

Office of Administrative Law

2015 SLAA REPORT

December 30, 2015

Marybel Batjer, Secretary
California Government Operations Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

Dear Ms. Batjer,

In accordance with the State Leadership Accountability Act (SLAA), the Office of Administrative Law submits this report on the review of our systems of internal control and monitoring processes for the biennial period ended December 31, 2015.

Should you have any questions please contact Belinda Lindstrom, Staff Service Manager II, at (916) 323-6224, Belinda.Lindstrom@oal.ca.gov.

BACKGROUND

The Office of Administrative Law, created in 1980, is a small agency with 20 employees. OAL's main function is to review administrative regulations proposed by over 200 state agencies to assess whether they comply with the legal standards and procedural requirements established by the Administrative Procedure Act (APA; Gov. Code, sec. 11340 et seq.). OAL transmits approved regulations to the Secretary of State, and issues written opinions regarding disapproved regulations. OAL is responsible for compiling and publishing the California Code of Regulations (CCR). We are also responsible for getting the California Regulatory Notice Register (Notice Register) published, a weekly publication that contains notices of proposed regulatory action by state agencies, as well as other notices of general public interest. Pursuant to Government Code sections 11344 and 11344.1, OAL makes the CCR and Notice Register available on the Internet, free of charge.

In response to petitions submitted to OAL by interested persons, OAL evaluates whether state agency rules, policies or procedures that have not been properly adopted pursuant to the requirements of the APA constitute "underground regulations." OAL may issue a formal legal analysis reflecting those evaluations.

Additionally, OAL assists state regulatory agencies through a formal 3-day training program, as well as through less formal methods, to understand and comply with the APA. Through its Reference Attorney service, OAL provides direct legal advice to state agencies and members of the public regarding California rulemaking law.

RISK ASSESSMENT PROCESS

Because OAL is a small agency with a collegial staff of attorneys and legal analysts, OAL's executive team uses a hands-on, direct communication approach toward management of the office. We do not have an internal auditor. Our risk assessment was performed by engaging in a series of informal, but comprehensive discussions of risks that could potentially affect our ability to perform our core mission. After conducting the assessment, we identified the issues identified herein as representing the significant risks facing our agency. Our assessment of each risk and our plans for addressing each risk are also discussed within this report.

EVALUATION OF RISKS AND CONTROLS

Operations- External- Staff—Recruitment, Retention, Staffing Levels

Staffing Levels - OAL has seen a steady increase in recent years in the number of proposed regulatory actions, the number of regulations affected per action, and in the complexity in the regulations submitted for review (2012 - 686 files, 2013 - 669 files, 2014 - 687 files, and 2015 - 708 files). Accordingly, the number of workload hours has increased. Two examples of statutes that have had a significant impact on OAL's workload: AB 32, the California Global Warming Solutions Act of 2006, a comprehensive program of regulatory and market mechanisms to achieve reductions of greenhouse gases, and SB 617 that requires state agencies to complete an economic impact analysis for all proposed regulatory actions and determine whether the action is a major regulation (economic impact exceeds \$50 million). Regulations proposed by state agencies to implement AB 32 and SB 617 must be reviewed by OAL for compliance with the APA. Also, OAL must review the regulatory action and determine whether the state agency has complied with the regulations adopted by the Department of Finance that implement SB 617.

Furthermore, requests from state agencies for OAL's 3-day training class on the rulemaking process have increased. OAL recently transferred over 200 state employees from the class waiting list to classes scheduled for 2016; however, the waiting list still has over 50 state employees on the list and the number grows weekly. There are ten 3-day classes currently scheduled and all ten classes are full through November 2016. The attorney who taught most of the 3-day class retired three years ago. He is no longer available to teach the class, and thus, the burden falls on the current legal staff and its full workload.

OAL receives petitions challenging purportedly illegal rules ("underground regulations") issued by state agencies. A few years ago, due to budget cuts, OAL lost one of the two legislative approved attorney positions. The review of an "underground regulation" petition requires a comprehensive legal analysis of all applicable statutes, regulations and case law, and all documents relevant to the challenged rule. With only one attorney now assigned to the underground regulations unit, OAL management must carefully assess whether to accept or decline any petition submitted for review.

Maintaining adequate staffing levels to sustain our core mission, especially during lean years, is one of our most significant challenges. To minimize this risk, we have asked for OAL's budget to be augmented to sustain the current program level and authorized staffing to ensure that we will be able to meet our statutory obligations. We have also asked for one new attorney in order to enhance the training provided by OAL and increase the number of classes to reduce and eliminate the class waiting list as quickly as possible. The additional attorney will assist with the training class, review proposed actions and petitions challenging alleged underground regulations.

Operations- External- Staff—Recruitment, Retention, Staffing Levels

Staff Recruitment and Retention - Over the years, experienced and knowledgeable attorneys in the APA rulemaking process is what has enabled OAL to make it through really lean times and regular periods of heavy workload. OAL management is concerned with retaining experienced and knowledgeable attorneys as well as its support staff. This can be a challenge given that out of the 11 attorney positions, OAL does not have any Attorney IV positions available, and therefore, no real upward mobility that many state agencies have, including those agencies with a smaller legal staff. Thus, openings in other state agencies may be attractive to our attorneys or support staff (particularly promotional opportunities with other agencies). For instance, in 2015, an OAL Attorney III accepted an Attorney IV position with another agency. It should be noted that it is common for an attorney to work for OAL for 20-plus years; however, promoting to an Attorney IV is becoming more of the norm statewide for those attorneys who are eligible and qualified. Additionally, during interviews of applicants for vacant attorney positions, OAL is frequently asked if it has Attorney IV positions available. OAL cannot compete equally for talented attorneys with other state agencies who have Attorney IV positions on their legal staff.

We are taking all feasible steps available to us to retain our existing staff by providing an

outstanding working environment. Nevertheless, we remain concerned about the costs associated with obtaining Attorney IV positions and filling a vacancy within the next month or two. To minimize the costs of filling vacancies, in general, we have registered to use the HR-Modernization program implemented by the Department of Human Resources (CalHR) as an economical means of conducting examinations for attorney positions. We are also reviewing and evaluating our budget to determine if OAL can include the salary of an Attorney IV in its budget.

Operations- Internal- Staff—Key Person Dependence, Succession Planning

Key person dependence - OAL is a small agency of 20 employees with one staff services manager who wears many hats: assistant to the Director and Deputy Director, fiscal officer, human resources and supervisor. As a result of these conditions, some degree of key person dependency is unavoidable. However, we have taken steps to curtail key person dependency by establishing written procedures for the staff services manager's key business functions.

Succession planning - One of OAL's most experienced attorneys will retire at the end of 2015, and we anticipate that this trend will continue as OAL has one additional attorney with almost 30 years of state service with OAL, plus two other attorneys not too far behind these two attorneys. Because OAL has a small legal staff of 11 attorneys, each departure of an experienced attorney has a significant impact on the historical knowledge held by OAL.

Key person dependence - In addition to establishing written procedures for the staff services manager's key business functions, additional staff have been trained. There is now a primary person responsible for the procurement of office supplies, and another person primarily responsible for keeping track of OAL's property.

Succession planning - We engage our staff in discussions about retirement in an effort to get advance notice for planning purposes. We have also begun identifying what internal staffing changes can and will need to be made. OAL has an informal, but well-established process for sharing historical and subject matter knowledge within the office. In order to preserve historical and subject matter knowledge and enhance consistency in our review of proposed regulations and underground regulation petitions, we developed a binder of resource materials for OAL attorneys and a guide for OAL's front office staff.

Operations- External- FI\$Cal Conversion

OAL contracts with the Department of General Services (DGS) to handle payment of OAL's bills. DGS has not paid OAL invoices for the past 4 months. OAL's invoices are submitted timely and as often as twice each month. We were told that there are problems with FI\$CAL and that is why our payments are being delayed. However, these delays will cost us more pursuant to the Prompt Payment Act. Most of our vendors are sending 2nd and 3rd past due notices. On December 15, 2015, OAL's P-card (credit card) was 4 months past due and was at risk of suspension. On December 16, Caltronics Business Systems (IT vendor) sent a notice stating we were in Collections. OAL's staff was unable to obtain bus passes from Sacramento Regional Transit (RT) due to past due invoices. RT has not been paid since August. OAL was sent an email notification stating that "failure to submit payment would result in further action on the part of RT."

On December 18, OAL's payments analyst at DGS informed us that she was not familiar with the procedure for processing Vendor Check Requests. She only deposits checks received from OAL staff and does not process the actual Vendor Check Requests; instead she only files Requests. This results in RT not being paid for months.

Travel Expense Claims to reimburse staff have not been issued since August. OAL is having to pay late penalty fees and also fees to have the State Controller's Office expedite payment, despite all OAL invoices being submitted timely.

Additionally, OAL's Deputy Director and Staff Service Manager met with DGS on September 1, 2015, to discuss CalSTAR reports that we were no longer receiving due to FI\$CAL. DGS assured OAL that it would receive FI\$CAL Expenditure reports. As of today, OAL still has not received any correct Expenditure reports. The only report we received is incorrect, and we asked CFS to make corrections; this has been over two months.

Because operating FI\$Cal at DGS is outside OAL's control, the only thing available for OAL is to continue its ongoing dialog with DGS to remedy the situation and to keep DGS apprised of this serious problem.

ONGOING MONITORING

Through our ongoing monitoring processes, the Office of Administrative Law reviews, evaluates, and improves our systems of internal controls and monitoring processes. As such, we have determined we comply with California Government Code sections 13400-13407.

Roles and Responsibilities

As the head of Office of Administrative Law, Debra Cornez, Director, is responsible for the overall establishment and maintenance of the internal control system. We have identified Beverly Johnson, Deputy Director, as our designated agency monitor(s).

Frequency of Monitoring Activities

The monitoring of the nonpayment of invoices at DGS continues on a weekly basis, as well as conversations with DGS staff on an almost daily basis. The monitoring of the staffing level at OAL is ongoing, and increases as vacancies become imminent. The Director meets with other management staff on a weekly basis, and more often, as the need arises.

Reporting and Documenting Monitoring Activities

The Director monitors the office workload of the legal division on a weekly basis using a report provided by support staff. The Staff Services Manager meets with the Director on a daily basis and reports on the current progress of DGS and FI\$Cal. The Director meets with other management staff on a weekly basis, or more often if the circumstances require, such as, when the office is in the process of filling a vacant position.

Procedure for Addressing Identified Internal Control Deficiencies

Being a small office of 20 people (11 attorneys, 6 support staff, and 3 exempt positions), with a flat management/hands on style, OAL is able to act quickly in response to any deficiencies that are identified during any monitoring activity or otherwise.

CONCLUSION

The Office of Administrative Law strives to reduce the risks inherent in our work through ongoing monitoring. The Office of Administrative Law accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies. I certify our systems of internal control and monitoring processes are adequate to identify and address material inadequacies or material weaknesses facing the organization.

Debra Cornez, Director

cc: Department of Finance
Legislature
State Auditor
State Library
State Controller
Secretary of Government Operations