and Monitor Millions in Recovery Act Funds and Lacks Controls to Prevent Their Misuse

LETTER REPORT NUMBER 2009-119.1, DECEMBER 2009

California Energy Resources Conservation and Development Commission's response as of December 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct a review of the preparedness of the California Energy Resources Conservation and Development Commission (Energy Commission) to receive and administer federal American Recovery and Reinvestment Act of 2009 (Recovery Act) funds awarded by the U.S. Department of Energy for its State Energy Program (Energy Program). The federal government enacted the Recovery Act for purposes that include preserving and creating jobs; promoting economic recovery; assisting those most affected by the recession; investing in transportation, environmental protection, and other infrastructure; and stabilizing state and local government budgets.

Finding #1: Because the Energy Commission is not yet prepared to administer Recovery Act funds, the State is at risk of losing millions.

As of November 16, 2009, the Energy Commission had entered into contracts totaling only \$40 million despite having access to \$113 million of the \$226 million in Recovery Act funds it had been awarded for the Energy Program—the Energy Commission is not authorized to spend the remaining \$113 million until January 1, 2010. Although these funds have been available to the Energy Commission since July 2009, it has approved the use of only \$51 million for Energy Program services, and of this amount has entered into two contracts totaling \$40 million with subrecipients for only two of the eight subprograms it intends to finance with Recovery Act funds. The funds from these two contracts, which were awarded to the Department of General Services and the Employment Development Department, will be used to issue loans, grants, or contracts to state departments and agencies to retrofit state buildings to make them more energy efficient and to provide job skills training for workers in the areas of energy efficiency, water efficiency, and renewable energy. However, none of the \$40 million has been spent. Therefore, except for the \$71,000 that the Energy Commission has used for its own administrative costs, no Recovery Act funds have been infused into California's economy. Additionally, the Energy Commission has been slow in implementing the internal controls needed to administer the Energy Program. Furthermore, based on the time frames provided by the Energy Commission, the Recovery Act funds will likely not be awarded to subrecipients until at least April 2010 to July 2010.

The Energy Commission still needs to complete several critical tasks before it can begin implementing the Energy Program and award Recovery Act funds to subrecipients to be spent for various projects. For example, the Energy Commission has not completed guidelines for subrecipients to follow when providing services under some of the new subprograms, or completed and released solicitations to potential subrecipients who will provide program services.

If the Energy Commission continues its slow pace in implementing the necessary processes to obligate the Recovery Act funds, the State is at risk of either having the funds redirected by the U.S. Department of Energy or awarding them in a compressed period of time without first establishing an adequate system of internal controls, which increases the risk that Recovery Act funds will be misused.

According to the Energy Commission's administrator for the Economic Recovery Program (program administrator), several factors have contributed to the delay in spending the Energy Program's Recovery Act funds. He stated that seven of the eight subprograms being funded by the Recovery Act funds

are new, and therefore it was necessary to develop program guidelines. He indicated that the Energy Commission had to wait until a bill was signed on July 28, 2009, giving it the statutory authority to develop and implement the guidelines and to spend the federal Recovery Act funds.

We recommended that the Energy Commission promptly solicit proposals from entities that could provide the services allowable under the Recovery Act and execute contracts, grants, or loan agreements with these entities.

Energy Commission's Action: Partial corrective action taken.

The Energy Commission reported it has made significant progress implementing newly created programs and awarding Recovery Act funds. It stated that it has allocated its Energy Program funds in the following manner:

- \$25 million to the Energy Efficient State Property Revolving Loan Program managed by the Department of General Services. The Energy Commission stated that as of December 21, 2010, retrofit work has begun at 62 state-owned facilities and five parking lots and more than \$6.5 million has been disbursed by the Department of General Services.
- \$25 million to the One Percent Energy Efficiency Loans program. The Energy Commission reported that initially the program was fully committed to 25 loans, however, four of the original loan recipients cancelled their projects and the Energy Commission is working to find replacements projects. It reported that one of the original projects is completed and the borrower will begin repayment in December 2010.
- \$20 million to the Clean Energy Workforce Training Program managed by the Employment Development Department (EDD) and the Employment Training Panel (ETP). The Energy Commission asserts that as of October 31, 2010, EDD had awarded \$14.5 million in grants to 28 regional partnerships and trained 2,909 people, and ETP had awarded \$4.5 million to 14 entities and trained 482 people.
- \$30.6 million to the Clean Energy Business Financing Program, administered by the California Business, Transportation and Housing Agency under a \$1.6 million interagency agreement. The Energy Commission reported that six loans have been approved, totaling \$23,999,000. The first loan for \$5 million was executed on December 3, 2010, with five more anticipated to be executed by January 28, 2011. A seventh loan may be awarded through a forthcoming notice of proposed awards.
- \$79.8 million to the Energy Efficiency Program. The Energy Commission states that it has awarded seven contracts, and has approved and executed six of them.
- \$33.2 million to the Energy Upgrade California program. The Energy Commission reported that on October 21, 2010, it executed an agreement with the Local Government Commission to support the program. The Energy Commission describes the program as the statewide energy and water efficiency and renewable energy generation retrofit program for single and multiple family residential and commercial buildings. The program will provide a web portal that will be a one-stop energy upgrade resource center for building upgrades, financing and incentives, finding a qualified contractor, workforce training, and home energy ratings. Implementation of the web portal is planned for three phases and the Energy Commission anticipates implementation will begin in January 2011 and last through December 2011.
- \$12.4 million to the Energy Commission to administer the Recovery Act funds.

Finding #2: The Energy Commission's current control structure is not sufficient to ensure proper use of Recovery Act funds.

The Energy Commission has not yet established the internal control structure it needs to adequately address the risks of administering Recovery Act funds. The Energy Commission is in the process of seeking help in establishing such a control structure, but as of November 16, 2009, had not issued a request for proposal (RFP) from potential contractors. The Energy Commission's contract manager estimates that it takes three to five months from the time the commission releases an RFP until the contract is executed. Added to the three to five months estimated to execute a contract will be whatever time the contractor needs to render the services it is hired to perform. Further delay increases the risk of delays in implementing the subprograms, possibly inhibiting the Energy Commission's ability to obligate Recovery Act funds before the September 30 deadline. Alternatively, the Energy Commission might try to award the funds to subrecipients without first establishing an adequate system of internal controls, increasing the possibility that Recovery Act funds will not be used appropriately and heightening the risk of fraud, waste, and abuse.

Our assessment of the Energy Commission's preparedness to administer the Recovery Act funds it received for the Energy Program showed that in some areas it appeared to be ready or almost ready, but we identified several areas in which the Energy Commission's controls are not adequate. For example, despite its assertions that its present internal control structure will enable it to properly administer the Recovery Act funds, the Energy Commission could not provide documentation to demonstrate that its existing controls are sufficient to mitigate and minimize the risks of fraud, waste, and abuse. In addition, the Energy Commission could not show it has a process in place to effectively monitor subrecipients' use of the Recovery Act funds and noted that it did not have reporting mechanisms in place to collect and review the data required to meet the Recovery Act transparency requirements.

We recommended that the Energy Commission, as expeditiously as possible, take the necessary steps to implement a system of internal controls adequate to provide assurance that Recovery Act funds will be used to meet the purposes of the Recovery Act. These controls should include those necessary to mitigate the potential for fraud, waste, and abuse. Such steps should include quickly performing the actions already planned, such as assessing the Energy Commission's controls and the capacity of its existing resources and systems, and promptly implementing all needed improvements.

Energy Commission's Action: Partial corrective action taken.

The Energy Commission reported that it has been addressing our recommendation through two contracting efforts. The first contract is for an audit support services contract to provide a commission-wide review of processes and procedures, including recommendations in areas where controls can be improved or strengthened. The contractor will also conduct risk assessments and audits of funding recipients. The second contract is for monitoring, evaluating, verifying, and reporting services to provide programmatic and performance reviews. The contractor will also validate data collected from or reported by funding recipients.

According to the commission, since the execution of the first contract on May 13, 2010, the contractor has completed a preliminary assessment of the Energy Commission's operations and expects to complete the final assessment in December 2010. The commission reports that a training series for commission project managers covering financial accountability is underway, and a second training module, scheduled for January 2011, will cover on-site monitoring. Further, a risk analysis tool has been sent to subrecipients so its controls can be assessed. This will allow the contractor to determine higher risk entities so it can focus their early auditing efforts. The commission believes that these activities taken as a whole will serve to further protect against fraud, waste, and abuse.

According to the commission, its second contract is for monitoring, evaluating, verifying, and reporting services. Since the commission executed the contract on April 28, 2010, the contractor has developed a database of planned projects and conducted some desk reviews and field visits to review installations. In addition, the contractor is developing a checklist tool to assist contract managers when they conduct on-site verification visits. The commission further reports that the contractor is developing monitoring and evaluation plans for projects funded with federal stimulus funds, and, as guided by the U.S. Department of Energy, will focus on job creation and retention, energy and demand savings, renewable energy capacity and generation, and carbon emission reductions.

High Risk Update—State Overtime Costs

A Variety of Factors Resulted in Significant Overtime Costs at the Departments of Mental Health and Developmental Services

REPORT NUMBER 2009-608, OCTOBER 2009

Responses from the Departments of Mental Health and Developmental Services as of October 2010

California Government Code, Section 8546.5, authorizes the Bureau of State Audits (bureau) to establish a process for identifying state agencies or issues that are at high risk for potential waste, fraud, abuse, and mismanagement or that have major challenges associated with their economy, efficiency, or effectiveness.

This current report, which addresses the significant amount of overtime compensation the State pays to its employees, is part of the bureau's continuing efforts to examine issues that will aid decision makers in finding areas of government that can be modified to help improve efficiency and effectiveness.

We focused our initial review of overtime costs on five state entities: the California Highway Patrol, the Department of Forestry and Fire Protection (Cal Fire), the Department of Veterans Affairs, the Department of Mental Health (Mental Health), and the Department of Developmental Services (Developmental Services). From these five entities, we further studied three—Cal Fire, Mental Health, and Developmental Services—because each had numerous individuals in one job classification code earning more than \$150,000 in overtime pay, which represented 50 percent of their total earnings during the five fiscal-year period we chose for review. We eventually narrowed our focus to two classifications of jobs—registered nurses-safety classification (nurses) at Napa State Hospital and psychiatric technician assistants at Sonoma Developmental Center—because employees in these classifications at each of the facilities earned the majority of overtime pay.

Finding #1: Employees working excessive amounts of overtime may compromise health and safety.

The focus on voluntary rather than mandatory overtime at Mental Health and Developmental Services, as required by their respective bargaining unit agreements (agreements), has resulted in a relatively small group of employees working many hours of overtime, while other individuals are working little or no overtime. For example, in fiscal year 2007–08, Mental Health's Napa State Hospital (Napa) paid \$9.6 million in overtime wages to its 489 nurses. However, \$1.9 million—20 percent of its total overtime costs—was paid to only 19 (4 percent) of these nurses. Similarly, in fiscal year 2007–08, Developmental Services' Sonoma Developmental Center (Sonoma) paid \$1.1 million—25 percent of the total overtime paid to

Review Highlights . . .

Our review of the State's overtime costs revealed the following:

- » *Employees at five entities, excluding the Department of Corrections and Rehabilitation, were paid at least \$1.3 billion of the more than \$2.1 billion in overtime pay during fiscal years 2003–04 through 2007–08.*
- » *Significant amounts of overtime were paid to a relatively small number of individuals in two job classifications at the departments of Mental Health (Mental Health) and Developmental Services (Developmental Services). For instance, in fiscal year 2007–08, at Mental Health's Napa State Hospital (Napa), 19, or 4 percent, of the 489 nurses in the registered nurse– safety classification averaged \$78,000 in regular pay and \$99,000 in overtime compensation.*
- » *According to various studies, individuals working excessive amounts of overtime may compromise their own and their patients' or consumers' health and safety.*
- » *One reason for the significant amounts of overtime at Napa and Developmental Services' Sonoma Developmental Center (Sonoma) is fluctuations in staffing ratios caused by the need to provide certain patients or consumers with one-on-one care.*

continued on next page . . .

- » *Pursuant to their respective bargaining unit agreements (agreements), both Mental Health and Developmental Services allowed leave hours to be counted as time worked in calculating overtime. For instance, during our review of overtime at Sonoma, we identified one employee who was paid for 160 hours of overtime in one month, even though that same employee took 167 hours of leave during that same month.*
- » *State law was changed in February 2009 to no longer allow leave to be counted in computing overtime for the two job classifications we tested. However, this same state law indicates that it may be superseded by agreements ratified subsequent to the law's effective date that once again could contain provisions that allow employees' leave time to be counted as time worked in computing overtime.*

psychiatric technician assistants—to only 27 (6 percent) of its 430 psychiatric technician assistants. Sonoma's psychiatric technician assistants were the largest overtime earners at Developmental Services.

Some nurses at Napa and psychiatric technician assistants at Sonoma work substantial amounts of overtime to meet internal staffing requirements, even though the vacancy rates were relatively low for these job classifications at the respective facilities in fiscal year 2007–08. We reviewed the payroll records for 10 nurses at Napa and 10 psychiatric technician assistants at Sonoma who earned significant amounts of overtime pay in fiscal year 2007–08 and found that these individuals worked an average of 36 hours of overtime each week. These hours were usually in addition to the employee's regular 40-hour workweek. In fact, we identified a nurse employed at Napa who earned \$733,000, or 66 percent of his total earnings, in overtime during fiscal years 2003–04 through 2007–08. This amounts to about 51 overtime hours each week during the five-year period.

Based on our review, 38 nurses at Napa and 65 psychiatric technician assistants at Sonoma worked, on average, at least 20 hours of overtime each week during fiscal year 2007–08. At the same time, 451 nurses at Napa (92 percent) and 365 psychiatric technician assistants at Sonoma (85 percent) worked fewer than 20 hours of overtime each week, on average. If the overtime had been distributed equally among all nurses and psychiatric technician assistants, they would have worked only six and eight hours of overtime per week on average, respectively. This closely compares with the results of a 2004 National Sample Survey of Registered Nurses conducted by the U.S. Department of Health and Human Services that found that the typical full-time registered nurse works an average of 7.5 hours of overtime each week.

Although nothing came to our attention indicating that the overtime at Napa and Sonoma affected the quality of care provided to patients or consumers, an August 2004 study published in *Health Affairs* entitled "The Working Hours of Hospital Nurses and Patient Safety" suggested that working substantial amounts of overtime could increase the risk of medical errors. For example, the study found that when a nurse worked a shift lasting more than 12.5 hours, the incidence of medical errors tripled. The study also found that the risk of errors increased when a nurse worked more than 40 or 50 hours in a week. Another study published in the *American Journal of Critical Care* entitled "Effects of Critical Care Nurses' Work Hours on Vigilance and Patients' Safety Issues" in 2006 indicated that these results could be applied to nurses and to psychiatric technician assistants. This study also indicated that experience in other industries suggests that accident rates increase when employees work 12 hours or more in a day.

Finally, a 2004 study by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, entitled "Overtime and Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviors" indicated that long hours also can increase the health and safety risks to the employee. Specifically, the report cited many studies in which overtime was associated with poorer perceived general health, more illnesses, increased injury rates, and increased mortality. Injuries and poor performance were particularly noted on

long shifts and when employees worked 12-hour shifts combined with working more than 40 hours a week. Thus, nurses and psychiatric technician assistants who work long shifts or more than 40 hours a week could place patients or consumers—and the employees themselves—at greater health and safety risk. Despite the increased risks associated with working long hours, our testing showed that during December 2007 and January 2008, nine of the 10 Napa nurses we reviewed regularly worked 12 or more hours in a day and on average worked more than 34 hours of overtime per week. Similarly, eight of the 10 psychiatric technician assistants we reviewed at Sonoma regularly worked 12 or more hours in a day and on average worked more than 35 hours of overtime per week.

To make certain that patients and consumers are provided with an adequate level of care, and that the health and safety of the employees, patients, and consumers are protected, we recommended that Mental Health and Developmental Services encourage Department of Personnel Administration (Personnel Administration)—which is responsible for negotiating labor agreements with employee bargaining units—to include provisions in future collective agreements to cap the number of voluntary overtime hours an employee can work and/or to require the departments to ensure that overtime hours are distributed more evenly among staff. One solution would be to give volunteers who have worked the least amount of overtime preference over volunteers who already have worked significant amounts of overtime.

Mental Health's Action: Corrective action taken.

Mental Health stated it raised the issue of having staff with the least amount of overtime receive preference over the employees who have worked significant amounts of overtime with Personnel Administration. In spite of that, Personnel Administration reached a tentative agreement as of October 7, 2010, with employee bargaining unit 17 and an agreement dated August 19, 2010, with employee bargaining unit 18, without a provision to have staff with the least amount of overtime receive preference over the employees who have worked significant amounts of overtime.

Developmental Services' Action: Corrective action taken.

Developmental Services states that the decision-making process for staffing and supervision continues to be influenced by the health and safety of consumers and retaining the facilities' certification with the Federal Centers for Medicare and Medicaid Services. However, Developmental Services stated it informed Personnel Administration of the bureau's recommendation. However, as discussed in Mental Health's response above, Personnel Administration reached agreements with the bargaining units, without the inclusion of having staff with the least amount of overtime receive preference over the employees who have worked significant amounts of overtime.

Finding #2: Several factors cause the need for significant amounts of overtime.

The annual authorized positions agreed to by state hospitals, Mental Health, and the Department of Finance (Finance) do not take into account fluctuations in patient needs, resulting in the need for overtime to meet the monthly, weekly, and sometimes daily changes in staffing required to provide proper care to patients. With assistance from its respective facilities, Mental Health determines the number of positions needed for the coming year based on the department's estimated patient needs and population. However, the estimate of positions needed does not take into consideration the need for certain patients to receive more intensive care, such as one-on-one observation. Therefore, mental health hospitals prepare internal staffing ratios in order to meet the fluctuating needs of their patients. These internal staffing ratios are based on the average number of patients each level-of-care staff member will monitor, which then dictates the ratios needed. In some of the residential units at Napa, the internal staffing ratios are double the minimum staffing ratios established by the Department of Public Health (Public Health). Additionally, some of Napa's internal staffing ratios include a fixed number of staff to meet the need for one-on-one observation. However, because the Public Health's annual authorized positions are generally insufficient to meet actual staffing needs, the facilities use overtime to meet their internal staffing ratios for level-of-care staff.

According to the assistant deputy director of Long-Term Care Services at Mental Health, the impact of federal law changes such as the Family Medical Leave Act (family leave), Enhanced Industrial Disability Leave (enhanced leave), and additional negotiated mandatory training and/or educational leave days has led to an overwhelming use of overtime to sustain the required staffing ratios in the state hospitals. When the current relief factor was established, it took into account a change in the number of holidays and the current average use of sick time and educational leave, among other things. All these issues were before implementation of family leave, enhanced leave, and the current consent judgment requirements, leaving a very outdated relief factor that results in overtime to cover for these shortages. As an example, the enhancement plan (the implementation tool for the consent judgment) requires significant hours of training regarding new processes and training to implement a new electronic clinical data tracking system. It also requires computer use and basic computer skills from job classifications that have not historically required these training hours.

As recommended by the deputy director of Public Health's Center for Health Care Quality, and as required by law, staffing for patients in general acute care hospitals is based on the patients' needs. Evaluations performed by trained experts at Napa may determine that patients require a higher level of care than can be provided with the minimum staffing ratios established by Public Health. For example, at Napa, the nurse administrator, the clinical administrator, and the program's management staff determine the level-of-care staffing needs for each residential unit. Based on this assessment of patients' level-of-care needs within these units, Napa develops its internal staffing ratios, which, as previously noted, may exceed the legally mandated minimum staffing requirements. For instance, one program at Napa includes eight residential units with three levels of care: acute psychiatric, skilled nursing, and intermediate care. This program houses individuals with more serious physical or complicated diagnostic conditions and multiple medical as well as psychiatric problems that require a higher level of observation from staff.

Because of recent furloughs and potential layoffs of level-of-care staff, overtime at Mental Health most likely will increase, adding to the State's overtime costs. Our testing was performed for fiscal year 2007-08, a year in which Mental Health had high overtime costs. In December 2008, in an attempt to reduce the State's spending, the governor issued an executive order directing Personnel Administration to implement a furlough plan. This plan required most state employees to take two unpaid days off each month, beginning in February 2009. Moreover, in July 2009, Executive Order S-13-09 was implemented, adding a third unpaid furlough day each month. For facilities such as Napa that provide services 24 hours a day, seven days a week, the employees accrue their unpaid furlough days and use them when feasible. Additionally, Mental Health has required its facilities to provide layoff notices to staff. Napa needs to ensure that an adequate number of licensed individuals are available to meet mandated and/or required internal staffing needs. Napa already relies on overtime to meet fluctuations in staffing ratios, and the impact on staffing levels due to furloughs and layoffs likely will result in additional overtime.

We also found that Napa occasionally overstaffed some of its residential units, having more level-of-care staff on duty than necessary to meet the internal staffing ratio. Specifically, within Program 4, Napa was overstaffed on six of the 10 days we tested during fiscal year 2007-08. According to Napa's central staffing officer, the overstaffing was due to the designated staffing units not accurately reporting patient and staffing needs to the central staffing office. However, based on discussions with Finance's Office of State Audits and Evaluations and the results of its audit of Mental Health's budget dated November 2008, the Legislative Analyst's Office has suggested that an independent consultant evaluate workload distribution, staffing ratios, and overtime at Mental Health. Among other things, Finance's audit concluded that the current staffing model might not reflect the true hospital workload and the hospital may not be using staff efficiently. Although no time frame has been set for its commencement, if the evaluation concludes that current staffing ratios are unwarranted or that staff are not being used efficiently, an updated staffing model that reflects the accurate hospital workload could offset some of the increased overtime costs.

The assistant deputy director of Long-Term Care Services at Mental Health agrees with the Legislative Analyst's Office recommendation to hire an independent consultant to perform a workload staffing study. Mental Health feels the staffing study will allow for changes to the existing ratios to better reflect the reality of staff workload. However, Mental Health would like to hold off on the study until the hospitals have reached and sustained full compliance with the consent judgment, which is expected in November 2011, in order to allow staff to focus their full attention on their compliance efforts.

To ensure that all overtime hours worked are necessary, and to protect the health and safety of its employees and patients, we recommended that Mental Health implement the Legislative Analyst's Office's suggestion of hiring an independent consultant to identify improvements necessary to the current staffing model of Mental Health's hospitals. The staffing levels at Mental Health may need to be adjusted, depending on the outcome of the consultant's evaluation.

Mental Health's Action: Pending.

According to Mental Health, it entered into a consent judgment with the United States Department of Justice under the Civil Rights of Institutionalized Persons Act on May 2, 2006. Since that time, Mental Health has worked diligently to implement new staffing standards included in the agreement. Mental Health plans to reevaluate staffing needs by requesting an augmentation to the state hospitals appropriation to fund the study in fiscal year 2011-12.

Finding #3: Agreements allowed leave time taken to count as time worked in calculating overtime payments.

Overtime provisions contained in the agreements for nurses and psychiatric technician assistants, bargaining units 17 and 18, respectively, contributed to the State's substantial overtime costs during fiscal years 2003-04 through 2007-08. Specifically, with the exception of sick leave for psychiatric technician assistants, the overtime provisions for bargaining unit 18 allowed employees to include hours they took as paid leave when computing overtime compensation. A similar provision was included in bargaining unit 17's agreement, but includes sick leave. Thus, for example, a nurse could use eight leave hours, including sick leave, to cover his or her regular shift, work an alternate eight-hour overtime shift during the same day, and ultimately earn pay for 20 hours in the same day (eight hours times the 1.5 overtime pay rate plus eight hours of paid leave). Therefore, staff covered by these agreements were paid at the overtime rate even though they may not actually have worked more than 40 hours during the week or more than eight hours in one day.

A new state law overrides these overtime provisions in current agreements and will reduce the State's overtime costs. California Government Code, Section 19844.1, which became effective in February 2009, provides that periods of paid or unpaid leave shall not be considered as time worked for the purpose of computing overtime compensation. Therefore, employees covered by the agreements for bargaining units 17 and 18 are paid overtime only if their actual hours worked cause them to exceed 40 hours per week or eight hours per day. However, language in Section 19844.1 indicates that agreements ratified after the effective date of the section may contain provisions that require certain entities, including Mental Health and Developmental Services, to again include periods of paid and unpaid leave as time worked in the calculation of overtime.

To ensure that the State is maximizing the use of funds spent on patients and consumers, we recommended that Mental Health and Developmental Services encourage Personnel Administration to resist the inclusion of provisions in agreements that permit any type of leave to be counted as time worked for the purpose of computing overtime compensation.

Mental Health's Action: Corrective action taken.

Mental Health stated it raised the issue of the methodology for computing overtime with Personnel Administration. Personnel Administration reached a tentative agreement as of October 7, 2010, with employee bargaining unit 17 and an agreement dated August 19, 2010, with employee bargaining unit 18. Under these agreements, the calculation of overtime will generally be based on the California Government Code, Section 19844.1 that states personal leave, sick leave, annual leave, vacation, bereavement leave, holiday leave, and any other paid or unpaid leave, shall not be considered as time worked by the employee for the purposes of computing overtime. However, when an employee is mandated to work overtime during a week with approved leave, other than sick leave, the employee will earn overtime pay.

Developmental Services' Action: Corrective action taken.

As discussed in Mental Health's response above, Personnel Administration reached agreements with the bargaining units and the calculation of overtime will be based on the California Government Code, Section 19844.1 with the one exception noted above.

Finding #4: Weak internal controls allowed over- and underpayments of overtime.

Our testing identified weaknesses in the internal controls at both Napa and Sonoma. Specifically, we found instances in which employees were overpaid or underpaid for overtime worked, instances when timekeeping and attendance records were not completed properly, and instances in which we were unable to locate timekeeping records at Sonoma.

During our review of 10 employees at Napa for December 2007 and January 2008, we found several discrepancies between attendance records and the payroll records. These discrepancies caused several over- and underpayments of overtime made to employees at Napa. Our analysis revealed five such errors in the two months we tested. For example, payroll staff at Napa erroneously omitted from the attendance records used to calculate overtime payments the overtime hours worked by and supported in the timekeeping records, causing over- and underpayments. Napa's human resources manager stated that these types of over- and underpayments were due to clerical error.

Finance identified similar issues at Napa during a review of internal controls conducted from July 2007 through December 2007. Specifically, the report cited inadequate personnel practices that do not provide reasonable assurance that attendance records are accurate and that payroll is proper, especially regarding overtime. As a result of its review, Finance made several recommendations to Mental Health. Among these was that Napa develop adequate timekeeping procedures to ensure that attendance records are adequately prepared, certified, and retained for audits. Although Napa has written timekeeping procedures, they were not always followed. For example, although Napa requires that the shift lead, unit supervisor, and nursing coordinator certify the accuracy of attendance sign-in sheets by signing them, we identified instances in which not all the authorizing signatures were present.

Finance also recommended that Napa improve its overtime reviews and preapprovals and include a second-level review outside the unit of the individual working overtime, and that these reviews be documented adequately in the personnel records. According to Napa's corrective action plan, as of April 1, 2008, overtime must be pre-approved by Napa's Central Staffing Office. However, for the five days we tested after this date, we identified four days when the tested unit did not obtain the required preapproval.

In addition, Napa's unit sign-in sheets and authorizations for extra hours were not always completed properly. For example, we noted instances in which the required authorizations were missing, the reasons for the overtime were not provided, and the number of overtime hours worked was not included. Finally, Finance recommended that Napa conduct random overtime auditing to help reduce fraud and abuse. Mental Health's October 29, 2008, corrective action plan stated that as of April 2008

Napa had conducted random overtime audits. However, Napa's human resources manager contradicted this assertion, stating that it has not performed any random overtime audits because of the combination of furloughs and the current overtime investigations of some employees that are taking significant staffing resources.

We also found several discrepancies at Sonoma between attendance records and the payroll records that caused over- and underpayments during December 2007 and January 2008, for the 10 employees reviewed. Our analysis revealed six such errors in the two months we tested. For example, some of the overpayments at Sonoma occurred because sick leave was counted as time worked for the purpose of calculating overtime payments, even though this practice is prohibited under the terms of the bargaining unit agreement. Sonoma's human resources manager attributed the mistakes to human error because personnel staff must enter information for hundreds of staff members into numerous complicated systems.

Sonoma uses overtime slips as its timekeeping records to approve and support its employees' overtime hours worked. We tested two employees' overtime slips for December 2007 and January 2008. Sonoma was able to locate only 96 of the 100 overtime slips it should have had on file for this period.

To improve internal controls over payroll processing, we recommended that:

- Napa and Sonoma research the overtime over- and underpayments we noted and make whatever payments or collections necessary to compensate their employees accurately for overtime earned.
- Napa and Sonoma review, revise, and follow procedures to ensure that their overtime documentation is completed properly; that timekeeping staff are aware of the overtime provisions of the various laws, regulations, and bargaining unit agreements; and that staff who work overtime are paid the correct amount.
- Mental Health fully implement Finance's recommendations cited in its report on Mental Health's internal controls dated December 2007.

Sonoma's Action: Corrective action taken.

According to Sonoma, the following have been implemented related to our recommendations:

- Sonoma worked with Developmental Services headquarters to reconcile the payment errors identified during the bureau's review and processed by the State Controller's Office.
- Sonoma has developed an ongoing process to audit the compensation transactions in an effort to avoid payment errors in the future. In addition, it provided training to all its human resources transaction personnel and timekeepers of applicable laws, regulations, contracts, rules, and policies. It provided training in February 2010 to all its managers and supervisors responsible for approving employees' time.

Napa's Action: Corrective action taken.

According to Napa, the following have been implemented related to our recommendations:

- All necessary salary adjustments that were identified during the bureau's review have been made and processed by the State Controller's Office.
- In October and November 2009 it informed its management team to carefully review timekeeping documents since their signatures on these documents indicate they have reviewed and approved the time. In addition, Napa issued an overtime reporting expectations memo in October 2010. This memo covers overtime expectations of staff, supervisors, and program directors/department heads.

Mental Health's Action: Corrective action taken.

Mental Health stated that Napa implemented a mandatory pre-approval from the Central Staffing Office prior to working overtime. Also, a new overtime reporting form, and a pre- and post-approval process have been developed, prior to any overtime payment being issued by Personnel Administration.

Napa stated its Central Staffing Office continues to develop hospital-wide policy and procedures to define responsibility and accountability for personnel practices for overtime.

In January 2010 Napa stated it performed an audit of its November 2008 unit sign-in sheets where a report was provided to its executive policy team, which identified weaknesses and recommendations to ensure that overtime documentation is completed properly and staff who work overtime are paid the correct amount. Also, Napa affirmed it implemented a process for conducting random overtime audits and performed overtime audits in January 2010 and October 2010. These random audits are intended to reduce the instances of fraud and abuse.

California Emergency Management Agency

Despite Receiving \$136 Million in Recovery Act Funds in June 2009, It Only Recently Began Awarding These Funds and Lacks Plans to Monitor Their Use

LETTER REPORT NUMBER 2009-119.4, MAY 2010

California Emergency Management Agency's response as of December 2010

The Joint Legislative Audit Committee requested that the Bureau of State Audits conduct a review of California's preparedness to receive and administer American Recovery and Reinvestment Act of 2009 (Recovery Act) funds. Using selection criteria contained in the audit request, we chose to review the preparedness of the California Emergency Management Agency (Cal EMA) to receive and administer the Recovery Act funds provided by the U.S. Department of Justice for its Edward Byrne Memorial Justice Assistance Grant Program (JAG Program). On February 17, 2009, the federal government enacted the Recovery Act to preserve and create jobs; promote economic recovery; assist those most affected by the recession; invest in transportation, environmental protection, and other infrastructure; and stabilize state and local government budgets. The Recovery Act also states that authorized funds should be spent to achieve its purposes as quickly as possible, consistent with prudent management. Based on our analysis, we believe that Cal EMA is moderately prepared to administer its Recovery Act JAG Program award.

Finding #1: Cal EMA only recently began to award subgrants.

Cal EMA only recently began awarding Recovery Act JAG Program funds, about 12 months after the passage of the Recovery Act and eight months after the U.S. Department of Justice awarded it \$136 million. As of February 22, 2010, Cal EMA had signed agreements for, and thereby awarded, only four subgrants, totaling almost \$4 million, or about 3 percent of its Recovery Act JAG Program grant. According to Cal EMA's records, by March 11, 2010—approximately three weeks later—Cal EMA had awarded additional subgrants, totaling \$31 million, to 52 more subrecipients for a total of \$35 million, or 26 percent of its Recovery Act grant. Under the Recovery Act JAG Program, payments are made to subrecipients to reimburse them for costs of providing program services. Cal EMA reported that it has not made any payments to these subrecipients but, according to its accounting records, has spent \$104,000 in Recovery Act JAG Program funds for administrative costs.

According to the director of Grants Management, the awards of Recovery Act JAG Program subgrants have moved at a good pace. The director stated that the Recovery Act requires Cal EMA to create multiple new programs. He further stated that Cal EMA gave priority to those new programs, especially to the two largest ones, which comprise 66 percent of its total Recovery Act JAG Program funds. Additionally, the director indicated that it released requests for applications (RFAs) for these two largest programs to potential subrecipients in October and November 2009, and it released RFAs for all but one of the remaining programs by February 2010. He also stated that Cal EMA granted multiple extensions to potential subrecipients for submitting their applications for the two largest new programs.

During a January 28, 2010, Senate Budget and Fiscal Review Committee hearing, the director of Grants Management testified on the status of the Recovery Act JAG Program subgrants. According to the director, his goal was to have all subgrants, except those related to one program, approved and signed by April 15, 2010. He also indicated that Cal EMA would not begin to disburse Recovery Act JAG Program funds until the third or fourth quarter of fiscal year 2009–10 and that significant disbursements most likely would not begin until the second and third quarters of fiscal year 2010–11. As a result, these substantial disbursements will not occur until about 1.5 years after the passage of the Recovery Act and more than one year after Cal EMA received the Recovery Act JAG Program grant.

We recommended that, as soon as possible, Cal EMA execute subgrant agreements with subrecipients so California can more fully realize the benefits of the Recovery Act funds.

Cal EMA's Action: Corrective action taken.

Cal EMA reported that as of June 30, 2010, it had executed all 229 JAG Program agreements supported by Recovery Act funds. Cal EMA indicated that it distributed Recovery Act funds as follows: \$33.4 million for law enforcement programs, \$10.4 million for prosecution and court programs, \$150,000 for prevention and education programs, \$44.6 million for corrections and community corrections to reduce the likelihood of recidivism, \$44.5 million for drug treatment and enforcement programs, \$1.5 million for crime victim and witness programs, and \$1.1 million for administrative costs.

Finding #2: Cal EMA needs to improve its monitoring of subrecipients' use of Recovery Act JAG Program funds.

Under the terms of its grant agreement with the U.S. Department of Justice, Cal EMA must monitor Recovery Act JAG Program funds in accordance with, among other governing requirements, all federal statutes, regulations, and the U.S. Office of Management and Budget (OMB) Circular A 133, to provide reasonable assurance that subrecipients comply with specific program requirements. In addition, the grant agreement states that, upon request, Cal EMA will provide documentation of its policies and procedures for meeting the monitoring requirements. However, although it provided monitoring planning documents that were general in nature, it was unable to provide policies and procedures or plans that would result in the required monitoring specific to Recovery Act JAG Program subrecipients.

To ensure that it meets the monitoring requirements of the Recovery Act JAG Program, we recommended that Cal EMA plan its monitoring activities to provide reasonable assurance that its subrecipients administer federal awards in accordance with laws, regulations, and the provisions of contracts or agreements.

Cal EMA's Action: Corrective action taken.

Cal EMA provided a monitoring plan for all its grant subrecipients that involves a risk-based approach that contains the following four key components: subrecipients are monitored during the term of the grant award; monitoring efforts focus on the areas of the most significant risk to the agency; all findings are addressed through appropriate corrective action; and ongoing financial and administrative training and technical assistance is provided to subrecipients. According to its monitoring plan, specific to Recovery Act funds, Cal EMA randomly selects subrecipients to receive extended scope reviews through the risk assessment process. Additionally, the plan indicates that all subrecipients receiving Recovery Act funds will receive a limited scope review within six months after the award is granted. This review may lead to an extended scope field review if needed to assure subrecipient compliance.

Finding #3: Cal EMA could not demonstrate it has determined the number of program staff it needs to monitor Recovery Act subrecipients.

Although the workload for subrecipient monitoring will increase significantly as a result of the 226 Recovery Act JAG Program subgrants that will be awarded during fiscal year 2009–10, Cal EMA could not demonstrate that it has adequately identified the number of program staff needed to monitor the use of those funds. The chief of the Public Safety Branch indicated that Cal EMA has acknowledged that the \$592,000 of Recovery Act JAG Program funds appropriated by the Legislature to pay its administrative costs for fiscal year 2009–10 will not provide enough funds to accomplish the monitoring the branch would like to achieve. Cal EMA submitted a budget change proposal seeking to use interest earned on its Recovery Act JAG Program funds—\$800,000 for fiscal year 2010–11 and \$800,000 for fiscal year 2011–12—to administer the Recovery Act JAG Program and it believes that these amounts will be adequate to manage the subgrants. However, the Legislative Analyst's Office found that Cal EMA had not provided sufficient workload information to justify the requested funding and recommended the Legislature reduce the requested funding to the fiscal year 2009–10 level.

of \$592,000. Moreover, the documents Cal EMA provided us did not clearly identify the workload associated with managing the subgrants or how the additional funds it requested met its needs for managing the additional workload.

We recommended that to plan its monitoring activities properly, Cal EMA identify the workload associated with monitoring its Recovery Act JAG Program subrecipients and the workload standards necessary to determine the number of program staff needed.

Cal EMA's Action: Partial corrective action taken.

Cal EMA reported that its goal is to monitor all 229 Recovery Act subrecipients through site visits by June 30, 2011, and reported it had completed onsite monitoring for 84 of the 229 subrecipients as of December 13, 2010. It also provided its estimate of the number of work hours needed to conduct at least one site visit during the grant period for each subrecipient. The estimate identified that it needed 8.62 personnel years to perform this work. In addition, Cal EMA reported that it hired a retired annuitant to assist existing staff in conducting site visits. However, Cal EMA pointed out that it is limited to spending \$592,000 each fiscal year on state operations to administer the Recovery Act projects and it intends to stay within that amount. Cal EMA also stated that it does not have eight staff who are dedicated 100 percent to the Recovery Act funded projects, but rather several program and monitoring staff who administer and monitor other federal- and state-funded projects as well.

Finding #4: Cal EMA misreported the administrative costs it charged to the Recovery Act JAG Program.

Cal EMA failed to consistently report to federal agencies the administrative costs it charged to its Recovery Act JAG Program award. Cal EMA has divided the reporting responsibilities for two reports between the Fiscal Services Division (quarterly expenditure reports to the U.S. Department of Justice) and the Public Safety Branch (quarterly progress reports to the federal Recovery Accountability and Transparency Board (Accountability Board)). Although the Fiscal Services Division reported \$104,000 in administrative costs as of December 31, 2009, the Public Safety Branch reported to the Accountability Board that Cal EMA did not spend any Recovery Act JAG Program funds for the same period. The Fiscal Services Division provided accounting reports to support the expenditures it reported. The records the Public Safety Branch offered as support for the report were project time reporting records that showed no staff time charged to the Recovery Act JAG Program activities. However, these project records were from October 2008 through December 2008, one year before the reporting period. We questioned the federal funds program manager regarding the accuracy of the time period covered in the project time reporting records she provided, and she responded that no time was charged to the accounting codes used to collect administrative costs related to the Recovery Act JAG Program award.

We recommended that Cal EMA develop the necessary procedures to ensure that it accurately meets its Recovery Act reporting requirements.

Cal EMA's Action: Corrective action taken.

Cal EMA provided revised procedures for meeting Recovery Act reporting requirements and for increasing communication among staff regarding federal reporting requirements.

Department of Public Health

It Faces Significant Fiscal Challenges and Lacks Transparency in Its Administration of the Every Woman Counts Program

REPORT NUMBER 2010-103R, JULY 2010

Department of Public Health's response as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to determine how the Every Woman Counts (EWC) program ended up in a budget crisis and whether the Department of Public Health (Public Health) has operated the EWC program efficiently over the past several years.

Finding #1: Opportunities exist for Public Health to identify and potentially redirect EWC program funds to screening services.

Our audit found that Public Health could do more to maximize the funding available to pay for screening services. When requesting additional funding from the Legislature in June 2009, Public Health claimed that redirecting funds within the EWC program from other areas—such as efforts aimed at providing outreach to women and training for medical providers—to pay for additional screening services would not be possible given federal requirements and would jeopardize federal funding from the Centers for Disease Control and Prevention (CDC). However, our analysis found that Public Health's claim was incorrect. We estimate that had Public Health redirected one-half of the amount it spent on various contracts for nonclinical activities in fiscal year 2008–09, it could have dedicated about \$3.4 million to pay for screening activities. This funding would have allowed more than 27,500 additional women to obtain screening services from the EWC program.

However, Public Health's ability to identify and redirect funds toward activities that directly support women is hampered by the fact that Public Health cannot determine how much its contractors spend on other activities. For example, Public Health spent more than \$6.7 million on various contracts with local governments and nonprofit organizations during fiscal year 2008–09; however, it does not know how much these contractors spent on each contracted activity because it lacks specific accounting mechanisms, such as detailed invoices to track expenditures for individual contracted activities. Instead, Public Health knows only the total amount payable under each contract and how much has been billed for general categories such as personnel costs and overhead to date. Without knowing how much contractors are spending on specific services that support the EWC program, Public Health lacks a basis to know whether the funds paid for these activities would have been better spent on additional mammograms or other screening procedures.

To ensure that Public Health maximizes its use of available funding for breast cancer screening services, we recommended that it evaluate each of the EWC program's existing contracts to determine whether the funds spent on nonclinical activities are a better use of

Audit Highlights . . .

Our review of the Department of Public Health's (Public Health) administration of the Every Woman Counts (EWC) program, revealed the following:

- » *Funding the EWC program will likely be more difficult in the future due to:*
 - *Declines in tobacco tax revenue.*
 - *Fiscal pressures placed on the State's budget resulting from the economic recession.*
- » *As a result of the budget problems, Public Health:*
 - *Asked for a budget augmentation of \$13.8 million in June 2009.*
 - *Imposed more stringent eligibility requirements and froze new enrollment for six months beginning in January 2010.*
- » *Contrary to its previous claims, Public Health has a great deal of flexibility to use existing EWC program funds to provide screening services to women.*
- » *Public Health's ability to redirect funds is hampered because it cannot easily identify funds it uses for activities that do not directly support women.*
- » *Public Health does not provide the Legislature with estimates of the number of women it expects to serve in a fiscal year, even though it provides this information to the federal government to secure federal funds.*

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» *Public Health has not fully complied with certain aspects of state law. Specifically, it has not:*

- *Developed regulations that implement the EWC program—nearly 16 years after the program began.*
- *Evaluated the effectiveness of the EWC program in annual reports to the Legislature—since 1994, only one report was submitted.*

taxpayer money than paying for a woman's breast or cervical cancer screening. To the extent that Public Health continues to fund its various contracts, we further recommended that it establish clearer expectations with its contractors concerning how much money is to be spent directly on the different aspects of the EWC program and should monitor spending to confirm that these expectations are being met.

Public Health's Action: Partial corrective action taken.

Public Health's six-month response indicates that it has not evaluated all of its contracts to determine whether the funds spent are a better use of taxpayer funds than paying for additional screenings. In particular, Public Health's response indicates that it has only evaluated the contracts of its regional centers. However, it appears that Public Health's review has resulted in it taking steps to significantly reduce the costs associated with these contracts. According to a budget presentation that Public Health made to the Legislature on November 5, 2010, Public Health plans to spend between \$200,000 and \$220,000 over an 18-month period for each regional center. For context, these same regional centers previously had contracts spanning several years that averaged between \$332,000 and \$480,000 over a 12-month period. During its presentation to the Legislature, Public Health reported that two of the 10 regional centers declined to accept the reduced contracts, while another three regional centers had agreed to the reduced contract amounts. Public Health defined the contract status of the remaining five regional centers as "pending" or as requiring approval from a county board of supervisors.

Public Health's six-month response also indicated that it has communicated its expectations to the regional centers regarding their expected level-of-effort on different aspects of the program. Specifically, Public Health indicated that it has established a "percent of effort" next to each contract activity and requires contractors to perform quarterly time studies to ensure that the contractors are adhering to the contract's terms. Public Health provided a summary report of the results of the first time study that indicated where contractors were spending too little effort or too much effort relative to Public Health's expectations. The time study was based on information from one week's worth of work.

Finding #2: Public Health needs to provide the Legislature with better information regarding caseload and cost.

Although state law says that screening under the EWC program is not an entitlement, Public Health indicated that it has tried to provide all eligible women with screening services. However, rather than assess how much funding it needs to provide these services and how many women could be served as a result, our audit found that Public Health instead bases its funding requests on past expenditure trends and projected growth factors. Public Health could provide greater transparency and help establish clearer expectations for program outcomes if it gave the Legislature information on its projected caseload and the related cost, as it does with its federal grant from the CDC. The EWC program chief indicated that Public Health would like to use caseload data to be more precise in forecasting its

costs, but has not done so because it lacks confidence in the reliability of the caseload data it collects. In order to provide the federally required caseload data to the CDC, Public Health has entered into a contract with the University of California, San Francisco, to assure the quality of its caseload data. The data that Public Health submits to the CDC are the number of women served based on the federal funds provided. Had Public Health done the same at the state level, it could have helped the Legislature define expectations for the program—in terms of the number of women to be served or other similar measures—during the budget process for fiscal year 2008–09. In doing so, it would have been in a stronger position to explain to the Legislature why it needed an additional \$6.3 million to pay for clinical claims for that year. Specifically, Public Health would have been able to explain to the Legislature whether it had already served the agreed-upon number of women based on the funding provided.

To ensure that Public Health can maintain fiscal control over the EWC program, we recommended that it develop budgets for the EWC program that clearly communicate to the Legislature the level of service that it can provide based on available resources. We further recommended that Public Health seek legislation or other guidance from the Legislature to define actions the program may take to ensure that spending stays within amounts appropriated for a fiscal year.

Public Health's Action: Partial corrective action taken.

In its 60-day update, Public Health indicated that it had developed a caseload estimate methodology using a time-series regression analysis and was pursuing a formal estimate process for fiscal year 2010–11. In its six-month response, Public Health indicated that it was finalizing its estimate package for inclusion in the Governor's Budget for fiscal year 2010–11; however, it did not provide a copy of its estimate package for our review. Public Health's six-month response also indicated that it had requested the State's Fiscal Intermediary, Hewlett Packard, to collect Social Security numbers for women enrolled in the program. Public Health intends to use Social Security numbers as a unique identifier to better track the program's caseload and to improve its caseload estimates in the future. Public Health expects Hewlett Packard to implement this system change in the summer of 2011.

Section 169 of the Budget Act of 2010 Trailer Bill on Health (SB 853, Chapter 717, Statutes of 2010), required Public Health to provide the Legislature with quarterly updates on program caseload, estimated expenditures, and related program monitoring. Public Health's six-month response to the audit included a copy of the report it submitted to the Legislature for the first quarter of fiscal year 2010–11. The report disclosed information regarding the amounts paid for various clinical services and the number of unique identification numbers—which are assigned to women—associated with the paid claims. Public Health also appropriately disclosed to the Legislature that the number of unique identification numbers included in its report would not equate to the unique number of women served, since one woman could have multiple identification numbers.

Finding #3: Public Health needs to provide more transparency regarding how it administers the EWC program to promote public input and enhance legislative oversight.

Finally, our audit found that Public Health could do more to improve the public transparency and accountability with which it administers the EWC program. State law requires Public Health to develop regulations that implement the EWC program. Nearly 16 years after the program began, such regulations still have not been developed. Public Health cited staff and funding limitations as the cause for the delay. Nevertheless, had Public Health developed the required regulations, it would have provided the public with an opportunity to comment and to provide input on important aspects of the EWC program, such as eligibility requirements and service priorities should funding be exhausted. State law also requires Public Health to evaluate the effectiveness of the EWC program annually and submit a report on its findings to the Legislature. Specifically, the report is required to contain information such as the number of women served and their race, ethnicity, and geographic area, as well as information on the number of women in whom cancer was detected through the screening services provided and the stage at which it was detected. Since this reporting requirement was placed in state law in 1994, the

Legislature has received only one report—in August 1996—in response to this requirement. This lack of information on the effectiveness of the EWC program limits Public Health's ability to advocate for appropriate funding and hampers the Legislature's and the public's ability to exercise oversight.

To ensure better public transparency and accountability for how the EWC program is administered, we recommended that Public Health comply with state law to develop regulations, based on input from the public and interested parties, that would direct how Public Health administers the EWC program. At a minimum, such regulations should define the eligibility criteria for women seeking access to EWC screening services. We further recommended that Public Health provide the Legislature and the public with a time frame indicating when it will issue its annual report on the effectiveness of the EWC program. Further, Public Health should inform the Legislature and the public of the steps it is taking to continue to comply with the annual reporting requirement in the future.

Public Health's Action: Pending.

Public Health indicated that it is in the process of developing regulations for the program that will further define how the program will be administered. Public Health indicated that certain staff have attended training provided by the Office of Administrative Law regarding the development of regulations. According to its six-month response, Public Health has also hired a consultant with rule-making experience. Public Health's six-month response did not provide an estimate on when the program's regulations would be finalized or available for public comment. Further, Public Health's response did not indicate whether it was contemplating defining eligibility requirements for women, or establishing protocols for responding to budget shortfalls. Finally, Public Health's six-month response indicated that it is finalizing its report to the Legislature regarding the program's performance and expects to release the report on February 1, 2011.

Department of Developmental Services

A More Uniform and Transparent Procurement and Rate-Setting Process Would Improve the Cost-Effectiveness of Regional Centers

REPORT NUMBER 2009-118, AUGUST 2010

Department of Developmental Services' response as of October 2010

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to examine the Department of Developmental Services' (Developmental Services) oversight responsibilities for the regional centers and to determine the extent to which Developmental Services performs oversight at a sample of regional centers selected for review.

Finding #1: Developmental Services completed almost all fiscal audits within the required time frame.

The Lanterman Act requires Developmental Services to audit state funds provided to the regional centers, and Developmental Services generally accomplishes this responsibility through the fiscal audits it conducts every two years as a condition of participating in a federal reimbursement program called the Medicaid Waiver. During our review of its files, we found that Developmental Services completed 18 of the 21 fiscal audits required in fiscal years 2007–08 and 2008–09. According to the chief of Developmental Services' Regional Center Audit Section (audit chief), the remaining three audits were completed in fiscal year 2009–10 and did not meet the required two-year period. The audit chief explained that Developmental Services did not complete these audits within two years because it did not have staff available to perform the reviews and because the lack of a timely budget resulted in no funds being available for travel.

To ensure that it is providing oversight in accordance with state law and Medicaid Waiver requirements, we recommended that Developmental Services ensure it performs audits of each regional center every two years as required.

Developmental Services' Action: Pending.

Developmental Services reports that it is on schedule to complete all its biennial fiscal audits by December 2010.

Finding #2: Although expenditures were generally allowable, the regional centers could improve their documentation and written procedures for purchase of services.

Based on our review of a sample of 40 expenditures at each of the six regional centers we visited, we determined that the regional centers generally have controls in place to ensure that they purchase only allowable services for consumers. Even so, we noted a few areas in which improvements could be made in the documentation of expenditures and in the written description of important control

Audit Highlights . . .

Our review of the Department of Developmental Services (Developmental Services), as well as six of the nonprofit regional centers coordinating services and supports for Californians with developmental disabilities (consumers), revealed the following:

- » *Developmental Services systematically audits and reviews whether services purchased for consumers are allowable but, at the time of our fieldwork, generally did not examine how regional centers establish rates or select particular vendors for services.*
- » *Although the regional centers could improve their documentation of procedures in a few areas, most of the expenditures we reviewed for the purchase of services appeared allowable and were properly supported by vendor invoices.*
- » *Regional centers, however, do not always document how rates are set, why particular vendors are selected, or how contracts are procured; thus, in some cases, the ways in which regional centers established payment rates and selected vendors had the appearance of favoritism or fiscal irresponsibility. For example, we found the following:*
 - *A regional center procured \$950,000 in services from a transportation provider under a so-called "negotiated rate" that appears to have been calculated to incur a specific level of spending before the end of the fiscal year rather than to obtain the best value for the consumers the regional center serves.*

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- *A different regional center negotiated a rate that was considerably higher than the rate of an existing vendor performing the same type of services and the vendor owner receiving the higher rate was the sister of the regional center's assistant director who approved the rate.*
- *Responses to a survey we conducted of regional center employees of locations we visited indicated that half of the roughly 400 employees who responded do not feel safe reporting suspected improprieties to their management.*
- *We could not systematically evaluate Developmental Services' process for responding to complaints from regional center employees, because, at the time of our fieldwork, it did not centrally log or track employees' complaints or have a written process for handling such complaints.*

processes. Specifically, because some have moved to electronic processes, two of the six regional centers we reviewed could not provide the authorizations for expenditures for purchase of services required by regulation.

Additionally, two regional centers could not provide up-to-date documentation of their procedures for approving and processing invoices for services. At San Andreas, the regional center's purchase-of-services manual was 20 years old, and the financial manager acknowledged that it needs to be updated. Although Valley Mountain Regional Center's (Valley Mountain) usual process for purchasing services is well documented, its method of processing transportation invoices relies on one person's expertise, and no written guidance exists for vital steps in the process. This lack of an established process for invoice reviews appears to be one of the factors that allowed Valley Mountain to pay a vendor based on insufficiently supported invoices. Although this issue did not necessarily result in inaccurate payments to the vendor, it called attention to a pattern of errors in its invoicing process that Valley Mountain agreed it needed to address.

We recommended that Developmental Services require the regional centers to prepare and follow written procedures for their purchase of services that detail what documents will be retained for payment of invoices. Additionally, we recommended that, if regional centers move to an electronic authorization process, Developmental Services should determine whether it needs to revise its regulations. Finally, we recommended that Developmental Services ensure that the system Valley Mountain implements to correct its transportation invoicing process collects individual consumer data as necessary to ensure compliance with Medicaid Waiver requirements.

Developmental Services' Action: Partial corrective action taken.

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to update their administrative policies and procedures related to purchasing consumer services and to retain required documentation when paying invoices. Developmental Services also stated that it is developing regulations related to electronic authorizations. It plans to report its progress toward implementation in its six-month report to the bureau. Finally, Developmental Services indicated in its October 2010 response that audit fieldwork is in progress at Valley Mountain.

Finding #3: Left to their own discretion, regional centers often established rates that were not supported by an appropriate level of analysis.

State law and regulations allow regional centers to establish the payment rates for many types of vendor services through negotiation with the vendor but do not prescribe how regional centers are to accomplish or document completion of this responsibility. Also, Developmental Services provided little direct oversight through existing monitoring efforts of how regional centers establish rates. Within this framework, we found—based on our review of a sample

of regional-center-established rates—that regional centers often do not retain support demonstrating that they established rates using an appropriate level of analysis. When documentation was available, however, a cost statement from the vendor—such as used by Far Northern Regional Center (Far Northern)—was the most frequently used support for rate determination, and one we considered a best practice. We also found that regional centers sometimes established rates using inappropriate processes that gave the appearance of favoritism toward certain vendors or fiscal irresponsibility.

For example, we found that a regional center procured \$950,000 in services from a transportation provider under a so-called “negotiated rate” that appears to have been calculated to incur a specific level of spending before the end of the fiscal year rather than to obtain the best value for the consumers the regional center serves. In another example, a different regional center negotiated a rate with a new vendor under circumstances giving the appearance of favoritism. The resulting rate was considerably higher than the rate of an existing vendor performing the same type of service and the vendor owner receiving the higher rate was the sister of the regional center’s assistant director who approved the rate.

To ensure that negotiated rates are cost-effective, we recommended that Developmental Services:

- Require regional centers to document how they determine that the rates they negotiate or otherwise establish are reasonable for the services to be provided.
- Encourage regional centers to use, when applicable, the cost-statement approach exemplified by Far Northern.
- Follow and refine, as necessary, its newly established fiscal audit procedures requiring a review of a representative sample of negotiated rates as part of its biennial fiscal audit of each regional center.

We also recommended that, if Developmental Services believes it needs statutory or regulatory changes to provide effective oversight of the regional centers’ rate-setting practices, the department should seek these changes.

Developmental Services’ Action: Partial corrective action taken.

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to maintain documentation on the process they use to determine, and the rationale for granting, any negotiated rate. Developmental Services also expanded its fiscal audit protocols to include a review of negotiated rates during its biennial fiscal audits of regional centers to ensure adequate documentation exists. However, we could not confirm whether Developmental Services is using these protocols because it had not—as of November 2010—completed fieldwork related to any fiscal audits it is conducting using the new protocols. Finally, Developmental Services indicated that it believes the statutory and administrative actions taken in recent years set parameters for rate negotiations and establish clear mechanisms for accountability.

Finding #4: The regional centers did not always comply with the requirements of the July 2008 rate freeze.

We found that the regional centers did not always conform to the requirements of legislation requiring them to freeze their negotiated rates for existing vendors or, for new vendors, to establish rates at or below the lesser of the regional center or statewide median rate for the pertinent service codes. These provisions, which were enacted in February 2008, specified that beginning on July 1, 2008, increases in payment rates for existing vendors were allowed only if required in contracts in effect on June 30, 2008, or authorized by Developmental Services in writing. In our review of 61 rates, we found four instances in which regional centers did not appear to follow the law requiring this rate freeze. As a result, these regional centers expended resources that the Legislature, in enacting the rate freeze, intended to preserve. We also found an additional instance of noncompliance with rate-freeze provisions in our review of regional center contracts.

We asked Developmental Services whether it reviews compliance with the rate freeze in its fiscal audits of the regional centers. The audit chief showed us that Developmental Services has procedures built into its fiscal audit process for reviewing compliance with the rate freeze within certain service codes. The audit chief stated that the scope of the fiscal audits includes transportation, day programs, and residential programs but did not generally involve other service codes for which regional centers establish rates. Therefore, other than for the services just mentioned, Developmental Services' audits division did not ordinarily review most regional-center-established rates for compliance with the rate freeze. In fact, four of the five rate-freeze violations we found are in service codes not typically reviewed during the fiscal audits.

In July 2010 Developmental Services provided us with revised fiscal audit procedures. These new procedures include a review of compliance with rate-freeze requirements for a sample of rates established by regional centers. Because these additions were provided to us after the end of our fieldwork, we could not evaluate their efficacy or the degree to which they had been implemented at that time.

We recommended that Developmental Services carry out its newly developed fiscal audit procedures for ensuring compliance with provisions of the Legislature's July 2008 rate freeze, unless these provisions were rescinded by the Legislature. We also recommended that, if Developmental Services needs to streamline its current fiscal audit program to enable it to incorporate this review of rate-freeze compliance and still adhere to mandated deadlines, it should do so. Finally, we recommended that Developmental Services review the five instances of noncompliance with the rate freeze that we identified and require corrective action by the respective regional centers, stating this corrective action should include remedies for future rate payments to these vendors as well as repayment by the regional centers of any state funds awarded in a manner not in compliance with state law.

Developmental Services' Action: Partial corrective action taken.

Developmental Services expanded its fiscal audit protocols to include testing for compliance with the July 2008 rate freeze. However, we could not confirm whether Developmental Services is using these protocols because it had not—as of November 2010—completed fieldwork related to any fiscal audits it is conducting using the new protocols. Additionally, in its October response, Developmental Services indicated that audit fieldwork is underway for one of the four regional centers that the bureau reported may have violated the rate-freeze provisions and it plans to begin the remaining reviews within 60 days. According to Developmental Services, it will report findings and the corrective actions it determines are appropriate when the audits are completed.

Finding #5: Developmental Services generally does not regulate or examine the regional centers' selection of vendors.

State law places the responsibility for securing needed services for consumers on regional centers and has traditionally imposed few restrictions on how the regional centers select vendors to provide these services. Although a recent amendment to the law now requires regional centers to select the least costly available provider of comparable services, Developmental Services has not adopted regulations or other requirements describing how regional centers are to demonstrate compliance with this amendment.

When we attempted to review documentation at the six regional centers we visited, we found that they do not maintain information showing how they chose from among the available providers. Because they do not document why a consumer's planning team selected particular vendors for a consumer's Individual Program Plan (IPP), oversight entities—Developmental Services in particular—cannot currently ensure that planning teams select the least costly providers of comparable services as required by the Lanterman Act, nor can they examine whether the regional centers mitigate, as much as feasible, the appearance of favoritism towards certain vendors.

To ensure that consumers receive high-quality, cost-effective services that meet the goals of their IPPs consistent with state law, we recommended that Developmental Services do the following:

- Require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated.
- Review a representative sample of this documentation as part of its biennial waiver reviews or fiscal audits to ensure that regional centers are complying with state law—and particularly with the July 2009 amendment requiring selection of the least costly available provider of comparable service.

Developmental Services' Action: None.

Developmental Services does not believe it has the legal authority to implement this recommendation, as it states that it places the department in a role inconsistent with the intent of the Lanterman Act. Developmental Services asserts that to require documentation of all vendors considered and an explanation of why the vendor selected constitutes the least costly vendor, and presumably all other factors required by law, could delay needed services to consumers and their families. According to Developmental Services, by design it does not have a direct role in the IPP development. Developmental Services asserts that if it required extensive documentation of one factor and not all factors considered in the IPP process, the likely response would be litigation claiming that Developmental Services overstepped its authority. As outlined in the Comments section of our August 2010 audit report (notes 2 and 3), the bureau does not agree with Developmental Services' response to this recommendation.

Finding #6: Regional centers have not established protocols for determining when a contract is prudent and do not consistently require or advertise competitive bidding for contracts.

Although state law requires the regional centers to submit to Developmental Services their policies for purchasing services for consumers, the Lanterman Act—and the Title 17 regulations designed to carry it out—does not require the regional centers to define when or how they will use contracts to procure services with vendors. Also, Developmental Services does not examine how particular vendors were selected for regional center contracts.

More specifically, except when awarding startup funds to develop new community resources, none of the regional centers we visited have policies indicating when a contract is required or when they would allow a vendor to operate under the more common vendorization and rate process. Without protocols establishing when to use a contract for special instances, regional centers risk paying for specialized services that are ill-defined. For example, Inland Regional Center (Inland) entered into a rate agreement with a startup transportation company to assess consumer transportation needs. Inland paid this company a total of \$950,000 in July and August 2008 to perform this service under a service code used for transportation broker services. The regulatory description of this service code would not be sufficient to hold this vendor accountable for a specific level of services. The only definition of the service the vendor was to perform was contained in the June 2008 rate agreement, which stated, "Contractor will assess, develop, implement and manage routing and time schedules to meet consumer transportation needs." The rate agreement contained no description of when or how the services would be performed, how the vendor would communicate the results of individual consumer assessments, or what form any end summary of results would take.

We asked Inland to provide us with the deliverables the vendor produced as a result of the rate agreement, and all it could provide was a six-page, high-level report that lacked the details necessary to identify how it could create a more efficient transportation system. Of particular concern was that a purpose of the assessment was to make transportation routing more efficient for individual consumers, but after repeated requests, Inland could not provide us a single example of a consumer rerouted as a result of the assessment. Furthermore, Inland's rate agreement was so general that we are not sure that it could have held the vendor to any specific level of performance.

Just as the regional centers did not establish a procedure for determining when to enter into a contract, some also did not have written policies specifying a competitive procurement process. The lack of established procurement requirements resulted in inconsistent documentation among and within regional centers. Additionally, we found that when entering into contracts, the regional centers missed opportunities to contain costs or attract the highest-quality service providers because they did not advertise the contracting opportunity or evaluate bids competitively. Specifically, the regional centers we visited issued Requests for Proposal (RFPs) or otherwise notified vendors about contracting opportunities for only nine of the 33 contracts we evaluated. In the nine instances when the regional centers issued RFPs, they evaluated some of the proposals competitively but, in two of these instances, one regional center—Westside Regional Center—did not retain documentation of its reviewers' analysis of the proposals. The lack of a consistent contracting process across the regional centers reduces transparency and can create the appearance of vendor favoritism.

To ensure that the regional centers achieve the greatest level of cost-effectiveness and avoid the appearance of favoritism when they award purchase-of-service contracts, we recommended that Developmental Services require regional centers to adopt a written procurement process that:

- Specifies the situations and dollar thresholds for which contracts, RFPs, and evaluation of competing proposals will be implemented.
- When applicable, requires the regional centers to notify the vendor community of contracting opportunities and to document the competitive evaluation of vendor proposals, including the reasons for the final vendor-selection decision.

To ensure that the regional centers adhere to their procurement process, we recommended that Developmental Services review the documentation for a representative sample of purchase-of-service contracts during its biennial fiscal audits. Finally, to deter unsupported and potentially wasteful spending of state resources by the regional centers, we recommended that Developmental Services determine the extent to which Inland needs to repay state funds it provided to a transportation vendor for an assessment of Inland's transportation conditions.

Developmental Services' Action: Partial corrective action taken.

Developmental Services states that it and the Association of Regional Center Agencies representing the 21 regional centers have agreed to language amending the contracts between Developmental Services and the regional centers. Developmental Services indicated that the contract amendments will require the regional centers to develop procurement policies and processes approved by their respective board of directors. According to Developmental Services, the policies and processes will address circumstances under which RFPs will be issued, the applicable dollar thresholds, and how the submitted proposals will be evaluated. Additionally, Developmental Services developed fiscal audit protocols for testing whether regional centers are complying with the newly developed procurement policies and processes. Finally, in its October 2010 response, Developmental Services indicated that an audit of Inland is underway and it has scheduled an audit of the transportation vendor to begin November 1, 2010.

Finding #7: Developmental Services' processing of allegations from regional center employees was only recently defined.

Employees at six locations we visited identified several problems in the working environment at the regional centers. Responses to a survey we conducted of these six regional centers' employees indicated that almost half of the roughly 400 employees who responded to the questions concerning this topic do not feel safe reporting suspected improprieties to their management. Consequently, we asked Developmental Services about its process for receiving regional center employees' complaints, concerns, or allegations and its procedures for reviewing this information. Although Developmental Services indicated that it has a process for receiving and reviewing allegations from regional center

employees, it had not documented this process, nor had it shared this process with regional center employees, until we brought our concern about this issue to its attention. Similarly, Developmental Services only recently began centrally logging allegations and tracking the status of its follow-up efforts and ultimate disposition of such allegations.

To ensure that regional center employees have a safe avenue for reporting suspected improprieties at the regional centers, we recommended that Developmental Services follow its newly documented process for receiving and investigating these types of allegations it put into writing in July 2010 and should continue to notify all regional centers that such an alternative is available. To ensure that appropriate action is taken in response to allegations submitted by regional center employees, we also recommended that Developmental Services centrally log these allegations and track follow-up actions and the ultimate resolution of allegations, as required by its new procedures.

Developmental Services' Action: Corrective action taken.

As we stated in our report, in July 2010 Developmental Services formally documented procedures that describe how it accepts, tracks, and resolves complaints from regional center employees, and it also informed the regional centers of this process. Developmental Services included information about its process on its Web site and instructed regional centers to do the same on their Web sites. Additionally, Developmental Services instructed regional centers to provide notification to employees, board members, consumers and their families, and the vendor community of the complaint process and their right to make reports of improper activity to Developmental Services. Finally, in July 2010, Developmental Services created and began using a log that summarizes allegations it has received and follow up it has taken.

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.

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.

California Department of Corrections and Rehabilitation

Inmates Sentenced Under the Three Strikes Law and a Small Number of Inmates Receiving Specialty Health Care Represent Significant Costs

REPORT NUMBER 2009-107.2, MAY 2010

Response from the California Department of Corrections and Rehabilitation and California Prison Health Care Services as of November 2010

The Joint Legislative Audit Committee requested that the Bureau of State Audits evaluate the effect of California's rapidly increasing prison population on the state budget. We were asked to focus on specific areas of the California Department of Corrections and Rehabilitation's (Corrections) operations to provide the Legislature and the public with information necessary to make informed decisions. This is our second report related to this request and contains the following subject areas:¹

- Review the current cost to house inmates; stratify the costs by their security level, age, gender, or any other relevant category tracked by Corrections; and determine the reasons for any significant cost variations among such levels and categories.
- To the extent possible, determine the costs for incarceration under the three strikes law. At a minimum, determine the incarceration cost for each of the following three scenarios:
 - The third strike was not a serious and violent felony.
 - One or more of the strikes was committed as a juvenile.
 - Multiple strikes were committed during one criminal offense.
- Review the number of vacant positions during the last five years and determine whether they affect the annual overtime costs and whether filling vacancies would save Corrections money.
- Determine the extent to which Corrections currently uses and plans to use telemedicine. Further, determine if by using telemedicine Corrections is reducing inmate medical and custody costs and the cost to transport and guard inmates outside the prison environment.

For this report, we determined the number of striker inmates whose current offense was not a serious and violent felony, striker inmates who committed one or more serious or violent offenses as a juvenile, and striker inmates who committed multiple serious or violent offenses on the same day. We also estimated the potential cost of the additional

Audit Highlights . . .

Our review of California's increasing prison cost as a proportion of the state budget and California Department of Corrections and Rehabilitation's (Corrections) operations revealed the following:

- » *Inmates incarcerated under the three strikes law (striker inmates):*
 - *Make up 25 percent of the inmate population as of April 2009.*
 - *Receive sentences that are, on average, nine years longer—resulting in about \$19.2 billion in additional costs over the duration of their incarceration.*
 - *Include many individuals currently convicted for an offense that is not a strike, were convicted of committing multiple serious or violent offenses on the same day, and some that committed strikeable offenses as a juvenile.*
- » *Inmate health care costs are significant to the cost of housing inmates. In fiscal year 2007–08, \$529 million was incurred for contracted services by specialty health care providers. Additionally:*
 - *30 percent of the inmates receiving such care cost more than \$427 million.*
 - *The costs for the remaining 70 percent averaged just over \$1,000 per inmate.*
 - *The costs for those inmates who died during the last quarter ranged from \$150 for one inmate to more than \$1 million for another.*

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¹ We addressed many of the objectives contained in the Joint Legislative Audit Committee's request in a report we published in September 2009 titled: *California Department of Corrections and Rehabilitation: It Fails to Track and Use Data That Would Allow It to More Effectively Monitor and Manage Its Operations* (report 2009-107.1).

- » *A significant portion of the increased workload due to medical guarding and transportation is covered through overtime.*
- » *The large leave balances of custody staff, to which the furlough program has contributed a significant amount, will eventually cost the State from \$546 million to more than \$1 billion.*

years of incarceration imposed by the three strikes law for each of these groups. Further, we reviewed additional information regarding vacant positions and leave usage and examined state laws, policies, and procedures relevant to these subjects. In addition, to expand on the information presented in our prior report regarding the stratification of incarceration costs by inmate characteristics, we analyzed cost data for contracted specialty health care and reviewed certain characteristics of inmates receiving specialty care. We also reviewed the California Prison Health Care Services' (Health Care Services) plans for containing health care costs, including its plan and associated costs for increasing the use of telemedicine.

Finding #1: Outdated and erroneous information reduces the usefulness of Corrections' data.

We identified approximately 85,000 convictions that appeared to be associated with outdated information. Additionally, we identified 42,000 of the 2.8 million convictions we considered in our analysis that were associated with sentencing information related to 53 offenses that—according to Corrections' records—were effective for only one day, indicating errors in the data. When we asked about these errors, Corrections' staff stated that it updates sentencing information to reflect changes in the law once a year and sometimes only once every two years. However, Corrections stated that after the new laws go into effect, staff do not subsequently review convictions associated with the sentencing information that has been updated. Corrections also indicated that there are situations when staff will correct sentencing information, but some inmate convictions associated with the incorrect sentencing information may go undetected. According to Corrections, because inmate sentences imposed by the judicial system are based on legal documents and are tracked separately from the table that contains sentencing data in Corrections' data system, errors in the sentencing information do not affect the actual sentences that inmates serve. However, convictions associated with incorrect sentencing information may require Corrections' staff to perform additional analyses to determine if an individual's actual sentence was inappropriate. Corrections also told us that incorrect sentencing information could lead to inaccurate estimates of the average daily population in future years, which are used to estimate budgetary costs or savings. Finally, although Corrections indicated that the clean up of existing data will be part of implementing a new system, its plan does not address in detail how historical data will be reviewed or corrected.

We recommended that to address the erroneous sentencing information and inappropriate assigned convictions in its data system, Corrections should complete its clean up of data that will be transferred into the new system, ensuring that this review includes a detailed evaluation of convictions that have been assigned outdated sentencing information as well as deleting erroneous sentencing information before it begins using its new data system. We also recommended that Corrections create a schedule for regular checks of the accuracy of existing sentencing information, as well as the accuracy with which sentencing information has been assigned to convictions.

Corrections' Action: Pending.

In its six-month response, Corrections stated that it reviewed a sample of convictions that appear questionable. However, according to the description of its analysis, in selecting this sample Corrections failed to consider the universe of errors we identified during the audit. In addition, Corrections' review focused on those inmates serving active terms for one of the identified convictions. From the results of this review, Corrections concluded that the procedure to clean up the data is labor intensive and because of the resources necessary to review the potentially erroneous records, it believes that such a review would pose a hardship on its staff and, in its opinion, would provide minimal results.

Case records staff stated that they will work with the Enterprise Information Services (EIS) and Strategic Offender Management System (SOMS) project team to identify and correct questionable data when Corrections begins the conversion process to move data into its new system. However, the EIS and SOMS project team states that it has deferred to Case Records staff, because they are the owners of the data. In response to our questions about the conflicting information in its six-month response, Corrections stated that the Case Records' description indicates when the data will be moved to the new system, and in contradiction to the six-month response further states that data clean-up efforts have been ongoing and will continue to be made by Case Records staff. However, Corrections did not provide any documentation substantiating the data clean up described.

Corrections also reviewed and updated its procedures for adding or altering sentencing information in its Offender-Based Information System. However, this response fails to completely address the recommendation. Specifically, Corrections does not address the evaluation of the accuracy of existing sentencing information as we recommended.

Finding #2: Most specialty health care costs were associated with a small population of inmates, and older inmates were generally more costly.

Our analysis of the information in Health Care Services' Contract Medical Database found that 70 percent of the inmate population with specialty health care costs during fiscal year 2007–08 averaged just more than \$1,000 and cost \$42 million in total, while the remaining 30 percent of the inmates cost \$427 million. We also found that a small percentage, 2 percent or 1,175 inmates, represented 39 percent—or \$185 million—of the total contracted specialty health care costs. Further, although we noted that the average contracted specialty health care costs generally increased with the age of inmates, the cost of specialty health care associated with inmates that died during the last quarter of fiscal year 2007–08 were significantly greater than those of any specific age group. Each of the 72 inmates who died during the last quarter incurred, on average, \$122,300 for specialty health care services for fiscal year 2007–08. Costs for the 72 inmates who died totaled \$8.8 million and costs for each individual ranged from \$150 to \$1 million.

We recommended that Health Care Services continue to explore methods of reducing the costs of medical care to the State, including those of inmates with high medical costs. These efforts could include proposing a review of the program that allows for the early release of terminally ill or medically incapacitated inmates, and other possible means of altering the ways in which inmates are housed without unduly increasing the risk to the public.

Health Care Services' Action: Partial corrective action taken.

In its six-month response, Health Care Services states that it is in the process of establishing internal processes to implement a bill recently passed to provide medical parole. These processes will allow for the medical parole of eligible inmates who do not pose a risk to public safety. Health Care Services stated that it anticipates implementing these processes in January 2011 when the law takes effect. Health Care Services has not yet provided documentation substantiating the actions described.

Finding #3: Health Care Services has not calculated a savings associated with the decrease in the number of referrals for specialty health care.

As part of its efforts to address concerns about unnecessary referrals for specialty health care, the receiver reported that it has implemented the use of specialty referral guidelines. In its cost-containment report, Health Care Services reports that since the implementation of the specialty referral guidelines in the fall of 2008, the number of requests for services decreased by 41 percent between April 2009 and January 2010. Despite this decrease in referrals in specialty care overall, the receiver stated that Health Care Services has not calculated the cost savings associated with the reduction in referrals. However, the receiver indicated that he believes the number of unnecessary referrals has decreased significantly. According to the Health Care Services' chief medical officer for utilization management, the data captured by the utilization management databases do not interface with any of Health Care Services' contract or claims databases. Because utilization management data do not interface with the contract or claims databases, Health Care Services is unable to associate specialty health care utilization with the cost of providing care. As a result, Health Care Services has not calculated a savings associated with the decrease in the number of referrals.

We recommended that to improve its ability to analyze and demonstrate the effectiveness of current and future utilization management efforts in containing health care costs, Health Care Services should identify a method to associate cost information with utilization management data.

Health Care Services' Action: Pending.

In its six-month response, Health Care Services stated that it has developed various reports that link volume data with paid claims so that high volume and high cost specialty and hospital data can be analyzed. However, it did not provide us with evidence of these reports, or a description of how they are being used to analyze or demonstrate the effectiveness of its efforts to use utilization management to contain health care costs.

Finding #4: Health Care Services has not fully estimated the cost benefit of expanding telemedicine use.

Although Health Care Services has continued expanding its use of telemedicine as part of its cost-containment strategy, it has not fully estimated the potential cost savings of using additional telemedicine. When we asked Health Care Services to provide us with an estimate of the number of medical specialty visits that could be replaced with telemedicine, the statewide program director for the Office of Telemedicine stated that the data systems needed to generate data that Health Care Services could use to estimate the percentage or number of medical specialty visits that could potentially be provided using telemedicine are not available.

Health Care Services did provide an estimate of the guarding and transportation costs that are avoided with each telemedicine consultation. This estimate included an updated methodology that addressed one of the concerns with its earlier estimate that we expressed in our prior report. However, the updated estimate did not address other concerns. For example, the calculation continues to exclude consideration of other factors that might affect costs, such as whether a subsequent in-person visit must be performed because the issue could not be treated through telemedicine. Further, even without considering the degree to which telemedicine consultations are unsuccessful because the issue must be treated through an in-person consultation, the underlying information used in Health Care Services' cost-avoidance figures varies between \$94 and \$1,233 per visit, suggesting that telemedicine consultations may not be cost-effective at some institutions.

We recommended that to determine whether the additional expansion of telemedicine is cost-effective within the California correctional system, Health Care Services should identify and collect the data it needs to estimate the savings of additional telemedicine through an analysis of the cost of specialty care visits currently provided outside the institution that could be replaced with telemedicine. We also recommended that Health Care Services further analyze the cost-effectiveness of telemedicine through

a more robust estimate of savings, including considering factors such as the percent of telemedicine consultations that required subsequent in-person visits because the issue could not be addressed through telemedicine.

Health Care Services' Action: Pending.

In its six-month response, Health Care Services indicated that its Office of Telemedicine Services has implemented collaboration between Utilization Management and Telemedicine to increase the use of telemedicine statewide and is tracking statistics. Health Care Services also stated that its efforts are ongoing and that as telemedicine visits increase and improve access to health care, improvements in public safety and decreases in travel and custody costs for off-site specialty consults and follow-ups should result. Health Care Services stated that cost-avoidance outcomes are to be determined by the health care access team and will be reflected in decreased transportation and guarding costs. However, Health Care Services' response to this recommendation did not provide a description of how it would analyze the cost of current specialty care visits provided outside of the institution that could be replaced with telemedicine. Health Care Services described several reports that it expects would be available by the end of December 2010 to evaluate initial and follow-up specialty encounters in an effort to provide more detail on such care. Health Care Services has not yet provided documentation substantiating the actions described.

Finding #5: The number of correctional officer positions that Corrections indicated it filled is higher than the amount we calculated using the State Controller's Office (SCO) data.

A summary of data collected by Corrections' program support unit indicated that it had filled about 1,070 more correctional officer positions than we calculated using SCO's position roster file. When we discussed the differences with Corrections' staff, the chief of the program support unit stated that there are a number of factors that could cause the differences. Some of the reasons he provided included a variance in the methodology used by each institution to determine the number of filled positions, significant lag time between when the positions are filled at institutions and when the institutions submit the paperwork and it is processed by SCO, and institutions counting staff that are in temporary positions—referred to as blanket positions—as filled positions.

We recommended that to ensure that SCO has accurate information on the number of authorized and filled positions, Corrections determine why the number of positions SCO indicates are vacant is higher than the number of vacant positions it is aware of, and submit information to SCO to correct this situation as necessary.

Corrections' Action: Pending.

In its six-month response, Corrections stated that it is developing and implementing the same Enterprise Resource Solution as SCO and that this automated system includes a strong position maintenance module that will improve the accuracy of position information. Corrections also stated that it has completed various efforts to improve its position data, including reconciling position data with SCO data, completing data cleansing activities and updating budget, SCO, and the automated system's position data, establishing a baseline position data set, and developing processes to ensure ongoing maintenance of position data. Corrections also stated that it is monitoring compliance and these efforts are ongoing. However, Corrections did not provide us with any documentation demonstrating the activities it cites in its six-month update.

Finding #6: A significant number of medical guarding assignments are covered with overtime.

Staff we interviewed at three institutions told us they either did not have authorized positions for medical guarding and transportation or the authorized positions were insufficient. For example, an associate warden at San Quentin told us that it guards inmates receiving inpatient care at Bay Area hospitals. She stated that the number of inmates in community hospitals varies from 10 to 35 per day,

but averages 19. She told us that guarding these inmates requires about 100 guarding assignments to provide coverage for a 24-hour shift. This is because guarding an inmate out of the institution typically requires two correctional officers per inmate for each of the three shifts a day. Further, she stated that, on average, 58 of these guarding assignments are not associated with authorized positions and are covered through overtime. This information is consistent with the receiver's February 2010 *Monthly Health Care Access Quality Report*, which indicated that as of February 2010, the monthly average for medical guarding and transportation for fiscal year 2009–10, based on information reported by the institutions, is 1,900 personnel years that is being covered by overtime, redirected, and part-time staff. The 1,900 personnel years include an average of 243,500 hours of overtime per month and accounts for 78 percent of the medical guarding and transportation hours. According to the director of administrative support services, Health Care Services decided not to request additional custody staff positions because it believes that referrals for outside specialty services will decrease in the future. In addition, according to the receiver, Health Care Services is considering a plan to place inmates with higher specialty care needs in institutions that can provide some of those specialties, thus reducing the number of inmates receiving care outside the institution. Finally, the director of administrative support services stated that, because emergency transportation cannot be predicted, it would be inefficient to staff for this item through established positions. However, given the amount of medical guarding and transportation work covered through overtime, we believe that care must be taken to ensure that the total amount of overtime worked by custody staff does not impact the safety of operations.

We recommended that to ensure that the total amount of overtime worked by custody staff does not unduly reduce their effectiveness and result in unsafe operations, Health Care Services should monitor overtime closely. If its efforts to reduce the number of referrals of inmates to outside specialty services do not reduce the amount of overtime worked by custody staff for the purpose of medical guarding and transportation, Health Care Services should explore other methods of reducing the total amount of overtime worked by custody staff.

Health Care Services' Action: Pending.

In its six-month response, Health Care Services stated that it is participating in a joint effort with Corrections to assess medical guarding and transportation staffing, as well as the use of overtime to ensure custody staffing needs are addressed. Based on the results of this effort, it plans to pursue a budget change proposal with Corrections regarding these issues. Health Care Services has not yet provided documentation substantiating the actions described. Health Care Services expects full implementation in June 2011.

Finding #7: Some aspects of Corrections' staffing formulas are outdated and others appear to be flawed.

To ensure that it hires sufficient staff to handle the guarding assignments that exist, Corrections uses staffing formulas to ensure, when the regularly scheduled custody staff are unavailable, that additional staff can work the assignment. These staffing formulas are also used to determine how many individuals can take vacation at any given time. We reviewed the documentation Corrections provided to support the specific calculations it used when updating the correctional officer staffing formula. Although we found that the factors that make up the formula agreed in total, some factors do not match the documentation provided as support for the calculations used to update the formula, which last occurred about six years ago. Because these formulas are used for staffing, such errors have an effect on Corrections' ability to ensure that custody staff are able to use the leave they earn.

These errors are reduced by errors in the way in which Corrections calculates the amount of vacation leave that it allows custody staff to take. Specifically, the number of staff who can take vacation and holiday leave at an institution is based on the number of authorized guarding assignments and does not change based on the number of custody staff positions actually filled. However, when there are vacant positions, less vacation coverage is needed because there are fewer employees. In addition, individuals working overtime in place of staff who would otherwise fill vacant positions do not earn additional leave. As a result at institutions that have vacant positions, the staffing formula allows for

more holiday or vacation leave than the formula indicates custody staff earn. Because of the offsetting errors, depending on the number of vacant positions at a specific institution, correctional officers may be provided too many or too few opportunities to use the leave they earn.

We recommended that to ensure that custody staffing meets institutional needs, and to provide staff the opportunity to use the amount of leave that they earn in the future, Corrections update its staffing formulas to accurately represent each of the factors for which custody staff are unavailable to work, such as vacation or sick leave. Corrections should attend to this project before implementing its new business information system to ensure the updated formulas can be used as soon as practical. We also recommended that Corrections create a policy for regularly scheduled reviews of the data used in the staffing formulas and to update the formulas as necessary.

Corrections' Action: Pending.

In its six-month response, Corrections stated that it plans to conduct an annual review of the average usage and accrual rates for various leave categories and that it has collected the data and is in the process of reviewing the data. Corrections also stated that it is currently working to replace the relief methodology with a ratio driven formula and that the new formula will ensure staffing levels are adequate to allow custody staff to use the leave balances they earn. Corrections expects full implementation of this recommendation by June 2011.

Finding #8: Growing leave balances, due in part to vacancies and errors in the staffing formulas, reduce current costs but represent a future liability.

Various factors have caused Corrections' staff to accrue large leave balances. When this occurs, current staffing costs are reduced but the State incurs the cost in the future when staff take the leave or are paid for the balances when they quit or retire. Currently, the state furlough program is the most significant cause of the accumulation of leave balances for Corrections' custody staff.

Although many custody staff have chosen to use the furlough hours they have earned, the amount of leave they can take is limited, as defined in the staffing formulas. As a result, their use of furlough hours means they use less of other types of leave, causing balances in those categories to increase. Additionally, when vacant positions exist, custody staff who do not use the amount of leave they earn reduce the need for overtime to work the guarding assignments of those vacant positions. Although this reduces staffing costs in the near term, it contributes to the growth of staff leave balances and essentially defers the costs into the future. The liability that leave balances represent must be paid out at employees' retirement, if it is not addressed before then. If Corrections were to increase staffing or overtime to allow custody staff to take their accrued leave, it would represent, including sick leave, a liability we estimate to be approximately \$940 million. Alternatively, if paid out when individuals retire or quit in lump sums, the leave balance—minus sick leave that can be credited toward the amount of time an individual is considered to have worked when they retire but is not paid out—represents a liability to the State that we estimate at approximately \$500 million. Further, according to Corrections it does not budget for leave payouts upon retirement, so these costs represent an unbudgeted expense each year.

We recommended Corrections provide supplemental information to the relevant legislative policy and fiscal committees. Specifically, we recommended that the supplemental information include a calculation of the annual increase or decrease in its liability for the leave balances of custody staff to better explain the cause of changes in expenditures. We also recommended that the supplemental information include an estimate of the annual cost of leave balances likely to be paid for retiring custody staff.

Corrections' Action: None.

- In its six-month response to this recommendation, Corrections references its previous discussion regarding efforts to replace its staffing formula that will ensure adequate staffing levels to allow custody staff to use the leave they earn. However, in no way does this action communicate to the relevant legislative policy and fiscal committees the amount, or increase or decrease in Corrections' liability for custody staff leave balances, as we recommended.

Further, Corrections states that due to a number of factors influencing retirement decisions, it is difficult to accurately estimate the annual cost of leave balances paid out to retiring custody staff. As a result, it does not intend to provide any further response to this recommendation.

Department of Health Care Services It Needs to Streamline Medi-Cal Treatment Authorizations and Respond to Authorization Requests Within Legal Time Limits

REPORT NUMBER 2009-112, MAY 2010

Department of Health Care Services' response as of November 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the Department of Health Care Services' (Health Care Services) administration of the California Medical Assistance Program (Medi-Cal) treatment authorization request (TAR) process. Health Care Services instituted the TAR process to monitor and control the provision of certain Medi-Cal services and drugs. The audit committee asked us to determine whether Health Care Services has performed a cost-benefit analysis or any other review of the TAR process. In addition, the audit committee requested that, for a two-year period, we identify Health Care Services' average response time for TARs by provider category and by the method used to request the TAR.

Finding #1: Health Care Services has not performed a cost-benefit analysis of its least-frequently denied TARs.

Overall, Health Care Services' data indicates that the TAR process as a whole saves substantially more money in avoided paid claims to Medi-Cal providers than it costs to administer. However, there are compelling reasons for Health Care Services to perform a cost-benefit analysis of the segment of its TAR process associated with service categories with low denial rates, but it has not done so. Our analysis revealed that Health Care Services may have spent \$14.5 million annually—40 percent of its total TAR-related expenditures—processing roughly four million medical TARs with denial rates of less than 4 percent in fiscal years 2007–08 and 2008–09. Consequently, the cost of processing this population of TARs is high. Health Care Services has performed limited analyses that considered the costs and benefits of its TAR process. However, these analyses did not consider whether administrative costs to process TARs for service categories with low denial rates were greater than or equal to how much Health Care Services saved in the form of costs avoided by denying inappropriate services.

To streamline the provision of Medi-Cal services and improve its level of service, we recommended that Health Care Services conduct cost-benefit analyses to identify opportunities to remove authorization requirements or to auto-adjudicate those medical services and drugs with low denial rates, low paid claims, or high TAR administrative costs.

Audit Highlights . . .

Our review of the administration of the California Medical Assistance Program treatment authorization request (TAR) process revealed that the Department of Health Care Services:

- » *Manually adjudicates all medical TARs including those rarely denied.*
- » *Did not consider administrative costs to process TARs associated with service categories with low denial rates in its previous analyses.*
- » *Does not separately track costs related to administering the TAR process.*
- » *Is not processing drug TARs within the legal time limits for prescriptions requiring prior approval.*
- » *Does not monitor its processing times for prior-authorization medical TARs even though state law requires them to be processed within an average of five working days.*

Health Care Services' Action: Pending.

Health Care Services reported that a contractor will perform a cost-benefit analysis to identify opportunities to remove authorization requirements or to auto-adjudicate those medical services and drugs with low denial rates, low paid claims, or high TAR administrative costs. According to Health Care Services, it is currently finalizing the work authorization agreement necessary for the contractor to begin this project. Health Care Services stated that the project is tentatively slated to be completed within 12 weeks of a signed work authorization agreement.

Finding #2: Health Care Services has failed to process drug TARs within federal and state time limits.

Health Care Services is not processing drug TARs within legal time limits for prescriptions requiring prior approval. Federal and state law generally require that, when Health Care Services requires a prior authorization before a pharmacist may dispense a drug, it must respond within 24 hours of its receipt of the request for authorization. The TAR is the means by which Health Care Services conducts its prior-authorization process. However, Health Care Services took longer than 24 hours to respond to 84 percent of manually adjudicated drug TARs in fiscal year 2007–08 and 58 percent in fiscal year 2008–09. Health Care Services does not monitor its TAR processing times in such a way that it can accurately assess its compliance with legal time limits. For example, Health Care Services tracks the date it receives a TAR, but it does not track the specific time it receives a TAR through the mail or by fax. In contrast, TARs submitted electronically have date and time stamps that reflect precisely when they were received. Further, Health Care Services has interpreted the 24-hour limit in law improperly to mean the next business day. Health Care Services considers TARs received between midnight and 5 p.m. on a business day as received on that day's date, and TARs received between 5:01 p.m. and 11:59 p.m. as received the following business day. Therefore, Health Care Services considers a drug TAR received at 8 a.m. on a Monday as received that day, but a response would not be due until Tuesday at 5 p.m., 33 hours after it actually was received. However, it considers a TAR it physically receives at 5:01 p.m. on Friday as officially received on Monday, giving it until close of business on Tuesday to process the TAR. As a result, Health Care Services' next business day could be as long as 96 hours—well beyond the 24 hours the law allows.

To ensure that Medi-Cal recipients receive timely access to prescribed drugs, we recommended that Health Care Services abolish its policy of responding to drug TARs by the end of the next business day and instead ensure that prior-authorization requests to dispense drugs are processed within the legally mandated 24-hour period. Alternatively, it should seek formal authorization from the Centers for Medicare and Medicaid Services (CMS), the federal agency that administers the Medicaid program, to deviate from the 24-hour requirement, and should seek a similar modification to state law. In addition, Health Care Services should begin recording the actual time it receives TARs through the mail or by fax, so that it can begin to measure accurately its processing times for these paper TARs.

Health Care Services' Action: None.

Health Care Services disagrees with our recommendation that it abolish its existing policy of adjudicating drug TARs by the end of the next business day. Health Care Services indicated that it has operationalized the 24-hour requirement as the end of the next business day because the offices where drug TARs are processed are not staffed or budgeted for 24-hour, seven-day-per-week operations. Health Care Services also reported that it has not sought formal authorization from CMS to deviate from the 24-hour requirement because it asserts that CMS is aware of Health Care Services' next business day practice and that emergency drug supplies are available to Medi-Cal beneficiaries as needed. In addition, Health Care Services stated that it does not plan to seek a modification to state law regarding the 24-hour time frame at this time. Health Care Services made similar statements in its response at the time we published our report in May 2010. However, as we indicated in our report, we are aware of no legal authority that authorizes Health Care Services to deviate from the unambiguous, plain language of federal and state law and, in the absence of an interpretative regulation, to "operationalize" the 24-hour requirement in a manner inconsistent

with the law for any purpose, including staffing and budgetary constraints. Further, although Health Care Services has asserted that CMS has an awareness of Health Care Services' "next business day" practice, the department could provide no evidence that CMS actually approves of the practice. While we sought CMS' opinion about whether Health Care Services' interpretation of "24 hours" as meaning the "next business day" was appropriate, we received no official response. Accordingly, we concluded that, in the absence of any formal interpretation or guidance by the federal government, the plain language of the federal law and conforming state law controlled. We therefore stand by our recommendation that Health Care Services should abolish its policy of responding to drug TARs by the end of the next business day and comply with the legal mandate requiring it to process prior-authorization drug TARs within the specified 24-hour period. As we recommended, it may be more practical for Health Care Services to seek formal authorization from CMS to deviate from the 24-hour requirement, which could result in a change to the federal statute or implementing regulation or a formal waiver from CMS, whereupon it would be appropriate to make conforming changes to state law.

Finally, Health Care Services reported that it has identified the system and business processes that would need to be modified to record the actual time it receives TARs through the mail or by fax, and that these changes are complex and costly. Given the lengthy time frame to make the necessary changes and the high cost, Health Care Services concluded that modifying the current system is not viable. Health Care Services reported that it will instead implement this change through the system that the new California Medicaid Management Information System contractor will develop.

Finding #3: Health Care Services cannot ensure compliance with state requirements for response times.

Health Care Services does not specifically monitor its processing times for prior-authorization medical TARs despite acknowledging that state law requires that TARs submitted for medical services not yet rendered must be processed within an average of five working days. Although it has a reporting tool that allows it to monitor TAR processing times, it does not differentiate TARs requesting prior authorization to provide services from TARs requesting an authorization after services already have been provided. As a result, Health Care Services cannot ensure that it is approving prior-authorization TARs within the legal time limit and therefore may be preventing some Medi-Cal patients from receiving timely medical services.

To ensure that Medi-Cal recipients are receiving timely medical services from providers, we recommended that Health Care Services start tracking prior-authorization medical TARs separately and ensure that such TARs are processed within an average of five working days. Although state law and regulations specifically require prior authorization for certain medical services, Health Care Services generally does not require prior authorizations in practice. Consequently, Health Care Services should seek legislation to update existing laws and amend its regulations to render them consistent with its TAR practices.

Health Care Services' Action: Pending.

Health Care Services reported that it has developed a manual sorting process that will identify prior-authorization paper TARs as they are received in the field office mail rooms. These TARs will be placed in a designated location and will be processed before retroactive paper TARs. Health Care Services is also designing a system workaround that will enable it to track and report prior-authorization paper TAR processing turnaround times. However, Health Care Services indicated that it will defer modifying the current system to track all prior-authorization TARs due to the lengthy time frame and high cost to implement such changes, but it will ensure that the replacement system described in the previous finding includes the ability to track and report on prior-authorization TAR processing.

Finally, Health Care Services reported that it is not currently seeking legislation to update existing laws and amend its regulations to render them consistent with its TAR practices because California's health care system will change significantly with the implementation of a recently approved federal waiver of certain Medicaid requirements and through provisions of the Affordable Care Act. Health Care Services believes it is premature to make the recommended legislative changes at this time, but will consider seeking such legislation, as warranted, in the future.

Department of Public Health

It Reported Inaccurate Financial Information and Can Likely Increase Revenues for the State and Federal Health Facilities Citation Penalties Accounts

REPORT NUMBER 2010-108, JUNE 2010

Department of Public Health's response as of December 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) conduct an audit of the Department of Public Health's (Public Health) management of the State Health Facilities Citation Penalties Account (state account) and the Federal Health Facilities Citation Penalties Account (federal account), into which monetary penalties collected from long-term health care facilities are deposited.

Finding #1: Public Health prepared fund condition statements for the federal account that overstated funds available for appropriation.

The federal account's fund condition statements for fiscal years 2004–05 through 2008–09, which appeared in the governor's budget, contained significant errors. Specifically, Public Health and its predecessor excluded financial information concerning the Department of Aging (Aging) when preparing the fund condition statements for the federal account, causing the fund balance to be overstated each year. The inaccurate reporting of the federal account's fund balance led to an overstatement of \$9.9 million as of June 30, 2009.

The fund balance overstatements occurred in large part because Public Health's budget section excluded financial information concerning Aging when preparing the fund condition statements for the federal account. Since fiscal year 2003–04, Aging has received an annual budget act appropriation from the federal account for its Long-Term Care Ombudsman Program (ombudsman program). Until March 30, 2010, the procedure manual used by staff in Public Health's budget section when preparing the fund condition statements did not indicate that preparation of the fund condition statement for the federal account required merging the activity associated with the financial statements from Aging's ombudsman program. Further, according to a manager in Public Health's budget section, the section did not have a sufficient number of qualified staff to ensure that the fund condition statements were accurately prepared. As a result, Public Health prepared inaccurate fund condition statements for inclusion in the governor's budget.

We recommended that Public Health include text in its budget section procedure manual requiring staff to reconcile the revenues, expenditures, and fund balance as supported by Aging's and Public Health's accounting records to the fund condition statement prepared for inclusion in the governor's budget. We also recommended that a supervisory review be performed of the reconciliation of the fund condition to Aging's and Public Health's accounting records.

Audit Highlights . . .

Our review of the Department of Public Health's (Public Health) management of the state and federal Health Facilities Citation Penalties accounts (state and federal accounts) over a nearly seven-year period revealed the following:

- » *Public Health's poor internal controls led to significant errors in the fund balance for the federal account—for at least five years, it or its predecessor overstated the fund balances that are included in the governor's budget.*
- » *The federal account's ending fund balance for fiscal year 2008–09 was overstated by \$9.9 million.*
- » *Although Public Health generally collects all nonappealed monetary penalties, it inappropriately granted reductions to 135 citations.*
- » *In part due to a lengthy appeals process, Public Health collects a significantly lower portion of monetary penalties for appealed citations.*
- » *Opportunities exist for Public Health to increase revenue for both the state and federal accounts.*

Public Health's Action: Corrective action taken.

Public Health stated that the budget section procedures manual has been updated with the revised fund condition statement procedures, which include obtaining financial statements from other departments and performing a supervisory review of the reconciliation. Further, Public Health stated that the budget section performed the internal review of the fund condition statements in October 2010.

Finding #2: Public Health collects a high proportion of the monetary penalties it imposed on facilities that chose not to appeal, but some penalties were reduced inappropriately.

Although we found that Public Health generally collected all of the monetary penalties that were collectable for the citations it issued to facilities that decided not to appeal monetary penalties imposed from fiscal year 2003–04 through March 15, 2010, the original penalty amounts were often substantially decreased before facilities made their payments. These decreases were generally due to state law, which grants facilities an automatic 35 percent reduction in original monetary penalty amounts if the penalties are paid and not contested within time frames specified in law. We found that Public Health inappropriately granted reductions to facilities that paid their penalties after the time frames specified in law, depriving the state account of roughly \$70,000 in revenues that it was otherwise due. These inappropriate reductions were mainly due to the inaccurate calculation made by the Electronic Licensing Management System (ELMS), the system used by Public Health to track facilities' enforcement penalties resulting from noncompliance with state requirements to determine whether a facility's payment was received in time to warrant a 35 percent reduction. Depending on the type of violation, state law specifies that to be eligible for a reduction, a facility must pay the monetary penalty within 15 or 30 business days after the issuance of the citation. However, ELMS was programmed instead to use the date that a facility certifies that it received the citation imposing the monetary penalty. In addition, we also noted that the monetary penalty assessment form that Public Health sends to a facility when issuing a citation incorrectly referenced state law, potentially giving facilities the impression that they have more time in which to make their payments to receive the reduction than is allowed under state law.

We recommended that Public Health update ELMS to use the issuance date of the citation as specified in state law when calculating whether a facility's payment was received in time to warrant a 35 percent reduction. Further, we recommended that Public Health update its monetary penalty assessment form to ensure it contains language that is consistent with state law. Finally, we recommended that to the extent Public Health believes state law should be revised to reflect the date on which the facility received the citation, rather than the date the citation was issued, it should seek legislation to make such a change.

Public Health's Action: Partial corrective action taken.

Public Health stated that it is finalizing the enhancement of the ELMS to calculate the 35 percent reduction based on the issuance date of the citation. Further, Public Health stated that the monetary penalty assessment form was updated in September to contain language consistent with state law. Finally, Public Health stated that it does not believe it needs to revise state law to reflect the date on which the facility received the citation, rather than the date the citation was issued. Thus, our related recommendation is not applicable.

Finding #3: Prompt collection of monetary penalties is affected by appealed citations and the backlog of facilities awaiting citation review conferences.

Public Health is unable to collect millions of dollars in monetary penalties that it imposed on facilities over the past several years because facilities have appealed the citations. Specifically, facilities appealed more than 1,400 citations issued from fiscal year 2003–04 through March 15, 2010, associated with roughly \$15.7 million in monetary penalties. Of these, as of March 15, 2010, nearly 1,000 citations

comprising nearly \$9 million in monetary penalties were still under appeal. Public Health may not collect appealed monetary penalties until a decision is reached to uphold, modify, or settle the monetary penalty. As a result, there are incentives for facilities to appeal citations, particularly those involving higher penalties, because facilities can defer payments of the penalties and possibly reduce the original amounts imposed.

Further, both Public Health and external parties, such as arbitrators or administrative law judges, may significantly reduce monetary penalty amounts. Public Health reduced monetary penalties by over \$2.7 million from fiscal year 2003–04 through March 15, 2010. This resulted in an average reduction of 59 percent of the originally imposed citations that were appealed, much more than the 35 percent reduction allowed by state law for facilities that do not contest a penalty and pay it within a specified time frame. Rather than pursuing an appeal through the judicial system, a facility may request a citation review conference, in which an independent hearing officer from Public Health's Office of Legal Services makes a determination on whether to uphold, modify, or dismiss the citation. More than 600 citations were awaiting a citation review conference as of February 2010, with corresponding monetary penalties amounting to nearly \$5 million. According to the deputy director of Legal Services, at the time of our audit, Public Health had begun taking steps to reduce the backlog of appealed citations awaiting a citation review conference, including hiring and training retired annuitants and entering into a contract with the Office of Administrative Hearings (OAH) to conduct citation review conferences for certain types of appealed citations.

Current federal law provides facilities the opportunity to refute any enforcement remedies, including monetary penalties, by way of an informal dispute resolution. Unlike the citation review conference, federal law prohibits a facility from seeking a delay of any enforcement action that the Centers for Medicare and Medicaid Services (CMS) has taken against it, including the imposition of a monetary penalty, on the grounds that the informal dispute resolution has not been completed before the effective date of the monetary penalty. Thus, if a facility has requested an informal dispute resolution that has not yet been completed by the due date of the penalty, the facility must still pay the monetary penalty.

We recommended that Public Health seek legislation authorizing it to require facilities that want to appeal a monetary penalty to pay the penalty upon its appeal, which could then be deposited into an account within the special deposit fund. In addition, we recommended that Public Health provide guidance to its staff that discourages settling appealed monetary penalties for a better term than had the facility not contested the citation and paid the penalty within the time frame specified in law to receive a 35 percent reduction, and, in instances where such a settlement did occur, document the factors that formed the basis for such a reduction. Further, we recommended that Public Health continue to take steps to eliminate its backlog of appeals awaiting a citation review conference and seek legislation amending its citation review conference process to more closely reflect the federal process by prohibiting facilities from seeking a delay of the payment of monetary penalties. Finally, we recommended that it monitor its and OAH's progress in processing appealed citations.

Public Health's Action: Partial corrective action taken.

Section 1417.5, added to the Health and Safety Code in October 2010, requires Public Health to develop recommendations to streamline its citation appeal process, and to collect citation penalty amounts upon appeal of the citation and place those funds into a special interest bearing account. The recommendations must be presented to the fiscal and policy committees of the Legislature no later than March 1, 2011.

Public Health stated that it disagrees with our finding related to establishing a policy that discourages settling appealed monetary penalties for a better term than had the facility not contested the citation, and will therefore not implement our recommendation. Additionally, Public Health stated that it will not implement our recommendation related to documenting the factors that formed the basis for reducing a monetary penalty by more than 35 percent. While Public Health agreed there should not be incentives for facilities to appeal citations, it asserted that it must maintain maximum discretion to weigh all factors in a final settlement. However, as we describe in the finding, using its discretion

in reducing monetary penalties has resulted in Public Health granting an average reduction to monetary penalties of 59 percent of the amount originally imposed over the past six years. Therefore, it appears that the manner in which Public Health is currently exercising its discretion to reduce monetary penalties could be an incentive to facilities to appeal citations.

To address the backlog of appeals awaiting a citation review conference, Public Health stated that it conducted citation review conferences for nearly all Class AA citations, which impose the highest monetary penalties. Further, Public Health set six citation review conferences and stated that 227 still need to be set for a conference. Finally, Public Health began transitioning the Class A violation citation review conferences to OAH in August 2010.

Finally, Public Health established a project manager position for the OAH interagency agreement and the coordinator of the citation review conferences. Public Health also developed a tracking system for following the progress of hearing the citations.

Finding #4: Opportunities exist to increase revenue for the state and federal accounts.

Monetary penalty amounts for three types of violations have not been updated regularly to reflect the Consumer Price Index (CPI). If state law had adjusted the monetary penalties to reflect the CPI, Public Health could have collected nearly \$3.3 million more than it actually collected. Similar opportunities to increase revenue for the federal account might also exist. Although revising these monetary penalty amounts would require changes to federal regulations, Public Health could encourage CMS to seek such changes. Another opportunity for Public Health to increase revenue for the state account is to ensure that it conducts all inspections of facilities in accordance with the time frames specified in state law. Legislation effective July 1, 2007, required Public Health to incorporate both federal and state requirements into its federal survey process and thus conduct dual-purpose surveys. Although this law has been in effect for nearly three years, only about 10 percent of the surveys conducted by Public Health were dual-purpose. As a result, although Public Health currently surveys facilities for compliance with federal requirements, it has not surveyed or imposed the resulting monetary penalties for the majority of facilities in the State to ensure their compliance with state requirements. Further, Public Health may have the opportunity to increase revenue for both the state and federal accounts by requesting that they be included in the state's Surplus Money Investment Fund (SMIF). Currently, both accounts are included in the Pooled Money Investment Account and earn interest for deposit into the General Fund. The penalty accounts would earn interest that is returned to the respective accounts rather than the General Fund if they were included in the SMIF.

California is one of the few states whose laws prohibit Public Health from assessing a monetary penalty for noncompliance with state requirements and then recommending that CMS also impose a monetary penalty for noncompliance with federal requirements. Because some portion of monetary penalties resulting from Public Health's recommendations to CMS is deposited into the federal account, this law limits the amount of revenue deposited into the federal account. Further, although CMS collects interest on the monetary penalties it imposes on facilities that are not paid on time for noncompliance with federal requirements, state law does not authorize Public Health to do so. In addition, state law does not specify a time frame within which a monetary penalty must be paid if a facility elects not to appeal the citation. If state law prescribed a time frame within which a nonappealed citation must be paid, and if it authorized Public Health to collect interest on monetary penalties paid after that date, it too could collect additional revenues. An additional opportunity for Public Health to increase revenue for the federal account is by working more closely with CMS to track the outcomes of the recommendations it makes to CMS. Public Health does not currently have an effective system in place to perform this tracking.

To increase revenue for both the state and federal accounts, we recommended that Public Health seek legislation authorizing it to revise periodically the penalty amounts to reflect an inflation indicator, and encourage CMS to seek changes to federal regulations authorizing CMS to revise the monetary penalty amounts to reflect the rate of inflation. Further, we recommended that Public Health ensure

that it conducts all state surveys of facilities every two years. We also recommended that Public Health submit to the Pooled Money Investment Board a request that the board approve including both the state and federal accounts in the SMIF. Additionally, we recommended that Public Health seek authorization from the Legislature both to impose a monetary penalty and to recommend that CMS impose a monetary penalty, and to seek legislation specifying a time frame within which facilities with nonappealed citations that do not qualify for a 35 percent reduction must pay their monetary penalties and allowing Public Health to collect interest on late payments of monetary penalties. Finally, we recommended that Public Health increase its coordination with CMS to ensure that it can track CMS's implementation of the recommendations that Public Health makes to CMS.

Public Health's Action: Partial corrective action taken.

Section 1417.5, added to the Health and Safety Code in October 2010, requires Public Health to develop recommendations to increase penalty amounts, including late penalty fees, and to annually adjust penalty amounts to reflect an inflation indicator. The section also requires Public Health to recommend revisions to state law to enable the department to recommend that CMS impose a monetary penalty when Public Health determines that a facility is out of compliance with both state and federal requirements. The recommendations must be presented to the fiscal and policy committees of the Legislature no later than March 1, 2011. Additionally, Public Health stated that, in January 2011, it will forward to CMS a copy of our audit report with a cover letter that encourages CMS to periodically revise the monetary penalties.

Public Health concurs that it should conduct all state surveys of facilities every two years as required by state law. However, Public Health stated that it is unable to meet this standard at this time due to limited staffing resources.

Public Health did not entirely agree with our recommendation to seek legislation specifying a time frame within which facilities with nonappealed citations, that do not qualify for a 35 percent reduction, must pay their monetary penalties and collecting interest on late payments of monetary penalties. However, Public Health will explore proposed legislation for the 2011 Legislative Session that specifies a time frame within which nonappealed citations that do not qualify for a 35 percent reduction must be paid.

Public Health stated that it submitted a request to the Pooled Money Investment Board to include the penalty accounts in the SMIF in June. The request was approved and the penalty accounts began to accrue interest for the fourth quarter of fiscal year 2009–10.

Finally, Public Health also noted in its 60-day response that it met with CMS in June regarding tracking CMS's implementation of the recommendations that Public Health makes, and has initiated the process to track this information. In its six-month response, Public Health stated that it will request continued assistance from CMS to enable Public Health to more closely track the outcome of its recommendations.

Finding #5: Public Health has not fully implemented all 2007 audit recommendations related to the state account, and our follow-up audit identified additional concerns.

In April 2007 the bureau issued a report titled *Department of Health Services: Its Licensing and Certification Division Is Struggling to Meet State and Federal Oversight Requirements for Skilled Nursing Facilities*, Report 2006-106. This report concluded that the Department of Health Services had weak controls over its disbursement of funds from the state account and did little to ensure that the payments it made to temporary management companies were necessary or reasonable. As part of our review of Public Health's internal controls over expenditures, we performed follow-up procedures to determine whether Public Health had implemented controls over its disbursement of both state and federal account funds and whether it had taken steps to ensure that payments were necessary and reasonable.

During our follow-up review, we found that Public Health had not fully implemented the recommendation that it document its rationale for charging general support items to the state account. Specifically, Public Health made some erroneous charges totaling \$15,000 to the penalty accounts, including charges for car rental expenses, in fiscal years 2007–08 and 2008–09. These charges were the result of posting errors made by Public Health in its accounting system. We also identified some additional concerns about Public Health's procedures for overseeing temporary management companies. For example, the California Health and Safety Code, Section 1325.5 (m), requires Public Health to adopt regulations for the administration of temporary managers. However, to date, they had not been developed. Rather than using formally adopted regulations, Public Health used internal procedures to guide its oversight of temporary management companies. The Administrative Procedure Act (act), which defines the process for adopting regulations, requires agencies to accept comments from interested parties regarding the proposed regulations and to hold public hearings if requested. Because Public Health followed internal policies that were developed without the process of public review, Public Health violated state law prohibiting agencies from enforcing regulations that have not been adopted in accordance with the act.

We recommended that, to ensure that it fully implements the recommendations made in the bureau's April 2007 audit report, Public Health create written procedures specifying that expenditure reports be reviewed by an accounting analyst within Public Health on a monthly basis to determine whether any charges do not apply to temporary manager payments. Further, Public Health should include in its written policies and procedures that general support items should not be charged to the penalty accounts. Finally, to ensure that it complies with current state law and increases transparency, Public Health should adopt regulations for the administration of temporary management companies.

Public Health's Action: Partial corrective action taken.

Public Health stated that it finalized and implemented the procedures specifying that expenditure reports should be reviewed by an accounting analyst within Public Health on a monthly basis. Additionally, in June 2010, Public Health circulated written policies and procedures to staff, which noted that general support items should not be charged to the penalty accounts. Finally, Public Health also stated that it will complete the regulations for the administration of temporary management companies by 2016.

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 Community Services and Development

Delays by Federal and State Agencies Have Stalled the Weatherization Program and Improvements Are Needed to Properly Administer Recovery Act Funds

LETTER REPORT NUMBER 2009-119.2, FEBRUARY 2010

Department of Community Services and Development's response as of January 2011

The Joint Legislative Audit Committee requested that the Bureau of State Audits conduct a review of California's preparedness to receive and administer American Recovery and Reinvestment Act of 2009 (Recovery Act) funds. Using selection criteria contained in the audit request, we identified for review the Department of Community Services and Development (Community Services) preparedness to administer the Recovery Act funds provided by the U.S. Department of Energy (Energy) for its Weatherization Assistance for Low-Income Persons (Weatherization) program and Recovery Act funds awarded by the U.S. Department of Health and Human Services for its Community Services Block Grant (Recovery Act Block Grant) program.

Finding #1: Community Services has not yet disbursed Recovery Act funds to weatherize homes.

According to Community Services, as of December 1, 2009, no homes had been weatherized using Recovery Act funds even though by July 28, 2009, Energy had made available nearly \$93 million of the \$186 million awarded to Community Services and the Legislature had appropriated the funds for use. To gain access to the remaining \$93 million awarded it, Community Services has until September 30, 2010, to meet certain performance milestones issued by Energy. However, delays in program implementation make it unlikely that Community Services will attain the performance milestones. Start-up of the Weatherization program has been delayed because federal oversight agencies and Community Services have not yet completed necessary tasks. For example, the U.S. Department of Labor (Labor) did not provide prevailing wage determinations for weatherization workers, as required by the Recovery Act, until September 3, 2009, and did not revise the wage rates for some workers until December 2009. In addition, Community Services has not yet developed the cost-effective measures to weatherize homes using the Recovery Act funds, has been slow in negotiating agreements with service providers that cover grant terms such as cash management, and has not developed procedures for monitoring the additional requirements service providers must comply with when using Recovery Act funds.

Furthermore, increases in the average cost of weatherizing a home will likely reduce the estimated number of eligible low-income persons Community Services can assist using Recovery Act funds. According to Community Services, the main factor that has increased the estimated cost to weatherize a home is the requirement that service providers pay workers the prevailing wage rates for the area specified by the federal Davis-Bacon Act. According to Community Services, prior to the Recovery Act contractors who provided weatherization assistance were exempt from paying prevailing wages and would use funding from multiple federal programs. However, the requirements of the Recovery Act to pay prevailing wages require contractors that use multiple funding sources to weatherize homes to compensate all workers—those funded by other federal sources and by Recovery Act funds—at the same prevailing wage rates. As a result, contractors may plan to perform Weatherization program services using only Recovery Act funds, further limiting the number of homes to be weatherized and increasing the average cost per home.

We recommended that to ensure it receives the remaining 50 percent of its \$186 million award for the Weatherization program, Community Services seek federal approval to amend its plan for implementing the Weatherization program and seek an extension from Energy for fulfilling the progress milestones. In addition, it should promptly develop and implement the necessary standards for performing weatherization activities under the program and develop a plan for monitoring subrecipients.

Finally, we recommended that Community Services make any necessary adjustments in its state plan to accurately reflect average costs per home for weatherization assistance and the estimated number of homes to be weatherized under the program.

Community Services' Action: Partial corrective action taken.

Community Services has executed contracts with weatherization service providers in the San Mateo, Los Angeles Service Area A, San Francisco Bay Area, Alameda, and Alpine/El Dorado counties service areas, and reports that contracts for all of its service areas are fully executed.

In addition, Community Services reported that it exceeded the September 30, 2010, production goal of weatherizing 12,945 units needed to gain access to the remaining \$93 million awarded to it by Energy. Community Services reported that it weatherized 17,100 units by September 30, 2010, and weatherized 20,444 units by December 7, 2010, about 108 percent of its November 30, 2010, target.

Through its efforts to monitor its contractors, Community Services has determined that 29 contractors met 100 percent of their production goals and will likely spend their funding allocations by the end of the contract terms. However, Community Services also reported that seven of their contractors will either not meet production goals or spend Weatherization funds at a rate that assures all the funds will be spent by the end of their contracts. Two contractors assumed responsibility for additional areas and performed adequately to receive second allocations for those areas. Three contractors had not executed their contracts until June 2010 and were not included in Community Services' analysis.

Community Services reported that, based on the above performance information, it requested and received approval from Energy on November 29, 2010, for the remaining Weatherization funding. Community Services stated that it has released full or partial second-phase funding to 32 contractors, six contractors did not receive second-phase funding, and three contractors will receive additional funding once they demonstrate improved performance. Community Services stated that for territories that received partial or no funding, on December 31, 2010, it released a request for application to secure new providers.

Community Services reported that standards for performing weatherization activities, the Energy Audit Tool and Priority Measure List, were approved by Energy on October 4, 2010. Implementation of the new priority measures required development of a training curriculum and energy audit application processes. Community Services' consultant is currently training service providers on the application of the audit. The training is performed in three phases: (1) basic energy audit software application, (2) audit process and data collection, and (3) proctored field work and evaluation.

Additionally, Community Services and its consultant will conduct webinars in January 2011 on the new order of operations process and priority list application. Contract amendments incorporating the new Priority Measure List and Energy Audit protocols were released on December 31, 2010, and the standards will go into effect on February 1, 2011.

Community Services reported that it has implemented a guide for carrying out the monitoring and inspection protocol set forth in the Energy-approved State Plan. Community Services stated its State Plan for implementing the Weatherization program funded by the Recovery Act requires monitoring consisting of third-party inspections, annual onsite visits, quarterly desk reviews, fiscal monitoring, and visits as needed to respond to special issues. Community Services reported it has completed six Energy Davis-Bacon onsite compliance visits since August 2010 for a total of 19 Davis-Bacon compliance visits since the implementation of the Weatherization program funded by the Recovery Act. In addition, 31 Energy onsite comprehensive monitoring visits were conducted since August 2010 for a total of 38 comprehensive monitoring visits completed since the implementation of the Weatherization program funded by the Recovery Act.

Community Services also reported that as of September 30, 2010, its consultant, RHA, completed 932 quality assurance inspections at 34 agencies, representing 109 percent of the 853 targeted inspections. During the months of October and November 2010, RHA completed an additional 160 inspections.

As directed by Energy, Community Services completed the Request for Proposal (RFP) process to procure third-party inspection services to replace RHA, and selected ConSol as its new quality assurance inspection contractor. ConSol's services, covering clients in several western states, include energy code compliance documentation, builder energy code training, and inspections. The ConSol contract requires the Department of General Services' approval. RHA will continue to perform inspections only until the new quality assurance contractor is fully trained and ready to assume this duty, which is expected to occur no later than February 25, 2011.

Additionally, Community Services stated it has employed a retired housing inspector with extensive experience in program and code compliance. The retired annuitant is tasked with developing internal quality assurance oversight processes, assisting in the transition from RHA to ConSol, and training Community Services' staff in quality assurance oversight. Two additional retired annuitants began working in Community Services' quality assurance unit on January 3, 2011.

According to Community Services, with Energy's approval of the Energy Audit Tool and Priority List, its training of providers, and implementation of the new protocols, Community Services can collect the necessary data to update production and expenditure goals in the Weatherization State Plan. The new protocols are expected to significantly increase average per unit costs, and substantially decrease the production goal. With data from production experience under the new protocols, Community Services will recalculate production goals and update the State Plan accordingly. Community Services expects to submit a State Plan amendment to Energy by March 31, 2011.

Finding #2: Community Services needs to improve its controls over cash management for the Weatherization program.

Community Services' cash management policy allows advances of Weatherization program funds to subrecipients without obtaining the required authorization. Our review of Community Services' records revealed that as of December 28, 2009, it had advanced about \$966,000 in Weatherization program funds to four subrecipients. Roughly \$748,000 of the advance is still outstanding, and \$99,000 has been outstanding for over 100 days. Federal regulations allow Community Services to provide cash advances to subrecipients for its Weatherization program under certain conditions. For example, Community Services and its subrecipients must follow procedures to ensure that the advances are made as close as possible to the time the subrecipient organization actually makes disbursements for direct program or project costs, as well as for allowable indirect costs.

Community Services' policy allows a subrecipient to receive a cash advance of 25 percent of the total grant award by providing a listing of the expenses that will be paid using the advance and certifying it has no other source of funds available. Under Community Services' current policy, subrecipients are required to offset at least 30 percent of the cash advance against their expenditures within three months and the remaining balance within six months. If less than 100 percent of the advance is offset against expenditures within six months, Community Services will apply subsequent claimed expenses toward the cash advance beginning in the seventh month following issuance of the advance until the advance is fully extinguished. Because of the extended period allowed by its current policy for liquidating advances, Community Services is not complying with the federal requirement to minimize the amount of time between when the cash is advanced and when disbursement of funds takes place. When we requested documentation that the federal government had given Community Services the authority to provide a 25 percent cash advance for its Weatherization program, management referred us to the regulations for a different grant program, the Community Services Block Grant, which is overseen by a different federal agency, and it did not provide its authority to use those regulations for the Weatherization program.

Moreover, Community Services lacks proper separation of duties for drawdowns of Weatherization program funds. According to the accounting supervisor, the accounting unit's internal controls require that duties be separated such that the person preparing claim schedules for the payment of invoices is prevented from also performing the cash drawdown. However, our review determined that three of 12 disbursements we tested were included in claim schedules that were prepared by the same individual who performed the drawdown. Failure to separate these duties heightens the risk that federal funds could be drawn in an incorrect amount or used for unallowable purposes and remain undetected. The accounting supervisor implemented a new policy after our testing was complete, and now all claim schedules will be reviewed by management prior to the cash drawdown and submission to the State Controller's Office.

To comply with federal cash rules that govern the use of Weatherization program funds, we recommended that Community Services ensure it has the authority to provide advances as outlined in its current policy. In addition, Community Services should segregate the duties of preparing claim schedules requesting payments from the duties of accessing Weatherization program funds.

Community Services' Action: Corrective action taken.

Community Services stated that in consultation with Energy and according to its guidance, Community Services has revised the advance payment provisions in its contracts to ensure compliance with federal rules. Community Services reported the new advance payment provisions were included in contract amendments released to all Weatherization program providers funded by the Recovery Act on December 31, 2010.

Finding #3: Community Services needs to improve its procedures for monitoring Recovery Act Block Grant subrecipients.

Community Services needs to follow its current monitoring practices for block grants not covered under the Recovery Act, and it has not yet developed an adequate process for monitoring additional requirements specific to the Recovery Act Block Grant to ensure that the funds are used only for authorized purposes and that the potential for fraud, waste, and abuse is promptly mitigated. The federal grant authorized by the Recovery Act requires that services be provided by September 30, 2010, and that recipients be paid by December 29, 2010. We believe monitoring of Recovery Act Block Grant funds to ensure the proper use of the funds should occur well before September 30, 2010, to allow subrecipients sufficient time to take corrective action on any findings that may result. According to the manager of program development and technical support for the block grant, if monitoring identifies questionable program expenses after Recovery Act Block Grant funds are spent, Community Services will take the appropriate steps to recover the unallowable expenses, but she did not specify the steps that Community Services would take in such a situation. However, under the federal cost principles applicable to the Recovery Act Block Grant, settlements resulting from violations of federal laws or regulations are an unallowable use for block grant funds unless authorized by the awarding agency.

Community Services told us it plans to use existing procedures, with some modification, to monitor the Recovery Act Block Grant funds. However, we reviewed its existing monitoring activities and found Community Services does not always follow its monitoring procedures. Specifically, it does not sufficiently track the resolution of findings it identifies during site visits and desk reviews. In addition, while the Recovery Act money will more than double the existing level of \$62 million in block grant funding for a total of \$151 million, Community Services is not prepared to address the additional Recovery Act monitoring requirements. It has not yet developed a timeline for completing its monitoring of Recovery Act Block Grant funds, identified the resources or designed a risk-based approach needed to carry out its monitoring activities, or developed a monitoring guide for new requirements. As a result, Community Services may not monitor a large number of subrecipients until after Recovery Act Block Grant funds are already spent. Although the manager of program development and technical support told us that audits and accounting could take steps to recover any unallowable expenses, she did not explain what those steps would be.

We recommended that to strengthen its abilities to monitor Recovery Act Block Grant subrecipients, Community Services do the following:

- Finalize the monitoring guide that focuses on the specific requirements of the Recovery Act.
- Create a timeline and develop a risk-based monitoring plan to ensure that subrecipients of block grant funds authorized by the Recovery Act are monitored in time to allow them to correct any findings and implement recommendations prior to the September 30, 2010, deadline for providing block grant services.
- Follow its procedures to track the results of monitoring subrecipients that will allow management to ensure findings of program noncompliance are promptly followed up by program staff and corrected by subrecipients.

Community Services' Action: Corrective action taken.

As recommended by the Bureau of State Audits, Community Services' field staff used the new Recovery Act Block Grant Monitoring tool for all onsite monitoring visits. As of December 15, 2010, field staff completed all 43 scheduled onsite reviews. The Recovery Act Block Grant program ended September 30, 2010, with the final close-out completed on December 29, 2010. The SharePoint automated tracking system captures relevant monitoring data and provides the capability to generate monthly status reports. According to Community Services, monthly status reports developed to-date include the following:

- Status of monitoring follow-up
- Closed findings
- Status of open findings and recommendations
- Status of open Recovery Act findings and recommendations
- Recovery Act Block Grant and Block Grant expenditure reporting activity

Finding #4: Community Services needs improvement in its cash management procedures for Recovery Act Block Grant funds.

Federal cash management regulations allow for advance payments, but require that advances be timed as close as administratively feasible to the actual cash disbursements by the subrecipients. Community Services provides cash advances to its subrecipients if they can justify a financial hardship. However, Community Services has not defined what constitutes a financial hardship in justifying a request for an advance payment. Without defining financial hardship, Community Services cannot know when a subrecipient that requests an advance payment has met that standard. Community Services provided advances of Recovery Act Block Grant funds, totaling \$3 million, to 56 service providers.

Further, Community Services did not require supervisory review of draws of federal cash to ensure that federal funds were drawn in the correct amounts and from the correct grants. As a result, in April 2009 Community Services mistakenly drew \$180,000 from the Low-Income Home Energy Assistance Program grant that it should have drawn from the block grant.

To comply with federal cash management regulations that govern Recovery Act Block Grant funds, we recommended Community Services define the financial hardship under which it will provide cash advances to subrecipients. In addition, Community Services should implement procedures to ensure that it accurately draws federal program funds from the correct grant.

Community Services' Action: Partial corrective action taken.

Community Services provided its amended contract agreement that does not contain a requirement that subrecipients justify a financial hardship to receive an advance payment of Recovery Act Block Grant funds. Rather, the contract agreement states that subrecipients will receive an advance payment equal to 25 percent of their total contract amount, in accordance with California Government Code section 12781(b).

According to Community Services, for its nine major accounting processes, staff has identified 51 procedures whose write-ups need to be updated or developed. As of December 31, 2010, 15 written desk procedures are close to being final, 15 procedures are about 50 percent completed, and 21 have not been initiated. The Financial Services Unit will continue to develop and structure the updated write-ups into a more formalized desk manual format that will include detailed step-by-step instructions with examples. Written procedures are being developed in accordance with all applicable federal and state requirements. The Financial Services Unit's timeline to complete the entire desk manual, including procedures for the drawdown of federal program funds is March 25, 2011.

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.

Department of Social Services

For the CalWORKs and Food Stamp Programs, It Lacks Assessments of Cost-Effectiveness and Misses Opportunities to Improve Counties' Antifraud Efforts

REPORT NUMBER 2009-101, NOVEMBER 2009

Department of Social Services' response as of November 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to determine the fraud prevention, detection, investigation, and prosecution structure for the California Work Opportunities and Responsibility to Kids (CalWORKs) and the federal Supplemental Nutrition Assistance Program (food stamp) programs at the state and local levels and the types of early fraud detection or antifraud programs used. Additionally, the audit committee requested that the bureau determine, to the extent possible, the cost-effectiveness of the fraud prevention efforts at the state and county levels, and to review how recovered overpayments are used. Further, we were asked to estimate, to the extent possible, the savings resulting from fraud deterred by counties' antifraud activities and whether early fraud detection programs are more cost-effective than ongoing investigations and prosecutions. Lastly, we were asked to assess the Department of Social Services' (Social Services) justification for continuing to use both the Statewide Fingerprint Imaging System (SFIS) and the Income Eligibility and Verification System (IEVS).

Finding #1: Early fraud programs may not be cost-effective in all counties, but they are generally more cost-effective than ongoing investigations.

Although they have taken some steps, neither the counties nor Social Services have conducted meaningful analyses to determine the cost-effectiveness of counties' efforts to detect and deter fraud in the CalWORKs and food stamp programs. As a result, we developed our own analysis, which indicates that the cost-effectiveness of antifraud efforts varies among the counties. Using a three-month projection of savings, our calculations showed that counties generally realize greater savings per dollar spent on early fraud activities than for ongoing investigations. This difference is due largely to the fact that according to the data that counties report, early fraud activities generally result in a much greater number of denials, discontinuances, and reductions of aid than ongoing investigations produce, and also because early fraud activities cost less. Ongoing investigations generally result in fewer discontinuances or reductions of aid because the main purpose of these investigations is to prove suspected fraud that may have occurred in the past.

Further, the net savings resulting from early fraud activities and ongoing investigations vary widely across the six counties we reviewed. For example, in the three-month projection for the food stamp program, Los Angeles County's early fraud activities yielded only 35 cents for every dollar it spent, while Orange County yielded \$1.82 in savings. Our calculations show similar variances among counties for the CalWORKs program. Differences in county practices may partially

Audit Highlights . . .

Our review of the Department of Social Services' (Social Services) oversight of counties' antifraud efforts related to the California Work Opportunities and Responsibility to Kids (CalWORKs) program and the federal Supplemental Nutrition Assistance Program, known as the food stamp program in California, found the following:

- » *Although they have taken some steps, neither the counties nor Social Services has performed any meaningful analyses to determine the cost-effectiveness of their efforts to detect and deter fraud in the CalWORKs or food stamp programs.*
- » *Our analysis of counties' investigative efforts found that the measurable savings resulting from early fraud activities exceed the costs for CalWORKs and approach cost neutrality for the food stamp program, assuming a three-month projection of savings.*
- » *Counties' early fraud efforts are more cost-effective than ongoing investigations.*
- » *Neither Social Services nor the six counties we visited took sufficient steps to ensure the accuracy of the data counties report on their investigation activities.*
- » *Social Services does not ensure that counties consistently follow up on information it provides them that might affect welfare recipients' eligibility.*
- » *Although Social Services asserts that the Statewide Fingerprint Imaging System (SFIS) deters welfare fraud, it has not assessed the cost-effectiveness of SFIS.*

account for variations in the cost-effectiveness of early fraud activities across the counties, to the extent that these practices affect the number of resulting denials, discontinuances, and reductions. For example, the counties that typically generated the highest measurable net savings in 2008—Orange and San Diego—not only accepted a high number of early fraud referrals but also had a high percentage of benefit denials, discontinuances, or reductions compared to their early fraud referrals.

Although neither Social Services nor the counties have performed a comprehensive analysis of the cost-effectiveness of the efforts to combat welfare fraud, some efforts have been made. One of the more promising efforts was the forming of a program integrity steering committee (steering committee) to follow up on the results of a 10-year statistical study on fraud prevention and detection activities in the CalWORKs and food stamp programs, and to identify cost-effective approaches for improving program integrity in both programs. In 2008 the steering committee approved eight recommendations for counties and 10 recommendations for Social Services regarding the most promising approaches it found. Social Services indicated that it is addressing four of the 10 recommendations directed to it and is considering how to address the remaining six.

We recommended that Social Services ensure that all counties consistently gauge the cost-effectiveness of their early fraud activities and ongoing investigation efforts for the CalWORKs and food stamp program by working with the counties to develop a formula to regularly perform a cost-effectiveness analysis using information that the counties currently submit. We also recommended that Social Services determine why some counties' efforts to combat welfare fraud are more cost-effective than others by using the results from the recommended cost-effectiveness analysis and that it seek to replicate the most cost-effective practices among all counties. Finally, we recommended that Social Services continue to address the recommendations of the steering committee and promptly act on the remaining recommendations.

Social Services' Action: Pending.

In November 2009, Social Services released to the counties a formula for measuring the cost-effectiveness of their fraud efforts. Because this formula is dependent on county-reported data, Social Services is working to revise the investigation activity report and instructions, with a target completion in early 2011. To allow for the sharing of cost-effective practices among counties, Social Services indicates it will soon issue an all-county letter to direct counties to its publication of the "Promising Approaches and State Recommendations" on its Web site that was derived from the 10-year study. In spring 2011, Social Services plans to establish a Web page for counties to post and share information on improving program integrity and cost-effectiveness. Finally, to determine the cost-effectiveness of counties' fraud efforts, Social Services believes an automated system is needed to track and monitor metrics and outcomes. Because Social Services lacks the funding for this system, it plans to implement an interim process by mid-2011, as resources permit.

Finding #2: Social Services does not ensure that counties report accurate data on their welfare fraud investigations.

Neither Social Services nor the six counties we visited have taken sufficient steps to ensure the accuracy of the counties' data in their investigation activity reports. These reports, which counties submit monthly to Social Services, summarize the counties' fraud investigative efforts. We found that the information these counties included on the investigation activity report is not always accurate, supported, or reported consistently. Social Services is aware of problems with the data and has taken some limited steps to clarify the instructions for preparing these reports. However, Social Services has not taken steps to improve the accuracy of the counties' reporting and its procedures for reviewing investigation activity reports are inadequate to detect even the most glaring errors in the data that counties report. For example, although counties reported reducing benefits on a total of nearly 5,000 cases during fiscal year 2007–08 as a result of ongoing investigations, only 41 of those cases were reported by Los Angeles County, a number that seems quite low considering the county spent over \$23 million to perform ongoing investigations during 2008 and it represents 30 percent of the

State's CalWORKs caseload. In fact, Los Angeles County confirmed to us that it has been inadvertently underreporting the number of cases in this category. Despite the known problems with counties' reporting, Social Services uses these erroneous investigation activity reports to populate part of a report it submits to the federal government and to prepare reports submitted to internal decision makers and the Legislature.

To ensure the accuracy and consistency of the data counties submit on welfare fraud activities that counties report and that Social Services subsequently reports to other parties, we recommended that Social Services remind counties that they are responsible for reviewing the accuracy and consistency of investigation activity reports submitted, that it perform more diligent reviews of the accuracy of the counties' reports, provide counties with feedback on how to correct and prevent errors that it detects, and continue with its efforts to clarify the instructions for completing the investigation activity reports.

Social Services' Action: Pending.

Social Services is working to revise the investigation activity report and instructions, with a target completion in early 2011. Additionally, Social Services indicates once the instructions are revised, Social Services intends to provide technical assistance to the counties on how to complete the report accurately. Social Services further stated that it reviews the investigation activity reports during its county visits and discusses any inaccuracies it finds with county staff.

Finding #3: Social Services does not ensure that counties consistently follow up on welfare fraud matches.

Social Services does not ensure that counties consistently follow up on information it provides them that might affect welfare recipients' eligibility. Federal and state regulations require that Social Services distribute 10 lists of individuals' names that potentially could match certain criteria that would cause the individual's aid amounts to be reduced or make them ineligible for aid (match lists). Most of these lists are in paper form. For six of the 10 match lists, federal regulations mandate that the State must, within 45 days of receiving the match information, notify the welfare recipient of an intended action—a discontinuance of or reduction in benefits—or indicate that no action is required. For the remaining four match lists, there is no mandated time period for review. None of the counties we reviewed consistently followed up on all of the match lists that had to be completed within the 45-day timeline and only one county was consistently completing matches for the four match lists without a time requirement. According to representatives from the five counties we reviewed, the format of some match lists could be improved to make them more efficient to use. For example, all five counties told us that having all match lists in electronic form would allow them to process matches more efficiently. Social Services indicates it has attempted in the past to address counties' concerns with the format of the match lists and is taking steps to provide more lists in electronic form.

Although Social Services has a process in place to monitor the counties' efforts to follow up on match lists, it is missing opportunities to improve their efforts because it does not visit all counties on a regular basis and does not always enforce recommendations from these reviews. Specifically, Social Services has not reviewed 25 of the 58 counties during the three-year period from August 2006 to August 2009, including Los Angeles County, which represents 30 percent of the State's CalWORKs caseload and was last reviewed in 2005. Social Services asserts that it lacks resources to review the counties' efforts on a regular basis.

We recommended that Social Services remind counties of their responsibility under the state regulations to follow up diligently on all match lists and work with counties to determine reasons why poor follow-up exists and address those reasons. We also recommended that Social Services revive its efforts to work with counties to address their concerns about match-list formats. Further,

we recommended that Social Services perform reviews of all counties regularly and better enforce the counties' implementation of its recommendations to correct any findings and verify implementation of the corrective action plans required.

Social Services' Action: Pending.

Social Services says it will issue a notice to counties in early 2011 to remind them of their obligation to consistently follow up on match lists. Social Services indicates that five of the 12 match lists are available in electronic format for 35 counties on the Interim Statewide Automated Welfare System, but that automating the other matches will be addressed as resources permit. Social Services indicates it is working to complete the IEVS reviews scheduled for fiscal year 2009–10. Social Services indicates that revisions to match list format and criteria will be worked on as resources permit.

Finding #4: Social Services has not done a cost-benefit analysis of SFIS.

Although Social Services asserts that SFIS deters individuals from fraudulently applying for aid in multiple counties, it has not done a cost-benefit analysis of SFIS because it believes there is no way to measure the deterrence effect of the system. When justifying the implementation of SFIS, Social Services did not conduct its own study; instead, it used the estimates from an evaluation Los Angeles County performed in 1997 to project statewide savings that would result from SFIS. However, in a report we issued in 2003, we concluded that Social Services' methodology of projecting statewide savings using Los Angeles County's estimated savings was flawed, especially in its assumption that the incidence of duplicate-aid fraud in Los Angeles County was representative of the incidence of this type of fraud statewide. Although studies that Social Services conducted in 2005 and 2009 concluded that SFIS identifies fraud that other eligibility determination procedures do not, these studies were of limited scope.

The large and ongoing historical backlog of SFIS results awaiting resolution by county staff raises questions of how counties are using SFIS in deterring fraud. As of July 31, 2009, there was a statewide backlog of more than 13,700 cases that were awaiting resolution by county staff for more than 60 days. Moreover, the number of duplicate-aid cases SFIS has detected is fairly low, given its cost. In 2008 Social Services data show that statewide the counties used SFIS to identify 54 cases of duplicate-aid fraud, and they have identified a total of 845 instances of fraud through SFIS since its implementation in 2000. Social Services believes that SFIS does not identify many cases because it deters people from applying for duplicate aid, a benefit that it asserts cannot be measured. We acknowledge that fraud deterrence is difficult to measure. However, because the State is spending approximately \$5 million per year to maintain SFIS, Social Services has an obligation to justify whether the continued use of SFIS is cost-beneficial to the State. Further, we noted that Arizona has developed a process to conduct a yearly cost-benefit analysis of its fingerprint imaging system.

Recognizing that the deterrence effect is difficult to measure, we recommended that Social Services develop a method that allows it to gauge the cost-effectiveness of SFIS. Social Services should include in its efforts to measure cost-effectiveness the administrative cost that counties incur for using SFIS. Based on its results, Social Services should determine whether the continued use of SFIS is justified.

Social Services' Action: None.

- Social Services believes that a new independent cost-benefit analysis of SFIS would not be beneficial because it believes that the studies it has conducted, including the original evaluation it performed in 1997, which we concluded was flawed, justifies the deterrence value of SFIS.

Finding #5: Social Services has not taken the necessary steps to claim its share of \$42.1 million in food stamp overpayment collections.

Since December 2003 counties have received \$42.1 million in overpayments recovered from food stamp recipients. However, Social Services has been delayed in taking the steps needed to claim its share of these overpayments or to distribute the shares of these funds due to counties and the administering federal agency, the U.S. Department of Agriculture (USDA). Overpayments to food stamp recipients can result from administrative errors by counties or inadvertent errors or fraud by recipients. Counties collect the overpayments from recipients through various means, including tax refunds intercepted and held by the federal government. For the distribution of overpayments to occur, Social Services must work with the USDA to reconcile tax intercepts and county collections, but it noted that its efforts have been delayed by staff turnover and past errors in counties' collection reports. Social Services' records show that of the \$42.1 million balance, \$17.2 million would go to the USDA, with the remaining \$24.9 million split between Social Services and the counties. The counties we reviewed deposit the cash they collect in their bank accounts and receive the interest earnings on these collections until Social Services claims its and the federal government's share. As a result of the six-year delay in addressing this issue, we estimate that Social Services lost approximately \$1.1 million in interest earnings on its share of the funds.

We recommended that Social Services continue to work with the USDA and make its reconciliation of the backlog of overpayments a priority to expedite the distribution of the \$42.1 million in food stamp overpayment collections to the appropriate entities. Further, it should develop procedures to ensure that it promptly reconciles future overpayments. Additionally, Social Services should continue to monitor the counties' collection reports to ensure that counties are reporting accurate information.

Social Services' Action: Partial corrective action taken.

Social Services indicates that as of June 2010 all overpayment collections were recovered. The total overpayment collections changed from \$42.1 million to \$39.8 million due to adjustments and revisions. As for the interest that counties earned while holding these funds, Social Services indicated it collected and forwarded \$465,000 to the federal government and that it is working with counties to collect the remaining interest earnings. Social Services also reports implementing a process to ensure the quarterly reconciliations are done timely and accurately. Finally, during the IEVS reviews, Social Services indicates staff are reviewing the accuracy of counties' collection reports.

Finding #6: Investigation and prosecution efforts vary by county.

County size, demographics, and county department staffing necessitate different approaches to investigating and prosecuting welfare fraud. Although the counties appear to have similar criteria for investigations, their procedures for conducting investigations and their criteria for prosecution and imposing administrative sanctions vary. For example, the monetary thresholds below which the district attorney generally does not prosecute fraud varied among the counties we visited and were as high as \$10,000, depending on the type of offense. These variances may affect the number of cases referred and successfully prosecuted in each county. The data reported by counties statewide show variances in the number of referrals for prosecution of CalWORKs and food stamp fraud and in the outcomes of the prosecutions filed. It is in the best interest of Social Services to track these variances, as well as study the counties' prosecution practices to determine whether other counties could become more effective in their efforts by emulating the successful prosecution practices used elsewhere.

Finally, state regulations require counties to conduct administrative disqualification hearings for CalWORKs and food stamp fraud cases for which the facts do not warrant prosecution or cases that have been referred for prosecution and subsequently declined. However, many counties have stopped using the administrative disqualification hearing process, which Social Services attributes to county investigative staff believing that the administrative disqualification hearing standard of proof is higher than in criminal cases. Social Services told us that it has convened a workgroup with the State's

presiding administrative law judge to discuss county concerns and clarify the appropriate application of the administrative hearing process. Social Services plans to issue guidance to counties when the workgroup has completed its efforts.

We recommended that Social Services track how counties determine prosecution thresholds for welfare fraud cases and determine the effects of these thresholds on counties' decisions to investigate potential fraud, with a focus on determining best practices and cost-effective methods. We also recommended that Social Services either ensure that counties follow state regulations regarding the use of administrative disqualification hearings or pursue changing the regulations.

Social Services' Action: Pending.

Social Services did not address our recommendation to review the effect of counties' varying prosecution thresholds. Social Services indicates continuing to work on notices to remind the counties of their responsibility to use the administrative disqualification hearing process and to convene a workgroup on this issue. However, due to limited resources, Social Services reports these efforts have been delayed until mid-2011. Social Services reports taking no action on our recommendation to track and review the cost-effectiveness of the prosecution levels that counties use.

Temporary Workers in Local Government

Although Some Workers Have Limited Opportunities, Most Have Reasonable Access to Permanent Employment and Earn the Same Wage Rates as Permanent Workers

REPORT NUMBER 2008-107, APRIL 2009

Responses from the City of Escondido, Contra Costa County, Riverside County, and San Joaquin County as of June 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the use of short-term and/or temporary employees by six California general law counties and cities. Specifically, the audit committee asked that we select six general law counties and cities to review, and that we determine how these local governments classify positions and how many temporary employees are misclassified. The audit committee specified that we include the counties of Kern, Riverside (Riverside), and San Joaquin (San Joaquin) in our review. In addition to these three counties, we selected Contra Costa County (Contra Costa), as well as the cities of Escondido (Escondido) and Fremont to review.

The audit committee requested that for each of the six general law counties and cities, we compare the number of temporary workers to the number of permanent workers and compare the wages and benefits of temporary workers to those of their permanent counterparts to the extent that such counterparts exist. The audit committee also asked that for the same six general law counties and cities, we determine the average length of employment for temporary workers and whether this length complies with applicable requirements, whether temporary workers are performing duties that are legitimately temporary in nature, whether temporary workers are provided reasonable opportunities to become permanent employees, and the number of temporary workers who became permanent employees.

Finding #1: Escondido is not properly monitoring the use of the department specialist classification.

Escondido paid 198 employees in the department specialist job classification during the five-year period 2003 through 2007. This is a part-time, temporary job classification for which the duties and pay for each position are defined by the individual city departments.

As of July 29, 2008, the city reported that it had 76 department specialist positions in various city departments, with hourly pay rates that ranged from a low of \$8.50 per hour to a high of \$100 per hour. Escondido has other department specialist job classifications, such as the department specialist/ library associate classification, but these classifications are for positions whose duties are related to existing job classifications whose salary ranges and increases are the same as those of the related permanent classifications.

Audit Highlights . . .

Our review of the use of temporary employees in four counties and two cities revealed the following:

- » *Of the 78 job classifications from four of the six entities in our review, temporary employees in only 11 classifications appeared to have limited opportunities to move to permanent jobs.*
- » *Five of these local governments had temporary workers who exceeded their government's established time limits on the amount of time temporary workers may work over various periods during 2006 and 2007:*
 - *In Contra Costa, 113 employees appeared to exceed the applicable limits, while 492 appeared to in Riverside.*
 - *Fremont, Escondido, and San Joaquin had relatively few workers who exceeded the limits.*
- » *The proportion of temporary workers in the cities we reviewed was higher than in the counties.*
- » *In contrast to permanent employees, temporary workers in five local governments generally do not receive, or receive very few, employer-sponsored benefits until they have worked at least 1,000 hours.*
- » *The results of our survey of 594 temporary workers from the six local governments indicate that survey respondents from the cities were more likely than respondents from the counties to be temporary employees by their own choice and less likely to have applied for permanent jobs with their local government employers.*

According to the Escondido human resources manager, the department specialist classification has a wide range of duties that depend on the individual department's needs. Additionally, the human resources manager indicated that Escondido has many department specialists because each city department has unique needs that cannot be met by employees in other city job classifications. The human resources manager also initially indicated that the city manager gives final approval for department specialist positions after the requesting city department makes an hourly rate recommendation based on the employee's duties and current market data. The human resources manager stated that the city has no set upper limit on the hourly rate that a department may request for department specialists. According to the human resources manager, the human resources department provides verbal and written guidance on how to use the department specialist classification and reviews department requests to use the classification. Although the city has general written guidance applicable to all part-time job classifications, including the department specialist, it has not developed written guidance concerning when to use the department specialist classification or how to determine the hourly wage rates paid to department specialists.

We asked Escondido for the documentation submitted requesting approval for nine department specialist positions the city had in July 2008. The Escondido human resources manager informed us that city departments were not required to have city manager approval to use the department specialist classification until February 2008. Only two of the nine individuals we asked about obtained city manager approval to work as a department specialist after February 2008. For these two individuals, Escondido provided copies of e-mails showing that the city manager approved the requests to use the department specialist classification. The e-mails did not explain why the requesting department needed to use a department specialist classification instead of an existing city job classification, nor did they support the salary being requested. A separate spreadsheet provided to us by Escondido shows an hourly rate of \$60 for each employee and a general description of duties—interim real property manager in the engineering department in one case, and an investigator in internal affairs in the police department in the other case.

Escondido also provided us with an e-mail from July 2007 showing that the city manager approved a department specialist position for a city employee who was retiring and being rehired at \$100 an hour as a labor negotiator. No explanation was offered in the e-mail or on the spreadsheet the city provided explaining why this individual needed to be rehired or why the city agreed that the hourly rate was fair.

Although, according to the city's human resources manager, the human resources department provides other city departments with guidance regarding the department specialist classification, we saw no documentary evidence of this guidance. In addition, given the lack of documentation, it is not clear how the city determines appropriate salary levels for department specialist positions.

To help ensure that its department specialist job classification is used consistently and appropriately, we recommended that Escondido's human resources department ensure decisions to use the classification, including the salary level for each position, are approved and fully documented.

Escondido's Action: Corrective action taken.

Escondido reported that it implemented a new procedure requiring city departments requesting to hire a part-time temporary department specialist position to provide the human resources department with documentation of the essential duties and hourly rates of pay before the request can be considered for approval by the city manager. Escondido also updated its recruitment approval procedures to indicate that when city departments request to hire a department specialist, the human resources department will review whether there is a current part-time temporary classification that more appropriately reflects the duties and hourly rate of pay of the position being filled.

Finding #2: Contra Costa County formed a labor-management committee to evaluate the county's use of temporary employees.

We did not do an in-depth analysis of the job classifications in which temporary employees in Contra Costa were employed. However, we noted that in 2006 Contra Costa agreed to form a committee consisting of certain county management employees and representatives of four employee organizations to meet on issues pertaining to temporary workers, contract employees, student interns, and agency temporary employees.

According to Contra Costa's director of human resources, the employee organizations included on the committee represent a significant portion of the county's temporary employees. The committee was charged with reviewing how the county was using temporary employees and making draft recommendations for the county board.

The committee submitted its report and recommendations to the board in August 2008. The committee made the following recommendations:

- Contra Costa may employ temporary employees only for certain specified reasons.
- The county may use agency temporaries only for specific reasons when no permanent or temporary employees are available to perform the work.
- The county shall not use contract employees to perform bargaining unit work.
- Independent contractors shall not perform bargaining unit work.
- The county shall ensure that student workers or interns are enrolled in a school as active students and are performing work related to their course of study.
- The county shall not replace a temporary employee who has worked in excess of established hourly limits with another temporary employee, under most circumstances.

The committee's recommendations suggest some areas that the county management employees and employee organizations agreed were areas of concern regarding Contra Costa's use of temporary employees. One area of concern appeared to be that the county did not always limit its use of temporary employees to its short-term workload needs. Another appeared to be that the county sometimes replaced a temporary worker who had reached the limit on the number of hours the employee could work in a job classification with another temporary employee.

According to the director of human resources, as of late March 2009, negotiations with a coalition of labor unions were ongoing to reach a final resolution to the committee's report recommendations. The human resources director also indicated that the number of county temporary positions has decreased from 645 in April 2005 to 65 in March 2009 and that the county pledged to eliminate the remaining 65 positions by December 2009.

To address issues identified by the joint labor-management committee created to review Contra Costa's use of temporary employees, we recommended that the county continue negotiations with employee organizations to reach resolution regarding the committee's recommendations.

Contra Costa's Action: Corrective action taken.

Contra Costa and several employee organizations reached an agreement, which was approved by the board of supervisors, that eliminated some temporary employee positions, clarified limits on the use of temporary employees, and strengthened the reporting requirements on the use of temporary employees.

Finding #3: Most local governments had temporary workers who worked beyond the established limits, but only two had significant numbers of such instances.

All six local governments we reviewed have limits on how long temporary workers may work. Five of the six had temporary workers who exceeded their government's established time limits for temporary employees over various periods during 2006 and 2007. Fremont, Escondido, and San Joaquin had relatively few workers who exceeded applicable time limits, and Kern County had none, while 113 employees in Contra Costa and 492 employees in Riverside appeared to exceed applicable limits.

According to a Riverside ordinance, temporary workers budgeted to departments must have approval from the county board of supervisors (board) to work more than 1,000 hours of substantially continuous service in the same capacity in a fiscal year. Similarly, temporary workers in the county's Temporary Assignment Program (TAP) must have approval from the director of human resources to work more than 1,000 hours per assignment in a fiscal year.

We took a sample of 39 of the 492 temporary employees who exceeded the 1,000-hour limit in fiscal year 2006–07 and requested information from Riverside concerning whether the departments obtained necessary authorizations for the employees to exceed the limit. Our sample included 20 temporary assistants in the TAP and 19 department temporary employees in the group counselor I classification. We selected employees from these two classifications because they represented 97 percent of the 492 employees who exceeded the 1,000-hour limit.

For the temporary assistants in the TAP, Riverside informed us that 18 of the 20 individuals in our sample were actually employees in the county's on-call per diem medical registry who were classified in fiscal year 2006–07 as temporary assistants. Per diem employees are not subject to the 1,000-hour limit. According to Riverside, in about June 2008 it updated the computer software program it uses to manage its human resources so that it correctly identifies the on-call per diem employees. Riverside also informed us that the remaining two TAP employees had worked beyond the 1,000-hour limit without receiving appropriate authorization from the director of human resources. According to Riverside, these two employees worked in a hospital setting where many hours of overtime were required because of critical hospital needs, including patient safety.

For the 19 temporary employees in the group counselor I job classification, we determined that the board approved all of the employees to work 1,000 hours over the 1,000-hour limit, up to a maximum of 2,000 hours. However, two of the 19 employees worked more than 2,000 hours—one working 2,615 hours and the other working 2,326 hours—with neither employee having received authorization to work more than 2,000 hours.

Contra Costa had 113 temporary employees in 2006 who exceeded the county's one-year limit on working in a temporary capacity. Contra Costa's personnel regulations allow the county director of human resources to authorize the reappointment of a temporary employee if certain conditions are met or for other reasons satisfactory to the director.

We reviewed a sample of 15 of the 113 temporary employees in Contra Costa who exceeded the limit; the county informed us that 14 of these employees may have been approved to work beyond the one-year limit and that the remaining employee did not exceed the limit due to a one-day break in service. For 14 of the 15 employees, the county was unable to tell us definitively whether the employees had been approved to work beyond the one-year limit, in part because its personnel regulations do not require that such authorizations be in writing.

In San Joaquin, 18 temporary employees exceeded the county's 1,560-hour limit during 2007, and none of them had the required authorization to do so. San Joaquin's civil service rules and regulations specify a limit on the length of employment of one day less than nine months in any 12-month period for temporary employees. According to San Joaquin's human resources director, this limit is interpreted as 1,560 hours per employee in a calendar year.

The human resources director indicated that each department is responsible for monitoring the hours worked by temporary employees to ensure that they do not exceed 1,560 hours in a calendar year. Each quarter the labor relations division distributes a report to each department that lists their current temporary employees along with the hours each one has worked up to that point in the calendar year. The report also provides a trending estimate so the departments are aware of when the employee will reach the limit if he or she continues to work at the same rate for the remainder of the year. The division sends a report to the departments and to applicable employee organizations every December showing those employees who are near or at the limit. If a department wants to obtain approval for an employee or a group of employees to exceed the 1,560-hour limit, the labor relations division would seek an agreement with the appropriate employee organization. However, the county prefers to enforce the 1,560-hour limit rather than having employees work over the limit.

To ensure that their temporary employees do not work more than the prescribed time limits without authorization, we recommended that Contra Costa and Riverside improve their processes for identifying workers who are approaching the limits and, along with San Joaquin, document requests and approvals for workers to exceed the limits.

Riverside's Action: Corrective action taken.

Riverside reported that it started producing a biweekly report detailing total hours worked by TAP employees and this information is reviewed by Riverside human resources staff to identify employees who will need approval to work over the 1,000 hour limit. As necessary, these staff request and obtain approvals from Riverside's human resources director. Riverside also reported that it provided additional guidance and training to its human resources staff regarding hourly limits for TAP employees and when extensions are required.

Riverside also sent a memorandum to county department heads reiterating the hourly limit specified in the county salary ordinance for temporary employees budgeted to county departments and the process for getting approval to work above this limit.

Contra Costa's Action: Corrective action taken.

An agreement between Contra Costa and various labor organizations requires the county to reformat a quarterly report on the use of temporary employees so it is easier to keep track of how many hours they have worked. The county reported that its human resources department will be using the quarterly report to track the number of hours worked by temporary employees and inform county departments when workers are about to reach established hourly limits. In cases where a temporary employee exceeds the limit, the human resources department requires the county department in which the employee works to provide documentation that demonstrates that the reason for the employee working beyond the limit is consistent with the provisions of the agreement between the county and employee organizations regarding the use of temporary employees. The county also reported that between March 2010 and May 2010 the county reduced the number of temporary employees from 639 to 171.

San Joaquin's Action: Corrective action taken.

San Joaquin reported that it had modified its processes for tracking the number of hours worked by temporary and part-time workers. To strengthen the process, the county has split the tracking function between two divisions: human resources and labor relations. Human resources has assumed responsibility for tracking part-time hours worked and for notifying county departments quarterly of the number of hours worked by their employees. San Joaquin also reported that human resources tracks employee hours worked more closely in the second half of the year as employees get closer to the hours limit and proactively works with county departments to help them determine whether any extensions will be necessary to help them meet their operational needs. Labor relations has retained the role of seeking agreement with the relevant employee organization for an extension requested

by a department for an employee to work beyond the 1,560-hour limit. San Joaquin further reported that it is working with the county information systems division to develop a component for its “executive dashboard” that will allow management staff to monitor the number of hours employees work against the 1,560-hour limit.

San Dieguito Union High School District

Its Expenditures for Community Facilities District 94-2 Were Generally Appropriate, but It Did Not Fully Disclose Some of Its Financial Issues

REPORT NUMBER 2009-116, JUNE 2010

San Dieguito Union High School District's response as of December 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) review the San Dieguito Union High School District's (school district) use of Community Facilities District 94-2 (facilities district 94-2) funds.

Finding #1: Almost all tested expenditures for the facilities district were appropriate.

With three exceptions, our testing of 60 invoices totaling \$16.4 million indicated that the school district's projects and expenditures for the facilities district have generally been appropriate. More specifically, between 1998 and 2009, a large majority of expenditures for the facilities district was spent on school facilities specified in the resolution of formation that created the facilities district. For example, the school district spent \$9 million for projects at La Costa Canyon High School and \$1.9 million for projects at Oak Crest Middle School; the resolution of formation lists both as approved schools on which the school district may spend facilities district funds. The exceptions totaled \$451,000. The first exception concerned about \$294,000 in payments for relocatable classrooms on the property of Sunset High School that the school district has used as district administrative offices since the classrooms' installation. The resolution of formation for the facilities district does not allow the facilities district to pay for school district offices. The second and third exceptions concerned the school district's charging the facilities district approximately \$157,000, or 49 percent, of the \$322,000 it spent on housing and demographic studies between 1999 and 2007. The school district did so even though the studies pertained to the entire school district. The charges to the facilities district were inappropriate because the school district did not reasonably allocate the costs across the school district, including eight other facilities districts. After 2007 the school district began using a district-wide fund to pay for its demographic studies, according to the school district's director of planning and financial management.

We recommended that the school district reimburse the facilities district for the \$451,000 in erroneous payments for administrative facilities and demographic studies, or the school district should adjust the charges to this facilities district so that they reflect only appropriate expenditures.

Audit Highlights . . .

Our review of the San Dieguito Union High School District's (school district) use of Community Facilities District 94-2 (facilities district 94-2) funds revealed that the school district:

- » *Issued more than \$93 million in revenue bonds since 1998 to pay for school construction and improvements.*
- » *Has allocated about \$29.1 million in bond-related funds to facilities district 94-2.*
- » *Spent facilities district 94-2 funds in appropriate ways except for certain relocatable facilities and for housing and demographic studies costing in total \$451,000.*
- » *Did not clearly communicate to the public the significant financial difficulties it encountered in early 2008 associated with its bonds, including the risk that funds to make bond payments would run out within a year.*
- » *Did not disclose certain required financial information concerning the economic gain or loss resulting from bonds it issued in 2006, and the potential risks from a key financial agreement associated with the bonds.*

School District's Action: Corrective action taken.

The school district reported that it reclassified the expenses related to the locatable buildings at Sunset High School and the demographics studies as nonqualified facilities district 94-2 expenditures, effectively eliminating them from the account used to track spending on facilities district 94-2 projects.

Finding #2: The school district did not clearly communicate its financial problems related to the 2006 bonds.

In early 2008 the school district did not communicate adequately to the public that interest costs on bonds for its community facilities districts had increased substantially and that the school district faced a risk that funds to make bond payments would run out by March 2009. Despite this serious financial situation, the agendas and minutes for meetings of the school district's board of trustees (school board) did not reflect the problems that the district was facing or its plans for addressing them. Because the school district did not provide detailed information, members of the public who did not attend school board meetings had little access to the information necessary to provide comments and recommendations to the school board and to hold it accountable.

We recommended that the school district ensure that descriptions for agenda items and minutes for school board meetings contain sufficient information to convey the substance of the items accurately, and post to the school district's Web site all relevant documents and presentations related to agenda items.

School District's Action: Corrective action taken.

The school district reported that its staff will endeavor to appropriately caption agenda items so that the public is sufficiently informed of the discussion. It also said that supplemental materials made available at meetings of the school board are now included in the minutes and are posted on its Web site.

Finding #3: The school district did not make all required financial statement disclosures.

For fiscal year 2006–07, the school district did not make certain disclosures required by applicable financial reporting standards related to bonds and other financial instruments. For example, the school district did not include information in its financial statements concerning the economic gain or loss resulting from its refunding bonds, which are the bonds issued in 2006 to redeem the school district's outstanding 1998 and 2004 bonds. Moreover, the school district failed to describe the potential risks from a key financial agreement associated with the bonds. Because the school district's financial statements lacked these disclosures, interested citizens were less able to assess the financial position of the district.

We recommended that the school district ensure that it follows all relevant standards for financial reporting and to this end consider using a checklist, such as the *Government Finance Officers Association's School District Preparer Checklist*, designed to assist in preparing comprehensive annual financial reports of school districts.

School District's Action: Pending.

The school district stated that it believes the *Government Finance Officers Association's School District Preparer Checklist* is most relevant to the independent auditing firm preparing the annual financial audit. The school district indicated that it is preparing to release a request for proposals from firms qualified to conduct audits of California school districts, and its evaluation criteria will include a review of tools and checklists used by the auditors and their school district clients to ensure the school district's annual audit reports will be fully compliant with all standards for financial reporting.

Finding #4: The school district usually met deadlines for responding to public requests for records, but it did not document consistently the records that it provided.

Between 2007 and 2009, the school district received 19 requests for information regarding facilities district 94-2. Nearly all of the requests came from a citizens group concerned about the school district's management of facilities district 94-2. The school district's responses to the requests generally complied with the deadlines in the California Public Records Act (records act), but a lack of documentation frequently prevented us from determining whether the school district provided all the requested documents. In three of the 19 instances, the school district exceeded by three to six days the initial 10-day deadline for responding to requests. However, the district often did not maintain a record of the documents that it had deemed responsive to a request, so we could not determine for eight of the 19 requests whether the information that the school district made available met the requests.

We recommended that the school district maintain a record of documents that it makes available to requesters.

School District's Action: Corrective action taken.

The school district reported that depending on the scope of the request, it will either continue its practice of making a back-up copy of records provided under the records act, or in the case of a voluminous request, the school district will document a general description of records provided.

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.

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