December 31, 2019

Julie Lee, Acting Secretary
California Government Operations Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

Dear Ms. Julie Lee,

In accordance with the State Leadership Accountability Act (Leadership Accountability), the Office of Administrative Law submits this report on the review of our internal control and monitoring systems for the biennial period ending December 31, 2019.

Should you have any questions please contact Elizabeth Heidig, Assistant Chief Counsel, at (916) 323-6800, Elizabeth.Heidig@oal.ca.gov.

GOVERNANCE

Mission and Strategic Plan

The Office of Administrative Law:

- Ensures public access to current and proposed state regulations by publishing the official California Code of Regulations (CCR) and the California Regulatory Notice Register (CRNR) and making them both available online without charge to the user.
- Improves the quality of regulations by reviewing proposed regulations and approving only those that are legally valid, clear, and supported by an adequate record.
- Ensures that the public has a meaningful opportunity to comment on rulemakings and that an agency considers those comments when it develops regulations.
- Protects the public from illegal rules by issuing legal opinions (called "determinations") concerning alleged "underground regulations."
- Fosters increased awareness of the rulemaking process.

OAL's primary functions are to implement the APA and OAL's mission statement.

- Regulation Review— State agencies each year propose thousands of regulations which, when adopted, affect almost all economic activities and all segments of the California public. The volume of this regulatory activity is driven in large part by the enactment of new statutes and the amendment of existing laws. OAL reviews each proposed regulation subject to OAL review and approves the regulation only after it ensures that the rulemaking agency has adequately considered public comments, and the regulation is easily understood, necessary, authorized, and consistent with law. When approved by OAL and filed with the Secretary of State, a regulation has the force of law. OAL review benefits not only the Legislature and those affected by state agency regulations, but also the agencies themselves.

- Regulation Publication— OAL, through OAL's vendor Thompson Reuters (Barclays), provides for the official publication of all approved regulations in the CCR, the recognized source of regulatory law in California.
- Notice Publication— OAL is responsible for an additional publication, the CRNR, which contains, among other things, Notices of Proposed Regulatory Action, and notifications to the public of various OAL and state agency decisions and pending actions related to regulations (Gov. Code, sec. 11344.1).
- Education and Training— OAL promotes public participation in APA rulemaking by responding to public inquiries and providing ongoing training to state agency staff on appropriate and efficient rulemaking and the public's role in the process.
- Public Awareness and Information— OAL maintains a home page on the Web to inform the public of OAL's mission and functions and other helpful information, such as what emergency regulatory actions are pending, and provides a portal for public contact with OAL. OAL maintains a reference attorney service to answer questions from the public and government agencies.
- Determinations Regarding "Underground Regulations"— After receiving a formal request from an interested person, OAL may issue a legal opinion determining whether agency rules are "underground regulations" which must be adopted according to APA procedures, including public comment and OAL review.

There are no entities that report to OAL.

Control Environment

ONGOING MONITORING

As the head of OAL, Kenneth J. Pogue, Director, is responsible for the overall establishment and maintenance of the internal controls and monitoring systems.

EXECUTIVE MONITORING SPONSORS

The executive monitoring sponsors' responsibilities include facilitating and verifying that OAL's internal control monitoring practices are implemented and functioning as intended. The responsibilities for the executive monitoring sponsors have been given to: Kenneth J. Pogue, Director, Elizabeth Heidig, Assistant Chief Counsel (currently taking on some of the responsibilities of the Deputy Director as that position is vacant), and Belinda Lindstrom, Staff Services Manager II (SSM II).

Management establishes ethical values. This is addressed by OAL attorneys complying with the California State Bar Code of Ethics and all staff taking Ethics training every two years. All staff meet monthly to discuss issues of concern (including ethical issues. As OAL is a small office with only 21 authorized positions, every employee has direct access to the Assistant Chief Counsel and the Director. OAL also conspicuously posts its Code of Conduct in the workplace. Oversight is provided by management by personally interacting with each employee every week. Any issues raised are addressed during weekly scheduled attorney meetings and monthly all staff meetings. OAL has a comprehensive workplace manual that is updated regularly and provided to all staff. While OAL rarely

has vacancies, OAL works with DGS to appropriately target recruitment efforts to fill vacancies and cross training existing employees to ensure that OAL's workforce is competent to handle OAL's mission critical functions and that all duties can be handled by multiple personnel. Management regularly provides performance guidance through the weekly file review process as well as daily assignment feedback by the Director and Senior Counsel. OAL has also established a yearly performance review process for all employees.

Information and Communication

Communication

OAL communicates internally through regular management meetings and monthly legal division meetings, as well as through detailed written policies and procedures for both the legal staff and support staff, checklists for legal review, and confidential legal memorandums. Any identified deficiencies are handled directly with key staff and, when appropriate, groups of staff in an effort to further enhance quality and productivity in addressing statutory responsibilities and increasing public/ departmental outreach and response.

All employees are encouraged to report inefficiencies, inappropriate actions, and/or ethical concerns to their supervisor, or any manager/supervisor they feel comfortable with. In addition, all employees have open and direct access to the Director.

Other channels of communication include:

- Regularly held trainings (both on rulemaking and underground regulations)
- OAL Reference Attorney – responds to inquiries from the public and state agencies
- Underground Regulations Attorney – responds to questions concerning potential underground regulations
- External Stakeholders – Access through the OAL Reference Attorney, Assistant Chief Counsel, Deputy Director and Director (when appropriate)[1]

[1] OAL intends to provide additional External Stakeholder training for participation in the rulemaking process in 2020.

[2] ProLaw is a Legal Practice Management, Document Management for OAL.

MONITORING

The information included here discusses the entity-wide, continuous process to ensure internal control systems are working as intended. The role of the executive monitoring sponsor includes facilitating and verifying that the Office of Administrative Law monitoring practices are implemented and functioning. The responsibilities as the executive monitoring sponsor(s) have been given to:
Elizabeth Heidig, Assistant Chief Counsel; and Kenneth Pogue, Director.

The monitoring of OAL's responsibility of meeting statutory and regulatory deadlines, as well as the demonstration and monitoring of ethical codes of conduct, continues on a daily basis by the Director. The Director meets daily with key staff and holds monthly meetings to identify internal and external control issues and mitigation strategies for implementation. Additionally, the Director holds key legal staff conferences on an as-needed basis (but at least weekly) to address organizational goals,

objectives and risks.

Reporting and Documenting Monitoring Activities

The Director, Deputy Director, and Assistant Chief Counsel (OAL does not have a chief counsel position) determine whether statutory and regulatory deadlines have been met by monitoring e-mail notifications, database auto-notifications, and confidential file review memos written by legal staff to the executive file review committee. The executive file review committee consists of the Director, Deputy Director, Assistant Chief Counsel, and at least one Senior Attorney. The Director monitors the office workload of the legal staff on a weekly basis, or on a daily basis if needed, using a report compiled by support staff.

OAL's SSM II, with the assistance of the Department of General Services' (DGS) staff, drafts the OAL budget, which is reviewed and approved by the Deputy Director and the Director.

The SSM II meets with the Director on a weekly basis, or more often as needed, and reports on the current progress of non-payments of state agency invoices, accounts payable, staffing, and the ongoing working relationship with Department of Finance (DOF), DGS, and Fi$Cal. The Director meets with 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.

The monitoring of purchases is the responsibility of the Associate Governmental Program Analyst (AGPA), as overseen by the SSM II, and facilitated by the implementation and use of the FI$Cal system. The AGPA reviews and processes purchase orders, and the Director reviews and approves them as appropriate.

The monitoring of non-payment of invoices for payments owed to OAL continues on a daily basis and is overseen primarily by the SSM II.

The monitoring of the staffing level at OAL is ongoing and increases as vacancies become imminent. The Director meets with other management staff as the need arises. The AGPA and SSM II meet quarterly with DGS to discuss new processes and/or procedures in accounting regarding Fi$CAL, and to discuss issues that may be at hand and any other concerns that might arise through these interactions with DGS. The SSM II then meets with the Deputy Director and the Director to review and discuss any relevant changes.

Addressing Identified Internal Control Deficiencies

Vulnerabilities identified during ongoing monitoring are reported to the executive monitoring sponsors for discussion and resolution. Being a small office of 22 positions (19 filled), with a flat management/ hands-on style, OAL is able to act quickly in response to any deficiencies that appear during any monitoring activity or otherwise. Corrective actions are taken to ensure identified vulnerabilities are corrected, weaknesses are identified, and proactive measures are taken. OAL procedures now require review and approval on three levels for expenditures:

- First, by the SSM II
- Second, by the Deputy Director, or by the Assistant Chief Counsel (when the Deputy Director position is vacant)
- Third, by the Director

Furthermore, OAL continues to cross-train staff on core functions to ensure coverage in the event OAL loses a key employee.

[1] ProLaw is a Legal Practice Management, Document Management and Accounting program for law firms.

RISK ASSESSMENT PROCESS

The following personnel were involved in the Office of Administrative Law risk assessment process: executive management, middle management, front line management, and staff.

The following methods were used to identify risks: brainstorming meetings, and ongoing monitoring activities.

The following criteria were used to rank risks: likelihood of occurrence, potential impact to mission/ goals/objectives, potential impact of remediation efforts, and tolerance level for the type of risk.

RISK IDENTIFICATION

Because OAL is a small agency with a collegial staff of attorneys, legal analysts, and support staff, OAL's executive team uses a hands-on, direct communication approach toward management of the office. OAL does not have an internal auditor, but does contract with DGS for specified services in Information Technology and Human Resources, including auditing and audit reporting. OAL's risk assessment was performed by engaging in a series of informal, but comprehensive discussions and review of risks that could potentially affect OAL's ability to perform its core mission. After conducting the assessment, the executive team identified the issues described herein as representing the significant risks facing the agency. The assessment of each risk and plans for addressing each risk are also discussed within this report.

RISK RANKING

OAL prioritizes any potential risks so that significant internal control deficiencies are remedied on a timely basis with the focus being on OAL meeting the statutory and regulatory deadlines and obligations of OAL's core mission.

RISKS AND CONTROLS

Risk: RECRUITMENT, RETENTION AND TRAINING OF STAFF

Staff Recruitment and Retention - Over the years, retaining experienced and knowledgeable attorneys in the APA rulemaking process is what has enabled OAL to meet its statutory deadlines during regular periods of heavy workload. There is a concern about retaining experienced and knowledgeable attorneys and 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 very few opportunities for attorneys or support staff to promote within OAL. Other state agencies have Attorney IV regulatory positions and bigger agencies have many opportunities for support staff to advance. Thus, openings in other state agencies may be attractive to our attorneys and support staff.

Key Person dependence and staff recruitment and training is a potential risk for OAL. Three of OAL's

most experienced attorneys retired in the last five years (two in 2019), and it is anticipated that this trend will continue as OAL has at least two additional attorneys who have indicated their intention to retire within the next few years. Because OAL has a small legal staff of 11 reviewing attorneys and three management level attorneys, each departure of an experienced attorney has a significant impact on the legal experience and historical knowledge of OAL. In addition, newer attorneys have indicated a desire for promotional opportunities which do not currently exist at OAL.

Inadequate staffing levels could prevent OAL from meeting its statutory and regulatory deadlines and obligations. The number of actions submitted by state agencies to OAL for review has increased. Since 2013, there has been an approximately 21 percent increase in the number of actions submitted to OAL for review. Inadequate staffing levels could prevent OAL from meting its statutory and regulatory obligations.

In addition, OAL's attorneys should be receiving regular outside training in multiple areas, including legal review and writing. OAL will need to seek augmentation of its budget as the current budget does not support such necessary training.

Control: A

Increase in workload and the loss of seasoned staff impacts the ability for OAL to meet statutory and regulatory deadlines in a consistent and most effective manner. OAL manages this risk through individual training and cross-training, and monitoring of each individual's ability to meet deadlines. To minimize this risk, OAL will need a budget augmentation to sustain the current program-level expectations and to increase staffing and promotional opportunities to ensure that OAL will be able to meet statutory obligations and respond to the additional demands on a small agency, as well as to provide for training to its attorneys.

Risk: Budget: Internal and External Risks

OAL is a small office with a tight budget. It is very difficult for OAL to absorb unexpected increases in expenditures making it very difficult to operate within its authorized budget. Specific internal risks are as follows:

1. OAL has a number of employees who are near retirement age and at the top of their payscales. These employees also have high leave balances. When these employees retire and their leave balances paid out, it will significantly impact OAL's operating budget and its ability to backfill positions.

2. OAL needs to retain knowledgeable employees. In order to do so, OAL must upgrade positions. The cost increases for the upgraded positions are absorbed within OAL's existing budget. However, maintaining its staffing levels makes it a challenge to remain within its authorized budget.

OAL has external risks to its budget because it contracts out for human resources, accounting, budget and IT services. This leaves OAL dependent on other departments that may increase the costs of their service contracts which OAL will have to absorb within its existing budget.

Control: A

It is critical for OAL to maintain a highly knowledgeable and experienced staff to achieve its

mission. If OAL does not retain the appropriate staff, the critical oversight of agency rulemaking to meet the applicable State Standards will not occur. Management strives to maintain a knowledgeable and experienced workforce while staying within its authorized budget. Management meets internally each week, or more often if necessary, to review and discuss its budget. Management also meets monthly to review its internal monthly expenditure report.

OAL communicates with DGS on a daily or as needed basis. OAL provides DGS with the timely submittal of information and supporting documentation necessary for DGS to perform its services. OAL has regularly scheduled monthly meetings with DGS to discuss its budget activities, respond to DOF's miscellaneous budget drills and to build its annual budget.

OAL identified and implemented cost saving measures through cancellation of non-use publications to cover the costs of the position upgrades. OAL is seeking the necessary resources to maintain its key staff to perform its critical mission functions.

Risk: Computer System

OAL's statutorily mandated review of rulemakings requires a quick and thorough legal review. OAL currently relies on multiple state agencies to provide operational infrastructure and support. OAL staff regularly experience disruptions in this infrastructure which results in unplanned down time for staff. This inhibits OAL review and creates inefficiencies in the performance of OAL's core functions. OAL's reliance on multiple state agencies for this infrastructure and support frequently results in delays. In addition, attorneys, instead of IT staff (OAL has no IT staff), are asked to address IT-related problems, taking them away from their primary duties.

Control: A

OAL is currently in the process of working with involved state agencies to resolve infrastructure issues and to establish a more streamlined approach to providing services to minimize future infrastructure disruptions and to minimize recovery time when disruptions do occur. In addition, OAL contracts with DGS for IT support. DGS-IT reviews and submits all required Information Reporting, such as the Statewide Information Management Manual (SIMM) Reports.

Risk: Compliance w/ Web Content Accessibility Guidelines

The Americans with Disability Act (ADA) and Government Code section 11546.7 requires each state agency to post on the homepage of the agency's Internet Web site a signed certification that the agency's Internet Web site is in compliance with specified accessibility standards by July 1, 2019, and every other year thereafter. OAL, like many agencies, has had to ensure the publishing of statutorily required information, while at the same time confirming the posted information is in compliance with the ADA. Without such compliance, individuals with disabilities may not be able to access documents on OAL's website and OAL may be subject to litigation for noncompliance.

Control: A

OAL has worked diligently with agencies and the publisher of the CCR and CRNR, Thomson Reuters (Barclays), to ensure that all material posted meets federal and state accessibility

requirements. OAL webmasters are trained on accessibility standards and ways to ensure that web content is accessible whenever content is changed or new content is added. Testing is conducted any time web content is changed. This testing includes, but is not necessarily limited to, methods recommended by the Department of Rehabilitation, including accessibility scanning, manual testing for mobility and use with popularly used screen readers. Content will not be posted on the OAL website until OAL webmasters have been satisfied that the content meets applicable accessibility standards. OAL is continuing to work with state agencies and the publisher to address potential accessibility issues with regulatory submissions by agencies, such as Notices of Proposed Actions and proposed regulations. This often involves working with an agency to come up with a format that meets accessibility requirements and conveys the information desired by the agency.

Risk: AGENCY APA TRAINING

There is a high demand from state agencies for OAL's 3-day training class on the rulemaking process. OAL staff also provides for a highly requested half-day underground regulation training. OAL receives numerous requests each year for specific agency-wide training dedicated to a single agency. Currently, there are eight agencies seeking an entire 3-day training for their specific agency. In addition, OAL has been asked to annually present to various groups, including members of the Legislative staff and other entities. All of these presentations are valuable in that they improve the quality of regulations for the state and provide necessary information to those involved. The burden of staffing the training classes falls on the current legal staff who are already responsible for a full workload.

OAL believes the increase in requests for training is a result of the high number of people retiring from state service and general regulatory staff turnover; therefore, new people are filling vacancies who need training on the regulatory process. Additionally, new bodies of law require training in the rulemaking process for staff at the many state agencies who are responsible for implementing new legislation.

The risk is that state agencies will not have adequate training in the APA, which will produce non-compliant rulemakings, wasting government resources and resulting in potential additional litigation.

Control: A

As of October 2019, OAL has increased the capacity of the training room so that it will hold approximately 50% more students. This allows OAL to provide training to more students, but not increase the burden on the trainers'/attorneys' time and workload by increasing the number of classes each month. This has also significantly reduced the backlog of those on the waiting list and will help ensure appropriate training is provided to agency employees responsible for the promulgation of regulations pursuant to the APA. OAL has successfully reduced its training applicant backlog from over 600 applicants to approximately 100. OAL believes that the expanded training room will allow OAL to address the large demand for OAL training.

CONCLUSION

The Office of Administrative Law strives to reduce the risks inherent in our work and accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies as appropriate. I certify our internal control and monitoring systems are adequate to identify

and address current and potential risks facing the organization.

Kenneth Pogue, Director

CC: California Legislature [Senate (2), Assembly (1)]
California State Auditor
California State Library
California State Controller
Director of California Department of Finance
Secretary of California Government Operations Agency