Application for the

National Legislative Program Evaluation Society

2018 Excellence in Evaluation Award

Colorado

Office of the State Auditor

Calendar Years 2014–2017

We Set the Standard for Good Government

Office of the State Auditor

Dianne E. Ray, CPA
State Auditor

VIA EMAIL

May 10, 2018

Jon Courtney
New Mexico Legislative Finance Committee
jon.courtney@nmlegis.gov

Dale Carlson
California State Auditor's Office
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Jennifer Sebren
Mississippi Joint Legislative PEER Committee
Jennifer.sebren@peer.ms.gov

Dear Judges:

On behalf of the Colorado Office of the State Auditor, I am pleased to submit our application for the 2018 NLPES Excellence in Evaluation Award. We look forward to receiving the results of your review. Thank you for your time and consideration.

Sincerely,

Dianne E. Ray, CPA
State Auditor

Award Contact Information

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Colorado Office of the State Auditor
Excellence in Evaluation Award Summary Narrative
Calendar Years 2014-2017

The Office of the State Auditor (OSA) is the government accountability arm of the Colorado General Assembly. Our mission is to improve government for the people of Colorado by providing objective information, quality services, and solution-based recommendations. Every day, our staff and the work they do reflect the OSA's tagline: "We set the standard for good government."

Body of Work

The OSA has produced a substantial body of work. Between January 2014 and December 2017, the OSA released 61 performance audits, evaluations, or studies—about 15 reports per year on average. These performance audits, evaluations, and studies have covered divisions, programs, and operations in 15 of Colorado's 19 principal executive branch departments, as well as 11 other government entities: the Governor's Office, the Judicial Branch, the Independent Ethics Commission, the Regional Transportation District, the Public Employees' Retirement Association, the Colorado Health Exchange, Adams State University, Western State Colorado University, and the municipalities of Central City, Cripple Creek, and Black Hawk. Please see ATTACHMENT B for a complete list of the OSA's performance audits, evaluations, and studies for each year.

Our performance audits, evaluations, and studies (collectively referred to as performance audits) have ranged from complex, multi-agency audits to single programs. Our performance audits have highlighted the importance of governance and accountability; helped to protect the public, including vulnerable populations; ensured the delivery of quality services; and identified ways to improve the effectiveness and efficiency of state government operations. Some performance audits involved the use of contractors due to the specialized expertise required to perform the audit work. These audits allowed us to examine technically complex programs that are important for the State, its employees, and its citizens. Even when contractors are involved, the OSA's audit managers and audit supervisors hold significant responsibility for planning the audit work, developing audit findings and recommendations, and writing the audit reports.

The OSA continues to benefit from experience and tenure of our performance audit staff, who collectively possess more than 250 years of performance auditing experience. The OSA's performance auditors are highly educated, with 74 percent holding advanced degrees and 32 percent holding professional licenses and certifications, such as Certified Government Auditing Professional, Certified Internal Auditor, Certified Government Financial Manager, and Certified Fraud Examiner. The OSA has an average of 33 professional staff assigned to conduct performance audits. See ATTACHMENT A for information about the OSA's organizational structure, expenditures, and performance auditor positions.

Our performance audits originate from several different sources. Of the 61 performance audits we issued over the last 4 years, 23 were statutorily required, 20 were conducted in response to a legislative request, and the remaining 18 were discretionary. The fact that 71 percent of the OSA's performance audits were driven by legislative interests (i.e., statutorily required or legislative requests) demonstrates that the General Assembly relies heavily on the OSA's audits to provide information and assessments of government operations and has confidence in the value of our work. During the 2014 through 2017 Legislative Sessions, the General Assembly passed 15 bills related to the OSA's audit authority and statutory responsibilities, including expanded authority to audit Colorado's health insurance exchange and new authority to evaluate the State's tax expenditures and to operate a statewide fraud reporting hotline. See ATTACHMENT D for a list of enacted bills.

Overall, the OSA's body of work consistently provides thorough, credible, and impartial assessments of the operation of state programs for legislators, agencies, and the public. As part of this application, we have included three performance audits completed during the 4-year period that represent the variety of performance audits we conduct, the quality of our audit work, and the scope of impact our audits have on government operations. All three of the highlighted audits resulted in changes to the programs' enabling statutes. Please see ATTACHMENT C for a copy of each selected performance audit report.

- SENIOR AND DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM (AUGUST 2015). This award-winning performance audit is an example of an evaluation of the effectiveness of programs meant to serve vulnerable populations. In 2000 and 2006, voters approved amendments to the Colorado Constitution establishing property tax exemptions for qualifying senior citizens and disabled veterans. Under the Program, the State reimburses counties for property tax revenue lost because of the exemptions. The OSA's performance audit matched data from state tax and death records for full- and part-time residents to examine the entire population of more than 200,000 exemptions that were initially approved by county assessors' offices for Tax Year 2013. Through this data matching, we were able to demonstrate that, of the $103 million in exemptions, about $25.3 million for 54,000 exemptions may not have met the eligibility requirements. This performance audit highlighted that the fundamental design of the Program did not protect the State from reimbursing counties for non-qualifying exemptions, and that the state Department of Local Affairs (Department) lacked the authority and processes to ensure that only qualifying applicants were approved. The audit further raised concerns that the State was unable to recover funds paid to counties for non-qualifying exemptions. In response to the audit, the General Assembly passed House Bill 16-1175, which expanded the scope of the Department's review of applications for the exemption and authorized actions to prevent or recoup reimbursement for non-qualifying exemptions.

- COMMUTING USE OF STATE-OWNED VEHICLES (DECEMBER 2016). This performance audit is an example of an in-depth review of a common use of State resources. At the time of our audit, state employees could use assigned state-owned vehicles for commuting between home and work when approved by their agency's executive director. This is generally considered a taxable fringe benefit that the State must report as part of the employees' income to the Internal Revenue Service (IRS). In Calendar Year 2015, eight state agencies authorized 782 employees to commute.

The audit found: (1) only one of the sample of 30 commuters met all the statutory criteria for use of a state-owned vehicle for commuting because the statutory criteria were vague and did not clearly align with the State's business needs, (2) the Department of Personnel & Administration (Department) may have been significantly underreporting vehicle fringe benefits because its policies and rules did not align with IRS regulations, and (3) the Department was not overseeing the use of state-owned vehicles across state government. Because we selected a statistically valid sample to review the commuter population, we were able to estimate that the State spent $1.38 million on commuting arrangements in Calendar Year 2015 that did not meet statutory requirements. In response to the audit, the General Assembly passed House Bill 17-1296, which clarified the criteria for the use of state-owned vehicles, strengthened the Department's role in overseeing commuting arrangements, and aligned state law with IRS fringe benefit reporting requirements.

- OFFICE OF FILM, TELEVISION, AND MEDIA (JUNE 2017). This performance audit is an example of how the OSA's audits examine the benefits of tax incentive programs, which are becoming increasingly popular, albeit controversial, tools to drive economic development and job growth. The Office of Film, Television, and Media (Film Office) was created in 2012 to expand and revitalize the Colorado film industry through a program that pays companies a financial incentive for films, commercials, television shows, and video games produced in the State. In Fiscal Years 2013 through 2016, the Film Office paid $10.6 million in incentives for 31 productions. The audit found widespread problems with the Film Office's administration of the program, including that it: (1) paid incentives totaling $1.9 million for all nine of the sampled projects although none met all the requirements to receive an incentive; (2) routinely paid incentives without having contracts, which are required by State Fiscal Rules; and (3) did not have complete and accurate information to assess and report on the effectiveness of the incentive program. In response to the audit, the General Assembly passed Senate Bill 18-103, which strengthened requirements to earn a production incentive. Separate from the legislative discussions about Senate Bill 18-103, the General Assembly significantly reduced General Fund support for the Film Office from an average of nearly $3 million annually prior to Fiscal Year 2017 to $750,000 annually in Fiscal Years 2018 and 2019. Discussions among the Joint Budget Committee about whether to continue funding for the film incentive program, and at what level, are reflected in the related media article in ATTACHMENT C.

Making An Impact

The OSA's performance audits benefit all Coloradans by promoting transparency and accountability in state government; improving the efficiency, effectiveness, and quality of operations and service delivery; identifying cost savings and other financial benefits; and producing legislative change.

The impact of each individual performance audit is unique. Some audits receive substantial media attention and public focus that precipitates quick and often sweeping legislative changes. Other audits receive less public attention, yet the audited agency takes the audit seriously and works diligently to implement the recommendations and improve operations. Overall, the OSA focuses on three key strategies to ensure that our performance audits have an impact:

- IDENTIFY FINANCIAL BENEFITS FOR THE STATE. The financial benefits we identify represent the dollar value the OSA provides to the people of Colorado by ensuring the responsible stewardship of public funds. During Fiscal Years 2014 through 2017, our performance audits identified financial benefits totaling $152.8 million, or an average of about $38.2 million per year. These benefits exceed the OSA's total net operating costs over the same time period by a ratio of 5 to 1. Financial benefits include the identification of potential cost savings, questionable payments, funds that could be more effectively managed, policies that could be changed to increase revenue, opportunities to leverage State resources with matching funds, improved collection of fees or debts owed, or increases in the value of State assets.

- IDENTIFY THE NEED FOR STATUTORY CHANGE. As a legislative agency, it is important that our audits provide quality information to the General Assembly about available policy options to improve program effectiveness or efficiency. During the 2014 through 2017 Legislative Sessions, 33 separate bills were enacted into law that related to issues raised in the OSA's audits and other work products. See ATTACHMENT D for a list of enacted bills.

- IDENTIFY VALUE-ADDED, ACTIONABLE RECOMMENDATIONS AND HOLD AGENCIES ACCOUNTABLE FOR IMPLEMENTATION. We strive to promote positive change in government by developing recommendations and solutions that address the problems we identify and that agencies will implement. The OSA requests agencies to report to the Legislative Audit Committee on the status of the implementation of recommendations from performance audits. These status reports are an important mechanism for holding agencies accountable for addressing performance audit recommendations. In 2016, we strengthened our status reporting process by including a review of the agency's documentation to verify the reported implementation status of the recommendations. This verification work has allowed the OSA to provide greater assurance to the Legislative Audit Committee and the public about the improvements agencies are making in response to audit recommendations.

  In addition, the General Assembly required reporting on the implementation status of audit recommendations during the annual budget cycle as part of the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act, which was enacted in 2013. To fulfill this requirement, we produce an annual report on the status of all unimplemented audit recommendations to the Legislative Audit Committee, the Joint Budget Committee, and each department's committee of reference. Over time, the data in these reports have shown a decrease in the number of unimplemented performance and IT audit recommendations from 67 recommendations as of June 30, 2014, to 48 recommendations as of June 30, 2017. These reports have been an important point of discussion between legislators and agencies and, ultimately, holding agencies accountable for their use of public resources.

Furthering the Field of Legislative Evaluation

One of the ways the OSA and its performance auditors advance the field of legislative program evaluation and performance auditing is through active involvement in the accountability community, including the National Legislative Program Evaluation Society (NLPES), the National State Auditors Association, the Mountain and Plains Intergovernmental Audit Forum, the Association of Government Auditors, the Institute of Internal Auditors, and the Association of Certified Fraud Examiners.

Our State Auditor served as President of the National State Auditors Association for the 2015-2016 term, and our Deputy State Auditor currently serves on the Executive Committee of the Mountain and Plains Intergovernmental Audit Forum. With respect to the National Conference of State Legislatures (NCSL) and NLPES, the OSA has a long-standing involvement with both organizations. In 2017, one of our performance audit managers was appointed to serve on the NCSL Executive Committee, and since 2009, he has served on the NLPES Executive Committee. In 2016, he was elected as NLPES Chair after having previously served as Vice Chair and Secretary. One notable effort he undertook as Chair was to facilitate a comprehensive review and update of the NLPES bylaws to ensure they reflect current practice and provide a solid foundation for NLPES in the future. His ongoing participation and leadership in NCSL and NLPES ensures that the OSA stays connected to our peer organizations and works to address the collective demands and issues we face as legislative audit and evaluation organizations.

We routinely present information about our performance audits, as well as the importance of the audit function itself, to state and local government officials, members of audit industry organizations, and students attending Colorado's higher education institutions. See ATTACHMENT E for a list of the OSA's external speaking activities. Specifically, the OSA's involvement in NLPES and NCSL conferences provides important opportunities for exchanging ideas and developing skills. In October 2015, the OSA planned and hosted the NLPES 2015 Fall Professional Development Seminar (PDS). At the time, attendance for the 3-day PDS was the highest since 2006, with more than 140 participants representing 30 different states. The PDS was a great success and offered three plenary sessions in addition to concurrent sessions covering a wide range of topics. The Poster Session, which was reimagined and reintroduced at the Denver PDS, was an instant crowd favorite and has become a central part of planning content for subsequent seminars (See ATTACHMENT F for the conference program). OSA staff made presentations and moderated sessions at the 2014, 2015, 2016, and 2017 NLPES Professional Development Seminars; offered a May 2017 NLPES webinar; and made presentations at the 2014 and 2017 NCSL Legislative Summits. OSA staff also contribute articles to the NLPES Newsletter and respond to inquiries posted on the NLPES email list.

ATTACHMENT A

OSA

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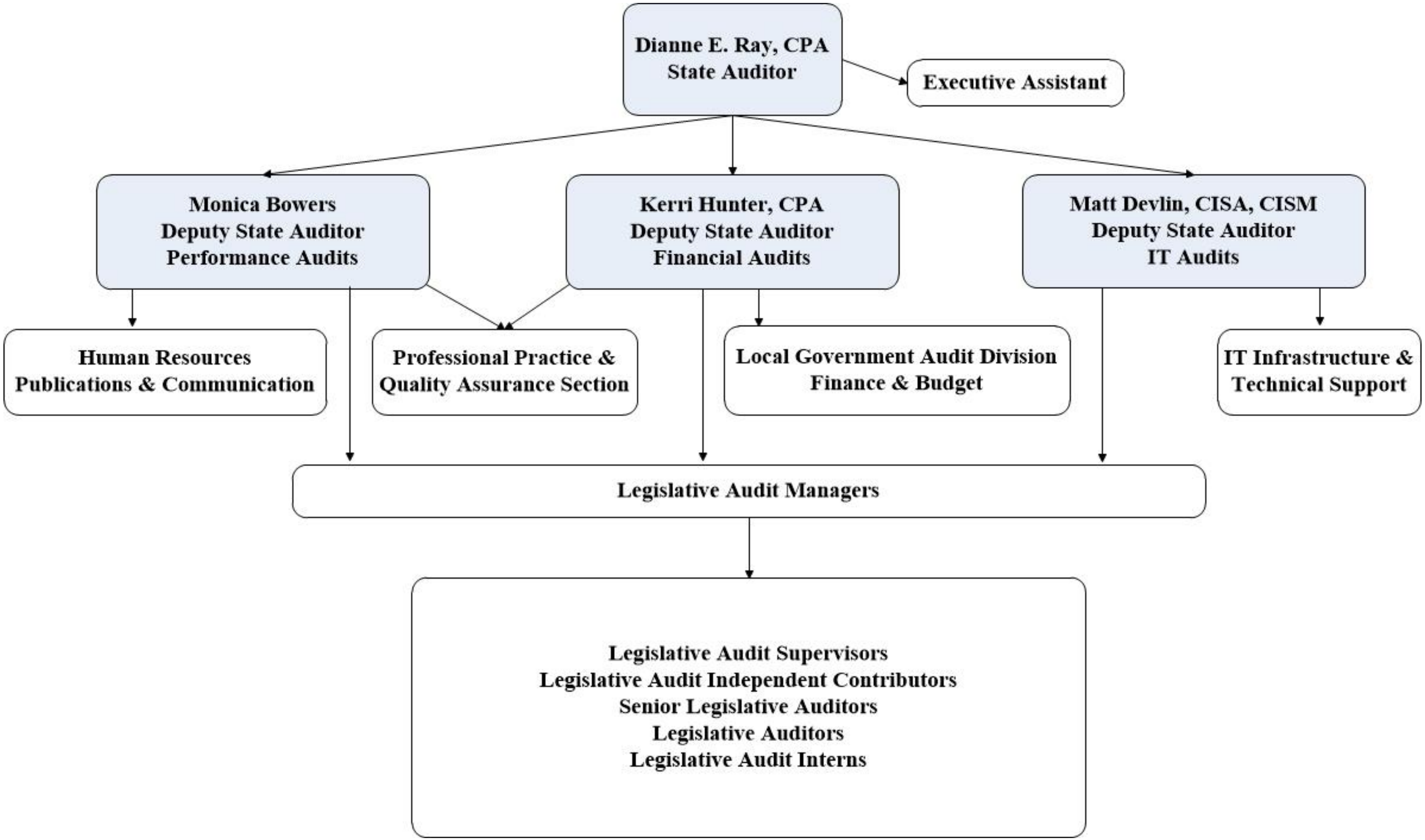
COLORADO OFFICE OF THE STATE AUDITOR
ORGANIZATIONAL STRUCTURE



COLORADO OFFICE OF THE STATE AUDITOR TOTAL EXPENDITURES BY FISCAL YEAR	
FISCAL YEAR	TOTAL EXPENDITURES
2014	$8,531,372
2015	$9,425,446
2016	$9,474,280
2017	$9,797,766

SOURCE: Colorado Financial Reporting System and Colorado Operations Resource Engine.

COLORADO OFFICE OF THE STATE AUDITOR TOTAL PERFORMANCE AUDIT STAFF BY POSITION				
POSITION	CALENDAR YEAR			
	2014	2015	2016	2017
State Auditor	1	1	1	1
Deputy State Auditor	1	1	1	1
Audit Manager	6	6	7	6
Audit Supervisor	8	8	8	8
Independent Contributor	0	0	2	3
Senior Auditor	6	8	6	11
Auditor	9	8	10	4
TOTAL PERFORMANCE AUDIT FTE	31	32	35	34

NOTE: Counts are filled positions as of December 31 each year.

ATTACHMENT B

OSA

We Set the Standard for Good Government

COLORADO OFFICE OF THE STATE AUDITOR PERFORMANCE AUDITS BY YEAR CALENDAR YEARS 2014-2017		
NAME OF REPORT	REPORT NUMBER	RELEASE DATE
CALENDAR YEAR 2017		
Automobile Inspection and Readjustment Program	1680P	December 2017
Gaming Cities' Use of Historical Fund Distributions	1682P	December 2017
Cash Funds Uncommitted Reserves, Fiscal Year Ended June 30, 2017	1772P	October 2017
Schedule of TABOR Revenue, Fiscal Year 2017	1773P	October 2017
Regional Tourism Act	1683P	October 2017
State Land Board	1681P	October 2017
Evaluation of Fort Lyon Supportive Residential Community: Preliminary Report	1671S	September 2017
Audit of Three Information Technology Systems at the Colorado Department of Public Health and Environment	1676P	September 2017
Public Administrators	1678P	September 2017
Colorado Health Benefits Exchange: Connect for Health Colorado	1675P	July 2017
Investments in Colorado's Great Outdoors	1621P	July 2017
Annual Compensation Study	1674P	June 2017
Cash Funds Uncommitted Reserves, Fiscal Year Ended June 30, 2016	1672P	June 2017
Office of Film, Television, and Media	1670P	June 2017
Adams State University	1665P-B	February 2017
Western State Colorado University	1665P-A	February 2017
Colorado Energy Office Follow Up to 2012 Audit	1663P	January 2017
CALENDAR YEAR 2016		
Commuting Use of State-Owned Vehicles	1560P	December 2016
Conservation Easement Tax Credit Program, After Changes in 2014	1561P	December 2016
Schedule of TABOR Revenue, Fiscal Year 2016	1673P	December 2016
Behavioral Health Programs	1556P	December 2016
Division of Youth Corrections	1557P	October 2016
Study of Volunteer Firefighter Pension Plans in Colorado	1550P	October 2016
Colorado Medicaid: The PEAK Application and Eligibility Verification	1555P	August 2016
Contracting for Services – Selection Process	1551P	August 2016

COLORADO OFFICE OF THE STATE AUDITOR PERFORMANCE AUDITS BY YEAR CALENDAR YEARS 2014-2017		
NAME OF REPORT	REPORT NUMBER	RELEASE DATE
Audit of the Information Security of the Colorado Operations Resource (CORE) System	1549P	June 2016
Independent Ethics Commission	1553P	March 2016
Cash Funds Uncommitted Reserves, Fiscal Year Ended June 30, 2015	1552P	February 2016
Immunization Program – Use of Tobacco Settlement Funds	1417P	January 2016
CALENDAR YEAR 2015		
Conveyance Program	1502P	December 2015
Department of State	1503P	December 2015
Local Sales Taxes **Recipient of the National Legislative Program Evaluation Society 2016 Excellence in Research Methods*	1422P	December 2015
Colorado Public Employees' Retirement Association (PERA) Hybrid Defined Benefit Plan Actuarial Assumptions Sensitivity Analysis	1416P	October 2015
Regional Transportation District Bus and Light Rail Train Operator Safety	1421P	October 2015
Schedule of TABOR Revenue, Fiscal Year 2015	1548P	October 2015
Gaming Impact Grants	1419P	September 2015
Collection and Usage of the FASTER Motor Vehicle Fees **Recipient of the National Legislative Program Evaluation Society 2017 Certificate of Impact*	1410P	August 2015
Senior and Disabled Veteran Property Tax Exemption Program **Recipient of the National Legislative Program Evaluation Society 2016 Certificate of Impact*	1412P	August 2015
Colorado Public Employees' Retirement Association (PERA) Hybrid Defined Benefit Plan Study	1409P	July 2015
Pet Animal Care Facilities Act Program	1418P	July 2015
Consumer-Directed Attendant Support Services	1413P	June 2015
Medicaid Prescription Drugs	1407P	June 2015
Cash Funds Uncommitted Reserves, Fiscal Year Ended June 30, 2014	1411P	March 2015
U.S. 36 Public-Private Partnership (P3) Project	1415P	March 2015
Colorado Correctional Industries	1350P	January 2015

COLORADO OFFICE OF THE STATE AUDITOR PERFORMANCE AUDITS BY YEAR CALENDAR YEARS 2014-2017		
NAME OF REPORT	REPORT NUMBER	RELEASE DATE
CALENDAR YEAR 2014		
Colorado Health Insurance Benefits Exchange: Connect for Health Colorado	1348P	December 2014
IT Vulnerability Assessment	1404P	December 2014
State Energy Program	1346P	December 2014
Child Welfare	1303P	November 2014
Schedule of TABOR Revenue, Fiscal Year 2014	1406P	November 2014
Systems Backup and Recovery	1403P	November 2014
Child Welfare Workload Study	1354S	August 2014
Medication Management for Committed Youth At Division of Youth Correction Facilities	1351P	August 2014
Child Protection Ombudsman Program	1345P	July 2014
History Colorado **Recipient of the National Legislative Program Evaluation Society 2015 Certificate of Impact*	1405P	July 2014
Waste Tire Processor and End User Program	1341P	July 2014
Dam Safety Program	1347P	June 2014
Veterans Trust Fund Grant Program	1340P	June 2014
Victim's Restitution	2197P	June 2014
Cash Funds Uncommitted Reserves, Fiscal Year Ended June 30, 2013	1344P	February 2014
School Meal Program	1302P	January 2014

Electronic copies of all reports can be accessed via the OSA's webpage: www.colorado.gov/auditor

Note: The date listed signifies when the final report was publicly released by the Legislative Audit Committee and does not necessarily match the date listed on the report cover.

ATTACHMENT C

We Set the Standard for Good Government

COLORADO OFFICE OF THE STATE AUDITOR

Colorado Office of the State Auditor
OSA
We Set the Standard for Good Government

DEPARTMENT OF LOCAL AFFAIRS

SENIOR AND DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM

AUGUST 2015

PERFORMANCE AUDIT

THE MISSION OF THE OFFICE OF THE STATE AUDITOR
IS TO IMPROVE GOVERNMENT
FOR THE PEOPLE OF COLORADO

LEGISLATIVE AUDIT COMMITTEE

Senator Lucia Guzman – Chair	Representative Dan Nordberg – Vice-Chair
Senator Chris Holbert	Representative Dianne Primavera
Senator Cheri Jahn	Representative Su Ryden
Senator Tim Neville	Representative Lori Saine

OFFICE OF THE STATE AUDITOR

Dianne E. Ray	State Auditor
Monica Bowers	Deputy State Auditor
Andy Knauer	Audit Manager
Jason LeBlanc James Stout	Staff Auditors

AN ELECTRONIC VERSION OF THIS REPORT IS AVAILABLE AT
WWW.STATE.CO.US/AUDITOR

A BOUND REPORT MAY BE OBTAINED BY CALLING THE
OFFICE OF THE STATE AUDITOR
303.869.2800

PLEASE REFER TO REPORT NUMBER 1412P WHEN REQUESTING THIS REPORT

OFFICE
OF THE STATE AUDITOR

We Set the Standard for Good Government

DIANNE E. RAY, CPA

STATE AUDITOR

August 11, 2015

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Senior and Disabled Veteran Property Tax Exemption Program. This audit was conducted pursuant to Section 39-3-208, C.R.S., which states the "state auditor shall periodically audit the property tax exemption program to ensure that the program is operating in compliance with Section 3.5 of Article X of the state constitution and this part 2 [of Title 39, Article 3 of the Colorado Revised Statutes]." The statute also states that "the state auditor may suggest means of improving the administration of the program." This report presents our findings, conclusions, and recommendations, and the responses of the Department of Local Affairs.

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CONTENTS

REPORT HIGHLIGHTS

SENIOR AND DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM
PERFORMANCE AUDIT, AUGUST 2015

DEPARTMENT OF LOCAL AFFAIRS

CONCERN

The fundamental design of the Senior and Disabled Veteran Property Tax Exemption Program (Program) does not sufficiently protect the State from reimbursing counties for non-qualifying exemptions and, within the current Program design, the Department of Local Affairs (DOLA) lacks authority and processes to ensure that only qualifying applicants are approved.

KEY FACTS AND FINDINGS

- State general funds are used to reimburse counties for tax exemptions granted to property owners.
- In Fiscal Year 2015, the State reimbursed counties almost $117 million for 211,692 senior and disabled veteran property tax exemptions.
- The state reimbursed counties a total of $169,000 for non-qualifying exemptions for tax year 2013. These exemptions did not meet one or more statutory qualifications.
- We identified indicators that almost 54,000 approved exemptions totaling about $25.3 million for tax year 2013 may not have met the eligibility requirements. This includes some exemptions that the counties did not send to DOLA for its review for multiple exemptions.
- There is no mechanism for the State to recover funds paid to counties for non-qualifying exemptions.
- DOLA is unable to identify some non-qualifying exemptions because its role is limited to checking for multiple applications. As a result, it does not coordinate with the Department of Revenue to check income tax filing information or with the Department of Public Health and Environment to check death records to improve the effectiveness of its review and help identify non-qualifying applicants.
- The County Assessors' Offices and DOLA do not have any way to validate the social security numbers provided by applicants. DOLA, in particular, relies on social security numbers to complete its eligibility review.

BACKGROUND

- In 2000 and 2006, voters approved amendments to the Colorado Constitution establishing property tax exemptions for qualifying senior citizens and disabled veterans.
- To qualify for the exemptions, seniors must be 65 or older and have owned their homes and used them as their primary residences for at least 10 years; veterans must be disabled and own and use their homes as their primary residences. Married couples are deemed to have the same primary residence and only qualify for one exemption.
- County Assessors' Offices have the primary responsibility for determining whether applicants qualify for the tax exemption.
- DOLA and the Department of Military and Veterans Affairs (DMVA) have supporting roles in eligibility determination. DOLA checks for multiple applications from the same property owner and DMVA verifies disability status.
- Qualifying applicants currently receive an annual exemption of 50 percent of the first $200,000 of property value on their primary residences.
- After being approved, exemptions remain in effect permanently until County Assessors' Offices are notified of circumstances that would cause them to end, such as the sale of the exempted property.

KEY RECOMMENDATIONS

Work with the General Assembly to develop a process for the State to recover funds from counties for non-qualifying exemptions.

Enter into agreements with the Departments of Revenue and Public Health and Environment to share information to identify potentially non-qualifying exemptions.

Investigate the feasibility of entering into an agreement with the Department of Revenue or the Social Security Administration to validate social security numbers.

Work with the counties, the Office of the State Treasurer, and the General Assembly to establish a process for DOLA to conduct a final review and give final approval for the list of approved exemptions sent to the Office of the State Treasurer for reimbursement.

RECOMMENDATION LOCATOR

AGENCY ADDRESSED: DEPARTMENT OF LOCAL AFFAIRS

REC. NO.	PAGE NO.	RECOMMENDATION SUMMARY	AGENCY RESPONSE	IMPLEMENTATION DATE
1	24	Work with the General Assembly to seek statutory changes to strengthen the qualification review process, including: (A) working with the State Treasurer on proposed statutory changes to allow the State Treasurer to recover funds from the counties for any reimbursements made for exemptions approved by the counties that are later found to be non-qualifying, and (B) expanding DOLA's role to include comparing county-reported exemption data with residency status information from tax records and death records to identify potentially non-qualifying applicants.	AGREE	A JUNE 2016 B OCTOBER 2016

AGENCY ADDRESSED: DEPARTMENT OF LOCAL AFFAIRS

REC. NO.	PAGE NO.	RECOMMENDATION SUMMARY	AGENCY RESPONSE	IMPLEMENTATION DATE
2	31	Expand the processes for identifying and denying non-qualifying applicants by: (A) working with the Department of Revenue to conduct an annual match of filing status data from Colorado tax returns to the DOLA database to identify and deny married couples who apply for more than one property tax exemption, and (B) identifying and addressing the problem with the current social security number search that allows some matches to go unidentified.	AGREE	A OCTOBER 2016 B JANUARY 2015
3	36	Investigate entering into an agreement with the Colorado Department of Revenue or the Social Security Administration, as appropriate, to annually validate the social security numbers it receives from the counties.	AGREE	SEPTEMBER 2015
4	43	Work with the counties, the State Treasurer, and the General Assembly to establish a process for DOLA to conduct a final review and give final approval for the list of approved exemptions sent to the State Treasurer for reimbursement.	AGREE	JUNE 2016

CHAPTER 1

OVERVIEW OF THE SENIOR AND DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM

In 2000, voters approved an amendment to the Colorado Constitution [Article X, Section 3.5], establishing a property tax exemption for qualifying senior citizens. In 2006, voters approved a further amendment to establish a similar exemption for qualifying disabled veterans. Qualifying seniors and disabled veterans currently receive an annual property tax exemption of 50 percent of the first $200,000 of property value on their primary residences. For example, someone who qualifies for the exemption with a property valued at $150,000 would only owe taxes on $75,000 (50% x $150,000) of the property value and someone with a property valued at $500,000 would owe taxes on $400,000 (50% x the first $200,000 + the remaining $300,000) of the property value.

In accordance with the Constitution, the property tax revenue lost by the counties as a result of the exemptions is reimbursed to each local government by the General Assembly. There is no limit on the total amount of exemptions in any given tax year. However, the General Assembly does have the authority to adjust the amount of property value that will be affected by the exemption. For example, for Fiscal Years 2010 through 2012, the General Assembly set the amount of property value that was exempt from taxes for seniors at 50 percent of the first $0 in value. This effectively meant that there would be no exemptions for seniors in those years. The General Assembly did not lower the exemption for disabled veterans in those years so qualifying disabled veterans continued to receive an exemption based on the $200,000 limit.

ELIGIBILITY

Section 39-3-203, C.R.S., establishes the following qualifications for receiving an exemption under the Senior and Disabled Veteran Property Tax Exemption Program (Program):

- A senior must be at least 65 years old and have owned and occupied the property as his or her primary residence for the 10 years immediately preceding the assessment date.

- A disabled veteran must have served on active duty in the U.S. armed forces, received an honorable discharge, and sustained a service-connected disability rated by the U.S. Department of Veterans Affairs as a 100 percent permanent disability.

- A disabled veteran must have owned and occupied the property as his or her primary residence since January 1 of the tax year for which the exemption will apply.

An applicant may only receive an exemption on one property in any tax year, and married couples are deemed to occupy the same primary residence for the purpose of determining eligibility. In other words, married couples cannot apply on multiple properties even if each spouse considers a different address as his or her primary residence.

Properties that are owned by a trust, corporate partnership, or other legal entity can qualify as long as the residents of those properties meet all other eligibility requirements. A senior or disabled veteran who is confined to a hospital, nursing home, or assisted living facility may qualify if he or she meets all other eligibility requirements. Finally, the surviving spouse of a senior or disabled veteran who had qualified for the exemption may qualify for the exemption.

Once approved to receive the exemption, the applicant does not need to re-apply for the exemption each property tax year. The senior or disabled veteran exemption remains in effect from year to year until a change in ownership or occupancy triggers its removal.

PROGRAM ADMINISTRATION

The following organizations have a role in administering the Program:

- **THE DEPARTMENT OF LOCAL AFFAIRS, DIVISION OF PROPERTY TAXATION (DOLA)**, through the state property tax administrator, has a duty to "assist and cooperate in the administration of all laws concerning the valuing of taxable property, the assessment of same, and the levying of property taxes," [Section 39-2-109(1) C.R.S.]. Regarding the Program specifically, statute [Section 39-3-207, C.R.S.] requires DOLA to "examine the reports sent by each assessor…to ensure that no applicant has claimed more than one exemption." Statute [Section 39-3-205(2) C.R.S.] also requires DOLA to design the application form(s) to be used for the Program.

- **COUNTY ASSESSORS' OFFICES** (Assessors' Offices) review applications for the exemptions in their counties to make eligibility determinations. Assessors' Offices also calculate the exemption amounts.

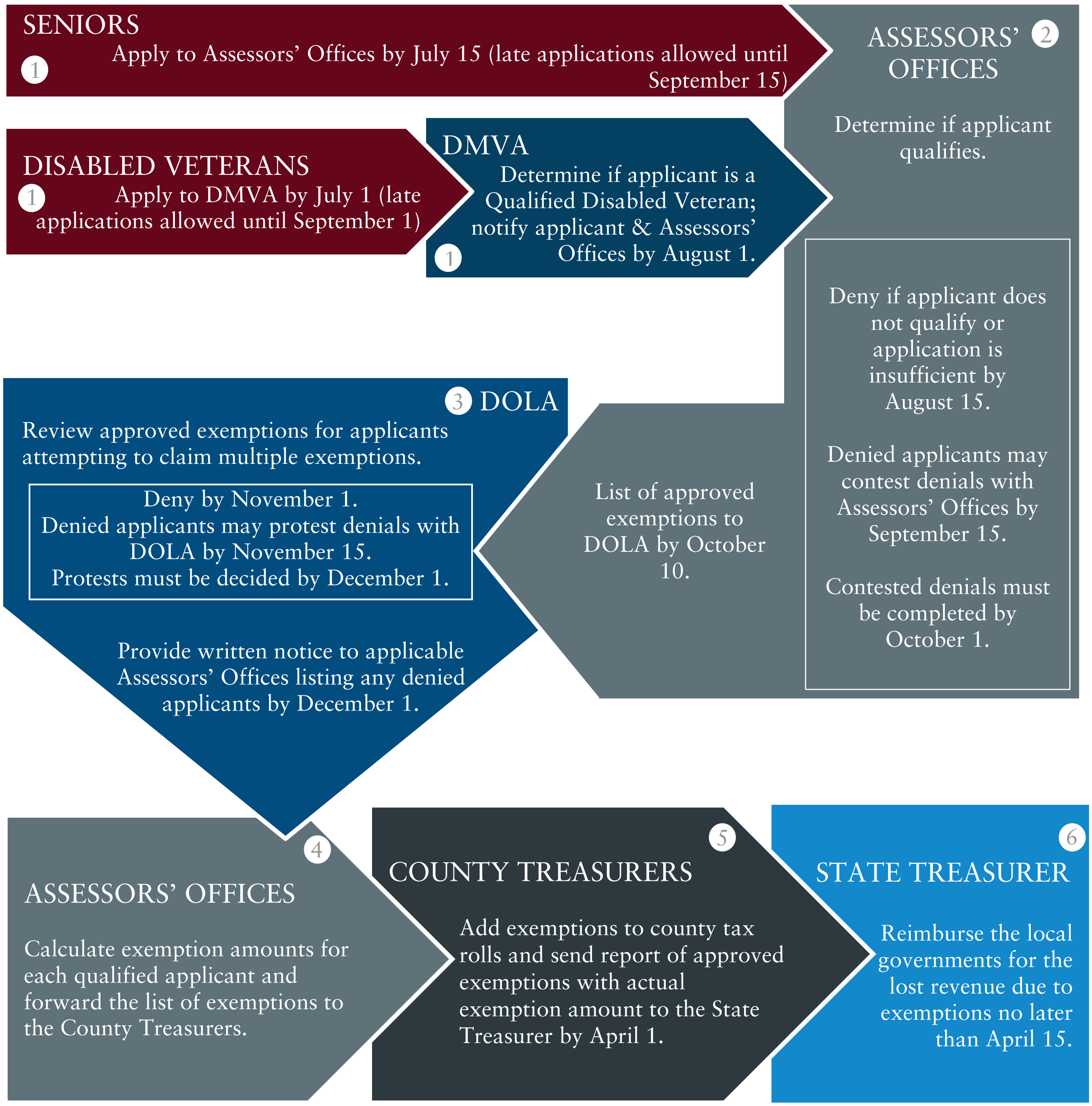
- **COUNTY TREASURERS' OFFICES** (County Treasurers) update the county's tax rolls based on the approved exemptions to ensure property owners are billed correctly, and provide a final report to the State Treasurer that includes the county's property tax exemptions and amount owed to them for that year.

- **THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS, DIVISION OF VETERANS AFFAIRS (DMVA)** reviews applications it receives from veterans and determines whether the applicants qualify as "disabled veterans" under the statutory requirements.

- **THE OFFICE OF THE STATE TREASURER (STATE TREASURER)** is responsible for the distribution of state general fund monies to reimburse counties for the amounts approved in exemptions.

Statute [Section 39-3-205, C.R.S.] details the application process and the timelines that must be followed for each step. Applications are submitted during the year for which the exemption will first apply, and approved exemptions are applied to the tax payment for that year, due the following spring. For example, an application submitted in 2015 would be for an exemption from the applicant's 2015 property taxes which are typically paid in the spring of 2016. Exhibit 1.1 illustrates the application process and timelines for seniors and disabled veterans:

EXHIBIT 1.1
SENIOR AND DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM
APPLICATION PROCESS AND DEADLINES



SOURCE: Office of the State Auditor's analysis of Section 39-3-201, et seq., C.R.S., and Department of Local Affairs' documentation.

FISCAL OVERVIEW

Property owners typically make property tax payments in the spring following the year for which they are owed. Similarly, reimbursements are made to the counties from the state general fund in April of the year following the property tax year for which the exemptions were granted. For example, the first payments were made to counties in April of Fiscal Year 2003 to cover exemptions for Tax Year 2002. In this way the counties are made whole by the State for the exemptions deducted from the taxes due in the same year.

Exhibit 1.2 shows the number and dollar amount of exemptions approved for seniors and disabled veterans each year since the beginning of the Program. In total, the State has reimbursed counties more than $635 million for property tax exemptions since the Program began.

EXHIBIT 1.2
SENIOR AND DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM
FINANCIAL SUMMARY
STATE FISCAL YEARS 2003 TO 2015

State Fiscal Year[1]	Property Tax Year[2]	Number of Senior Exemptions	Amount Exempted for Seniors[3]	Number of Disabled Veteran Exemptions[4]	Amount Exempted for Disabled Veterans[4]	Total Number of Exemptions	Total Amount Exempted
2003	2002	123,400	$ 61,491,000	N/A	N/A	123,400	$ 61,491,000
2004	2003	134,100	$ 0	N/A	N/A	134,100	$ 0
2005	2004	137,400	$ 0	N/A	N/A	137,400	$ 0
2006	2005	138,700	$ 0	N/A	N/A	138,700	$ 0
2007	2006	145,600	$ 74,232,000	N/A	N/A	145,600	$ 74,232,000
2008	2007	155,800	$ 79,138,000	1,300	$ 690,000	157,100	$ 79,828,000
2009	2008	163,600	$ 84,477,000	2,000	$ 1,072,000	165,600	$ 85,549,000
2010	2009	168,100	$ 0	3,100	$ 1,336,000	171,200	$ 1,336,000
2011	2010	167,700	$ 0	3,000	$ 1,578,000	170,700	$ 1,578,000
2012	2011	169,000	$ 0	3,300	$ 1,756,000	172,300	$ 1,756,000
2013	2012	182,900	$ 100,822,000	3,600	$ 1,906,000	186,500	$ 102,728,000
2014	2013	197,500	$ 107,697,000	3,800	$ 2,083,000	201,300	$ 109,780,000
2015	2014	207,500	$ 114,235,000	4,200	$ 2,646,000	211,700	$ 116,881,000
Total		2,091,300	$ 622,092,000	24,300	$ 13,067,000	2,115,600	$ 635,159,000

SOURCE: Office of the State Auditor's analysis of Department of Local Affairs Annual Report data.

[1] State Fiscal Year is the fiscal year in which the State reimbursed counties for the property taxes exempted for the previous tax year.

[2] Property Tax Year is the calendar year which the property tax was assessed, due the following year.

[3] The General Assembly reduced the senior property tax exemption to $0 for the following State Fiscal Years: 2004 through 2006 and 2010 through 2012.

[4] The disabled veterans' exemption became effective for Property Tax Year 2007.

AUDIT PURPOSE, SCOPE & METHODOLOGY

We conducted this performance audit pursuant to Section 39-3-208, C.R.S., which states that the "state auditor shall periodically audit the property tax exemption program to ensure that the program is operating in compliance with Section 3.5 of Article X of the state constitution and this part 2 [of Title 39, Article 3 of the Colorado Revised Statutes]." The statute also states that, "the state auditor may suggest means of improving the administration of the program." Our audit work was performed from September 2014 through May 2015. We acknowledge the cooperation and assistance provided by management and staff at DOLA, DMVA, and the State Treasurer. The statute also allows the state auditor direct access to related documents at certain county offices. We acknowledge the cooperation of the Assessors' Offices, and the County Treasurers. We would also like to acknowledge the assistance with our audit work provided by the Department of Revenue and the Department of Public Health and Environment.

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 upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

The primary objectives of this audit were to determine whether the Program is in compliance with the applicable statutes, has adequate controls to ensure that only qualifying seniors and disabled veterans are receiving the exemption, and to identify means of improving the administration of the Program. Our conclusions for each of these objectives are described in the audit findings and recommendations.

To accomplish our audit objectives, we:

- Reviewed relevant state statutes and rules and DOLA policies related to administration of the Program, and interviewed staff at DOLA, DMVA, the State Treasury, and five Assessors' Offices to gain an understanding of the role each entity plays in the process.

- Conducted a survey of all 64 Assessors' Offices to gain an understanding of the specific eligibility determination procedures in place in each county.

- Reviewed applications sent to DMVA, and data sent from all of the Assessors' Offices to DOLA to identify any exemptions that were non-qualifying.

- Performed an analysis of DOLA's database containing the data received from the Assessors' Offices to evaluate DOLA's process to identify applicants applying for multiple exemptions.

- Compared the exemptions included in the reports sent to DOLA with those sent to the State Treasurer to determine whether only qualifying exemptions were included in the reimbursement by the State Treasurer.

- Compared tax filing information from the Department of Revenue (DOR) and death record data from the Colorado Department of Public Health & Environment (CDPHE) with DOLA's database to identify exemptions that may be non-qualifying.

All of our data analysis for this audit involved examining records of the entire population of more than 200,000 exemptions that were initially approved by the Assessors' Offices for Tax Year 2013.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those internal controls, as well as specific details about the audit work supporting our findings, conclusions and recommendations, are described in CHAPTER 2 of the report.

CHAPTER 2

PROGRAM EFFECTIVENESS

The administration of the Senior and Disabled Veteran Property Tax Exemption Program (Program) relies on a coordinated effort between state agencies and county offices. The Program's current structure places the primary responsibility for determining eligibility with the 64 County Assessors' Offices (Assessors' Offices) while two state agencies, the Department of Local Affairs (DOLA) and the Department of Military and Veterans Affairs (DMVA), play supporting roles in ensuring that only qualifying exemptions are allowed. In addition, the County

Treasurers' Offices (County Treasurers) and the Office of the State Treasurer (State Treasurer) have responsibilities for the process of getting State reimbursement to the counties for the exempted taxes.

We considered the extent to which the Program has been effective in making property tax exemptions available to qualified seniors and disabled veterans. As illustrated in CHAPTER 1, Exhibit 1.2, the number of seniors and disabled veterans using the exemption has increased since Tax Year 2007, when the disabled veterans' exemption became effective, from 157,000 to 212,000, or about 35 percent, and the amount of tax relief provided through the Program has increased by about 46 percent, from about $80 million to $117 million.

Although these figures indicate that the Program has been effective in reducing property taxes for eligible seniors and disabled veterans who apply, we identified deficiencies in the current operation and design of the Program that have contributed to the State reimbursing counties for some exemptions we could definitively identify as non-qualifying, as well as for a significant amount for which there were either multiple compelling indicators that the exemptions were non-qualifying, or a single indicator that the exemptions may be non-qualifying. For example, we found that the State reimbursed counties in 2014 for some exemptions from applicants who were deceased and did not appear to have a surviving spouse who might qualify for the exemption, as well as some exemptions from applicants who did not file Colorado tax returns, which might indicate the applicant was not using the exempted property as his or her primary residence, as required by statute. This report includes four recommendations to reduce the risk of non-qualifying exemptions being approved by counties and reimbursed by the State without a fundamental change in the Program's design. In addition, the report discusses problems with the current statutory design of the Program; changing the fundamental Program design is a policy issue.

COUNTY ELIGIBILITY DETERMINATIONS

Assessors' Offices have the primary responsibility for determining whether applicants qualify for the senior and disabled veteran property tax exemption. Applicants for the senior exemption must submit an application to their county assessor's office and the Assessor's Office may request additional information from the applicant, if needed, to determine if the senior qualifies for an exemption. Applicants for the disabled veteran exemption submit their application to the Department of Military and Veterans Affairs (DMVA). Once DMVA verifies that an applicant has the necessary disabled veteran status, it forwards the application to the appropriate Assessor's Office for further eligibility determination. Applicants who fail to provide needed information or do not qualify for the exemption receive a denial notice from the Assessor's Office explaining the reason for the denial and the protest process. Each Assessor's Office then sends a list of the approved exemptions in his or her county to DOLA for further review. The data submitted by the counties include each approved exemption as well as notes (e.g., comments regarding changes in ownership of the property or the death of an applicant) that county staff have entered for their own use. DOLA uploads the data into a database and reviews them solely to identify and deny any applicants who are claiming more than one exemption. DOLA notifies the counties of any exemptions it denies.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We analyzed data from DOLA's database containing more than 200,000 exemptions approved by the counties for Tax Year 2013, reviewed relevant statutes and Program rules, surveyed all 64 Assessors' Offices regarding their eligibility determination processes, and interviewed a judgmental sample of five counties and DMVA staff. The purpose of our audit work was to determine if counties have adequate controls in their processes for determining qualifying applicants and for identifying any non-qualifying applicants approved for Tax Year 2013.

We also matched the data in DOLA's database for Tax Year 2013 with:

- Death records maintained by the Department of Public Health and Environment (Public Health) to determine if there were death records on file for any approved applicants.

- Tax filing data maintained by the Department of Revenue (Revenue) to determine if any approved applicants filed their income taxes as full year non-residents, or did not file Colorado income tax returns, for 2013, for indicators that any approved applicants did not occupy their Colorado residences as their primary residences in 2013.

We conducted these matches to evaluate whether additional controls, including at the state level, are needed to better ensure that only qualifying applicants are approved.

HOW WERE RESULTS MEASURED?

Qualified exemptions must meet the following eligibility requirements:

- **OCCUPATION OF PROPERTY AS PRIMARY RESIDENCE.** Section 39-3-203 (1)(a)(I), C.R.S., states that applicants must have owned and occupied the property as their primary residence for the 10 years preceding the assessment date.

- **ALLOWANCE OF ONLY ONE EXEMPTION PER MARRIED COUPLE.** Section 39-3-203 (5), C.R.S., states that two individuals who are legally married, but who own more than one piece of residential real property, shall be deemed to occupy the same primary residence and may claim no more than one exemption. Section 39-3-207(2)(a)(I), C.R.S., indicates that any applicant, including a married couple, who applies for more than one exemption is not entitled to any exemption.

- **QUALIFICATION OF SPOUSES OF PROPERTY OWNERS AND TRUSTS.** Section 39-3-202(2)(a), C.R.S., states that a spouse or surviving spouse qualifies for the exemption if the spouse occupied the property as his or her primary residence or did so until the death of the applicant. This section further states that a property held in trust for estate planning purposes will qualify for the exemption. In each of these cases, DOLA has developed a separate "long-form" application that must be completed for a spouse or trust to be approved for the exemption.

In addition to the eligibility requirements, Section 39-3-205(3), C.R.S., gives County Treasurers the authority to recover funds from a taxpayer if it is determined that the taxpayer did not qualify for the exemption.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

For Tax Year 2013, we found approved exemptions that did not meet all of the eligibility criteria and some that may not have met the criteria based on our comparison of DOLA's database with tax and death records. We discuss each of these areas below.

NON-QUALIFYING EXEMPTIONS

We identified 137 non-qualifying exemptions totaling about $57,800 that were approved by counties and reimbursed to counties by the State, as follows:

- **APPLICANT IS NOT THE OWNER OF THE PROPERTY.** We found 83 exemptions totaling almost $31,200 that should not have been approved because the property on the application was not owned by the applicant. We identified these properties by reviewing DOLA's database for any notes county staff entered into a comments field that gave an indication that the exemption did not qualify. The comments often noted that applicants were deceased or that they no longer qualified for some other reason. We asked the Assessors' Offices to double check the 196 exemptions we questioned, and for these 83 the Assessors' Offices reported that the applicant did not own the property. Specifically, in 46 of these cases, the applicant was deceased and the county did not have a record of a surviving spouse that qualified for the exemption. In 37 cases, the applicant was no longer the owner of the property and the exemption should have been removed. In addition, these 37 cases included eight exemptions totaling about $3,900 that the Assessor's Office approved even though it knew the applicants had transferred ownership of their properties to relatives and, therefore, no longer qualified for the exemption.

- **PROPERTY IS NOT THE APPLICANT'S PRIMARY RESIDENCE.** We found 52 exemptions totaling more than $26,300 that should not have been approved because the applicant did not use the property as his or her primary residence. We identified these exemptions by reviewing DOLA's database for any applicants who listed a different mailing address than the property address for which the exemption was sought. Applicants might list a different mailing address for a variety of reasons, such as having mail sent to relatives who handle their taxes for them. We asked the Assessors' Offices to verify the residency status for the 407 applicants who used a different address; for 52 of them, the counties determined that the property was not the primary residence of the applicant.

- **MARRIED COUPLE APPLIED ON MULTIPLE PROPERTIES.** We found two exemptions totaling about $300 that should not have been approved because they were filed by a married couple. We identified these exemptions by reviewing DOLA's database for comments written by county staff. In this case both properties in the same county included a comment stating "husband and wife own two properties, live apart, both qualify, same mailing address." While the husband and wife might each qualify individually for an exemption, because they are married they are considered to have only one primary residence. However, the Assessor's Office approved both exemptions. The Assessor's Office did not have an explanation for why these exemptions were approved.

EXEMPTIONS THAT MAY NOT QUALIFY

We identified indicators that almost 54,000 approved exemptions for Tax Year 2013 may not have met the eligibility requirements. These exemptions, which totaled about $25.3 million were approved by counties and reimbursed to counties by the State. As described below, each of these exemptions had one or more indicators that they may not qualify under statute.

- We found 430 approved exemptions totaling about $234,800 from applicants who may not have used the exempted property as their primary residences in 2013. We identified these exemptions by comparing DOLA's database with tax records. These 430 applicants had filed their 2013 Colorado tax returns as full year non-residents. Revenue defines a full year non-resident as an individual who did not permanently reside within the boundaries of Colorado at any time during the tax year but did receive income from sources within Colorado. The fact that these applicants filed as full year non-residents is a strong indicator that they may not have been using the exempted properties as their primary residences and, therefore, did not qualify for an exemption in Tax Year 2013. Twenty-four of these 430 also provided an out of state mailing address, further increasing the possibility that Colorado is not their primary state of residence.

- We found 10,335 exemptions totaling about $5.1 million from applicants for whom death records exist at Public Health. The fact that death records are on file for these applicants is a strong indicator that the exemptions may not qualify. In all of these cases, counties have either failed to obtain a long-form application from the surviving spouse or trust in which case the exemption should not be allowed until the correct application is filed, or the exemption simply does not qualify because the qualifying applicant is deceased. However, 2,436 of these deceased applicants with exemptions totaling about $1 million did not list any other occupant on their property at the time they applied, making it less likely that there is a surviving spouse who qualifies for the exemption.

- We found 43,138 applicants with approved exemptions totaling about $20 million who did not file a Colorado tax return for 2013 and were not included in the count of applicants with death records, discussed above. There are a number of reasons why a person might not file a tax return in Colorado. For example, for Tax Year 2013, seniors generally were not required to file if they earned income below $11,500 if filing an individual return or about $21,000 if filing a joint return. However, another possibility is that the applicants are not Colorado residents. Of these 43,138 applicants, 205 with exemptions totaling more than $82,600 also provided an out of state mailing address, further increasing the possibility that they are not Colorado residents.

RECOVERING FUNDS FOR NON-QUALIFYING EXEMPTIONS

We found that counties are not recovering funds from taxpayers for approved exemptions that are later found to be non-qualifying. Specifically, no county reported that it attempts to collect any previously exempted taxes from applicants who are found to be non-qualifying after having been approved for the exemption. Additionally, neither DOLA nor the State Treasurer knew of any instances in which a county had repaid the State upon recovering funds from a taxpayer.

WHY DID THE PROBLEM OCCUR?

DOLA'S ROLE IN ENSURING APPROVED APPLICANTS MEET ALL EXEMPTION QUALIFICATIONS IS VERY NARROW. Under Section 39-3-

207(2), C.R.S., DOLA's sole responsibility with respect to the Program is to identify and deny applicants seeking more than one exemption. This charge does not provide for any further State level evaluation to help ensure that all applicants approved by the counties meet all exemption qualifications. If DOLA's role in statute was expanded, DOLA could compare its database of approved county exemptions with Colorado tax records at Revenue and with death records at Public Health to identify additional exemptions that may not qualify. Doing these comparisons annually would have the additional benefit of ensuring that qualifying exemptions are reviewed on a recurring basis rather than only at the time of the initial application. DOLA could share the results of these comparisons with Assessors' Offices so that they could follow up and deny any non-qualifying exemptions. According to DOLA, its data systems might need to be improved to make these comparisons efficiently, which would require some additional resources.

THERE IS NO MECHANISM FOR THE STATE TO RECOVER FUNDS PAID TO COUNTIES FOR NON-QUALIFYING EXEMPTIONS. Section 39-3-205(3), C.R.S., gives County Treasurers the authority to recover funds from a taxpayer if it is determined that the taxpayer did not qualify for the exemption; however, there is no similar language that pertains to the State Treasurer or to DOLA for recovering State funds. DOLA reported that it does not have the authority to recover funds from the counties and the State Treasurer reported it does not have authority to withhold future reimbursements for any exemptions found to be non-qualifying after having been approved. If DOLA worked with the State Treasurer to develop a mechanism to recover improperly reimbursed exemptions from the counties, then the counties would have an incentive to recover funds from the taxpayers.

PROGRAM DESIGN. In addition to gaps in current Program operations, we found that the fundamental design of the Program does not sufficiently protect the State from reimbursing counties for non-qualifying exemptions. This is because, under statute, the Program allows Assessors' Offices, who have no financial stake in the Program, to determine the eligibility of exemptions with no State involvement.

Because state general fund monies are used to reimburse local governments for property tax revenue lost as a result of the exemptions, counties have no financial motivation to ensure they only approve fully-qualified exemptions.

The lack of state involvement in the eligibility determination process may also contribute to county eligibility procedures that are not uniformly rigorous. According to our survey of the 64 counties, while all do some review to evaluate whether applicants own the properties on which they are requesting exemption, fewer than half check for any other eligibility qualifications (i.e., age, length of residence, or primary residency).

WHY DO THESE PROBLEMS MATTER?

The current lack of state level oversight of county eligibility determinations and the limited role of DOLA in the process creates a significant risk that non-qualifying exemptions will be approved and reimbursed to counties by the State.

Our work in this area definitively identified 137 exemptions totaling about $57,800 that should not have been approved and, therefore, represent an inappropriate use of state funds. However, the risk that the state is reimbursing counties for non-qualifying exemptions is significantly higher than these definitive figures might indicate. First, the State currently has no mechanism to determine the scope of non-qualifying exemptions that are being allowed. We identified 83 of the non-qualifying exemptions by following up with counties on notes they voluntarily included in the data they sent to DOLA that implied that the exemptions might not be qualifying. Without these notes, our audit would not have discovered many of the non-qualifying exemptions reimbursed for Property Tax Year 2013. We only saw notes in the data from 18 counties. It is likely that similar situations (e.g., the applicant does not own the property) exist in other counties but were not noted in the data. Second, we identified another $25.3 million in exemptions which may be non-qualifying. Although it is likely that many of these exemptions are allowable, counties would need to follow up with almost 54,000 applicants across the state to try to verify whether each was qualifying or non-qualifying.

Finally, the amounts we identified are only for one tax year. We worked with Assessors' Offices to try to determine how long the 137 exemptions we identified as non-qualifying have been in place. We were able to determine the length of time exemptions have been allowed for 81 of the 137. Specifically, 49 have been allowed for only 1 year, 26 have been allowed for between 2 and 5 years, and 6 have been allowed for between 6 and 12 years. Since the exemption amount changes over time based on property valuations and mill levies, we were unable to determine the exact amount that has been exempted over these time frames. The average exemption amount for all exemptions granted in 2013 was only about $545 per exemption per year. However, because applicants only need to be approved once to receive an ongoing exemption, the risk to the State of spending funds for non-qualifying exemptions is increased. Based on our work, the only time a county typically determines that an approved exemption is no longer qualifying is when the property is sold. As we found from our work, there are applicants who are improperly determined as qualifying or who lose their qualifying status through death or a change in residency but these exemptions could exist and be reimbursed by the State for many years before the errors are corrected.

RECOMMENDATION 1

The Department of Local Affairs (DOLA) should work with the General Assembly to seek statutory changes to strengthen the qualification review process for the Senior and Disabled Veteran Tax Exemption Program, including:

A Working with the Office of the State Treasurer (State Treasurer) on proposed statutory changes to allow DOLA to coordinate with the State Treasurer to recover funds from the counties for any reimbursements made for exemptions approved by the counties that are later found to be non-qualifying.

B Expanding DOLA's role to include comparing county-reported exemption data with residency status information from tax records and death records to identify potentially non-qualifying applicants and providing the results of the comparisons to the counties for follow-up. DOLA should enter into agreements to share information with the Department of Revenue and the Department of Public Health and Environment and improve data systems as needed.

RESPONSE

DEPARTMENT OF LOCAL AFFAIRS

A AGREE. IMPLEMENTATION DATE: JUNE 2016.

In DOLA's reading of the statute we agree there is currently no ability for the State Treasurer to amend the amount of reimbursement requested by a county, or to adjust in the current year for over-reimbursements from a previous year. We further agree that the State Treasurer should be given this authority, and that DOLA has a role in helping the State Treasurer determine that there has been an overpayment to a county. As anticipated by the auditor, such a solution would need a statutory change, and DOLA commits to working with the State Treasurer and members of the Audit committee, or other legislators if necessary, to seek such legislation.

To implement this recommendation, DOLA will initiate discussions with the State Treasurer and other interested parties after the release of the report and, hopefully, conclude with the passage and signing of legislation in the next session of the General Assembly.

B AGREE. IMPLEMENTATION DATE: OCTOBER 2016.

DOLA strongly concurs these changes will strengthen the integrity of the Program and it is the appropriate agency to conduct these reviews. Unfortunately, current statute grants DOLA very limited authority on why exemptions can be denied by DOLA, and a short timeframe in which to review exemptions that have been granted by the counties. Legislation is necessary to expand DOLA's role in the initial approval of applications (for the residency check), and the ability to dictate removal of already granted exemptions for purposes beyond those already outlined by statute (for the death records check). Expanding the amount of time DOLA has for reviewing the applications as submitted by the counties would also be helpful, as these suggestions significantly increased DOLA's review beyond the current process. Upon the release of the report DOLA will contact both the Department of Revenue and the Department of Public Health and Environment to see how to best begin this implementation, in anticipation of legislation being introduced during the upcoming session.

Assuming legislation passes in the 2016 session, this improved process could be started as early as the fall of 2016. Ultimately, this process will work best with an IT data base solution, that in all likelihood will not meet a 2016 timeframe, but manual processes can be undertaken.

PROGRAM DESIGN

Although the design of the Program is a matter of public policy and therefore outside the scope of our audit, we identified options the General Assembly could consider to help resolve the current problems with how the Program is designed in statute. For example, the Program could be changed to require a state agency, rather than counties, to determine eligibility. Currently, the Property Tax Administrator within DOLA is charged with approving property tax exemptions on certain properties used for religious, charitable, and/or educational purposes [Section 39-2-117, C.R.S.]. This change might require the responsible state agency to involve Assessors' Offices in verifying property ownership as well as implement other procedures to verify eligibility. Another alternative might be for counties to continue making eligibility determinations, but to charge a state agency with directing how counties should verify eligibility and monitoring the determinations through some type of review process. Changing the Program design so that the State has greater assurance that it only pays for qualifying exemptions is likely to require additional state resources.

Our audit recommendations for improvement within the current structure of the Program should help reduce the number of non-qualifying exemptions that are approved. However, without a change in the fundamental design of the Program to give state agencies more authority and responsibility, the State will continue to be at risk of paying significant amounts for non-qualifying exemptions.

REVIEW FOR MULTIPLE APPLICATIONS

While counties are responsible for the bulk of eligibility determination for the senior and disabled veteran property tax exemption, the Department of Local Affairs (DOLA) is responsible for ensuring that no single applicant claims more than one exemption, and it also searches for married couples who apply for the exemption on multiple properties. Statute [Section 39-3-207(1), C.R.S.], requires that each Assessor's Office provide a report to the Department on the senior and disabled veteran property tax exemptions approved in his or her county each year by October 10th. Statute [Section 39-3-205(2)(a), C.R.S.] also specifies that these reports must contain, among other items, the name and social security number of the applicant claiming the exemption, and the name and social security number of each additional person who occupies the property.

DOLA staff upload all of the county reports into a database and conduct a search for multiple applications with the same social security number. Since social security numbers are unique to the individual, any match between two applicants could indicate that an individual has applied for multiple exemptions or that the social security number is wrong for one of the applicants. Additionally, any match between an applicant on one property and an occupant of another property could indicate that a married couple is applying on multiple properties.

When DOLA's search identifies multiple applications with matching social security numbers, DOLA sends a letter to each applicant denying his or her application because of the match. The letters let the applicants know that they can protest the denial by providing proof of their social security number. If DOLA determines that any applicant has applied for more than one exemption, statute requires DOLA to deny all applications from that applicant. DOLA reported it also denies any applications for which the applicant does not provide proof of his or her social security number. Once protests have been decided, DOLA provides notice to Assessors' Offices of the denied applications in their counties by December 1.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

Our audit work included a review of relevant statutes and Program procedures, a survey of all 64 Assessors' Offices, and interviews with Program staff about DOLA's process for reviewing Assessors' Offices reports. We also performed data analysis using DOLA's property tax exemption database for Tax Year 2013 which included more than 200,000 exemptions and more than 347,000 names of applicants and other occupants of the properties. We compared DOLA's list of approved applicants to the Department of Revenue's (Revenue) tax return information to identify any individual property tax exemption applicant who filed a joint 2013 Colorado tax return. We also compared the results of our analysis to the list of approved exemptions sent by counties to the State Treasurer for reimbursement to determine the amount the State reimbursed counties for non-qualifying applicants.

The purpose of our analysis was to determine whether DOLA has adequate processes to identify and deny non-qualifying applicants. As discussed below, neither individuals nor married couples are allowed more than one exemption per year.

HOW WERE RESULTS MEASURED?

Our audit work tested whether any property tax exemptions that were allowed in Tax Year 2013 did not comply with the following statutory provisions:

MARRIED COUPLES MAY NOT CLAIM SEPARATE EXEMPTIONS. Section 39-3-203(5), C.R.S., states that "two individuals who are legally married, but who own more than one piece of residential real property, shall be deemed to occupy the same primary residence and may claim no more than one exemption." DOLA's Program instructions further clarify that married couples who apply for the exemption on multiple properties will be denied the exemption on each property.

EACH APPLICANT MAY CLAIM ONLY ONE EXEMPTION. Section 39-3-207(2)(a)(I), C.R.S., requires DOLA to examine the reports sent by Assessors' Offices to, "ensure that no applicant has claimed more than one exemption." If DOLA determines that an applicant has claimed more than one exemption, statute requires DOLA to provide written notice to the applicant that he or she is not entitled to any exemption. This statute further establishes a process for applicants to protest a denial but only on the grounds that the applicant did not actually apply for more than one exemption.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DID THEY OCCUR?

First, we found 196 exemptions totaling about $110,000 that were paid by the State but did not qualify because they were filed by married couples seeking separate exemptions. We worked with Revenue to compare the DOLA data with Colorado tax records and identify applicants who filed joint Colorado tax returns with another applicant. In accordance with statute and DOLA's Program instructions, each of these 196 exemptions should have been denied. DOLA does not use tax filing information from Revenue to identify married couples who apply for multiple exemptions. However, DOLA could identify more non-qualifying applicants if it worked with Revenue to compare Program exemption data with Colorado tax filing records to identify and deny multiple applications from married couples.

Second, we found six likely non-qualifying applicants with exemptions totaling about $1,400 that DOLA's review did not find. Two of these were applicants with different names whose social security numbers were the same. It is likely that one of these social security numbers is incorrect and that the other is correct, so one exemption may be qualifying. The other four were applicants who appear to be two married couples and who applied for separate exemptions. In these cases, the applicants were each listed as occupants on the other application. DOLA did not identify any of these matches, and it did not issue denials to the applicants requesting that they provide documentation proving they are entitled to an exemption. When we brought these exceptions to DOLA's attention, staff stated that they will search specifically for these exemptions when they do their review for Tax Year 2015 and deny them if they are still claiming the exemption. According to DOLA staff, their inability to identify these social security number matches is a result of the way in which the database currently handles certain types of properties. DOLA reported that it is working to identify the problem with the current search parameters to solve the problem.

WHY DO THESE PROBLEMS MATTER?

Although the number and amount of non-qualifying exemptions we identified is relatively small, for every instance in which DOLA fails to identify or deny an applicant or married couple applying for multiple exemptions, State funds are improperly paid to counties. In our review we found that the State paid a total of $110,288 in Fiscal Year 2014 to counties for the exemptions we identified as likely to be non-qualifying. Specifically, $109,536 in State funds was paid to counties for tax exemptions granted to married couples who submitted multiple applications, and $752 was paid to counties to cover exemptions for applicants who may have applied with an incorrect social security number.

RECOMMENDATION 2

The Department of Local Affairs (DOLA) should expand its processes for identifying and denying non-qualifying applicants by:

A Working with the Department of Revenue (Revenue) to conduct an annual match of filing status data from Colorado tax returns to the DOLA database to identify and deny married couples who apply for more than one property tax exemption.

B Identifying the problem with the current social security number search that allows some matches to go unidentified and changing the search as necessary.

RESPONSE

DEPARTMENT OF LOCAL AFFAIRS

A AGREE. IMPLEMENTATION DATE: OCTOBER 2016.

Checking whether married couples are applying on multiple properties is already within DOLA's statutory responsibility. DOLA will explore its authority to enter into an agreement with Department of Revenue to have them run a comparison on DOLA's current data base and additional 2015 new applicants against Revenue's information on taxpayers' marital status. If it can be done through interagency agreement and without additional statutory permission, DOLA intends to put this review process in practice for 2015 applications. It will be difficult to achieve in the current timeframe that DOLA has to review all applications (October 10 through October 31), and permission to access the Revenue information may need statutory change.

As other improvements to this program will require statutory changes, DOLA will seek a change to provide a reasonable timeframe for this review and any permission necessary for Revenue's examination of

DOLA's information. It will be DOLA's goal to have a process in place to implement this married couple review no later than October, 2015 if it can be done without legislation, October of 2016 if legislation is necessary. Ultimately, this process will work best with an IT data base solution, that in all likelihood will not meet a 2016 timeframe, but manual processes can be underway by that time.

B AGREE. IMPLEMENTATION DATE: JANUARY 2015.

There are more than 200,000 exemptions granted in this program that are reviewed by DOLA on an annual basis. DOLA agrees there were six applications that should have been denied that were not discovered in DOLA's review. DOLA has already worked with OIT staff to explore why these particular applications were not discovered in DOLA's initial check, and changes have been made to the program so this type of error should not happen in the future.

Additionally, DOLA has expanded its comparison of social security numbers to include an "occupants to occupants" match in the event that this information may trigger questions regarding whether an application should be granted. DOLA will use this improved system during our 2015 review. Although these changes have already been completed, they will be tested when DOLA reviews 2015 applications in October.

DATA VALIDATION

As discussed earlier, the Department of Local of Affairs (DOLA) uses data sent by the counties to identify applicants applying on multiple properties using a query in its database that identifies all applicants who have listed a social security number (SSN) that matches another applicant or occupant. In addition, in RECOMMENDATION 1, we discuss the benefits of expanding DOLA's review function to include matching its data with death record and tax filing data from the Department of Public Health and Environment (Public Health) and the Department of Revenue (Revenue), respectively. These matches would be more accurate if they were based on comparing SSNs between DOLA's database and the data available from Public Health and Revenue.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We performed a search for duplicate SSN's contained within the DOLA database and asked DOLA to follow up with any applicant whose SSN matched the SSN of another applicant or occupant. The purpose of our test work was to determine whether DOLA's data for review are accurate.

Because DOLA uses SSNs to identify duplicate applications that should be denied, it is important for the SSNs to be accurate.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

The SSNs that DOLA uses to perform its review are not always accurate. Overall, we found 96 applications in the 2013 exemption data which contained the same SSN number for applicants or occupants with different names. A person's SSN should be unique to that individual, so one of the SSNs in each of these matches must be inaccurate. DOLA's review for matching SSNs among applicants did identify 14 of these matches and DOLA was able to obtain corrected SSNs from the individuals, but DOLA did not identify two applicants with matching SSNs. However, DOLA does not have any reason to search for occupants with matching SSNs, so it did not identify the other 80 matches.

Our testing for invalid SSNs was limited to the data available from DOLA, which means that we were only able to identify possibly invalid SSNs that matched the SSNs of other applicants or occupants. The matches we found indicate that there are likely other invalid SSNs in DOLA's data that are not identified because they do not match another SSN in the data set.

WHY DID THE PROBLEM OCCUR?

DOLA does not have any way to validate the SSNs reported by counties and none of the Assessors' Offices we contacted/surveyed had a method to verify that the SSNs reported by applicants are valid. One way SSNs could be validated would be for DOLA to request the Social Security Administration to verify county-reported numbers before conducting its review. According to Revenue, SSN data is federally protected and, therefore, DOLA would need to enter into an agreement with the Social Security Administration to have that agency verify SSNs. Another possibility is for DOLA to enter into an agreement with Revenue that would allow it to share federally protected information. The drawback to this solution is that Revenue would not be able to verify SSNs for anyone who was not required to file a Colorado tax return but may still qualify for the property tax exemption.

WHY DOES THIS PROBLEM MATTER?

Section 39-3-207(2)(a)(I), C.R.S., requires DOLA to annually examine the reports sent by Assessors' Offices to identify applicants who have claimed more than one exemption and deny all such claims. DOLA's review for multiple exemption claims is based on a search of matching SSNs within its database. However, the existence of invalid SSNs within the database creates a risk that DOLA will not identify some applicants applying for multiple exemptions.

Additionally, if DOLA is to use outside agencies, such as Revenue and Public Health, to obtain indications of potential ineligibility, DOLA would want to ensure that the data sent to these agencies is accurate. Considering that an SSN is the most common means of comparing data sets for applicants, it is clear that if an SSN is invalid within DOLA's database, it would not match the presumably valid SSN contained within the other agencies' databases. Therefore, if there were to be an indication of ineligibility for an individual who listed an invalid SSN, DOLA would not be aware of this indicator as the outside agency would be unable to identify that individual within their database.

RECOMMENDATION 3

The Department of Local Affairs (DOLA) should investigate entering into an agreement with the Colorado Department of Revenue (Revenue) or the Social Security Administration, as appropriate, to annually validate the social security numbers it receives from the counties.

RESPONSE

DEPARTMENT OF LOCAL AFFAIRS

AGREE. IMPLEMENTATION DATE: SEPTEMBER 2015.

DOLA agrees that correct social security numbers are vital to the integrity of the review process to determine if there are any applications seeking exemption that should be denied. DOLA will investigate the possibility of and request entering into an agreement to validate social security numbers with Revenue or the Social Security Administration no later than September, 2015.

The implementation date is in regard to the request for an agreement. If DOLA is granted access to this information we will look to implement with our review of applications in the fall of 2016, there is probably not time to implement a process before the 2015 review in October.

REIMBURSEMENTS WITHOUT STATE-LEVEL REVIEW

The final step in processing senior and disabled veteran property tax exemptions is for each county to request reimbursement from the State Treasurer for all of its approved exemptions for the tax year. This process begins with the Assessors' Offices compiling their final report of allowed exemptions, computing the individual exemption amounts, and sending these reports with the exemption amounts to their respective County Treasurers. The County Treasurers each send the State Treasurer a report of the approved exemptions and their requests for reimbursement. The State Treasurer also requires each County Treasurer to send a signed letter attesting to the total dollar amount of reimbursement the county expects to receive.

By statute [Section 39-3-207(4)(a), C.R.S.] the State Treasurer is required to reimburse local governments for property tax exemptions by April 15 of each year. The State Treasurer issues a warrant to each County Treasurer for the amount needed to fully reimburse all local government entities for the amount of revenue lost due to the exemption of property taxes accrued during the previous property tax year. The reimbursement is paid from the State General Fund and is not subject to statutory limitation on State General Fund appropriations. The State Treasurer reimbursed counties roughly $110 million for more than 200,000 senior and disabled veteran property tax exemptions claimed from Tax Year 2013.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We compared DOLA's final list of roughly 200,000 exemptions (i.e., the list of exemptions approved by counties and not denied by DOLA) with the list of exemptions for which the State Treasurer reimbursed counties. We refer to this complete list of all exemptions the State Treasurer reimbursed to all counties as the "State Treasurer's report." The purpose of the comparison was to determine whether the State Treasurer had reimbursed counties for any exemptions that were unallowable or that the counties did not provide to DOLA for review. The audit work performed also included a review of relevant statutes and procedures, as well as interviews with Program staff regarding the process for reimbursement.

HOW WERE THE RESULTS MEASURED?

We used the following statutory requirements to evaluate whether the State Treasurer had reimbursed counties for any exemptions that were non-qualifying or had not been fully reviewed.

COUNTIES SHOULD SEND ALL EXEMPTIONS ALLOWED TO DOLA FOR REVIEW. Section 39-3-207(1), C.R.S., states that each Assessor's Office shall forward to DOLA a report on the exemptions allowed in his or her county for the current property tax year. Since these reports go to DOLA for further review, it is reasonable to expect that they contain all of the exemptions that the counties will allow for the current year.

APPLICANTS MUST FILE BY STATUTORY DEADLINES TO QUALIFY FOR EXEMPTIONS. Section 39-3-205(1), C.R.S., establishes the initial deadlines for filing exemption applications. Specifically, seniors must apply by July 15 and disabled veterans must apply by July 1 to be eligible for a protest period. Section 39-3-206(2), C.R.S., allows for the filing of late applications by September 15 for seniors and September 1 for disabled veterans. However, this statute also indicates that applicants may not protest a denial if they file a late application.

THE STATE TREASURER SHOULD ONLY REIMBURSE COUNTIES FOR QUALIFYING EXEMPTIONS FROM THE YEAR PRIOR TO THE YEAR IN WHICH THE COUNTY SEEKS REIMBURSEMENT. Specifically, Section 39-3-207 (3), C.R.S., states that each County Treasurer shall forward to the State Treasurer a report on the exemptions allowed in his or her county "for the **PREVIOUS** property tax year" and Section 39-3-207 (4), C.R.S., states that the State Treasurer shall issue a warrant to each County Treasurer for the amount of property tax revenue lost as a result of the exemption to property taxes that accrued during the **PREVIOUS** property tax year. [Emphasis added.]

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

We did not identify problems with the majority of the exemptions for which the State Treasurer reimbursed counties for Tax Year 2013. However, we did find that the State Treasurer reimbursed counties for a small number of exemptions that were non-qualifying and/or that were not fully reviewed, as described below.

REIMBURSEMENTS FOR UNALLOWABLE EXEMPTIONS. We identified 19 exemptions totaling about $7,900 that the State Treasurer reimbursed to counties but were non-qualifying. These included:

- 10 exemptions totaling $2,800 that Assessors' Offices told us did not meet all of the eligibility requirements for the exemption. These were initially denied by an Assessor's Office but were then mistakenly left on the list of approved exemptions sent to the County Treasurers.

- 4 exemptions totaling about $2,600 that were submitted by applicants after the statutory deadlines. Assessors' Offices should not have approved these applications because they did not meet the requirement of timely application established in Section 39-3-206, C.R.S. In addition, because the applications were late, the counties could not provide the information to DOLA to include in its review for multiple applications.

- 5 exemptions totaling about $2,500 that were denied by DOLA but were not removed by the county from the reports sent to the State Treasurer for reimbursement.

REIMBURSEMENTS FOR EXEMPTIONS NOT FULLY REVIEWED. We found 130 exemptions totaling about $60,900 that the State Treasurer reimbursed to counties but that were not provided to DOLA by the counties. Although it is likely that most of these exemptions were allowable, DOLA did not review them to ensure that applicants did not claim more than one exemption. Specifically:

- 122 exemptions totaling about $56,900 that, according to the counties, were mistakenly left off the reports they sent to DOLA.

- 8 exemptions totaling about $4,000 that the counties approved after submitting their reports to DOLA. DOLA told us that it had advised the counties to include these exemptions on their reports to the State Treasurer, even though DOLA did not check them for duplicate claims.

REIMBURSEMENTS FOR PRIOR TAX YEARS. We found 62 exemptions totaling $19,000 for exemptions from years prior to Tax Year 2013. According to Assessors' Offices for the eight counties that included exemptions from prior tax years, these exemptions should have been included in the reimbursement request sent to the State Treasurer in 2013 for Tax Year 2012, but were not. However, statutes appear to allow the State Treasurer to reimburse counties only for the prior tax year (e.g., only for 2013 in the 2014 reimbursement).

WHY DID THE PROBLEM OCCUR?

As the Program is currently structured, there is no single agency that ensures that the State only reimburses counties for qualifying exemptions. Specifically, no state agency is responsible for identifying and correcting discrepancies such as:

- Exemptions denied by Assessors' Offices but mistakenly left on lists forwarded to County Treasurers.

- Exemptions denied by DOLA but sent to the State Treasurer for reimbursement.

- Exemptions sent to the State Treasurer for reimbursement but never sent to DOLA for review.

- Exemptions for previous tax years sent to the State Treasurer for reimbursement.

The Program could be modified to assign this responsibility to DOLA. This would involve requiring DOLA to review all exemptions for allowability and conduct additional reviews, as necessary, before the County Treasurers send requests to the State Treasurer for reimbursement to the counties. This would ensure that DOLA reviews the final list of approved exemptions and that all exemptions sent to the State Treasurer for reimbursement have gone through all review steps, eliminating the risk of non-qualifying exemptions remaining on the list reimbursed by the State.

One way of modifying the process would be for DOLA to compare its list of exemptions reviewed and not denied with the counties' final lists of approved exemptions to ensure that all exemptions sent to the State Treasurer for reimbursement have been fully reviewed and not denied. This option would keep the current process mostly intact; however, it does require DOLA to add a second review. There is currently only a 2-week period (April 1st to April 15th) during which this review could occur. Therefore, the existing statutory timelines would most likely need to be changed such that the counties finalize their lists of approved exemptions and exemption amounts earlier than April 1st or the date of the reimbursement to the counties is delayed beyond April 15th.

Another solution would be to move DOLA's entire review to the very end of the process. In this scenario, DOLA would perform its reviews only after the counties have completed their eligibility reviews and calculated the exemption amounts. DOLA could then provide the State Treasurer with a list of all the approved exemptions and amounts for each county. With this solution, DOLA only has to conduct one review. However, this option would also involve changes to the statutory timelines so that this review could occur early enough in the process for the counties to calculate the final exemption amounts and issue tax bills by early January, as required by Section 39-10-103(1)(a), C.R.S.

WHY DO THESE PROBLEMS MATTER?

According to the Colorado Constitution, the state is required to compensate each local government entity for the net amount of property tax revenue lost as a result of the property tax exemption. Without adequate review by a State agency of the exemptions on which reimbursement is based, there is an increased risk that the State is reimbursing counties for non-qualifying exemptions. The lack of review at the state level to help ensure reimbursements meet all requirements also increases the risk of fraud since non-qualifying exemptions could be included on the reports sent to the State Treasurer without being detected.

For Tax Year 2013 we identified $87,800 that was reimbursed to counties for exemptions that were either non-qualifying or were not fully vetted by DOLA. Specifically, $7,900 was reimbursed for exemptions that did not qualify, and $60,900 was reimbursed for exemptions that were not reviewed by DOLA and so might be unallowable due to being one of multiple applications filed by a single applicant or a married couple. The remaining $19,000 were for exemptions for earlier tax years which does not seem to be allowable based on the statutory language that only allows counties to request, and the State Treasurer to reimburse for, exemptions for the prior tax year (in this case, Tax Year 2013).

RECOMMENDATION 4

The Department of Local Affairs (DOLA) should work with the counties, the Office of the State Treasurer (State Treasurer), and the General Assembly to establish a process for DOLA to conduct a final review and give final approval for the list of approved exemptions sent to the State Treasurer for reimbursement.

RESPONSE

DEPARTMENT OF LOCAL AFFAIRS

AGREE. IMPLEMENTATION DATE: JUNE 2016

DOLA agrees that a final examination and approval of the counties' requests for exemption reimbursements prior to payment by the State Treasurer would improve controls over the program and it is logical for DOLA to be responsible for that review. DOLA will work to include this issue in any legislation introduced on the program, and will coordinate with both the counties and the State Treasurer to develop a process for completing this final examination and approval of the counties' requests.

If legislation passes in 2016, this process of a final review should be able to take place prior to the State Treasurer's disbursement of funds in April of 2017.

COLORADO OFFICE OF THE STATE AUDITOR

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DEPARTMENT OF PERSONNEL & ADMINISTRATION

COMMUTING USE OF STATE-OWNED VEHICLES

NOVEMBER 2016

PERFORMANCE AUDIT

THE MISSION OF THE OFFICE OF THE STATE AUDITOR
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DIANNE E. RAY, CPA

STATE AUDITOR

November 21, 2016

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Department of Personnel & Administration's design of the State's commuting processes. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Personnel & Administration.

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CONTENTS

REPORT HIGHLIGHTS

COMMUTING USE OF STATE-OWNED VEHICLES
PERFORMANCE AUDIT, NOVEMBER 2016

DEPARTMENT OF PERSONNEL & ADMINISTRATION

CONCERN

The audit identified fundamental concerns with how the State manages the use of take-home vehicles:

- The statutory criteria to authorize use of a take-home vehicle for commuting are unclear and some criteria may not align with the State's business needs.
- The Department of Personnel & Administration's (Department) policies and rules do not appear to align with Internal Revenue Service (IRS) regulations for determining whether and how much vehicle fringe benefit income should be added to an employee's pay.
- The Department does not carry out all the functions specified in statute for the use of take-home vehicles or serve as a central oversight or support entity with respect to the use of take-home vehicles across state government.

KEY FINDINGS

- For only one of the commuters in our sample of 30 did the state agency demonstrate that the commuting arrangement met all statutory requirements. We estimate that $1.38 million of the total $1.54 million spent on commuting in Calendar Year 2015 was for commuting arrangements that did not meet all the statutory criteria.
- The Department does not review commuting authorizations for compliance with criteria or provide clear guidance to agencies related to the use of take-home vehicles.
- The State's commuting requirements and agency internal controls do not clearly ensure compliance with IRS requirements for reporting vehicle fringe benefits. As a result, the State may not have properly reported vehicle fringe benefits for the more than 1,000 employees with take-home vehicles in Calendar Year 2015. This includes 327 employees for whom we identified specific concerns. For example, the State may have underreported vehicle fringe benefits for two state employees by more than $5,000 each in Calendar Year 2015. Both the employees and the State may be liable for taxes on the amounts underreported and the State could be charged monetary penalties by the IRS.
- Of the 17 commuters required to reimburse the State in Calendar Year 2015, we found 65 percent were not reimbursing the amounts that they should have according to Department rules. Overall, the State only collected about $15,400 in reimbursements out of the $40,800 it was owed in Calendar Year 2015.

BACKGROUND

- Take-home vehicles are state-owned vehicles that employees drive home instead of leaving at a state facility when not being used for business purposes.
- State employees may use state-owned take-home vehicles for travel between the employee's residence and place of business when approved by the agency executive director [Section 24-30-1113(2), C.R.S.].
- The Department is responsible for promulgating rules related to the use of take-home vehicles and determining that commuting authorizations meet the criteria for commuting [Sections 24-30-1113(3), C.R.S.].
- The use of a take-home vehicle is a taxable fringe benefit according to the IRS [26 C.F.R., 1.61-21(a)(1)].
- In Calendar Year 2015, a total of eight state agencies authorized 782 employees to commute (based on data available as of June 2016). An additional 327 employees had take-home vehicles in Calendar Year 2015 (based on data available as of October 2016).
- We estimate that commuting cost the State about $1.54 million in Calendar Year 2015, of which employees reimbursed the State about $15,400.

KEY RECOMMENDATIONS

- Work with stakeholders to recommend key factors to determine eligibility for commuting that would promote efficient and effective state business and work with the General Assembly on statutory changes, as needed.
- Work with the Office of the Attorney General, and tax specialists as appropriate, to assess the State's compliance with IRS requirements for reporting employees' vehicle fringe benefits, revise rules and guidance based on the assessment, and report any corrections to employees' Calendar Year 2015 W-2s.
- Assess whether reimbursement should be set at the value of the commuting fringe benefit according to IRS regulations and take steps to ensure employees correctly reimburse the State.

The Department agreed with all 10 recommendations.

CHAPTER 1

OVERVIEW OF COMMUTING IN STATE-OWNED VEHICLES

Under certain circumstances, state employees may use state-owned vehicles for commuting between the employee's residence and place of business. Specifically, statute allows agency executive directors to authorize employees to use a state-owned vehicle for commuting when such use of the vehicle would (1) promote a legitimate nonpartisan state interest, (2) promote the efficient operation of the state motor vehicle fleet system, and (3) be cost effective to the state agency [Section 24-30-1113(2), C.R.S.]. Statute exempts the institutions of higher education and the State Board of Stock Inspection Commissioners from these requirements [Section 24-30-1102(5), C.R.S.].

ADMINISTRATION OF COMMUTING IN STATE-OWNED VEHICLES

Whereas agency executive directors are responsible for authorizing commuting, statute provides for the Department of Personnel & Administration (Department) to play two key roles in the administration of commuting using state-owned vehicles: (1) promulgate rules related to commuting, and (2) make a determination based on review and verification of written application forms and supporting documentation that commuting purposes meet the criteria for commuting [Sections 24-30-1113(2), (3) and (4), C.R.S.].

The Department's State Fleet Management group within the Division of Central Services carries out these responsibilities. The Department has created rules governing commuting in state-owned vehicles and has established processes for collecting and reviewing authorization forms and maintaining data about commuters. The Department has less than one full-time-equivalent staff dedicated to the commuting function.

The Department's rules contain several provisions to establish the requirements for commuting and how commuting benefits should be administered, including:

- Commuting can only be authorized when the employee is *required* to commute [1 C.C.R., 103-1, Sections 3.1.02, 3.1.04 and 3.2.01].
- Using a state-owned vehicle for personal purposes, other than authorized commuting, is strictly prohibited [1 C.C.R., 103-1, Sections 3.4.01]. Prohibited personal uses of a state-owned vehicle include: (1) transporting any person unrelated to official state business, including family members or relatives; (2) any recreational

use; (3) transporting or storing personal property of any kind; and (4) any unlawful use.

- The process by which agencies submit commuting authorization forms to the Department [1 C.C.R., 103-1, Section 3.2].
- Requirements for determining whether a commuter will reimburse the State for commuting and in what amount [1 C.C.R., 103-1, Sections 3.3 and 3.5]. The Department establishes the reimbursement rate on an annual basis.
- Requirements for determining the value of the commuting fringe benefit for taxation purposes, with reference to Internal Revenue Service (IRS) regulations [1 C.C.R., 103-1, Section 3.5.02 and 3.5.03].
- Agencies' responsibilities for the enforcement and monitoring of vehicle use for commuting purposes [1 C.C.R., 103-1, Section 3.6].

The Department has developed a commuting authorization form for agencies to use for the purpose of reporting any employees that have been authorized to commute. According to the Department, the agency's executive director must determine if the necessity of the commute meets the standards in statute and attest to this on the form. Department rules [1 C.C.R., 103-1, Section 3.2.03] require the executive director to complete and sign the form for each employee required to commute, attesting that the form is complete and accurate and that the commuting requirement is a benefit to the State. If the commuting is taxable or reimbursable (as described later), the form must also be signed by the agency's payroll officer. Any changes to the employee's commuter status must be reported immediately to the Department [1 C.C.R., 103-1, Section 3.2.04].

The Department uses the Colorado Automotive Reporting System (CARS) database to maintain information on employees who are authorized to commute in state-owned vehicles. The database includes detailed information on each fleet vehicle such as the vehicle identification number and the agency to which it is assigned. The database does not track which state-owned vehicles are used for commuting or by which employees. The Department sends an annual list of active commuting approvals to each agency for the executive director to review and approve [1 C.C.R., 103-1, Section 3.2.05], and updates CARS with the names of commuters and the timeframe of the authorized commuting accordingly.

At times, agencies are not timely in reporting, or can fail to report to the Department when an employee starts or terminates commuting in a state-owned vehicle. Similarly, the Department does not always properly update its CARS database with the names of commuters or the months that they were authorized to commute. Therefore, the number of commuters recorded in CARS during a set period, such as a calendar year may not be accurate. We worked with the Department and agencies to ensure that we had the most accurate information possible on employees who commuted in Calendar Year 2015. For example, we verified with agencies the names of commuters and the months of authorized commuting arrangements for Calendar Year 2015. The information we provide in this report on the number of commuters in the State in Calendar Year 2015 is based on the best available information provided by the Department and agencies as of June 2016. As described in CHAPTER 2, we later identified additional employees that appear to have been commuters in Calendar Year 2015 and also learned of numerous employees with take-home vehicles who were not considered commuters.

Based on information we had as of June 2016, a total of eight state agencies authorized 782 employees to commute in Calendar Year 2015. EXHIBIT 1.1 outlines the number of authorized commuters by agency and the total number of estimated commuting miles as a percentage of the agency's total fleet miles in Calendar Year 2015.

EXHIBIT 1.1. COMMUTING USE OF STATE-OWNED VEHICLES BY AGENCY CALENDAR YEAR 2015					
AGENCY	NUMBER OF COMMUTERS	ESTIMATED COMMUTING MILES[1]	AVERAGE MILES PER COMMUTER	TOTAL FLEET MILES	COMMUTING AS % OF TOTAL FLEET MILES
Corrections	346	2,485,800	7,200	10,435,200	24%
Transportation	243	1,691,900	6,900	10,309,000	16%
Public Safety	87	785,300	9,000	18,160,200	4%
Revenue	66	703,900	10,700	2,922,500	24%
Natural Resources	25	104,800	4,200	14,005,700	1%
Local Affairs	10	140,300	14,000	429,500	33%
Public Health and Environment	4	10,700	2,700	1,472,200	1%
Military Affairs	1	7,100	7,100	273,100	3%
TOTAL	782	5,929,800	7,580	58,007,400	10%

SOURCE: Office of the State Auditor analysis of commuting information provided by the Department of Personnel & Administration and agencies as of June 2016 and fleet data provided by the Department of Personnel & Administration.
[1] Estimation is based on the daily roundtrip commute miles from the employee's commuting authorization form multiplied by 20 days each month for each of the months the employee commuted in Calendar Year 2015.

COST OF COMMUTING IN STATE-OWNED VEHICLES

The costs of using state-owned vehicles for commuting are incurred by agencies that authorize this use. Agencies reimburse the Department for the use of state-owned vehicles, including commuting. Specifically, agencies pay for both the fixed and variable operating costs for each permanently assigned vehicle. Permanently assigned vehicles are those that are assigned to a specific agency for use by employees of that agency. These are unlike vehicles in the state motor pool, which are available to be checked out from the Department on a short term basis. Fixed costs include vehicle lease payments and a management fee, which funds State Fleet Management's administrative overhead including personal services, administrative expenses, leased space, and indirect costs. Agencies pay the fixed costs associated with a vehicle whether it is used for commuting or not. Variable costs include fuel and maintenance costs for permanently assigned vehicles at state agencies. In addition, agencies also pay a cents per mile insurance rate for each vehicle they are permanently assigned that is determined by the Department. Commuting use of a vehicle increases the variable costs agencies must pay. Agencies are appropriated funds for the fixed cost of vehicles, but are not appropriated specific funds for variable costs. Instead, the agencies pay for variable costs from their operating budgets. Each year, the Department calculates a variable rate for each class of vehicle and for each agency by projecting fuel costs and averaging past actual variable costs, which acts as a fixed per mile rate. The amount agencies pay the Department in variable costs is based on this per-mile rate and the actual miles from monthly odometer reports. The use of the vehicle for commuting is included as part of agencies' variable costs.

The Department does not calculate an annual total cost to the State of commuting. To estimate this cost for Calendar Year 2015 for the purposes of the audit, we collected Department data on the per-mile variable and insurance cost it charged agencies by vehicle type, asked agencies what vehicle each commuter typically drove, and reviewed the authorized commuting miles reported on the commuting authorization forms. In Calendar Year 2015 there were a total of 782 commuters, which we estimate cost the State approximately $1.5 million, as shown in EXHIBIT 1.2.

EXHIBIT 1.2. ESTIMATED COST TO THE STATE OF COMMUTING FOR CALENDAR YEAR 2015

AGENCY	NUMBER OF COMMUTERS	ESTIMATED COST TO THE STATE[1]	AVERAGE COST PER COMMUTER	TOTAL VARIABLE FLEET COSTS	COMMUTING AS % OF TOTAL VARIABLE FLEET COSTS
Corrections	346	$590,200	$1,700	$3,439,400	17%
Transportation	243	$468,200	$1,900	$2,415,200	19%
Public Safety	87	$223,300	$2,600	$4,810,300	5%
Revenue	66	$175,600	$2,700	$569,400	31%
Natural Resources	25	$41,300	$1,700	$4,895,300	1%
Local Affairs	10	$36,300	$3,600	$85,100	43%
Public Health and Environment	4	$2,900	$700	$262,200	1%
Military Affairs	1	$1,400	$1,400	$67,200	2%
TOTAL	782	$1,539,200	$2,000	$16,544,100	9%

SOURCE: Office of the State Auditor analysis of commuting information provided by agencies as of June 2016 and variable rate data provided by the Department of Personnel & Administration.

[1]Estimation of cost is based on daily roundtrip commute miles from the employee's commuting authorization form multiplied by 20 days each month for each of the months the employee commuted in Calendar Year 2015, multiplied by the variable rate per mile (including insurance) by vehicle class and agency.

In Calendar Year 2015, a total of 17 of the 782 commuters were required to reimburse the State for their commute. Approximately $15,400 in total was credited back to the agencies employing these reimbursing commuters to help offset the expenses to the State associated with using state-owned vehicles to commute. We discuss the reimbursement requirements in CHAPTER 2.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. Audit work was performed from December 2015 to October 2016. We appreciate the assistance provided by management and staff at the Department of Personnel & Administration and agencies with employees who commute.

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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The key objective of this audit was to evaluate the design of the State's commuting processes, including the role of the Department, the valuation of taxable fringe benefits of commuting, and the controls for collecting reimbursement from commuting employees.

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

- Reviewed the relevant requirements in statutes, rules, IRS regulations, and guidance related to authorization and taxation of the use of state-owned vehicles for commuting purposes.
- Interviewed Division of Central Services staff, Office of the State Controller staff, and staff at agencies with commuters from our sample of 30 employees.
- Reviewed data from the Department's CARS database on employees who were authorized to commute in state-owned vehicles from Calendar Years 2013 through 2015 and verified the Calendar Year 2015 data with agencies.
- Reviewed Position Descriptions and additional information provided by agencies for a statistically-valid sample of 30 of the 782 employees, which represented six of the eight agencies with commuters.
- Contacted all 19 agencies with permanently assigned fleet vehicles in Calendar Year 2015 to inquire about the assignment of take-home vehicles, which includes all vehicles state employees take home with them at night instead of parking at a state facility when not being used for business purposes.
- Reviewed Colorado Personnel Payroll System (CPPS) data on the vehicle fringe benefits added to employees' gross income for Calendar Year 2015.
- Reviewed the amount each of the 17 reimbursing commuters reimbursed the State in Calendar Year 2015.
- Reviewed fiscal note documentation and discussed with the Department methods to best estimate the cost of commuting to the State.
- Reviewed other states' and public employers' policies for authorizing commuting and valuing commuting fringe benefits.

We relied on sampling techniques to support our audit work. We selected a random, statistically-valid sample of 30 Calendar Year 2015 commuters to review. We designed our sample based on our audit objective to assess the design of processes for authorizing commuting and to allow us to project the results of our audit work to the total population of Calendar Year 2015 commuters.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objective. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in CHAPTER 2 of this report.

CHAPTER 2

AUTHORIZING AND VALUING COMMUTING

When an agency authorizes an employee to use a state-owned vehicle for commuting, there are three main considerations to ensure that the commuting arrangement is properly handled. First, the commute must comply with statutory requirements for being efficient for the state fleet system and cost effective to the agency. Second, the commute must be valued appropriately for reporting fringe benefits to the Internal Revenue Service (IRS). Third, the agency has to determine whether the employee is required to reimburse the State for the commute, and if so, collect the reimbursement. We assessed these three areas and found that the Department of Personnel & Administration (Department) needs to improve its processes and guidance. In addition, we identified opportunities for policymakers to consider legislative change. We discuss these issues and provide recommendations for improvement in this chapter.

COMMUTING AUTHORIZATIONS

State employees and officers are eligible for commuting between work and home in state-owned vehicles when the executive director of the agency determines that the commuting arrangement meets authorization requirements in statute and in rules promulgated by the Department.

Statute [Section 24-30-1113, C.R.S.] establishes the requirements for authorizing the use of state-owned vehicles for commuting and the Department's role in the authorization process. Specifically, statute [Section 24-30-1113(3), C.R.S.] provides for the Department to create rules for authorizing commuting and reviewing the commuting purpose to ensure authorizations meet the requirements in statute and rules. Executive directors have authority to approve commuting.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

In Calendar Year 2015, there were 782 commuting employees at eight agencies, according to available data as of June 2016. We collected and reviewed the authorization forms for all 782 commuters. We reviewed Position Descriptions and additional information provided by agencies for a statistically-valid sample of 30 of the 782 employees, which represented six of the eight agencies with commuters. The purpose of this work was to determine if the commuting arrangements were authorized in accordance with the requirements in statute and rules discussed below.

COMMUTING MUST PROMOTE EFFICIENT, EFFECTIVE STATE BUSINESS. Statute [Section 24-30-1113(1) and (2), C.R.S.] and Department rules [1 C.C.R., 103-1, Sections 3.1.04 and 3.2.01] allow agency executive directors to authorize commuting when it is necessitated by state business and the executive director determines that the commute:

- Promotes a legitimate nonpartisan state interest.
- Promotes the efficient operation of the state motor vehicle fleet system.
- Is cost effective to the state agency.

COMMUTING MUST BE REQUIRED FOR THE EMPLOYEE. Department rules [1 C.C.R., 103-1, Sections 3.1.04 and 3.2.01] specify that the agency executive director has to determine that commuting in a state-owned vehicle is *required*. The authorization form includes a section for agencies to attest that the commuting is required and explain why.

FORMS AUTHORIZING COMMUTING SHOULD BE SIGNED BY EXECUTIVE DIRECTORS. Statute [Section 24-30-1113(2), C.R.S.] and Department rules [1 C.C.R., 103-1, Sections 3.2.01 and 3.2.03] specify that agency executive directors are responsible for determining whether or not to authorize commuting. The Department reports that it expects the executive director, and not a designee, to sign the form for each commuter. One agency's policy is for the Governor to authorize the commute of the agency's executive director.

COMMUTING SHOULD BE VERIFIED BY THE DEPARTMENT. Department rules [1 C.C.R., 103-1, Section 3.2.03] require an agency to submit an authorization form to the Department for each commuter, and statute [Section 24-30-1113(3), C.R.S.] requires the Department to determine whether the commute meets requirements.

THE DEPARTMENT SHOULD KNOW ABOUT EMPLOYEES WITH TAKE-HOME VEHICLES. Department rules require agencies to submit commuting authorization forms for all employees who are assigned take-home vehicles, which are those that employees drive home instead of parking at a state facility when not being used for business purposes. Specifically, Department rules [1 C.C.R., 103-1, Sections 3.1.02 and 3.2.06] make a distinction between commuters who are employees required to use a state-owned vehicle to drive between their homes and principal or regular workplaces, and “non-commuters” who are employees with take-home state-owned vehicles, but because they work out of their homes or the vehicles, they are considered by the Department to be non-commuters. Department rules [1 C.C.R., 103-1, Sections 3.2.03 and 3.2.06] require agencies to submit commuting authorization forms to the Department for each commuter as well as each non-commuter. The commuting authorization form has a box for agencies to indicate if the employee is a non-commuter.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, our review of 30 sampled commuting arrangements found no evidence that the commute had been authorized for any reason other than to promote a legitimate state interest. However, we found inconsistencies across agencies with respect to how they determined that the commuting arrangements met other requirements. In addition we found that the Department does not have complete and accurate information about employees with take-home vehicles. We discuss these issues below.

AGENCIES DID NOT DETERMINE THAT THE COMMUTE PROMOTES THE EFFICIENT OPERATION OF THE STATE FLEET SYSTEM. For 29 of the 30 commuters in our sample, representing all six agencies in the sample, the agency did not provide us with information to explain how the commute promoted the efficiency of the state fleet system. Instead, the agency described other reasons for authorizing their commuting arrangements, as follows:

- For 11 of the 30 commuters, the agency employing the commuters reported that its authorization was not based on a consideration of how the commute promoted the efficiency of the fleet system, but instead solely on promoting public safety. The agency reported that fast response times are critical to ensuring public safety and that the commuter could be called to respond to emergency situations at any time.

- For the other 18 commuters, the agency provided information about how the commute improved agency operational efficiency and made the agency better able to accomplish its business needs, but not how the commute improved the efficiency of the fleet system. For example, one agency explained that it was more efficient for the agency to have the employee drive directly from his home to different locations instead of driving to a central location first to retrieve the state vehicle, but did not demonstrate the impact on any state fleet vehicles or the fleet system.

For one of the 30 commuters in our sample, the agency provided information showing that requiring the employee to commute promoted efficient use of the fleet system. Specifically, the agency reported that authorizing a commuting arrangement as opposed to requiring the employee to use a motor pool vehicle resulted in reduced mileage on fleet vehicles and provided information showing its calculation. However, it was not clear that this analysis had been done as part of the basis for deciding that commuting should be authorized for this commuter, or whether the analysis was done in response to our questions.

AGENCIES DID NOT DETERMINE, OR COULD NOT SUBSTANTIATE HOW THEY DETERMINED, THAT THE COMMUTE WAS COST EFFECTIVE TO THE AGENCY for 27 of the 30 commuters in our sample, representing five agencies. Specifically:

- For 11 commuters, the agency indicated that it did not evaluate cost effectiveness because public safety was the sole consideration when authorizing the commute.

- For 16 commuters in our sample, the agency reported that the commute was more cost effective than an alternative option, such as reimbursing the employee for mileage, but did not provide enough detail to determine how it reached that conclusion. For 14 of these commuters, the agency described how commuting was less costly than alternative options (e.g., reimbursing the employee for using his or her own car) but did not calculate the actual savings. For the other two, the agency reported it would not be able to calculate the cost savings of the commute.

For three of the 30 commuters in our sample, the agency provided information with specific amounts it estimated were saved through the commute. However, the agencies that authorized these three commutes were not consistent in how they reached this conclusion and may not have always made correct assumptions about the cost to the State of the alternative to which using a state-owned vehicle for commuting was being compared. For example, in two cases, the cost of the alternative included reimbursing the employee for using a personal vehicle for at least some mileage that is not reimbursable under State Fiscal Rules because it is considered the person's commute rather than work-related miles. In addition, in two of the three cases it was not clear that these analyses had been done as part of the basis for deciding that commuting should be authorized for this commuter, or whether the analysis was done in response to our questions.

For only one of the commuters in our sample of 30 did the agency provide information about both how the commute promoted the efficient use of the state fleet system and how the commute was cost effective to the agency.

AGENCIES DID NOT CLEARLY SHOW THAT THE COMMUTE WAS REQUIRED for nine of the 30 commuters in our sample, representing five agencies.

Four of the commuters had problems in more than one area. Specifically:

- For four of the 30 commuters in our sample, the commuting authorization form did not clearly indicate that commuting was required. Specifically, in all four cases the “required” box on the authorization form was not checked to indicate that the commute was required for the employee. In three cases, the authorization form or attached statement indicated that the employee responds to emergencies as part of his or her duties, but because the “required” box was not checked, it is not clear that the agency was clearly *requiring* the employee to commute, as opposed to allowing the employee to commute if he or she chose to do so. For the fourth case, the lines available to indicate why the commute was required were blank on the form. For these four commuters we reviewed the employee’s Position Description as another source that might indicate that commuting was a requirement for the employee. The Position Description outlines key requirements of a position. For three of these commuters, there was no mention of commuting in the Position Description and for the fourth commuter, the agency had no Position Description for the employee.

- For one of the 30 commuters in our sample, the employee’s Position Description specifically stated that it was a job requirement that the employee, “Must own a vehicle capable of winter travel.” The commuting authorization form indicated that commuting was required because “…immediate and efficient response to events or accidents necessitates commuting.” However, since owning a specific type of vehicle was already a job requirement for this position, it was unclear why commuting in a state-owned vehicle was also required for this employee.

- For eight of the 30 commuters in our sample, the proper authority (typically the executive director) did not sign the authorization form. In one case the commuting authorization form was not signed at all and in seven cases the commuting authorization form was signed by someone other than the executive director or other proper authority. This includes one case where the executive director signed his own commuting authorization form when the policy at that agency states that the Governor must authorize the commute for the executive director. Four of these commuters also did not have the "required" box checked on their authorization forms. When forms have not been signed by the proper authority, it is unclear that commuting has been appropriately required by the agency.

THE DEPARTMENT DID NOT HAVE ACCURATE AND COMPLETE INFORMATION ABOUT EMPLOYEES WITH TAKE-HOME VEHICLES IN CALENDAR YEAR 2015. The Department could not report to us a complete list of employees with take-home vehicles in Calendar Year 2015. Specifically, the Department could not report to us the number of non-commuters and did not have a complete list of commuters.

- **NON-COMMUTERS.** During the course of the audit, we identified approximately 50 non-commuter forms that had been provided to the Department. However, the Department reported that it did not maintain information on the number of non-commuters and could not provide us with a complete or accurate number of non-commuters. To determine the number of non-commuters, in September and October 2016, we contacted agencies that had permanently assigned state fleet vehicles to ask about the assignment of take-home vehicles in Calendar Year 2015. Ten of the 19 agencies with permanently assigned state fleet vehicles reported a total 322 non-commuters with take-home vehicles in Calendar Year 2015.

- **COMMUTERS.** Four agencies responded to our inquiry about take-home vehicles with information suggesting that additional employees that the agency had previously not reported to the Department as commuters may have actually been commuters in Calendar Year 2015. This included five employees from three agencies with take-home vehicles in Calendar Year 2015 who appeared to report to an office, as opposed to working out of the vehicle or the employee's home. As such, these employees should have been reported to the Department as commuters and the agencies should have determined that the employees met the requirements for commuting. The fourth agency may have had additional commuters, but did not count them as such because of its internal policy to allow employees to take home state-owned vehicles for up to 7 days each month for 3 consecutive months without being considered a commuter.

WHY DID THESE PROBLEMS OCCUR?

MISALIGNMENT OF PRACTICE AND STATUTE IN DETERMINING COMMUTING ELIGIBILITY. The results of our audit work indicate a misalignment between current practice and some of the provisions in statute as discussed in this section. To the extent actual practice reflects the business needs of state agencies, this may mean that some statutory provisions do not effectively support those needs.

- **PROMOTION OF THE EFFICIENT OPERATION OF THE STATE MOTOR VEHICLE FLEET SYSTEM.** The fact that virtually none of the agencies in our sample considered the effect of commuting on the efficiency of the state fleet system may indicate, at a minimum, that it is an ambiguous criterion for agencies to apply. Expecting agencies to evaluate this criterion may not be feasible because it is unclear how the decision to authorize a single commuter could significantly impact the efficiency of the entire state fleet and each agency likely has little information about the fleet as a whole. Department staff thought the concept of efficiency to the fleet was not well defined and subject to individual interpretation. The Department could not provide an example of how an agency would demonstrate that the commute promotes state fleet efficiency because it does not think that it is possible to do so. One agency reported that it believes the Department is in a better position to evaluate this criterion because it has broader knowledge of state fleet operations than individual agencies. Thus, if the impact of commuting arrangements on the efficiency of the entire fleet system continues to be a factor that the General Assembly wants evaluated, it may be more practical to require this of the Department.

- **COST EFFECTIVE TO THE STATE AGENCY.** The fact that nearly all of the agencies in our sample either did not determine the cost effectiveness of commuting arrangements, and instead considered only the ability to promote public safety, or could not substantiate how they determined the commute was cost effective may indicate the need to reconsider cost effectiveness as a mandatory criterion. Changes to statute may be beneficial to allow agencies to forego evaluation of cost effectiveness if a commute promotes public safety.

In contrast, our work shows that helping an agency meet its business needs, accomplish its mission, and promote efficient operations are key factors agencies consider important in authorizing commuting. For example, agencies reported the following as primary reasons that they authorized commuting:

- **TO ENSURE PUBLIC SAFETY**, including (1) allowing highway construction workers to commute so that they can respond to incidents on state highways within 30 minutes to reduce threats to public safety, as well as to minimize traffic delays and limit costs associated with problems at construction projects; (2) allowing avalanche forecasters to commute so that they can quickly assess the risk of avalanches in all weather conditions and at all times, and respond to avalanche risks regardless of the location; and (3) allowing law enforcement officers to commute so that they can respond to incidents as quickly as possible.

- **TO PROMOTE EFFICIENCY**, including (1) allowing an employee who picks up and delivers evidence in criminal cases to various locations throughout the state to commute rather than requiring her to drive to the office each morning to pick up the vehicle and then drive to a pick-up or drop off location; and (2) allowing an employee who has frequent meetings outside the office to commute so he can drive directly between home and the meetings rather than having meetings scheduled around picking up and dropping off a vehicle at a state office.

Statute does not provide guidance or direction for agencies in interpreting what would demonstrate that a commute promotes the efficient operation of the state motor vehicle fleet system or is cost effective to the state agency. Changes to clarify the criteria in statute and ensure that they reflect both the intent of the General Assembly and the business needs of state agencies may be warranted. We found that several government employers provide for agencies to authorize commuting based on the type of job without an analysis of the effect on the employer's overall fleet system or cost effectiveness. We identified 10 other states and local governments that had clear criteria for authorizing commuting and found that seven of the 10 allowed either emergency responders or law enforcement to commute without conducting a cost effectiveness analysis. The other three governments require a cost effectiveness analysis for all commuters. For example, one state requires a cost analysis for long-term assignment of a vehicle to home. Specifically, its administrative rules state, "For long-term assignment of a vehicle to home, the agency must do a cost-benefit analysis. The analysis must consider the costs and risks of daily travel to the home, the frequency of call-outs, parking risks, any salary savings, and other factors. The analysis should weigh reasonable alternatives such as the cost of reimbursing private vehicle mileage."

LACK OF CENTRAL OVERSIGHT. Currently, no single state agency, including the Department, takes responsibility for verifying that all commuting arrangements meet all the criteria in statute and rules. This lack of central oversight appears to contribute to the inconsistencies and lack of compliance we found. The Department told us it does not believe its role is to determine that commuting arrangements authorized by agencies meet the established criteria and that making such a determination would inappropriately put its judgment in place of that of agency executive directors. However, statute and rules give the Department authority to render determinations on whether commuting meets requirements and provide for agencies to appeal the Department's determinations and actions in the event of disagreement. Specifically, Section 24-30-1113(3), C.R.S., states, "A determination by the director [of Central Services] that commuting purposes meet the criteria for commuting authorization *shall* [emphasis added] be based on review and verification of written application forms and supporting documentation submitted in the manner provided in rules and regulations adopted by the division." Further, Section 24-30-1106, C.R.S., provides for agencies to voice disagreement with "any decision…or other act of the department…" and requires the Department executive director to render decisions on such disagreements. Similarly, Department rules provide for the Department to revoke commuting authorizations or impose restrictions and for an agency appeal process [1 C.C.R., 103-1, Section 3.6.03].

Prior to 2006 the Department's rules provided for a clearer oversight role, specifying that state-owned vehicles could not be used for commuting without "the [director of Central Services'] favorable determination, based on review and verification of the application and support documents..." The Department was not able to provide information about why it eliminated this determination role from the rules.

Overall, we found that the Department does not conduct any type of substantive review of commuting authorization forms submitted by agencies, has not consistently collected and maintained information about employees with take-home vehicles, and has not clearly defined what constitutes commuting and when commuting authorization forms need to be submitted to the Department. We discuss these issues below.

- **THE DEPARTMENT DOES NOT ENSURE THAT COMMUTING AUTHORIZATIONS ARE COMPLETE.** The Department reports that its main function with regard to reviewing authorization forms is to ensure that they are complete. However, the Department did not ensure that it had complete authorization forms for 149 of the 775 Calendar Year 2015 commuters in its Colorado Automotive Reporting System (CARS) database. Specifically:

  - For 79 commuters, the authorization form included no explanation about why the commute was required.

- For 51 commuters, the form did not have any authorization signature.
- For 24 commuters, the form included no daily round trip mileage.
- For 5 commuters, the Department did not have the completed form on file.

For nine of these commuters, the authorization form had problems in more than one area. In addition, when the audit started, the Department was unaware of seven additional Calendar Year 2015 commuters that agencies reported to us as of June 2016. As discussed above, we became aware of five additional employees in September and October 2016 that may have been commuters in Calendar Year 2015.

These pieces of information are important to ensuring that the commuters meet the basic criteria and help demonstrate that agencies have considered the criteria in authorizing the commute. In our January 2005 performance audit of the *Maintenance and Use of State Fleet Vehicles*, we recommended that the Department review authorization forms for completeness and signatures and follow up with agencies about incomplete forms; the Department agreed with our recommendation and had planned to implement it by June 2005.

- **THE DEPARTMENT DOES NOT ASK FOR SUPPORTING DOCUMENTATION.** Department rules [1 C.C.R., 103-1, Section 3.2.03] require the agency to submit the authorization form to the Department for each commuter, but there is no mention in the rules about supporting documentation. One method agencies could use to document the need for commuting would be to notate in Position Descriptions that commuting is required for the position. Currently, there is no explicit Department rules or guidance requiring such notation.

- **THE DEPARTMENT HAS NOT CONSISTENTLY COLLECTED AND MAINTAINED INFORMATION FROM AGENCIES ABOUT NON-**

COMMUTERS. Although Department rules require agencies to submit a commuting authorization form for their non-commuters, the Department has not clearly enforced this requirement. For example, when the Department sent out an annual verification, it provided agencies with its current list of commuters and asked that agencies make it aware of any commuters not on the list. However, it did not ask for verification of non-commuters or provide any additional information to agencies on non-commuters. In addition, when the Department received authorization forms clearly indicating an employee was a non-commuter, the Department reported to maintain a copy of the form, but not enter the employee into its CARS database or have any system for tracking these employees. It appears that one of the four agencies that did not report all of its Calendar Year 2015 commuters to the Department was unclear about when an employee should be considered a commuter or a non-commuter. Consistently collecting and maintaining information about non-commuters could help ensure that agencies are correctly classifying employees as commuters and non-commuters. In October 2016, Department staff reported to have changed the verification process to include the collection of non-commuter information and record information about non-commuters in the CARS database.

- **THE DEPARTMENT HAS NOT CLEARLY DEFINED COMMUTING OR WHEN AUTHORIZATION FORMS NEED TO BE SUBMITTED.** Department rules [1 C.C.R., 103-1, Sections 3.1.02(c) and 3.2.03] require agencies to submit authorization forms to "document the authorization of commuting" and define commuting in the following way: "It is commuting if an employee is *required* [emphasis added] to use a state vehicle to drive *each day* [emphasis added] to a state business location…" The definition of commuting in Department rule creates ambiguity in two ways.

First, if an agency has not clearly *required* the employee to commute, but has instead just *allowed* the employee to use a state-owned vehicle for commuting, an agency might consider the employee exempt from having to meet the commuting requirements in statute and not submit a commuting authorization form to the Department. In October 2016, we learned about one agency head whose agency reported that this employee regularly used a state-owned vehicle to commute throughout Calendar Year 2015. However, the agency did not submit a commuting authorization form to the Department because, "The employee was not formally required by the [agency] to commute ("an authorized commuter") at any point in [Calendar Year] 2015, so [the employee] does not meet the definition of a commuter in DPA rules." Because the agency did not require the commute, it did not assess whether the employee met the commuting requirements in statute and rules.

Second, if an employee does not use a state-owned vehicle to commute *each day,* an agency might consider the employee exempt from having to meet the commuting requirements in statute and not submit a commuting authorization form to the Department. The agency that developed its own policy of allowing employees to take home state-owned vehicles for up to 7 days each month for 3 consecutive months without being considered commuters reported to us that it believed these employees did not fit the definition in Department rules of a commuter. However, statute does not appear to exempt employees who commute less frequently than each day from commuting requirements. For example, in outlining the requirement for commuters to reimburse, statute [Section 24-30-1113(4)(a), C.R.S.] specifies that commuters shall reimburse for 20 days per month *regardless of the actual number of days the employee used the vehicle to commute*. It is therefore unclear that the Department has appropriately defined commuting in line with statutory intent.

Changes to statute could help clarify the breadth and limits of the Department's responsibilities, such as whether the General Assembly intends the Department to carry out a statewide oversight role, define key terms that influence who is covered by commuting requirements, serve only as a record keeper, or have no responsibilities for the commuting arrangements of other agencies. If statute is changed to modify the Department's responsibilities, the Department should then implement rules and procedures to fulfill that role.

LACK OF CLARITY ABOUT APPLICABILITY OF COMMUTING REQUIREMENTS FOR THE JUDICIAL BRANCH. Two of the employees who appeared to be commuters in Calendar Year 2015 for whom the agency did not submit a commuting authorization form were from the Judicial Branch. The Department reports that it has traditionally considered the Judicial Branch to be subject to fleet-related requirements and related rules promulgated by the Department. In Calendar Year 2015, the Department provided a total of 51 vehicles to the Judicial Branch for its use, which the Department reports must be managed according to its rules. However, staff at both the Judicial Branch and the Department report that it is not clear whether commuting requirements apply to the Judicial Branch.

The lack of clarity stems from the fact that statute specifies that the Department implement a centralized fleet system, the provisions of which "shall apply to the executive branch of the state of Colorado..." [Section 24-30-1104(2), C.R.S.]. Statute also provides for the Department to develop necessary rules and regulations "in relation to departments, institutions, and agencies of the executive branch..." [Section 24-30-1105(1), C.R.S.]. It appears that the General Assembly may have intended to exempt the Judicial and Legislative Branches from the Department's regulation with regard to fleet vehicles. However, it is not entirely clear whether the General Assembly intended for this exemption to also apply to the commuting requirements in Section 24-30-1113, C.R.S. The commuting statute requires the "state agency" executive director to authorize commuting and determine that the commuting meets requirements. The definition of "state agency" in Section 24-30-1102(5), C.R.S., does not explicitly include or exclude the Judicial and Legislative Branches. The Department reports that it has not sought legal advice on whether the Judicial and Legislative Branches are subject to the commuting requirements outlined in statute and Department rules. The Legislative Branch had no permanently assigned vehicles in Calendar Year 2015 and we have come across no evidence to suggest that the Legislative Branch has approved the use of state-owned vehicles for commuting.

The confusion around the applicability of commuting requirements to the Judicial and Legislative Branches may also illustrate a policy issue. Specifically, if the General Assembly intended for the Judicial and Legislative Branches to be subject to, or excluded from, the requirements outlined in statute for commuting, policymakers may wish to consider amending the statute to make this intention clear.

WHY DO THESE PROBLEMS MATTER?

The results of our work indicate that many commuting arrangements may be costing the State resources without meeting two of the three statutory criteria: that commuting only occur when it promotes efficient operation of the state fleet, and is cost effective to the agency. Specifically, for only one commuter in our sample of 30 did the agency demonstrate how the commute met all three requirements. Based on the results of our audit work, we estimate with 95 percent confidence that the State spent $1.38 million on commuting in Calendar Year 2015 that did not meet current statutory requirements. For more information on the assumptions used in estimating costs, see EXHIBIT 1.2.

On the other hand, if the criteria currently in statute do not accurately reflect the needs of the State or the goals of the General Assembly, and the intent of the program is that commuting is a resource for agencies to meet their business objectives, then the results we found may not reflect an improper use of state resources. Instead, our results may indicate that strict adherence to the requirements that commuting only be authorized when it promotes the efficient operation of the fleet and is cost effective to the agency might negatively impact agencies' ability to effectively carry out their mission. Agencies reported that each of the commutes in our sample of 30 was tied to accomplishing a business objective. If most of the current commuting arrangements in the State were discontinued due to failure to comply with all of the existing criteria, agencies might have difficulty meeting their business objectives in an efficient manner.

Clarifying the General Assembly's intent for the program may also help agencies that have not authorized commuting. In Calendar Year 2015, there were 11 agencies with permanently assigned fleet vehicles that had not reported any commuters to the Department. These agencies may have no commuters because they have been strictly adhering to the requirements of needing to demonstrate the efficient operation of the state fleet system and the cost effectiveness to the agency, even if such commuting would have helped them carry out their mission more effectively.

Whether the criteria for commuting remain as currently written in statute or are revised, it is important that agencies only authorize commuting when they *require* the employee to commute. When agencies have not clearly required commuting of the employee, there is a risk that the commute has been authorized not because it is critical for state business, but because it is a perk for the employee.

When there is not a clear understanding of what constitutes commuting, there is a risk that agencies do not consistently identify commuters and ensure that they meet the requirements for commuting.

Further, if the General Assembly intended there to be some central oversight of commuting, that intent is not being achieved. Because of the way in which the Department has interpreted its role as limited to collecting information from agencies about their commuting arrangements, and because the Department does not always have accurate information about commuting arrangements that have been authorized or about non-commuters, there is no place to get complete, consolidated, and accurate information about commuters and non-commuters for the State as a whole.

RECOMMENDATION 1

The Department of Personnel & Administration should work with stakeholders to recommend key factors to determine eligibility for commuting that would promote efficient and effective state business and work with the General Assembly on statutory changes, as needed.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

AGREE. IMPLEMENTATION DATE: MAY 1, 2017.

The Department will work with agencies to identify eligibility criteria for commuting that promotes efficient and effective state business as well as complies with IRS regulations and state statutes. The Department will also work with the General Assembly to revise state statutes to reflect the eligibility criteria, as needed.

RECOMMENDATION 2

The Department of Personnel & Administration (Department) should work with the General Assembly, and stakeholders as appropriate, to clarify the role the General Assembly intends the Department to have with respect to commuters and non-commuters throughout the State. The Department should work with the General Assembly on legislative changes so that statute accurately and clearly reflects its role.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

AGREE. IMPLEMENTATION DATE: MAY 1, 2017.

The Department will work with the General Assembly to clarify the role of the Department and agencies regarding commuters and non-commuters throughout the State. The clarification will include the General Assembly's intended roles and responsibilities for the Department and agencies for administration of the State fleet program. The Department will work with the General Assembly to revise State statutes to reflect clarification of the Department's role, as needed.

RECOMMENDATION 3

As long as current statutory requirements remain in effect, the Department of Personnel & Administration should improve its oversight of commuters and non-commuters and management of data related to them by:

A Developing guidance for how agencies should demonstrate compliance with the commuting authorization requirements.

B Collecting sufficient information to review agency commuting authorizations.

C Implementing a review and verification process that fulfills its statutory responsibilities.

D Collecting and maintaining information about employees with take-home vehicles.

E Revising the definition of commuting in rules to eliminate ambiguity about whether use of a state-owned vehicle for commuting is allowed if it has not been formally required and whether the employee has to use the state-owned vehicle each day in order to be a commuter.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

A AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

If current statutory requirements remain in effect, the Department will develop guidance for how agencies will meet statutory requirements. The Department currently has less than one FTE to monitor the commuting process. With clarification from the General Assembly on the role of the Department and these requirements, the Department may need additional FTE to fulfill its role and meet its statutory requirement.

B AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

If current statutory requirements remain in effect, the Department will collect sufficient information to review agency determinations. With clarification from the General Assembly on the role of the Department and these requirements, the Department may need additional FTE to fulfill its role and meet its statutory requirement.

C AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

If current statutory requirements remain in effect, the Department will implement a review and verification process that fulfills its statutory requirements. With clarification from the General Assembly on the role of the Department and these requirements, the Department may need additional FTE to fulfill its role and meet its statutory requirement.

D AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

If current statutory requirements remain in effect, the Department will collect and maintain information about employees' take home vehicles. With clarification from the General Assembly on the role of the Department and these requirements, the Department may need additional FTE to fulfill its role and meet its statutory requirement.

E AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

If current statutory requirements remain in effect, the Department will revise the definition of commuting in rule to eliminate ambiguity about whether use of a state-owned vehicle for commuting is allowed if it has not been formally required and whether the employee has to use the state-owned vehicle each day in order to be a commuter.

RECOMMENDATION 4

The Department of Personnel & Administration should work with the Office of the Attorney General to seek legal advice about the applicability of commuting requirements outlined in Section 24-30-1113, C.R.S., to the Judicial Branch, communicate the results of this to the Judicial Branch, and modify its policies and procedures as needed.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will work with the Office of the Attorney General to clarify the applicability of commuting requirements of Section 24-30-1113, C.R.S., to the Judicial Branch. The Department will modify its policies and develop guidance as needed to address commuting in the Judicial Branch.

COMMUTING FRINGE BENEFIT REPORTING

Employees who use an employer-provided vehicle for commuting receive a vehicle fringe benefit according to the IRS. Depending on the circumstances, the employer may need to add the value of this vehicle fringe benefit to the employee's gross income and be taxed accordingly. The IRS requirements for identifying the fringe benefit value of using employer-provided vehicles are complex. To comply with IRS regulations employers generally need to:

- Determine whether the vehicle is excluded from taxation. IRS regulations [26 C.F.R., 1.132-5(h)] exclude from taxation all use, including commuting use, of "qualified nonpersonal use" vehicles, which are specially equipped vehicles, such as marked patrol cars or utility vans without passenger seats. Out of the 782 employees that commuted in Calendar Year 2015, agencies classified 487 commuters (62 percent) as exempt from taxation because they commuted in these types of vehicles.

- Determine the taxable value of any personal use of the employer-provided vehicle, if the vehicle is not excluded from taxation. Commuting is considered personal use of the vehicle and the value is considered taxable income by the IRS [26 C.F.R., 1.61-21(a)(1)]. Commuting means use of the vehicle by the employee to get from home to primary places of business. For 295 of the 782 commuters (38 percent) that were not exempt from taxation in Calendar Year 2015, the commuting use of the state-owned vehicle was a fringe benefit that needs to be valued. Depending on how much, if anything, the employee reimbursed the employer for the benefit, the value also needs to be added to the employee's gross income. We will refer to these employees as taxable commuters.

One of the methods the IRS allows employers to use for valuing a commuting fringe benefit is each one-way commute at $1.50 [26

C.F.R., 1.61-21(f)(3)(i)]. This method, called the **COMMUTING VALUATION RULE**, can be used when (1) the employer requires the employee to commute in the employer-provided vehicle, (2) the employer has a policy disallowing any personal use of the vehicle aside from commuting, and (3) the employee is not a control employee [26 C.F.R., 1.61-21(f)(1)]. Department rules [1 C.C.R., 103-1, Sections 3.1.02, 3.1.04 and 3.4] specify that employees authorized to commute must be *required* to commute and may not use the vehicles for personal use other than commuting. Department rules [1 C.C.R., 103-1, Section 3.1.03] define a control employee as an elected official or employee whose annual compensation is equal to or greater than the federal executive level V, which was $148,700 in Calendar Year 2015, and only two taxable commuters in Calendar Year 2015 were control employees based on information we received as of June 2016. Thus, the vast majority of taxable commuters met the requirements for having the commute be valued at $1.50 each way and agencies generally valued the commuting fringe benefit at $60 per month, which assumes the employee commuted 20 days each month. EXHIBIT 2.1 provides an example of how this valuation method works.

EXHIBIT 2.1. EXAMPLE OF INCOME CALCULATION USING COMMUTING VALUATION RULE	
Each one-way commute is valued at $1.50 each. If the employee commuted 20 days, roundtrip, each month, the total vehicle fringe benefit value for Calendar Year 2015 would be $720 ($1.50 each way x 2 times per day x 20 days per month x 12 months).	+$720
Amount employee paid for the benefit, if anything (assumes the employee reimbursed). If the employee reimbursed the State $500 for the year's commuting, the reimbursement amount would not be included in the employee's gross income.	-$500
Amount added to employee's gross income. The amount the State needs to include in the employee's gross income for Calendar Year 2015 is $220 ($720 commuting fair market value - $500 reimbursed by the employee).	=$220
SOURCE: Office of the State Auditor analysis of IRS regulations [26 C.F.R., 1.61-21(f)].	

The IRS' commuting valuation rule, which is the simplest valuation method, allowing employers to value an employee's commute at $1.50 each way without substantiation of business use of the vehicle, cannot be used for control employees [26 C.F.R., 1.61-21(f)(1)(v)]. Instead, the IRS provides for two other special valuation rules that can be used for control employees. One of these methods, the **CENTS-PER-MILE VALUATION RULE** [26 C.F.R., 1.61-21(e)], counts each mile driven for personal use, including commuting, at the IRS' standard mileage rate (57.5 cents in Calendar Year 2015). The other method, the **LEASE VALUE RULE** [26 C.F.R., 1.61-21(d)], generally involves identifying the lease value of the vehicle based on IRS tables, and adding the lease value plus the value of any employer-provided fuel to the employee's gross income. The employer has the option to include the entire lease value in the employee's gross income, leaving the employee to claim any relevant exemptions for business use of the vehicle on his or her taxes, or the employer can exclude business use from the reported gross income if the employer has an adequate accounting of the business use [26 C.F.R., 1.132-5(b)(1)(iv)].

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed Department rules, State Fiscal Rules, and other state guidance to assess whether the Department has established policies and processes to comply with IRS requirements for reporting vehicle fringe benefits.

The Internal Revenue Code and IRS regulations require that fringe benefits, including the use of an employer-provided vehicle, be added to gross income, unless an exclusion is specifically provided for in the Internal Revenue Code [26 U.S.C., 61(a)(1) and 26 C.F.R., 1.61-21(a)(1)]. In general, the employer is required to report any vehicle fringe benefit on the employee's W-2 and deduct, withhold, and deposit taxes on vehicle fringe benefit income [26 U.S.C., 6051(a)(3) and 26 U.S.C., 3402(s)].

Under IRS regulations [26 C.F.R., 1.274-5(k)] employers do not need to account for the business use of the vehicle in valuing an employee's vehicle fringe benefit when the employee is assigned a qualified nonpersonal use vehicle. For an unmarked law enforcement vehicle to qualify as qualified nonpersonal use, the employee assigned to the vehicle needs to regularly carry firearms and any commuting "must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation" [26 C.F.R., 1.274-5(k)(6)(i)].

Statute [Section 24-30-201(1)(f), C.R.S.] charges the State Controller with coordinating all procedures for financial administration and control at state agencies, so as to integrate them into an adequate and unified system. One of the State Controller's responsibilities is to report and deposit federal taxes withheld from state employees' paychecks in accordance with IRS requirements. Statute [Section 24-17-102, C.R.S.] also charges agencies with having adequate systems of internal control, including adequate authorization and record-keeping procedures to provide effective accounting control over state assets, liabilities, revenues, and expenditures. Together these statutory requirements put responsibility on the State Controller to develop systems, and agencies to implement those systems, that allow for the State to correctly value and report vehicle fringe benefits of state employees.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DID THESE PROBLEMS OCCUR?

Overall, we found that the State's commuting requirements and agency internal controls do not clearly ensure compliance with IRS requirements for reporting vehicle fringe benefits, as outlined below.

THE DEPARTMENT DOES NOT REQUIRE TRACKING OF ACTUAL DAYS COMMUTED. Department rules [1 C.C.R., 103-1, Section 3.5.02] and guidance promulgated by the State Controller's Office (*2015 Year-End Information & 2016 Tax Information*) require agencies to impute commuting income using a standard 20 days per calendar month regardless of the actual number of commuting days per month. The

Department's approach in assuming 20 days of commuting each month, without collecting information from employees about the actual number of days commuted, may conflict with IRS requirements.

The IRS generally requires employers to have one of the following related to an employee's commuting:

- An adequate accounting of the use of a vehicle, such as an employee maintained account book, log, trip sheet, or similar record in which the information is recorded at or near the time of the commute along with supporting documentary evidence [26 C.F.R., 1.274-5(f)(4)], or

- An employee provided statement of some kind about how many days the employee actually used the employer-provided vehicle for commuting [26 U.S.C., 274(d)].

The Department reported that it applies the 20 days per month standard for valuing commuting fringe benefits to mirror the 20 days per month reimbursement requirement in statute [Section 24-30-1113(4)(a), C.R.S.], which we discuss in the next finding. However, the 20 day per month requirement in statute does not necessarily apply to valuing the fringe benefit of the commute for reporting to the IRS. Agencies reported to us that they do not track the number of days employees *actually* commuted for tax reporting purposes. As a result, agencies are determining the value of commuting fringe benefits based on 20 days. It is not clear that this approach is consistent with the IRS regulations cited above.

Agencies reported they do not currently have systems in place to determine how many days their commuting employees actually commute when they are assessing the value of commuting fringe benefits, but they may be able to compile the information. One agency reported that it began keeping vehicle logs in November 2015 and other agencies reported that they may be able to determine how many days employees commuted by other means, such as by compiling information from employees' calendars.

THE DEPARTMENT DOES NOT APPEAR TO FOLLOW IRS REQUIREMENTS FOR VALUING THE COMMUTES OF CONTROL EMPLOYEES. For valuation and taxation of commuting by control employees, Department staff report that agencies are supposed to value the commute by taking the number of roundtrip daily miles on the commuter's authorization form, multiplied by 20 days each month, multiplied by a per-mile rate established by the Department, which was $.38 for January through April 2015, and $.35 for May through December 2015. For example, a control employee authorized to commute 50 miles round trip would be valued at $350 for a commute in December 2015 (50 miles x 20 days x 35 cents per mile).

This method of valuing the fringe benefit for control employees does not appear to align with IRS requirements because:

- The Department has not used the IRS' standard per-mile rate (57.5 cents in Calendar Year 2015). Instead, the Department created its own rate based on fleet-average purchase price and fuel, maintenance, and insurance costs. IRS regulations do not appear to allow employers to develop their own system for valuing the vehicle use.

- The Department has not collected information from employees about the actual miles driven for commuting versus business use of the vehicle. IRS regulations generally require employers to have an accounting of travel, which includes time, place, and business purpose of miles, recorded through diaries, logs, or other records. Without substantiation of business use, IRS regulations require the entire lease value of the vehicle, plus the value of the fuel, be used to value the vehicle fringe benefit that should be recorded as gross income.

THE DEPARTMENT DOES NOT HAVE PROCESSES IN PLACE TO DOCUMENT THE BUSINESS USE OF VEHICLES BY NON-COMMUTERS. One reason why the gaps in the Department's approach to vehicle fringe benefit valuation methods is particularly problematic is because the IRS's valuation requirements apply not only to commuters, which are the focus of this audit, but also to non-commuters. As previously mentioned, non-commuters are employees with take-home state-owned vehicles, but because they work out of their homes or the vehicles, they are considered by the Department to be non-commuters. From the perspective of the IRS, vehicle fringe benefits apply to all employees with employer-provided vehicles, unless specifically exempted. The IRS requires employers to substantiate the business use of employer owned vehicles or include the value in taxable income [26 C.F.R., 1.274-5T(b)].

We contacted the agencies that have permanently assigned state fleet vehicles to ask how many non-commuters they had in Calendar Year 2015 and whether they collect information from them to substantiate the business use of the vehicles. Out of the 19 agencies with permanently assigned state fleet vehicles, 10 agencies reported a total 322 non-commuters for Calendar Year 2015. Agencies reported that 47 of these non-commuters used qualified nonpersonal use vehicles, such as cargo vans or marked emergency vehicles, which means that there would be no taxable fringe benefit for the employees. However, for the remaining non-commuters, agencies would need to have substantiation demonstrating that all the use of the vehicle was for business in order to conclude that the employee received no taxable fringe benefit. Without such substantiation, the agency cannot exclude the employee's use of the vehicle as business use and determine that there was no personal use of the vehicle that would need to be taxed.

Overall, the 10 agencies with non-commuters in Calendar Year 2015 did not have processes to substantiate the business use of vehicles used by non-commuters and therefore may not have had a basis for assessing the value of vehicle fringe benefits. Specifically, one of the 10 agencies reported that in November 2015 it started documenting details on the business use of the vehicle. Five agencies reported that they do not maintain documentation of business use. For example, one agency reported that it does not document the business use of the vehicle because it follows the Department's guidance that these employees are not commuters and does not have to account for the use of the vehicle for taxation. The other four agencies reported that they may have information to determine the vehicle's use (e.g., by compiling information from employees' calendars), but they do not currently have processes to collect substantiation from employees to allow the agency to account for business and personal use business use.

From our review of Calendar Year 2015 payroll data, we identified eight non-commuters from four agencies in which the agency added vehicle fringe benefits to the employee's gross income. In all eight cases, the agency did not have records to substantiate the business use of the vehicle, but added $720 to the employee's gross income for Calendar Year 2015.This would be the appropriate amount if the employee were a commuter qualifying for the IRS commuter valuation rule and commuted 20 days each month. However, as a non-commuter without substantiation to show the business use of the vehicle, the value of the vehicle fringe benefit is the entire lease value of the vehicle plus fuel. For the remaining 314 non-commuters in Calendar Year 2015, we did not identify any evidence that agencies added any vehicle fringe benefits to Calendar Year 2015 gross incomes of non-commuters. As mentioned above, agencies reported that 47 of the 322 non-commuters used qualified nonpersonal use vehicles in Calendar Year 2015, and as such could conclude that the employee received no taxable vehicle fringe benefit without having to substantiate business use of the vehicle. However, for the other 267 non-commuters with no vehicle fringe benefits added to gross income, the agency could only conclude that the employee received no taxable vehicle fringe benefit if it has substantiation of business use of the vehicle.

THE DEPARTMENT'S DEFINITION OF "DE MINIMIS" USE IS NOT CONSISTENT WITH THE IRS. Department rules state that "de minimis" use of a state-owned vehicle is personal use "that is of so small a value that accounting for it would be unreasonable or administratively impractical", and includes "occasionally taking a State-owned motor vehicle to the employee's residence the evening prior to a planned business trip…" [1 C.C.R., 103-1, Section 3.1.05]. One agency developed its own policy of allowing employees to take home vehicles for up to 7 days each month for 3 consecutive months without being considered commuters. However, IRS regulations [26 C.F.R., 1.132-6(e)(2)] specify that "de minimis" use is limited to 1 day per month. Therefore, employee use of a state-owned vehicle for commuting more than once per month does not qualify as "de minimis" use. In addition, Department rules do not specify that any personal use of a state-owned vehicle more than "de minimis" use would be considered a taxable fringe benefit.

COMMUTING FRINGE BENEFIT AMOUNTS WERE NOT ALWAYS DETERMINED AND ADDED TO EMPLOYEES' GROSS INCOME ACCORDING TO DEPARTMENT POLICY. We found evidence that seven agencies did not report commuting fringe benefits according to current Department policy for 43 commuters in Calendar Year 2015, as outlined below.

- For 21 employees at two agencies, the agency imputed more income than it should have based on the number of months the employee appeared to have commuted. For example, an employee that commuted for 4 months should have been imputed $240 (4 months x $60 each month). However, we found that the agency imputed a total of $720 for Calendar Year 2015. In another example, an employee stopped commuting in Calendar Year 2013, but the agency continued to impute income through Calendar Year 2015. In total the two agencies imputed approximately $5,340 more than the value of the employees' commute in Calendar Year 2015, according to information we received indicating the months of the employees' commuting. The State appears to have over-reported these 21 employees' gross income by amounts ranging from $60 to $720 in Calendar Year 2015.

- For 17 commuters at three agencies, the agency imputed less income than it should of have based on the number of months the employee appeared to have commuted. In total the three agencies did not impute approximately $5,300 in Calendar Year 2015, according to information we received indicating the months of employees' commuting. This included two commuters for whom the agency imputed no income in Calendar Year 2015 and did not provide authorization forms to the Department. In one case, the employee had been commuting since February 2015 and the other employee commuted all of 2015. For seven commuters the agency did not impute any income even though the agency had provided commuting authorization forms to the Department, and for the remaining eight cases, the agency imputed some income, but not for all the months the employee appears to have commuted. The State appears to have under-reported the 17 employees' gross income by amounts ranging from $60 to $720 in Calendar Year 2015.

- For three reimbursing commuters at one agency, the agency failed to impute income for employees who reimbursed less than the Department's current policy of reimbursing $60 per month. Under IRS regulations [26 C.F.R., 1.61-21(b)(1)], if the employee pays for the benefit, but less than the benefit's full value, the remainder is taxable. We estimate that these three employees each received unreported taxable fringe benefits ranging from $100 to $520 in Calendar Year 2015, given the Department's current policy of assuming 20 days of commuting each month. The agency collected less than the $60 minimum because agencies applied the Department's reimbursement rate for non-control employees of 22 cents for January through April 2015 and 20 cents for May through December 2015, but because these commuters had relatively short commutes of 4, 7, and 12 roundtrip miles respectively, the monthly reimbursement rate was less than what it would be had the agency valued the commute at $1.50 each way.

- For two control employees at two agencies, the agency failed to value the employee's commute according to current Department policy. As previously described, current Department policy values the commute of control employees by taking the number of roundtrip daily miles on the commuter's authorization form, multiplied by 20 days each month, multiplied by a per mile rate established by the Department, which was $.38 for January through April 2015, and $.35 for May through December 2015. One agency imputed $60 per month from January through April 2015 instead of $220 per month; in May 2015 it started correctly imputing the higher control employee amount. Another agency required the employee to reimburse $60 per month instead of $208 per month because it was not aware of the different rate for control employees.

In addition, in September and October 2016, we became aware of five employees from three agencies who had take-home vehicles in Calendar Year 2015, and appear to have been commuters, but the agency had not submitted commuting authorization forms to the Department for these employees. Two of these employees were control employees. We found no evidence that agencies added vehicle fringe benefits to these five employees' gross income in Calendar Year 2015 or that these employees reimbursed for commuting. As a result, these employees may have received taxable vehicle fringe benefits that were not reported. For a fifth agency, there may be additional employees who took vehicles home in Calendar Year 2015, but for whom the agency did not track and report this personal use as fringe benefits.

We have provided the Department with a list of employees for whom we have identified potential discrepancies in Calendar Year 2015 vehicle fringe benefits for the Office of the State Controller to review and determine whether any corrections to employees' Calendar Year 2015 W-2s are warranted.

The Office of the State Controller reports that it plans to take a more active role in monitoring compliance with reporting vehicle fringe benefits. In order for the State Controller to monitor compliance, the Department will need to have accurate information on which employees are authorized to commute and which employees are non-commuters, the months they used the vehicle, whether they are taxable or exempt from taxation, and whether they are control employees or not. As we describe in the first finding, we found problems with the Department's collection and maintenance of commuter and non-commuter information and recommend the Department improve its data on commuters and non-commuters. Reliable and accurate data will be necessary for the State Controller's reconciliation with payroll data.

THE DEPARTMENT'S POLICIES REGARDING EXEMPT EMPLOYEES ARE NOT INCLUSIVE OF ALL THE REQUIREMENTS. Department rules [1 C.C.R., 103-1, Section 3.3.02] state that "A commuter may be exempt from reimbursement or taxation if qualified under the provisions of the IRS definition of 'non-qualified personal use'." The rules go on to provide examples including vehicles that are not likely to be used other than minimally for personal use because of the unique size or unusual configuration, law enforcement vehicles that are outfitted and clearly marked as law enforcement, and unmarked vehicles used by state law enforcement officers qualified as peace officers under statute.

Department rules do not align with the IRS tax exclusion definition for qualified nonpersonal use vehicles. For example, for unmarked law enforcement vehicles, the IRS only allows them to be considered qualified nonpersonal use vehicles if (1) the employee assigned the vehicle is authorized to execute search warrants and to make arrests, and needs to regularly carry firearms; and (2) any commuting is "incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation" [26 C.F.R., 1.274-5(k)(6)]. However, Department rules do not mention any of these requirements. In addition, Department rules do not provide the citation for where the specific requirements can be found and incorrectly names exclusions as "non-qualified personal use" instead of "qualified nonpersonal use," so it may be difficult for agencies to identify the IRS requirements.

Our sample of 30 commuters included 15 exempt commuters from three agencies and an additional commuter that the agency reported to us should have been classified as exempt. We asked the three agencies to provide us with information about how the commuters met the IRS definition for using qualified nonpersonal use vehicles. From the information provided, it was not clear that four of these 16 commuters from our sample met the requirements for driving qualified nonpersonal use vehicles. For three commuters, the agency reported that, as peace officers, these commuters were "authorized" to carry firearms on a full time basis subject to the agency's policies, but not that these commuters actually regularly carried firearms. For the fourth commuter, the agency reported that the commuter did not regularly carry firearms and could not execute search warrants or make arrests.

In addition, in March 2016, the Department approved a waiver for all peace officers at one agency to be considered tax exempt commuters. Specifically, the waiver stated "All active peace officers (as defined in CRS 16-2.5-101) within [the agency] are approved for tax exempt commuter status whenever required to commute by the duties of their assignment. When peace officers are required to commute, it is understood that it is for official state business purposes, and it is required for the benefit of [the agency] and the State and not for the benefit of individual officers." The waiver makes no mention of IRS requirements for qualified nonpersonal use vehicles. In Calendar Year 2015, this agency had 58 commuters that it had classified as exempt, one of whom was a control employee.

LACK OF GUIDANCE AND CLEAR INTENT. Overall, the problems we found in this area are due to a lack of clarity on the interpretation and application of federal requirements and statute. The Department reports that it has not sought IRS or legal guidance related to any of the problems we described above - whether it is allowable to value the fringe benefits based on a standard number of days per month instead of the actual number of commute trips, whether it has the ability to apply its own per mile rate in valuing the personal use for control employees, or whether it can consider all State-defined peace officers to be exempt from taxation.

Agencies that are not required to follow the Department's fleet rules or State Fiscal Rules may still rely on the Department's guidance to help them ensure compliance with vehicle fringe benefits. For example, the Judicial and Legislative Branches are not subject to State Fiscal Rules and may not be subject to the Department's fleet rules, and the State's institutions of higher education are exempt from following the Department's fleet rules [Section 24-30-1102(5)]. However, they are responsible for complying with IRS requirements. To the extent that these agencies model their policies and requirements on those of the Department, there is a risk that the agencies may not have had procedures to ensure compliance with IRS requirements. During the course of the audit, we became aware of two commuters in the Judicial Branch, one of whom was a control employee, and another commuter at an institution of higher education in Calendar Year 2015.

WHY DO THESE PROBLEMS MATTER?

When the State has not properly valued and reported employees' gross income, there are many implications for the employees and the State. As outlined throughout this finding, our audit work identified specific concerns with a total of 327 employees that had take-home vehicles for whom the State may not have properly reported vehicle fringe benefits for Calendar Year 2015. This included the two taxable control employees we were aware of as of June 2016 who were authorized to commute in Calendar Year 2015. We estimate, using the lease value rule with no business use deduction, that the State may have under-reported these two control employees' gross income by $5,200 and $5,800 each for Calendar Year 2015.

- In one case, the employee drove a 4x4 SUV for the entire year. Based on information provided by the Department, we estimate the taxable lease value of the vehicle for Calendar Year 2015 was $6,850 and the taxable fuel value was $880. The agency did not report to have records needed to substantiate the business use of the vehicle, which is required by IRS regulations [26 C.F.R., 1.274-5T(b)(1)] to deduct the business use of the vehicle. The agency added a total of about $1,900 to the employee's gross income for Calendar Year 2015, leaving an estimated amount of about $5,800 that the agency appears to have not reported as taxable income and for which it appears the agency did not withhold taxes.

- In the other case, the employee drove a 4x4 SUV for 8 months in Calendar Year 2015. Based on information provided by the

Department, we estimate the prorated taxable lease value of the vehicle was $4,600 and the taxable fuel value was $1,100. The agency reported that it had some information needed to exclude the business use of the vehicle in Calendar Year 2015. However, the agency had not collected all the information required by the IRS to substantiate the business use of the vehicle during the year, which means that the agency may not have had a basis for deducting the business use of the vehicle in Calendar Year 2015. The employee reimbursed a total of $480 for commuting and the agency added no additional income for vehicle fringe benefits, leaving an estimated amount of $5,200 that the agency did not report as taxable income and for which the agency did not withhold taxes.

For the estimated 275 non-commuters that did not drive qualified non-personal use vehicles in Calendar Year 2015, there is potentially high risk of under-reporting vehicle fringe benefits in cases where the employee has not substantiated the business use of the vehicle. If any of these 275 non-commuters did not keep records to substantiate the business use of the vehicle, the taxable vehicle fringe benefit should have been reported in gross income in Calendar Year 2015. We estimate that a typical state sedan driven 10,000 miles in Calendar Year 2015 had a taxable vehicle fringe benefit value of $5,900, which would need to be added to the employee's gross income for Calendar Year 2015 if there was no substantiation of business use.

For the five additional employees we identified in September and October 2016 as having been possible commuters in Calendar Year 2015, the State may have underreported gross income. Two of these employees were control employees, so the amount of underreported gross income for Calendar Year 2015 could be significant if the agency does not have documentation to substantiate the business use of the vehicle. In addition, employees at the agency that allowed employees to take home vehicles for up to 7 days each month for 3 consecutive months may also have had under-reported gross income since the IRS considers any commuting more than 1 day per month to be taxable.

In addition, there may be a risk that the State improperly valued and reported vehicle fringe benefits for virtually all of the other approximately 780 employees that had take-home vehicles in Calendar Year 2015. For example, for agencies that followed the Department's guidance to value the commute of taxable commuters using a standard of $60 per month instead of $1.50 per each commute trip the State may have over or under-reported employees' gross income.

Finally, if agencies have not appropriately applied the IRS definition of qualified nonpersonal use vehicles in exempting commuters from taxation, the State may have underreported vehicle fringe benefits for these employees. In Calendar Year 2015, there were 487 commuters classified by their agencies as exempt commuters, 462 of whom were law enforcement, and 47 non-commuters identified by their agencies as having driven qualified nonpersonal use vehicles. If any of these employees did not qualify for the exemption, as we appear to have found with four cases from our review of 30 files, the State may have underreported gross income. Assuming the employee commuted 20 days per month for 12 months, the amount underreported would be $720 per employee. In the case of the control employee, the State may have underreported approximately $9,300 using the lease value rule with no substantiation of business use.

The potential impact of misstated gross income may be wide spread.

- Employees may owe additional federal, state, and Medicare taxes.

- The State may owe additional Medicare taxes, which are paid based on the employee's gross income.

Income used to determine employer and employee contributions to PERA does not include automobile use [Section 24-51-101(42)(b), C.R.S.], so any adjustments to employees' Calendar Year 2015 gross income to include vehicle fringe benefits should not impact PERA contributions.

In addition, the IRS could impose penalties and restrictions. In cases where the State did not make required deposits on time or made deposits for less than the required amount, such as in cases where the State has not correctly valued, reported, and withheld taxes for vehicle fringe benefits, the State may be at risk of IRS penalties [26 C.F.R., 301.6721-1]. In the case of control employees, there is a risk that the State would need to report gross income retrospectively at much higher rates than it otherwise would have been able to report had the gross income been recorded in a timely manner. If the IRS determines that (1) the employer has not treated the value of the vehicle fringe benefit as wages for reporting purposes within the time for filing the returns for the taxable year, (2) the employer has not demonstrated a good faith effort to treat the benefit correctly for reporting, and (3) the employee has not treated the value of the vehicle fringe benefit as wages for reporting purposes within the time for filing the returns for the taxable year [26 C.F.R., 1.61-21(c)(3)(ii)], then the employer and the employee have to value the benefit using a fair market value based on the amount an individual would have had to pay in an arm's-length transaction to lease the same or comparable vehicle [26 C.F.R., 1.61-21(b)(4)]. In other words, the State and the employee would not be able to use either of the IRS' special valuation rules outlined earlier.

Department staff responsible for drafting the Department's commuting rules identified the risk to the State of not properly valuing and reporting vehicle fringe benefits. An undated internal analysis that Department staff reported was drafted in 2009 stated:

> "The concern with exempting someone for reasons that are not allowed by the IRS is not so much a problem for the State, but for the individual…This could become a major problem if years later the State commuting program is audited by the IRS (as California is currently undergoing) and the IRS finds that many positions have been exempted when they should not have been. The individuals involved would then owe back taxes to the IRS for multiple years, and they would then likely sue the state for causing them to break the law."

RECOMMENDATION 5

The Department of Personnel & Administration (Department) should work with the Office of the Attorney General, or tax specialists as appropriate, to assess the State's compliance with Internal Revenue Service (IRS) requirements for reporting employees' vehicle fringe benefits. At a minimum, this should include:

A Assessing whether the policy for valuing commuting fringe benefits based on a standard number of days (i.e., 20 days per month), regardless of the actual number of days commuted, can substitute for information from the employee about the actual number of days commuted, and if not, revising Department rules and State Fiscal Rules to require agencies to collect information from employees on the number of days commuted and use the information for valuing the employee's commuting fringe benefit.

B Determining a method for valuing commuting fringe benefits for control employees that is in compliance with the IRS (e.g., using the lease value rule or cents-per-mile rule) and updating Department rules, State Fiscal Rules, and other guidance accordingly.

C Assessing whether the State collects sufficient information from non-commuters to substantiate their business use of state-owned vehicles for valuing vehicle fringe benefits and making any necessary changes to Department rules, State Fiscal Rules, and other guidance accordingly.

D Revising Department rules to ensure the definition of "de minimis" use of a state-owned vehicle is consistent with IRS requirements and specify that any personal use of a state-owned vehicle that is more than "de minimis" use is valued as a taxable fringe benefit.

E Ensuring that the State's requirements for qualified nonpersonal use vehicle exemptions are in line with those of the IRS, such as specifying that law enforcement using unmarked vehicles need to regularly carry firearms, and be authorized to execute search warrants and to make arrests, and the commuting use needs to be incident to law enforcement functions, and providing a citation in Department rules and/or State Fiscal Rules for the IRS definitions related to qualified nonpersonal use vehicles.

F Sharing any revised rules or guidance with the Judicial and Legislative Branches and the State's institutions of higher education so that they can revise their requirements and processes as each determines is necessary.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

A AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will work with the Office of the Attorney General or tax specialists to assess whether the policy of valuing commuting fringe benefits based on a standard number of days can substitute for the actual number of days commuted. If not, then the Department will revise its rules and policies.

B AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will work with the Office of the Attorney General or tax specialists to review the State's compliance with IRS regulations for reporting of employees' fringe benefits, including the method of valuing fringe benefits for control employees. Based on this review, the Department would determine whether to revise the Division of Central Services Rules and Fiscal Rules to include the appropriate method for valuing fringe benefits for control employees.

C AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will work with the Office of the Attorney General or tax specialists to review the State's compliance with IRS regulations for reporting of employees' fringe benefits, including the information collected for non-commuters to substantiate their business use of state-owned vehicles for valuing fringe benefits. Based on this review, the Department will determine whether to revise Division of Central Services Rules and Fiscal Rules to include the appropriate method for valuing fringe benefits for non-commuters.

D AGREE. IMPLEMENTATION DATE: SEPTEMBER 2017.

The Department will review the State's compliance with IRS regulations for reporting of employees' fringe benefits, including the definition of "de minimis" use of a state-owned vehicle. Based on this review, the Department will determine whether to revise Division of Central Services Rules and Fiscal Rules to ensure the definition of "de minimis" is consistent with IRS requirements and that any personal use of a state-owned vehicles that is more than "de minimis" use is valued as a taxable fringe benefit.

E AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will review the State's compliance with IRS regulations for requirements for qualified nonpersonal use vehicle exemptions. Based on this review, the Department will determine whether to revise Division of Central Services Rules and Fiscal Rules to ensure the requirements for qualified nonpersonal use vehicle exemptions comply with IRS regulations.

F AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will work with the Office of the Attorney General, or other tax specialists as appropriate, to assess the State's compliance with Internal Revenue Service (IRS) requirements for reporting employees' vehicle fringe benefits. The Department will share any revised rules or guidance with the Judicial and

Legislative Branches and the State's institutions of higher education.

RECOMMENDATION 6

The Department of Personnel & Administration (Department) should assess whether its waiver approved in March 2016 allowing all peace officers at one agency to be exempt commuters is compliant with Internal Revenue Service (IRS) requirements. If the Department determines the waiver is not compliant with IRS requires, the Department should amend or rescind the waiver.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will review its waiver approved in March 2016 that allows all peace officers at one agency to be exempt commuters. If the Department determines the waiver is not compliant with IRS requirements, the Department will amend or rescind the waiver.

RECOMMENDATION 7

The Department of Personnel & Administration should work with agencies to review the vehicles fringe benefits of employees with take-home vehicles in Calendar Year 2015 and report any necessary corrections to W-2s to employees and the Internal Revenue Service.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will work with agencies to review the commuting fringe benefits of employees with take-home vehicles in Calendar Year 2015, communicate any changes in compensation to employees, and report any necessary corrections to W-2s to employees and the IRS.

COMMUTING REIMBURSEMENTS

Statute [Section 24-30-1113(4)(a) and (b), C.R.S.] requires commuters to reimburse the State at a rate computed by the Department, unless exempted by Department rules. Department rules [1 C.C.R., 103-1, Section 3.3] exempt from reimbursement (1) commuters who drive a qualified non-personal use vehicle, as defined by the IRS; and (2) commuters for whom the convenience to the State is greater than the benefit to the employee. According to information from the Department, 17 of the 782 commuters (2 percent) were not classified under either of these exemptions and therefore were required to reimburse the State in Calendar Year 2015. These 17 reimbursing commuters were spread across three separate agencies and reimbursed the State via payroll deductions a total of approximately $15,400 in Calendar Year 2015. The amounts collected for reimbursement are credited back to the respective employing agencies in order to help offset operating expenses.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed the amount each of the 17 reimbursing commuters reimbursed the State in Calendar Year 2015 to evaluate whether agencies required them to reimburse the correct amount based on the following requirements in statute and rules:

REIMBURSEMENT SHOULD BE FOR 20 DAYS EACH MONTH AT A FIXED RATE. Statute [Section 24-30-1113(4)(a), C.R.S.] states that, "Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month." Department rules [1 C.C.R., 103-1, Section 3.5.03] establish the standard daily rate for reimbursing commuters based on:

A The employee's daily roundtrip commute miles, as authorized by the agency executive director, multiplied by:

B A standard per-mile rate determined annually by the Department based on the actual operating cost of a typical state transportation vehicle and a portion of ownership costs. The standard per-mile rate established by the Department in Calendar Year 2015 was \$.22 per mile for January through April and \$.20 per mile for May through December. All employees, aside from control employees as discussed below, use the standard rate.

Using this calculation, a commuter who was authorized to commute 20 roundtrip miles per day for the entire year would have reimbursed the State at a rate of \$88 per month from January through April (20 miles per day x \$.22 x 20 days per month) and \$80 per month from May through December.

In addition, Department rules [1 C.C.R., 103-1, Section 3.5.03] establish a minimum reimbursement amount based on the IRS regulations [26 C.F.R., 1.61-21(f)(3)] related to valuing required commuting as a taxable fringe benefit. This minimum reimbursement amount is \$1.50 per each one-way commute, or \$3.00 per day. The Department reports that it considers the minimum to be \$60 per month using the 20 days per month cited in statute (\$3 per day x 20 days). Therefore, a commuter should reimburse based on the formula above, but no less than \$60 per month.

REIMBURSEMENT BY CONTROL EMPLOYEES SHOULD BE AT A HIGHER RATE. The Department requires control employees to reimburse at a higher rate than the standard rate. As previously mentioned, Department rules [1 C.C.R., 103-1, Section 3.1.03] define control employees as elected officials or those having compensation that is at least as much as that paid to a federal government employee holding a position at Executive Level V, which was \$148,700 in Calendar Year 2015. Department rules [1 C.C.R., 103-1, Section 3.5.04] instruct control employees to "contact State Fleet Management, Division of Central Services for specific instructions." For control employees, the per-mile reimbursement rate established by the Department in Calendar Year 2015 was $.38 for January through April and $.35 for May through December. In Calendar Year 2015, there was one reimbursing control employee in the State.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

When we compared the amount reimbursed by commuters to the requirements in rules, we found discrepancies in the reimbursement amounts for 11 of the 17 reimbursing commuters in Calendar Year 2015 (65 percent), representing two of the three agencies that had reimbursing commuters. Overall, the State only collected about $15,400 in reimbursements out of the $40,800 it was owed in Calendar Year 2015. In addition, the State over collected about $120 from two commuters and may owe these employees refunds. We identified more than one discrepancy for five of these 11 employees.

- **REIMBURSED FOR FEWER THAN 20 DAYS EACH MONTH.** Five commuters reimbursed fewer than the required 20 days per month. Instead, these commuters reimbursed for between 2 and 4 days each month. As a result, the State received between $1,100 and $8,200 less than it should have from each of these five commuters in Calendar Year 2015, or about $17,700 less in total. This means these commuters, combined, only paid about 19 percent of what they should have.

- **REIMBURSED LESS THAN THE MINIMUM AMOUNT.** Three commuters did not reimburse at the $60 per month minimum reimbursement rate. These commuters reimbursed between $8 and $44 less than they should have each month, or a total of about $1,000 less than they should have in Calendar Year 2015. In all three cases, the employees had relatively short commutes of 4, 7 and 12 roundtrip miles, which made the monthly amount less than $60. Combined, this means that these commuters only paid about 50 percent of what they should have.

- **DID NOT REIMBURSE AT THE CONTROL EMPLOYEE RATE.** The one reimbursing commuter who was a control employee did not reimburse at the control employee rate. This commuter reimbursed a total of $60 per month for their 130 mile round trip commute, or a total of approximately $6,800 less than they should have for their active commuting months of May through December 2015. This means that this commuter only paid about 6.5 percent of what they should have.

- **REIMBURSED AT A HIGHER RATE.** Seven commuters reimbursed at the incorrect per-mile rate for 8 months in Calendar Year 2015 because the agency did not reduce the per-mile rate when the Department changed it from $.22 to $.20. This resulted in two of these commuters reimbursing $50 and $70 more than they should have in Calendar Year 2015. The reimbursement amounts for the other five commuters were still below what they should have been because they were reimbursing for less than 20 days per month as well.

WHY DID THESE PROBLEMS OCCUR AND WHY DO THEY MATTER?

We identified two elements that appear to contribute to the problems we found with commuting reimbursements, as well as an inefficient system that is potentially not aligned with the statutory intent for commuting, as described below.

LACK OF CLEAR RULES AND GUIDANCE

The two agencies with commuters who reimbursed incorrect amounts told us the main reason for the errors we found was that they were not aware of one or more of the reimbursement requirements: the $60 minimum, the different rate for control employees and how to identify control employees, or the change in the per mile rate in May 2015. We found that the Department's rules and forms related to commuting could be clarified to help better inform agencies of the requirements. Specifically:

- Department rules [1 C.C.R., 103-1, Section 3.5.03(c)] require agencies to ensure that employees reimburse at least the minimum amount by referencing IRS regulations, but Department rules do not specify the State's actual minimum reimbursement of $60 per month. In addition, neither the commuting authorization form nor either of the Department's two memos about reimbursement rate changes sent to agencies in May 2015 and March 2016, the first such memos to agencies since 2011 when Department rules reinstated reimbursement for some commuters, states that there is a minimum reimbursement amount or specifies the amount.

- Department rules [1 C.C.R., 103-1, Sections 3.1.03 and 3.5.04] provide the definition of a control employee, but only directs agencies to contact the Department for specific instructions on valuation and taxation. The rules do not state that control employees will be required to reimburse at a different rate than the standard rate. In addition, neither the authorization form nor the Department's rate change memos to state agencies in May 2015 and March 2016 state the current control employee reimbursement rate or the current compensation amount that results in the commuter being classified as a control employee.

- The Department also does not post current rate information or the compensation level that classifies an employee as a control employee on its website. Adding this information to the site could serve as an efficient means of providing information that agencies need to help them ensure they are collecting the correct amounts of reimbursement from reimbursing commuters. The Department could then reference in its rules and other commuting documents (e.g., the authorization form) the location on its website where this information resides.

- State Fiscal Rules related to miscellaneous compensation and perquisites [1 C.C.R., 101-1, Rule 2-8] provide information about the commuting benefit, but state only that commuters are imputed income. Specifically, the rules state, "Where state-owned motor vehicles are used for taxable commuting,…the employee shall be imputed income for the use of the state vehicle at a rate that approximates the benefit derived from the use of the vehicle and that complies with Internal Revenue Service publications and regulations." There is no mention that some commuters reimburse for commuting rather than being imputed income. In contrast, other benefits mentioned in this fiscal rule specify that employees may be required to reimburse for the benefit. For example, the section relating to the clean air transit benefit for state employees states that agencies shall maintain records showing, among other things, "the actual cost, if any, paid by the employee…"

- Guidance issued by the State Controller's Office, *2015 Year-End Information & 2016 Tax Information*, instructs payroll staff to add $60 per month to the employee's income. Specifically, the guidance states "Employees with personal use of state vehicles must have the value of the benefit added to their taxable income. State Fleet's commuting rate is $60 per month." The guidance does not specify that some employees reimburse the State the value of the commute rather than having income imputed or that control employees must reimburse or impute income at a different rate than non-control employees.

Ensuring that the Department is issuing clear guidance related to commuting benefits is important for eliminating any confusion among state agencies. State Fiscal Rules set forth the policies concerning internal controls, accounting policies, and financial reporting for the Executive Branch and are therefore the go-to guidance for agency payroll and accounting staff. As such, State Fiscal Rules and other related guidance issued by the Office of the State Controller should, at a minimum, not conflict with commuting program requirements.

WAIVER GRANTED INAPPROPRIATELY

For the four commuters we found who reimbursed the State for between 2 and 4 days per month, the Department reported that it granted a waiver from the statutory requirement to reimburse for 20 days per month to one agency for all of its commuters with a specific job position. The waiver, dating back to May 2011, allows these commuters to reimburse the State based on the average number of days per month the employee estimated the vehicle was *actually* driven to the office. However, the Department does not have the authority to waive the 20-day requirement, which is in both statute and Department rules. Statute specifically states "reimbursement shall be for twenty days per month regardless of how many days the individual uses the vehicle to commute during the month" [Section 24-30-1113 (4)(a), C.R.S.]. The Department reports that it had not obtained legal advice on its authority to waive this requirement, and it believed it had the authority to waive the reimbursement requirement at the time. However, after recently reviewing the waiver and statutory requirements, the Department determined that it in fact does not have the authority to waive the 20 day requirement in statute. Therefore the May 2011 waiver should be rescinded.

THE DEPARTMENT'S REIMBURSEMENT POLICY IS INEFFICIENT

Statute [Section 24-30-1113(4)(a), C.R.S.] requires reimbursement to "approximate the benefit derived from use of the vehicle" and charges the Department with establishing a reimbursement rate. We found that the Department has created a system to determine reimbursement amounts that may be inefficient.

First, instead of basing reimbursement on the IRS' valuation of the vehicle fringe benefit, the Department created its own separate methodology. Specifically, the Department requires commuters to reimburse at a per-mile rate that Department staff feel best approximates the cost to the State of a basic transportation vehicle that would typically be used by a commuter (such as sedans and mid-size SUVs). For example, for May through December 2015, the rate was 20 cents based on the average cost of fuel, maintenance, and collision and liability coverage for these vehicles. The Department stated that it creates its own reimbursement rate instead of using the IRS standard mileage reimbursement rate, which was 57.5 cents per mile in Calendar Year 2015, because the IRS rate is significantly higher than the cost to the State of owning and operating a state vehicle. However, it is unclear why the Department feels that it needs to require employees to reimburse the State for commuting based on a per-mile rate. The statutory provision requiring reimbursement does not specify that reimbursement has to be done on a per-mile basis. Instead, the Department could require employees to reimburse the State based on the IRS commuting valuation rule or lease value rule, depending on how the agency has determined the commuting fringe benefit for the employee's W-2.

If the 17 employees who were required to reimburse the State for commuting in Calendar Year 2015 had reimbursed based on the applicable IRS valuation rule, instead of the Department's current method, the amounts reimbursed would have been as follows:

- 16 employees whose commutes qualified for the commuter valuation rule would have reimbursed between $240 and $720 each in Calendar Year 2015, assuming that the employees commuted 20 days per month. Collectively, these 16 employees would have reimbursed $10,740. Instead, they were required to reimburse amounts ranging from $500 to $9,100 in Calendar Year 2015, or collectively $33,500. However, these employees actually reimbursed between $200 and $2,100 in Calendar Year 2015, for a collective total of $15,000.

- One control employee, whose commute could not be valued using the commuting valuation rule, would have reimbursed an estimated $5,700 in Calendar Year 2015, based on the lease value rule. Instead, they were required to reimburse a total of $7,300 and actually reimbursed $480.

It may be appropriate for the Department to assess whether using the applicable IRS valuation method to determine reimbursement amounts would be simpler and still effective in helping the State recoup at least some of the costs associated with requiring employees to commute.

Second, if the Department learns that it can no longer determine commuting fringe benefits based on 20 days per month as part of implementing recommendations from the previous finding, agencies could be put in a position of having to use two different methodologies for assessing commuting fringe benefits. Specifically, agencies would have to (1) determine how much employees are required to reimburse the State based on 20 days of commuting per month, as required by statute [Section 24-30-1113(4)(a), C.R.S.]; and (2) determine whether the agency needs to add any vehicle fringe benefits to employees' gross income based on *actual* days commuted. Agencies would need to calculate both amounts to ensure that employees have reimbursed at least as much as the IRS considers the value of the vehicle fringe benefit to be. In the event that the reimbursement amount is less than the vehicle fringe benefit value according to the IRS, the agency would need to add the difference to the employee's gross income. It may be simpler and more efficient for employees to reimburse based on the IRS valuation, rather than for 20 days of commuting each month, thereby allowing agencies to determine only one value.

THE DEPARTMENT'S POLICY ON EXEMPTIONS MAY NOT BE ALIGNED WITH THE INTENT OF STATUTE

Statute [Section 24-30-1113(4)(b), C.R.S.] provides the Department with authority to provide exemptions from reimbursement in rule. The Department's rules [1 C.C.R., 103-1, Section 3.3] exempt (1) commuters who drive a qualified non-personal use vehicle, as defined by the IRS (487 in Calendar Year 2015); and (2) commuters for whom "the convenience to the State is greater than the benefit to the individual" (278 in Calendar Year 2015). From our review of 30 sampled commuters, we found no instances of agencies inappropriately exempting employees from reimbursement based on current Department rules. However, these rules have resulted in only 2 percent of all commuters reimbursing the State. Policymakers may wish to consider whether the State should simplify its approach to either exempt all employees from reimbursement, which would require statutory change, or to align its exemptions only with those established by the IRS. For example:

- The State could exempt all commuters from reimbursement. In Calendar Year 2015, the State should have collected $40,800 from all reimbursing commuters. The cost to the State of exempting all of these commuters from reimbursement would therefore be $40,800.

- The State could allow only those employees who commute in qualified nonpersonal use vehicles to be exempt from reimbursement, in line with IRS exemptions. In Calendar Year 2015, 487 employees were categorized by their agencies as exempt. If all of the remaining 295 commuters reimbursed the State based on the value of the vehicle fringe benefit according to the IRS valuation for commuting 20 days each month, we estimate that the State would have collected about $178,000 in reimbursements in Calendar Year 2015. However, if the State collected reimbursement from these 295 employees based on its current reimbursement calculations, we estimate that the State would have collected about $442,000.

It may be appropriate for policymakers to assess the State's policies for reimbursement. Exempting all commuters from reimbursement would require statutory change. Exempting only those commuters who use qualified nonpersonal use vehicles would require a change to the Department's rules, but not necessarily a change in statute.

RECOMMENDATION 8

The Department of Personnel & Administration should assess (1) whether reimbursement should be set at the value of the commuting fringe benefit according to Internal Revenue Service (IRS) regulations and (2) which employees should be exempt from reimbursement, and work with the General Assembly as needed on any statutory change.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will work with the General Assembly to clarify the approach to be used for reporting fringe benefits to the IRS for commuting, including reimbursements vs. imputed income. The Department will work with the General Assembly to clarify which employees should be exempt from reimbursement. The Department will work with the General Assembly on statutory changes for the approach for reporting fringe benefits and the exemption from reimbursement, as needed.

RECOMMENDATION 9

As long as the State's reimbursement policies continue in their current form, the Department of Personnel & Administration (Department) should improve its communication with agencies to help ensure that the State collects reimbursements in accordance with applicable requirements by:

A Revising its website, the commuting authorization form, and/or Department rules to clearly communicate (1) the minimum reimbursement amount, (2) the standard reimbursement rate, (3) the control employee reimbursement rate, and (4) the compensation level for determining whether a commuter is a control employee.

B Revising State Fiscal Rules to reflect requirements of commuting in state-owned vehicles, eliminate the reference to imputing income for authorized commuters in Rule 2-8, or specify where current commuting requirements can be found.

C Revising Central Payroll year end guidance to reflect current requirements of commuting in state-owned vehicles or specify where current information can be found.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

A AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

If the State's current reimbursement rules and statutory requirements remain unchanged, the Department will improve its communication with agencies to help ensure the State collects reimbursements in accordance with applicable requirements by revising its website, the commuting authorization form, and/or Department rules to clearly communicate (1) the minimum reimbursement amount, (2) the standard reimbursement rate, (3) the control employee reimbursement rate, and (4) the compensation level for determining whether a commuter is a control employee. If the Department revises its rules and statutory requirements, the Department will communicate the new process to State agencies.

B AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

If the State's current reimbursement policies remain unchanged, the Department will revise State Fiscal Rules to be consistent with those policies and will communicate this to State agencies. If the Department revises its current reimbursement policies, the Department will communicate the new process to State agencies.

C AGREE. IMPLEMENTATION DATE: SEPTEMBER 1, 2017.

The Department will revise Central Payroll year end guidance to reflect current requirements of commuting in state-owned vehicles and will specify where current information can be found.

RECOMMENDATION 10

The Department of Personnel & Administration should rescind its approval of a May 2011 waiver for one agency to allow its commuters to reimburse for less than 20 days per month.

RESPONSE

DEPARTMENT OF PERSONNEL & ADMINISTRATION

AGREE. IMPLEMENTATION DATE: JANUARY 1, 2017.

The Department will rescind its approval of a May 2011 waiver for one agency to allow its commuters to reimburse for less than 20 days per month.

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MAY 2017

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STATE AUDITOR

May 18, 2017

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Office of Film, Television, and Media, within the Office of Economic Development and International Trade. The audit was conducted pursuant to Section 24-48.5-115(4), C.R.S., which requires the State Auditor to conduct a performance audit of the Office of Film, TV, and Media no later than July, 1, 2017, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the responses of the Office of Economic Development and International Trade.

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CONTENTS

REPORT HIGHLIGHTS

OFFICE OF FILM, TELEVISION, AND MEDIA
PERFORMANCE AUDIT, MAY 2017

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

CONCERN

The Office of Film, Television, and Media (Film Office) lacks controls to ensure that it only pays incentives to production companies that qualify, to strategically target its incentive funds to provide the most benefit to the State, and to comply with statute in managing contracts and paying incentives. Further, the Film Office lacks information to assess the overall benefit it provides to the State.

KEY FINDINGS

- The Film Office paid about $1.9 million in incentives for the nine projects in our sample even though none of them met all requirements. This included $129,000 for projects that did not qualify for incentives and another $1.8 million for projects for which the Film Office lacked documentation to substantiate they qualified. The Film Office also paid incentives totaling $102,900 using the lower in-state spending threshold for two projects that do not appear to qualify under the in-state requirements. Paying incentives for projects without ensuring they qualify reduces the funds available for qualifying projects and diminishes the long-term economic benefit to the State.

- The Film Office paid about $1.9 million in incentives for productions without having contracts in place before the projects began. The majority of this ($1.3 million) was for projects for which no contract or purchase order was ever executed. Statute prohibits state agencies from disbursing funds unless the disbursement is supported by an approved purchase order or a contract.

- Film Office staff decide whether to approve an incentive based on undocumented conversations with interested companies and do not use uniform criteria to evaluate the extent to which a project supports the Film Office's strategic goals. The goals include offering funds to projects that provide the most economic development and to maximize job creation.

- The Film Office lacks complete and accurate information to assess and report on the effectiveness of its operations. Specifically, the Film Office does not collect data on full-time equivalent jobs created through the incentive program or the amount of income tax revenue the state collects due to these jobs.

BACKGROUND

- The Film Office was created in Fiscal Year 2012 to expand and revitalize the film industry in Colorado.

- One of the Film Office's major functions is to administer the State's film incentive program to encourage production in the State. The Film Office is also tasked with marketing Colorado as a destination for making films, television shows, commercials, and video games.

- A Colorado production project may receive an incentive if at least 50 percent of its employees are Colorado residents and it meets the following thresholds:
  - $100,000 spent in the state if the company is an in-state company.
  - $250,000 (for commercials, video games, and television shows) or $1 million (for films) spent in the state if the company is an out-of-state company.

- The Film Office paid a total of $10.6 million in incentives in Fiscal Years 2013 through 2016, for 31 productions, including 6 commercials, 4 documentaries, 7 feature films, 13 television shows, and 1 video game.

KEY RECOMMENDATIONS

- Implement controls to only pay incentives for projects the Film Office verifies as meeting the qualifications and that have contracts or purchase orders properly executed.
- Implement a documented application procedure, expand policies and procedures to include uniform criteria, and require documentation related to all potential incentive projects and approval decisions be maintained.
- Expand data collection and evaluation of the benefits of the incentive program and use complete and accurate data.

CHAPTER 1

OVERVIEW OF THE OFFICE OF FILM, TELEVISION, AND MEDIA

Colorado has had a program to promote film production in the state almost continuously for nearly 50 years. On July 1, 1969, the Colorado Motion Picture and Television Commission (Commission) became the first legislated film commission in the nation, established to promote Colorado as a location for filming. The Commission was defunded and eliminated in Fiscal Year 2003. In Fiscal Year 2006, the General Assembly changed statute to annually appropriate $500,000 from the State's Limited Gaming Fund to the Economic Development Commission (EDC) to give performance-based incentives of up to 10 percent of a production's budget to encourage film production in the state. At that time, the EDC was given the authority to spend 2.5 percent of the funds on administration of the film incentive program.

In Fiscal Year 2012, the General Assembly further modified statute to create the Office of Film, Television, and Media (Film Office), within the Governor's Office of Economic Development and International Trade (OEDIT) [Section 24-48.5-114, C.R.S.]. According to Section 24-48.5-115, C.R.S., the key responsibilities of the Film Office are described below.

CASH INCENTIVE PROGRAM. Statute states that a production company that meets minimum workforce and spending requirements outlined in statute may claim a financial incentive through the Film Office. Section 24-48.5-116(1)(a), C.R.S., states that the incentive amount shall be 20 percent of the production company's qualified local expenditures. A qualified local expenditure is defined as a payment made by a production company to a business in Colorado in connection with production activities in Colorado [Section 24-48.5-114(7), C.R.S.]. The specified spending minimums vary depending on whether the production company is an in-state or out-of-state business.

FACILITATION EFFORTS. The Film Office markets Colorado as a destination for producing feature films, television shows and commercials, and video games. The Film Office facilitates such production by helping companies scout Colorado locations for films and apply for needed permits, and by helping state and local government agencies in negotiations with production companies.

SUPPORT AND EDUCATIONAL EFFORTS. The Film Office carries out other activities that include partnering with film festivals, art organizations, and local businesses to provide educational seminars, panels, networking events, and film contests for those interested in film and media creation. The Film Office also offers grants for film production at Colorado colleges, universities, and high schools, and subsidies for professional reviews of screenplays for Colorado residents.

Statute also authorizes the Film Office to offer loan guarantees to help production companies with limited capital secure loans for production in Colorado [Section 24-48.5-115(3)(a), C.R.S.]. To date, the Film Office has not entered into any loan guarantee agreements. The Film Office reports that it believes that the incentive program is a more efficient and effective mechanism to encourage production in Colorado and that there has been limited interest in the loan guarantee program. As a result, the Film Office does not currently accept applications for the loan guarantee program.

For the purposes of the Film Office, Section 24-48.5-114(1)(a), C.R.S., defines "film" as "any visual or audiovisual work, including, without limitation, a video game, television show, or a television commercial…" Therefore, in this audit report, references to film production, or the film industry, encompasses film, television, and video game productions and industries.

FILM OFFICE REVENUE AND EXPENDITURES

The Film Office receives $500,000 annually in limited gaming funds pursuant to Section 12-47.1-701(2)(a)(VI), C.R.S., and had received an average of $2.95 million annually in General Funds between Fiscal Years 2013 and 2017, pursuant to Section 24-48.5-116(5)(a)(II), C.R.S. As of May 2017, the General Assembly decreased the Film Office's General Fund appropriation to $750,000 for Fiscal Year 2018.

According to Section 24-48.5-116(5)(c), C.R.S., all funds the Film Office does not expend by the end of each fiscal year are available for expenditure in the next fiscal year without further appropriation. EXHIBIT 1.1 outlines the Film Office's revenues and expenditures for Fiscal Years 2013 through 2016.

FILM OFFICE REVENUES AND EXPENDITURES

	FISCAL YEAR 2013	FISCAL YEAR 2014	FISCAL YEAR 2015	FISCAL YEAR 2016
REVENUES				
General Fund	$3,000,000	$800,000	$5,000,000	$3,000,000
Limited Gaming Funds	$500,000	$500,000	$500,000	$500,000
TOTAL REVENUES	$3,500,000	$1,300,000	$5,500,000	$3,500,000
EXPENDITURES				
Operations[1]	$414,100	$349,100	$453,300	$622,700[2]
Incentive Program	$67,500	$1,959,900	$1,933,400	$6,661,400
TOTAL EXPENDITURES[3]	$481,600	$2,309,000	$2,386,700	$7,284,100

SOURCE: Office of the State Auditor analysis of Film Office financial information.
[1] "Operations" includes expenses for all of the activities that the Film Office engages in (including salaries, rent, supplies, etc.) except for the payment of incentives.
[2] The Film Office reports that its operations costs have increased over the 4-year period because it expanded activities such as offering educational seminars, sponsoring film festivals, and awarding grants to Colorado colleges for student production activities as well as increases in the Office of Economic Development and International Trade's general operating expenses.
[3] The Film Office used funds rolled over from previous years to cover instances when expenditures were higher than revenues.

The Film Office has been appropriated 4.5 full-time equivalent employees (FTE) each year since Fiscal Year 2013. The Film Office employed 3.0 FTE in Fiscal Years 2013 through 2015 and then increased to 4.0 FTE in Fiscal Year 2016.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this audit in accordance with Section 24-48.5-115(4), C.R.S., which requires the State Auditor to conduct an audit of the Film Office, the performance-based incentive program, and the loan guarantee program no later than July 1, 2017. The audit was also conducted in accordance with Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent Government (SMART) Act. Audit work was performed from August 2016 through March 2017. We appreciate the assistance provided by the management and staff of the Office of Film, Television, and Media, the Office of Economic Development and International Trade, the

Governor's Office, and the Economic Development Commission during this audit.

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. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The key objectives of the audit were to:

- Assess the Film Office's activities to ensure compliance with statutory requirements and evaluate the Film Office's accomplishment of its statutorily intended purpose of developing the film industry in the state.

- Evaluate whether the incentive program is operated in accordance with statute and Film Office policies, and evaluate what impact the incentive has on the film industry in the state.

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

- Reviewed relevant state statutes and Film Office policies.

- Interviewed staff at the Film Office and the Office of Economic Development and International Trade; eight Certified Public Accountants who provided reviews of productions' financial documents; nine of the 10 commissioners from the Economic Development Commission; and a sample of incentive recipients.

- Gathered and analyzed documentation and data on the incentive applications, application reviews, Film Office expenditures, and incentive payment records.

- Analyzed the Film Office's appropriations and expenditures in Fiscal

Years 2013 through 2016 and encumbrances between July 1, 2012, and December 31, 2016.

- Gathered and reviewed data on changes in the incentive program's trends in the number of jobs created, cost per job, and productions incentivized per year in Fiscal Years 2013 through 2016.

We relied on sampling to support our audit work and selected the following sample:

- A non-statistical sample of nine projects that received incentives between Fiscal Years 2013 and 2016.

The results of our testing of this sample was not intended to be projected to the entire population. This sample was selected to provide sufficient coverage to test controls of those areas that were significant to the objectives of the audit.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in CHAPTER 2 of this report.

CHAPTER 2

ADMINISTRATION AND CONTROLS OF FILM INCENTIVE FUNDS

One of the Office of Film, Television, and Media's (Film Office) major functions is to administer the State's film incentive program, which is a cash reimbursement for specific expenditures to encourage production companies to conduct production activities in Colorado [Section 24-48.5-115(2)(g), C.R.S.]. From Fiscal Years 2013 through 2016, the Film Office paid $10.6 million in incentives for 31 productions including commercials, documentaries, feature films, television shows, and video games.

EXHIBIT 2.1 outlines the numbers and types of incentives the Film Office paid in Fiscal Years 2013 through 2016.

FILM INCENTIVE STATISTICS
FISCAL YEARS 2013 THROUGH 2016

FISCAL YEAR	PRODUCTION TYPE	NUMBER OF PRODUCTIONS	INCENTIVES PAID	QUALIFIED LOCAL EXPENDITURES REPORTED	NUMBER OF IN-STATE JOBS REPORTED
2013	Commercial	1	$67,500	$374,200	95
2014	Commercial	1	$66,900	$334,500	52
	Feature Film	3	$1,158,900	$15,272,700	316
	Television	4	$734,100	$8,099,300	185
	TOTAL	8	$1,959,900	$23,706,500	553
2015	Commercial	2	$121,300	$621,900	82
	Documentary	1	$94,300	$472,500	22
	Feature Film	2	$598,600	$3,038,000	107
	Television	4	$1,119,200	$6,611,100	213
	TOTAL	9	$1,933,400	$10,743,500	424
2016	Commercial	2	$77,800	$389,100	86
	Documentary	3	$165,700	$985,200	17
	Feature Film	2	$5,050,000	$27,912,000	236
	Television	5	$603,900	$4,796,900	170
	Video Game	1	$764,000	$3,849,200	27
	TOTAL	13	$6,661,400	$37,932,400	536

SOURCE: Office of the State Auditor analysis of Film Office performance-based incentive data.

A list of incentivized projects between July 1, 2012 and March 31, 2017 is included in Appendix A.

INCENTIVE PAYMENTS

To receive an incentive, a production company must apply to the Film Office by requesting incentive funds for a specified production project and receive conditional approval from the Film Office and the Economic Development Commission (EDC). Once the production company has completed the project, it must submit documentation of its qualified local expenditures to a Colorado Certified Public Accountant (CPA) and get a report from the CPA that its expenditures equal or exceed the minimum amounts necessary to receive the incentive, [Section 24-48.5-116(2)(c), C.R.S.]. After the CPA reports on the production company's qualified local expenditures and the production company certifies that it meets the eligibility requirements, statute, [Section 24-48.5-116(c)(I)], states that "the [Film] Office shall issue the incentive to the production company."

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed a non-statistical sample of nine of the 31 productions that received an incentive in Fiscal Years 2013 through 2016. We selected the sample to review a variety of production types (e.g., feature film, commercial, and video game) and productions carried out by in-state as well as out-of-state production companies. We also selected the sample to include some productions in which the qualified expenditures or workforce amounts reported were close to the minimum requirements and therefore an error would be more likely to affect the production's incentive amount. These nine productions received a total of about $1.9 million out of the $10.6 million that the Film Office paid in incentives over the period we reviewed. We also contacted all 10 of the CPA firms that production companies hired to review production expenditures between Fiscal Years 2013 and 2016, and eight agreed to talk with us regarding how they carry out their reviews.

The purpose of our work was to evaluate whether the Film Office has adequate internal controls for managing the incentive program. Internal controls are processes designed to provide reasonable assurance that agencies will: (1) achieve their objectives; (2) operate effectively and efficiently; (3) safeguard public funds (including minimizing fraud, waste, and abuse); and (4) ensure compliance with applicable laws and regulations. State Controller policy, effective February 2016, adopted the Standards of Internal Control in the Federal Government (also known as the Green Book) as the state standard for internal controls. Internal controls help ensure compliance with statutory requirements and policies and procedures. Therefore, our audit work evaluated the Film Office's controls for ensuring compliance with the requirements described below.

COLORADO WORKFORCE. Under statute, a production company is eligible to claim an incentive only if the workforce for the production's in-state activities is made up of at least 50 percent Colorado residents [Section 24-48.5-116(1), C.R.S.]. According to the Film Office, the workforce would include cast, crew, and any other individuals or vendors that appear on the production company's set roster, a list of cast and crew that are on the set during the day. Additionally, Film Office policies require production companies to submit documentation to the Film Office of the residency status of the workforce, which includes a declaration of residency form as well as proof of residency, such as a Colorado driver's license, for all in-state employees.

QUALIFIED LOCAL EXPENDITURES. Under Section 24-48.5-116(1), C.R.S., a production company's in-state expenditures must be a minimum of:

- $100,000 for a Colorado production company.
- $250,000 for an out-of-state production company creating a commercial, TV show, or video game in Colorado.
- $1,000,000 for an out-of-state production company creating a film in Colorado.

Production companies can claim payments of up to $1 million per employee or contractor in wages or salaries for individuals who participate in production activities as qualified local expenditures if they withhold and pay all Colorado income taxes [Section 24-48.5-114(7)(i), C.R.S.].

Statute requires a production company to apply to the Film Office prior to beginning production activities in the state [Section 24-48.5-116(2)(a), C.R.S.] and Film Office policies state that the production company must apply before filming begins. Additionally, Fiscal Rules require state agencies to have a signed purchase order or contract before work can begin [1 C.C.R., 101-1, Rule 2-2 (2.16)].

Film Office policy states that it will review the following before making incentive payments:

- A proof of performance document (required by Section 24-48.5-116(2)(c)(I), C.R.S.) that certifies in writing that the amount of its actual qualified local expenditures equaled or exceeded the minimum amounts (as listed above).

- A final budget and ledger detailing all of the production's qualified local expenditures, a total payroll report showing that state income taxes were withheld for payroll expenses, and a vendor list including addresses.

- A CPA review of the accuracy of the production's financial documents. Statute requires the production company to hire a Colorado licensed CPA to conduct this review [Section 24-48.5-116(2)(c)(I), C.R.S.].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

The Film Office has not implemented internal controls to ensure that it only pays incentives to production companies that meet the Colorado workforce and local expenditure minimums. We found that the Film Office paid the production companies for all nine of the projects we reviewed a total of about $1.9 million in incentives even though none of them met all applicable qualification and documentation requirements, as described below.

THE FILM OFFICE PAID $129,900 IN INCENTIVES FOR PROJECTS THAT DID NOT QUALIFY. Specifically:

- The Film Office paid a $65,400 incentive in Fiscal Year 2015 for one project for which no CPA report was submitted. This project was one of two separate projects with the same production company that began in the spring of 2013. The EDC had approved the projects separately—a $368,800 incentive for an estimated $4.7 million project and $65,400 incentive for a smaller, $800,500 project. The Film Office prepared a single contract that included the combined incentive amounts ($452,200) for both projects, although the contract did not specify the project(s) to be completed and was never signed by the State.

  When the production company completed its work on the larger project, it submitted a CPA report for that project and the Film Office paid the full combined incentive of $452,200. The Film Office reported that it paid the combined amount because the production company exceeded its estimated Colorado spending on the larger project by more than it had estimated spending on the smaller project. The Film Office concluded that the combined incentive amount was warranted because the larger project alone had generated more economic benefit in the state than expected for both projects. However, according to the CPA report for the larger project, the company created only 47 jobs on the larger project for which the Film Office paid the combined incentive of $452,200, but had estimated that it would create 61 jobs on the two approved projects. Therefore, the Colorado income tax withheld for the Colorado jobs was likely less than expected because fewer Coloradans were employed than was expected. Because there was no CPA review, documentation, or proof of performance submitted for the smaller project, the Film Office has no evidence of the actual qualified local expenditures or of the percentage of Colorado workforce for this production.

  As discussed in a later section, the Film Office's decision to pay a higher than approved incentive for the larger project was contrary to its historical practice of only paying the EDC approved incentive even when a project exceeds the estimated spending and workforce figures.

- The Film Office paid an incentive of $28,000 for one project in Fiscal Year 2014 that did not meet the Colorado workforce minimum of 50 percent. The CPA report indicated that the minimum had been met, but the supporting documentation sent to the Film Office did not support the CPA report.

- The Film Office overpaid one incentive by $36,500, or about 5 percent of the total $764,000 approved amount, in Fiscal Year 2016. The overpayment occurred because the production company improperly included about $212,000 in expenses that were incurred prior to the effective date of the contract. Therefore, the incentive the Film Office paid was more than 20 percent of the production's actual qualified local expenditures. The CPA report for this project did not identify or correct this error.

- We found another project with inaccuracies in the CPA report that the Film Office did not identify but that did not affect the incentive amount. For this project, the production company included about $31,000 in payroll expenses for individuals who did not have Colorado income tax withheld. Statute only allows payroll to be included as a qualified local expenditure if Colorado income tax was withheld. In addition, the CPA applied the wrong local qualified expenditure threshold in calculating expenses.

THE FILM OFFICE PAID $1.8 MILLION IN INCENTIVES WITHOUT HAVING DOCUMENTATION TO SUBSTANTIATE THAT REQUIREMENTS WERE MET. Specifically:

- **MISSING WORKFORCE DOCUMENTS.** The incentive file for one of the projects was missing proof of residency for the individuals listed as Colorado residents, the files for two projects were missing total workforce information (e.g., a full list of individuals employed), and files for five projects lacked *both* the residency documents and the complete workforce information. As a result, we were unable to verify that the Colorado resident workforce for eight projects was at least 50 percent of the total workforce. The Film Office paid a combined total of $1.8 million in incentives on these projects. Additionally, for one production, the CPA only calculated individuals for the total workforce who were listed on the payroll reports and not individuals who were paid as vendors. The Film Office reported that individuals paid as vendors should be included in the workforce total as long as they are listed on the production's daily set roster. The Film Office had no information on whether the individuals paid as vendors were Colorado residents. If they were not Colorado residents, but had been properly included in the total workforce calculation, the production would not have met the 50 percent Colorado resident workforce requirement.

- **LACK OF EXPENDITURE DOCUMENTS.** For one of these projects, the Film Office had no documentation at all to support the production company's expenditures. Additionally, none of the incentive files included supporting documentation that fully aligned with the expenditures included in the projects' qualified local expenditures totals. For example, in one file we reviewed, the local qualified expenditure calculations included gas and lodging expenses without vendor names or addresses that showed that they were made in-state and were associated with the production activities.

- **LACK OF PROOF OF PERFORMANCE.** The incentive files for two projects were missing the final proof of performance document which certifies that the production has completed all the necessary requirements of the contract and is required by statute.

WHY DID THESE PROBLEMS OCCUR?

INCOMPLETE GUIDANCE FOR CPA REVIEWS. The Film Office has not clearly defined the type of work a production company must require a CPA to perform to provide adequate assurance that a project has met the qualifications to receive an incentive. The Film Office includes a list of "Expectations for CPA Review & Report of Film Incentive Proof of

Performance" (which we refer to as the CPA expectations list throughout this section) which was included in all the contracts we reviewed. The list specifies that the CPA must verify certain information reported in the production company's proof of performance, including the following:

- The financial information, including the budget for the entire production, non-qualified local expenditures, qualified local expenditures, and all backup documentation.

- Total Colorado payroll and proof of Colorado income tax withholding.

- Colorado production workforce information and all backup documentation, including the percentage of the production company's workforce that were Colorado residents.

However, according to the CPA reports we reviewed, the production companies did not all require the CPAs to conduct the same type or level of verification for their projects. While six of the 10 CPAs who reviewed project files conducted an audit under auditing standards, the other four indicated that they had, "review[ed] the financial information related to production activities to verify the accuracy of the expenses incurred." According to the American Institute of CPAs (AICPA) an audit is the highest level of assurance service that a CPA provides and is intended to corroborate the amounts and disclosures a company makes in its financial statements by obtaining audit evidence in a number of different ways including: inquiry, physical inspection, examination, and analytical procedures. In contrast, a review is substantially narrower in scope than an audit and does not include the examination of source documents such as receipts, testing of accounting records through inspection, or other procedures normally performed in an audit.

In addition to not having defined the type of work the CPAs should be required to conduct, the Film Office has not clarified the key purposes of the CPA review of expenditures. Specifically, the Film Office provides no direction about whether the review is intended to verify that the qualified local expenditures claimed by the production company were (1) really payments to a person or business in Colorado in connection with production activities in Colorado, as required by statute; or (2) verifiable expenses connected with the production; or (3) both. For example, the CPA expectations list does not address how several common expenses we noted in our file review should be handled. We found reimbursements to production company employees for various items, including gas or lodging, without receipts or other documents that specified a vendor or business address. Without the addresses, it was not possible to determine if the expenses were in Colorado and/or related to the production. The Film Office provides no direction to CPAs on what information must be included in supporting documentation for expenses to confirm that the expense is qualified.

Finally, the CPA expectations list does not clearly outline how workforce numbers should be calculated and substantiated. The errors we found in our file review indicate that the CPAs do not know how they are expected to verify or calculate the workforce numbers and that they do not calculate the workforce numbers consistently. Four of the eight CPAs we interviewed reported that they verified workforce residency with payroll addresses instead of using the declaration of residency forms that the Film Office intends them to use to verify residency. The Film Office has not stipulated that the CPAs use the declaration form to verify residency. In addition, CPAs may have difficulty consistently identifying and reporting the total workforce count because production companies provide a variety of documents denoting employment, such as payroll records, daily set rosters, crew lists, and vendor lists; the Film Office has not stipulated which documentation should serve as the official employment list nor has it communicated to CPAs the circumstances under which vendors should be considered as part of the workforce.

LACK OF SUBSTANTIVE REVIEW FOR ELIGIBILITY. Film Office staff stated that they review each CPA report submitted solely to ensure that the CPA indicated that the production was eligible for the incentive. They reported that they have insufficient staff resources to do any further review to ensure the incentives they pay are only for qualifying projects. Specifically:

- The Film Office does not review the CPA reports for reasonableness (such as to check that the CPA applied the correct local qualified expenditure criteria) or to identify any obvious errors, such as inconsistent information within the report or miscalculations.

- The Film Office does not verify the accuracy of the CPA reports by comparing them to any of the supporting documents it requires production companies to submit, such as proof of residency or expense documentation. The Film Office paid 46 incentives between July 1, 2012, and March 31, 2017, an average of about one per month. Therefore, if the Film Office reviewed one project every month against supporting documentation, it could ensure the accuracy of the CPA reports for virtually all of its incentive projects. We estimate it took one person no more than 8 hours to comprehensively compare a CPA report to supporting documentation during our audit (for those CPA projects where the Film Office had supporting documentation). Such reviews could likely be streamlined by the use of standard templates to guide and document them. Further, if the Film Office deems such reviews too resource intensive, it could check information in the CPA reports against supporting documents on a sample or risk basis, for greater efficiency. Either way, such reviews would require that the Film Office enforce its requirements for production companies to provide proof of residency documents and expense documents. The Film Office did not routinely enforce compliance with these requirements for the projects we reviewed.

Instituting a review of the reports for reasonableness, basic accuracy, and to verify the information in the reports against supporting documents would provide more assurance that the Film Office only pays accurate incentive amounts for fully qualifying projects.

An option to the Film Office implementing reviews to ensure CPA reports can be relied upon would be for it to seek statutory change such that the Film Office, rather than the production companies, contract with a third party, such as a CPA firm, for verification that projects meet all incentive requirements. This approach would provide the Film Office with direct authority over the verification so that it could more directly, and potentially more efficiently, ensure that the work is of a scope and type to serve as a reliable basis for paying incentives. If the Film Office were to contract directly with the CPA firms to conduct the reviews, it could deduct the cost of the reviews from the incentive amount to avoid shifting the costs of the reviews from the production companies to the State. This option would still require the Film Office to clearly define the type and amount of work it would expect the third party to carry out.

WHY DO THESE PROBLEMS MATTER?

The Film Office's lack of controls has resulted in it paying incentives for ineligible production projects and creates a risk that ineligible payments will continue. When the Film Office pays incentives for productions that do not employ a workforce consisting of at least 50 percent Colorado residents, it is not incentivizing the creation of jobs or state income tax revenue to the extent intended by statute. Similarly, paying incentives for productions that did not reach the minimum qualifying expense level means that the Film Office is not incentivizing spending in Colorado to the extent intended by statute. Further, paying ineligible incentives reduces the amount available to offer for productions that meet all the requirements and therefore provide the economic benefits intended by statute.

When the Film Office is inconsistent in how it manages its incentives, it creates both the appearance and the actuality of inequity. Specifically, when the Film Office paid a higher incentive to one production company because it overspent its budget for one of two incentive projects, it departed from its typical practice of only paying the incentive amount approved by the EDC, even on projects that significantly exceeded their planned budgets, and violated its own policy and procedure manual which states, "the amount of incentive cannot exceed the maximum amount initially determined by the Office regardless of actual expenditures." In other cases, the Film Office has incentivized different projects by the same company but treated each as a separate project that was expected to meet the minimum requirements on its own. Additionally, the Film Office reported that it considers productions to only be eligible for an incentive of up to the amount approved by the EDC and has denied requests for additional incentive funding when a company overspends its original budget.

RECOMMENDATION 1

The Office of Economic Development and International Trade should strengthen its oversight of the CPA review process by:

A Establishing specific requirements in each project contract for the type of work production companies must require CPAs to conduct to provide adequate assurance that the project is qualified for the incentive payment. This should include defining the type of work, and the type of supporting documentation, (e.g., original receipts showing that the expenses were made in Colorado, and a complete list of production employees and residency documentation for all Colorado employees) that can be used to verify qualified local expenses and workforce figures.

B Enforcing its policies that require production companies to submit specified documentation before paying the incentive.

C Implementing reviews of the CPA reports to include reasonableness and general accuracy reviews of all reports and verification of the accuracy of at least some reports against underlying documentation.

RESPONSE

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

A AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade agrees that stricter definitions of cast, crew, and expenses can be implemented (in addition to what is already in place) in order to provide CPAs with stronger guidance of the type of report required for the program. The incentive contracts will be amended to include: 1) stricter definitions of workforce, 2) requirements about the type of work production companies must require CPAs to conduct, and 3) the type of supporting documents production companies must provide to CPAs to carry out the specified work.

B AGREE. IMPLEMENTATION DATE: APRIL 2017.

The Office of Economic Development and International Trade began stricter enforcement of policies in April 2017. Since that time, the Office has not paid incentives on projects that were completed without first obtaining all required documentation.

C AGREE. IMPLEMENTATION DATE: APRIL 2017.

As of April 2017, the Office of Economic Development and International Trade strengthened reviews of CPA reports for reasonableness and general accuracy. CPA reports are reviewed against payroll reports and Colorado residency verification as provided by the project.

RECOMMENDATION 2

As an alternative to RECOMMENDATION 1, the Office of Economic Development and International Trade should evaluate the costs and benefits of the Office of Film, Television and Media contracting directly with a third party to verify qualified local expenditures and workforce figures and:

A Use the results of the review to seek legislative change, as appropriate.

B Establish specific requirements for the type and amount of work a third party must conduct to provide adequate assurance that the project is qualified for the incentive payment if the Office of Film, Television, and Media begins contracting for verification itself.

RESPONSE

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

A NOT APPLICABLE.

In light of the implementation of Recommendation 1, Recommendation 2 is not applicable.

B NOT APPLICABLE.

See above.

CONTROLS OVER STATE FUNDS

To manage the State's incentive program, the Film Office accepts and reviews incentive applications for production company eligibility and project viability on a continuous basis. Once the Film Office approves an application, it is presented to the Economic Development Commission (EDC) for funding approval, conditional upon whether the production company meets the statutory criteria as discussed in the Film Incentives Finding. If the EDC approves funding for a production, the Film Office contacts the company to let it know and begins the process of executing a contract or purchase order with the company for the project. The Film Office pays the incentive, in accordance with statute [Section 24-48.5-116, C.R.S.], once the production is complete, the production company's CPA has reviewed and reported on the qualified local expenditures, and the production company has certified that the production has met statutory eligibility criteria.

EXHIBIT 2.2 shows the number of productions for which the Film Office executed contracts or purchase orders, including dollar amounts, between July 1, 2012, and December 31, 2016.

EXHIBIT 2.2

INCENTIVE PROJECTS AND AMOUNTS
JULY 1, 2012 THROUGH
DECEMBER 31, 2016

	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	July 1, 2016 Through December 31, 2016	Total
Number of Projects with Executed Contracts or Purchase Orders[1]	7	10	20	18	6	61
Contracted Amount	$1.4M	$1.2M	$9.2M[2]	$2.8M	$2.1M	$16.7M

SOURCE: Office of the State Auditor analysis of data from the State's financial management system, the Colorado Operations Resource Engine (CORE), and data provided by the Film Office.
[1]Since the EDC approves projects throughout the year, the year in which a contract is executed may not be the year that the project was approved.
[2] This amount is for all of the projects that were contracted in Fiscal Year 2015. However, five of these projects, totaling $1.6 million were approved in Fiscal Year 2014.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed all of the EDC approved incentive projects between July 1, 2012 and December 31, 2016. We also reviewed contract and purchase order information for the 61 incentive projects for which the Film Office executed contracts or purchase orders between July 1, 2012, and December 31, 2016. Of these 61 contracted projects, the Film Office has paid incentives for 43, totaling $11.7 million. We also reviewed all of the EDC monthly meeting minutes for the same period to identify the incentive projects and amount of incentives that were approved by the EDC.

The purpose of the audit work was to evaluate the Film Office's controls for managing the commitment and disbursement of incentive funds for production projects against the following requirements:

- **Disbursement of funds.** Statute prohibits state agencies from disbursing funds unless the disbursement is supported by an approved purchase order or a contract [Section 24-30-202(1), C.R.S]. In addition, Fiscal Rules require state agencies to maintain an adequate system of internal controls to identify and prevent or minimize the disbursement of funds without prior approval through a contract or purchase order [1 C.C.R., 101-1, Rule 2-2 (7.3)].

- **RECORDING THE OBLIGATION OF FUNDS.** Fiscal Rules require the State Controller or delegate to review contracts before approving them. The review process involves verifying that a number of requirements are met, including that funds are encumbered, before executing the contract [1 C.C.R., 101-1, Rule 3-1 (9.3.1.1.4)]. An encumbrance is an amount reserved in the accounting system to reflect a formal obligation of the State [1 C.C.R., 101-1, Rule 2-2 (2.7)].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

We found that the Film Office does not have an adequate system of internal controls over the commitment and disbursement of incentive funds as illustrated by the problems discussed below.

DISBURSING FUNDS WITHOUT EXECUTED PURCHASE ORDERS OR CONTRACTS. We found that the Film Office paid a total of $1.9 million in incentives for nine projects either without having a contract or purchase order in place, or without having a contract or purchase order in place before the project work began. Specifically we found:

- The Film Office paid about $1.3 million dollars in incentives on four productions for which no contract or purchase order was ever executed. These payments represent 11 percent of the $11.7 million the Film Office paid for all 43 projects, for which it paid incentives between July 1, 2012 and December 31, 2016.

- The Film Office executed two contracts after the production company completed production. The CPA reports in both instances indicated that the production period ended about a month before the contract was executed. The Film Office paid about $67,000 in incentives for each of these projects.

- The Film Office executed contracts for three projects after the production company began work on the project and thereby began earning the incentive. Specifically, the Film Office executed one contract in March 2013, about 2 months after the production company began work, and later paid the production company a $307,000 incentive; the Film Office executed another contract in October 2013, almost 4 months after the production company began work, and later paid the production company a $100,000 incentive; and it executed a third contract in May 2014, about 3 months after the production company began work, and later paid the production company a $70,000 incentive.

NOT ENCUMBERING FUNDS. We found that the Film Office never encumbered funds in the state's financial management system, the Colorado Operations Resource Engine (CORE), for three of the 61 contracted incentive projects (5 percent) we reviewed. The unencumbered projects totaled about $820,000 in approved incentive funds. Further, the Film Office waited to encumber $1.3 million in approved incentives for 12 other projects for between 31 and 206 days after it had executed the contracts or purchase orders, as illustrated in EXHIBIT 2.3. Projects can vary substantially in length, with commercials typically being completed and paid within about 6 months of executing a contract and TV shows often running more than a year.

EXHIBIT 2.3

INCENTIVE PROJECTS
TIMING OF ENCUMBRANCES

NUMBER OF INCENTIVE PROJECTS	NUMBER OF DAYS BETWEEN CONTRACT/PURCHASE ORDER AND ENCUMBRANCE
46	0-30
9	31-60
1	61-90
2	>120
TOTAL 58[1]	

SOURCE: Office of the State Auditor analysis of data from state accounting systems, Colorado Operations Resource Engine (CORE) and Colorado Financial Reporting System (COFRS).
[1] Three of the contracts were never encumbered.

WHY DID THESE PROBLEMS OCCUR?

The Film Office reported that the reason some contracts were never executed is that the production companies refused to sign the contract because of concerns about some of the terms. For example, one of the standard contract terms stated that if the production company failed to perform, then the State would own the rights to any work product and copyright associated with the production. According to the Film Office, it worked with the Office of the State Controller and changed the terms in June 2014 so that the contract language was no longer an issue. We recognize that the Film Office needed to find a solution to the problematic contract language so that it could be effective in working with production companies to promote production in Colorado. However, the Film Office violated statute and Fiscal Rules when it chose to pay the incentives to production companies that refused to sign the contracts. Fundamentally, the Film Office still lacks basic controls to ensure that it complies with statute and fiscal rule, as described below.

THE FILM OFFICE LACKS CONTROLS TO ENSURE CONTRACTED PROJECTS ARE BEGUN AND COMPLETED IN A TIMELY MANNER. The Film Office reported two specific factors that have caused delays in contract execution:

- The film industry practice of applying for incentives in multiple states may mean that a production company is not willing to sign a contract until it gets multiple offers and decides which is best for it. In some cases, production could begin before this process is completed, particularly because some states offer incentives to projects already underway.

- The Film Office does not want to tie up funds it would otherwise consider available for commitment to another incentive project until it is fairly certain the contracted incentive will actually be earned. A company may not earn a contracted incentive if the project never actually occurs or does not meet all of the requirements; may not earn the entire incentive if the qualified local expenses are lower than projected; or may be delayed in earning the incentive if the beginning or completion of the project is delayed. We confirmed that just under 20 percent of the 48 incentive projects contracted and paid or released from July 1, 2012, through December 31, 2016, (13 of the total 61 contracted projects were still pending as of December 31, 2016, the date of our review) did not earn their contracted incentives. These projects represented $2.0 million (12 percent) of the total incentive amounts contracted over the period.

To date, the Film Office has not implemented controls to help reduce delays in contracting and encumbering. For example, the Film Office does not require a production company to begin or complete an incentive project within a specified time after executing a contract. The Film Office also does not have procedures to unencumber funds for projects that are delayed for lengthy periods and require companies to reapply in such situations. We found that some other state film offices do impose deadlines. For example, the Texas film office does not allow production companies to apply for an incentive earlier than 60 days before the first day of production and in Washington, production companies must begin principal photography no later than 120 days after they receive approval for the incentive.

Further, the Film Office has not accurately reflected Fiscal Rule requirements related to encumbrances in its policies. The Film Office policy and procedures manual states that once an incentive project receives approval from the EDC, the Film Office must execute a contract and then encumber the funds, rather than the reverse, as required by Fiscal Rules which state that the State Controller or delegate cannot sign a contract unless the funds are first encumbered [1 C.C.R., 101-1, Rule 3-1 (9.3.1.1.4)]. In practice, the encumbrance and contract execution should occur at essentially the same time.

WHY DO THESE PROBLEMS MATTER?

As a result of the Film Office not executing contracts or purchase orders for approved incentive projects, it received five statutory violation notices from the State Controller's Office on the 31 incentives (16 percent) it paid between July 1, 2012, and December 31, 2016. The Film Office received one of these statutory violations in Fiscal Year 2014, three in Fiscal Year 2015 and one in Fiscal Year 2017. A state agency can receive a statutory violation when it incurs a liability or makes a payment on the State's behalf without the prior approval of a purchase order or a contract, which violates Section 24-30-202(1) or (3), C.R.S. Fiscal Rules allow for the State Controller to ratify and pay an expenditure that received a statutory violation if certain conditions are met, including that the violation is not part of a consistent pattern of statutory violations [1 C.C.R., 101-1, Rule 2-2 (7.4.5)]. If the State Controller determines that the statutory violations are part of a consistent pattern, he or she can refuse to pay the obligation and Fiscal Rules create personal liability for any person who incurs, orders, or votes for an obligation, or makes a payment, which creates a statutory violation [1 C.C.R., Rule 2-2 (7.2)]. Thus, the Film Office places its employees and the EDC members at risk of being personally liable for any approved incentive amount that is not documented in an executed contract.

Not encumbering approved incentive funds at the time that contracts are executed could result in the EDC over-approving funds and the Film Office overspending its funds. The Film Office keeps a production tracking spreadsheet which staff report is used to track funds, inform the EDC about the amount available for approving new incentive project applications, and help prevent overspending its appropriation. We reviewed the spreadsheet and found that it does not serve as an accurate means of tracking the funds available to prevent approving incentives or spending funds that are not available. Specifically, the spreadsheet does not have a consistently calculated monthly balance of available funds nor does it indicate when the Film Office determined that specific projects would not be produced in the state so that those committed funds could be made available for other projects.

Because of the errors in the Film Office's spreadsheet, we tracked the amounts the EDC approved, the amounts included in executed contracts, and the amounts the Film Office paid in incentives for all projects from July 2012 through December 2016, and found that the Film Office gave inaccurate information about how much money was left in its incentive account in all 24 of the 44 monthly EDC meetings that it presented its budget during this period because of the errors in its spreadsheet. The Office of Economic Development and International Trade staff reported to us that they use CORE to report the account balance information to the EDC. However, since the Film Office has not recorded encumbrances in a timely manner, CORE is also not an accurate source of information about the availability of incentive funds. Therefore, the EDC is making decisions about approving incentive projects using inaccurate information. We determined that 12 of the 61 contracts (20 percent) that the Film Office signed over the period we tracked overcommitted the Film Office budget at the time the contract was signed. If all of these projects had been completed during the period we reviewed, the Film Office would not have had sufficient funds to pay all of the incentives. According to our calculations, the incentive account balance was overcommitted by about $1.7 million at the end of Fiscal Year 2015.

The Film Office's practice of not using the encumbrance process to accurately track the commitment of funds could harm the State's reputation and discourage production companies from considering Colorado for their projects. For example, once the EDC has approved a production company for an incentive, the company may view the commitment as firm, even before a contract is signed or work begins. If the Film Office ever has to delay or deny an approved incentive payment because it has overcommitted funds, production companies may be reluctant to seek the incentive to film in Colorado and instead look at other states as preferred locations.

RECOMMENDATION 3

The Office of Economic Development and International Trade should improve its controls over film incentive funds and its compliance with requirements for encumbrances and contract execution by:

A Implementing controls, such as internal deadlines, that require incentive funds to be encumbered and a contract executed within a limited and specified time after EDC approval.

B Establishing controls to help ensure approved projects are completed in a timely manner. This may include stipulating timelines for applying for incentives, beginning and completing work on approved projects, unencumbering unneeded funds, and requiring reapplication for projects that are delayed beyond a specified deadline.

C Revising the policy and procedure manual to accurately reflect Fiscal Rule requirements to encumber funds at the time contracts are executed.

RESPONSE

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

A AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade implemented a new procedure after the April and May EDC Meetings that encumbers approved funds immediately using a General Accounting Encumbrance. The Office will enforce timeliness of contract execution by: 1) sending contracts for approval before the EDC meeting and 2) creating an internal checklist that requires deadlines for contract execution.

B AGREE. IMPLEMENTATION DATE: JULY 2017.

In addition to the existing communication between production companies and the Film Office, the Office of Economic Development and International Trade will create a reasonable timeline for project execution based on the type and scale of potential projects. The Office will adhere to the set timelines and require follow up at specific milestones, which will be documented. Projects that get off track or need to be extended will require approval from the Office in writing.

C AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade will revise its policy and procedure manual to accurately reflect Fiscal Rule requirements to encumber funds at the time contracts are executed.

APPLICATION PROCESSING

For production companies to be eligible for an incentive, statute requires them to apply to the Film Office before beginning production activities in the state. The Film Office makes an initial determination about whether the project is eligible and the Economic Development Commission (EDC) votes to conditionally approve or to deny each project [Section 24-48.5-116(2), C.R.S.]. Conditional approval means that the Film Office will pay the incentive after production is complete, if the company certifies and the company's CPA report agrees that the production meets the statutory requirements.

The Film Office starts the process of evaluating projects for a film incentive by asking interested production companies to contact the Film Office to provide basic information about the project. According to Film Office staff they consider questions listed in the Film Office's policy and procedure manual, such as, "What are the major factors in selecting a location, convenience, or scenery?" and "What is your budget and what is your current financing status?" during their initial conversation with interested companies. The Film Office considers these questions guidance for their staff. Based on the conversation, staff evaluate whether the company has the capacity to successfully complete the project in terms of having adequate funding, experienced staff, and a logistical plan. If staff decide that the proposed project is not viable, or if the Film Office lacks sufficient funds to offer an incentive, staff recommend that the production company go no further and the process ends. Thus, the Film Office decides based on this conversation whether the potential project should be funded.

If staff conclude that a proposed project is viable and the Film Office has available funds, staff ask the company to submit a three-page form that contains information such as the production company's name and address; how many jobs it estimates it will create during the production;

and how much money it expects to spend on the production, both in-state and out-of-state. This document serves as the application and is presented at the EDC's monthly meeting where the EDC votes on the project. Based on the minutes of the EDC meetings from July 2012 through December 2016, the EDC approved all but one project that the Film Office presented, which it tabled. In the period July 1, 2012 through December 31, 2016, the Film Office received a total of 76 applications of which 72 were approved by the EDC. Of these 72, 61 resulted in signed contracts with a production company and the Film Office ultimately paid 43 of them an incentive. Not all projects approved by the EDC ultimately receive an incentive payment either because the production company never signs a contract with the Film Office or did not complete production.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed 31 of the 43 incentive applications for projects for which the Film Office paid an incentive from July 1, 2012 through December 31, 2016. These 31 applications represent all of the applications for projects that the Film Office paid an incentive in Fiscal Years 2013 through 2016. We also reviewed the Film Office's documentation for the three applications it denied in Fiscal Years 2013 through 2016. We used the following criteria to evaluate the Film Office's incentive application processes:

- **FILM OFFICE GOALS.** The Film Office has two goals to strategically use its funds to the benefit of the State. The first is to "strategically incentivize projects that will bring the most economic development to the State and prioritize projects that plan to spend money outside of metro Denver." The second is to "utilize incentive funds strategically in order to maximize the number of jobs created and the number of qualified prospects served through our limited yearly funding." Qualified prospects are incentive projects that are likely to meet the qualifications to receive an incentive.

- **TRANSPARENCY AND ACCOUNTABILITY.** The State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act emphasizes accountability and transparency in state government programs, stating, "It is important that state government be accountable and transparent in such a way that the general public can understand the value received for the tax dollars spent by the state" [Section 2-7-201(1)(a), C.R.S.]. To achieve the intended accountability and transparency, we would expect a state program like the film incentive program, that is determining whether an entity is eligible for funding, to have and communicate uniform eligibility criteria, apply the criteria in a fair and consistent manner to determine eligibility, document the decision making process, and communicate eligibility decisions to interested entities in writing.

WHAT PROBLEMS DID THE AUDIT IDENTIFY AND WHY DID THEY OCCUR?

We found that the Film Office's current process for accepting and processing applications does not promote achievement of its goals to strategically incentivize productions that bring the most economic development to the State, prioritize projects that plan to spend money outside of metro Denver, or maximize the number of jobs created and projects it incentivizes each year. The process also is not transparent to potential applicants, policy makers, or the public, as described below.

NO UNIFORM EVALUATION CRITERIA. The Film Office has no criteria for staff to use in interpreting the information obtained through the conversations with interested companies, even though these conversations serve as the sole process for the Film Office to determine whether a potential project should be offered an incentive. For example, the Film Office told us they ask interested companies about the experience of the production staff and the planning for the project, but the Film Office has not developed objective measures, such as the amount and type of experience production staff should have or the amount of planning that should have been completed, for staff to use in deciding whether a project should be offered an incentive. Staff reported that their backgrounds in and knowledge of the film industry allow them to accurately gauge an interested company's capacity and make a denial decision without either specified criteria or any further evaluation of the project. They indicated that they use this informal process so that production companies do not incur the time and cost of completing the three-page application until they know that the project will be recommended for an incentive.

NO DOCUMENTATION OF THE EVALUATION OR DECISION PROCESS. We found the Film Office maintained virtually no documentation of how it reached decisions to fund proposed incentive projects. Specifically:

- The Film Office does not keep records of all of its conversations with companies interested in an incentive, such as notes about the major factors the company said were important in selecting a location or the company's budget and financing status (questions staff said they routinely ask). The Film Office does have some records of production company interest that includes contact information, but it does not track project information during those phone calls and does not always log contact information for every interested production company that calls.

- Film Office staff had no records indicating how and why they decided a company should submit a written application or not.

- The Film Office had no records indicating that staff conducted any further evaluation of potential projects once completed application forms were submitted. In Fiscal Years 2013 through 2016, the Film Office received 76 applications and recommended all but three to the EDC (96 percent). The Film Office reported that this high approval rate is due to its informal assessment and decision process.

- The Film Office had a letter for only one of the three written applications it denied, which stated that the reason for denial was that the production company applied after it had completed much of its production, so it did not meet the statutory requirement to apply before beginning production in the state. The Film Office did not have any documentation showing why the other two written applications were denied or that it had communicated the reasons to the applicants.

WHY DO THESE PROBLEMS MATTER?

It is important for the Film Office to have a consistent, documented process for evaluating incentive applications for two reasons. First, the lack of guidance and criteria on what makes a good incentive project means the process is not designed or operating to allow the Film Office to strategically maximize its incentive funds by awarding them to projects with the highest expected economic impact, which is one of its strategic goals. Second, without a documented evaluation and decision process, the Film Office's decisions are not transparent and do not demonstrate accountability for making decisions that are fair, consistent, and effective in accomplishing the Film Office's purpose. In fact, the current application procedure appears to promote the approval of projects based solely on staff's perception of the company's capacity and ability to meet the minimum spending requirements, not on criteria that reflect the goals of using funds strategically to provide the most economic development or maximize job creation.

Further, the current informal process is not consistently documented and does not allow the Film Office to track how many production companies have shown interest in the incentive over any period and the proportion that were denied. Thus, the Film Office does not have data to evaluate the extent of unmet interest in film production in Colorado so that it can accurately represent its resource needs to policy makers. The Film Office staff stated that they do sometimes log information about interested projects into a database, but that they have not been consistent about doing so for every project and that the individual records are incomplete with only the name of the project and contact information for the production company, but no information about the project budget. Further, Film Office staff told us that the State has lost production projects to surrounding states based on not having enough incentive money, but because its documentation of the application and evaluation process is so minimal, it could not provide us with any supported data to illustrate the loss.

RECOMMENDATION 4

The Office of Economic Development and International Trade should improve the incentive application process by:

A Implementing a documented application procedure that ensures that the Office of Film, Television, and Media collects comprehensive and consistent information on all prospective incentive projects.

B Expanding the Office of Film, Television, and Media's policy and procedure manual to include uniform criteria to be used in evaluating proposed projects and making recommendations to the Economic Development Commission. The criteria should include factors that reflect the production company's capacity for the project, the expected economic benefit, and how the project furthers the Office of Film, Television, and Media's strategic goals.

C Implementing written policies and procedures to maintain documentation related to all potential incentive projects that includes the reasons why each project was denied or recommended for approval.

D Implementing a documented method of informing interested production companies of the reasons why the Office of Film, Television, and Media has denied a proposed project.

RESPONSE

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

A AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade will create an application checklist and maintain a log of all applications and prospective projects to ensure all the required information is collected consistently in accordance with the checklist.

B AGREE. IMPLEMENTATION DATE: JULY 2017.

For evaluating incentive projects, the Office of Economic Development and International Trade will modify existing policies to develop and use uniform criteria for all applicants. The Office will also create a rating scale for the criteria that allows factors such as project viability, past experience from production companies, and overall economic development of the project, to be used as measures for recommending or denying projects to the EDC.

C AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade will implement written policies and procedures to maintain documentation related to all potential incentive projects that includes the reasons why each project was denied or recommended for approval.

D AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade agrees to implement a standardized method of informing interested production companies of the reasons why the Office has denied a proposed project.

IN-STATE AND OUT-OF STATE INCENTIVES

Colorado's film incentive program is available to both in-state and out-of-state production companies. EXHIBIT 2.4 shows incentives the Film Office paid to in-state and out-of-state production companies in Fiscal Years 2013 through 2016.

EXHIBIT 2.4

FILM INCENTIVES PAID TO IN- AND OUT-OF-STATE COMPANIES
FISCAL YEARS 2013 THROUGH 2016

FISCAL YEAR	2013	2014	2015	2016	TOTAL
In-State Production Companies	0	4	6	10	20
In-State Incentive Amounts	$0	$490,700	$863,400	$840,500	$2,194,600
Out-of-State Production Companies	1	4	3	3	11
Out-of-State Incentive Amounts	$67,500	$1,469,200	$1,070,000	$5,820,900	$8,427,600
Total Number of Productions	1	8	9	13	31
Total Incentive Amounts	$67,500	$1,959,900	$1,933,400	$6,661,400	$10,622,200

SOURCE: Office of the State Auditor analysis of Film Office incentive data.

The differences between the in-state and out-of-state incentive requirements are shown in EXHIBIT 2.5. Specifically, the workforce requirements are the same for both, but the amount of qualified local expenditures required for in-state production companies is lower for all types of productions.

EXHIBIT 2.5

STATUTORY REQUIREMENTS
IN-STATE AND OUT-OF-STATE
INCENTIVES

	IN-STATE PRODUCTION COMPANY	OUT-OF-STATE PRODUCTION COMPANY
Colorado Resident Percentage of Workforce	50%	50%
Total Qualified Local Expenditures for TV Shows, Commercials, and Video Games	$100,000	$250,000
Total Qualified Local Expenditures for Films	$100,000	$1,000,000

SOURCE: Office of the State Auditor analysis of Section 24-48.5-116 (1), C.R.S.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed all 31 of the Film Office's paid incentive productions in Fiscal Years 2013 through 2016 to evaluate whether the production companies that were approved for an in-state incentive met the following requirements to qualify for the in-state incentive:

- **DEFINITION OF A PRODUCTION COMPANY.** Statute defines a production company as a person, including a corporation or other business entity, *that engages in production activities* [emphasis added] for the purpose of producing all or any portion of a film in Colorado [Section 24-48.5-114(6), C.R.S.].

- **DEFINITION OF IN-STATE.** According to statute, an in-state production company "has been a resident of the state or registered with the Secretary of State for at least 12 consecutive months; except that, if the production company creates a business entity for the sole purpose of conducting production activities in the state, then such business entity need not be registered with the Secretary of State for 12 consecutive months, but the owner of the business entity must be a resident of the state for at least 12 consecutive months" [Section 24-48.5-114(4), C.R.S.].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

We found problems with the qualifications of two of the 20 production companies that were approved for in-state incentives over the period we reviewed, as described below.

ONE COLORADO COMPANY DID NOT APPEAR TO BE A PRODUCTION COMPANY. For one feature film production, we found that an out-of-state production company applied for an incentive and also listed an in-state production company on the application. Although the in-state company met the statutory requirement of having been registered with the Secretary of State for at least 12 consecutive months, there are indicators that it was not a production company. Specifically:

- None of the Secretary of State filings for the company listed the principal address as a Colorado address and the company's registered owner was not a Colorado resident at the time of production.

- The Film Office had no evidence that this in-state company had carried out production activities prior to, during, or after the incentive project. In fact, according to the documentation the production company submitted to the Film Office, all of the production expenses for the incentive project were incurred by the out-of-state production company, suggesting that the in-state company was not involved in any production activities.

- Readily available online information about the film does not identify the in-state company as one of the several production companies associated with the film. Specifically, the film's production credits, information on the Internet Movie Database (an online database of information related to films and television programs), and Wikipedia do not include the name of this in-state company as one of the production companies associated with the film.

The Film Office paid the full incentive, which totaled about $82,000, based on the out-of-state production company reporting it incurred

$455,000 of local qualified expenditures, which exceeds the *in-state* spending threshold of $100,000. If the Film Office had determined that the in-state company named on the application was not a Colorado production company, and therefore considered the applicant to be an out-of-state company, the company would not have met the out-of-state threshold of $1,000,000 and would therefore not have been qualified for the incentive.

ONE PRODUCTION COMPANY DID NOT APPEAR TO MEET THE INTENT OF THE IN-STATE REQUIREMENT. This production company technically qualified for the in-state incentive as it was registered with the Secretary of State for at least 12 consecutive months, but if the intent is for the in-state incentive to be available to businesses that have long-term operations in Colorado, we found indications that this intent was likely not achieved in this case. Specifically:

- The incentive application, the purchase order executed by the Film Office, and the production company's proof of performance all cite only an out-of-state address for the company.

- The Film Office had no evidence that the company engaged in any business activities in Colorado after the incentive project.

WHY DID THESE PROBLEMS OCCUR?

THE FILM OFFICE ENCOURAGES OUT-OF-STATE COMPANIES TO APPLY JOINTLY WITH IN-STATE COMPANIES. Film Office staff reported that they routinely recommend that out-of-state production companies apply jointly with in-state companies in order to apply for an in-state incentive. The Film Office believes that it has the authority to approve projects that are primarily operated by out-of-state companies based on the in-state criteria, but the Film Office does not verify that an in-state company actually participates in any way on an incentive project that is approved according to the in-state criteria. The Film Office reported that it believes that allowing out-of-state companies to take advantage of the lower minimum qualified local expenditure requirements through some type of association with an in-state company is a legitimate means of promoting production and job creation in Colorado. For the same reason, the Film Office does not verify that the businesses listed on an application are production companies as defined in statute, rather than other types of businesses.

THE STATUTORY DEFINITION OF AN IN-STATE COMPANY IS LIMITED. Statute only specifies that a person or business entity must meet one of two requirements to be considered an in-state company for the purposes of the film incentive: (1) be registered with the Secretary of State for at least 12 consecutive months; or, (2) if a newly created business, be owned by someone who has been a Colorado resident for at least 12 months. These requirements provide only limited assurance that an applicant claiming in-state status is actually a legitimate, ongoing operation in Colorado. If the intent of the General Assembly was to incentivize companies that maintain some type of ongoing operations in Colorado, verifying registration with the Secretary of State or that a business owner had resided in Colorado for 12 months at some point in time does not accomplish that intent because they do not indicate that any business activity is actually occurring in Colorado. To date, the Film Office has not established additional requirements for applicants that could help achieve this intent.

We conducted research to try to determine what other information would indicate that a business is actively operating in Colorado and found no single source. For example, unless a business employs at least one employee on an ongoing basis, it does not need to carry workers' compensation insurance and would therefore not be known to the Colorado Department of Labor and Employment; if a business does not collect and remit state or local sales taxes, it is not required to obtain a business license from the Colorado Department of Revenue. Some businesses must file a business tax return with the Department of Revenue but the Department of Revenue is prohibited from sharing tax filing information with other state agencies. Although we found no readily available source to verify the in-state status of a business, the Film Office could require applicants to provide some type of additional evidence of their operations to gain greater assurance that the companies it approves for the in-state incentive are in-state companies.

For example, the Film Office could require a company seeking in-state status for the film incentive to provide one or more of the following as evidence that they have ongoing business in Colorado, such as:

- Current Colorado state business tax returns.

- Documents showing the company employs Colorado residents and pays the associated payroll taxes.

- Evidence that the company maintains worker's compensation insurance for Colorado employees (if applicable).

- Utility bills or lease agreements that indicate the company's presence in Colorado.

WHY DO THESE PROBLEMS MATTER?

Statute does not specify why there is a lower spending threshold for in-state production companies to be eligible for incentives. However, given the overall intent and goals of the incentive program to increase jobs, spending in the state, and state income tax revenue, it is reasonable to infer that the intent may have been to encourage the establishment of long-term infrastructure and ongoing production activities within the state. By having a lower spending threshold for a Colorado business to qualify for the incentive, the State is more likely to encourage the development of such infrastructure and see longer-term financial benefits, such as additional state and local tax revenue and more permanent job opportunities. When the Film Office pays an incentive to an out-of-state company based on a production meeting the lower in-state spending threshold, the Film Office reduces the amount the production company is incentivized to spend in the state during the production, which reduces the short-term economic benefit to the State, and the Film Office is not maximizing the long term economic benefits of the incentive.

Finally, in treating projects that are primarily completed by out-of-state production companies as in-state, the Film Office may mislead the EDC in its decision on whether to approve an application, and policymakers and the public about the extent to which the incentive supports long-term economic development in the state.

RECOMMENDATION 5

The Office of Economic Development and International Trade should clarify how the requirements for in-state production companies are applied to the film incentive program by:

A Implementing policies and procedures that more narrowly define an in-state company. To maximize the value of the incentives, the definition should focus on companies that have, or plan to have, ongoing operations in the state. The Office of Economic Development and International Trade should work with the General Assembly, if needed, to seek statutory changes related to the definition of an in-state company.

B Implementing and enforcing requirements that applicants seeking in-state status provide evidence that they meet the definition established in response to PART A. This could include requiring submission of proof of business operations such as business tax records, worker's compensation insurance coverage, employee payroll tax records, or utility bills.

RESPONSE

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

A AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade will implement policies and procedures that more narrowly define an in-state company. The Office can implement stricter guidelines within the current latitude of the statute. An in-state company is currently defined as being formed by a Colorado resident (who has been a resident for at least one year), or a company that has been registered with the Colorado Secretary of State for at least one year. The Office will further define that an in-state company must be registered with the Colorado Secretary of State for at least one year AND engage in active production activities within that time period.

B AGREE. IMPLEMENTATION DATE: JULY 2017.

The Office of Economic Development and International Trade will require evidence that companies meet in-state status, as defined above, which may include business tax and insurance records, or other relevant documentation.

EFFECTIVENESS OF FILM OFFICE ACTIVITIES ON INDUSTRY DEVELOPMENT

Each year, the Governor's Office of Economic Development and International Trade (OEDIT) issues a report that contains information on the impact of the Film Office. According to the Film Office, between Fiscal Years 2013 and 2016, the 31 incentivized film projects created about 1,600 jobs, and the production companies spent an estimated $72.8 million in the state. In addition, Film Office annual reports cite an estimated increase of about $157.2 million in overall economic activity in the state due to the incentives over the 4-year period. The Film Office reports that this increase in economic activity is estimated using a multiplier calculated in 2014 by the University of Colorado, Leeds School of Business. In 2014 the Film Office contracted with Leeds to conduct a study on the economic impact of the incentives. Leeds used IMPLAN, an economic modeling software tool, to calculate an overall multiplier effect of the incentive program. Qualified local expenditures and Colorado jobs reported to the Film Office were input into IMPLAN, which measured their effects on the film and media industry in the state and calculated a multiplier of 1.71. The multiplier indicates that for every $1 in incentives issued, an additional $0.71 in economic benefit was generated.

In addition to managing the incentive program, the Film Office conducts other activities such as marketing Colorado as a destination for film production and offering educational seminars to promote the film industry and employment in Colorado.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed statute and the Film Office's goals; documentation of incentivized productions, including how much the production companies reported spending, the length of the productions, and state income taxes withheld for local employees; and the information reported in OEDIT's Fiscal Years 2013 through 2016 annual reports about Film Office outcomes. We also reviewed and analyzed data for 2006 through 2015 from the Bureau of Labor Statistics for information on employment and businesses in the Motion Picture and Video Production Industries on a national level and to compare Colorado with Utah and New Mexico, nearby states that sometimes compete with Colorado for production activity. The Bureau of Labor Statistics gives estimates on paid part-time and full-time workers in different occupation classifications as well as business numbers and locations.

The 10-year period we reviewed covers the changes in the incentive program, from the initial appropriation of $500,000 in 2006, to the increase in funding and incentive percentage for productions that began in Fiscal Year 2013, to the most recently available data in 2015. The purpose of the audit work was to evaluate the Film Office's effectiveness in accomplishing legislative intent. According to the legislative declaration in House Bill 12-1286, which reestablished the Film Office and increased the incentive from 10 to 20 percent, the General Assembly intended the Film Office to promote growth in the film industry in Colorado and thereby have a positive impact on Colorado's economy and job creation. This intent is reflected in the Film Office's goals, which include attracting new jobs and maximizing economic development in the state related to the film industry. Our audit work also reviewed the extent to which the Film Office tracks relevant outcome data that can be used to guide its strategies and operations as well as to inform the public and policy makers about the costs and benefits of the Film Office.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DID THEY OCCUR?

The Film Office routinely tracks and reports on a number of outcomes of its activities, such as the number of jobs created and the amount of increased spending in Colorado due to incentivized projects. However, we found that it is difficult to determine a comprehensive benefit the State receives from the Film Office for two reasons, as discussed in this section.

SOME OF THE DATA THAT THE FILM OFFICE USES TO REPORT ITS OUTCOMES CONTAIN INACCURACIES. The Film Office gathers information on the number of jobs created and in-state spending due to film production from the incentivized productions' CPA reports. However, as we noted in the Incentive Payments finding, these reports sometimes contain inaccurate workforce and/or expenditure information. Additionally, the Film Office policy requires the CPAs to *verify* total expenditures and workforce numbers, but not to *report* these figures to the Film Office. While most of the CPA firms do report the figures, one firm simply reported that it verified that the minimum requirements for the incentive were met for the productions it reviewed. As a result, the information the Film Office receives from the CPAs and uses to report outcomes is inconsistent.

THE FILM OFFICE LACKS INFORMATION ON FTE AND INCOME TAX REVENUE FROM INCENTIVE PROJECTS. A 2015 study completed by the Pew Charitable Trusts for the state of Maryland identified best practices for evaluating film tax credits in order to fully measure economic benefit. The study recommended states include a variety of factors in evaluating the benefits of their programs, including the number of FTE created (rather than simply counting jobs) and the amount of state income taxes collected due to the programs.

Currently, the Film Office does not track these measures. The Film Office does not request information such as the number of days or hours

Colorado residents worked on incentivized productions so that it can calculate FTE jobs, or the amount of income tax withheld for all jobs. Typically, one FTE represents one full-time job over a 1-year period. For example, for budgeting purposes, state agencies define one FTE as one employee who works full-time (2,080 hours) for a 1-year period. Some production companies and CPAs provided detailed information to the Film Office on the number of hours production employees worked and on income taxes withheld, but this detailed reporting is not required. Collecting information to be able to calculate and report FTE jobs as a consistent measure of job creation for each incentivized project and across projects is important because not only are jobs in the film industry often temporary, the variance in length of employment among different kinds of productions is significant. Also, collecting and reporting the amount of income tax revenue generated through incentivized productions would allow the Film Office to review and report the benefit of the program to the State. Currently, the Film Office reports total payroll amounts as a benefit of the program, however, it is likely that the wages for out-of-state employees will not be spent in the state. Therefore, a more accurate measurement of the benefit to the State would be to calculate wages for in-state employees and only payroll taxes for out-of-state employees, instead of the total payroll amounts.

We conducted a limited analysis of the FTE impact, cost per job, and cost per FTE for three productions for which the data were available. As EXHIBIT 2.6 shows, using the cost per reported job to assess or report the workforce benefits of a project could be misleading. We found that for the three projects, the variations in length of resident employment had a significant impact on the number of FTE generated. Even though the video game production reported the fewest Colorado resident jobs, it actually created more FTE than the other two projects. Using an FTE measure, rather than a jobs measure, allows for a more accurate picture of the workforce impact that can be compared across different types of productions.

EXHIBIT 2.6

ANALYSIS OF COST PER JOB AND FTE FOR VARIOUS PRODUCTION TYPES

	VIDEO GAME	FEATURE FILM	COMMERCIAL
Incentive Amount Paid	$764,000	$82,000	$20,900
Total Colorado Jobs reported	30	40	33
Cost per job	$25,500	$2,050	$630
Length of Production	1 year	3 weeks	3 days
Total Colorado FTE[1]	33.82	1.95	0.43
Cost Per FTE[2]	$22,600	$42,000	$48,400

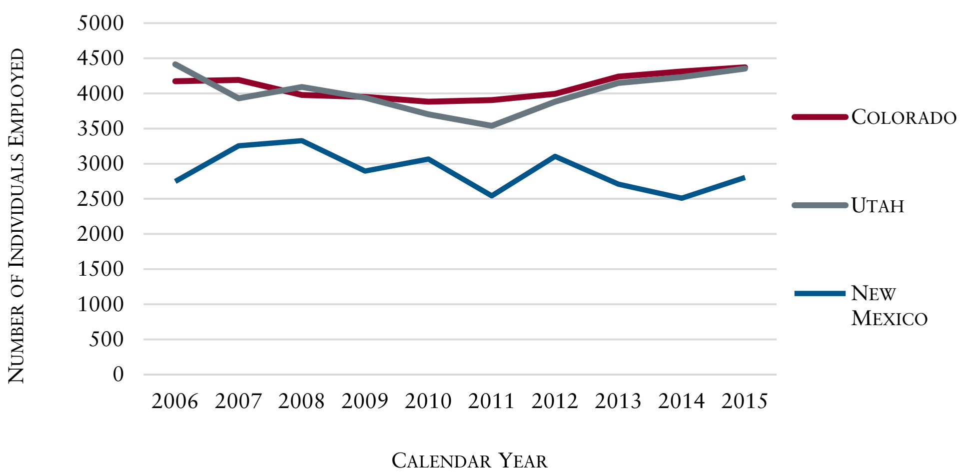
SOURCE: Office of the State Auditor analysis of Film Office production data.
[1] Total Colorado FTE was calculated by taking the total number of hours worked by Colorado residents, as reported by the production company, and dividing it by 2,080 for each resident employee.
[2] Cost per FTE was calculated by taking the total incentive paid to the production divided by the FTE.

THE FILM OFFICE DOES NOT ANALYZE HOW INCENTIVIZED PRODUCTIONS IMPACT OVERALL COLORADO INDUSTRY CHANGES. According to the Film Office, as well as professionals in the film and media industry who participated on a recent panel presentation on the state of film in Colorado, the incentive program has been achieving its purpose in drawing more productions to the state, competing with other states, and increasing the production infrastructure in the state. However, the Film Office does not collect data on the changes that have occurred in the Colorado film industry overall and compare that to information from the projects it incentivizes.

We assessed the changes in employment and number of establishments in the media professional industry using data from the Federal Bureau of Labor Statistics from Calendar Year 2006 to 2015. EXHIBIT 2.7 shows Colorado employment in the media professional categories from 2006 to 2015. EXHIBIT 2.7 also shows the number of individuals employed in the media professional industry in Utah and New Mexico, which sometimes compete with Colorado for film production projects and which annually give roughly $7 million and $50 million in tax credit incentives, respectively. Between Calendar Years 2006 and 2015, the number of individuals employed in the media professional industry increased an average of about 0.6 percent annually in Colorado compared to average increases of about 0.05 and 1.1 percent annually, respectively, in Utah and New Mexico. Since the Film Office incentive increased from 10 to 20 percent, effective in Calendar Year 2012, growth in the industry in Colorado, averaged 3.1 percent annually, lagging behind Utah, with average annual growth of 3.9 percent, but outpacing New Mexico, whose annual growth averaged a 2.8 percent decrease annually over the same period.

EXHIBIT 2.7

TOTAL MEDIA PROFESSIONAL[1] EMPLOYMENT CALENDAR YEARS 2006 THROUGH 2015



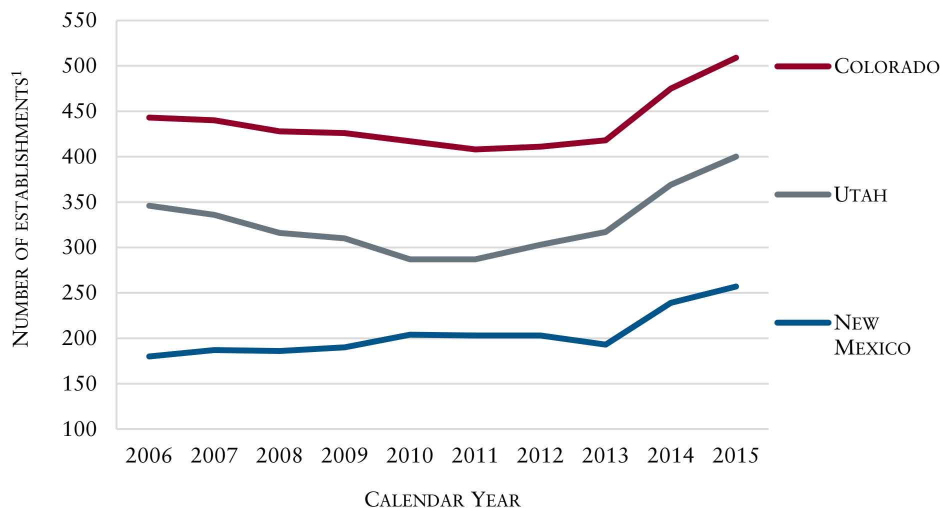
SOURCE: Office of the State Auditor analysis of Bureau of Labor Statistics data for Occupational Employment Statistics data.
[1] Individuals employed were listed under BLS Occupation Codes for arts, design, entertainment, sports, and media occupations (North American Industry Classification System code 5121) with the sub-occupations of creative media and include occupations such as, actors, camera operators, film and video editors, graphic designers, multimedia artists and animators, music directors and composers, producers and directors, set and exhibit designers, sound engineering technicians, and media and communication equipment workers.

According to Film Office data, between Calendar Years 2013 and 2015 incentivized productions created between 318 and 743 jobs annually and grew at an average rate of 56 percent.

As shown in EXHIBIT 2.8, between 2006 and 2015, the number of motion picture and video businesses in Colorado increased, with average annual growth of 1.7 percent. Utah saw a similar increase averaging 1.9 percent annually whereas New Mexico's rate increased 4.3 percent on average annually. All three states saw more rapid growth between 2012 and 2015, ranging from an annual average increase in Colorado of 7.5 percent up to an annual average of 9.8 percent growth in Utah. The Film Office does not attempt to determine whether any of its activities impact the number of motion picture and video businesses operating in Colorado.

EXHIBIT 2.8

TOTAL MOTION PICTURE AND VIDEO INDUSTRY ESTABLISHMENTS CALENDAR YEARS 2006 THROUGH 2015



SOURCE: Office of the State Auditor's analysis of Bureau of Labor Statistics data for Quarterly Census of Employment and Wages data.
[1] Establishments were listed under BLS Motion Picture and Video Industries, NAICS Code 5121.

Another source of information on production activity in the state may be the 10 film commissions that operate within local governments. The commissions are typically in contact with any production companies working in their area, regardless of whether the companies have sought an incentive through the Film Office. However, the Film Office does not collect and analyze information on production activities from the film commissions to gain a broader understanding of production activities around the state. While these commissions are not required to keep any specific data on production activity, we surveyed all 10 commissions and three of the four that responded noted that there has been an increase in production activities in their areas over the last 5 years. It is likely that most of the information provided by the commissions would be anecdotal; however data on industry activities is not easy to find, so any information would help the Film Office better determine the effectiveness of the incentive program.

WHY DO THESE PROBLEMS MATTER?

When information collected and reported on the outcomes of the Film Office's activities is incomplete or inaccurate, the public and policymakers cannot rely on the information to fully understand the overall impact of the Film Office in relation to its costs to the State. As the charts above show, there has been growth in Colorado's industry over the past 10 years, but the Film Office is not evaluating whether its activities are contributing to any of the growth and is not fully informing the public or policy makers about the total benefits of its operations.

In addition, the Film Office needs to have complete and accurate data on the in-state expenditures, income tax revenue, and FTE jobs created through its activities to be able to strategically use its limited funds to have the greatest economic impact, which is one of its goals. Without this information, the Film Office and the Economic Development Commission may not select the most advantageous projects to incentivize, and therefore not maximize the benefit derived from the incentive program. Similarly, if the Film Office collected and used more detailed data on the cost and economic benefit of its marketing and educational activities, it would be able to make strategic decisions to leverage its resources for these activities towards outreach in industries that have the greatest economic impact. The Film Office's activities outside of the incentive program, such as education panels, industry networking and festivals, and support towards student productions, tend to focus on film creation, but the Film Office does not have data to evaluate if this focus helps the State attract the productions that provide the most economic development or greatest return on investment.

Analyzing and reporting overall information on growth in the industry in Colorado and how it compares to other states could also help the Film Office and policymakers determine whether changes in the Film Office's activities are needed to maximize their impact. For example, as shown in EXHIBITS 2.7 and 2.8 above, the number of individuals employed and the number of businesses in the film industry appear to have increased since Fiscal Year 2013 when the incentive was doubled, which may indicate the higher incentive is encouraging growth in the industry. However, it is important for a variety of information to be considered in evaluating the effectiveness of the program and making decisions about how to use limited incentive funds going forward.

The Film Office's funding for the incentive program is subject to an annual appropriation by the General Assembly. Between Fiscal Years 2013 and 2017, the Film Office requested a total of $19 million for the incentive program (roughly $4 million each year), citing the program's success in promoting industry growth and the need to turn away major productions due to a lack of funds. The Film Office received appropriations over this period of $15 million, or 21 percent less than requested. Due to the data inaccuracies and lack of comprehensive measurements, as discussed above, the Film Office does not have complete or accurate information that the Joint Budget Committee can rely on to make a decision about whether the Film Office's requests for funding are warranted.

RECOMMENDATION 6

The Office of Economic Development and International Trade should implement policies and procedures to expand its data collection and reporting on the benefits the State receives from the incentive program by:

A Collecting and reporting on FTE jobs created by incentivized projects. This could involve either requiring the reporting of days or hours worked by each Colorado resident on each incentivized project so that the Office of Film, Television, and Media can calculate the FTE, or requiring production companies to calculate and report the FTE for their incentivized projects using a formula determined by the Office of Film, Television, and Media.

B Expanding the information it collects on each incentivized project to include detailed data on the amount of income tax withheld for employees and compiling, analyzing, and reporting the data as part of the benefits of the Office of Film, Television, and Media.

C Including statewide industry data in evaluating and reporting about the Office of Film, Television, and Media's activities and comparing the Office of Film, Television, and Media's information when possible with statewide data. For example, this should include collecting, analyzing, and reporting the total number of productions each year, and the number of film industry jobs in Colorado each year along with the FTE jobs created through the Office of Film, Television, and Media's activities.

RESPONSE

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

A AGREE. IMPLEMENTATION DATE: SEPTEMBER 2017.

The Office of Economic Development and International Trade will hire a program analyst to collect, assess, and report additional data including hours worked, FTE jobs, income tax withholdings, number and impact of productions, statewide industry data, and other relevant information.

B AGREE. IMPLEMENTATION DATE: SEPTEMBER 2017.

The Office of Economic Development and International Trade will hire a program analyst to collect, assess, and report additional data including hours worked, FTE jobs, income tax withholdings, number and impact of productions, statewide industry data, or other relevant information.

C AGREE. IMPLEMENTATION DATE: SEPTEMBER 2017.

The Office of Economic Development and International Trade will hire a program analyst to collect, assess, and report additional data including hours worked, FTE jobs, income tax withholdings, number and impact of productions, statewide industry data, and other relevant information.

APPENDIX A

INCENTIVES PAID
JULY 1, 2012, TO MARCH 31, 2017

FISCAL YEAR	PRODUCTION COMPANY	PROJECT TITLE	TYPE OF PRODUCTION	INCENTIVE AMOUNT
2013	Gartner/Block Carter	Coors	Commercial	$67,500
2014	Clean Guys Entertainment	Clean Guys Comedy	Television Show	$28,000
	Detour Films	Coors	Commercial	$66,900
	FF5 Productions	Fast and the Furious 5	Film	$700,000
	High Noon Entertainment	Prospectors Season 1	Television Show	$345,100
	Nine Nights	Dear Eleanor	Film	$395,100
	Rocky Mountain PBS	Colorado Experience, Season 1	Television Show/Documentary	$53,700
	The Frame	The Frame	Film	$63,800
	World Championship Sports (Universal Sports)	Relocation Agreement	Television Show	$307,300
TOTAL:				$1,959,900
2015	Being Evel	Being Evel	Film	$94,300
	Christmastime	Christmastime–Heaven Sent	Film	$516,600
	Discovery Communications	Catch and Release and Pawn in the Game	Television Show	$452,200
	High Noon Entertainment	Prospectors Season 3	Television Show	$546,600
	Hyundai Motor America	Hyundai Running Footage	Commercial	$101,200
	Rocky Mountain PBS	Colorado Experience, Season 2	Television Show/Documentary	$20,700
	Impossible Pictures/Visual Approach	Moneygram	Commercial	$20,100
	Cop Car	Cop Car	Film	$82,000
	Universal Sports	Countdown to Sochi, Podium 360, Rugby Rising	Television Show	$99,700
TOTAL:				$1,933,400
2016	Being Evel	Verizon/Samsung	Commercial	$20,900
	Calvary, Inc.	Coors	Commercial	$57,000
	Cine-Manic Productions	Hateful 8	Film	$5,000,000
	Cloud Imperium Games	Star Citizen	Video Game	$763,900
	Colorado Public Television	Colorado Inside Out	Television Show/Documentary	$22,100
	Great Divide Pictures	Heart of the World: Colorado's National Parks	Documentary	$75,400
	High Noon Entertainment	Prospectors Season 4	Television Show	$250,000
	Intrepid Adventures[1]	Hondros	Documentary	$20,300
	James Havey Productions	The Great Divide	Documentary	$70,100
	Listen Productions	Casting Jon Benet	Film	$50,000
	Orion Entertainment	Ultimate Sportsman's Lodge	Television Show	$156,500
	Walk the Line Films	Play Along!	Television Show	$148,000
	Universal Sports	2015 Alpine World Championships, Podium 360	Television Show	$27,200
TOTAL:				$6,661,400

2017	72 and Sunny	Coors	Commercial	$51,500
	Intrepid Adventures	Hondros	Documentary	$27,300
	Addie and Louis Productions	Our Souls at Night	Film	$1,500,000
	Amateur 5	Amateur	Film	$293,400
	Canyon Entertainment	The Joey Canyon Show	Television Show	$75,100
	Contrast Audio Visual	Max Lucado–Traveling Light	Television Show	$29,100
	Don't Pose Productions	Star Raiders	Film	$41,000
	Ease Commercial Services	Toyota Rav 4	Commercial	$111,700
	Project Gnaw	Gnaw	Film	$58,200
	Hoax	Hoax	Film	$160,000
	James Havey Productions	Colorado Fuel and Iron	Documentary	$39,200
	Janicek Entertainment	Xfinity Latino Entertainment	Television Show	$148,700
	Lifted Life	The Lifted Life	Television Show	$39,300
	Rocky Mountain PBS	Standing in the Gap	Television Show/Documentary	$24,900
	SIV	Shooting in Vein	Film	$34,100
	Walden the Movie	Walden: Life in the Woods	Film	$177,100
TOTAL:				$2,810,600
TOTAL:		46		$13,432,800

SOURCE: Office of the State Auditor analysis of CORE data of paid incentives between July 1, 2012, and March 31, 2017.

[1] This film was paid in two separate installments, the first for $20,300 in Fiscal Year 2016 and the second for $27,300 in Fiscal Year 2017 for a total of $47,600.

POLITICS > **COLORADO LEGISLATURE**

Colorado film incentive program remains in political limbo after alarming audit

Citing an audit's red flags, the Joint Budget Committee earlier this month deadlocked along party lines over whether to fund the governor's request for $2 million in next year's budget.

Francois Guillot, AFP/Getty Images file

Director Quentin Tarantino poses with actors Kurt Russell, Tim Roth and Walton Goggins at the premiere of his movie "The Hateful Eight" (Les Huit Salopards) in Paris in 2015. Colorado gave the film produced in Telluride $5 million in tax breaks, though it's not clear whether it was one of several films in recent years flagged in a government audit.

By **BRIAN EASON** | brianeason@denverpost.com | The Denver Post

PUBLISHED: February 20, 2018 at 12:20 pm | UPDATED: February 20, 2018 at 5:12 pm

Grab the popcorn.

Colorado lawmakers this spring appear poised to rehash a perennial fight over taxpayer subsidies for the state film industry, a program that Democratic Gov. John Hickenlooper views as a critical job creator but that some conservatives have blasted as a taxpayer giveaway to Hollywood.

The latest installment in the long-running political drama has a new wrinkle: An alarming audit released in June found that the state made nearly $2 million in cash payments to film production companies that didn't even qualify for incentives.

Citing the audit's red flags, the Joint Budget Committee earlier this month deadlocked along party lines over whether to fund Hickenlooper's request for $2 million in the 2018-19 fiscal-year budget, instead voting to renew the $750,000 the office received this year from the general fund. The office also receives $500,000 in operating expenses from state gaming revenues, bringing its total funding to $1.25 million.

With the vote, state budget writers effectively punted the issue back to the state legislature, which last year reduced the program's funding from the $3 million to $5 million it had received annually over the prior three years.

"I think what we're doing by our discussion here is inviting legislation to restore funding if the legislature so desires," state Rep. Bob Rankin, a Republican budget writer from Carbondale, said after the vote.

The issue was among a handful of relatively small expenses that became a major flashpoint in last year's debate over the $26.8 billion state budget, with the GOP-led Senate seeking to eliminate the program's general fund appropriation entirely, before the two sides settled on the reduced amount.

Hickenlooper says the program has wide-ranging benefits for the state economy, not just creating film-industry jobs, but also building up Colorado's creative class, which in turn provides a stable of advertising talent for other companies based here. Republicans, though, question whether the program's benefits are worth their cost — particularly in a state that struggles each year to pay for basic public services, such as roads and education.

In a recent news media briefing, Hickenlooper said he'd continue to argue for more funding in light of the budget committee vote. But the fight over spending will likely have to wait until a legislative effort to tighten the program's guardrails in light of the audit clears both chambers. That measure, Senate Bill 103, passed the Senate earlier this month on a unanimous bipartisan vote.

TAGS: **FILMING IN COLORADO**, **INCENTIVES**, **JOHN HICKENLOOPER**

Brian Eason of The Denver Post.

Brian Eason
Statehouse reporter Brian Eason joined The Post from the Indianapolis Star, where he covered city hall for the news outlet's watchdog team beginning in 2014. Before that, he was an investigative reporter at The Clarion-Ledger in Jackson, Miss., and covered local government at The Leaf-Chronicle in Clarksville, Tenn. He graduated in 2009 from the University of Missouri with degrees in journalism and political science.

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ATTACHMENT D

COLORADO OFFICE OF THE STATE AUDITOR RELATED LEGISLATION 2014–2017 LEGISLATIVE SESSIONS		
BILL NUMBER	BILL NAME	RELATED AUDIT
SB 17-016	County Choice Child Protection Teams	Child Welfare (October 2014)
HB 17-1125	Services in Colorado Correctional Facilities	Colorado Correctional Industries (January 2015)
HB 17-1131	Authority to Contract Administration of College Opportunity Fund	Colorado Student Loan Program, dba College Assist (January 2016)
HB 17-1217	State Historical Society Governance	History Colorado (June 2014)
HB 17-1223	OSA Fraud Hotline	None. This bill relates to the OSA's statutory responsibilities.
HB 17-1296	Assignment of State-Owned Vehicles	Commuting Use of State-Owned Vehicles (November 2016)
SB 17-294	Revisor's Bill	None. This bill relates to the OSA's statutory responsibilities.
HB 17-1005	Modernize Laws Relating to Office of the State Auditor	None. This bill relates to the OSA's statutory responsibilities.
HB 17-1143	Audits of Medicaid Client Correspondence	None. This bill relates to the OSA's statutory audit requirements.
HB 17-1298	Annual Compensation Report Submission Deadline	Annual Compensation Study (May 2017)
HB 17-1329	Reform Division of Youth Corrections	Division of Youth Corrections (September 2016)
HB 17-1361	Evaluate State Information Technology Resources	None. This bill relates to the OSA's statutory audit requirements.
SB 16-050	Retailer Hold Harmless for Assigned Location Code	Local Sales Taxes (November 2015)
SB 16-099	Correctional Education Program	Colorado Correctional Industries (January 2015)
HB 16-1086	Performance Audit of the Department of Personnel and Administration and State Personnel Board	None. This bill relates to the OSA's statutory audit requirements.
HB 16-1172	Department of Transportation Efficiency and Accountability Committee	Collection and Usage of FASTER Motor Vehicle Fees (August 2015)

COLORADO OFFICE OF THE STATE AUDITOR RELATED LEGISLATION 2014–2017 LEGISLATIVE SESSIONS		
BILL NUMBER	BILL NAME	RELATED AUDIT
HB 16-1175	Property Tax Exemption Administration	Senior and Disabled Veteran Property Tax Exemption Program (August 2015)
SB 16-013	Clean-up of the Office of the Child Protection Ombudsman	Child Protection Ombudsman Program (June 2014)
SB 16-038	Transparency of Community Centered Boards	None. This bill relates to the OSA's statutory audit requirements.
SB 16-073	State Auditor Authority to Audit State Historical Fund Distribution	None. This bill relates to the OSA's statutory audit requirements.
SB 16-089	Department of State Cash Fund Alternative Maximum Reserve	Department of State (November 2015)
SB 16-122	More Oversight of the Department of Transportation	None. This bill relates to the OSA's statutory audit requirements.
SB 16-156	Modifications Regarding General Assembly Oversight Committees	None. This bill relates to the Legislative Audit Committee's membership.
SB 16-203	Evaluation of the State's Tax Expenditures	None. This bill relates to the OSA's statutory audit requirements.
HB 16-1014	Secretary of State Business Intelligence Center	Department of State (November 2015)
HB 16-1411	Fort Lyon Residential Community Study	None. This bill relates to the OSA's statutory audit requirements.
HB 16-1453	Colorado Cybersecurity Initiative	None. This bill relates to the State Auditor's participation on the Colorado Cybersecurity Council.
SB 15-014	Medical Marijuana Caregivers	Medical Marijuana Regulatory System Part II (June 2013)
SB 15-019	Colorado Health Benefit Exchange Audit Authority	Connect for Health Colorado (October 2014)
SB 15-024	Updates to the Local Government Audit Law	None. This bill relates to the OSA's statutory audit requirements.

COLORADO OFFICE OF THE STATE AUDITOR RELATED LEGISLATION 2014–2017 LEGISLATIVE SESSIONS		
BILL NUMBER	BILL NAME	RELATED AUDIT
SB 15-100	Implementation of Recommendations in Connection with Legislative Review of Rules and Regulations of Stat Agencies	Child Welfare (October 2014)
SB 15-195	Spending Savings from the Awarding of Earned Time to Inmates	Colorado Correctional Industries (January 2015)
SB 15-204	Independent Functioning of the Office of the Child Welfare Protection Ombudsman	Child Protection Ombudsman Program (June 2014)
SB 15-225	State Historical Society Governance	History Colorado (June 2014)
SB 15-236	Reorganization of Funds Expended by the State Historical Society	History Colorado (June 2014)
SB 15-241	Collaborative Management of Multi-Agency Services Provided to Children and Families	Child Welfare (October 2014)
SB 15-242	Allocation to Counties for the Purpose of Hiring New Child Welfare Staff	Colorado Child Welfare Workload Study (August 2014)
SB 15-243	Prohibition on the Transfer of State-Operated Beds Under the Waiver for Home and Community-Based Services for Individuals with Intellectual and Developmental Disabilities	Regional Centers for People with Developmental Disabilities (November 2013)
HB 15-1188	Clarifications to the State Vocational Rehabilitation Program	Vocational Rehabilitation Program (November 2013)
HB 15-1247	State Engineer Dam Safety Review Fees	Dam Safety Program (February 2014)
HB 15-1261	Cash Funds Maximum Reserve	Cash Funds Uncommitted Reserves Fiscal Year Ended June 30, 2013 (February 2014)
HB 15-1280	Creation of a Capital Reserve in Cash Funds	Cash Funds Uncommitted Reserves Fiscal Year Ended June 30, 2013 (February 2014)
HB 14-1176	Emissions Program Audit Cycle	None. This bill relates to the OSA's statutory audit requirements.
HB 14-1188	Use of Outdoor Advertising Program Revenues	Outdoor Advertising Program (May 2013)

COLORADO OFFICE OF THE STATE AUDITOR RELATED LEGISLATION 2014–2017 LEGISLATIVE SESSIONS		
BILL NUMBER	BILL NAME	RELATED AUDIT
HB 14-1190	School District Financial Capacity Capital Construction Grants	Public School Capital Construction Assistance Program (September 2013)
HB 14-1300	General Fund Transfer to Colorado State Fair Authority Cash Fund	Colorado State Fair Authority, Fiscal Year 2013 (January 2014)
HB 14-1338	Regional Centers Task Force and Utilization Study	Regional Centers for People with Developmental Disabilities (November 2013)
HB 14-1396	Medical Marijuana Registry Access	Medical Marijuana Regulatory System Part II (June 2013)

ATTACHMENT E

We Set the Standard for Good Government

COLORADO OFFICE OF THE STATE AUDITOR
EXTERNAL PRESENTATIONS BY PERFORMANCE AUDIT STAFF
CALENDAR YEARS 2014–2017

2017

- September 2017 — NATIONAL LEGISLATIVE PROGRAM EVALUATION SOCIETY
  2017 Fall Professional Development Seminar
  Madison, WI

- August 2017 — NATIONAL CONFERENCE OF STATE LEGISLATURES
  2017 Legislative Summit
  Boston, MA

- August 2017 — MOUNTAIN & PLAINS INTERGOVERNMENTAL AUDIT FORUM
  2017 Conference
  Denver, CO

- August 2017 — WYOMING LEGISLATIVE SERVICE OFFICE VISIT TO THE COLORADO LEGISLATURE
  Program Evaluation Breakout Session
  Denver, CO

- July 2017 — COLORADO MUNICIPAL CLERK ADVISOR PROGRAM
  2017 Meeting
  Denver, CO

- June 2017 — NATIONAL STATE AUDITORS ASSOCIATION
  2017 Annual Meeting
  Atlantic City, NJ

- May 2017 — NATIONAL LEGISLATIVE PROGRAM EVALUATION SOCIETY
  Webinar
  Denver, CO

- April 2017 — METROPOLITAN STATE UNIVERSITY OF DENVER
  Political Science Class
  Denver, CO

- March 2017 — KIWANIS CLUB, DENVER TECH CENTER
  Monthly Meeting
  Lone Tree, CO

- March 2017 — UNIVERSITY OF COLORADO-DENVER

School of Public Affairs
MPA Class
Denver, CO

- February 2017 — METROPOLITAN STATE UNIVERSITY OF DENVER
  Internal Auditing Class
  Denver, CO

2016

- October 2016 — NATIONAL LEGISLATIVE PROGRAM EVALUATION SOCIETY
  Fall Professional Development Seminar
  Jackson, MS

- July 2016 — KENYA NATIONAL PARLIAMENT DELEGATION
  Visit to the Colorado General Assembly
  Denver, CO

- June 2016 — NATIONAL STATE AUDITORS ASSOCIATION
  Annual Meeting
  Beaver Creek, CO

- April 2016 — METROPOLITAN STATE UNIVERSITY OF DENVER
  Political Science Class
  Denver, CO

- March 2016 — U.S. STATE DEPARTMENT
  International Visitor Leadership Program
  Denver, CO

- March 2016 — UNIVERSITY OF COLORADO-DENVER
  School of Public Affairs
  MPA Class
  Denver, CO

- January 2016 — COLORADO FISCAL MANAGERS ASSOCIATION
  Monthly Meeting
  Denver, CO

2015

- October 2015 — COLORADO STATE UNIVERSITY
  School of Social Work
  Policy Analysis Class
  Fort Collins, CO

- October 2015 — NATIONAL LEGISLATIVE PROGRAM EVALUATION SOCIETY
  Fall Professional Development Seminar
  Denver, CO

- September 2015 — WESTERN STATES ASSOCIATION OF TAX ADMINISTRATORS
  Annual Conference
  Denver, CO

- September 2015 — MOUNTAIN & PLAINS INTERGOVERNMENTAL AUDIT FORUM
  Annual Conference
  Colorado Springs, CO

- August 2015 — U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
  Office of the Inspector General
  Single Audit Training Workshop
  Kansas City, KS

- May 2015 — UNIVERSITY OF COLORADO-DENVER
  School of Public Affairs
  Spring Banquet & Awards Ceremony
  Denver, CO

- April 2015 — COLORADO STATE UNIVERSITY
  School of Social Work
  Policy Analysis Class
  Fort Collins, CO

- April 2015 — METROPOLITAN STATE UNIVERSITY OF DENVER
  Political Science Class
  Denver, CO

- March 2015 — UNIVERSITY OF COLORADO-DENVER
  School of Public Affairs
  MPA Class
  Denver, CO

- January 2015 — NATIONAL STATE AUDITORS ASSOCIATION
  Webinar
  Denver, CO

2014

- November 2014 — COLORADO STATE UNIVERSITY
  School of Social Work
  Policy Analysis Class
  Fort Collins, CO

- November 2014 — NATIONAL ASSOCIATION OF STATE AUDITORS, TREASURERS, AND CONTROLLERS
  Webinar
  Denver, CO

- October 2014 — UNIVERSITY OF COLORADO-DENVER
  School of Public Affairs
  MPA Class
  Denver, CO

- October 2014 — NATIONAL LEGISLATIVE PROGRAM EVALUATION SOCIETY
  Fall Professional Development Seminar
  Raleigh, NC

- August 2014 — 20TH BIENNIAL FORUM OF GOVERNMENT AUDITORS
  Denver, CO

- August 2014 — NATIONAL CONFERENCE OF STATE LEGISLATURES
  Legislative Summit
  Minneapolis, MN

- June 2014 — NATIONAL STATE AUDITORS ASSOCIATION
  Annual Meeting
  Minneapolis, MN

- May 2014 — ASSOCIATION OF GOVERNMENT ACCOUNTANTS, DENVER CHAPTER
  Annual Conference
  Denver, CO

- April 2014 — METROPOLITAN STATE UNIVERSITY OF DENVER
  Political Science Class
  Denver, CO

ATTACHMENT F

We Set the Standard for Good Government

NLPES PDS 2015

National Legislative Program Evaluation Society

Professional Development Seminar

October 11-14, 2015 — Denver, Colorado
@ The Curtis Hotel

Hosted by the Colorado Office of the State Auditor

National Conference *of* State Legislatures

The Forum for America's Ideas

NLPES Executive Committee

Patricia Berger
Pennsylvania

Dale Carlson
California

Greg Fugate
Colorado

Rachel Hibbard
Hawaii

Wayne Kidd
Utah

Marcia Lindsay
South Carolina

Nathalie Molliet-Ribet, Chair
Virginia

Katrin Osterhaus
Kansas

Charles Sallee
New Mexico

Shunti Taylor
Georgia

Linda Triplett
Mississippi

—

Brenda Erickson
NCSL Staff Liaison

SUNDAY
October 11, 2015

NLPES EXECUTIVE COMMITTEE MEETING — 8:00 AM – 4:00 PM
DODGEBALL ROOM

REGISTRATION & INFORMATION DESK — 4:30 – 6:30 PM
PEEK-A-BOO BALLROOM FOYER

WELCOME RECEPTION — 5:30 – 6:30 PM
MARCO POLO BALLROOM

MONDAY
October 12, 2015

REGISTRATION & INFORMATION DESK — 8:00 AM – 4:30 PM
PEEK-A-BOO BALLROOM FOYER

MORNING WALK — 7:00 – 7:30 AM
Depart Hotel Lobby @ 7:00AM

CONTINENTAL BREAKFAST 7:30 – 8:30 AM
PEEK-A-BOO BALLROOM

GENERAL SESSION 8:30 – 10:15 AM
PEEK-A-BOO BALLROOM

I DIDN'T SIGN ON FOR THIS! DEALING WITH CONSTANT CHANGE IN THE WORKPLACE

MIKE COLLINS
THE PERFECT WORKDAY COMPANY

Mike Collins is president of The Perfect Workday Company, an information company based in The Research Triangle Region of North Carolina. He presents 100+ programs a year for organizations such as IBM, American Express, Novo Nordisk Pharmaceuticals and The John F. Kennedy Special Warfare School and Center.

PASSING BREAK 10:15 – 10:25 AM

CONCURRENT SESSIONS 10:25 – 11:55 AM

SUPERVISING SAVVY: DELIVERING CONCRETE FEEDBACK AND PROVIDING GUIDANCE WITH CONFIDENCE AND GRACE

PATTY-CAKE ROOM

SPEAKERS: RACHEL HIBBARD – HAWAII
JAMES TAURMAN – COLORADO
EMILY WILSON – LOUISIANA
MODERATOR: SHUNTI TAYLOR – GEORGIA

Evaluating Health Exchanges: Lessons Learned for Conducting Challenging Audits and Evaluations

Keep Away Room

Speakers:	Joel Alter – Minnesota
	Carleen Armstrong – Colorado
	Michelle Aubel – New Mexico
	Jan Yamane – Hawaii
Moderator:	Charles Sallee – New Mexico

PASSING BREAK 11:55 AM – 12:05 PM

BOX LUNCH 12:05 – 1:05 PM

PEEK-A-BOO BALLROOM

PASSING BREAK 1:05 – 1:15 PM

CONCURRENT SESSIONS 1:15 – 2:45 PM

Managing Audits and Evaluations in the Legislative Environment (Part 1)

Patty-Cake Room

Speakers:	Lance McCleve – Idaho
	Leslie McGuire – Georgia
	Karen McKenna – California
	Nathalie Molliet-Ribet – Virginia
	Jan Yamane – Hawaii
Moderator:	Monica Bowers – Colorado

Making a Difference: Evaluations of Programs for Vulnerable Populations

Keep Away Room

Speakers:	Kyle Craigo – South Carolina
	Dan Kleinmaier – Wisconsin
	Sean Surtleff – Texas
	Jenell Ward – Mississippi
Moderator:	Dale Carlson – California

PASSING BREAK

2:45 – 2:55 PM

POSTER SESSION
FOUR SQUARE BALLROOM

2:55 – 4:25 PM

Celebrating NLPES Impact Award Winners

Come network with your colleagues from other states and learn about their award-winning reports.

Session participants can enter a drawing to win a door prize!

EVENING RECEPTION @ HOTEL
FOUR SQUARE BALLROOM

5:30 – 6:30 PM

POSTER SESSION REPRESENTATIVES

Marc Owen – Arizona
Rosa Reyes – California
Jeffrey Kahn – Colorado
Craig Timmons – Georgia
Rachel Hibbard & Jan Yamane – Hawaii
Margaret Campbell & Lance McCleve – Idaho
Christine Clarke – Kansas
Karen LeBlanc – Louisiana
Scott Farwell & Amy Gagne – Maine
Matthew Holmes – Mississippi
Jeremy Verhasselt – Montana
Brent Lucas – North Carolina
Sheronne Blasi – Oregon
Andy Young – South Carolina
Audrey O'Neill – Texas (State Auditor's Office)
Emily Johnson – Texas (Sunset Advisory Commission)
Tim Osterstock – Utah
Nathalie Molliet-Ribet – Virginia
Eric Thomas & Valerie Whitener – Washington
Jacob Schindler – Wisconsin
Joy Hill & Kathy Misener – Wyoming

TUESDAY

October 13, 2015

REGISTRATION & INFORMATION DESK 8:00 AM – 4:30 PM
PEEK-A-BOO BALLROOM FOYER

MORNING WALK 7:00 – 7:30 AM
Depart Hotel Lobby @ 7:00AM

CONTINENTAL BREAKFAST 7:30 – 8:30 AM
PEEK-A-BOO BALLROOM

GENERAL SESSION 8:30 – 10:40 AM
PEEK-A-BOO BALLROOM

FIVE BEHAVIORS OF A COHESIVE TEAM

CHARITI GENT
CHARITI GENT COACHING + CONSULTING

Chariti Gent is a long-time Madison, Wisconsin resident and Midwesterner. After spending 15 years coaching and training adults within academia, government, and corporate America, Chariti ventured out on her own and formed Chariti Gent Coaching + Consulting, where she regularly coaches, trains and guides individuals, groups, and organizations in leadership development, purposeful living, and dynamic team building. Her company exists to inspire happiness, confidence, and freedom in the lives of her clients and the people of this world. She is an Authorized Partner and Certified Trainer of *Everything DiSC*, as well as *The Five Behaviors of a Cohesive Team*, and she regularly leads experiential workshops around the role of creativity in personal and professional development. Chariti holds a Bachelor's degree in Sociology and Political Science from the University of Wisconsin-Madison, a Master's Degree in Public Policy from the University of Colorado-Boulder, and a "real world degree" from her employment as a policy analyst at entities such as the U.S. Government Accountability Office, the Wisconsin Department of Administration-Office of the State Budget, and the Wisconsin Department of Transportation.

PASSING BREAK

10:40 – 10:50 AM

CONCURRENT SESSIONS

10:50 AM – 12:05 PM

IT'S WHERE THE DATA ARE: IT CONSIDERATIONS WHEN PLANNING AUDITS AND EVALUATIONS

PATTY-CAKE ROOM

SPEAKERS: AUDREY O'NEILL – TEXAS
JACOB SCHINDLER – WISCONSIN
BEN WARD – CALIFORNIA
RAY WRIGHT – MISSISSIPPI
MODERATOR: KATRIN OSTERHAUS – KANSAS

EVALUATING OIL & GAS, NATURAL RESOURCES, FISH & WILDLIFE, AND PUBLIC LANDS PROGRAMS

KEEP AWAY ROOM

SPEAKERS: KAREN LEBLANC – LOUISIANA
JOE MURRAY – MONTANA
RYAN MCCORD – WASHINGTON
REBECCA CONNOLLY – WASHINGTON
MODERATOR: WAYNE KIDD – UTAH

PASSING BREAK

12:05 – 12:15 PM

NLPES AWARDS LUNCHEON

PEEK-A-BOO BALLROOM

12:15 – 2:00 PM

PRESIDING: NATHALIE MOLLIET-RIBET – VIRGINIA
CHAIR, NLPES EXECUTIVE COMMITTEE

PASSING BREAK 2:00 – 2:10 PM

CONCURRENT SESSIONS 2:10 – 3:25 PM

Evaluating Roads, Bridges, and Other Transportation Projects

Keep Away room

Speakers: Michelle Colin – Colorado
Eric Thomas – Washington
Sarah Williamson – Mississippi
Moderator: Patricia Berger – Pennsylvania

Can You Read Me Now? Report Formats, Style Guides, Copy Editing, and Other Practices

Patty-Cake Room

Speakers: Margaret Campbell – Idaho
Melissa Simpson – Arkansas
Shunti Taylor – Georgia
Moderator: Marcia Lindsay – South Carolina

PASSING BREAK 3:25 – 3:35 PM

CONCURRENT SESSIONS 3:35 – 4:50 PM

Managing Audits and Evaluations in the Legislative Environment (Part 2)

Patty-Cake Room

Speakers: Emily Johnson – Texas
Keenan Konopaski – Washington
Darin Underwood – Utah
Valerie Whitener – Washington
Jan Yamane – Hawaii

Moderator: Monica Bowers – Colorado

Not For Public Release: Safeguarding Confidential or Sensitive Information When Performing Audits and Evaluations and Reporting on the Results

Keep Away Room

Speakers: Christine Clarke – Kansas
Jeff Grimes – North Carolina
Brent Lucas – North Carolina
Noah Natzke – Wisconsin

Moderator: Nathalie Molliet-Ribet – Virginia

EVENING RECEPTION @ WYNKOOP BREWERY (1634 18th St.) 5:30 – 7:00 PM

WEDNESDAY

October 14, 2015

REGISTRATION & INFORMATION DESK 8:00 AM – 3:30 PM
PEEK-A-BOO BALLROOM FOYER

MORNING WALK
Depart Hotel Lobby @ 7:00AM
7:00 – 7:30 AM

CONTINENTAL BREAKFAST 7:30 – 8:30AM
PEEK-A-BOO BALLROOM

GENERAL SESSION 8:30 – 9:55 AM
PEEK-A-BOO BALLROOM

STATE POLICY TRENDS: TODAY'S TRENDS BECOME TOMORROW'S AUDITS AND EVALUATIONS

NATIONAL CONFERENCE OF STATE LEGISLATURES
STAFF PANELISTS:

- JONATHAN GRIFFIN, SENIOR POLICY SPECIALIST, NCSL FISCAL AFFAIRS
- ALISON LAWRENCE, SENIOR POLICY SPECIALIST, NCSL CRIMINAL JUSTICE
- HEATHER MORTON, PROGRAM PRINCIPAL, NCSL FISCAL AFFAIRS
- ANNA PETRINI, POLICY ASSOCIATE, NCSL STATE SERVICES
- LAURA ROSE, GROUP DIRECTOR, NCSL LEGISLATIVE MANAGEMENT
- LAURA TOBLER, NCSL DIRECTOR OF STATE POLICY RESEARCH

PASSING BREAK
9:55 – 10:05 AM

CONCURRENT SESSIONS 10:05 – 11:20 AM

Hiring and Onboarding the Best and the Brightest with a Focus on Long-Term Retention

Patty-Cake Room

Speakers: Leah Blevins – Utah
Leslie McGuire – Georgia
Linda Triplett – Mississippi
Moderator: Linda Triplett – Mississippi

Risky Business: Selecting and Planning Impactful Audits and Evaluations

Keep Away Room

Speakers: Gina Brown – Louisiana
Chuck Hefren – North Carolina
Joe Murray – Montana
Moderator: Rachel Hibbard – Hawaii

PASSING BREAK 11:20 – 11:30 AM

BOX LUNCH 11:30 AM – 12:30 PM
PEEK-A-BOO BALLROOM

PASSING BREAK 12:30 – 12:40 PM

CONCURRENT SESSIONS 12:40 – 1:55 PM

Showcasing Office Technologies

Patty-Cake Room

Speakers: Katherine Guenther – Montana
Matthew Harvey – Utah
Ben McCulloch – Texas
Eric Whitaker – Washington
Moderator: Candace Ware – Utah

Going Green: A Discussion About the GAO's New Green Book and How It Might Be Used In Audits and Evaluations

Keep Away Room

Moderators: Christopher Harless – Colorado
Kara Trim – Colorado

PASSING BREAK 1:55 – 2:05 PM

CLOSING SESSION 2:05 – 3:20 PM
PEEK-A-BOO BALLROOM

Emerging Issues Roundtable

Moderator: Greg Fugate – Colorado

OPTIONAL TOUR OF COLORADO STATE CAPITOL BUILDING & DOME 4:00 – 5:30 PM

Depart Hotel Lobby @ 3:45 PM
Attendees are requested to wear their conference badges while on the tour.

Thank you for attending!

See you for the 2016 PDS in Jackson, Mississippi!