

**Division of Human Resources and
State Personnel Board
Department of Personnel & Administration**

**Performance Audit
May 2013**



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May 1, 2013

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of Division of Human Resources at the Department of Personnel & Administration and the State Personnel Board. The audit was conducted pursuant to Section 24-50-103.5(2), C.R.S., which requires the State Auditor to conduct a performance audit of Department's and Board's management and oversight of the State's personnel system every four years. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Personnel & Administration and the State Personnel Board.



We Set the Standard for Good Government

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DIVISION OF HUMAN RESOURCES AND STATE PERSONNEL BOARD

Performance Audit, May 2013 Report Highlights



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State Auditor

Department of Personnel & Administration

PURPOSE

Assess the management and oversight of the State's personnel system provided by the Department of Personnel & Administration's (the Department) Division of Human Resources (the Division) and the State Personnel Board (the Board).

BACKGROUND

- The state personnel system is the civil service system of state classified employees.
- State agencies with classified employees must adhere to the requirements guiding the state personnel system in the State's Constitution, statutes, and personnel rules.
- The Division oversees the state personnel system and agencies' compliance with statewide human resources requirements.
- The Board promulgates rules for the state personnel system and adjudicates employment disputes.

OUR RECOMMENDATIONS

The Department should:

- Improve data integrity and oversight over the performance review process for classified employees.
- Monitor and enforce agency compliance with laws and requirements guiding the human resources function.
- Improve workforce planning and management systems, training, and metrics.
- Improve tracking of Personnel Director's appeals to ensure they are handled timely.

The Board should:

- Improve its case management system and processes to ensure cases are resolved efficiently and timely.
- Establish safeguards to manage potential conflicts of interest, including written policies, annual disclosures, and training.

The Department and Board agreed with these recommendations.

AUDIT CONCERN

The Department's Division of Human Resources and the State Personnel Board need to improve their systems and processes for overseeing Colorado's state personnel system.

KEY FACTS AND FINDINGS

- The Division's system used to track state employees' performance did not have reliable data needed to monitor agencies' compliance with performance review requirements. For 12 out of 14 employees sampled, the system was inaccurate and did not reflect hard-copy files at agencies. Our review also found that between 4 percent and 8 percent of classified employees had no record of receiving a performance review in 2011 and/or 2012, as required by statute.
- The Division focuses on providing agencies human resources consulting services; it does not proactively monitor to ensure agencies comply with statutes, rules, and directives. A risk-based approach would allow the Division to monitor given its limited staff.
- Most of the State's key databases used to track workforce data continue to have unreliable data and the Division has not developed human resources metrics or trained agencies on using metrics. We also raised these concerns in our 2009 audit.
- The Division has not maintained complete or accurate electronic appeals data. We could not determine whether 201 of the 370 appeals (54 percent) from Fiscal Years 2011 and 2012 were issued by the Division within 90 days as required by statute. We identified three cases for which the Division did not issue a decision within 90-days so the agency action was automatically upheld.
- Although the Board has implemented a new case management system, the system and Board practices need improvement. For example, for 7 out of 175 cases (4 percent) in Fiscal Year 2012, key data, such as dates or records of hearings being held, were either not recorded in the system correctly or not recorded in the system at all. The Board also lacked adequate procedures for retrieving and using its case management data.
- The Board has not implemented safeguards to help prevent conflicts of interest, including a consistent process for disclosing conflicts, written conflicts of interest policies or procedures, or regular trainings or reminders on conflicts of interest. We also raised this concern in our 2009 audit.

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RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Responding	Agency Response	Implementation Date
1	23	Improve data integrity and oversight over the performance review process by (a) requiring agencies to enter accurate and complete performance review information into the State's Colorado Personnel Payroll System (CPPS) no later than July 1 each year and issuing technical guidance to agencies in this area; (b) monitoring agency compliance with the statutes and rules on performance reviews, following up with agencies that do not comply, and identifying ways to improve compliance; (c) verifying the self-reported, agency-level data in CPPS by periodically conducting compliance spot checks; (d) considering transitioning to a more efficient method of compiling data for the Joint Budget Committee report; and (e) providing agencies with technical guidance on the earliest date a performance review may occur.	Department of Personnel & Administration	a. Agree b. Agree c. Agree d. Agree e. Agree	a. May 2013 b. June 2013 c. July 2013 d. June 2014 e. June 2014
2	29	Improve monitoring and enforcement of agency compliance with state personnel system statutes, rules, and directives guiding the human resources function by (a) tracking the complaints and requests for consulting services that the Division of Human Resources (the Division) receives and using the information to improve the state personnel rules, training, and/or guidance for agency human resources staff; (b) using the information from the tracking methods in part "a" to develop a risk-based approach to monitor agencies, enforce state personnel rules, and follow up to ensure problems at agencies are corrected; and (c) analyzing the Division's organizational structure to determine whether opportunities exist to improve monitoring.	Department of Personnel & Administration	a. Agree b. Agree c. Agree	a. June 2014 b. December 2013 c. December 2013

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Responding	Agency Response	Implementation Date
3	37	Improve workforce planning and management by (a) continuing efforts to improve human resources information systems. This should include exploring new information systems and the expanded use of the Colorado Personnel Payroll System (CPPS); (b) developing and training agencies on accurate entry of data into statewide systems; and (c) developing human resources metrics and training agency human resources staff on the use of metrics to measure performance and develop long-term workforce planning strategies, including succession plans.	Department of Personnel & Administration	a. Agree b. Agree c. Agree	a. June 2014 b. December 2013 c. June 2014
4	44	Improve procedures for tracking Personnel Director's appeals to ensure they are handled timely by (a) implementing controls such as clear guidance for staff on data entry and a process for periodic supervisory review or spot checks to verify that pertinent appeals information is recorded in the database; and (b) using the database to track appeals and manage the appeals process and eliminating the use of hard-copy tracking sheets.	Department of Personnel & Administration	a. Agree b. Agree	a. December 2013 b. June 2014
5	50	Improve the electronic case management system and processes to ensure cases are resolved efficiently and within required timeframes by (a) adding to the Legal Files system the date the complainant reports receiving the notice of the agency action being appealed to the Board; (b) ensuring staff follow standard procedures for entering information into Legal Files; (c) training staff to create data reports from the Legal Files system that can be used to conduct supervisory reviews and determine timeliness; and (d) developing supervisory review procedures to provide reasonable assurance that electronic case data is accurate and complete.	State Personnel Board	a. Agree b. Agree c. Agree d. Agree	a. January 2013 b. July 2013 c. July 2013 d. January 2013

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Responding	Agency Response	Implementation Date
6	55	Establish safeguards to manage potential conflicts of interest by (a) approving and implementing a written policy on conflicts of interest that includes clear guidance to Board members, Administrative Law Judges (ALJs), and staff on what constitutes an apparent, potential, or real conflict and in what situations conflicts should be disclosed and Board members should recuse themselves; (b) requiring all Board members, ALJs, and staff to annually sign conflicts of interest statements affirming that they will comply with the policy established in part “a” and taking appropriate action when conflicts are disclosed; and (c) implementing training on conflicts of interest, ensuring that Board members, ALJs, and staff receive this training periodically, and providing reminders on conflicts of interest policies and procedures during each Board meeting.	State Personnel Board	a. Agree b. Agree c. Agree	a. May 2013 b. May 2013 c. June 2013

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Overview of the State Personnel System

Chapter 1

Article XII, Section 13 of the Colorado Constitution creates the state personnel system, which is the civil service system of state classified employees. Classified employees, who include most nonappointed employees serving in executive branch agencies, must be selected and evaluated according to a merit-based system that considers job-related knowledge, skills, and performance. The executive directors and division heads of agencies with classified employees are required to ensure that their agencies adhere to the policies and procedures established specifically for the state personnel system in the State's Constitution, statutes, and personnel rules.

Under the Colorado Constitution (art. XII, sec. 14), the state personnel system is overseen by the Department of Personnel & Administration (the Department), the State Personnel Director (the Personnel Director) who heads the Department as its Executive Director, and the State Personnel Board (the Board). The Constitution assigns the Board rulemaking authority over aspects of the state personnel system and assigns the Personnel Director responsibility for administering the state personnel system in accordance with the Constitution, state laws, and rules. The State Personnel System Act (Section 24-50-101, et seq., C.R.S.) requires the Personnel Director to lead human resources policy and personnel system operations, provide agencies consulting services and directives, and oversee the management of the system. Both the Board and the Personnel Director have the authority to establish state personnel rules, which provide statewide human resources requirements that apply to all classified employees. Within the Department, both the Division of Human Resources (the Division) and the Board oversee various aspects of the personnel system for classified employees.

Although the Personnel Director is responsible for administering the state personnel system, the system is decentralized, with most state agencies performing their own human resources functions. As of May 2013, only two state agencies, the Department of the Treasury and the Department of State, rely on the Department to handle their human resources activities. For the remaining agencies, the Department is responsible for providing guidance and oversight to ensure the personnel system is operating effectively and in accordance with applicable laws and state personnel rules.

Division of Human Resources

The Division is responsible for carrying out the daily oversight and management of the state personnel system. Within the Division, the Consulting Services Unit provides a range of services to state agencies and higher education institutions. These services include providing technical assistance on human resources topics, certifying state human resources professionals in the employee selection process, developing hiring exams, providing training to human resources professionals and other state employees, and overseeing the merit pay system. In addition, the Division resolves employment disputes, known as appeals, related to position reallocations, examinations for job applicants, employee performance evaluations, and the overall administration of the state personnel system.

The Division is also responsible for overseeing the State's risk management program; maintaining the State's job evaluation and compensation system; and managing plans for health, life, and disability benefits for state employees.

State Personnel Board

The Colorado Constitution (art. XII, sec. 14) makes the Board responsible for promulgating rules for the state personnel system and adjudicating employment disputes, known as appeals, between classified employees and state agencies or higher education institutions. The Board has Type 1 authority as defined in the Administrative Organization Act of 1968 [Section 24-1-105(1), C.R.S.]. As a Type 1 entity, the Board has the authority to exercise its prescribed statutory powers, duties, and functions independent of the Department.

The Board consists of five members who serve 3-year terms. The Governor appoints three members and classified employees elect the other two members. Board members cannot be officers or employees of the State or of any employee organizations. According to statute [Section 24-50-103(8), C.R.S.], Board members are compensated \$75 per day for each day in which they are engaged in the performance of their duties plus reimbursement for actual and necessary expenses incurred in the performance of their duties. The Board also has six staff: a Director, who is selected by the Board; three part-time administrative law judges, who review cases and hold hearings on behalf of the Board; and two administrative support staff, who process cases. Board staff also facilitate the settlement process between parties and provide training on the appeal process to state agencies upon the agencies' request.

Statute [Section 24-50-125(5), C.R.S.] requires the Board to conduct hearings for appeals that involve actions affecting an employee's base pay, classification status, or tenure, but the Board may use its discretion to grant hearings for other

types of appeals after reviewing the merits of the case. During Fiscal Year 2012, state employees filed 270 appeals with the Board. These appeals included issues of alleged discrimination; whistleblower allegations; disciplinary actions that affected an employee’s base pay, status, and tenure; and other employment-related matters.

Funding and Staffing

Funding for the Division comes from a variety of sources, including indirect cost recoveries from all state agencies, fees paid by state agencies for training and risk management, and the State’s General Fund. According to the Department, since Fiscal Year 2008, it has reduced staff dedicated to human resources functions, which include consulting, training, and providing assistance to state agencies and employees, because its funding has declined. As shown in the following table, beginning in Fiscal Year 2008, the Division’s full-time-equivalent (FTE) staff allocated to these human resources functions decreased about 35 percent, from 22.6 FTE in Fiscal Year 2008 to 14.6 FTE in Fiscal Year 2012.

Department of Personnel & Administration Division of Human Resources Expenditures and FTE Staff for Human Resources Functions¹ Fiscal Years 2008 through 2013							
	2008	2009	2010	2011	2012	2013 ²	Percentage Change 2008 to 2012
Expenditures (In Millions)	\$2.5	\$2.7	\$2.3	\$2.0	\$1.9	\$2.1	-24%
FTE Staff	22.6	23.6	20.1	18.1	14.6	14.1	-35%
Source: Office of the State Auditor’s analysis of data from the Colorado Financial Reporting System (COFRS) and budget requests from the Department of Personnel & Administration. ¹ Includes expenditures and actual full-time-equivalent (FTE) staff for the Division’s consulting, training, and dispute resolution processes. ² As of April 2013.							

Funding for the Board comes primarily from the State’s General Fund and reappropriated cash funds. Since Fiscal Year 2008, the Board’s expenditures have increased 17 percent, from \$566,000 in Fiscal Year 2008 to \$663,000 in Fiscal Year 2012. The Board was appropriated 4.8 FTE staff each year during this period.

State Workforce Demographics

The State's workforce is divided into classified employees, who are part of the state personnel system, and nonclassified employees, who are outside of the personnel system. Classified employees make up about one half of the State's workforce. According to Division data as of February 2013, there were about 31,800 classified employees in the State, with an average age of about 47, an average term of employment with the State of 10 years, and an average salary of approximately \$51,000 per year.

Nonclassified employees follow the personnel policies and procedures of their respective organizations and primarily include employees in the judicial branch, legislative branch, and institutions of higher education. The Division does not comprehensively track data on nonclassified employees. However, according to the State's Fiscal Year 2012 Comprehensive Annual Financial Report, as of June 2012, the State employed about 35,400 nonclassified employees with an average salary of about \$70,000 per year.

Recent Constitutional and Legislative Changes

Effective September 1, 2012, House Bill 12-1321 changed the state personnel system from a performance pay system to a merit pay system. A merit pay system favors priority positions identified by the Personnel Director through the State's annual compensation survey and provides employees with pay increases based upon their performance ratings and salary range distribution. Priority groups include employees that are at or below the minimum salary range for their positions, with high-performing employees in these groups receiving larger salary increases when funding is available. The purpose of merit pay is to move higher-performing employees through their salary range more quickly and to maintain a workforce that is concentrated at the midpoint of the salary ranges with fewer employees at the bottom and top of the ranges.

In 2012, Colorado voters approved Amendment S to the Colorado Constitution, which made changes to the state personnel system including allowing hiring decisions based on a comparative analysis rather than requiring a test, exempting certain positions from the classified system, decreasing the length of the term for Board members from 5 to 3 years, and allowing agencies to hire nonresidents for positions in geographic areas close to the State border.

Audit Scope and Methodology

This report includes the results of our performance audit of the management and oversight of the State's personnel system provided by the Department and the Board, as required by Section 24-50-103.5(2), C.R.S. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit objectives included evaluating:

- The Department's authority and effectiveness in monitoring and overseeing state executive branch agencies' compliance with state statutes, personnel rules, and the Department's human resources guidance, including requirements for reviewing and tracking the performance of classified employees.
- The Department's effectiveness in providing workforce planning information to agencies and the Department's management, leadership, and guidance of the state personnel system.
- The efficiency of the Department's and Board's employment appeals processes.

To accomplish our audit objectives, we performed the following audit work:

- Reviewed relevant state laws, and personnel rules, as well as Board and Department policies and procedures.
- Interviewed Department management and staff and Board members and staff to determine how the Department and Board oversee the State's personnel system. We also surveyed human resources staff at executive branch agencies and reviewed the results of the Department's most recent statewide customer satisfaction survey to determine the services provided by the Department and state employees' and agencies' satisfaction with those services.
- Analyzed Department and Board data, including data on appeals and workforce data, to determine whether appeals were conducted in accordance with applicable requirements and to assess whether workforce data were accurate, complete, and sufficient to allow the Department to monitor the State's personnel system.

- Assessed the Department's implementation of our previous audit recommendations and reviewed the prior audits the Department conducted of Executive Branch agencies to follow up on problems identified previously.
- Reviewed trends in the Department's budget and staffing to determine the impact changes might have had on the Department's ability to oversee the personnel system.
- Researched best practices in human resources administration that were relevant to our objectives.
- Assessed the effectiveness of internal controls that were significant to our audit objectives, including those related to the Department's monitoring of agencies' compliance with state personnel rules, the Department's and Board's appeals processes, and Board conflicts of interest.

We relied on sampling techniques to support our audit work as follows:

- We selected a non-statistical sample of 14 classified employee performance reviews for employees in seven executive branch agencies. We selected our sample to provide representation of performance reviews of classified employees conducted by executive branch agencies during 2011 and 2012. We designed our sample to help provide sufficient, appropriate evidence for our comparison of payroll system data to hard-copy performance review records maintained by the agencies for each employee based on our audit objectives.
- We selected a non-statistical sample of four delegation agreements. We selected our sample to provide representation of the 17 delegation agreements between the Department and executive branch agencies at the time of our audit. We designed our sample to help provide sufficient, appropriate evidence for our evaluation of the roles and responsibilities of each party based on our audit objectives.
- We selected a non-statistical sample of 15 executive branch agency human resources managers to survey. We selected our sample to provide representation of executive agency human resources professionals. We designed our sample to evaluate the Department's efforts to provide guidance to state agencies, improve the State's use of human resources performance indicators, and assess agencies' use of systems outside of Department-maintained databases based on our audit objectives.

- We selected a non-statistical random sample of 20 appeals processed by the Department. We selected our sample to provide representation of the 370 appeals the Department processed in Fiscal Years 2011 and 2012. We designed our sample to evaluate whether appeals were filed timely, the Department investigated the appeals and issued its decision within required time frames, and the Department followed Board rules for processing appeals based on our audit objectives.
- We selected a non-statistical sample of six appeals to the Board. We selected our sample to provide representation of 270 appeals the Board received in Fiscal Year 2012. We designed our sample to evaluate whether information within the Board's electronic database matched information found in the hard-copy case files based on our audit objectives.

When samples were chosen, the results of our testing were not intended to be projected to the entire population. Rather, cases were selected to provide sufficient coverage of those areas—such as performance reviews—that were significant to the objectives of this audit. Specific details about the audit work supporting our findings, conclusions, and recommendations are described in the remainder of the report.

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Division of Human Resources’ Oversight of the State Personnel System

Chapter 2

The Colorado Constitution [art. XII, sec. 14(4)] establishes the State Personnel Director (the Personnel Director) as the head of the Department of Personnel & Administration (the Department) and as the administrator of the state personnel system responsible for ensuring the system operates in accordance with the State Constitution, statute, and rule. Although the Personnel Director has ultimate responsibility for administering the personnel system, the system is highly decentralized, with statute [Section 24-50-101(3)(d), C.R.S.] requiring department heads to operate and manage the personnel system within their departments. The Personnel Director delegates authority for day-to-day administration of the personnel system, such as hiring, creating job requirements, and evaluating employee performance, to most state agencies in accordance with state personnel rules. The Department’s Division of Human Resources (the Division) is responsible for providing expertise, strategic management, and oversight for the state personnel system. The Division works with the Department to promulgate personnel rules and issue directives that agencies must follow, provides human resource consulting services to agencies, and oversees agencies to help ensure they follow applicable laws and requirements.

This chapter presents our findings related to the Division’s operations in three areas: (1) its system and procedures for ensuring state agencies comply with performance management requirements, (2) its monitoring of agencies’ compliance with statutes and rules related to the personnel system, and (3) its practices for ensuring efficient and effective administration of the State’s workforce. Overall, we found that the Division needs to improve its data and processes for overseeing and managing the State’s decentralized personnel system.

Oversight of Performance Management

Statute [Section 24-50-101(3)(a), C.R.S.] specifies, “it is the purpose of the state personnel system, as a merit system, to assure that a qualified and competent workforce is serving the residents of Colorado.” To ensure the workforce is

qualified and competent, statute [Section 24-50-104(1)(c.5)(I), C.R.S.] requires that classified employees receive annual performance reviews. State agencies are responsible for providing classified employees with performance reviews and use these reviews to communicate feedback on employee performance, facilitate improvements in employee and agency performance, and provide documented evidence for consideration in promotion, demotion, transfers, and layoffs. During their performance reviews, classified employees may earn a performance rating of 1, meaning “does not meet expectations”; 2, meaning “meets expectations”; or 3, meaning “exceptional performance.”

Once agencies provide reviews, the Division is responsible for compiling performance review information, using the information to calculate any merit-based pay increases, and reporting agency compliance with performance review requirements. Although the Department has not created a rule or written requirement, the Division reports that State agencies’ human resources staff should enter employees’ performance review information, including the rating, date of the review, and supervisor responsible for the review, into the Colorado Personnel Payroll System (CPPS), which is administered by the Department. CPPS is the system of record for tracking classified employees’ performance ratings and also retains payroll information for classified employees in the State and is used to disburse employee pay. According to the Division, it and state agencies plan to use the data in CPPS to calculate each classified employee’s merit pay in years when agencies receive funding for merit raises. In addition, Statute [Section 24-50-104(1)(c.5)(V), C.R.S.] requires the Department to annually report to the Joint Budget Committee (the JBC) the percentage of supervisors at each state agency who complied with statutory requirements related to performance reviews and the number of supervisors who were disciplined for failure to provide employees with reviews as required. However, the Department does not use CPPS to compile this information and instead relies on each agency to report aggregate totals on supervisor compliance each year.

What audit work was performed and what was the purpose?

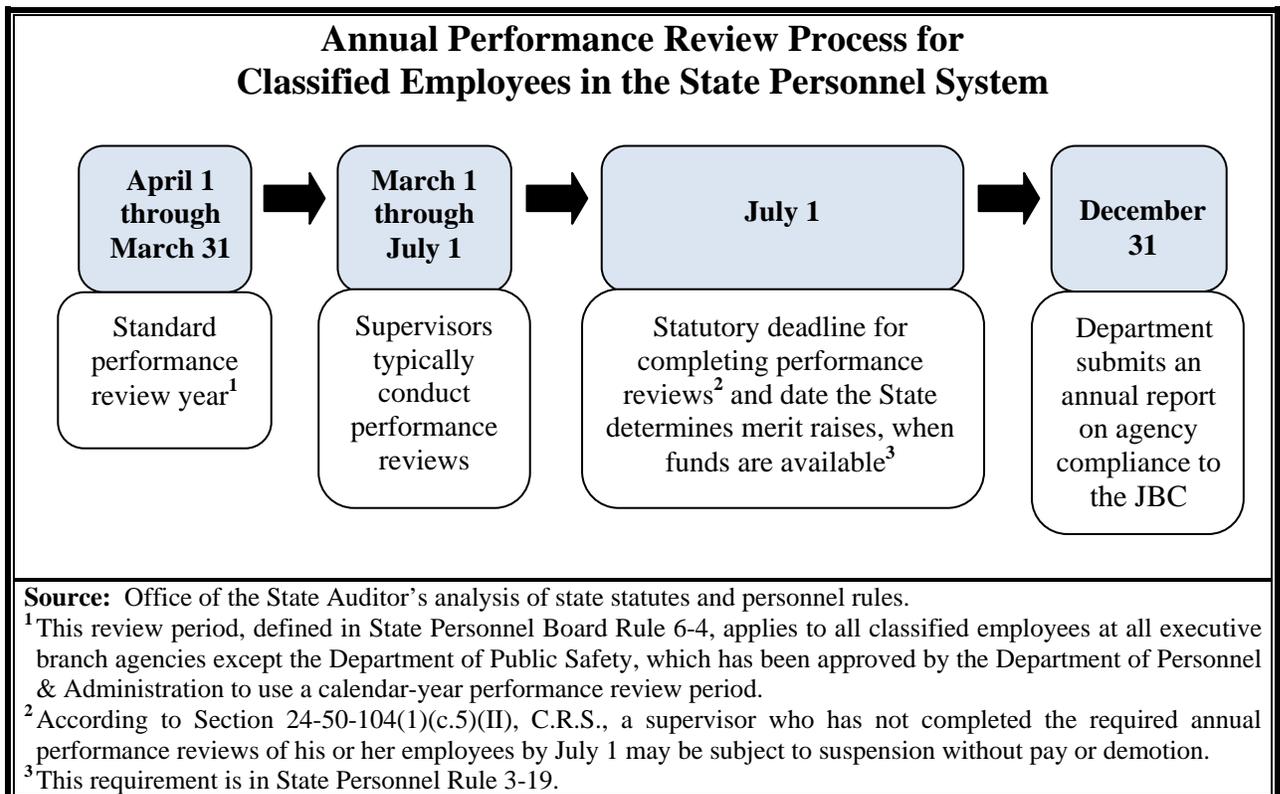
The purpose of the audit work was to evaluate the Division’s practices for monitoring the performance review process in the State. We assessed the Division’s oversight of agencies’ compliance with statutory requirements to provide all classified employees annual performance reviews and the Division’s methods for ensuring agencies record performance review information into CPPS. We analyzed CPPS data for 19 executive branch agencies to determine if they reported providing employees timely performance reviews in 2011 and 2012. We evaluated whether the data in CPPS were accurate and complete by selecting a sample of 14 classified employees from seven agencies and comparing CPPS data for each employee to hard-copy performance review records maintained by the agencies. In addition, we compared the CPPS data with the agency compliance

reports the Department presented to the JBC in December 2012 to determine if the reporting appeared to be accurate.

How were the results of the audit work measured?

We used the following criteria to measure the results of our audit work:

- Performance management requirements.** Statute [Section 24-50-104(1)(c.5), C.R.S.] requires agencies to provide all classified employees with an annual performance review and outlines mandatory sanctions for supervisors who fail to evaluate their employees by July 1 of each year. When evaluating classified employees, all agencies are required to follow the standard performance review period, April 1 through March 31, set in State Personnel Rule 6-4, with the exception of the Department of Public Safety, which has been granted a waiver by the Department. Based on the standard review period, April 1 through March 31, we considered reviews completed between March 1 and July 1 (the latest date by which supervisors are expected to complete evaluations according to statute) to be timely. The following chart shows the annual performance review process.



- **State agency records.** Each state agency with delegated authority signs a delegation agreement with the Department requiring the agency to maintain and provide human resources records in a timely manner in the format specified by the Department upon request. Performance review records are one type of record all agencies should maintain and provide the Department by entering them into CPPS in a timely manner.
- **Department and Division monitoring.** According to statute [Section 24-50-104(1)(c.5)(V), C.R.S.], the Division is responsible for monitoring agencies' compliance with performance review requirements and providing an annual report on agency compliance to the JBC each year. Further, as the administrator of CPPS, the Department should ensure the human resources data that agencies enter into CPPS are accurate and complete.
- **Implementation of the talent agenda.** One of the Department's strategic plan goals is implementing the talent agenda, which includes providing merit raises to classified employees. Statute [Section 24-50-104(1)(c)(I), C.R.S.] requires the Department to establish a merit pay system based on employees' performance reviews and placement within position salary ranges. In order to implement the talent agenda, the Department will need to work with agencies to ensure the State has effective processes and accurate data to manage and track the performance of state employees.

What did the audit work find?

Overall, our review of the performance management data in CPPS for 2011 and 2012 indicates that CPPS does not have complete and accurate data on employee performance reviews necessary to monitor agency compliance with performance review requirements and calculate merit increases. Further, our review of a sample of hard-copy performance reviews indicated that some agencies have not provided all their classified employees timely and consistent performance reviews. We identified the following problems:

- **CPPS lacked reliable data on employee performance reviews.** We attempted to review CPPS data to determine whether agencies provided classified employees reviews between March 1 and July 1 in 2011 and 2012. However, because CPPS lacked complete and accurate data, we were unable to determine the percentage of employees at each agency that received a performance review as required. Specifically, as shown in the following table, CPPS records showed that about 8 percent of the classified employees in 2011 and about 4 percent of the classified employees in 2012 had no record of a performance review occurring between March and July in one or both of the years we reviewed. For

these employees, agencies either did not provide a performance review by the statutory July 1 deadline or provided a review but did not enter it into CPPS.

CPPS Performance Review Data for Classified Employees¹ 2011 and 2012 Performance Review Years				
Review Year	Number of Employees Eligible for a Review	Employees with No Record of a Timely Performance Review²		Agencies with Untimely or Missing Reviews
		Number	Percentage	
2011	23,836	1,859	8%	17 out of 19
2012	23,220	840	4%	18 out of 19

Source: Office of the State Auditor's analysis of data in the Colorado Personnel Payroll System (CPPS).
¹Excludes nonclassified employees and employees in the Senior Executive Service.
²Includes employees with no record of a performance review in CPPS between March and July and excludes employees recently hired and employees who retired prior to July 1 each year. For some employees, CPPS had no record of a performance review at any time for these 2 review years.

Because most agencies had untimely or missing review information, we reviewed hard-copy documentation for a sample of 14 classified employees from seven state agencies to verify the performance review information recorded in CPPS. We found that for 12 of the 14 sampled employees, CPPS was inaccurate and did not reflect hard-copy performance reviews. Specifically, CPPS showed that eight of the 12 employees did not receive timely reviews, but the hard-copy files showed timely reviews *had* occurred; the remaining four employees had inaccurate review dates in CPPS and also did not receive performance reviews by the July 1 deadline in either 2011 or 2012. Because of these inaccuracies, for the employees lacking records of timely reviews in CPPS, neither we nor the Division could use the system to determine whether the employees received a review and if so, how those employees performed or were rated in those years.

- **CPPS indicated that 11 agencies provided some performance reviews early, before the review period was complete.** Information that agencies recorded in CPPS for 2011 and 2012 showed about 364 (1.4 percent) of the 25,650 classified employees received performance reviews either in January or February, at least 1 month before the review period was completed. We expected all agencies, except the Department of Public Safety, to begin performance reviews as early as March 1 because the standard review period is April 1 through March 31. Some circumstances, such as a change in the employee's supervisor or an employee transferring position, could prompt a review before March. However, it was not possible to determine whether it was appropriate that the agencies

conducted early reviews because CPPS does not record the reason an early review was conducted. When agencies provide employees performance reviews before the end of the review period without good cause, the reviews may not accurately reflect all the work the employees performed in the period.

Overall, because of the errors, missing data, and inconsistencies in CPPS, neither we nor the Division could use the system to accurately determine how many classified employees did not receive a performance review, how many employees did not receive their review on time, or the performance ratings that classified employees received. Because of these data problems, the Division does not have access to adequate data needed to monitor and report agency compliance with performance review requirements and the CPPS data cannot be relied upon for calculating merit pay increases for classified employees. In fact, we found that the Division does not use the CPPS data to prepare its annual report to the JBC on agency compliance with performance review requirements because the Division is concerned with the accuracy of CPPS. Instead, the Division requires agencies to complete a separate annual survey to provide information for the JBC report. When we compared the Department's December 2012 report with the JBC with the data in CPPS, we identified discrepancies, as shown in the table below.

Comparison of CPPS Data with the Department's December 2012 Report to the JBC		
	CPPS Data	Report to JBC
Number of Agencies in Full Compliance	5	17
Number of Noncompliant Supervisors	429 out of 4,264	37 out of 4,135
Percentage of Supervisors in Compliance	90%	99%
Source: Office of the State Auditor's review of CPPS data and the Department of Personnel & Administration's December 2012 performance review report to the Joint Budget Committee.		

CPPS data and the performance review figures that agencies reported to the Department for the JBC report show that some agency supervisors were noncompliant with performance review requirements. However, because CPPS appears to have errors, we were unable to determine whether the significant discrepancies between the two data sets were primarily due to problems with CPPS or inaccurate reporting by agencies. Specifically, our review of a sample of 14 hard-copy performance records found that one of the four employees who had not received a timely performance evaluation in 2012 worked for a department that the JBC report indicates was in full compliance. Because CPPS lacks complete and accurate information, we were unable to use it to verify the accuracy of the information agencies provided for the JBC report and determine

whether the problem identified in our sample was an isolated error or representative of more extensive inaccuracies within the JBC report.

Why did the problem occur?

The problems we identified were due to the following factors:

- **Division management reported that agencies often enter inconsistent and incomplete performance review information into CPPS.** A lack of reliable CPPS data has been an ongoing problem. Our 2005 audit of the Department and a review conducted by the Division in 2008 found similar problems with the reliability of CPPS. Division management reported that it believes this problem has become worse in recent years because agencies have not received funding for merit raises, so agencies have had less incentive to enter information for all employees into CPPS because it was not being used to calculate raises.
- **The Division's processes and guidance are not sufficient to ensure agencies use CPPS consistently and record accurate and complete information.** Although Division management has been aware of issues with CPPS data, it has not taken the steps needed to ensure agencies enter reliable and complete data into the system. The Department has not provided agencies clear guidance on how to record performance review information into CPPS. Further, the Division reported that it emails agencies to remind them to enter performance review data into CPPS but takes no further action to ensure the information agencies provide is timely, complete, or accurate. The Division does not perform any reviews of the data for accuracy or integrity such as by conducting spot-checks of the data in CPPS to ensure that the dates agencies enter reflect actual performance review dates. According to Division management, it has not been able to address this problem because it does not have the staff resources to verify the accuracy and integrity of the performance review data that agencies enter into CPPS or to follow up with agencies that do not provide timely and accurate information. However, the Division reported that it is exploring options to implement an electronic, centralized performance management system, as part of its efforts to improve its human resource information systems, that would allow supervisors to provide employees with electronic reviews and automatically populate review information, such as the date of the review, in a central database when the review is completed, eliminating the need for agencies to manually enter the performance rating and review date.
- **The Division's processes and controls are not always sufficient to ensure agencies follow the performance management requirements in**

statute and rule. As stated above, four employees in our sample had not received a performance review by the July 1 deadline in either 2011 or 2012. The Division does not have processes to confirm that agencies monitor their supervisors for compliance or take corrective action when untimely or noncompliant supervisors fail to provide employees with timely reviews. Our 2005 audit of the Department found similar problems with the Division's ability to monitor agency compliance. A 2008 review by the Division also found that there was a substantial risk that some employees were not receiving performance reviews. We provide more discussion and recommendations for improvements for Division monitoring in Recommendation No. 2.

In addition, agencies may be conducting early performance reviews in January and February, before the end of the required review period, because the Division has not provided agencies clear guidance regarding the earliest date during the review year that supervisors may complete employee performance evaluations under normal circumstances.

Why does this problem matter?

When agencies do not enter reliable performance review data into CPPS, it is difficult for the State to implement a merit pay system to reward top-performing employees. Recent legislation, House Bill 12-1321, authorized a new merit pay method to provide classified employees raises based on their performance ratings and other priorities identified by the Personnel Director. As part of this process, the Division is responsible for compiling data on ratings and current pay for all classified employees, calculating merit pay increases, and entering new salary information into CPPS to provide salary increases. Because the General Assembly approved merit pay funding for Fiscal Year 2014, the potential effect of the problems with CPPS data will be larger than it had been previously, because performance-based raises have not been funded since Fiscal Year 2009 and inaccurate performance rating information could result in employees not receiving appropriate salary increases.

According to the Division, it and state agencies plan to use the performance ratings data in CPPS, along with other factors, to calculate how much each employee will earn in merit pay. However, the Division and agencies cannot use CPPS to calculate and distribute merit pay accurately and fairly based on employee performance until the integrity of the CPPS data is improved. In order to capture the ratings of each classified employee in time to implement merit pay for Fiscal Year 2014, Department management reported that it plans to allow agencies to either record employees' performance ratings in CPPS or record the ratings in a Department-created spreadsheet that the Department will upload into CPPS.

In addition to hindering the implementation of a merit pay system, failing to provide employees with performance reviews, or providing them at the wrong time, can negatively affect employees, their performance, and ultimately the quality of the State's workforce. The purpose of performance review requirements is to ensure that all classified employees are reviewed annually so the State has an effective and skilled workforce. Employees who do not receive reviews at all or who receive reviews that are not timely do not have current feedback to improve their skills and performance. Similarly, when employees receive performance reviews before the end of the performance review year, there is a risk that their performance rating may not reflect their performance for the entire review year. For example, if an employee received an "exceptional performance" rating in February and then had performance issues in March, "exceptional performance" may no longer be the proper rating. We recognize the need for some flexibility in setting timelines for performance reviews, but a standard timeline, such as no earlier than March 1 and no later than July 1, would ensure the Department is properly balancing flexibility with the potential risk of agencies providing performance reviews too early.

A lack of accurate performance review data in CPPS also makes it difficult for the Division to monitor agency compliance with performance review requirements. Although we found that the CPPS data were not entirely reliable, they indicate that between 4 percent and 8 percent of classified employees may not have received a timely performance review during the past 2 years. A lack of monitoring increases the risk that employees will not receive timely performance reviews, and noncompliant supervisors may not be disciplined if their noncompliance goes unrecorded.

Lastly, inaccurate or incomplete data in CPPS can negatively affect the Division's ability to report information to decision makers. Historically, the Division has requested information from agencies to develop the report to the JBC on agency compliance, which has led to more discrepancies between CPPS and agency-reported data. The Division cannot not use CPPS to help develop the JBC report accurately without improving the reliability of CPPS.

Recommendation No. 1:

The Department of Personnel & Administration should improve data integrity and its oversight over the performance review process by:

- a. Requiring agencies to enter accurate and complete performance review information into the State's Colorado Personnel Payroll System (CPPS) no later than the statutory deadline of July 1 of each year. This should include issuing technical guidance that specifies how agencies should record

performance information in CPPS and requires agencies to update the information in a timely manner when changes occur.

- b. Implementing processes for monitoring agency compliance with the statutes and rules on performance reviews, following up with agencies that do not comply, and identifying ways to improve compliance.
- c. Verifying the self-reported, agency-level data in CPPS by periodically conducting compliance spot checks that compare CPPS data for a risk-based sample of classified employees with the performance review data and documentation maintained by agencies. The spot checks should include verifying that the CPPS data agencies record in the system are accurate.
- d. Considering transitioning to a more efficient method of compiling data for the Joint Budget Committee (JBC) report for better compliance monitoring. This method could include using CPPS, developing and using an electronic performance review system that will provide system-generated review dates, or another method.
- e. Providing agencies with technical guidance on the earliest date a performance review may occur.

Department of Personnel & Administration Response:

- a. Agree. Implementation date: May 2013.

The Department of Personnel & Administration is implementing a new procedure for state agencies to enter the performance review information into CPPS. This procedure is designed to facilitate more accurate and timely entry of performance review information. The Department has supplied state agencies with a spreadsheet and associated guidance to document the required performance management information. State agencies will be required to enter the information directly in to CPPS or submit the spreadsheet to be uploaded into CPPS by May 17, 2013.

- b. Agree. Implementation date: June 2013.

The Department has also developed internal procedures for consulting services staff members within the Division of Human Resources to monitor compliance with the submission of the performance review information in accordance with the new requirements.

- c. Agree. Implementation date: July 2013.

The Department is implementing a new organizational structure where consulting services staff members are assigned to specific state agencies. These consulting services staff members will verify the accuracy of data within CPPS through spot checks based upon risk-based samples.

- d. Agree. Implementation date: June 2014.

The Department is evaluating various alternatives to improving the accuracy of all aspects of workforce data, ranging from providing training and technical guidance to state agencies on data entry within CPPS to upgrading CPPS to implementing a comprehensive human resources information system. In relation to the performance review information, the Department will use data directly from CPPS for the JBC report rather than relying on a separate data collection effort.

- e. Agree. Implementation date: June 2014.

The Department is working with human resources professionals statewide on improving the current performance management program within the State. As part of this larger effort, the Department will provide guidance to state agencies on appropriate performance review dates.

Monitoring the State Personnel System

The Department has delegated the authority to perform human resources functions, such as hiring and employee evaluations, to most agencies in the state. Higher education institutions, the legislative and judicial branches, and 17 of the executive branch agencies have delegated authority and employ most of the State's 31,700 classified employees. The Department executes delegation agreements with each of these state entities. As of May 2013, the Department of the Treasury and Department of State do not have delegated authority and instead rely on the Department to handle their human resources activities. Within the Department, the Division monitors agency compliance with delegation agreements that grant agencies the authority to function more independently of the Department. Prior to 2010, the Department conducted statutorily required audits of agencies' human resources activities to monitor compliance with statute, personnel rules, and delegation agreements; however, House Bill 10-1181 made these audits optional and the Department has not conducted audits since 2010.

What audit work was performed and what was the purpose?

The purpose of our audit work was to determine whether the Division has adequate systems and processes to monitor state agencies' compliance with statutes and rules for personnel system administration. We reviewed the Division's policies and procedures for overseeing human resource and personnel operations in state agencies and reviewed a sample of four out of the 17 delegation agreements signed by the Department and executive branch agencies that outline the roles and responsibilities of each party. We reviewed the prior audits of agencies conducted by the Division in 2008 and 2009 to follow up on previously identified problems. We analyzed human resources data, such as hiring and employee evaluation records, that the Division collected from executive branch agencies for Fiscal Years 2011 through 2012 for accuracy and completeness. We examined the appeals received by the Division and the results of the Division's most recent statewide customer satisfaction survey. We interviewed Division staff and surveyed human resources staff at 15 executive branch agencies to determine the types of monitoring and consulting services the Division provides and potential areas for improvement. We also reviewed budgetary changes at the Division to determine what, if any, effect these changes have had on the Division's ability to provide oversight of the state personnel system.

How were the results of the audit work measured?

According to the State Constitution [art. XII, sec. 14(4)], the Personnel Director is responsible for administering the state personnel system. Statute (Section 24-50-101, C.R.S.) specifies that the state personnel system is intended "to provide a sound, comprehensive, and uniform system of personnel management" for the State; assure that a qualified and competent workforce serves Colorado; and provide all individuals with an equal opportunity to compete for employment. Further, statute requires the Department to provide leadership, oversight, directives, and consulting services to agencies to ensure that the personnel system meets its statutory purpose. Although the Department has the ultimate authority over all actions within the State's personnel system, personnel rule (Section 1-6, 4 C.C.R. 801-1) allows it to delegate its authority to state agencies and indicates that department heads are responsible for managing day-to-day human resource operations. Within the Department, the Division is responsible for monitoring agency compliance with delegation agreements. To oversee agencies' human resources activities under delegation agreements and ensure that agencies comply with applicable laws and rules, statute [Section 24-50-101(3)(d), C.R.S.] provides the Department with the authority to conduct reviews or audits of agency operations. The Division's monitoring of state agencies is important to ensure consistent and proper administration of the state personnel system.

What did the audit work find?

We found that the Division does not proactively monitor state agencies to ensure that they comply with statute, state personnel rules, Department directives, and delegation agreements. Currently, the primary method the Division has to identify problems within the state personnel system is to review agency actions that are challenged on appeal by state employees or applicants for state positions. However, reviewing appeals is not adequate for the Division to determine whether agencies comply with applicable rules because many agency actions or instances of noncompliance may not be appealed. For example, applicants for a state position would typically be unaware if an agency violated personnel rules regarding selection (Section 4-1, 4 C.C.R., 801-1) by allowing staff with a conflict of interest to make hiring decisions. Additionally, some potential problems do not involve appealable matters. For example, personnel rule (Section 1-23, 4 C.C.R., 801-1) requires agencies to maintain updated records within employees' personnel files, but failure to maintain updated personnel records is not an appealable matter. As previously mentioned, until Calendar Year 2010, one of the Division's primary monitoring tools was conducting audits of human resources activities at agencies. These audits identified problems and made recommendations for improvement across a broad range of human resources topics, including performance evaluation, selection, and agency grievance processes. However, the Division stopped conducting audits of agencies when House Bill 10-1181 made the audits an optional, rather than mandatory, monitoring tool for the Department. According to Department management, legislation made the audits optional to allow the Department flexibility to focus limited resources toward consulting with agencies and processing Personnel Director's appeals (discussed in Recommendation No. 4).

Why did the problem occur?

The problems we identified were due to the following factors:

- **Greater focus on providing consulting services and Division staffing limitations.** According to Department management, the Division has shifted its focus from monitoring and enforcing agency compliance to providing consulting services to agencies and acting more as a partner in administering the state personnel system by providing guidance and training to agencies when requested. Department management stated that although its past audits and reviews of agencies were a valuable tool, it does not currently have sufficient staff resources to conduct audits. In addition, although the Department's delegation agreements with agencies indicate that it retains the authority to overturn or modify agency actions, unless a problem is identified quickly, it may be impractical to reverse some actions. For example, if an agency does not follow selection rules

when hiring an employee and the Department is not aware of the problem for several months, reversing the agency's action would require dismissing the improperly hired employee and reopening the position, which may not be an equitable solution.

We reviewed Division staffing levels and found that the number of full-time-equivalent (FTE) staff allocated to the Division for oversight, workforce planning, consulting, and training decreased about 35 percent in recent years, from 22.6 FTE in Fiscal Year 2008 to 14.6 FTE in Fiscal Year 2012. However, according to management, the Division plans to hire approximately seven staff to fill some of its vacancies during Fiscal Year 2013. Thus, it may have the ability to use some of its staff to conduct monitoring of agencies in the future. Monitoring could include a range of activities such as audits, limited desk reviews, following up on complaints and instances of noncompliance, and partnering with agencies to correct any problems identified.

- **Lack of data on complaints and consulting services and lack of a risk-based monitoring approach.** Although the Division's resources may limit the extent of its monitoring of state agencies, we found that it could improve the effectiveness of its monitoring activities by collecting more information on potential problems and developing a risk-based approach to monitoring. Division staff reported receiving a range of calls that include complaints, concerns, and requests for human resources consulting from state employees and non-employees that can indicate possible agency noncompliance with statutes and state personnel rules. However, the Division does not track the calls or requests it receives and does not typically take action on complaints unless they result in a formal appeal. Tracking the types of complaint calls and requests for services it receives from each agency could help the Department develop a risk-based approach to monitoring agencies and providing consulting services. For example, the Division could develop a process to electronically track the types of human resources calls its staff receive and the consulting they provide and assess potential problems at agencies and trends in the personnel system. The Division could use this information to help focus its monitoring and consulting efforts on the most significant problem areas and determine whether agencies need additional training or clarification through personnel rules or guidance that may lead to greater agency compliance.
- **Division organizational structure creates difficulties in fulfilling dual roles.** Currently, the same Division staff are responsible for both the Division's consulting and the Division's monitoring functions. Division management reported that it is difficult for staff to take on the roles of both consultant and rule enforcer because agencies may be more reluctant

to share their human resources problems, such as not completing timely performance reviews or not following rules for selecting new employees, with Division staff if the agencies knew they may be subjected to corrective actions or an audit. However, management stated that it is currently restructuring the organization of the Division to better serve state agencies and employees. As part of this restructuring, the Division should consider assigning consulting and monitoring responsibilities to different staff, which could help minimize conflicts staff experience when they serve as both consultant and rule enforcer for the same agencies.

Why does this problem matter?

As a result of the Division not conducting proactive monitoring of agencies for compliance with statutes and personnel rules, there is a greater risk that the Department will not be aware if agencies are not following state laws, personnel rules, delegation agreements, or Department directives. Our review of audits conducted by the Division from 2008 and 2009 indicates that when the Division conducted audits, it found numerous problems, including agencies that lacked processes to track employee grievances, agencies that could not demonstrate that all employees received performance reviews, and agencies that did not properly evaluate job requirements as required during the selection process. Without a system of checks and oversight, noncompliance is more likely to continue. Further, if agencies are not consistently adhering to laws, rules, and Department-issued technical guidance governing human resources, it undermines the statutory goals of the state personnel system to (1) provide a sound and uniform system of personnel management, (2) ensure that a qualified and competent workforce serves Colorado, and (3) provide all individuals with an equal opportunity to apply and compete for employment. In addition, by not proactively monitoring agencies, the Division is less able to identify areas where additional rules, training, or guidance may be necessary to improve the administration of the personnel system.

Recommendation No. 2:

The Department of Personnel & Administration should improve its monitoring and enforcement of agency compliance with state personnel system statutes, rules, and directives guiding the human resources function by:

- a. Implementing methods to track the types of complaints and requests for consulting services that the Division of Human Resources (the Division) receives and using the information to improve the state personnel rules, training, and/or guidance it provides agencies' human resources staff.

- b. Using the information obtained from the tracking methods in part “a” of the recommendation to develop a risk-based approach for monitoring agencies, enforcing state personnel rules, and following up to ensure problems at agencies are corrected. This approach could include conducting audits and desk reviews of high-risk areas and following up on complaints and reports of noncompliance.
- c. Performing an analysis of the Division’s organizational structure to determine whether opportunities exist to improve monitoring. These improvements could include allocating additional staff to monitoring functions and dividing the Division’s consulting and monitoring functions so staff who provide consulting services to agencies are not responsible for enforcing the same agencies’ compliance with state personnel rules.

Department of Personnel & Administration Response:

- a. Agree. Implementation date: June 2014.

The Department of Personnel & Administration has already begun the process of refining the Division of Human Resources’ electronic tracking system for appeals to include complaints, questions, and general advice. In addition, the Department will evaluate potential automated tools to further improve the tracking processes.

- b. Agree. Implementation date: December 2013.

The Department will use the improved tracking system data to analyze trends and identify issue areas. The consulting services staff within the Division of Human Resources will use these data to address areas that need attention within their assigned state agencies.

- c. Agree. Implementation date: December 2013.

As indicated above in the response to Recommendation No. 1 part “c”, the Department is implementing a new organizational structure within the Division of Human Resources where consulting services staff members are assigned to specific state agencies. This will allow the consulting services team to spend time working more directly with their assigned state agencies and managing identified issue areas while providing proactive training, partnership, and human resource services. Additionally, the Department is evaluating the benefits of creating a separate monitoring function designed to improve agency compliance.

Workforce Planning and Management

A key human resource function is workforce planning and management, which includes efforts to develop strong leaders; plan for employee retirements; acquire, develop, and retain top talent; and create incentives that reward employees' job performance and results. Within the Department, the Division is primarily responsible for workforce planning and management for the state personnel system. As part of its workforce planning and management responsibilities, the Division compiles data, including the number of state employees and their demographics, payroll information, and employee turnover figures, from CPPS and other human resource databases used by institutions of higher education. Using this information, the Division produces reports, including the *Annual Workforce Report* and monthly summaries of employee counts, which the General Assembly, the Governor, and state agencies use as tools to prepare for workforce changes due to factors such as retirement eligibility and voluntary turnover. In addition, the Division uses the reports to assess the State's staffing composition and develop guidance and training for State agencies. For example, the Division analyzes performance indicators such as employee turnover to assist agencies in identifying strategies to improve employee retention.

The following table provides basic workforce statistics for the state for Fiscal Years 2010 through 2013. As of February 2013, the state personnel system included a total of about 31,700 classified employees spread across 53 agencies and institutions of higher education, making the State one of the largest employers in Colorado.

State of Colorado Workforce Statistics for Classified Employees Fiscal Years 2010 Through 2013¹				
	2010	2011	2012	2013¹
Number of Classified Employees	33,100	33,300	32,100	31,800
Percentage of Annual Turnover	9%	10%	10%	6%
Percentage of Classified Employees Eligible to Retire in 5 Years	34%	34%	36%	36%
Source: Office of the State Auditor's review of the state workforce data maintained by the Department of Personnel & Administration.				
¹ The Fiscal Year 2013 figures are as of February 2013. Because turnover is measured on an annual basis, it is likely to increase throughout the fiscal year.				

What audit work was performed and what was the purpose?

The purpose of our audit work was to follow up on recommendations from our 2009 audit of the Department related to workforce planning and determine

whether the Division has adequate data and practices that allow for efficient and effective administration of the State's workforce planning activities. We reviewed Fiscal Year 2012 data from the State's payroll and human resources system, CPPS, which the Division uses to compile workforce reports. The CPPS data include employee demographic, payroll, and turnover information. We also reviewed data from COJobs, the State's online job application system. In addition, we interviewed Division management and staff and surveyed human resources representatives at 15 executive branch agencies to evaluate the Division's efforts to provide guidance to state agencies, improve the State's use of human resource performance indicators, and assess agencies' use of systems besides CPPS and COJobs.

How were the results of the audit work measured?

According to statute [Section 24-50-101(3)(a), C.R.S.], "the purpose of the state personnel system, as a merit system, [is] to assure that a qualified and competent workforce is serving the residents of Colorado." As the leader of the State's personnel system, the Department is responsible for providing agencies with guidance and resources to effectively plan and manage the State's workforce. Within the Department, the Division is primarily responsible for the following workforce planning and management activities:

- **Leadership and consulting services.** According to statute [Section 24-50-101(3)(c), C.R.S.], the Department is responsible for providing "leadership in the areas of policy and operation of the state personnel system" and "consultant services to executive branch agencies and institutions of higher education to further their professional management of human resources in state government."
- **Maintain data and provide training.** The Department is responsible for compiling information necessary to manage the State's workforce and providing guidance and training to state agencies. Specifically, statute [Section 24-50-127(1), C.R.S.] and personnel rules further require the Department to maintain records for all employees, including data on education, training, skills, and workload.

The Division has established several goals for Fiscal Year 2013 that relate to workforce planning and management. For example, the Division's goals include implementing a shared services model to provide some human resources functions to agencies more efficiently, developing new training for state agencies and employees, and implementing the changes to the merit pay system.

Our 2009 audit included the following two findings and recommendations related to workforce planning and management within the Division:

- **Update and consolidate databases.** We found that the State's human resource databases were widely dispersed among agencies, contained unreliable data, and were out-of-date. We recommended that the Division work with the Governor's Office of Information Technology to update and consolidate the databases.
- **Develop key human resource metrics.** We found that the Division had not provided adequate guidance and benchmarks to agencies on the use of key metrics, such as the time to fill open positions and costs related to employee turnover. We recommended that the Division develop key human resources metrics and train state agencies on the use of metrics and performance indicators to improve their hiring practices and succession planning.

The Department and Division agreed to implement both prior audit recommendations related to workforce planning and management.

What did the audit work find?

We found that the Division has not implemented either recommendation related to workforce planning from our 2009 audit. Most of the State's key databases used to track payroll, turnover, and workforce data remain unchanged and continue to present the same issues with data reliability that we reported in our 2009 audit. One exception to this is that in 2011, the Division implemented a new online job application system and hiring database called COJobs, which allows applicants to apply for positions online and human resources staff at the agencies to track each step of the recruitment process. Although COJobs has better capabilities than the previous job application system, it continues to present the same issues with data reliability we noted in our previous audit. Specifically, we found the following problems with the systems and data the Division uses for workforce planning:

- **The Division continues to use fragmented and inconsistent human resources data.** There is no one system in the State that contains payroll and workforce data for all state agencies and institutions of higher education. According to Department staff, there are more than 13 different systems used by agencies to track payroll, workforce data, timekeeping, and other human resources-related functions. During the audit several agencies reported using different systems for non-payroll functions, such as time and leave tracking, in addition to using CPPS. Some agencies have developed their own systems internally, whereas others are using systems purchased from an outside vendor. According to the Division staff we interviewed, while some of the data from agencies' systems are uploaded into CPPS, the data formats are not always uniform across systems and

must be converted into a single format for the Division's analyses and reports.

- **The information systems used to track State's workforce lack key information.** We found that CPPS lacks certain data fields and COJobs does not retain historical hiring information for all job postings. Specifically, CPPS does not track information such as employees' skills, training, experience, and transfers between agencies that would assist the Division and agencies to plan for succession, measure employee performance, and develop training for employees on a statewide basis. In addition, COJobs overwrites job posting data when agencies reuse or edit existing job postings, making it difficult to assess hiring performance and average time to fill positions. Overwriting can occur when agencies that have recurring openings for the same position edit a prior posting rather than create a new posting. Although this practice could reduce the administrative time needed to post a position, editing job positions eliminates any record of prior postings in COJobs.
- **Data used for state workforce planning are incomplete and inconsistent.** We found that State agency staff do not enter complete and consistent data into the COJobs and CPPS databases used for state workforce planning. For example, we reviewed job posting data for Fiscal Year 2012 and found that COJobs was missing at least one of the key dates related to the hiring process, which include the job posting date, interview date, offer date, and start date, for about 95 percent of postings, making it impossible for the Division to accurately calculate the average time to fill open positions and track the performance of the State's hiring process. Similarly, the Department reported that agency staff do not consistently enter the correct percentage of FTE for their part-time staff into CPPS, making it impossible for Division staff to accurately determine the total hours of part-time workers and whether the salaries paid to part-time staff are appropriate for each position.

In addition to ongoing problems with the State's human resources databases, we found the Division has not developed human resources metrics or provided training to agencies on the use of metrics as recommended in the prior audit. Specifically, Division management has not developed benchmarks or guidance for state agencies to use to assess the skill and qualifications of their workforce, their performance in retaining employees and planning for succession, and the time and cost of filling open positions.

Why did the problem occur?

We identified three key factors that contribute to the Division's information systems and data problems and lack of workforce planning activities.

- **Lack of improvements to fully utilize existing systems.** The Division reported that it has begun investigating the potential replacement of the State's human resource information systems. In addition, the Division reported that there may be smaller-scale improvements available that it has not yet pursued or fully researched. For example, CPPS has functions to track FTE and payroll expense information that the Division currently does not use; the Division reported it is exploring the potential expansion of the system.
- **Lack of standardized data entry.** The Division has not developed and communicated to agencies a standardized method for data entry into CPPS and COJobs. In the absence of clear guidance on how human resources and workforce data should be recorded in the State's systems, agencies enter incomplete and inconsistent data. For example, we found that most agencies enter "100" in CPPS to indicate one FTE, but some use "1." In addition, some agency staff record the date a position is filled in COJobs as the date the employee is hired, whereas others record the date they close out the position in COJobs, which can be significantly later.
- **Reductions in staffing and resources.** According to Division management, it abandoned its workforce planning initiatives related to improving human resource metrics and succession planning due to budget cuts and a reduction in staff in recent years. As discussed in Recommendation No. 2, we reviewed Division staffing and found that the number of FTE staff allocated to the Division for workforce planning, oversight, consulting, and training decreased 35 percent in recent years, from 22.6 FTE in Fiscal Year 2008 to 14.6 FTE in Fiscal Year 2012. According to management, this staffing reduction caused the Division to re-prioritize the services it provided so that it now primarily provides consulting when requested by agencies. However, as noted previously, the Division reported that it plans to hire approximately seven FTE staff to fill vacancies during Fiscal Year 2013, some of which the Department may be able to use to resume its workforce planning and management efforts.

Why does this problem matter?

The State needs complete and accurate workforce data, as well as performance metrics, to ensure efficient administration of the personnel system, hire and retain

qualified staff, and identify areas for improvement. Currently, the lack of accurate data limits the Division's ability to perform the following key activities:

- **Analyze workforce data and report key workforce information.** The Division has limited ability to analyze workforce data on a statewide level, so the Division relies upon self-reported data from agencies and must compile data from multiple sources to obtain key workforce information. For example, the Department recently completed an informal survey of agencies to determine the number of human resources staff employed by each agency because it cannot identify those positions from its system data. Relying on self-reported data and having to compile and convert data from multiple systems increases the risk of inaccuracies and inconsistent reporting, is time consuming, and makes it impossible for the State to have real-time information about its workforce as a whole.

In addition, the lack of human resources data, performance metrics and training for agencies on the use of metrics negatively affects reporting on the State's workforce and may reduce the efficiency of the State's human resources administration. The lack of accurate data and metrics diminishes the Division's ability to provide information and guidance requested by key stakeholders, such as the Governor, the General Assembly, state agencies, and the public. Key stakeholders and agencies need performance metrics to identify staffing needs, measure workforce skills, identify areas for improvement, and provide a basis for measurement over time. For example, if the Division established a performance metric related to time to hire, then stakeholders could use information on how long it took to hire state employees to evaluate the efficiency of the State's hiring process. Further, the Division could work with agencies that take the longest to fill positions to speed up hiring times, which could improve workforce efficiency and result in cost savings.

- **Manage the workforce and identify improvements.** The State may be less prepared for changes that will affect its workforce. For example, recent legislative changes provide agencies increased flexibility in hiring employees and create new methods for distributing merit pay, but because of a lack of accurate data, the Division will be unable to determine whether the changes have a positive impact on key metrics, such as time to fill positions and turnover. Ultimately, a greater ability to conduct workforce planning and analysis could help the Division identify improvements that could reduce costs associated with high turnover and time to fill positions in state agencies.
- **Implement and monitor Division goals.** The Division's goals include implementing shared services, developing new training for state agencies

and employees, and implementing the changes to the merit pay system. Without appropriate metrics to measure progress related to each goal, the Division will not have a reliable method to determine the effectiveness of their efforts during the year.

Recommendation No. 3:

The Department of Personnel & Administration should improve its workforce planning and management by:

- a. Continuing its efforts to improve its human resources information systems. These efforts should include exploring new information systems and the expanded usage of the Colorado Personnel Payroll System (CPPS).
- b. Developing and training agencies on accurate entry of data into statewide systems, including CPPS and COJobs.
- c. Developing human resource metrics and training agency human resources staff on the use of metrics to measure performance and develop long-term workforce planning strategies, including succession plans.

Department of Personnel & Administration Response:

- a. Agree. Implementation date: June 2014.

The Department is evaluating various alternatives to improving the accuracy of all aspects of workforce data. This evaluation includes providing training and technical guidance to state agencies on data entry within CPPS, at a minimum. In addition, the Department and the Office of Information Technology are evaluating upgrading CPPS to provide expanded functional needs as well as potentially implementing a comprehensive human resources information system.

- b. Agree. Implementation date: December 2013.

As stated above, the Department will be providing ongoing training and support to state agencies on consistent and accurate data entry into statewide systems.

- c. Agree. Implementation date: June 2014.

The Department is working towards a Human Resource Key Performance Index (HRKPI) report that will provide high level data by agency for various human resources metrics including turnover, performance management, appeals filed, training hours completed, time to fill positions, etc. The Department will work with state agencies on the use of these metrics to evaluate performance and develop workforce planning strategies.

Dispute Resolution in the State Personnel System

Chapter 3

When a state employee or an applicant for state employment has a personnel-related dispute with a state agency that cannot be resolved by the agency, the party may contest the agency's action by filing an appeal with the State Personnel Board (the Board). Statute [Section 24-50-125(5), C.R.S.] requires the Board to conduct hearings for appeals that involve actions affecting an employee's base pay, classification status, or tenure. The Board can also use its discretion to grant hearings on appeals not affecting an employee's base pay, classification status, or tenure based on the merits of the appeal if the appealing party petitions for a hearing. However, the Board typically forwards appeals not involving pay, status, or tenure to the State Personnel Director (the Personnel Director) at the Department of Personnel & Administration (the Department) for resolution. Because the Board's process includes a full evidentiary hearing, appeals with the Board can take up to 165 days, whereas appeals resolved by the Personnel Director must be decided within 90 days.

This chapter includes the results of our review of the dispute resolution process for appeals processed by the Department and the Board. We found that both the Department and the Board should improve their electronic case management systems by establishing data entry procedures and data review processes, incorporating necessary fields into the systems, and creating system reports for use in managing cases. We also reviewed the Board's conflicts of interest policies and procedures and found that the Board should strengthen its conflicts of interest practices by adopting a written conflicts policy, requiring annual disclosures of conflicts, and providing periodic conflicts training. We discuss these issues and our recommendations in the remainder of this chapter.

Appeals to the State Personnel Director

As previously discussed, the Board forwards most appeals that do not involve pay, tenure, or status to the Personnel Director for review. This appeals process, known as a Personnel Director's appeal, typically reviews agency actions such as the content or conduct of an examination, benefits, non-selection, and final performance evaluations. The Department's Division of Human Resources (the

Division) has been delegated the authority to investigate and issue decisions on Personnel Director's appeals.

Prior to filing an appeal, the individual contesting an agency action must first exhaust any applicable procedures established by the agency for resolving disputes. If the individual is not satisfied with the resolution offered by the agency, he or she must then file an appeal within 10 days after receipt of notification of the agency action. Division staff notify both the individual filing the appeal, known as the complainant, and the agency of the receipt of each appeal, and Division staff enter appeals information, such as the appeal date and type, into a database. Division staff collect and review documentation and other information from both parties and make a preliminary decision on the appeal that can include upholding the agency's action, reversing it, or modifying it. Historically, Personnel Director's appeals are decided based on the documentation provided by the parties and do not include a hearing. The final appeal decision is approved by the Director of the Division of Human Resources on behalf of the Personnel Director, and the parties receive decision letters to inform them of the outcome. As shown in the following table, in Fiscal Year 2012, the Division received a total of 231 Personnel Director's appeals.

Personnel Director's Appeals Filed Fiscal Years 2011 and 2012			
	2011	2012²	Percentage Change
Total Appeals¹	139	231	66%
Source: Office of the State Auditor's analysis of the Department of Personnel & Administration's appeals data.			
¹ Includes appeals related to non-selection for an open position, removal of an applicant's name from an eligible list, and other appeals not specifically categorized by the Department.			
² According to the Department, the number of appeals increased in 2012 primarily due to a change in Board rules that requires applicants for state employment to be notified of their right to appeal.			

What audit work was performed and what was the purpose?

The purpose of our audit work was to determine whether the Division has sufficient controls and procedures in place to ensure that the Personnel Director's appeals process complies with statute and personnel rules. For the purposes of our audit objectives, we did not review benefits-related appeals because they are not filed in response to an agency's action; benefits-related appeals typically relate to instances when state employees miss the State's benefits enrollment deadline and need additional time to select their benefit coverage. We reviewed the electronic data for 370 Personnel Director's appeals recorded in the Division's database for Fiscal Years 2011 and 2012 that were not related to benefits to assess the

reliability and completeness of the data. We assessed the timeliness of the Division's appeals process by reviewing the appeal dates recorded in the database for each of the 370 appeals. We also performed a more detailed review of a random sample of 20 hard-copy files out of the 370 appeals to determine whether the complainants in the cases had filed their appeals timely (within 10 days after receipt of the agency action) and whether the Division had investigated the appeals, issued its decision within 90 days, and followed personnel rules for processing appeals. To ensure coverage of appeals involving individuals who are not state employees (i.e., job applicants) and appeals that present more risk to the State, our sample included appeals related to examinations and those filed by individuals who were not selected for the job for which they applied as well as appeals filed by state employees.

How were the results of the audit work measured?

Section 24-50-112.5(4), C.R.S., and State Personnel Rule 8-81 create an appeals process for persons directly affected by agency personnel actions related to matters that do not involve pay, tenure, or status. State Personnel Rule 8-81 indicates that complainants must file their appeal within 10 days of receiving notice of the contested agency action. Once Division receives the appeal, it must follow personnel rules related to processing the appeal, such as providing parties with notice acknowledging the receipt of the appeal, reviewing the merits of the appeal and providing notice of its decision. According to statute [Section 24-50-112.5(4), C.R.S.], the Personnel Director shall issue a written decision no later than 90 days after receipt of the appeal. The Personnel Director may overturn an agency's personnel action only if the action is found to be arbitrary, capricious, or contrary to rule or law. If the Personnel Director does not issue a decision within 90 days, personnel rules state that the agency's decision will be upheld automatically.

What did the audit work find?

As discussed in the following section, we found that the Division has not maintained complete or accurate electronic appeals data needed to determine whether 201 of the 370 appeals from Fiscal Years 2011 and 2012 were issued by the Division within 90 days as required by statute. As a result we evaluated the timeliness of the 169 cases for which complete electronic data were available and reviewed the Division's process for investigating appeals, as well as timeliness, for a sample of 20 cases using hard-copy appeals records. Although the problems were not extensive, we identified some appeals for which the Division did not issue timely decisions or investigate the appeals. Specifically, we found the following issues:

- **The Division lacks complete data on appeals.** As previously mentioned, for 201 out of 370 electronic appeals records, or 54 percent, (this includes 10 sampled cases) we were unable to determine timeliness because the Division did not record in its database the date its decision had been issued. Further, Division staff stated that when entering the decision date they sometimes entered the date they closed the case file, which is after the decision is issued, rather than the date the decision was actually issued, making it difficult to determine whether cases were processed in a timely manner. For the sample of 20 hard-copy files, we identified one appeal that did not have an accurate receipt date, or date when the Division received the appeal filing from the complainant, recorded in the database. The correct receipt date is needed to calculate the start of the 90-day review period and determine if the decision was timely.
- **The Division issued some decisions past the 90-day deadline.** For the remaining 169 of the 370 appeals that had enough information in the Division's database to measure timeliness, we identified three (2 percent) appeals for which the Division did not issue a decision within the required 90-day period, which results in the agency action automatically being upheld. For example, in one instance, a complainant filed two appeals related to overtime pay. The complainant filed the second appeal because a new instance of the same issue had occurred at the agency. We found that the Division did not record the second appeal into its database and did not investigate the new occurrence or issue a decision on the appeal. According to the Division, it had intended to address the decision of both appeals in one decision letter, but the letter did not address the second appeal due to an error when it was drafted. In addition, as previously discussed, while we only found three instances out of the 169 appeals that were untimely, other appeals may have been untimely, but the Division's data were insufficient for us to determine timeliness for the remaining 201 (54 percent) appeals in Fiscal Years 2011 and 2012.

In addition to the problems listed above, we also found that the appeals data maintained by the Division contained numerous blank fields and typographical errors. For example, for 309 of the 370 appeals, the "final decision" field was blank, meaning that the database did not contain information on whether the agency action being appealed had been upheld or overturned. In another example, 5 of the 370 appeals from Fiscal Years 2011 and 2012 were inaccurately recorded as being closed in the year 1999.

Why did the problem occur?

The Division does not have adequate controls to ensure that appeals data are consistently entered into its appeals database and relies extensively on hard-copy

records to manage its appeals. We found that some data recording errors had occurred because of inconsistencies in the way staff entered information into the database. For example, the data we reviewed did not always reflect the date of the Division's final decision but rather the date that staff closed the appeals file, which does not reflect the actual date the decision was made. This occurred because the Division has not created any written guidelines for staff to follow when entering appeals information, including a standard procedure regarding the proper date to record. Clear guidance for staff to follow when data entering appeals information, such as the decision date, could help ensure that staff record appeals correctly. Additionally, Division staff do not conduct any post-entry supervisory review of the data in the database to ensure appeals information has been entered correctly.

According to the Division, staff use the data from the database to create a hard-copy worksheet where they track key appeals information and dates and use this hard-copy tracking sheet to determine trends by appeal type, agency, and processing times after each case is complete. Using hard-copy tracking sheets is less efficient than using the database to determine trends. Although Division management was uncertain of what caused the three untimely appeals decisions we found, tracking appeals in multiple places makes it difficult for management to ensure that all appeals are timely and identify problems when they occur.

Why does this problem matter?

Maintaining incomplete and inaccurate data prevents the Division from utilizing its electronic database to ensure that appeals are properly investigated and processed within the time frames outlined in statute and personnel rules. There is also a risk that the Division could report inaccurate appeals information and statistics to the Personnel Director and state agencies. As discussed above, the Division also uses the data to determine appeals trends and identify areas where agencies may need more guidance on personnel rules. The Division could determine trends in a more efficient manner using the appeals information from automated database reports if data were entered accurately and completely.

In addition, although we only found three instances in which the Division did not issue a timely decision, meeting the 90-day deadline is important in every case because of the automatic decision that is applied if the deadline is missed. As noted earlier, state personnel rules automatically uphold the agency's action if no decision is issued by the Division within 90 days, which has the same effect as ruling that an agency acted appropriately. When the Division does not make a decision within the 90-day period or fully investigate an appeal, there is a risk that improper agency actions will go unaddressed and may affect other state employees and applicants for state employment.

Implementing efficient processes to ensure pending appeals are tracked and recorded accurately in the database is also important because the number of appeals have increased recently and if the trend continues, it could affect the Division's operations. The types of appeals that we reviewed related to non-selection and examinations have increased 66 percent over the past 2 years, from 139 in Fiscal Year 2011 to 231 in Fiscal Year 2012. Further, only three Division staff process the types of appeals that we reviewed, which averaged about 77 appeals per staff person in Fiscal Year 2012. While it is unknown whether the number of appeals will continue to increase, it is important that the Division have complete and accurate appeals data to efficiently monitor deadlines, manage staff workload, and analyze trends.

Recommendation No. 4:

The Department of Personnel & Administration should improve its procedures for tracking Personnel Director's appeals to ensure they are all handled timely by:

- a. Implementing controls such as clear guidance for staff on data entry and a process for periodic supervisory review or spot checks of the appeals data to ensure it is entered into the database accurately and consistently and to verify that all pertinent appeals information is recorded, including the receipt date, the decision date, and the expiration date of the 90-day period.
- b. Using its database to track appeals and manage the appeals process and eliminating the use of hard-copy tracking sheets. This should include implementing standard procedures for utilizing the appeals database, such as through automated reports, to analyze appeal timeliness and trends.

Department of Personnel & Administration:

- a. Agree. Implementation date: December 2013.

The Department of Personnel & Administration has begun refining the electronic tracking system for appeals, which will include quality assurance processes. In addition, a peer review process will be implemented within the new consulting services team to ensure accuracy, timeliness, and completion of Personnel Director's appeals.

- b. Agree. Implementation date: June 2014.

The Department will use the improved electronic tracking system to manage the appeals process rather than the hard-copy tracking sheet.

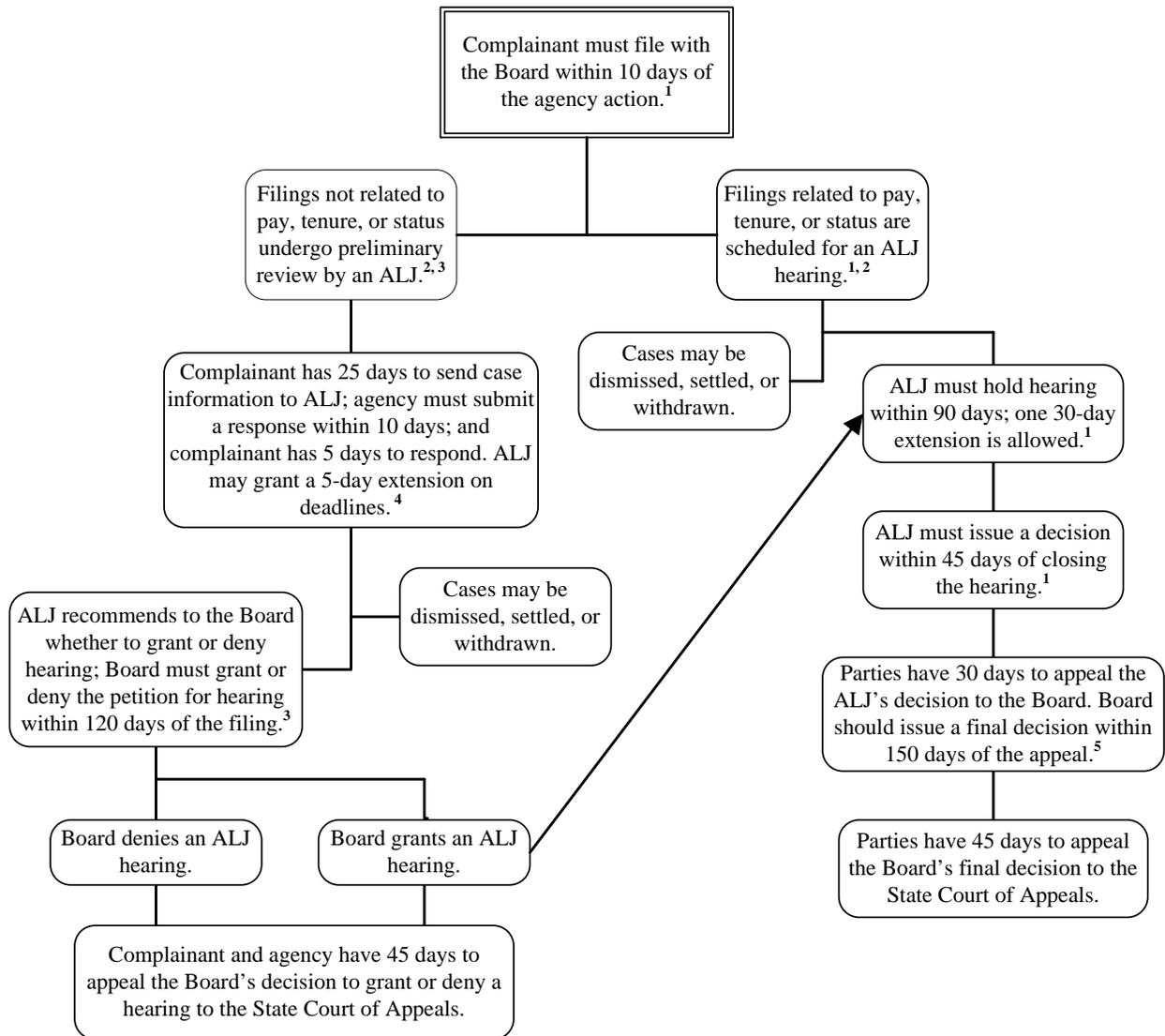
In addition to making the improvements to the Division's electronic tracking system, the Department will evaluate potential automated tools to further improve the tracking processes.

State Personnel Board Case Management

The Board is responsible for reviewing appeals of certain types of agency actions within the state personnel system and providing employees with due process. Although the Board is administratively located within the Department, it functions independently from the Department and is not managed by the Personnel Director. The Board comprises five Board members and employs three Administrative Law Judges (ALJs) and three Board staff. Board staff include a Director, who manages the rest of the staff and ALJs; one paralegal, who provides assistance, such as legal research; and one administrative assistant.

Individuals contesting an agency action, known as complainants, may file two types of cases with the Board: mandatory and discretionary. Mandatory cases involve agency actions that affect an employee's base pay, status, or tenure and are automatically heard by an ALJ at an administrative hearing. Discretionary cases involve agency actions that did not affect an individual's base pay, status, or tenure, and these cases do not automatically receive hearings. Instead, the complainant must file a petition for a hearing, and an ALJ reviews the merits of the case and recommends to the Board whether the complainant should receive a hearing with the ALJ. If the Board approves a request for a discretionary hearing, the case moves through the same administrative hearing process used for mandatory cases. After the ALJ issues a decision, the complainant or agency may appeal to the five-member Board for a review of the hearing decision. After the Board has issued its final decision, the parties may also file an appeal with the State Court of Appeals. The chart below shows the hearing process as well as the deadlines required in statute and personnel rules that the parties and Board must follow.

State Personnel Board Case Management Process and Deadlines Fiscal Year 2012



Source: Office of the State Auditor's analysis of statutes and the State Personnel Board's processes and rules.

¹Section 24-50-125, C.R.S.

²The Board also refers filings alleging discrimination to the Colorado Civil Rights Division within the Department of Regulatory Agencies. The Civil Rights Division investigation determines whether probable cause of discrimination exists.

³Section 24-50-123, C.R.S.

⁴Section 8-50, 4 C.C.R., 801-1.

⁵Sections 8-67 through 8-71, 4 C.C.R., 801-1.

In Fiscal Year 2012, the Board received a total of 270 filings or requests for a hearing. Of the 270 initial filings, the Board approved 137 for a hearing. The

remaining 133 cases were dismissed because the Board declined a request for a discretionary hearing, the parties settled the dispute prior to being approved for hearing, or a party missed a key deadline or withdrew from the process. Because the Board facilitates settlement between parties once a case is approved for hearing, most of the 137 cases approved for a hearing were also settled, withdrawn or dismissed prior to the hearing or before the ALJ could issue a decision. Out of the 137 cases approved for hearing, ALJs issued opinions for only 8 cases or about 6 percent. The following table shows the Board’s caseload for the last 3 fiscal years.

State Personnel Board Caseload Fiscal Years 2010 Through 2012			
	2010	2011	2012¹
Number of Cases Filed by Complainants	273	245	270
Number of Cases Approved for ALJ Hearing	142	112	137
Number of ALJ Decisions Issued ¹	12	17	8
Number of ALJ Decisions Appealed to the Board	6	8	2
Source: Data provided by the State Personnel Board.			
¹ In Fiscal Year 2012, a total of 129 out of the 137 cases approved for an Administrative Law Judge (ALJ) hearing were withdrawn, dismissed, settled, or successfully mediated prior to hearing.			

Board staff and ALJs use an electronic case management system to administer and track cases. The Board implemented its current electronic system in July 2010 by adapting a system used by the Department’s Office of Administrative Courts to meet the Board’s needs. This electronic system is called Legal Files. The Board staff and ALJs use the Legal Files case management system to track hearing dates and deadlines, record case notes, and store electronic copies of key case and hearing documents. Board staff also maintain hard-copy case files because parties submit some paper documents. The Legal Files system automatically calculates key deadlines, such as the dates by which Board rules require parties to submit certain documents to the Board, and provides the ALJs electronic notices on approaching deadlines and key hearing dates.

What audit work was performed and what was the purpose?

The purpose of the audit work was to determine whether the Board’s Legal Files electronic case management system is adequate to help the Board ensure cases are resolved within the time frames required by statute and personnel rules and determine whether the data recorded in the system are complete and accurate. We compared information within Legal Files to information found in the hard-copy case files for a sample of six cases from Fiscal Year 2012 that were representative of the cases the Board received and heard that year. The sample included both

mandatory and discretionary cases that had completed key steps in the hearing process. We reviewed the hard-copy case files to assess the accuracy of the information recorded in Legal Files. We also reviewed the data for all 270 cases recorded in Legal Files for Fiscal Year 2012 to determine whether key dates necessary to measure case timeliness and efficiency were recorded by the Board in the system and whether the Board complied with the required time frames for each step of the hearing process.

How were the results of the audit work measured?

Sound business practices suggest that case management systems provide management with accurate, meaningful, and timely information to facilitate effective oversight of operations and ensure tasks are completed in a timely manner and comply with all applicable legal requirements and internal procedures. As shown in the previous flow chart, statute and personnel rules establish numerous deadlines within the hearing process to ensure appeals are handled efficiently. For example, statute [Sections 24-50-125(3) and (4), C.R.S.] requires complainants to file a petition for a hearing within 10 days of receiving the notice of the agency action and requires that cases be heard by an ALJ within 90 days of the filing. Personnel rule (Section 8-50, 4 C.C.R., 801-1) requires a complainant requesting a discretionary hearing to provide the Board with case information within 25 days of the petition for a hearing.

In our May 2009 performance audit of the Department and Board, we found that the Board's electronic case management system lacked key capabilities, such as data fields necessary to assess timeliness of hearings and the ability to automatically calculate deadlines. In addition, Board staff did not produce case management reports from the system that would help them oversee the hearing process. The audit recommended that the Board improve its management and monitoring of cases by assessing its data and system needs and determining efficient ways to retrieve data and create reports from the system. The Board agreed with this recommendation and agreed to develop and implement a new case management system that met the Board's needs, including providing necessary data fields to assess timeliness, calculating deadlines, and generating reports.

What did the audit work find and why did it occur?

We found that although the Board has implemented a new case management system, Legal Files, that has better capabilities since the 2009 audit, the Board's system and practices need further improvement. Specifically, we found:

- **Data on the timeliness of cases were not always accurate and complete.** For 7 (4 percent) of the 175 cases that continued in the hearing

process beyond the initial filing in Fiscal Year 2012, we found that key data, such as dates or records of hearings being held, were either not recorded in Legal Files correctly or not recorded in the system at all. For four cases the wrong dates were recorded in the system when compared with the hard-copy case files, which can make it appear that statutory timelines were not met or steps in the hearing process occurred out of order. In addition, one case was recorded in the system twice, which caused duplicate entry and inaccurate records. Finally, for two cases, key information, such as whether a hearing was held or closed, was not recorded correctly in the system or not recorded at all, which caused it to appear that these activities did not take place. For example, when a hearing closing date was not recorded in the system, it appeared that the Board did not meet the statutory deadline to issue a decision. Although the Board had provided staff with a Legal Files system manual, at the time of our audit, the Board had not provided staff and ALJs with Legal Files training since 2010.

- **Legal Files lacked a field to record the date complainants received the notice of the agency action being contested.** Typically, when agencies take personnel actions that affect individuals, they must notify the individual in writing. The date of this notification, as reported to the Board in the complainant's filing documents, should be captured in Legal Files. Having this date in Legal Files allows the Board to more easily evaluate whether the complaint was filed within the statutory 10-day deadline. At the time of our audit, Board staff used a manual process to review the timeliness of the appeals received by the Board against the 10-day standard.
- **The Board lacked adequate procedures for retrieving and using Legal Files data.** The Board implemented Legal Files in July 2010 and reports that the system better meets its case management needs, but at the time of our audit, the Board still had not developed procedures, such as producing case management reports from the system, to efficiently monitor whether cases met required deadlines. During our audit, we identified four cases for which the Board provided incorrect case information to the audit team due to difficulties Board staff had when determining how to create reports from Legal Files. For example, for one case the Board provided dates that were for a different case, which made it appear that the Board skipped many steps in the hearing process.

After we brought these concerns to the Board's attention, the Board Director reported that the Board was planning to add the date the individual received the notice of the agency action being appealed to the Legal Files system, develop standard procedures for entering data into Legal Files and train staff on data entry,

develop management reports and train staff on how to run them, and develop supervisory review procedures.

Why does this problem matter?

Without accurate and complete electronic case data and procedures for utilizing the data, the Board does not have a reliable means to ensure that it is resolving hearings in a consistent and timely manner. At the time of our audit, the Board had to rely on ad hoc analysis or anecdotal evidence to measure the timeliness of its cases, and Board staff had to use a manual process to verify that filings for hearings were received within 10 days of the date the complainant received the notice of the agency action being contested. The manual supervisory review process is likely more time-consuming than if all data were recorded in Legal Files, and there is a risk that some cases will not meet required time frames, which can create inequities in the hearing process for individuals who are involved in personnel disputes within the state personnel system. For example, although we did not identify any cases that did not meet deadlines in our review, the problems we identified create a risk that one party might receive additional time to file documents, which would be unfair to the opposing party. Further, without a robust case management system that provides complete and accurate data on each step in the hearing process, Board management is less able to monitor and assess its performance over time, identify inefficiencies in its process, and make necessary improvements.

Recommendation No. 5:

The State Personnel Board should improve its electronic case management system and processes to ensure cases are resolved efficiently and within the time frames established by rule and statute by:

- a. Adding the date the complainant reports receiving the notice of the agency action being appealed to the Board to the Legal Files system.
- b. Ensuring staff follow the standard procedures for entering information into Legal Files. This should include training Board staff and Administrative Law Judges (ALJs) on the standard procedures.
- c. Training staff to create data reports from the Legal Files system that can be used to conduct supervisory reviews such as determining whether cases met required deadlines.
- d. Developing supervisory review procedures, such as comparing dates in Legal Files to a sample of hard-copy case management files to ensure they

are the same, to provide reasonable assurance that electronic case data is accurate and complete.

State Personnel Board Response:

- a. Agree. Implementation date: January 2013.

In January 2013, a new field for the date the complainant reports receiving the notice of the agency action being appealed to the Board was included in Legal Files as a customization for the Board, and has been regularly used since then.

- b. Agree. Implementation date: July 2013.

During the week of April 22, 2013, the Board staff, Director, and ALJs participated with the Office of Administrative Courts staff and ALJs in training for the new web-based Legal Files software. The half day sessions provided hands-on training in the use of the web-based system and changes affecting how information is entered. The upgrades to the Legal Files system should significantly improve the ease of data entry for users. By July 2013, written procedures specific to the Board's use of Legal Files will be updated based on the upgrades to Legal Files and made available for each user, with updates to written procedures made as the system undergoes additional changes.

- c. Agree. Implementation date: July 2013.

In November and December 2012, training in "Crystal Reports" was provided to a staff member responsible for creating data reports from Legal Files. That reporting process has enhanced the Board's ability to track statutory deadlines for cases and ensure better case management overall. By July 2013, written procedures will be prepared to include changes resulting from the upgrades to Legal Files with regular updates as the Crystal Reports and Legal Files systems evolve.

- d. Agree. Implementation date: January 2013.

As of January 2013, biweekly reports are generated from Legal Files for the Board Director's review of the commencement dates, close record dates, and issue dates for initial decisions, which can also be compared to hard-copy records for intermittent audit purposes. These reports will also be shared by the Director with Board staff and ALJs

on a regular basis so they are all aware of their individual responsibility to help maintain integrity in Board case management.

Board Conflicts of Interest Disclosures

Board members are either elected or appointed and may have outside employment separate from their work with the Board. The outside employment as well as other activities of Board members may create conflicts of interest with issues or cases before the Board, if not properly handled. In addition, because the Board's staff and ALJs are all actively involved in administering and, in the case of ALJs, deciding cases, the Board must also guard against the chance that staff could work on cases where they may have a conflict of interest. To prevent conflicts of interest and ensure awareness of applicable statutes and rules prohibiting conflicts, the Board's Director has periodically required Board members, ALJs, and staff to complete and sign a disclosure form listing any real or potential conflicts and a certification of review and compliance signifying that they have read and agree to abide by a November 2009 memo providing guidance on conflicts of interest prepared by the Board's legal counsel.

What audit work was performed and what was the purpose?

The purpose of the audit work was to evaluate whether the Board had implemented the recommendations related to conflicts of interest from our 2009 audit of the Department and Board. In the 2009 audit, we recommended that the Board develop rules or written policies on how to handle real and apparent conflicts of interest; provide consistent training; and require Board members, ALJs, and staff to complete annual conflicts of interest disclosures. Board management agreed to our 2009 audit recommendation and set a goal to implement it by January 2010.

We reviewed the steps the Board has taken since the 2009 audit to improve its conflicts of interest policies and procedures and reviewed a November 2009 memo on conflicts of interest the Board's legal counsel sent to Board members and the Board Director, which is used as a reference document during training for new members and staff. We surveyed each Board member and interviewed the Board Chair, the Director, the three ALJs, and the Board's two administrative staff. We also reviewed 24 sets of signed disclosure forms and certifications of review and compliance, one from each of the Board members, ALJs, and staff in Calendar Year 2009 and Calendar Year 2012, the only years all staff submitted these documents, and two that were submitted in Calendar Years 2010 and 2011. The disclosure statements and certifications were signed in 2009, at the time of new member appointments and staff hiring, and during the course of this audit.

How were the results of the audit work measured?

There are numerous provisions in statute, case law, and state policies emphasizing the responsibility of board members, administrative law judges, and state employees to act impartially and avoid real conflicts or the appearance of conflicts of interest, also known as apparent conflicts, including the following:

- Article 18 of Title 24 of the Colorado Revised Statutes requires state employees and public officials, including the Board and its staff, to comply with a code of ethics and standards of conduct requiring them to act impartially and avoid real or apparent conflicts of interest.
- The Colorado Code of Judicial Conduct emphasizes that judges and those who act as judges, meaning ALJs and Board members, must avoid impropriety and the appearance of impropriety such as real and apparent conflicts of interest. In 2003, the Colorado Court of Appeals clarified that Board members are equivalent to judges because they act in a quasi-judicial capacity and therefore must abide by the Code of Judicial Conduct. As such, both Board members and Board ALJs are charged with identifying and resolving real or apparent conflicts to ensure that the processes before them are fundamentally fair to the participants.

What did the audit work find and why did it occur?

The Board has not fully implemented our 2009 audit recommendation to strengthen safeguards to help prevent conflicts of interest. Specifically, we found the following problems:

- **The Board has not implemented a consistent process for disclosing conflicts of interest.** Most Board members, ALJs, and staff did not complete disclosures or compliance statements in 2010 or 2011 and only completed them in Calendar Year 2009, around the time of our prior audit, and again in August 2012, after our current audit had commenced. The only individuals who submitted disclosures and compliance statements in Calendar Years 2010 or 2011 were one new ALJ and one new Board member. In addition, the Board has not developed a procedure to share conflicts disclosed by Board members with other members.
- **Disclosure forms do not ask that the Board and staff disclose all types of conflicts.** Specifically, the disclosure statements that Board members, ALJs, and staff signed in 2009 and 2012 requested that they disclose potential and real conflicts but do not indicate the need to disclose *apparent* conflicts. The Colorado Judicial Code of Conduct says that judges must avoid “impropriety *and the appearance* of impropriety”

(emphasis added). Article 18 of Title 24 of the Colorado Revised Statutes requires the Board administrative staff, as state employees, to refrain from conduct for which there would be an appearance of a conflict or an actual conflict. Further, although the certifications of review and compliance specify that staff shall “abide by the guidelines outlined [in the legal memo],” the advisory memo does not include clear guidelines for disclosing apparent conflicts.

- **The Board has not formalized written conflicts of interest policies or procedures.** After our May 2009 audit, the Board directed its legal counsel from the Attorney General’s Office to draft a memo with guidance on conflicts of interest for Board consideration. In November 2009, the legal counsel provided the Board a memo that included general information about conflicts of interest and recommended that the Board begin signing disclosure statements and certification of review and compliance forms annually. However, the memo is advisory in nature and lacks definitive guidelines for Board members, ALJs, and staff to follow. For example, the memo suggests that the Board determine a “cooling off period” or time frame for which Board members should recuse themselves from cases involving agencies where they worked in the past. However, the Board has not made a determination regarding a “cooling off period.” After we brought this concern to the Board’s attention, the Board Director reported the Board planned to develop a formal written policy on conflicts of interest.
- **The Board has not implemented regular trainings or other reminders on conflicts of interest.** Board management reported that, other than training provided to new members, conflicts of interest training has not been provided to Board members, ALJs, or staff since November 2009. Because the case law and legal guidelines for judges on conflicts of interest change over time, it is important that continuing Board members and ALJs receive regular reminders to disclose conflicts, such as at each Board meeting, and periodic training, such as on a biennial basis or more frequently if needed.

Why does this problem matter?

A lack of standard policies and procedures for identifying conflicts and preventing Board members and ALJs from hearing cases when a conflict of interest arises increases the risk that Board members or ALJs could hear cases for which a real or apparent conflict exists. If a conflict did exist, the Board’s decision could be subject to legal challenge and potentially overturned. For example, in 2003 the Colorado Court of Appeals overturned a Board decision

because a Board member had a conflict with an attorney on a case but the member did not recuse herself.

A policy requiring annual disclosures and certifications of compliance would provide greater assurance to those who have cases before the Board and the public that no real, apparent, or potential conflicts of interests endanger their chances of receiving a fair hearing. In November 2012, voter approval of State Constitutional Amendment S changed the terms that Board members serve from 5 years to 3 years and limited all members to two terms in office. As a result of these changes, more turnover in Board membership will occur, so clear policies, guidance, and training on conflicts of interest will be important to orient new members and clarify expectations.

Recommendation No. 6:

The State Personnel Board should establish safeguards to manage potential conflicts of interest by:

- a. Approving and implementing a written policy on conflicts of interest that includes clear guidance to Board members, Administrative Law Judges (ALJs), and staff on what constitutes apparent, potential, and real conflicts of interest and in what situations Board members and staff should disclose conflicts of interest and recuse themselves.
- b. Establishing a process requiring all Board members, ALJs, and staff to annually sign conflicts of interest statements affirming that they will comply with the policy established in part “a” and disclose any apparent, potential, or real conflicts of interest known at the time of signing and taking appropriate action when conflicts are disclosed.
- c. Implementing training on conflicts of interest and ensuring that Board members, ALJs, and staff receive this training when they join or are hired by the Board and periodically thereafter, such as biennially. Ongoing training should include reminders on conflicts of interest policies and procedures, such as from the Board Chair or legal counsel, during each Board meeting.

State Personnel Board Response:

- a. Agree. Implementation date: May 2013.

A written policy was developed and approved in March 2013 regarding conflicts of interest including guidance for Board members

and Board staff to determine what constitutes a conflict of interest or an appearance of a conflict of interest. The new policy will be distributed to Board members and staff in May 2013. This policy will be updated appropriately, and as needed, to reflect changes in the applicable laws.

- b. Agree. Implementation date: May 2013.

A new disclosure form was developed and approved in March 2013 to include the Board policy and guidance on conflicts of interest and a check off list to assist in assessing conflicts. Board members and staff will sign the new disclosure form in May 2013. Board members and staff will complete the disclosure annually and as needed when an actual conflict or an appearance of a conflict may arise. A second, similar disclosure form will be included in each monthly Board packet to permit Board members to disclose actual conflicts or appearances of conflicts relating to cases before the Board. The Board will take appropriate action for any actual conflicts or appearances of conflict that are disclosed.

- c. Agree. Implementation date: June 2013.

Training in conflicts of interest is being developed in conjunction with the Board's counsel and targeted for completion by June 2013 in anticipation of the start date for a new administrative law judge and the appointment of a new Board member who will begin his/her term July 2, 2013. This training will be provided on a regular basis thereafter for Board members and staff, and will be updated when needed to reflect changes in applicable law. Either Board counsel or the Director will remind Board members of that obligation at each Board meeting.

Appendix

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Appendix A

Summary of Findings Related to the SMART Government Act Department of Personnel & Administration Division of Human Resources May 2013

The SMART Government Act [Section 2-7-204(4), C.R.S.] requires the State Auditor to conduct performance audits of programs or services in at least two departments each year so as to audit all departments in a 9-year cycle. These audits may include, but are not limited to, a review of:

- The integrity of the performance measures included the department's strategic plan.
- The accuracy and validity of the department's reported results.
- The overall cost and effectiveness of the audited programs or services in achieving legislative intent and the department's goals.

The Department of Personnel & Administration (the Department) and State Personnel Board (the Board) Performance Audit was selected for focused audit work related to the SMART Government Act. The scope of the SMART Government Act audit work was limited to the activities of the Department's Division of Human Resources (the Division) and focused on the Division's strategic management and oversight of the state personnel system and on consulting services to state agencies. This appendix covers five key questions, relevant to the SMART Government Act, to assess the effectiveness of the Division's performance in the areas we audited.

What is the purpose of this program/service?

According to statute (Section 24-50-101, C.R.S.), the Department is responsible for providing strategic management and oversight of the personnel system as well as consulting services to state agencies. To achieve this purpose, the Division is responsible for monitoring agencies and providing human resources consulting, data analytics, training, and employee assistance.

What are the costs to the taxpayer for this program/service?

In Fiscal Year 2012, the Division's expenditures related to monitoring, human resources consulting, data analytics, training, and employee assistance for State agencies and employees were about \$1.9 million.

How does the Department measure the performance of this program/service?

In its Fiscal Year 2014 strategic plan, the Department established the following three strategic goals related to the Division's human resources administration:

- **Goal 1: Improve Department customer service.** With respect to services provided by the Division, the Department's objective is to work with interested parties to develop processes to "maximize the opportunity for the State to hire, retain, compensate, and train

its employees, thereby increasing the efficiency of the State's overall human resource function.”

- **Goal 2: Modernize Department systems that are outdated, ineffective, or on the verge of failure.** According to the Department, a number of the systems it administers that are critical to the management of state government are outdated, obsolete, and at risk of failure.
- **Goal 3: Implement the Talent Agenda initiative (House Bill 12-1321 and Amendment S).** In its previous strategic plan for Fiscal Year 2013, which the Department was required to present to the General Assembly in January 2012, the Department indicated that optimizing the State's processes used to hire, retain, and compensate employees was a key organizational goal. During Calendar Year 2012, the General Assembly passed House Bill 12-1321 and voters approved Amendment S, which are jointly referred to as the “Talent Agenda” and represent significant progress toward the Department's goals from its Fiscal Year 2013 plan. Together, these measures were intended to improve the State's ability to recruit, retain, and reward high-performing employees and include modernizing the State's workforce environment, increasing flexibility in the hiring process, and establishing a merit pay system. To implement these changes, the Department's Fiscal Year 2014 strategic plan noted that it will need to update its policies, procedures, and technical assistance and provide training to the State's human resources managers.

In addition to the goals listed above, the following Department performance measures apply to the Division's programs and services that we audited:

- Increase the percentage of customers reporting satisfaction with overall services provided by the Department to 42 percent by Fiscal Year 2014, from 38 percent in 2012. Although this was also established as a performance measure in its strategic plan for Fiscal Year 2013, the Department had not yet completed a customer satisfaction survey and established benchmarks for this measure. As a result, the Fiscal Year 2014 plan was the first to provide benchmarks and only provides the survey results for 2012.
- Increase statewide employee engagement, as measured by the biennial engagement survey, to 70 percent by Fiscal Year 2014, from 61 percent in 2012. The biennial engagement survey will be conducted again in Fiscal Year 2014 to determine if the Department has met the 70 percent performance measure.

Is the Department's approach to performance measurement for this program/service meaningful?

The SMART Government Act [Section 2-7-202(11), C.R.S.] includes several requirements to ensure that the Department's performance measures are meaningful. Specifically, performance measures are required to:

- Assess progress toward achieving the Department's goals.
- Be indexed to a baseline.
- Provide a time frame for successful performance.
- Be understandable to the general public.

We found that the performance measures for the Division services we audited met the requirements of the SMART Government Act. Each performance measure shows how the Department will assess the Division's progress in achieving its goals, is indexed to a baseline, provides a time frame for successful performance, and is understandable. However, we found that the Department's approach to measuring the Division's performance could be more complete if it had improved data and metrics related to the state's human resources activities. For example, in its Fiscal Year 2013 strategic plan, the Department included a performance measure to decrease the time it takes the State to fill open positions to 45 or fewer days. However, the Department did not report the actual time to fill positions in its Fiscal Year 2013 plan and removed this measure from the Fiscal Year 2014 plan. As we discuss in Recommendation No. 3 on workforce management, the Division currently lacks adequate data, such as data on time to fill positions, to fully develop key human resources metrics and assess its performance. By improving the quality of its data, the Division may be able to establish additional measures that track the overall performance of the State's human resources administration, including time to fill positions.

Is this program/service effective in achieving legislative intent and the Department's goals?

As discussed in Chapter 2 of this audit, we found that the Division's ability to provide strategic management and oversight of the State's personnel system and provide consulting services, as required by statute, is limited by its incomplete human resources data, outdated human resources systems, and a lack of proactive monitoring of agencies.

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