



Kenneth J. Pogue, Director

December 6, 2021

Yolanda Richardson, Secretary
California Government Operations Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

Dear Ms. Richardson,

In accordance with the State Leadership Accountability Act (SLAA), the Office of Administrative Law (OAL) submits this report on the review of our internal control and monitoring systems for the biennial period ending December 31, 2021. Should you have any questions please contact Kenneth J. Pogue, Director, at (916) 323-6221, Kenneth.Pogue@oal.ca.gov.

The Office of Administrative Law, created in 1980, is a small agency with 23 employees (currently with two vacancies). There are no entities that report to OAL. OAL's core function is to review, and approve or disapprove, administrative regulations proposed by over 200 state agencies as to whether they comply with the substantive and procedural requirements of the Administrative Procedure Act (APA; Gov. Code, sec. 11340 et seq.). OAL is also responsible for making determinations on petitions submitted to OAL alleging state agencies are enforcing underground regulations, for providing training on APA rulemakings as well as underground regulations, and for publishing the California Code of Regulations (CCR) and the California Regulatory Notice Register (CRNR).

MISSION STATEMENT

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 Functions

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**— Also through Barclays, 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. OAL also offers free yearly training in the underground regulations petition process to members of the public.
- **Determinations Regarding “Underground Regulations”**— After receiving a formal petition from an interested person, OAL may issue a legal opinion determining whether agency rules not adopted under the APA are “underground regulations” which must be adopted according to APA procedures, including public comment and OAL review.

Vision

OAL is a public agency that serves its constituents by providing: professional legal review of regulations and requests for determination; education concerning the rulemaking process; and access to state agency regulations accurately produced in both paper and electronic form. Management and staff work closely together to achieve optimal productivity and job satisfaction.

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, Deputy Director, Dale Mentink, Assistant Chief Counsel, and Belinda Lindstrom, Staff Services Manager II (SSM II).

Monitoring Activities

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 daily 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 two Attorney IVs. The Director monitors the office workload of the legal staff on a weekly basis, or daily 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 daily 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 23 positions (21 filled), with a flat management/hands-on style, OAL can 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
- 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.

Communication

OAL communicates internally through regular management meetings, monthly legal division meetings and by email 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 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

Ongoing Monitoring Compliance

OAL has implemented and is documenting the ongoing monitoring processes as outlined in the monitoring requirements of California Government Code sections 13400-13407. These processes include oversight, reviews, evaluations, and improvements to the OAL systems of controls and monitoring. Key performance indicators are tracked by the executive monitoring sponsors daily through ProLaw²-generated reports on assigned files and due dates, as well as Daily Action Reports (on Secretary of State filings) and automated calendar reminders on various action items and meetings, so that vulnerabilities are quickly identified and addressed.

RISK ASSESSMENT PROCESS

The following personnel were involved in the OAL's risk assessment process: Executive Management (Kenneth J. Pogue, Director, Elizabeth A. Heidig, Deputy Director, Dale Mentink, Assistant Chief Counsel, and Belinda Lindstrom, SSM II).

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

¹ OAL intends to provide additional External Stakeholder training for participation in the rulemaking process in 2022.

² ProLaw is a Legal Practice Management, Document Management and Accounting program for law firms.

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: OPERATIONS- LAWSUIT – *Public.Resource.Org, Inc. v. OAL and CBSC, Sac. Superior Ct., Case no. 34-2021-80003612*

Petitioner, Public.Resource.Org, Inc., a 501(c)(3) nonprofit organization, through a Public Records Act request and subsequent litigation, has challenged the way OAL provides public access to the California Code of Regulations (CCR). Petitioner asserts that OAL must provide petitioner with unfettered access to the entire CCR in a specified electronic format. Since 1979, the State of California has, pursuant to Government Code section 11344.4, required the monetization of the CCR sufficient to reimburse the state for all the costs incurred in printing, publication, and distribution. Since 1998, OAL has followed State competitive bidding requirements to contract with outside vendors to print, publish, and distribute the CCR. As part of this contract, the contractor, on behalf of OAL, makes the entire CCR available online, free of charge to the public, while the vendor also offers the CCR with additional features as part of its for-pay subscription services. In the event Petitioner prevails in its petition, OAL will potentially be required to change the way the CCR is published.

CONTROL A

OAL is represented by the Office of the Attorney General and is actively defending the matter in superior court. In the event Petitioners are successful in the above-referenced matter, OAL will comply with the Court's order and will work with the Department of Finance to identify an appropriate funding mechanism to address any requirements resulting from the Court's order.

RISK: OPERATIONS-DECREASE IN DEMAND FOR OAL'S 3-DAY APA TRAINING

For years, OAL was unable to meet the demand for its 3-day Administrative Procedure Act training classes. In order to address the large backlog of requests, OAL doubled the size of its

training room and was able to enroll twice as many students in the class. As a result, OAL was able to remedy the backlog and enroll students very quickly in OAL's monthly classes. Almost immediately, however, Covid 19 restrictions required OAL to pivot to a remote learning model. This model was successful and OAL continued to meet the pace of demand for the training. Currently, OAL is experiencing a decrease in demand for the class and may have difficulty meeting its obligation to the General Fund in the amount of \$184,000 each Fiscal Year. Additionally, the need to meet the income generation requirement requires OAL to focus almost exclusively on the 3-day APA class to the detriment of other free educational offerings such as webinars and on-line videos that OAL would like to pursue.

CONTROL A

If OAL is unable to meet its General Fund income requirements, OAL will work with GovOps and DOF to identify funding solutions.

RISK: OPERATIONS – CONTAGIOUS DISEASE PREVENTION MEASURES

Like many other state departments, OAL reacted to the dangers associated with Covid 19 by changing its policies to allow extensive remote working options. The potential for a Covid 19 or other pandemic type of outbreak within the office continues to be a particular risk for OAL and its small number of employees where the long-term absence of one staff member would create a significant impact to the overall productivity of the office. However, OAL is required by law to accept regulatory filings at OAL's front desk. As a result, OAL requires front desk and support staff to be regularly in the office, resulting in the possibility of contact with individuals carrying Covid 19. Additionally, OAL has required at least one attorney to staff the office between 8 a.m. and 5 p.m. daily. This limited in-office staffing model has had a number of impacts on OAL staff:

- Front desk employees are regularly in contact with individuals filing and/or making deliveries and pick-ups at the front desk.
- Remote employees are having to work in home office spaces that are not always ideal.
- Employees had struggled to have regular communications now that most are working from home.
- New employees had a more difficult time receiving guidance from more experienced staff.
- Access and connectivity limitations and difficulty with IT support.

- Impacts to internal communication methods and timing, collaboration, teamwork, camaraderie, morale, employee wellbeing, mental health, and changes to employee childcare circumstances.
- OAL trainers had to immediately pivot to providing remote training.

CONTROL A

OAL moved immediately to address the threat of Covid 19 to its employees by:

- Requiring masks for all employees and visitors and limiting the number of visitors allowed at the front desk at a time. OAL also required all in-office employees to test their temperatures upon arrival.
- Ordering and installing glass barriers at the front desk.
- Regularly sanitizing all front-desk surfaces.
- Changing front-desk assigned seating areas to allow for safe distances between employees.
- Requesting employees to test negative for Covid 19 after displaying any symptoms of illness and before returning to work.
- Eventually requiring employees to be vaccinated or to regularly test negative for Covid 19 before working in the office.

OAL also worked with DGS and the California Department of Technology (CDT) to address remote meeting requirements by:

- Providing in-office training in Teams and Zoom to allow for remote meeting.
- Providing staff with home monitors, docking stations and headsets.
- Updating OAL's computers to provide cameras for use in video conferencing.
- Increasing OAL's internet bandwidth to allow for extensive video conferencing.
- Allowing employees to take their office chairs home.
- As funding allows, to purchase additional home-office equipment.

In order to address employee morale, to provide new employees with guidance and support, and to address other remote working impacts, OAL initiated regular Teams all-staff meetings. OAL also teamed new employees with more experienced attorneys with whom they could regularly meet by video and phone, and scheduled meetings with executive

staff, including the Director, Deputy Director, and Assistant Chief Counsel. OAL also regularly celebrates holidays and employee milestones over Teams or Zoom video meetings.

CONCLUSION

OAL strives to reduce the risks inherent in our work and accepts the responsibility to continuously improve by addressing newly recognized risks and revising controls to prevent those risks from happening. I certify our internal control and monitoring systems are adequate to identify and address current and potential risks facing the organization.

KENNETH J. POGUE
DIRECTOR

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