

December 18, 2023

Amy Tong, Secretary
California Government Operations Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

Dear Secretary Amy Tong,

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, 2023.

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

GOVERNANCE

Mission and Strategic Plan

The Office of Administrative Law (OAL):

- 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 rulemaking actions 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 Administrative Procedure Act (APA) and OAL's mission statement.

- **Regulation Review.** Each year, state agencies 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 by law, and consistent with law. When approved by OAL and filed with the Secretary of State (SOS), a regulation has the force of law. OAL review benefits not only the Legislature and those affected by state agency regulations, but also the state agencies themselves.

- Regulation Publication. OAL, through OAL's vendor Thomson Reuters (Barclays), provides for the official publication of approved regulations in the CCR, the recognized source of regulatory law in California. (Gov. Code, sec. 11344.)
- Notice Publication. Also through Barclays, OAL is responsible for publication of the CRNR, which contains, among other things, Notices of Proposed Regulatory Action, and notifications to the public regarding 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 the APA rulemaking process 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 APA process.
- Public Awareness and Information. OAL maintains an internet webpage to inform the public of OAL's mission, OAL's functions, and other helpful information, such as what emergency rulemaking actions are pending. OAL maintains a reference attorney service to answer questions from the public and state agency staff. OAL also offers free yearly training on 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 state agency rules that were not adopted pursuant to the APA are underground regulations that must be adopted according to APA procedures, including public comment and OAL review.

OAL's Goals.

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

Control Environment

As the head of OAL, Kenneth J. Pogue, Director, is responsible for the overall establishment and maintenance of the internal controls and monitoring systems. The Director, in conjunction with the Deputy Director, is responsible for demonstrating integrity and ethical values to the OAL staff.

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. This hands-on, direct communication approach has helped to maintain the competency of OAL staff and hold staff accountable. All employees are encouraged to report inefficiencies, inappropriate actions, and/or ethical concerns to their supervisor, or any manager/supervisor with whom they feel comfortable. In addition, all employees have open and direct access to the Director.

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 ProLaw-generated reports on assigned files and due dates, as well as Daily Action Reports (on SOS filings) and automated calendar reminders on various action items and meetings, so that vulnerabilities are quickly identified and addressed. (ProLaw is a legal practice management, document management, and accounting program for law firms.) The responsibilities for the executive monitoring sponsors have been assigned to: Kenneth J. Pogue, Director; Elizabeth Heidig, Deputy Director; Dale Mentink, Assistant Chief Counsel; and Belinda Lindstrom, Staff Services Manager II. The executive monitoring sponsors' responsibilities include facilitating and verifying that OAL's internal control monitoring practices are implemented and functioning as intended.

OAL does not have an internal auditor but does contract with the Department of General Services (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.

Information and Communication

OAL communicates internally through regular management meetings, monthly legal division meetings, regular email communication, detailed written policies and procedures for both the legal staff and support staff, checklists for legal review, and confidential legal memoranda. 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 with whom they feel comfortable. In addition, all employees have open and direct access to the Director.

Other available channels of communication for members of the public and external stakeholders:

- Regularly scheduled trainings regarding the APA rulemaking process and underground regulations.
- The OAL reference attorney is available to respond to inquiries from the public and state agency staff.
- The OAL underground regulations attorney is available to respond to questions concerning potential underground regulations.
- Access to OAL's Assistant Chief Counsel, Deputy Director, and Director is also available when appropriate.

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, Deputy Director; Kenneth Pogue, Director.

Ongoing Monitoring Compliance.

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 memoranda written by legal staff to the executive file review committee. The executive file review committee consists of the Director, Deputy Director, Assistant Chief Counsel, two Attorney IVs, and one Attorney III. 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 Staff Services Manager II (SSM II), with the assistance of staff at DGS, 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 OAL 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 and Deputy Director review and approve 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. As a small office of 26 positions (24 filled, with the remainder of positions to be filled by February 1, 2024), 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.

RISK ASSESSMENT PROCESS

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

The following methods were used to identify risks: brainstorming meetings, employee engagement surveys, ongoing monitoring activities, audit/review results, other/prior risk assessments, and performance metrics.

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

RISKS AND CONTROLS

Risk: Decrease in Demand for OAL's Three-Day APA Training Course

For years, OAL was unable to meet the demand for its three-day APA training course. In order to address the large backlog of course enrollment requests, OAL doubled the size of its training room and was able to enroll twice as many students in the course. As a result, OAL was able to remedy the backlog and enroll students very quickly. Almost immediately after the completion of the expanded training room, 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 course. However, OAL is now experiencing a decrease in demand for the training course and has had difficulty meeting its \$184,000 budget obligation generated from the three-day APA training course. For Fiscal Year 2022-23, OAL experienced a 7% (\$12,880) shortfall in meeting its Reimbursement Authority.

The need to meet the annual budget obligation of \$184,000 requires OAL to focus almost exclusively on the three-day APA training course to the detriment of other free educational offerings. In an effort to expand OAL's training course offerings and achieve OAL's goal of increasing public access to APA-related information and information regarding how to comment on proposed regulatory actions or otherwise participate in the rulemaking process,

OAL has begun posting training materials on its website. OAL plans to continue to add additional training resources to the OAL website over the next year, including webinars and focused training module videos.

Additionally, in the 2023-24 budget, OAL obtained budgetary authority to hire three additional positions to, in addition to other tasks, increase OAL's training capabilities. The positions will be tasked with the development of additional training opportunities for executive branch and legislative branch staff on a variety of APA-related topics, such as general and special exemptions to the APA, emergency rulemaking authority, and underground regulations. These positions will also be responsible for providing informational sessions to the public in order to achieve OAL's goal of increasing public access to information regarding how to meaningfully participate in the APA rulemaking process.

OAL contemplates the increased access to free, on-demand training materials may result in a further decrease in demand for OAL's three-day APA training course, which will put OAL further behind in meeting its annual budget obligation of \$184,000.

Control: A

If OAL is unable to continue to meet its annual budget obligation of \$184,000, OAL will work with the Government Operations Agency and DOF to identify funding solutions. OAL will continue to monitor enrollment in the three-day APA training course to determine if any changes need to be made in an effort to increase course enrollment.

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, Assembly]
California State Auditor
California State Library
California State Controller
Director of California Department of Finance
Secretary of California Government Operations Agency