Implementation of State Auditor's Recommendations

Audits Released in January 2003 Through December 2004

Special Report to

Senate Budget and Fiscal Review Subcommittee #1—Education

February 2005
Report No. 2005-406 S1

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CALIFORNIA STATE AUDITOR

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February 23, 2005 2005-406 S1

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

Dear Governor and Legislative Leaders:

The Bureau of State Audits presents its special report for the Senate Budget and Fiscal Review Subcommittee No. 1—Education. This report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. This report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes appendices that summarize recommendations that warrant legislative consideration and monetary benefits that auditees could realize if they implemented our recommendations. This special policy area report is available on our Web site at www.bsa.ca.gov/bsa/reports/subcom2005-policy.html. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, 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.

Respectfully Submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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Senate Budget and Fiscal Review Subcommittee #1—Education

INTRODUCTION

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2003 through December 2004, that relate to agencies and departments under the purview of the Senate Budget and Fiscal Review Subcommittee No. 1—Education. 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 left-hand margin of the auditee action to identify areas of concern or issues that we believe an auditee has not adequately addressed.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The Bureau of State Audits' (bureau) policy requests that auditees provide a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, we request 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 an auditee provide a response beyond one year or initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such 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 February 7, 2005.

To obtain copies of the complete audit and investigative reports, access the bureau's Web site at **www.bsa.ca.gov/bsa/** or contact the bureau at (916) 445-0255 or TTY (916) 445-0033.

CALIFORNIA COMMISSION ON TEACHER CREDENTIALING

It Could Better Manage Its Credentialing Responsibilities

Audit Highlights . . .

Our review of the credentialing process administered by the California Commission on Teacher Credentialing (commission) revealed the following:

- ☑ *The commission could better evaluate the effectiveness of the programs it oversees and better measure the performance of the teacher credentialing process.*
- ☑ *The commission could take additional steps to improve its processing of credential applications, including focusing its customer service activities.*
- ☑ *Several areas of the commission's process for developing program standards lack structure and could be improved.*
- ☑ *The commission suspended its continuing accreditation reviews in December 2002 and is evaluating its accreditation policy, and it does not expect to present a revised policy to its governing body until August 2005.*

REPORT NUMBER 2004-108, NOVEMBER 2004

California Commission on Teacher Credentialing response as of January 2005

The Joint Legislative Audit Committee asked us to study the effectiveness and efficiency of the teacher credentialing process administered by the California Commission on Teacher Credentialing (commission). Our audit found that the commission could make improvements to better evaluate the programs it oversees and its internal operations, more effectively manage its application processing, and refine how it updates program standards.

Finding #1: The commission has neither fully evaluated nor accurately reported the results of two of its three teacher development programs.

The commission's teacher development programs provide funding for individuals who do not yet meet the requirements for a teaching credential. However, the commission has neither sufficiently evaluated nor accurately reported on two of its three teacher development programs. Specifically, the commission did not have the effectiveness of the California School Paraprofessional Teacher Training Program (paraprofessional program) independently evaluated, as state law requires. The commission indicates that the high cost of this evaluation is a concern, but it could not provide documentation that it sought the funding it believes is needed for the evaluation. Further, because the commission did not develop ways to measure and monitor local program performance, nearly 70 participants whose participation in the paraprofessional program was scheduled to end by December 2003 have not completed credential requirements. In addition, the commission overstated the benefits of the Pre-Internship Teaching Program in a report to the Legislature and could not provide support for certain assumptions in this report. Finally, although no requirement

exists for the commission to evaluate its intern program, commission data indicates that the program has been successful in meeting its objectives.

We recommended that the commission establish performance measures for each of its teacher development programs. We also recommended that the commission ensure that the statistics it presents in its program reports to the Legislature are consistent and that it maintains the supporting documentation for these statistics. Further, we recommended that the commission monitor how local teacher development programs verify the academic progress of participants and establish consequences for underperformance. Finally, we recommended that the commission resume requests for budget increases to fund an independent evaluation of its paraprofessional program that assesses all the requirements in the applicable statute or seek to amend those parts of the law that it believes would be too costly to implement.

Commission Action: None.

The commission agrees it could adopt additional performance measures that address the effectiveness of programs in meeting statutory objectives. The commission indicated that a process it implemented in 2001 to track candidate enrollment in each of its teacher development programs will help the commission monitor the effectiveness of programs in helping candidates achieve a credential.

Finding #2: The commission could improve its ability to measure the performance of preparation programs and the teacher credentialing process.

The commission annually reports on the number of California teaching credentials it issues and the number of emergency permits and credential waivers it grants. However, it provides this information with limited, if any, analysis of the trends associated with these numbers and does not account for external factors that could affect these statistics. In addition, if the commission and the other entities involved worked to remove current obstacles, the commission could use the results of the teaching performance assessment, annual data on retention of teachers, and administrator surveys that are currently in development to better measure various aspects of the process and the preparation programs.

We recommended that the commission include an analysis with the statistics it publishes in its annual reports to provide context to education professionals and policy makers for why the number of credentials, permits, and waivers it issues has changed. We also recommended that the commission collaborate with colleges and universities to determine what funding is necessary to activate and maintain the teaching performance assessment as the enabling legislation envisioned it. It should then request the Legislature and the Governor's Office to authorize this function in future budget acts. Finally, to aid it in developing performance measures for preparation programs, we recommended that the commission keep itself informed of surveys and reports that other entities prepare.

We also recommended that the Legislature consider giving the commission a specific policy directive to obtain and use data on teacher retention to measure the performance of the process and preparation programs and provide this information in its annual reports.

Commission Action: None.

Although the commission agrees that a thoughtful analysis of teacher supply and demand data is helpful to policy makers at all levels, it stated that such an analysis would require additional resources and information that are not currently available to it. However, we disagreed that additional staffing was needed to conduct this analysis because we found that most of the information needed was readily available. The commission also indicated that such an analysis could be at odds with state policy directives or increase the State's exposure to litigation. Finally, the commission indicated that it provides data upon request to independent bodies that conduct such analyses.

The commission stated that it would continue to work with colleges and universities to implement the teaching performance assessment on a voluntary basis and that it looks forward to direction from state policy makers in resolving funding issues that have prevented the full implementation of the assessment. In addition, the commission is amending its grant process to include performance measures for its teacher development programs. Finally, the commission indicated that it is considering systematic collection of valid and reliable data gathered through surveys and performance assessments as part of its review of the accreditation system.

Legislative Action: Unknown.

Finding #3: The commission has not established specific performance measures for its divisions.

The commission's February 2001 strategic plan (2001 plan), which the commission partially updated just after we completed our fieldwork, was outdated and did not establish the specific performance measures the commission needed to evaluate the results of its current efforts. In addition, the commission does not systematically track whether it is successfully completing the tasks it outlined in the 2001 plan. As a result of inadequate strategic planning, the commission has lacked specific performance measures to guide, evaluate, and improve its efforts.

We recommended that the commission regularly update its strategic plan and quantify performance measures when appropriate in terms of the results the commission wants to achieve. We also recommended that the commission present the commission's governing body (commissioners) with an annual status report on how the commission has achieved the goals and tasks outlined in the strategic plan.

Commission Action: None.

During the audit, the commission indicated that it had postponed long-range strategic planning until vacancies on the commission's governing body are filled. The commission indicates that it does not plan to take action to address our other recommendation because its executive director annually prepares a list of accomplishments that are directly linked to the strategic goals, which is read at a commission meeting. The commission also indicated that its agenda items provide a status report on the goals and tasks at each meeting. However, as we observed during the audit, the executive director's list of accomplishments does not track the progress of the strategic plan tasks.

Finding #4: The commission has made efforts to streamline and remove barriers from the teacher credentialing process.

Although state law mandates the framework of the teacher credentialing process, the commission has the responsibility to analyze the process periodically and report to the Legislature if particular requirements are no longer necessary or need

adjustment. In exercising its oversight of the process, the commission has implemented some reforms and is contemplating others. The commission has also worked to reduce the barriers to becoming a California teacher. In addition to these efforts, the commission is considering whether to consolidate the examinations that it requires prospective teachers to pass.

We recommended that the commission continue to consider ways to streamline the process, such as consolidating examinations it requires of credential candidates. If the commission determines that specific credential requirements are no longer necessary, it should seek legislative changes to the applicable statutes.

Commission Action: Pending.

The commission concurs and added that it has been exploring the possibility of streamlining examinations for the past year.

Finding #5: By better managing its customer service, workload, and technology, the commission could improve application processing.

By focusing its customer service, better managing its workload, and taking full advantage of a new automated application-processing system, the commission could improve its processing of applications. Facing a significant volume of contacts, the commission has not taken sufficient steps to focus its customer service activities. Proper management of customer service is necessary because the large volume of telephone calls and e-mails that the commission receives takes staff away from the task of processing credential applications.

Although the commission typically processes applications for credentials in less than its regulatory processing time of 75 business days, applications go unprocessed for a significant amount of this time because staff members are busy with other duties. The commission has taken some steps to improve its process, including automating certain functions as part of its Teacher Credentialing Service Improvement Project (TCSIP), which is a new automated application processing system that the commission planned to implement in late October 2004. However, the commission has not performed sufficient data analysis to make informed staffing decisions. TCSIP offers tangible time-saving benefits, such as allowing colleges and universities to submit applications electronically

and automating the commission's review of online renewals, but the commission does not plan to use either function to its full potential in the foreseeable future. Although online renewals offer the benefit of faster and more efficient processing, the commission has not sufficiently publicized this benefit. The commission could do more to inform teachers about the benefits of online renewal by performing the data analysis necessary to determine where the commission needs to do additional outreach and by better highlighting online renewal's availability and faster processing time. Finally, we noted that the commission could be more efficient by automating how it routes and responds to customers' e-mails.

We recommended that the commission gather meaningful data about the types of questions asked in e-mails to use with data from its telephone system to improve the public information it provides. To ensure the effective management of its application workload, we recommended that the commission routinely monitor the composition of the applications that it has not yet processed and collect and analyze data on the average review times for different types of applications. In addition, we recommended that the commission routinely have TCSIP create automated reports to track the average processing times and list applications that are taking more than 75 business days to process. To optimize the time-saving benefits of TCSIP, we recommended that the commission require colleges and universities to submit credential applications electronically to the extent that is economically feasible and consider expanding TCSIP to allow school districts to submit applications electronically, which would then allow for an automated review of routine applications. Further, to encourage more teachers to renew their credentials online and to determine whether additional outreach efforts may be necessary, we recommended that the commission gather data on and study the percentage of renewals it receives online for different types of credentials. Finally, we recommended that the commission automate its response to and routing of e-mails.

Commission Action: Partial corrective action taken.

The commission indicated that it has developed a method that staff now use to gather data on e-mails. In January 2005, the commission changed its Web site to respond to questions that customers ask on the telephone and in e-mails. The

➲ commission disagreed with our recommendation to routinely monitor the composition of applications waiting to be processed as well as collect and analyze data on average processing times for different application types because it did not believe this recommendation was feasible or cost effective. The commission states that it plans to develop an automated report to track application processing times once TCSIP is implemented. The commission indicates that it will do everything possible to encourage colleges and universities to submit applications electronically, but indicates that enhancing the online process to allow school districts to submit applications electronically will require additional resources. To encourage more educators to renew credentials online, the commission indicates its new Web site has a clearly displayed link for this function. Further, the Web site and the commission's pamphlets now state that online renewals are processed within 10 working days. Finally, the commission indicates that it has developed an automated response to all incoming e-mails and is working on a system to route the e mails.

Finding #6: The commission's process for developing teacher preparation program standards lack structure and could be improved.

The commission is in the midst of a 10-year process of developing program standards that comply with the requirements of Senate Bill 2042, Chapter 548, Statutes of 1998 (act). The commission does not have an overall plan to guide its efforts to finish implementing program standards or its ongoing standard-setting activities. Further, the commission's recent experiences developing program standards to meet the act's requirements offer an opportunity to evaluate how to better manage its future efforts. Our review of five sets of recently developed program standards identified areas in the commission's process for developing program standards that lack structure and could be improved. Among other issues, the commission does not use a methodical approach to form advisory panels of education professionals that assist it in developing program standards; neither does it always put in perspective the results of its field-review surveys to the commissioners when recommending standards for adoption. Finally, we found that the commission had an inadequate policy for ensuring staff maintain important documents related to the development of program standards.

We recommended that the commission develop an overall plan to guide its efforts to update program standards. This plan should describe the commission's process for developing standards and should provide more structure for that process. We also recommended that the commission develop a methodical approach to forming advisory panels to ensure that it objectively appoints education professionals to those panels. Further, to provide commissioners with a better perspective on the results of field-review surveys, we recommended that commission staff report the actual results for each standard. Finally, we recommended that the commission implement a more specific record retention policy.

Commission Action: Partial corrective action taken.

The commission indicates that it has finished its work related to the development and implementation of program standards to meet the act's requirements, but agrees that a long-range plan with associated timelines for reviewing and updating future program standards would be a helpful planning tool. However, as we stated in the report, the commission is still developing five sets of single subject standards—which it plans to adopt in July 2005—and it is implementing eight other single subject standards—four in July 2005 and the remaining four in July 2006. Thus, we believe that significant planning efforts remain for the commission.

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The commission believes that it uses a methodical approach to appoint advisory panel members and that its approach does not lend itself to a checklist type of evaluation of applicants relative to the commission's qualifications and standards. However, our analysis of the commission's process to form advisory panels found that the panel applications were not structured to specifically address how candidates meet the commission's qualifications, the commission did not use a consistent ranking process to ensure that it appointed the most qualified or desired candidates, the commission did not use a checklist or other review tool to ensure that candidates meet its qualifications, and that it was unclear how the commission considered the role of ethnic diversity and other factors in its selections.

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Further, the commission disagrees with our recommendation to present the actual field-survey results to the commissioners because it indicates that commissioners have not raised an issue with this method. The commission also noted that it could provide the results to the commissioners upon request.

Finally, the commission indicates that it has updated its record retention policy for documents related to the development of program standards.

Finding #7: The commission suspended its continuing accreditation reviews of colleges and universities.

The commission suspended its continuing accreditation reviews of colleges and universities in December 2002 to allow colleges and universities time to implement the commission's new standards and for it to evaluate its accreditation policy. Continuing accreditation reviews are an important component of the commission's accreditation system and help ensure that colleges and universities operate teacher preparation programs that meet the commission's standards. Although the commission has been working with representatives from colleges and universities to evaluate its accreditation policy, it does not plan to propose a revision to the commissioners until August 2005.

We recommended that the commission promptly resume its continuing accreditation reviews and take steps to complete the evaluation and revision of its accreditation policy promptly.

Commission Action: None.

The commission indicates that it plans to make recommendations to the commissioners on revisions to the accreditation framework in spring or early summer 2005. Because colleges and universities have requested a 24-month preparation period for onsite accreditation reviews, the commission believes that the earliest practical date that it could initiate site visits would be fiscal year 2006–07.

CALIFORNIA'S EDUCATION INSTITUTIONS

A Lack of Guidance Results in Their Inaccurate or Inconsistent Reporting of Campus Crime Statistics

REPORT NUMBER 2002-032, DECEMBER 2003

California education institutions' and the California Postsecondary Education Commission's responses as of December 2004

Audit Highlights . . .

Our review of California's education institutions' compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) revealed the following:

- ☑ *The Clery Act does not always provide clear definitions.*
- ☑ *Institutions sometimes report inaccurate or incomplete statistics in their annual reports.*
- ☑ *Institutions have significant discretion in identifying reportable locations.*
- ☑ *Institutions do not always request sufficient detail on crimes from campus security authorities and police agencies to avoid duplication or exclusion of a reportable incident.*
- ☑ *Not all institutions disclose required campus security policies and notify current students and employees of the annual reports' availability.*

Chapter 804, Statutes of 2002, requires the Bureau of State Audits (bureau) to report to the Legislature the results of its audit of not less than six California postsecondary education institutions (institutions) that receive federal student aid. The bureau was also directed to evaluate the accuracy of the institutions' statistics and the procedures they use to identify, gather, and track data for publishing, disseminating, and reporting 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 evaluated compliance with the Clery Act at California State University, Sacramento (Sacramento); City College of San Francisco (San Francisco); San Diego State University (San Diego); University of California, Davis (Davis); University of California, Santa Barbara (Santa Barbara); and University of Southern California (USC).

Chapter 804, Statutes of 2002, also requires the California Postsecondary Education Commission (Commission) to provide on its Internet Web site a link to the Internet Web site of each California institution of higher education that includes on that Web site the institutions' criminal statistics information.

Finding #1: Institutions receive little guidance on converting California's definitions of crimes to Clery Act reportable crimes.

The Clery Act requires eligible institutions to compile crime statistics in accordance with the definitions used in the uniform crime reporting system of the United States Department of

Justice, Federal Bureau of Investigation (FBI). Definitions for crimes reportable under the Clery Act can be found in both the FBI's Uniform Crime Reporting Handbook (handbook) and federal regulations. If the United States Department of Education (Education) finds that institutions have substantially misrepresented their crime statistics, it may impose a civil penalty of up to $25,000 for each violation or misrepresentation and may suspend or terminate the institution's eligibility status for Title IV funding. Although some state and federal entities provide limited guidance to some institutions, it appears that no single governing body exists within California to provide guidance to all institutions required to comply with the Clery Act on such matters as converting California's definitions of crimes to those reportable under the Clery Act. This lack of comprehensive guidance can result in the inconsistent reporting of crime statistics by the institutions and exposes them to Educations' penalties.

To provide additional guidance to California institutions for complying with the Clery Act, the Legislature should consider creating a task force to perform the following functions:

- Compile a comprehensive list converting crimes defined in California's laws to Clery Act reportable crimes.
- Issue guidance to assist institutions in defining campus, noncampus, and public property locations, including guidelines for including or excluding crimes occurring at other institutions.
- Obtain concurrence from Education on all agreements reached.
- Evaluate the pros and cons of establishing a governing body to oversee institutions' compliance with the Clery Act.

Legislative Action: Unknown.

Finding #2: Some institutions do not maintain documentation of the incidents they include in their annual reports and others inaccurately report the number of incidents.

The six institutions we visited have established procedures to capture what each institution believes are reasonably complete crime statistics. Although the *Federal Student Aid Handbook* requires institutions to retain records used to create their annual reports, including the crime statistics, for three years after the

due date of the report, only Sacramento retained documentation to identify the specific incidents that were included in its 2002 annual report. San Diego was only able to provide documentation to identify the specific incidents it reported for calendar years 1999 and 2001. We were able to re-create the statistics for San Francisco using data from crime reports and other relevant documents. Davis, Santa Barbara, and USC did not maintain their documentation in a manner that would allow us to identify the specific incidents included in their annual reports; however, Davis and Santa Barbara chose to re-create their statistics. We were unable to re-create and verify the statistics for USC. According to our analysis, institutions mostly over-reported their crime statistics. However, except for Davis and San Francisco, the percentage of error was generally small.

To improve the accuracy and completeness of their data, we recommended that five of the six institutions retain adequate documentation that specifically identifies the incidents they include in their annual reports.

Institutions' Actions: Corrective action taken.

The education institutions reported that they implemented either systems or methods to retain adequate documentation of the incidents they include in their annual reports.

Finding #3: Institutions do not always have an adequate process for accurately identifying crimes at reportable locations.

To comply with the Clery Act requirement for reporting the statistics for crimes occurring in or on noncampus buildings and property, and on public property, institutions must determine which locations meet the Clery Act definitions of noncampus and public property. Two of the six institutions we visited did not have a sufficient process for identifying all reportable noncampus locations in their statistics. Another institution did not differentiate in its annual report, crimes occurring on campus from those occurring at public property locations, such as streets surrounding the campus. When institutions do not adequately capture and report statistics for all noncampus and public property locations, they risk distorting actual levels of crime.

To improve the accuracy and completeness of their data, we recommended that four of the six institutions should establish procedures to ensure that they accurately identify all reportable locations and report all associated incidents.

Institutions' Actions: Corrective action taken.

The education institutions reported that they have established policies and procedures to ensure that they identify all reportable locations and report all associated incidents.

Finding #4: Collecting insufficient information from campus security authorities and police agencies can lead to other errors.

The Clery Act requires institutions to collect crime statistics from campus security authorities and state or local police agencies (police agencies). However, the institutions did not always collect sufficient detail, such as the time, date, location, and nature of an incident, to determine if the incidents are reportable. Specific details of an incident aid in verifying whether it is reportable and whether the same crime has been reported by more than one of its sources. Institutions that do not collect sufficient detail on an incident may over-report actual crimes by counting an incident more than once.

To improve the accuracy and completeness of their data, we recommended that three of the six institutions should establish procedures to obtain sufficient information from campus security authorities and police agencies to determine the nature, date, and location of incidents.

Institutions' Actions: Corrective action taken.

The education institutions reported that they have established policies and procedures to request sufficient information on incidents, including the nature, date, and location of the incident.

Finding #5: Institutions do not always comply with Clery Act requirements.

The Clery Act outlines numerous campus security policies that institutions must disclose in their annual reports. Although most of the institutions make reasonable efforts to disclose their policies, they can do more to ensure compliance with all statutory requirements. The Clery Act and federal regulations also require institutions to distribute their annual reports to enrolled students and current employees and to notify prospective students and employees of the availability of the annual report. San Francisco is the only one of the

six institutions we reviewed that does not do so. In addition, the Clery Act requires that institutions make timely reports to the campus community on Clery Act reportable crimes considered a threat to other students and employees. However, only one of the six institutions established a time frame to report incidents to the campus community.

To improve the accuracy and completeness of their data, we recommended that three of the six institutions should establish procedures to include all required campus security policies in their annual reports. Further, we recommended that two institutions should establish procedures to notify all current and prospective students and employees of the reports' availability. Finally, we recommended that five of the six institutions should establish a policy to define timely warning and establish procedures to ensure that they provide timely warnings when threats to campus safety occur.

Institutions' Actions: Corrective action taken.

The education institutions reported that they have made the necessary changes to correct the deficiencies noted in our report.

Finding #6: The Commission's Web site does not link users to the institutions' Web sites.

State law requires the Commission to provide a link to the Web site of each California institution containing criminal statistics information. However, as of September 4, 2003, the Commission's Web site did not include links to almost 300 campuses listed on the Web site of Education's Office of Postsecondary Education. The Commission believes that it would need assistance from the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs to maintain a comprehensive list of institutions and their Web sites. Without such a list, the Commission is unable to provide links to the Web site of each institution, as state law requires.

To ensure that it provides links to the Web site of each California institution that includes on that Web site criminal statistics, the Commission should work with the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs to update its Web site. Additionally, the Commission should periodically reconcile its Web site to the federal Web site.

Commission Action: Corrective action taken.

The Commission stated that it has assigned a staff person to work with the Bureau for Private Postsecondary and Vocational Education to ensure that all links are included on the Commission's Web site. Further, the Commission also stated that its staff spend time daily checking and updating the campus information on its Web site. Finally, the Commission reported that staff periodically reconcile its Web site with the federal Web site.

CALIFORNIA STATE UNIVERSITY

Its Common Management System Has Higher Than Reported Costs, Less Than Optimal Functionality, and Questionable Procurement and Conflict-of-Interest Practices

REPORT NUMBER 2002-110, MARCH 2003

California State University response as of March 2004

Audit Highlights . . .

Our review of the California State University's (university) Common Management System (CMS) revealed the following:

- ☑ *The university did not establish a business case for CMS to define its intended benefits and associated costs and ensure that the expenditure of university resources is worthwhile.*
- ☑ *The university's previous cost projections understated the full costs of CMS over its now nine-year project period; these costs—including an estimated $269 million for maintenance and operations—are now expected to total $662 million.*
- ☑ *Problems exist that cast doubt on whether CMS will achieve all the objectives intended, nor offer what could have been achieved from a systemwide project.*

continued on next page . . .

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the California State University's (university) Common Management System (CMS) project. Specifically, the audit committee asked that we identify the initial cost estimates and current projected costs for CMS including integration costs, consultant costs, data center costs, and the university's funding sources for these related expenditures. Additionally, the audit committee asked us to identify the university's needs, benefits, and return on investment from CMS and its supporting data center. The audit committee also asked us to review the university's management and oversight for CMS and its supporting data center, the university's process to select the software, hardware, and consultants contributing to the CMS project, and how implementation has affected growth in employee positions and workload. The audit found the following:

Finding #1: The university did not develop a business case for CMS.

The university did not establish a business case for CMS by preparing a feasibility study report that evaluated the need for and the costs and benefits of this new administrative computer system. Without such a feasibility study, the university lacks persuasive answers to the Legislature's questions about its use of state resources for CMS and its supporting data center.

The Public Contract Code requires state agencies to follow the State Administrative Manual (SAM) when acquiring information technology (IT) goods and services. To ensure compliance with the code's intent, the SAM procedures include a need and

- ☑ *Although the university followed recommended procurement practices to acquire data center services, its procurements for software and consultants on the project raise questions about the fairness and competitiveness of the university's practices.*
- ☑ *The university did not do enough to prevent or detect apparent conflicts of interest on CMS-related procurements.*

cost-benefit analysis. According to SAM, a feasibility study "must establish the business case for the investment of state resources in [an IT] project by setting out the reasons for undertaking the project and analyzing its cost and benefits." However, under Public Contract Code Section 12100.5, the university is exempt from certain state oversight and approval of its IT procurements. The university believes the Public Contract Code further exempts it from following SAM regarding feasibility study reports, although the statute requires the university to adopt policies and procedures that further the legislative policy expressed in the code.

Regardless of the applicability of SAM feasibility study procedures to its own practices, the university would have been in a stronger position to answer legislative and public questions concerning the need for CMS if it had performed a need and cost-benefit analysis consistent with SAM. Had the university conducted a feasibility study that mirrored the SAM requirements, it would have maintained sufficient documentation to support the project's intent, justification, nature, and scope. Additionally, performing such a feasibility study would have provided the university with an opportunity to quantify the increased business process efficiencies expected from CMS. Although the university has given various reasons for pursuing a systemwide implementation of CMS, individually and collectively they do not justify spending $662 million over the nine-year project period, an estimated $393 million in one-time costs and $269 million in maintenance and operations costs, without establishing the business case.

To ensure that the university's future IT projects are appropriate expenditures of state resources, the university should adopt policies and procedures that require a feasibility study before the acquisition and implementation of significant IT projects. Such a feasibility study should include at least a clearly defined statement of the business problems or opportunities being addressed by the project, as well as an economic analysis of the project's life-cycle costs and benefits compared with the current method of operation. The university should also establish quantitative measures of increased business process efficiencies to measure the benefits achieved through common management and business practices.

University Action: Corrective action taken.

The university stated that it issued an executive order that requires feasibility studies for significant IT projects and establishes policies and procedures for them. The university further indicated that it has established metrics through its quality improvement process to measure process efficiencies and expected to apply these qualitative and quantitative measures of process efficiencies across the university system for the first time in spring 2004.

Finding #2: The university's CMS project costs exceed initial estimates, and its cost monitoring procedures are inadequate.

Recent project cost data indicate that the university's earlier 1998 and 1999 cost estimates of between $332 million to $440 million for its CMS project understated the project's costs. A more comprehensive review of actual CMS expenditures and projections in June 2002 revealed that total project costs for the types of expenses the university initially estimated—what it considers to be "new" costs—now total $482 million. Additionally, this $482 million excludes other project-related campus costs the university did not include in its estimates because its focus was only on "new" costs. These other project-related costs include $63 million in implementation costs charged to other campus budgets and $117 million in campus maintenance and operations costs over the now nine-year development and implementation period, bringing the total projected costs to $662 million.

Moreover, the university cannot accurately report on the project's expected systemwide costs because it has not established an ongoing process to capture and monitor the costs campuses actually are incurring or projecting to incur. Although it tracks central project costs, the chancellor's office does not track campus costs because it believes they are a campus responsibility. As a result, the university was not aware of its total systemwide costs for the CMS project until campuses had reported their actual and projected CMS costs in a June 2002 survey. Furthermore, the university has not reported to the Legislature a clear picture of the project's financial status. In its November 2002 Measures of Success report to the Legislature, the university reported the project budget for fiscal years 2000–01 and 2001–02 at $30 million and $31 million,

respectively, and the actual costs "at budget;" however, it did not report campus costs which totaled $29 million and $47 million in those respective fiscal years.

Additionally, although the university tracks central project costs, it did not use project status reports that periodically track variances between the actual and projected CMS costs on the one hand and the initial and revised CMS project budgets on the other. Prudent project management calls for establishing approved initial budgets and tracking actual costs, enabling managers to report and monitor project progress through periodic status reports that analyze variances between the planned budget and the actual costs. These variances measure project performance and assist management in controlling the project schedule and costs by predicting shortcomings and reducing the risk of exceeding the budget.

Similarly, the university does not have a comprehensive systemwide funding plan for the CMS project. The university's funding plan only addressed expected CMS expenditures at the chancellor's office, not any campuses' funding needs. The chancellor's office expected campuses to determine their own costs and funding necessary to implement CMS. However, our funding survey determined that only seven of 23 campuses were able to provide funding plans for their projected CMS costs. When it does not finalize funding for all CMS costs up front, the university lacks a clear understanding of how the CMS project funding needs may affect its ability to meet other priorities, such as academic needs.

To ensure that it adequately monitors and controls project costs, the university should determine the quarterly cost information it needs to adequately monitor the project. After making this determination, the university should establish a mechanism to collect and compile comprehensive and systemwide project cost information that includes campus costs. Further, the university should compare the collected cost information against the approved systemwide project budget, publishing this information in a quarterly status report. The university should also ensure that it includes all costs of the CMS project in its annual reports to the Legislature, as well as ensure that the CMS project and all future IT projects have a systemwide funding plan that covers the entire scope of the project in place before beginning a project.

University Action: Corrective action taken.

The university stated that it has established procedures and parameters for implementing quarterly and annual reporting of data. It stated that it reported consolidated annual data in its November 2003 Measures of Success document, and included both central and campus costs to implement and operate CMS. The costs were collected from campuses and reported as systemwide totals in four expenditure categories consisting of implementation, in-kind, integration, and operations and maintenance. Additionally, the university stated that it established a process for annually collecting and reporting CMS financial plans for each campus along with their CMS expenditure plans. It reports that it collected campus financial plans for fiscal year 2003–04 and consolidated campus CMS financial data into a systemwide report used to identify short- or long-term financing needs for campus implementation efforts.

Finding #3: CMS may not achieve all of the university's business objectives due to the university's weak planning efforts early in the project and its limited expectations with regard to systemwide reporting.

The university expects to accomplish certain business objectives with its CMS project, but problems noted during our review indicate that CMS may neither fully achieve those objectives nor offer what could have been achieved from such a systemwide project. Doubts about CMS fully accomplishing its business objectives and achieving the potential of a systemwide implementation can be traced to the university's weak efforts early in the planning process and limited expectations with regard to systemwide reporting.

Although it initially planned to make as few modifications as possible to the PeopleSoft software, the university ultimately found that it needed to make about 200 modifications to the initial versions of the software applications to meet business requirements and other campus needs. Compounding the time and costs for modifications, PeopleSoft periodically releases new versions of the CMS software, and the university intends to keep current with those releases. Thus, the university will need to reapply many of the CMS modifications to the new releases, adding potentially significant maintenance costs in reapplying, testing, and implementing these modifications. Although we recognize that not all modifications take the same

amount of time and effort, we are unable to quantify which modifications were most costly because the university did not track modification costs. Moreover, before purchasing the software, the university did not sufficiently evaluate its specific business processes and software to understand up front which business processes the potential vendors' software products could accommodate and which software products would require modification to meet its business needs. Failing to make these evaluations up front, the university had no basis to anticipate the extent of software modifications it eventually would make or the loss of functionality some campuses would experience.

Furthermore, the university intended CMS to meet the business objectives of providing ready access to current, accurate, and complete administrative information, as well as establishing standards for common reporting processes. However, the university is not implementing the CMS software throughout the university in a manner that will maximize systemwide reporting. Instead of installing shared databases, the university has been installing separate and distinct databases for all but two campuses. Separate databases must be separately maintained and tested. Additionally, a wide variation in functionality across campuses will result because most campuses are not planning to implement all the modules or sub-modules (functionality elements) purchased under the PeopleSoft agreement and the functionality elements the university created for CMS, because the PeopleSoft software did not provide the needed functionality. This lack of uniformity raises the cost of implementing and maintaining the CMS software and limits its usefulness in producing systemwide reports.

The university has also experienced problems with fixing software errors and with information security. Although providing updates and fixing some minor software errors to its newly modified CMS software is expected, the university also needed to make corrections and redistribute some of these CMS software updates and fixes. When the university takes more than once to provide complete updates or fix some errors, campuses must spend more time and money redoing their work or assume the risk of potential system errors. Furthermore, the university has not fully addressed the lack of security around a search feature in the PeopleSoft software that apparently allows employees access to the confidential information of other employees and students beyond what is needed to do their jobs. The university might have reduced the need to rework software fixes and improved information security had it

established an effective quality assurance function. Also, hiring an independent oversight consultant may likely have assisted the university in identifying and addressing quality assurance and information security deficiencies earlier in the CMS project.

Finally, the university's procurement approach of identifying, procuring, and implementing its own solution caused it to assume substantially all the responsibility for the CMS project, sharing little if any project risk with vendors and consultants. The university procured the software for the CMS project in September 1998, ultimately agreeing to pay PeopleSoft $37 million to use the software for the next eight years and for an initial amount of training and consulting services. It then hired consultants on an hourly basis to help it identify campus business needs, to design and develop the modifications needed for the software, and to help implement this software at campuses throughout the university system. However, the university could have structured its procurement so that, in return for a fixed fee, the winning firm would be responsible primarily for the successful implementation of whatever software product the university decided to use. The university then could have entered into a contract that paid the firm only upon completion of key deliverables, such as the successful modification of functionality elements within the software to meet the university's needs. Structuring contracts to pay only after deliverables have been tested and accepted is a recommended procurement practice. Instead, the university chose to purchase only the software, and it is conducting the substantial amount of work, with the assistance of consultants paid through additional contracts, necessary to ensure that the software is modified and implemented properly. The university concluded that it was best for it to modify and implement the software, but it never performed sufficient analysis to determine that a university installation provided the best value. As a result, it assumed the considerable financial and business risk involved in ensuring that the software meets its business needs and is implemented successfully at campuses.

To ensure that it achieves its stated business objectives for CMS, the university should continue its recently established practice of tracking actual hours spent on software modifications and consider this information when estimating the cost and time associated with developing and applying future software modifications. Also in the future, the university should evaluate its specific business processes against vendor products before procuring IT systems, so as to select the product that best

accommodates the university's specific needs. The university should also reassess the design of CMS and evaluate the economies that can be achieved by reducing the number of separate CMS databases. Similarly, the university should define the scope and associated costs of CMS by identifying the specific functionality that is necessary and establish a minimum level of functionality that all campuses will implement to not only minimize costs, but also to facilitate common systemwide reporting.

Additionally, to ensure it adequately addresses CMS project quality and information security, the university should establish a quality management plan and continue its efforts to establish an effective quality assurance function for the CMS project. Such steps may include hiring an independent oversight consultant to perform various quality assurance functions and to evaluate the progress of the CMS project. The university should also establish a policy on sensitive information requiring that campuses implement the use of confidentiality agreements for all employees with access to the CMS system.

Finally, the university should plan future procurements to share project risk with vendors and consultants, such as allowing them to propose their own solutions and structuring contracts to protect the university's interest, including provisions to pay only after deliverables have been tested and accepted.

University Action: Partial corrective action taken.

The university stated that it established a practice to record the actual hours spent to develop modifications and that it will use the data for ongoing maintenance decisions and planning future upgrades. Additionally, it stated that in the requirement development phase of future projects, it would consider the impact of current business processes on vendor selection before procuring IT solutions or software when best practices warrant such a review and that it implemented a policy that requires consideration of current and alternate business processes related to vendor selection. Further, in response to our recommendation to reassess the design of CMS, the university indicated that it evaluated alternative technology approaches and concluded that retrofitting at this stage in the university's implementation did not appear cost-effective and would introduce a higher technical risk, even if a single database were viewed to be more technically efficient. The university also stated that it defined and

published the scope of the revised CMS baseline core functionality and that campuses reported costs based on this revised baseline core functionality, as well as on the cost of planned functionality outside of this baseline. The university stated that it also evaluated the design for systemwide reporting using CMS and determined that its current design is appropriate for its needs. The university reports that it developed documentation for each area of systemwide reporting that identifies the data required, the source of the data, the edits useful for quality assurance, and the schedule for data submissions.

The university also stated that it implemented a CMS quality improvement initiative that established a quality assurance function within CMS. Further, the university indicated that it would expand oversight to include internal assessment by individuals outside the IT organizational environment. The university also stated that it issued policy and a letter to campus presidents related to protection and control of confidential data, including the required use of confidentiality agreements. It indicated that the software vendor developed software product improvements that restrict or grant users access to confidential data based on job function. Finally, the university reported that it would continue to use risk sharing with vendors when circumstances are consistent with industry best practices and when marketplace conditions make such an approach feasible, appropriate, and cost-effective. Additionally, the university stated that it made further revisions to its IT project procurement guidelines calling for identifying the best means for sharing risk with vendors ranging from the university assuming all the risk to extensive risk assumption by the vendor.

Finding #4: The processes the university used to select the software vendor and consultants on the project did not clearly demonstrate best-value procurements.

The university's process to select the software vendor and consultants for the CMS project did not clearly demonstrate best-value procurements that consider both quality of proposals and overall costs. For example, the procurement process by which the university selected a single CMS software vendor raises questions about whether the university used a fair and objective competitive process. Specifically, its solicitation

document did not provide for a method to select only one vendor, although the university decided late in the process that it needed such a method. Moreover, when the selection narrowed to two vendors, the university did not formally modify the procurement process nor use quantitative scoring to select a best-value vendor objectively. Likewise, the university could not demonstrate that it resolved issues that the procurement evaluation teams raised for the software ultimately selected. The university also could not show us how it determined that the cost differences between the competing vendors were immaterial. Further, the university's analysis comparing the finalist vendors' costs did not compare costs for a systemwide implementation and was based on a fraction of the actual maintenance and operations costs now estimated.

Additionally, the university's practice of employing consultants to work on the CMS project without appropriate competition raises more questions about the propriety of its business dealings. For instance, the university hired consulting firms under sole-source contracts for reasons that appear questionable. Further, although it recommends a discussion with consulting firms about scope of work and rates, the university does not require the solicitation of offers from more than one prequalified consultant with university-awarded master agreements. As a result, the university has not always solicited offers from multiple prequalified consultants before procuring their services and, therefore, cannot demonstrate that it procured best-value services.

To ensure it uses recommended practices in its future procurements, the university should use the procurement process appropriate to the procurement objective, restarting the process or formally modifying the process through written notification to vendors as the objectives change. The university should also establish a practice of using quantitative scoring to clearly demonstrate that it followed an objective evaluation process to identify the best-value vendor. It should also document the resolution of evaluation team concerns to demonstrate that it considered and addressed or mitigated these concerns. Finally, the university should enforce its policy that prohibits the use of sole-source contracts when multiple vendors or consultants are available and establish a policy for the use of its master agreements to require the solicitation of offers from at least three prequalified vendors or consultants.

University Action: Partial corrective action taken.

The university stated that it issued a bulletin reminding campuses to use the procurement process appropriate to the procurement objective. Additionally, it indicated that it modified existing policies to require the use of quantitative scoring to identify the best-value vendor. However, although previously the university stated that it would further review its procedures for the resolution and documentation of concerns arising during evaluation processes, its March 2004 update did not address this topic. Further, the university stated that it reissued its sole source policy and guidance to campuses and revised and reissued its policy and guidelines for master agreements requiring campuses to solicit at least three offers when using these agreements.

Finding #5: Data center services have improved, but data warehousing needs remain.

Unlike its procurement of the CMS software, the university did use recommended procurement practices to select the outsourced data processing services needed to run CMS. The university conveyed its needs to potential vendors, asking them to propose solutions. The university also used an objective selection process with weighted criteria to evaluate potential vendors. Further, the university shared risk with the vendor by establishing contract terms aimed at holding the vendor accountable for meeting preestablished service levels. When it experienced inadequate service from the data center in the early months of the contract, the university used the procedures outlined in the contract to help raise the data center services to agreed levels. The service levels have improved in recent months, with the vendor achieving or coming within one percentage point of achieving targets in the five months ending in November 2002.

Although the university worked to address its CMS data processing needs and is implementing more efficient means for reporting, it only now is starting to address campus CMS data storage and retrieval (data warehousing) needs. The outsourced data center processes CMS transactions, but is not designed for data warehousing. Data warehousing can provide for optimum data storage and reporting, such as enabling the production of reports that contain historical analysis of university operations. Largely because of concerns over CMS project resources, the university reportedly removed data warehousing from

the CMS project scope early in the project and made this important component a campus responsibility, not including the costs as part of its CMS project costs. Now, with some campuses expressing an interest in data warehousing services, the university is addressing the data warehousing needs for a voluntary consortium of campuses and expected to release its final version of the data warehousing model in early 2003.

To ensure it continues to receive improved service levels from the data center vendor, the university should continue to monitor and take action to resolve problems with the vendor. The university should also ensure that it provides campuses with the means to effectively and efficiently store and retrieve data needed for management reporting by expediting the CMS data warehousing project, and it should include the CMS-related costs of data warehousing in its CMS project costs.

University Action: Corrective action taken.

The university stated that it would continue to monitor and manage the performance of the CMS data center and take appropriate and prompt action to assure appropriate service levels. Further, it indicated that it is endorsing, on a provisional basis, data warehousing as core functionality within CMS, but that a final decision to include this CMS functionality is dependent upon the completion and evaluation of a feasibility study.

Finding #6: The university's oversight over potential conflicts of interest needs improvement.

The university did not do enough to detect or prevent conflicts of interest by decision makers for CMS-related procurements. It did not identify all necessary employee positions in its conflict-of-interest code as designated positions required to file annual statement of economic interest forms (Form 700s) and did not always retain and make available certain required filings of these forms. Additionally, the university did not require consultants on the project to file Form 700s, although they performed duties similar to employees in designated positions. Further, the university failed to provide for adequate disclosure processes to help ensure that individuals participating in the procurement process were free from conflicts. Also, it did not provide appropriate guidance to employees to identify potential conflicts using the Fair Political Practices Commission (FPPC) process

for determining conflicts. Finally, it lacks a policy that spells out for university employees what constitutes "incompatible activities," such as accepting anything of value from anyone seeking to do business with the university, and does not require that employees in designated positions receive regular ethics training.

Our review of Form 700s found an employee who appeared to have a conflict of interest while participating in the CMS software procurement decision and an employee who possibly may have used nonpublic information to benefit personally. Conflicts of interest cast a shadow over the university's reputation for fair and honest business practices and undermine public confidence in the university's procurement decisions. Moreover, if an employee uses information not available to the general public for personal financial gain, it not only harms the university's reputation but also is unlawful.

To ensure that the university takes appropriate action to prevent potential conflicts of interest in the future, the Legislature should consider requiring the university to provide periodic ethics training to designated university employees similar to that required by the Government Code for designated state employees. Additionally, the Legislature should consider requiring the university to establish an incompatible activities policy for university employees similar to that addressed in Government Code, Section 19990.

Similarly, the university should conduct periodic conflict-of-interest training, such as the ethics training required of state agencies for designated employees, and should establish an incompatible activities policy that it communicates to university employees. The university should also enhance its disclosure form to indicate what constitutes a conflict, identify all participating vendors, and state the prohibition of using nonpublic information to benefit personally; and it should require all employees to sign this form before participating in the procurement process. Additionally, the university should update its conflict-of-interest code to classify all positions responsible for evaluating or overseeing vendors or consultants and should require consultants that serve in a staff capacity and that participate or influence university decisions to file Form 700s. Further, university human resources staff should be reminded of their responsibility to collect, retain, and make available filed Form 700s for the required seven-year period. Finally, the university should remind its employees of the prohibition against using information not available to the public to benefit financially, and discipline infractions if necessary.

Legislative Action: Legislation passed.

In August 2004, Chapter 264, Statutes of 2004 (Assembly Bill 1969) was enacted. This legislation requires the university to offer designated employees ethics training on at least a semiannual basis.

University Action: Corrective action taken.

The university stated that it developed a comprehensive web-based conflict-of-interest and ethics training program for delivery to designated employees who would be tested to earn a certificate of completion. The training includes coverage of the FPPC eight-step process for assessing potential conflicts and employees' responsibility to seek the advice of counsel when questions exist. Additionally, the university stated that it presented a workshop in February 2003 to update university filing officers on the FPPC filing requirements and provided a session on conflict of interest at the systemwide human resources conference in October 2003. However, although the university previously stated that its counsel reviewed conflict-of-interest issues and would fully cooperate with any action taken by the FPPC, its March 2004 update did not address this topic. The university also indicated that it distributed a memorandum identifying key laws that govern the behavior and activities of university employees in areas of incompatible activities, conflict of interest, and ethics.

The university stated that it revised and reissued requirements for procurement disclosure forms and would require all employees to sign these forms before participating in the procurement process. The university reported that it also enhanced its procurement disclosure form to clearly indicate what constitutes a conflict of interest and stated that evaluators are prohibited from using nonpublic information to benefit personally. Further, the university stated that it would ensure that all participants understand the scope and nature of their commitments when participating in a procurement activity, and that, when possible, it would list on the disclosure form all vendors participating in the procurement. It also stated that it would continue to update its conflict-of-interest code and advised university officials to review carefully the existing designated position list to determine whether existing positions require incorporation, and in determining its designated positions, identify employees in positions responsible for evaluating and

overseeing vendors and contractors. It further indicated that it requires consultants to file Form 700s when they are hired to make or participate in making decisions that foreseeably will have a material effect in a university financial interest. The university reported that it reminded filing officers in February 2003 of the requirement to collect, retain, and make available for the required seven-year period the filed Form 700s and that it would repeat this reminder each year. Finally, the university indicated that the memorandum identifying key laws that it distributed addresses the prohibition against employees using information not available to the public to benefit financially and that it would inform current and future employees of these requirements.

CALIFORNIA DEPARTMENT OF EDUCATION

The Extensive Number and Breadth of Categorical Programs Challenges the State's Ability to Reform and Oversee Them

REPORT NUMBER 2003-107, NOVEMBER 2003

California Department of Education response as of November 2004

Audit Highlights . . .

Our review of the State's process for identifying, assessing, and overseeing education-related categorical programs concludes that:

- ☑ *The California Department of Education (CDE) did not take sufficient steps to implement a pilot project aimed at reforming categorical programs.*
- ☑ *CDE's allocation of categorical program funding needs improvement. Specifically, for three of the 12 categorical programs reviewed, CDE may not have accurately calculated allocation amounts in accordance with state law.*
- ☑ *CDE has yet to implement fully the Bureau of State Audits' previous recommendations aimed at strengthening its oversight methods.*
- ☑ *For a few categorical programs, such as the Lottery Education Fund program, CDE does nothing to review recipient's compliance with applicable requirements.*

The Joint Legislative Audit Committee directed the Bureau of State Audits (bureau) to review the State's process for identifying, assessing, and overseeing categorical programs. Our report concluded that the extensive number and breadth of categorical programs challenges the State's ability to reform and oversee them. For purposes of our audit, we defined "categorical funding" broadly so that we could identify allocations made by the California Department of Education (CDE) and the State Controller's Office (SCO) for programs providing funding over and above the basic funding provided to local education agencies (LEAs), typically referred to as revenue limit funding. Categorical funding is far-reaching. For fiscal year 2001–02, CDE and the SCO disbursed roughly $17 billion to various recipients for 113 categorical programs. In addition, for five of these categorical programs, the State delayed CDE's authority to allocate funding totaling $867 million until fiscal year 2002–03. We reported the following issues:

Finding #1: CDE could not demonstrate sufficient efforts to implement a pilot project giving flexibility to categorical program funding.

Chapter 369, Statutes of 2000, enacted in September 2000, required CDE to establish the Pilot Project for Categorical Education Program Flexibility (pilot project). Participating school districts would have flexibility in spending categorical funds among 24 programs within three clusters: (1) school improvement and staff development, (2) alternative and compensatory education, and (3) school district improvement. Only five school districts actually applied to participate in the pilot. However, CDE did not take sufficient steps to fully implement the project, failing to follow recommendations of the

project's advisory group and of state law. Having abandoned the pilot project, the State has lost valuable information to guide its reform of categorical programming.

To implement the pilot project as state law requires, we recommended that CDE provide direction to those school districts currently participating in the pilot project on how to capture and report information necessary to determine their pupils' academic progress. We also recommended that CDE report to the governor and the Legislature on the pilot project's status. Finally, we recommended that CDE survey nonparticipating school districts to assess their level of interest in the pilot project. If the survey results indicate a high level of interest, CDE should distribute its streamlined application packet to school districts. However, if the survey results indicate a low level of interest, CDE should consider seeking legislation to eliminate the provisions of Chapter 369, Statutes of 2000.

CDE Action: Partial corrective action taken.

CDE stated that it sent a survey in December 2003 and subsequently received information from all five participating school districts summarizing their pilot project activities, experiences, and recommendations. CDE further stated that it will compile Academic Performance Index and, if appropriate, Adequate Yearly Progress data for these school districts. Additionally, CDE stated that in August 2004, it mailed surveys to 70 nonparticipating school districts that were broadly representative of California districts. According to CDE, as of November 8, 2004, 24 districts had responded, with 11 indicating that they would be likely to apply to participate in the program. CDE also stated that it is currently working on an implementation plan for Assembly Bill 825 (Chapter 871, Statutes of 2004), which consolidates 22 education categorical funding programs into six block grants effective fiscal year 2005–06. CDE stated that in light of this new law, further examination is in order about the need to continue the pilot project. CDE planned to report the results of its analyses to the governor and Legislature in the final pilot project evaluation due February 2005.

Finding #2: The State can learn from the federal government's previous attempts to implement block grants.

The U.S. Congress has demonstrated a strong interest in consolidating narrowly defined categorical grant programs for specific purposes into block grants for broader purposes. In the Omnibus Budget Reconciliation Act of 1981, Congress created nine block grants from about 50 of the 534 categorical programs in effect at that time. When Congress requested a report on federal block grant programs, the U.S. General Accounting Office (GAO) identified lessons learned from implementing federal block grant programs—lessons the State should consider in any categorical reform efforts it undertakes.

Across government services, the GAO has recommended a shift in focus of federal management and accountability toward program results and outcomes, with less emphasis on inputs and rigid adherence to rules. This focus on outcomes is particularly appropriate for block grants, given their emphasis on providing states the flexibility to determine the specific problems they want to address and the strategies they plan to employ.

The GAO also suggested that funding allocations based on formulas that target funds most effectively consider the following three variables: (1) state or local need, (2) differences among states in the costs of providing services, and (3) state or local ability to contribute to program costs. To the extent possible, equitable allocation formulas should rely on current and accurate data that measure need and ability to contribute.

We recommended that when the Legislature considers future reform proposals calling for the consolidation of categorical programs into block grants, it should ensure that proposals contain: accountability provisions that include a focus toward program results and outcomes; and allocation methods that reflect the recipient's need, ability to contribute to program costs, and cost of providing services.

Legislative Action: Partial legislation passed.

In September 2004, the Legislature enacted Chapter 871, Statutes of 2004, which addressed our recommendations related to accountability provisions that include a focus toward program results and outcomes. This law, which established six block grants to fund 22 existing categorical programs, demonstrates the Legislature's intent to, among other things, refocus attention on the effect that the

expenditure of categorical program funds has on pupil learning rather than on state spending and compliance with operational rules for categorical programs. Further, the law requires—subject to an appropriation in the annual Budget Act—the Legislative Analyst's Office to report and make recommendations by January 1, 2007, on the effectiveness and distribution effects of the law on pupil achievement and recommendations on the continuation or elimination of categorical education programs whose funding is not part of the block grants established by the law. However, we are unaware of any specific changes made to the allocation methods for each categorical program that reflect the recipient's need, ability to contribute to program costs, and cost of providing services.

Finding #3: Efforts to reform categorical programs should also consider the impact of constitutional and legal requirements.

Our legal counsel observes that federal law, federal and state constitutional principles, and court decisions may affect certain categorical programs. Thus, any decision to create block grants must consider any legal restraints on consolidating programs. For example, the State receives federal money under numerous federal programs. Federal law generally restricts states to using those funds for the purposes of the federal programs; and under some federal programs, each state must provide matching funds as a condition of receiving federal money. Consequently, reform efforts in California should carefully consider whether categorical programs involving federal funds are appropriate candidates for consolidation into block grants and whether moving state funds that support those federal programs into block grants would affect the State's eligibility for federal funds.

Reformers should also consider the impact of state constitutional principles on proposed block grants. The two landmark decisions of *Serrano v. Priest* required the State to remedy disparities in per-pupil spending between school districts but excluded spending on categorical programs for special needs from the requirement that funding be roughly equal across districts. In *Butt v. State of California,* the California Supreme Court held that the California Constitution makes public education a uniquely fundamental concern of the State and prohibits the maintenance and operation of the public school system in a way that denies basic educational equality to students of particular districts. Further,

the court held that the State bears the ultimate responsibility to ensure that the public school system provides basic equality of educational opportunity. Therefore, any reform efforts should include mechanisms by which the State can ensure that block grants are distributed, administered, and overseen in a manner that fulfills this constitutional obligation.

Moreover, funding for categorical programs created by an initiative measure approved by the voters, such as the California Lottery Act of 1984, may be used only for the purposes that voters approved. For example, the California Lottery Act limits the use of funds to the education of students and expressly prohibits lottery funds from being spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose. Under the California Constitution, the voters must approve any changes to the purposes for which those funds may be spent. Thus, if money from the Lottery Education Fund is consolidated into block grants, either the State must continue to spend it for the purposes specified in the act or reformers must obtain the voters' approval to expand or change those purposes.

In other instances, court decisions affect specific categorical programs. For example, the California Supreme Court, in *Crawford v. Board of Education,* held that school boards have an obligation under the California Constitution to take reasonably feasible steps, in addition to desegregation obligations under federal law, to alleviate racial segregation in public schools. Thus, school districts will be required to continue to fund that constitutional obligation from some revenue source.

We recommended that when the Legislature considers future reform proposals calling for the consolidation of categorical programs into block grants, it should determine whether categorical programs involving federal programs are appropriate candidates for consolidation. Further, the Legislature should consider whether the reform proposal (1) is consistent with any legal restrictions that may apply to any particular funds and the State's constitutional obligation to provide equal educational opportunities within the public school system and (2) includes mechanisms by which the State can monitor and ensure that it meets those obligations. Finally, the Legislature should determine whether state or federal court decisions govern the funding of particular programs and ensure that block grant proposals continue to meet those mandates.

Legislative Action: Unknown.

In September 2004, the Legislature enacted Chapter 871, Statutes of 2004, which established six block grants to fund 22 existing categorical programs. However, we are unable to determine if the Legislature considered factors presented in our recommendations before enacting the law.

Finding #4: Inconsistencies or errors exist in CDE's calculations for four categorical programs.

The Targeted Instructional Improvement Grant (TIIG) program combines funding to certain LEAs for their court-ordered desegregation and voluntary integration programs. LEAs include school districts, charter schools; county offices of education; special education local plan areas; regional occupational centers or programs; the State's three diagnostic centers; and in a few instances, joint powers authorities.

To calculate recipients' allocations, state law requires CDE to use both the LEA's actual average daily attendance (ADA) as reported on the apportionment for the period covering July through April and its total ADA. But state law does not define the term "total" ADA. CDE did not include the adult education ADA when calculating the fiscal year 2001–02 allocations for TIIG. Because state law does not define "total" ADA, it is unclear whether CDE's exclusion of adult ADA is appropriate. Our recalculation, including adult education ADA, of the allocations for three of the five LEAs tested found that Los Angeles Unified, San Bernardino City Unified, and Fresno Unified would have been increased by $3.9 million, almost $36,000, and $29,000, respectively. This exclusion of adult ADA had no effect on the other two districts because one did not have adult ADA data and the other received the minimum amount set by state law.

We recommended that if the Legislature concurs with CDE's exclusion of adult ADA when making allocations for the TIIG program, it should enact language to clarify its definition of "total" ADA.

Legislative Action: Partial legislation passed.

In September 2004, the Legislature enacted Chapter 871, Statutes of 2004. Among other things, this law created the Targeted Instructional Improvement Block Grant that combines the targeted instructional improvement grant

and supplemental grants programs and established an allocation method. Specifically, commencing with fiscal year 2005–06, the superintendent of public instruction must apportion block grant funds to a school district in the same relative statewide proportion that the school district received in fiscal year 2003–04 for the targeted instructional improvement grant and supplemental grants programs. Beginning with fiscal year 2006–07, the amount of funding a school district receives pursuant for this block grant must be adjusted for inflation by the amount calculated pursuant to Section 42238.1 of the Education Code and for growth as measured by the regular ADA used to calculate the second principal apportionment for kindergarten and grades 1 to 12, inclusive. However, as we point out in our discussion of the California Public School Library Act program, state law does not specifically define the term "regular" ADA and CDE uses different definitions for "regular" ADA.

The California Public School Library Act program provides funds for resources such as books, periodicals, computer software, CD-ROMs, and equipment enabling school library and on-line access. State law requires CDE to calculate allocations by using regular ADA reported for the period covering July through April of the prior fiscal year. However, state law does not specifically define the term "regular" ADA. In the absence of a definition, CDE defines "regular" ADA for this program as the regular elementary and high school ADA. CDE uses a different definition when calculating the apportionment for the period covering July through December. Specifically, staff responsible for this task define regular ADA as regular elementary and high school ADA plus extended-year ADA. Applying CDE's different definitions of regular ADA to our recalculation of the allocations for six LEAs results in different allocation amounts for some districts. For example, using the definition CDE applies to the principal apportionment, our recalculation of the allocations for certain LEAs under the California Public School Library Act program results in $30,000 more for one LEA and $665 less for another.

We recommended that if the Legislature desires CDE to properly calculate allocations the way the Legislature intends, it should define "regular" ADA for the California Public School Library Act program.

Legislative Action: Legislation passed.

In September 2004, the State enacted Chapter 871, Statutes of 2004. Among other things, this law created the School and Library Improvement Block Grant by combining the school library materials program—the California Public School Library Act program—and the school improvement programs. It also established an allocation method. Specifically, commencing with fiscal year 2005–06, the superintendent of public instruction must apportion block grant funds to a school district in the same relative statewide proportion that the school district received in fiscal year 2003–04 for the school library materials program and the school improvement programs. Beginning with fiscal year 2006–07, the amount of funding a school district receives shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 of the Education Code and for growth as measured by enrollment in kindergarten and grades 1 to 12, inclusive, as reported in the California Basic Education Data System report.

The School Improvement Programs funds school site councils' plans to improve instruction, services, and school environment. CDE's allocation method appears inconsistent with a literal reading of the statutory allocation formula found in state law. Currently, the School Improvement Programs are sunsetted by other provisions of state law, yet the Legislature continued to fund it in the annual budget act. Our legal counsel has advised us that CDE is required to comply generally with the purposes of the program and to continue allocating funds under the sunset statutory allocation formula.

State law specifies how CDE is to determine whether schools with Kindergarten through grade six (K-6) should receive a cost-of-living adjustment (COLA). Our review of CDE's calculation found that CDE has been multiplying the predetermined rate of $106 by the annual COLA percentage instead of the same percentage increase made in base revenue limits for unified school districts with more than 1,500 ADA. The Legislature's intent in enacting Education Code, Section 52048(a) (b), was to simplify and equalize the funding system for schools with K-6. Because CDE could not provide us with the percentage increase data for the unified school districts for fiscal years 1985–86 through 2000–01, we are unable to compute the overall effect that this apparent inconsistency has on meeting the Legislature's intent.

We recommended that if the Legislature continues to fund the School Improvement Programs in the annual budget and intends that CDE make adjustments to equalize the funding for schools with K-6 using the same percentage increase made in base revenue limits for unified school districts with more than 1,500 ADA, it should enact language that provides CDE with specific instructions on how to compute the percentage increase.

Legislative Action: Legislation passed.

In September 2004, the Legislature enacted Chapter 871, Statutes of 2004. Among other things, this law created the School and Library Improvement Block Grant by combining the school library materials program and the school improvement programs and established an allocation method. Specifically, commencing with fiscal year 2005–06, the superintendent of public instruction must apportion block grant funds to a school district in the same relative statewide proportion that the school district received in fiscal year 2003–04 for the school library materials program and the school improvement programs. Beginning with fiscal year 2006–07, the amount of funding a school district receives shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 of the Education Code and for growth as measured by enrollment in kindergarten and grades 1 to 12, inclusive, as reported in the California Basic Education Data System report.

The Miller-Unruh Basic Reading Act program (Miller-Unruh) provides a school district an allowance for the salary of reading specialists, computed by multiplying the number of reading specialists the district employs by the statewide average salary for such a position. Districts must use their funds to pay for any difference between the allowance and the teachers' actual salaries. On June 30, 1987, Miller-Unruh was sunsetted by provisions of state law, yet the Legislature continued to fund it in the annual budget act.

State law allows CDE to adopt an allocation method but has requirements for prioritizing new Miller-Unruh funds. In calculating the number of reading specialists to allocate to applicants, CDE did not follow a 1999 state law requiring the use of Academic Performance Index (API) data to define underperforming schools and did not follow the requirement of the 2001 Budget Act to consider the financial ability of those districts with the lowest base revenue limit amounts.

Instead, CDE relied only on factors such as mean reading scores below 565 on the Stanford 9 tests, the number of previously authorized reading specialists, and the number of elementary schools within a district. Moreover, although CDE calculated its fiscal year 2002–03 allocation using applicants' base revenue limit amounts, it still did not use their API data. As a result, for fiscal years 2001–02 and 2002–03, those school districts with underperforming schools or the lowest base revenue limits may not have received first priority for the reading specialist positions. The State did not appropriate funds for Miller-Unruh for fiscal year 2003–04.

CDE also failed to adhere to state law regarding the reallocation of unused reading specialist positions. For fiscal year 2001–02, LEAs reported to CDE that they did not use 66 Miller-Unruh reading specialist positions. However, in fiscal year 2002–03, CDE did not reallocate 54 of these unused positions, allowing 28 LEAs to retain them. Further, CDE's billing data for fiscal year 2001–02 indicates that eight of the 28 LEAs that did not even participate in Miller-Unruh continued to receive allocations in fiscal year 2002–03 for 9.5 positions. Because CDE did not follow state law to reallocate unused reading specialist positions, some districts that could have used the specialists went without them.

We recommended that if the Legislature continues to fund the Miller-Unruh Basic Reading Act program in the annual budget, it should ensure that CDE allocates Miller-Unruh reading specialist positions in a manner that gives first priority to school districts with underperforming schools and the lowest base revenue limits. Further, it should ensure that CDE reallocates unused positions in the following fiscal year.

Legislative Action: None.

Although the State funded the Miller-Unruh Basic Reading Act program in the Budget Acts for fiscal years 2001–02 and 2002–03, it did not do so in the Budget Acts for fiscal years 2003–04 and 2004–05.

Finding #5: CDE has yet to implement fully the bureau's previous recommendations aimed at strengthening its oversight methods.

CDE's oversight methods are similar to those it had in place when the bureau conducted its last audit of CDE's monitoring efforts. In January 2000 the bureau issued a report titled

Department of Education: Its Monitoring Efforts Give Limited Assurance That It Properly Administers State and Federal Programs. The bureau found that CDE staff did not review fund recipients based on their risk for noncompliance, did not routinely use performance measures to assess quality and effectiveness, did not conduct the number of required program reviews, and did little to ensure that organizations took corrective actions or faced sanctions when CDE discovered deficiencies. The bureau recommended that CDE make several changes in its oversight of state and federal programs, for example, establish performance measures, direct staff to adhere to audit and review cycles, monitor LEAs' corrective action, and enforce fiscal and administrative penalties as needed. Yet CDE has not taken action on some of the bureau's recommendations, citing budget cuts as the cause. Consequently, CDE lacks assurance that recipients are properly spending the funds that these categorical programs provided.

We asked CDE to provide us with its current progress and planned action for implementing 15 of the bureau's recommendations from the January 2000 report. According to CDE, it fully implemented eight recommendations, partially implemented three, and is evaluating and reconsidering the remaining four. Our review of CDE's efforts showed that it did not always identify current progress and planned actions for all of its monitoring divisions and did not always specifically address its implementation of the bureau's recommendations. For example, in our prior report the bureau recommended that CDE modify its underlying philosophy for administering state and federal programs to restore its accountability for monitoring entities receiving federal funds. However, even though in September 2003 CDE stated that it will revise the coordinated compliance review (CCR) monitoring process for fiscal year 2004–05, it is silent as to how it will modify its underlying philosophy for other monitoring divisions administering state and federal programs. In addition, the bureau recommended that CDE prepare a department-wide monitoring plan that includes, at a minimum, various elements such as monitoring goals and identifying mandated monitoring requirements. In its one-year response to our January 2000 report, CDE stated that it convened an external advisory committee to discuss the redesign of its monitoring and accountability system. However, CDE does not describe the results of the committee

meeting in its September 2003 discussion on current progress and does not address how it has prepared a department-wide monitoring plan. The bureau also recommended that CDE direct all program reviewers to adequately document the monitoring procedures performed during site visits. CDE told us that it plans to develop a checklist for every program compliance area in the CCR process; reviewers will check "yes" or "no" to demonstrate whether they have reviewed the required documentation. However, because the proposed checklist will not require CCR reviewers to document exactly what they examine during site visits, the checklist may hinder a supervisor's ability to ensure that the CCR reviewer examined all required items. Finally, the bureau recommended that CDE establish a monitoring committee composed of various representatives such as executive management, audits division, CCR reviewers, and individual program reviewers. In its September 2003 discussion of its planned action for implementing the recommendation, CDE does not state whether it will establish a monitoring committee. Rather, CDE states that the CCR reviewers meet with CDE program staff to refocus the CCR monitoring process and that its Audits and Investigations Unit periodically meets with and distributes reports to the Nutrition Services and Child Development divisions as well as the Adult Education Office to discuss their monitoring efforts.

We recommended that CDE continue to implement the bureau's January 2000 recommendations aimed at strengthening CDE's oversight.

CDE Action: Partial corrective action taken.

CDE stated that the establishment of a new monitoring process is under development to replace the current CCR process. Although it did not address several specific points of our recommendation, CDE pointed out that it is working on several tasks that will provide effective oversight of categorical programs. CDE also stated that as budget deliberations take place regarding categorical programs, it will consider the necessary resources to address any newly required programmatic changes.

CDE stated that it implemented a process to follow up with LEAs not submitting proposed resolution of findings by the required 45-day timeframe. It also stated that all federal and state monitoring findings and the LEAs' proposed resolutions of findings are entered in a compliance tracking system. CDE developed a status report to identify districts that have not

responded timely. CDE stated that it contacts those LEAs that have not submitted their proposed resolutions of findings on time to determine the reason for the delay and to provide all necessary monitoring assistance.

Finding #6: CDE provides no assurance that funds are spent properly for two categorical programs totaling $1.8 billion.

For the TIIG program and the Lottery Education Fund, CDE provides no assurance that funds are spent properly. CDE stated that discussions with legislative staff led it to believe that TIIG was purposely kept ambiguous to allow previous participants greater flexibility in spending funds and using the funds to embark on new programmatic areas. Thus, in February 2002 CDE informed county and district superintendents of schools and district business officials that there would be no application process, claim audit, reporting requirements, or program plans for TIIG. Further, CDE points out that the second priority of TIIG—to provide instructional improvement for the "lowest-achieving pupils in the district"—would be almost impossible to monitor because state law does not define this term. CDE believes that legislative staff are fully aware that there is little reason for oversight given such broad terms. CDE also points out that the Legislature did not intend to establish fiscal oversight because the new law deletes previous audit requirements. Specifically, previous state law for the desegregation programs under court mandate required LEAs to submit a claim for reimbursement to the SCO for the costs of the program. The claims were subject to the audit and approval of the SCO prior to payment to ensure that the LEA was complying with state law. However, current state law creating TIIG makes no mention of SCO or CDE oversight.

We recommended that if the Legislature intends CDE to provide oversight for TIIG, it should enact language specifically requiring CDE to do so. It should also enact language to define the term "lowest-achieving pupils in the district."

CDE Action: Unknown.

In September 2004, the Legislature enacted Chapter 871, Statutes of 2004. Among other things, this law created the Targeted Instructional Improvement Block Grant by combining the targeted instructional improvement grant and supplemental grants programs. However, the law does not include language that specifically requires CDE

to provide oversight for this block grant. Further, we are unaware of other enacted legislation implementing this recommendation.

The California Lottery Act of 1984 limits the use of lottery funds to the education of students and expressly prohibits lottery funds from being spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose. Under the California Constitution, the voters must approve any changes to the purposes for which lottery funds may be spent. For example, Proposition 20 restricts a small portion of the lottery funds for the purchase of instructional materials.

Control Section 24.60(b) of the 2001 Budget Act requires CDE to conduct a survey of a representative sample of 100 LEAs to determine patterns of use of lottery funds in those agencies and report the survey results to the Legislature and the governor. Yet CDE merely collects and reports the expenditure data and does not review expenditures to ensure that LEAs did not spend them for the acquisition of real property, construction of facilities, financing or research, or any other noninstructional purpose. According to CDE, it plans to propose changes to the *Standards and Procedures for Audits of California K-12 Local Education Agencies (K-12 Audit Guide),* which the SCO issues to assist certified public accountants and public accountants to determine whether these funds were being spent in compliance with the law. Nevertheless, these efforts will not be sufficient to ensure that lottery funds are not spent on acquisitions that state law expressly prohibits.

We recommended that CDE continue its plan to propose changes to the *K-12 Audit Guide* to determine whether Proposition 20 funds are being spent in compliance with state law. Additionally, it should propose a similar change to the *K-12 Audit Guide* to ensure that funds are not being spent for the acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose.

CDE Action: Partial corrective action taken.

CDE stated that audit procedures for lottery fund expenditures have been included in the 2004–05 *K-12 Audit Guide* to determine whether lottery funds are being spent for the purchase of instructional materials. CDE also stated that the Education Audit Appeals Panel adopted the lottery

audit procedures as emergency regulations in June 2004 and will consider adopting the permanent regulations in November 2004. Finally, CDE stated that it did not propose audit procedures to determine whether lottery funds are being spent for non-instructional purposes because the term *non-instructional purposes* is not defined in statute.

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UNIVERSITY OF CALIFORNIA, SAN FRANCISCO

Investigations of Improper Activities by State Employees, February 2003 Through June 2003

ALLEGATION I2000-715 (REPORT I2003-2), SEPTEMBER 2003

University of California, San Francisco, response as of September 2003

Investigative Highlight . . .

The University of California, San Francisco, used proprietary bidding specifications that restricted fair competition for a contract totaling $495,000.

After investigating the allegation, we determined that the University of California, San Francisco (UCSF), used proprietary bidding specifications that restricted fair competition for several roofing projects under a contract totaling $495,000 and thus may have violated state law and Regents' policies.[1] The specifications placed unnecessary requirements on potential bidders, which limited the number of contractors able to submit competitive bids for the projects. Further, the specifications unnecessarily forced contractors to use a specific manufacturer's products and limited their ability to use substitute products, even if the substitute products were less expensive and superior in quality. As part of our investigation, we hired a roofing consultant to evaluate the bidding specifications.

Finding: UCSF used specifications that restricted competitive bidding for roofing projects.

In conflict with state law and Regents' policies, UCSF used specifications for roofing projects that restricted competitive bidding. According to our roofing consultant, the language used in UCSF's specifications primarily limited competition in three ways.

[1] The Louisiana Office of State Purchasing defines a "proprietary specification" as a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others. Stephen M. Phillips, who serves as counsel for the National Roofing Contractors Association and the National Roofing Legal Resource Center defines a "proprietary specification" (also known as a closed or restrictive specification) as any specification that is restrictive to a specific product.

First, the specifications included certain contractor requirements that served no purpose other than to limit the number of contractors competing for the work. For example, the specifications required contractors to list three projects in which they employed a similar type of roof system within a 50-mile radius of the project location. While requiring documentation of previous experience is valid, according to our consultant, specifying a 50-mile limitation served only to restrict competition.

Second, portions of the specifications forced potential bidders to use specific brand products produced by a single manufacturer. For example, the specifications' requirements differed from applicable industry standards in regard to two of the necessary products, so that only one brand of product could meet the specifications. The specifications also listed physical properties for the entire roof membrane. According to our roofing consultant, the only reason to impose such a requirement would be to limit contractors to using membrane products made by a single manufacturer.

Third, the specifications limited contractors' ability to use substitute products regardless of whether those substitutes were equal to or better than those products called for. In one instance, the specifications limited contractors' ability to submit alternative products, even if the substitute products were less expensive and had adequate or superior performance properties. In two instances, the specifications limited bidders' ability to fully assess the time and cost ramifications of providing substitute materials; in another instance, the specifications dictated that the contractor incur additional costs associated with submitting substitute products, costs, according to our consultant, the contractor should not bear. While using proprietary products and not allowing substitutions is appropriate in some instances, our consultant concluded in this instance it was not justified.

UCSF Action: Partial corrective action taken.

➲ UCSF reported that the contract in question contained detailed requirements that it believes are based on legitimate business needs to ensure contractor availability at the construction site, maintain the product warranty, and discourage substitutions of potentially inferior roofing products. UCSF agreed that the specifications relating to the

manufacturer's products were tightly written, but added that it was done so as to minimize any impact on patients in the buildings affected. However, UCSF reported that the bid specifications for more recent contracts have been prepared with assistance from independent roofing consultants to avoid any appearance of inappropriate proprietary specifications that would unduly limit competition.