



State of California

SECRETARY OF STATE

Final Personnel Audit Report

**Prepared by the
staff of the
State Personnel Board**

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Executive Officer**



January 2005

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SECRETARY OF STATE *PERSONNEL AUDIT HIGHLIGHTS...*

In September 2004, the Executive Officer of the State Personnel Board (SPB)¹ directed SPB staff to conduct an audit of some of the personnel practices, policies, and processes of the Office of the Secretary of State (SOS)² during the period from January 1, 2003 through June 30, 2004. What follows is a summary of the major findings:

Workplace Environment

- ☑ An abusive working environment exists within SOS for those employees who have to work directly with the Secretary of State.
- ☑ While SOS staff has handled complaints of an abusive working environment through a creative adaptation of a process designed for reporting Security/Safety incidents, SOS does not have in place a formal process to adequately respond to employee complaints about alleged abusive behavior and unreasonable demands made by the Secretary, or any other exempt manager.
- ☑ Although SOS has a discrimination complaint process and has properly utilized that process to investigate discrimination complaints in the past, SOS has reported that it has no record of having received two recent complaints against the Secretary of State himself.

SPB directs that SOS respond to these two complaints that it initially reported that they have no record of receiving, as SPB is informed that SOS now has copies of the missing complaints.

- ☑ SPB recommends that SOS issue a written policy that would allow employees who allege that they have been subjected to abusive behavior or unreasonable demands to file written

¹References to the "State Personnel Board" or "SPB" means the SPB acting by and through its Executive Officer.

²As used in this report, the term "SOS" refers to the Office of the Secretary of State and the term "Secretary" refers to the individual occupying the elected position of Secretary of State.

complaints, as well as a process to investigate and address such complaints.

Selection and Appointment Process

- ☑ Several civil service examinations audited revealed multiple improprieties throughout the examination process, raising concerns about whether the examination processes were open and competitive or whether they were designed to favor or result in the appointment of a particular candidate.
- ☑ To ensure that an examination is competitive and fairly tests the qualifications of competitors as required by the merit principle, an agency must document its examination criteria and selection procedures - SOS failed to do so, calling into question whether the examinations complied with applicable laws, rules, and examination protocol.
- ☑ The merit principle requires that civil service examinations be job-related; the failure of SOS to conduct job analyses raises questions about whether the selection procedures utilized by SOS were job-related.
- ☑ Several deficiencies in SOS's examination processes were identified, including deficiencies in bulletin preparation, application processing, and scoring methods:

Identified deficiencies may have resulted in excluding or discouraging some qualified individuals from competing for positions within the office; or allowing individuals not meeting examination or appointment criteria to be considered or selected.

Identified deficiencies also raise questions as to whether SOS is accurately assessing the required knowledge, skills, abilities, and qualifications of competitors.

- ☑ The audit revealed several potential improprieties in the appointment processes for Career Executive Assignment (CEA) positions.

SOS improperly used the temporary appointment (TAU) process to hire someone from outside the civil service into a CEA position.

SOS improperly transferred a CEA I into a CEA II level position without an examination - a transfer to a higher level is not appropriate under state laws and regulations.

SPB recommends and directs that SOS:

Ensure bulletins and publicity periods comport with laws and rules.

Ensure applications are signed, and date-stamped.

Maintain documentation to show how candidates meet minimum qualifications and that the examination itself was fairly administered.

Ensure ethnic, gender, and disability data are removed from the application.

Conduct job analyses to ensure selection procedures are job related.

Ensure CEA eligible lists are established after the final filing date.

Refrain from using temporary appointments for CEA positions.

Refrain from promotions without examination.

Ensure candidates meet minimum qualifications for examinations.

Ensure proper application of veteran's preference points.

Review applicant and hiring data to assess possible adverse impact on particular racial, gender, or ethnic groups.

Personal Services Contracts

- Whether or not the numerous personal services contracts entered into by SOS with private entities comport with the civil service mandate is an issue not for the audit team – challenges to such contracts are to be resolved in the first instance by requests for review filed with SPB's Executive Officer.
- An employee organization challenged two of the contracts after the audit period ended - an initial determination by the Executive Officer resulted in the invalidation one of those contracts; the other challenge currently pending is awaiting an initial determination.
- Contracts that go unchallenged may or may not be in compliance with the civil service mandate.

EXECUTIVE SUMMARY

INTRODUCTION

The People of California have entrusted the oversight of the merit principle and enforcement of the civil service laws to the State Personnel Board (SPB or Board). SPB conducts personnel audits to review whether an agency's personnel practices conform to the merit principle and state civil service laws.

Article VII, Section 1, subdivision (b) of the California Constitution establishes the "merit principle" in state employment by mandating that:

In the civil service permanent appointment and promotion shall be made under ***a general system based on merit*** ascertained by ***competitive examination***. (emphasis added).

The merit principle requires that individuals hired into and promoted within the state civil service be selected on the basis of their job-related qualifications; such selection decisions must be free from illegal discrimination and political patronage.

The merit principle and state civil service laws also mandate that equal employment opportunities must be provided to all state employees and applicants; that employment decisions must be made on the basis of merit, efficiency, and fitness ascertained by a competitive examination process; and that illegal discrimination and harassment must be prohibited by personnel policy and practice in the employment, development, advancement, and treatment of state employees and applicants.

Finally, all state employees are entitled to be treated in a manner that maintains generally accepted standards of human dignity and courtesy.³

³These standards are evidenced by the fact that "discourtesy" and "unlawful discrimination" constitute cause for discipline of the offending civil service employee. Elected and appointed officials, however, are not subject to discipline.

The Personnel Practices, Policies, and Processes Audit

In September 2004, SPB staff conducted an audit of the personnel practices, policies, and processes of the Office of the Secretary of State (SOS).⁴ While the audit touched upon many aspects of personnel practices during the audit period, its primary purpose was two-fold:

- To determine whether SOS was complying with its obligations under the law to insure equal employment opportunity and an appropriate workplace environment for its employees; and
- To determine whether the selection processes used by SOS for its high-level, policy influencing positions (Career Executive Assignments, also known as CEAs), as well as for its other positions, complied with the civil service laws and rules designed to insure compliance with the merit principle.

The findings from this audit and SPB's directives and action items are set forth in summary form below, and then in more detail in the sections that follow this Executive Summary. The directives, designated with a "D", direct changes to current practices, policies, and processes on a going forward basis. The action items, designated with an "A", ask for SOS to provide SPB further information to assist SPB in determining whether corrective action is necessary. The specific selection processes audited and contracts reviewed are listed in appendices to this audit report. Also listed, in Appendix E for the reader's convenience, are the pertinent laws and rules.

Workplace Environment

During the audit period, three SOS employees filed written complaints with SOS management alleging that the Secretary had engaged in abusive behavior towards them and made unreasonable demands upon them. While SOS appears to have in place appropriate policies for ensuring equal employment opportunity in the workplace, SOS reports that it has no record of having received two other complaints from one of these three employees. The missing complaints, which were provided to SPB during the course of the audit, contain allegations that could constitute discrimination, harassment, and denial of equal employment opportunity (EEO) and should have been properly handled through a discrimination complaint or EEO process. SPB is informed and believes that SOS may now have copies of the missing complaints and directs SOS to address the EEO allegations contained in them through its EEO process.⁵

⁴As used in this report, the term "SOS" refers to the Office of the Secretary of State and the term "Secretary" refers to the individual occupying the elected position of Secretary of State.

⁵If SOS still does not have copies of these complaints, SPB can provide them to SOS.

Most of the other allegations by these three employees about the Secretary do not clearly fall within the rubric of EEO, but would be more accurately characterized as allegations of abusive, humiliating, unreasonably demanding, or demeaning behavior. For want of a process better designed to deal with the allegations of an abusive working environment, SOS management referred the three complaining employees to SOS's Injury and Illness Prevention Program and offered them the opportunity to document their concerns on Security/Safety Incident Report forms. While SOS's Injury and Illness Prevention Program was utilized as a means of giving these employees an avenue to document their complaints and seek reassignment, that program was not adequate to address, respond, and remedy all the employees' allegations.

SPB recommends that, effective immediately, SOS institute a policy that would allow all employees who wish to report allegations that they have been subjected to abusive behavior or unreasonable demands by anyone in the workplace the opportunity to submit written complaints, in confidence, without fear of reprisal or retaliation. In addition, SPB recommends that SOS institute procedures to address thoroughly and appropriately any such complaints that it may receive.

Selection and Hiring Practices

Article VII, Section 4 of the California Constitution provides that officers elected by the people and a deputy and an employee selected by each elected officer are exempt from the State Civil Service.⁶ Although SPB has limited oversight authority in the selection and appointment processes for exempt employees, for the sake of completeness, SPB did review one exempt appointment made by SOS during the review period. SPB did not identify any deficiencies with the appropriateness or legality of this appointment.

Article VII of the California Constitution requires that permanent appointments *in state civil service* be based on merit as ascertained by competitive examination. This merit principle is embodied in the State Civil Service Act and SPB rules that govern the examination and appointment process for all civil service positions.

Currently, the state's selection system is decentralized and provides for state departments, under the authority and oversight of SPB, to administer their own selection processes, including initial recruitment and publicity efforts, eligible list establishment, and hiring. SPB has delegated to SOS the authority to conduct examinations and make selection decisions for appointments to civil service classifications within SOS. Appointing powers, such as SOS, and all officers and employees to whom an appointing power delegates appointment authority, are responsible for ensuring adherence to the laws and SPB rules throughout the

⁶An article in the Sacramento Bee on December 16, 2004, reported that SOS increased the number of exempt appointees to an unnecessary level, based upon legislative authorizations and changes. SPB has neither approved those appointments, nor has it reviewed the propriety of those appointments in connection with this audit.

selection and appointment process. Failure to adhere to the laws and rules renders the state employer vulnerable to charges of improprieties in the selection process and can result in costly challenges, the need to re-administer examinations, and the voiding of illegal appointments.

To insure compliance with the merit principle in the state civil service, SPB may conduct an investigation into the process leading to the appointment of any individual to a position in the state civil service, and, if the appointment is found to be improper, may consider appropriate remedial action including, but not limited to, freezing eligibility lists, ordering new examinations, and voiding illegal appointments.

This audit encompassed a review of the selection and hiring practices of SOS for CEA positions, which are high level, policy-influencing positions, as well as civil service positions that do not fall within the CEA category.

The CEA classification and its selection process were established to recognize the unique selection and pay considerations appropriate to high level⁷ executive, policy-influencing, civil service positions. Specific laws and rules govern the examination, selection, and hiring process for CEAs, which are different in some respects from those governing selection processes for positions within the non-CEA or regular civil service. Employees appointed to these top management positions (allocated CEA I – V) in the organization do not attain permanent status in the CEA classification and may have their positions terminated on twenty (20) days notice. While the CEA selection process provides more flexibility to department heads than does the regular civil service selection process, compliance with CEA laws and rules is essential to ensure the validity of CEA appointments.

The audit revealed a number of inadequacies in both the examination and appointment phases of the selection processes for both CEA and non-CEA civil service positions. One of the most significant problems identified is SOS's failure to maintain sufficient documentation in its examination and appointment files to demonstrate that it consistently complies with civil service laws, rules, and merit principles. A second serious inadequacy lies in SOS's failure to conduct job analyses prior to administering its examinations. Conducting a job analysis, one purpose of which is to identify and determine in detail the particular job duties and requirements and relative importance of these duties for a given job, is necessary to insure that examinations are job-related, and, therefore, designed to test a competitor's ability to do the job. Other serious omissions on the part of SOS were revealed in a review of how the examinations were publicized, how the applications were reviewed for eligibility to take the examinations, and how the examinations were conducted and scored. More minor discrepancies were

⁷The only persons employed in state government who hold positions equal to or at a higher level than CEAs are elected officials, those appointed to their positions by the Governor, and other persons holding positions designated exempt from the civil service by the California Constitution.

identified and noted with regard to a variety of appointment processes such as transfers and temporary appointments. The type and number of inadequacies noted raise questions as to whether the appointments made to the examined positions were truly based on merit.

SPB recommends that SOS improve its selection practices by implementing procedures to insure and document the job-relatedness of its examinations, and to insure that all phases of the process, from publicity to application review to rating and scoring, comport with civil service laws and rules. Conforming practice to accepted personnel policies, as well as the law, will ensure that all aspects of SOS's selection process comport with the merit principle, and are competitive and of such character as to fairly test the qualifications, fitness, and ability of competitors.

Personal Services Contracts

The courts have interpreted Article VII of the California Constitution to provide for a "civil service mandate." That mandate requires that state work must be performed by civil service employees unless a statutory exception permits a state agency to contract that work to a private contractor. Under the State Civil Service Act and the state's Public Contract Code, SPB is charged with the responsibility of reviewing personal services contracts that state agencies enter into with private contractors to determine whether those contracts violate the civil service mandate. If the contract is justified on the grounds that it saves the state money, the state department entering into the contract is required to seek advance approval of SPB to insure the contract meets certain regulatory criteria. If the contract is justified on other than a cost-savings basis, SPB may be requested by an employee organization to review the contract to assure that the contract falls under an exemption to the civil service mandate.

SPB conducted a general review of fifty-nine (59) personal services contracts that SOS entered into during the review period. Many of these contracts were for services relating to the Help America Vote Act of 2002 (HAVA). The total amount allocated to these 59 contracts was \$5.6 million.

None of these contracts were cost-savings contracts. No employee organization challenged any of the reviewed contracts during the audit period.⁸ SPB's review revealed no improprieties with respect to the process SOS followed when justifying the contracts under exceptions to the civil service mandate. It is beyond the scope of this audit report for SPB to make findings as to whether these contracts, (non cost-savings contracts) were authorized under the statutory exceptions relied upon by SOS. If an employee organization has requested or requests, review of any of the contracts still in effect at the time of the request, SPB will review those contracts pursuant to its statutory and regulatory process.

⁸Subsequent to the audit period, however, SPB received two requests from an employee organization for review of personal services contracts for legal services. SPB's Executive Officer has disapproved one of the legal contracts for non-compliance with the civil service mandate and exceptions set forth in government code; this matter is currently on appeal before the Board.

The other disputed legal contract is still under review by SPB. This second contract was also the subject of review in the *California State Auditor Report 2004-139*, California State Auditor, Bureau of State Audits, 2004, p. 2. The report cites in part, "...a law firm retained to provide legal advice on issues related to HAVA performed unrelated work such as writing speeches for the secretary of state that had little if anything to do with HAVA and also invoiced and was paid for services that did not conform with the terms of its contract."

SCOPE OF AUDIT AND METHODOLOGY

Prior to the on-site audit, SOS provided to SPB listings of all personal services contracts, examinations (including CEA examinations), and exempt and CEA appointments during the review period. SPB reviewed fifty-nine (59) personal services contracts. SPB reviewed thirteen (13) departmental examinations of various classifications, levels, and types.

In order to evaluate the hiring procedures and practices of SOS, SPB reviewed a listing of appointments (permanent, temporary, transfers, training and development⁹ assignments, exempt,¹⁰ and CEA) made during the review period, and selected for review various types of appointments made by SOS. Appointment data for this review was obtained from certification lists, appointment documents, employee history information, and other documents contained in personnel files. SPB reviewed twenty-nine (29) appointments.

As noted above, the purpose of the audit was to assess the extent to which SOS's personnel practices conformed to state laws, regulations, and merit principles including, but not limited to, the anti-discrimination and anti-retaliation laws and regulations. The audit was also designed to review the process used by SOS to address complaints of employees of an abusive working environment.

⁹Training and Development (T & D) assignments are not true appointments. These are temporary assignments of up to two years for the purpose of training, and involve the performance of duties of a classification other than the employee's appointment classification.

¹⁰SPB has no authority over exempt appointments other than to ensure that the positions being filled by exempt appointments are authorized by the Constitution.

PART I

SOS WORKPLACE ENVIRONMENT

Applicable Laws, Policies and Procedures

The Law:

The State Civil Service Act (SCSA) and the regulations the Board has adopted implementing the SCSA protect civil service employees from illegal discrimination and harassment¹¹ and allow a state department or agency and, under some circumstances, the Board itself, to take disciplinary action against civil service employees who engage in misconduct that constitutes cause for discipline under Government Code § 19572.¹² Nothing in the SCSA, however, specifically authorizes the Board or other administrative agency to take administrative action against an exempt employee or elected official, such as the Secretary, who may engage in illegal discrimination or harassment or other misconduct.

Equal Employment Opportunity Policy:

During the period covered by this personnel audit, SOS issued to its new employees an unsigned Equal Employment Opportunity Policy dated April 15, 2003.¹³ This policy describes SOS's EEO policy, in relevant part, as follows:

The Secretary of State (SOS) is committed to providing a workplace in which all individuals are treated with respect and professionalism. Consistent with this commitment, it is the policy of SOS to provide Equal Employment Opportunity (EEO) for all employees and applicants for employment.

This policy also states that, "Because all forms of discrimination are unprofessional and disrespectful, can decrease work productivity, undermine employment relationships, decrease morale, and cause emotional distress, the SOS has a 'zero-tolerance policy' for violations of this policy."

¹¹Government Code § 19702 and 2CCR §§ 54.2, 547.1.

¹²Government Code §§ 19572 and 19583.5.

¹³On August 1, 2004, SOS issued an Equal Employment Opportunity Policy dated and signed by its Management Services Division Chief.

The policy sets forth procedures for employees to file both formal and informal complaints and provides:

SOS will investigate claims and take appropriate corrective action that is proportionate to the seriousness of the conduct. Employees who report sexual harassment or participate in the investigation of a claim will be protected from any form of retaliation. Employees who are found to have engaged in retaliatory conduct will be disciplined.

Sexual Harassment Prevention Policy:

During the period covered by this personnel audit, SOS issued to its new employees an unsigned Sexual Harassment Prevention Policy dated April 15, 2003.¹⁴ That policy provides, in relevant part:

The Secretary of State is committed to providing a workplace in which all individuals are treated with respect and professionalism. Consistent with this commitment, it is the policy of the SOS that its employees are prohibited from engaging in sexual behavior that:

- Rises to the level of sexual harassment in violation of Title VII of the Civil Rights Act of 1964 and the Fair Employment and Housing Act.
- Is unprofessional and disrespectful and, while not unlawful, may contribute to a hostile work environment.

Injury and Illness Prevention Program:

SOS has adopted an Injury and Illness Prevention Program. The stated purpose of this program is "to prevent accidents, to reduce personal injury and occupational illness, and to comply with all safety and health standards set forth in state and federal law." The program states that it is SOS's policy that "everything possible be done to protect employees, clients and visitors from injury." The program permits employees who report a safety or security incident to remain anonymous and provides that, "*No employee will be retaliated against for reporting hazards or potential hazards or for making suggestions related to safety.*" (Italics in original.) The program includes a form, "Security/Safety Incident Report," and instructions for completing that form, investigating the

¹⁴After the period covered by this personnel audit, SOS issued a Sexual Harassment Prevention Policy dated August 1, 2004 and signed by its Management Services Division Chief, and a Sexual Harassment Prevention Policy dated September 15, 2004 and signed by the Secretary. The September 15, 2004 policy begins as follows, "At the initiative of the Secretary of State in September of 2003, work began on this new Sexual Harassment Prevention Policy, which is being provided to you to ensure that the employees of the Secretary of State's Office have an environment where they are treated with respect and professionalism."

reported incident, and creating an "action plan" to prevent similar incidents in the future.

SOS employees may submit completed Security/Safety Incident Reports to SOS's Safety Officer, who generally uses the reporting system as a method of tracking workplace incidents and ensuring that necessary facility repairs are made. Depending upon their nature, completed reports may be referred for further action to SOS staff responsible for workers' compensation or EEO matters. SOS does not have a separate workplace violence policy. SOS employees may utilize the Security/Safety Incident Report process to report workplace violence incidents.

Administrative Manual:

A copy of SOS's Administrative Manual is posted on SOS's internal intranet website. The manual includes information with respect to SOS's EEO, sexual harassment and reasonable accommodation policies, describes the discrimination complaint process and includes an internal employment discrimination complaint form for employees to complete if they wish to file a discrimination complaint. SOS's Injury and Illness Prevention Program is also included in SOS's Administrative Manual on its internal intranet website.

Training:

During the time period covered by the personnel audit, SOS provided Sexual Harassment Prevention training to sixty-five (65) supervisors and managers.¹⁵

Complaint Process

Discrimination Complaints:

SPB reviewed four files identified by SOS as discrimination complaints. Two of those involved primarily medical and worker's compensation issues. SPB audited the remaining two that were more clearly discrimination complaints.

In February 2004, SOS received a complaint from an employee who asserted that an SOS manager (Mr. X, not the Secretary) had "verbally abused and harassed" her when she took time off from work to care for her disabled adult son. In early March 2004, another employee complained that Mr. X had spoken to her in a "demeaning, vulgar and abusive manner." SOS treated these complaints as discrimination complaints under its EEO Policy.

¹⁵Sexual Harassment Prevention Training was provided to the Secretary, the Undersecretary of State, the Chief Deputy Assistant Secretary of State, Operations, and the Director of Communications in July 2004, and was scheduled to be provided to rank and file employees in September 2004.

In mid-March 2004, SOS retained outside counsel to commence an independent fact-finding in regard to these two complaints and a third complaint received prior to the audit period. The fact finder issued her report in April 2004, finding that Mr. X had engaged in "profane, abusive, vulgar and threatening behavior." Based upon these findings, SOS demoted the manager, effective May 10, 2004. The manager appealed the demotion to SPB. The parties settled the appeal, with Mr. X agreeing to resign.

Findings:

1. SOS utilized the procedures set forth in its EEO and Sexual Harassment policies to take prompt, effective action in this matter.

Security/Safety Incident Reports:

SOS maintains Security/Safety Incident Reports filed by SOS employees under SOS's Injury and Illness Prevention Program. Articles published in the Sacramento Bee on August 21, 24, 25, and 28, 2004 reported on three Security/Safety Incident Reports filed by three SOS employees during the audit period. SPB has audited those three reports. SOS provided the three reporting employees with blank Security/Safety Incident Report forms to complete after being notified of the incidents which are the subject matter of those reports.

Ms. A's Reports

In the first of those audited Security/Safety Incident Reports, filed in June 2003, the reporting employee (Ms. A) describes the Secretary's alleged "unreasonable training requests" and his "extreme outbursts" during sessions scheduled for computer training. The report states that the Secretary was "enraged" and "screamed and yelled" at Ms. A and "ranted" at Ms. A's division chief when Ms. A had to leave a training session early because of a prior commitment that could not be cancelled. SOS responded to this incident report by removing Ms. A as the Secretary's computer trainer. This action was satisfactory to Ms. A.

Ms. B's Reports

The second Security/Safety Incident Report, filed in October 2003, describes a conversation on the "hotline," the telephone line used exclusively for communications between the Secretary and SOS staff that the second reporting employee (Ms. B) had with the Secretary about a media interview. The report states that, when asked when he wanted to do the interview, the Secretary became "increasingly irritated and raised his voice"; as the conversation continued, the Secretary became "antagonistic and aggressive in his comments"; and the Secretary's "irrational behavior escalated and he started to use profanity." The report states that, after the conversation, Ms. B felt "humiliated, embarrassed, upset, abused, demeaned and berated." SOS responded to the

assertions made in this second incident report by reassigning Ms. B, at her request, to a position in a different unit of SOS.

Ms. C's Reports

The third Security/Safety Incident Report, filed in November 2003, describes a conversation that the third reporting employee (Ms. C) had with the Secretary. According to the report, after Ms. C responded to the Secretary's request as to when he had to be at an event, the Secretary replied that "then that should be on my f---ing schedule, now" and slammed the door "so violently the walls shook." The report states further that, "On a day to day basis – working for the Secretary has both been full of anxiety and a constant feeling of uncertainty. He is irrational, unpredictable, violent, and angry and has no respect for his employees – specially his female employees." SOS responded to the third incident report by involuntarily reassigning Ms. C to a position in which she would not have direct contact with the Secretary. Ms. C had a temporary authorization (TAU) appointment with SOS. SOS thereafter terminated Ms. C's TAU at its 9-month expiration without first providing Ms. C with the opportunity to take an examination to seek permanent civil service status.

Additional Reports by Ms. C

Articles published in the Sacramento Bee on August 24, 25, and 28, 2004 and in the San Francisco Chronicle on August 29, 2004, stated that Ms. C asserted that, in addition to the Security/Safety Incident Report described above, she also filed two additional Security/Safety Incident Reports with SOS in November 2003. SPB has audited those two additional reports.

The first of those additional reports refers to "irrational demands" of the Secretary and describes "the chaotic nature and mean spirited interactions" with the Secretary experienced by another employee, who was allegedly let go after she sought resolution of the "negative and abusive behavior" of the Secretary. That first additional report also states that Ms. C was going to file a "final complaint" that would "contain issues regarding the 'sexual atmosphere' of the Exec office."

The second of those additional reports asserts that the Secretary: (1) made sexual hand gestures during two conference calls with Division Chiefs; (2) asked Ms. C during a conference call whether she was "into men or women"; (3) "continually" made gay jokes; (4) asked whether it was true that body builders had small genitals; and (5) made noises simulating sex on one occasion when he went to the bathroom. In that report, Ms. C asserts that she "constantly felt that [she] was working in a sexually charged-negative atmosphere."

Ms. C asserted that she confirmed orally with SOS staff that they had received copies of the additional reports shortly after she submitted them. SOS asserted

during the audit that it did not currently have copies of either of those two reports or any record of ever having received them.¹⁶

Additional Complaints of Abusive Working Environment:

Articles in the Sacramento Bee on August 21, 24, and 25 and September 5, 2004, reported on additional assertions made by former SOS employees. SPB audited those assertions.

An employee (Ms. D) who worked for SOS in its Executive Office for approximately six weeks during the audit period stated that, when she complained of the Secretary's unreasonable demands on her time and his "hostile and abusive" behavior toward her, she was informed that, in order to return to her former position in state service, her only option was to accept a "soft" rejection on probation. Ms. D was not offered the opportunity to file a Security/Safety Incident Report.

Another former employee (Ms. E) who worked directly with the Secretary for approximately eight weeks during the audit period described incidents during which the Secretary was "ranting," "raving" and "shouting obscenities" at his staff. Ms. E chose to resign from the state civil service without filing a complaint.

Other former and current SOS employees orally confirmed to SPB the occurrence of similar incidents and behaviors.¹⁷ These employees described various incidents during which the Secretary shouted and used profanity when the Secretary was upset with the employee's failure to perform or respond as the Secretary desired. The employees generally described these incidents as abusive, humiliating, manipulative and demeaning. They also stated that the Secretary made unreasonable demands on their time. For examples, the Secretary insisted that employees remain in the office well after 5:00 p.m. if the Secretary was still there, even if there was no pressing work for the employees to perform; and the Secretary required that employees compile and deliver summaries of press clippings about the Secretary first thing every morning, including Saturdays and Sundays.

Some former and current employees expressed concern that there was no effective avenue of recourse available in state service for employees to complain that an elected official in charge of a department or office has engaged in abusive behavior toward staff or made unreasonable demands upon staff's time. One recommended that an independent, neutral outside agency should be empowered to receive, investigate, and respond adequately and effectively to such complaints.

¹⁶This issue has been referred to the California Attorney General's Office.

¹⁷SPB assured the current and former employees who asked that SPB would not voluntarily disclose their names.

Findings:

1. An abusive working environment exists within SOS for those employees who have to work directly with the Secretary.
2. As SOS's EEO policy states, state employees are entitled to a workplace in which they are treated with respect and professionalism. SOS staff acted commendably in attempting to mold an existing process to receive complaints of abusive behavior in the workplace. There is, however, no formal process in place for SOS to receive, investigate, and respond adequately and effectively to complaints that the Secretary or any exempt employee has engaged in abusive behavior toward or made unreasonable demands upon civil service employees if such complaints do not allege illegal discrimination or harassment.¹⁸
3. SOS provided the three reporting employees with the Security/Safety Incident Report forms. SPB commends SOS staff's efforts to provide the reporting employees with an opportunity to file written complaints. SOS did not, however, fully explain to the complainants the process by which the assertions set forth in the reports would be reviewed, investigated, and addressed. SOS took quick action to reassign the reporting employees to positions or duties that would not involve contact with the Secretary. SOS did not, however, take further action to investigate or address the assertions set forth in the written reports that it received.
4. Due to the conflict in statements, SPB is unable to make firm findings as to whether SOS received the two additional Security/Safety Incident Reports filed by Ms. C.

Directives and Action Items:

(D 1) Effective immediately, SOS should issue a written policy that would allow all employees who wish to report allegations that they have been subjected to abusive behavior or unreasonable demands the opportunity to submit written complaints, in confidence, without fear of reprisal or retaliation. In addition, SOS

¹⁸Civil service employees who engage in abusive, harassing or discriminatory behavior may be disciplined under Government Code § 19572. If an appointing power chooses not to initiate such action, the complainant may seek permission from SPB to file disciplinary charges pursuant to Government Code § 19583.5. Such administrative disciplinary action is not available against an elected official or exempt employee. While administrative disciplinary action may not be available, employees who have been subjected to abuse, harassment and/or discrimination by an elected official or exempt employee may be able to seek damages in court against both their appointing powers and the offending official and exempt employee. They may also be able to seek recompense for any injuries they may suffer through the workers' compensation system.

should institute procedures to investigate and address thoroughly and appropriately any such complaints that it may receive.

(A 1) SPB directs, in accordance with its EEO and Sexual Harassment Prevention Policies and applicable laws and rules, that SOS respond to the two missing complaints it initially reported as having no record of receiving. One option is that the SOS follow the same practice it did with Mr. X and retain an independent counsel to commence an independent fact-finding investigation.

PART II THE SELECTION AND APPOINTMENT OF SOS EMPLOYEES

Article VII of the California Constitution requires that permanent appointments in state civil service be based on merit as ascertained by competitive examination. The merit principle is embodied in the State Civil Service Act and SPB rules that govern the examination and appointment process for all civil service positions.

Currently, the state's selection system is decentralized and provides for state departments, under the authority and oversight of SPB, to administer their own selection processes, including initial recruitment and publicity efforts, eligible list establishment, and hiring decisions. Thus, SPB has delegated to SOS the authority to conduct examinations and make selection decisions for appointments to civil service classifications within SOS. Appointing powers, such as SOS, and all officers and employees to whom an appointing power delegates appointment authority, are responsible for ensuring adherence to the civil service laws and SPB rules in the appointment of civil service employees. Failure to adhere to the merit principle compromises the very basis of the civil service system and results in costly challenges to the process and potentially the voiding of any illegal appointments.

CAREER EXECUTIVE ASSIGNMENT (CEA) POSITIONS

Persons are appointed (hired for the job) to the high level, policy-influencing, CEA positions based upon a position-specific selection process, typically consisting of an application/resume evaluation, interview, and an appointment. CEAs are "at will" positions; a CEA does not attain permanent status in the position nor is there a probationary period. The hiring process may vary depending upon the position being filled, but must comply with existing laws and rules to be consistent with the merit principle. SPB audited all seven CEA examinations administered by SOS during the review period. A list of those examinations is attached as Appendix A.

Notwithstanding delegation of the examination process from SPB to SOS, SOS is required by law to document the examinations it gives by maintaining, for a period of three years, an examination file that includes, at a minimum, the specific job-related evaluation criteria and selection procedures that were used in the examination.¹⁹ The failure of SOS to document its examination criteria and selection procedures made it difficult for the audit team to confirm compliance

¹⁹2CCR §548.40.

with applicable laws, rules and examination protocol. The findings and recommendations that follow are based upon the files reviewed.

Overview of the CEA Examination Process

The examination process begins with the posting of an examination bulletin for an appropriate period of time to solicit candidates to apply to take an examination for a specific CEA position, continues with a review of the applications received and administration of the selected examination instrument, and ends with the creation of an eligible list from which an appointment is made.

The Publicity Phase

SPB laws and regulations set forth the following criteria for the publicity phase of the CEA examination process. CEA examinations must be competitive and CEA positions should be publicized as widely as practicable.²⁰ Although, until recently, there was no law or rule dictating the length of the publicity period for civil service examinations, best practices would suggest a publicity period of at least 10 working days for all examination bulletins.²¹

Examination bulletins for CEAs must describe the knowledge, skills, abilities, and personal characteristics necessary to perform the duties of the positions and must identify the CEA position and the evaluation standards and methods to be applied.²² The specific amounts, kinds, and levels of education and experience that are not required may be indicated as desirable qualifications.

Additionally, examination bulletins must identify the minimum qualifying ratings that competitors must achieve to obtain a qualified rating as well as indicate that “the final earned rating of each person competing in any examination shall be determined by the weighted average of earned ratings on all phases of the examination...”²³

Findings:

1. The publicity period for the CEA examinations reviewed ranged from eight (8) to fifty-seven (57) calendar days.
2. SOS failed to document in any of the CEA examination files reviewed the type of publicity it utilized to solicit applicants for each of the examinations or the distribution of examination bulletins. SOS did provide SPB with a

²⁰2CCR §§ 548.40; 548.41.

²¹2CCR § 50 now provides for a 10 working days publicity period.

²²Ibid.

²³Government Code § 18936.

standard distribution list that the department utilizes for all examination bulletins. SOS stated that it also notifies all employees by departmental e-mail of examinations being given.

3. For the Chief, Public Affairs, CEA examination, part of the examination bulletin was missing in the examination file.
4. SOS did not include in any of the CEA examination bulletins audited, language indicating that a final earned rating of 70% must be attained in order to obtain a ranking on the eligible list.²⁴
5. SOS did not include in six of the CEA examination bulletins audited,²⁵ language indicating that the total weight of the selection instrument would equal 100%.²⁶ Each test part must carry a specific weight from 0% to 100%.
6. In two of the CEA examination bulletins audited, SOS improperly included language requiring specific knowledge and experience as part of the minimum qualifications (instead of as desirable qualifications), which language may have resulted in the exclusion of qualified applicants from consideration. The purpose of desirable qualifications is to provide a department with a means of evaluating competitors, as well as providing applicants with a means of determining their own relative competitiveness.

For the position of Chief, California State Archives and Museum, SOS conducted two examinations, the first on a permanent civil service basis and the second on a CEA basis. The parallel CEA bulletin incorrectly required education as part of the minimum qualifications. This language may have resulted in erroneously disqualifying applicants from the examination or preventing candidates from applying who were otherwise eligible.

The Chief, Strategic Communications CEA examination bulletin listed as part of the minimum qualifications, rather than as desirable only, specific knowledge such as public information and education, techniques for preparing, producing and disseminating information, utilizing all major media of communication, and public relations. This language may have resulted in erroneously disqualifying applicants from the examination or preventing candidates from applying who were otherwise eligible.

²⁴Government Code § 18936 and 2CCR § 548.41.

²⁵Chief, Public Affairs CEA (in 2003 and 2004); Chief, Management Services Division CEA; Chief, Strategic Communications CEA; Assistant Secretary of State CEA; and Chief, Information Technology CEA.

²⁶Government Code § 18936.

Directives and Action Items:

(D 2) Effective immediately, SOS shall maintain, in every examination history file, information regarding the publicity of each CEA examination and distribution of examination bulletins.

(D 3) Effective immediately, SOS shall ensure that all CEA examination bulletins comply with statutory and regulatory requirements.²⁷ This encompasses statements regarding the minimum threshold required for attaining list eligibility and minimum vs. desirable qualifications on bulletins.

Examination Application Review

Applications for an examination must be reviewed by trained human resources personnel to insure that they are filed in a manner and by a date specified in the examination bulletin or other publicity materials, and that applicants meet the minimum qualifications and other criteria for taking the examination. Human resources personnel must also remove ethnic, gender, and disability data from the applications before they are forwarded to the personnel administering the examination.

Findings:

1. SOS accepted applications in one of the CEA examinations²⁸ reviewed without applicants' signatures, and allowed some applicants to file resumes rather than a state application despite language on the bulletin requiring an application; one applicant filed a "proxy" application²⁹ without submitting a signed application.
2. In one of the CEA examinations reviewed, SOS accepted applications without evidence of proof of postmark or date stamp, as required by law.³⁰
3. SOS did not remove voluntary ethnic, gender, disability and other confidential information in one of the CEA examination³¹ files prior to proceeding with the examination process.
4. In none of the CEA examinations SOS administered during the audit

²⁷Government Code §§ 18936, 18971 – 18979, 2CCR § 548.41.

²⁸Chief, Strategic Communications CEA.

²⁹The proxy application was a blank, unsigned application.

³⁰Government Code §§ 19704, 19705, and 2CCR §§174.6 – 174.8.

³¹Chief Public Affairs CEA.

period, did the department maintain sufficient documentation to demonstrate that it accurately determined if the competitors met minimum qualifications as required by law.³² There was no indication on a majority of the applications in the examination files as to whether they were “accepted” or “approved” by the department.

Directives and Action Items:

(D 4) Effective immediately, SOS shall only accept completed, signed applications as stated on the examination bulletin.

(D 5) Effective immediately, SOS shall date stamp all applications/resumes for CEA examinations or maintain postmarked envelopes to demonstrate competitors met filing requirements.

(D 6) Effective immediately, SOS shall maintain documentation to clearly demonstrate how competitors meet the minimum qualifications of the CEA classification being examined.

(D 7) Effective immediately, SOS shall designate a person, who is not directly involved in the selection process, to remove the voluntary ethnic, gender, and disability document/flap attached to the state application form. This shall be done prior to forwarding the applications to the appointing power as required by law.³³

(A 2) SOS shall notify SPB in writing and provide supporting documentation for the basis of accepting those applicants who met the minimum qualifications resulting from an application review for all the CEA examinations administered by SOS during the review period.

The Selection Instrument (Examination) Itself

The merit principle embodied in Article VII, Section 1(b) of the State Constitution requires that civil service examinations be job-related, and fairly test the qualifications of the competitors. Given the lack of documentation in the examination files, the audit team had a difficult time establishing whether the examinations met either of these criteria.

To ensure job-relatedness of an examination, an appointing power should perform a job analysis of the position to be filled. A job analysis is used to identify and determine in detail the particular job duties and requirements and the relative importance of these duties to the position in question. The job analysis

³²Government Code §§ 18900(a), 18932, and 2CCR § 171.1.

³³Government Code §§ 19704, 19705, 19792 and 2CCR §§ 174.6 – 174.8.

can then be used to develop minimum requirements for screening applicants, as well as for selection and development of the examination itself.

Findings:

1. **Job analysis:** There was no information in any of the CEA examination files reviewed that demonstrated that the examinations were based on a job analysis. The absence of job analyses raises questions regarding the job-relatedness and content validity of SOS examinations, the appropriateness of the testing methods used, and the accuracy with which the knowledge, skills, abilities, and other qualifications of competitors are assessed.³⁴
2. **Documentation:** The examination files lacked essential documentation. To ensure that that an examination is competitive and fairly tests the qualifications of the competitors as required by the Constitution as well as applicable laws and regulations,³⁵ documentation must reflect how the examining agency determined point values awarded to the competitors for each part of the examination and how the examining agency arrived at the competitors' final scores. The lack of documentation in the examination files reviewed precluded the audit team from determining whether the examinations met this basic merit criteria.
3. **Rating criteria:** Two of the examination files did not contain pre-determined rating criteria for the screening phase, documentation for pass point setting, or the rationale for determining how raw scores were converted to final scores.³⁶
4. **Scoring:** Three of the examination files did not contain distinctions between scores and overlapped in the evaluation criteria. Parts of the evaluation criteria were not job-specific, and it is unclear how qualifications were evaluated by the screening committee.³⁷

One examination file did not have clear distinctions between scores. It was unclear if the text used in the rating criteria represented the lower score or the higher score that were in each rating category. It could not be determined how individual rating scores were converted to final scores.³⁸

³⁴Government Code §§ 18930, 19702.2, and 2CCR § 250.

³⁵Government Code § 18930; 2CCR § 198.

³⁶Chief, Strategic Communications CEA and Chief, California State Archives and Museum CEA.

³⁷Chief, Public Affairs CEA; Chief, Management Services Division CEA; and Assistant Secretary of State CEA.

³⁸Chief, Information Technology Division CEA.

5. Raters: Five of the seven examinations reviewed³⁹ were administered by a committee who screened candidates' applications and Statements of Qualifications. In some instances, the screening committees were human resources staff, who were at a lower level than the CEA level for which the examinations were given. For example, in the Chief, Management Services Division CEA examination, the position directs the overall management of Fiscal and Administrative/Human Resources Affairs, yet subordinate level staff who report to the position were used as subject-matter experts.
6. Notification: SPB did not identify any deficiencies with the manner in which SOS notifies applicants and competitors throughout the CEA examination process.

SOS used appropriate numeric scores on their Notice of Examination Results mailed to candidates and on the CEA eligible lists.

7. Eligible Lists: In one of the CEA examinations reviewed,⁴⁰ SOS established the eligible list prior to the final filing date of the examination.

Directives and Action Items:

(D 8) Effective immediately, SOS shall provide SPB with a plan to conduct job analyses to ensure that all future examinations are job-related, competitive, and fairly test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class.

(D 9) Effective immediately, to ensure the competitiveness and fairness of the examinations, SOS shall include proper documentation in each examination file that demonstrates that the selection instrument and its rating scale are job-related, contain meaningful distinctions in its text, contain language that does not overlap categories, and appropriately assesses each competitor's qualifications and the required knowledge, skills, and abilities for the position/classification.

(D 10) Effective immediately, SOS shall ensure that all CEA eligible lists are established after the examination final filing date.

³⁹Chief, Public Affairs CEA; Chief, Management Services Division CEA; Chief, Strategic Communications CEA; Assistant Secretary of State CEA; and Chief, Information Technology CEA.

⁴⁰Chief, Strategic Communications CEA.

CEA Appointment Process

Persons may be appointed to a CEA position in one of two ways: (1) they may be reachable on an eligibility list after examination; or (2) they may be transferred into the position from another CEA position at the same or lower salary level.⁴¹

SPB reviewed all nine CEA appointments made by SOS during the audit period: seven were CEA list appointments and two were CEA transfer appointments.

Findings:

The audit revealed several potential improprieties in the appointment processes for several CEA positions. The examination files did not contain enough information, however, for the audit team to determine whether the incumbent met the minimum qualifications to compete in a CEA examination or the criteria for a transfer without examination. Two of the appointments reviewed cause SPB particular concern:

1. Chief, Strategic Communications , CEA I

SPB has concerns with several aspects of this appointment. The person appointed to this position came from *outside state civil service* and was appointed on a temporary (*TAU*) basis effective September 22, 2003. TAU appointments may only be made to permanent positions, and CEAs are not considered permanent positions.⁴²

With some specific exceptions,⁴³ CEAs are generally selected from the civil service. Nothing in the file revealed whether the person appointed met any of the exceptions to the general rule that CEAs are to come from inside the state civil service.

An examination bulletin was released for the CEA position on September 26, 2003, with a final filing date of October 17, 2003, which was extended to November 21, 2003. SOS appointed the TAU incumbent to the CEA position on November 19, 2003, before the final filing date, contrary to the Constitution, and SPB laws and rules.⁴⁴

⁴¹2CCR § 548.70 (eligibility for CEA positions shall be established as a result of competitive examination of persons with permanent civil service status); 2CCR § 548.95 (allows the transfers from one CEA position to another CEA position at substantially the same or lower level of salary. Transfers between positions at different CEA levels are governed by the same standards that govern general civil service classes).

⁴²Government Code § 19058.

⁴³Government Code §§ 18990 and 18992, 2CCR § 548.70 requires eligibility for appointment to a CEA position to be established as the result of persons with permanent status in the civil service.

⁴⁴Article VII of the State Constitution, Government Code § 18900, and 2CCR 548.70.

2. Chief, Legislative and Constituent Services CEA II

On March 23, 2004, SOS transferred the person holding the position of Chief, Strategic Communications CEA I (same person noted above) from a CEA I level position to a CEA II level (Chief, Legislative and Constituent Services CEA II) *without examination*. A transfer to a *higher* level is not appropriate under the law and Board rules.⁴⁵

Directives and Action Items:

(D 11) Effective immediately, SOS shall follow the legal requirements and not appoint persons to CEA positions on a TAU basis.

(D 12) Effective immediately, SOS shall not transfer CEAs from one (1) CEA level to a *higher* CEA level.

(D 13) Effective immediately, SOS shall ensure candidates meet the minimum qualifications for its CEA examinations and properly detail a review of applications to ensure appointments meet all eligibility requirements.

(A 3) Effective immediately, SOS shall explain to SPB the TAU appointment to the Chief, Strategic Communications, CEA I position. The purpose of this is to determine whether this is an illegal appointment that may need to be voided.

(A 4) Effective immediately, SOS shall explain to SPB the transfer of an employee from a CEA I level to the Chief, Legislative and Constituent Services, CEA II position. The purpose of this is to determine whether this is an illegal appointment that may need to be voided.

REGULAR (NON-CEA) CIVIL SERVICE POSITIONS

As is the case with the selection process for CEA positions, the selection process for regular civil service positions begins with the examination phase and is followed by an appointment phase. Persons are appointed (hired for the job) to regular civil service positions based upon a classification-specific selection process typically consisting of a written test and/or oral interview. The type of testing process used may vary depending upon the results of a job analysis, but must comply with existing laws and rules to be consistent with the merit principle.

The names of persons who pass all parts of the examination are placed on an employment eligibility list. When there are job openings in state civil service, persons who are reachable on the employment eligibility lists are contacted for a hiring interview. The department has the discretion to hire anyone who is

⁴⁵2CCR § 548.95 provides for transfer between CEA positions and levels.

certified as eligible from the employment list or other people who have civil service eligibility by way of transfer or reinstatement based on merit. Most positions are full-time and employees gain permanent status after successfully completing a probationary period. As noted above, however, some of the laws and rules in the selection process differ between CEA and regular civil service positions.

Overview of the Regular (Non-CEA) Civil Service Examination Process

SPB reviewed six regular civil service examinations administered by SOS from January 1, 2003 through June 30, 2004. The SPB audit team selected examinations that would provide a range of the selection and testing methods used by SOS for department-specific, as well as servicewide classifications, and a variety of classification levels ranging from clerical to managerial.

The audit of examinations included a review of examination files, as well as job analysis data, examination planning documents, examination bulletins, accepted and rejected state applications, qualification appraisal panel (QAP) interview questions, experience and education (E & E) and other selection instruments, rating criteria, scoring methods, applicant data, and eligible lists.

SOS utilized a QAP interview examination weighted 100% for two of the classifications. In this type of examination, accepted candidates are scheduled for an interview before a panel of raters, the same questions are asked of each candidate, and, based solely upon the interview, a final score is derived. All successful candidates are then placed on the employment eligible list.

SOS administered an E & E examination weighted 100% for three of the classifications. This type of selection process is based solely upon a comparative evaluation of information contained in the candidate's application. All candidates who meet the minimum qualifications are assigned one of three scores and placed on the employment list. There is no written test or interview.

SOS used a self-assessment questionnaire weighted 100% for one of the classifications. In this examination, accepted candidates were required to answer fifty-five questions on an internet site. Candidates, who correctly answered the questions and met the pass point or higher, were assigned a score and placed on the employment eligible list.

A list of the regular civil service examinations reviewed is attached as Appendix B.

The Publicity Phase

As with the CEA examination process, the process for filling a non-CEA civil service position begins with the posting of an examination bulletin for an appropriate period of time to solicit candidates to apply to take an examination.

SPB laws and regulations provide criteria for the publicity phase of the examination. Within a reasonable time before the scheduled examination date, departments must announce or advertise its examinations.⁴⁶ It is incumbent upon departments to ensure an adequate posting period in the spirit of broad and inclusive recruitment. Prior to the enactment of Rule 50⁴⁷ there was no rule outlining a publicity requirement. Rule 50 now requires that, at a minimum, examination bulletins should be posted for at least 10 working days. Information regarding the publicity of each examination and distribution of examination bulletins should be maintained in each examination file.

Findings:

1. Of the civil service examinations reviewed, the publicity period ranged from seven to forty-seven calendar days. SPB did not identify a deficiency with the length of SOS's publicity periods.
2. There was no documentation in any of the examination files reviewed to demonstrate the publicity of the examinations or distribution of examination bulletins. This issue was discussed with SOS staff who provided SPB with a standard distribution list that is utilized for all examination bulletins. SOS also notifies all employees by departmental e-mail of examinations being given.
3. In three of the examinations reviewed, SOS released bulletins which contained incorrect or inadequate information relating to veterans' preference points.⁴⁸ Two of the bulletins did not contain language as to whether veterans' preference points would be granted; a third bulletin erroneously stated that veteran's points would be awarded; however in this instance, the department did not actually apply veterans' points to the scores of the successful candidates, resulting in no negative impact to the resulting eligible list.⁴⁹

⁴⁶Government Code §18933.

⁴⁷2CCR § 50, Merit Selection Manual, Section 3300, effective May 17, 2004.

⁴⁸Government Code §§ 18971 – 18979.

⁴⁹Executive Assistant; Chief, California State Archives and Museum, and Political Reform Program Senior Specialist.

Directives and Action Items:

(D 14) Effective immediately, SOS shall maintain, in every examination history file, information regarding the publicity of each examination and distribution of examination bulletins.

(D 15) Effective immediately, SOS shall ensure compliance with 2CCR § 50 *Merit Selection Manual, Section 3300 Recruitment for Civil Service Examinations*, which requires examination bulletins be posted for a minimum of ten working days.

(D 16) Effective immediately, SOS shall ensure that all examination bulletins comply with statutory and regulatory requirements⁵⁰ pertaining to the correct application of veterans' preference points.

Application Review

As with applications for CEA positions, applications for a regular civil service examination must also be completed and signed. All applications need to be date stamped as they are received.⁵¹ The applications should be reviewed by trained human resources personnel to insure that they are filed in a manner and by the date specified in the examination bulletin or other publicity materials, and that applicants meet the minimum qualifications⁵² and other criteria for taking the examination. Human resources personnel must also remove ethnic, gender, and disability data from the applications before they are forwarded to the personnel administering the examination.⁵³

Findings:

1. SOS accepted applications in one of the examinations reviewed without applicants' signatures.⁵⁴
2. In three of the examinations⁵⁵ audited, the examination files contained applications with no evidence of postmark or a date stamp indicating the date the application was mailed or received. The failure to document this

⁵⁰Government Code §§ 18971 – 18979.

⁵¹2CCR § 174.

⁵²Government Code § 18900 (a).

⁵³Government Code §§ 19704, 19705, 19792, and 2CCR §§ 174.6 - 174.8.

⁵⁴Chief, California State Archives and Museum.

⁵⁵Executive Assistant, Associate Small Business Officer, and Chief California State Archives and Museum.

information raises questions as to whether the applications were timely, as required by statute and regulation.

3. In two of the examinations,⁵⁶ SOS did not maintain sufficient documentation that demonstrated that the department accurately determined if the candidate met minimum qualifications. There was no indication on a majority of the applications whether they were “accepted” or “approved” by the department. Inherent in the administration of a merit selection process is the assumption that all individuals will be processed through an examination in a consistent manner, and held to the same uniform standard. Because adequate documentation was not available, the audit team had no way to determine whether the competitors met the minimum qualifications for the class for which the examination was being given.
4. SOS did not remove voluntary ethnic, gender, disability, and other confidential information in one of the examinations⁵⁷ reviewed prior to proceeding with the examination process.

Directives and Action Items:

(D 17) Effective immediately, SOS shall date stamp all applications/resumes for examinations or maintain postmarked envelopes to demonstrate competitors meet filing requirements.

(D 18) Effective immediately, SOS shall maintain documentation to clearly demonstrate how competitors meet the minimum qualifications of the classification being examined.

(D 19) Effective immediately, SOS shall designate a person, who is not directly involved in the selection process, to remove the voluntary ethnic, gender, and disability document/flap attached to the state application form. This shall be done prior to forwarding the applications to the appointing power as required by applicable laws and regulations.⁵⁸

The Selection Instrument (Examination) Itself

The merit principle embodied in Article VII, Section 1(b) of the State Constitution, requires that civil service examinations be competitive, job related, and fairly test the qualifications of the competitors.

⁵⁶Associate Small Business Officer, Program Technician II.

⁵⁷Corporation Assistant.

⁵⁸Government Code §§ 19704, 19705, 19792, and 2CCR §§ 174.6 - 174.8.

The State Civil Service Act dictates that to be *competitive*, an examination must be open to persons who meet the minimum qualifications for the class, and be of such a character as “fairly to test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the class of position for which they seek appointment.”⁵⁹

To ensure *job-relatedness* of an examination, an appointing power should perform a job analysis of the position to be filled. A job analysis is used to identify and determine in detail the particular job duties and requirements and the relative importance of these duties to the position in question. The job analysis can then be used to develop minimum requirements for screening applicants as well as for selection and development of the examination itself.

To ensure that an examination is not discriminatory, an analysis of statistical data is completed prior to or after the administration of each examination to determine if adverse impact resulted from any phase of the selection process.⁶⁰ The data is collected from the voluntary ethnic, gender, and disability document/flap attached to each state application form. Documentation on applicant and hiring data should be reviewed, summarized in an analysis and maintained in the examination file until a new examination is conducted. When there is a finding that adverse impact is identified, human resources staff typically re-evaluate their selection procedures used or document that the procedures used, were job-related, and include that information in their analysis. Due to the absence of an analysis document in all examination files, SPB could not determine if adverse impact resulted in the department’s selection processes.

Findings:

1. **Job Analysis:** With one exception,⁶¹ there was no information in any of the examination files reviewed that demonstrated that the examinations were based on a job analysis. The absence of job analyses raises questions regarding the job-relatedness, the appropriateness of the testing methods used, and the accuracy with which the knowledge, skills, and abilities, and other qualifications of competitors are assessed.⁶²
2. **Documentation:** To ensure that an examination is competitive and fairly tests the qualifications of the competitors as required by the Constitution as well as applicable laws and regulations,⁶³ documentation must reflect

⁵⁹Government Code §§18900 and 18930.

⁶⁰Government Code § 19705.

⁶¹SOS did indicate that a job analysis was completed several years ago for the Program Technician classification and provided that to SPB.

⁶²Government Code §§ 18930, 19702.2, and 2CCR § 250.

⁶³Government Code § 18930 and 2CCR § 198.

how the examining agency determined point values awarded to the competitors and how the examining agency arrived at the competitors' final scores. The lack of documentation in the examination files reviewed precluded the audit team from determining whether the examinations met this basic merit criteria.

In three of the examinations,⁶⁴ the most noticeable deficiency present was the lack of documentation regarding the selection instrument, its rating criteria and how scores were determined. Some of the deficiencies noted were lack of documentation for assigning the various weights to the questions; raw scores listed by candidate name rather than identification number; and no indication of how the pass point was determined.

The lack of documentation raises concerns about whether the examinations were competitive and fairly tested the qualifications of the competitors. Without proper documentation of the scoring process, a department is unable to establish that the selection process comports with the merit principle and is susceptible to charges that a particular candidate was pre-selected, that the selection instrument was designed to favor a particular candidate's qualifications, that the pass points and final scoring were determined after the results of the interviews were known, or that the examination results were otherwise a product of favoritism.

3. Multiple Improprieties in Single Examinations: Several of the examinations audited revealed multiple improprieties throughout the examination process, raising concerns about whether the examination process was open and competitive or whether it was designed to favor or result in the appointment of a particular candidate. This raises concerns regarding the examinations/appointments and of pre-selection.

For example, in one examination, auditors tracked the progress of SOS's Community Outreach Liaison exempt employee to a permanent civil service position at the SOS. The exempt employee filed an application to gain a permanent job with SOS. Exempt employees have no permanent civil service status and must compete and be successful in an examination to be eligible for a permanent position with the state. SOS administered an open spot examination for Associate Small Business Officer (a classification typically used only by the Department of General Services) in San Francisco. The examination bulletin had a 7-day publicity period and utilized a "one-day file-in-person" method to collect applications, rather than by mail. The SOS scheduled a "file-in-person" in San Francisco the day before Thanksgiving 2003 for 6 hours (from 8:00 am to 2:00 pm). SOS received one application from their Community Outreach

⁶⁴Executive Assistant, Associate Small Business Officer, and Program Technician II.

Liaison exempt employee. The individual subsequently received a passing score and permanent appointment at SOS.⁶⁵

In another examination, auditors followed the progress of a TAU appointment made at SOS to a permanent civil service position. The applicant was from outside state service attempting to gain a permanent job with SOS. TAU appointments are rare and incumbents must pass a civil service examination within 9 months or lose their positions. SOS administered an open spot examination for Political Reform Program Senior Specialist in Los Angeles, with an 8-day publicity period, and received two applications. The TAU employee subsequently received a passing score and permanent appointment at SOS.

In a third examination, auditors found that SOS administered a promotional spot examination for Program Technician II in San Diego. One application was received during the 8-day publicity period. The employee who filed that application subsequently received a permanent list appointment.

4. Scoring: In two of the examinations reviewed, Corporation Assistant and Program Technician II, SOS utilized inappropriate scoring methods.⁶⁶ The scores on the rating evaluations were inconsistent with the scores on the Notices of Examination Results mailed to candidates. There was no documentation in the examination files to clarify these discrepancies.⁶⁷ In one examination,⁶⁸ the department utilized nine limited scores instead of full range scoring (70 to 99)⁶⁹ for the classification being tested, which is inappropriate under the law. Notwithstanding the incorrect final scores for two of the SOS examinations reviewed, Corporation Assistant and Program Technician II, SPB did not identify any other scoring deficiencies with SOS's published eligible lists.

⁶⁵This issue has been referred to the California Attorney General's Office.

⁶⁶2CCR §§ 199, 205, and 206.

⁶⁷In the Corporation Assistant examination, a candidate was rated 75%, but the Notice of Examination Results reflected a score of 76%. The department changed the examination plan from 100% QAP to 100% E & E, but did not adjust the scoring method. In the Program Technician II examination, which was 100% E & E, there was an inconsistency in the rating of a candidate. The candidate was assigned a score of 95%, but the Notice of Examination Results reflected a score of 94%.

⁶⁸Program Technician II.

⁶⁹Government Code § 19057 (Rule of Three Names).

In three of the examinations⁷⁰ that utilized E & E rating criteria, the work experience required to obtain eligibility in Rank 1 or 2, appears to far exceed the minimum qualifications. For a competitor to receive a score in Rank 2, the person would need 2-3 times the minimum qualifications. For a competitor to receive a score in Rank 1,⁷¹ the person would need 4 times the minimum qualifications. There was no documentation in the examination files to clarify why the criteria was developed in this manner and, without a job analysis, the audit team was unable to determine if it was job-related and reasonable.

In another examination,⁷² four candidates received disqualifying scores of 65%, yet there was no documentation or rationale in the file to explain the pass point.

5. **Notification**: SPB did not identify any deficiencies with the manner in which SOS notifies applicants and competitors of testing results throughout the examination process.
6. **Adverse Impact Analysis**: SOS maintained the statistics from the voluntary ethnic, gender, and disability flaps in the examination files reviewed to illustrate applicant data; however, there was no indication to show that this data was reviewed or analyzed by SOS prior to or after the administration of each examination to determine if adverse impact resulted. This analysis is necessary in order to ensure that SOS examinations are not discriminatory. Absent an analysis, such a determination cannot be made.

Directives and Action Items:

(D 20) Effective immediately, to ensure the competitiveness and fairness of all examinations, SOS shall include proper documentation in each examination file to demonstrate that the selection instrument and its rating scale appropriately assess the competitor's qualifications and the required knowledge, skills, and abilities for the classification.

(D 21) Effective immediately, SOS shall maintain in all examination files, documentation to ensure that proper and measurable rating criteria are applied correctly. It is recommended that SOS develop benchmarks and a coinciding rating scale as part of the rating criteria for QAP interviews.

⁷⁰Program Technician II, Political Reform Program Senior Specialist, and Corporation Assistant.

⁷¹Program Technician II was 8 years; Political Reform Program Senior Specialist was 16 years; and Corporation Assistant was 12 years.

⁷²Executive Assistant.

(D 22) Effective immediately, all E & E examinations shall utilize proper scores and the rating criteria shall contain job-related rating criteria. SOS shall maintain its job-related documentation in all examination files to support the rating criteria used.

(D 23) Effective immediately, SOS shall maintain proper documentation in all examination files to clarify any discrepancies in competitors' scores. Documentation shall be maintained until completion of a new examination.

(D 24) Effective immediately, SOS shall review applicant and hiring data for every examination administered to determine if adverse impact has resulted from any phase of the selection process. Such documentation shall be maintained in the examination file until completion of a new examination. Where adverse impact is identified, SOS will either re-evaluate selection procedures prior to releasing eligible lists or identify the job-relatedness of selection procedures by a supportable job analysis.

(A 5) Effective immediately, SOS shall explain the multiple improprieties regarding the Associate Small Business Officer; Political Reform Program Senior Specialist; and Program Technician II (San Diego) examinations, in particular, the concern or issue of possible pre-selection.

(A 6) Effective immediately, SOS shall advise SPB as to how the department determined whether the applicants for Associate Small Business Officer and Program Technician II met the minimum qualifications for the examinations.

(A 7) Effective immediately, SOS shall clarify to SPB the inconsistencies in the final scores for the following examinations: Corporation Assistant and Program Technician II.

(A 8) Effective immediately, SOS shall provide SPB with a plan to conduct job analyses to ensure that all future examinations are job-related, competitive, and fairly test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class.

Regular (Non-CEA) Civil Service Appointment Process

Article VII, Section 1(b) of the State Constitution requires that, "In the civil service *permanent* appointment and promotion shall be made under a general system based on merit ascertained by competitive examination." (*emphasis added.*) Appointments in the state civil service may be from a list, by transfer from another state civil service classification or by reinstatement.

SPB reviewed twenty-nine of the one hundred and sixty-six various types of appointments made by SOS from January 1, 2003 through June 30, 2004. SPB

also reviewed listings of appointments made during the review period.⁷³ SPB purposely selected specific types of appointments in order to assess whether SOS adhered to state civil service laws and rules as well as the merit principle. These included temporary appointments (TAU), appointments made from eligible lists, transfers within state service, and training and development (T & D) assignments. Within those categories, various appointments were randomly selected.

Temporary Authorization (TAU) Appointments

The Constitution recognizes that sometimes circumstances may justify the filling of civil service positions on a temporary basis, and allows for such appointments for a period not to exceed nine months. The law defines some limited circumstances in which an appointing power may fill positions on a temporary basis.⁷⁴

Article VII, Section 5 of the State Constitution states that, “A temporary appointment may be made to a position for which there is no employment list. No person may serve in one or more positions under temporary appointment longer than 9 months in 12 consecutive months.” The law further defines the use of temporary appointments, providing that such appointments may be made in the absence of an appropriate employment list. The law also requires, however, that persons who fill these temporary positions must meet the minimum qualifications of the classification to which appointed.

In addition, government code⁷⁵ sets forth the requirement of the establishment of an employment list when a permanent position is filled by temporary appointment and there is no employment list. The eligible list must be established before the expiration of the temporary appointment. If the person filling the temporary appointment is successful in the examination and is reachable on the eligibility list, that person may be appointed to the position on a permanent basis. Once hired as permanent, the time spent under the temporary appointment does not count towards the completion of the probationary period designated for the class. In certain instances, when there is no employment list, a department may have an operational need and valid justification to hire temporary employees.⁷⁶ TAU appointments (temporary hires) are rare and temporary hires must pass a civil service examination within nine months and be reachable for appointment or be separated from employment.

⁷³This list was produced using the State Controller’s Office employee history data via SPB’s internal automated appointment tracking system.

⁷⁴Government Code §§ 19058, 18932, and 18974.

⁷⁵Government Code § 19058.

⁷⁶Government Code § 18529, 2CCR §265.

SPB reviewed all five open TAU appointments made by SOS during the review period. One was an inappropriate TAU CEA appointment, as previously noted.

Findings:

1. No applications were attached to the appointment packages to demonstrate or verify that SOS determined, at the outset, that the TAU hires met the minimum qualifications for the classification in which they were hired. The lack of documentation made it impossible for the audit team to determine whether SOS met the other criteria for the TAU appointments.
2. SOS appropriately administered examinations within the nine-month TAU period for four of the five open TAU appointments. The four individuals with temporary appointments were successful in the examination process and were hired permanently. SOS did not administer an examination for the one other open TAU appointment within the nine-month period resulting in the individual's TAU appointment being terminated. While the law does not require that all TAUs result in a permanent appointment, it is noted that the one individual who did not receive a permanent appointment was one of the SOS employees who reported to SOS management alleged abusive behavior engaged in or unreasonable demands made by the Secretary.

Directives and Action Items:

(A 9) Effective immediately, SOS shall review and clarify to SPB its determination that all TAU appointments met the minimum qualifications for their respective classifications.

Transfer Appointments

SPB reviewed five of sixty-five transfer appointments made by SOS during the review period. A transfer appointment is a hire made through the transfer process rather than the examination process and may be utilized for current state employees wishing to transfer to another position or another department and for former employees wishing to reinstate. Under the law and Board rules, employees may transfer from one job to another if the level of duties, responsibilities, and salaries of the two classes are substantially the same and the classes are not in the same series. Except in certain jobs, it is not necessary to meet the minimum qualifications for the class to which the person wishes to transfer; but employees must have any license, certificate, credential, etc., required for the class.

Findings:

1. SOS transferred an Office Assistant (Typing) from a half-time position to a full-time position without documentation that the person had eligibility pursuant to Board rule.⁷⁷

Directives and Action Items:

(A 10) SOS shall review the Office Assistant (Typing) transfer and notify SPB, in writing, what conditions of 2CCR § 277 were met.

List Appointments

As described earlier, a list appointment is an appointment of a candidate from the employment list or eligible list after an examination.⁷⁸ When there are job openings in the state civil service, persons within the top three names or the top three ranks on the employment list are contacted first for a hiring interview. The department has the discretion to make a “list appointment” (hire) from the employment list or hire a person through a transfer.

Findings:

1. SPB reviewed six of sixty-four list appointments made by SOS during the review period and did not identify any major deficiencies with the appropriateness or legality of these appointments.⁷⁹

Directives and Action Items:

(D 25) Effective immediately, SOS shall ensure that appropriate clearance of certifications are obtained, documented, and maintained in each appointment package.

⁷⁷2CCR § 277 sets forth the requirements for a change in time base for an employee.

⁷⁸After a person passes all parts of a state exam, their name will be placed on an employment list, which is active for 1 - 4 years. When filling a position, employers may select anyone in the top three ranks based on merit for the job and offer that person a list appointment. The certification (Cert) rule requires departments to hire only those candidates who are certified as eligible on an eligible list. Rule of 3 Names: Requires departments to only hire from within the top three names on the eligible list. Rule of 3 Ranks: Requires departments to only hire from within the top three ranks on the eligible list. There may be more than one individual in each rank; therefore, departments will be able to select from a larger eligible pool as outlined in 2CCR § 245.2.

⁷⁹However, minor documentation deficiencies existed with all of the certification lists reviewed. There was no indication on the certification lists as to whether the person was hired (code H). The “contact date,” “commitment date,” and the “hire effective date” were not documented on the certification lists.

PART III PERSONAL SERVICES CONTRACTS

According to articles in the media, questions have been raised as to whether SOS entered into personal services contracts that violate the federal Help America Vote Act (HAVA). According to these articles, the California Bureau of State Audits, the Joint Legislative Audit Committee, and the U.S. Election Assistance Commission have explored, or are exploring, these allegations.

While SPB has jurisdiction to review personal services contracts, SPB's jurisdiction is limited to determining solely whether a contract complies with one or more of the conditions for contracting set forth in Government Code § 19130.⁸⁰ SPB does not have jurisdiction to review whether SOS's contracts comply with HAVA or to determine whether monies were appropriately spent.

As described by the California Supreme Court,⁸¹ an implied "civil service mandate" emanates from Article VII of the California Constitution, which prohibits a state agency from contracting with a private contractor to perform work that state civil service employees have historically and customarily performed and can perform adequately and competently. Government Code § 19130 codifies the exceptions to the "civil service mandate" that courts have recognized as legal justifications for state agencies to contract state work to private contractors.

Under Government Code § 19130, a state agency may justify its personal services contracts on grounds of cost savings, or upon other grounds specified in the statute. Cost savings contracts must be submitted to the SPB for review prior to their execution. None of the personal services contracts that SOS entered into during the audit period were cost savings contracts.

State agencies do not have to give SPB prior notice of contracts justified on other than cost savings grounds before entering into those contracts. Instead, those contracts are generally reviewed by SPB only upon the request of an employee union after the contracts have been executed. In accordance with Government Code § 19132, an employee union may ask SPB to review a contract that a state agency has entered into with a private contractor to determine whether the contracted services should be performed by civil service employees or whether that work can legally be performed by a private contractor pursuant to a codified exception to the civil service mandate.

⁸⁰Public Contract Code § 10337.

⁸¹Professional Engineers in California Government v. Department of Transportation (1997) 15 Cal.4th 543, 544.

SPB regulations set forth the process a state agency must follow when justifying a personal services contract and the process SPB follows when an employee union asks SPB to review a contract for compliance with Government Code § 19130 and the civil service mandate.⁸²

Prior to its on-site review, SPB requested a listing from SOS of all personal services contracts entered into during the review period from January 1, 2003 through June 30, 2004. SPB reviewed fifty-nine contracts.⁸³ Most of the contracts reviewed during the audit had already expired; SOS issued notice to cancel five of the contracts after the audit period closed.

None of the SOS contracts that SPB reviewed were challenged by a union during the audit period. A list of the contracts reviewed is attached as Appendix C.

After the audit period closed, the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) requested that SPB review two of the audited personal services contracts involving legal services. By memorandum dated October 15, 2004, SPB's Executive Officer disapproved one of the challenged legal contracts. A copy of the October 15, 2004 memorandum, is attached as Appendix D. SOS has appealed that disapproval to the Board.

The other challenged contract, which was also cited in the *California State Auditor Report 2004-139*, California State Auditor, Bureau of State Audits, 2004, p. 2, is still under review by SPB staff for compliance with the civil service mandate. With respect to this particular contract, the California State Auditor Report states, in part, "...a law firm retained to provide legal advice on issues related to HAVA performed unrelated work such as writing speeches for the secretary of state that had little if anything to do with HAVA and also invoiced and was paid for services that did not conform with the terms of its contract."

Findings:

1. It is beyond the scope of this audit report for SPB to make findings as to whether the contracts reviewed were properly let in compliance with law⁸⁴ or whether the contractors performed work that should have been performed by employees properly hired through the civil service process. If an employee organization has requested, or requests, review of any of the contracts still in effect at the time of the request, SPB will review those contracts pursuant to its statutory and regulatory process.

⁸²CCR §§ 547.59 – 574.71.

⁸³On September 7, 16, and 24, 2004, SOS sent thirty (30) day termination notices for six (6) of the personal services contracts that were reviewed by SPB. Another contractor notified SOS of his resignation effective September 29, 2004.

⁸⁴Government Code § 19130.

PART IV

SUMMARY OF DIRECTIVES AND ACTION ITEMS

This personnel audit review was conducted by State Personnel Board staff to assess the extent to which the Office of the Secretary of State conformed to state laws, regulations, merit principles; including, but not limited to anti-discrimination and anti-retaliation provisions. What follows is the complete list of directives and action items set forth in this report and the department's response to specific items in the audit.⁸⁵

DIRECTIVES	
(D 1)	<p>Effective immediately, SOS should issue a written policy that would allow all employees who wish to report allegations that they have been subjected to abusive behavior or unreasonable demands the opportunity to submit written complaints, in confidence, without fear of reprisal or retaliation. In addition, SOS should institute procedures to investigate and address thoroughly and appropriately any such complaints that it may receive.</p> <p><u>SOS Response</u>: "SOS will comply with this recommendation."</p>
(D 2)	<p>Effective immediately, SOS shall maintain, in every examination history file, information regarding the publicity of each CEA examination and distribution of examination bulletins.</p> <p><u>SOS Response</u>: "SOS will incorporate into all examination files information concerning how the examination was publicized."</p>
(D 3)	<p>Effective immediately, SOS shall ensure that all CEA examination bulletins comply with statutory and regulatory requirements. This encompasses statements regarding the minimum threshold required for attaining list eligibility and minimum vs. desirable qualifications on bulletins.</p> <p><u>SOS Response</u>: "SOS will ensure that all CEA examination bulletins comply with statutory and regulatory requirements, specifically statements regarding the total weight of the selection instrument and the minimum threshold required for attaining list eligibility."</p>

⁸⁵The complete text of SOS's response of January 18, 2005, is shown in Appendix F.

(D 4)	Effective immediately, SOS shall only accept completed, signed applications as stated on the examination bulletin.
	<u>SOS Response</u> : “It is normal, historical practice for SOS to accept only completed, signed applications. We will do so in all future examinations.”
(D 5)	Effective immediately, SOS shall date stamp all applications/resumes for CEA examinations or maintain postmarked envelopes to demonstrate competitors met filing requirements.
	<u>SOS Response</u> : “The historical practice at SOS has been to date stamp all applications/resumes for CEA examinations or maintain postmarked envelopes to demonstrate that competitors met filing requirements. We will endeavor to be more diligent in this practice.”
(D 6)	Effective immediately, SOS shall maintain documentation to clearly demonstrate how competitors meet the minimum qualifications of the CEA classification being examined.
	<u>SOS Response</u> : “SOS will ensure that all applications for future examinations contain clear and concise notes as to how each applicant met the minimum qualifications.”
(D 7)	Effective immediately, SOS shall designate a person, who is not directly involved in the selection process, to remove the voluntary ethnic, gender, and disability document/flap attached to the state application form. This shall be done prior to forwarding the applications to the appointing power as required by law.
	<u>SOS Response</u> : “The practice of SOS has been to remove ethnic, gender and disability application flaps before forwarding the applications to examination panels or hiring supervisors. The flap(s) the auditors found still attached were an oversight. We will endeavor to be more diligent in this regard.”

<p>(D 8)</p>	<p>Effective immediately, SOS shall provide SPB with a plan to conduct job analyses to ensure that all future examinations are job-related, competitive, and fairly test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class.</p> <p><u>SOS Response:</u> “SOS will develop and submit a plan for conducting job analyses, per SPB’s suggestion. However, since we have never prepared job analyses for CEA positions, nor have others to the best of our knowledge, other departments are being canvassed to determine if we might gain insight into best practices. To date, however, we have been unable to identify any state department that has completed CEA job analyses. For rank and file positions within the agency, we have an aggressive program for conducting these types of job analyses. Currently, 14 staff from HR and most programs have completed SPB’s WRIPAC training. Over the last few years, the WRIPAC team completed full job analyses for the following classifications: Program Technician/Program Technician II; Supervising Program Technician II; Archivist I/II; and Elections Specialist. Job analyses were performed for the following classifications: Executive Assistant; Associate Personnel Analyst; Associate Budget Analyst; and Associate Governmental Program Analyst. Job analyses in the current FY are planned for Document Preservation Technician and Senior Information Systems Analyst.”</p>
<p>(D 9)</p>	<p>Effective immediately, to ensure the competitiveness and fairness of the examinations, SOS shall include proper documentation in each examination file that demonstrates that the selection instrument and its rating scale are job-related, contain meaningful distinctions in its text, contain language that does not overlap categories, and appropriately assesses each competitor’s qualifications and the required knowledge, skills, and abilities for the position/classification.</p> <p><u>SOS Response:</u> “Historically, SOS begins the examination process for all future examinations with a review of the previous exam’s history file to ensure that the selection instrument and rating scale are job-related and appropriate to assess each competitor’s qualifications. We will maintain documentation in files of future exams.”</p>
<p>(D 10)</p>	<p>Effective immediately, SOS shall ensure that all CEA eligible lists are established after the examination final filing date.</p> <p><u>SOS Response:</u> “As is our historical practice, SOS will ensure that all CEA eligible lists are established after the examination final filing date.”</p>

(D 11)	Effective immediately, SOS shall follow the legal requirements and not appoint persons to CEA positions on a TAU basis.
	<u>SOS Response</u> : “SOS will follow the legal requirements and not appoint persons to CEA positions on a TAU basis.”
(D 12)	Effective immediately, SOS shall not transfer CEAs from one CEA level to a <i>higher</i> CEA level.
	<u>SOS Response</u> : “SOS will not transfer CEA’s from one CEA level to a higher CEA level without first undergoing the CEA examination process.” ⁸⁶
(D 13)	Effective immediately, SOS shall ensure candidates meet the minimum qualifications for its CEA examinations and properly detail a review of applications to ensure appointments meet all eligibility requirements.
	<u>SOS Response</u> : “SOS will ensure that all applications for future examinations contain clear and concise notes as to how each applicant met the minimum qualifications.”
(D 14)	Effective immediately, SOS shall maintain, in every examination history file, information regarding the publicity of each examination and distribution of examination bulletins.
	<u>SOS Response</u> : “SOS will incorporate into all examination files information concerning how the examination was publicized.”
(D 15)	Effective immediately, SOS shall ensure compliance with 2CCR § 50 <i>Merit Selection Manual, Section 3300 Recruitment for Civil Service Examinations</i>, which requires examination bulletins be posted for a minimum of ten working days.
	<u>SOS Response</u> : “All examination bulletins posted by SOS will be publicized for a minimum of 10 working days. We note, however, that this requirement took effect only recently and was not in effect during the period covered by the audit, when guidelines were not specific as to the number of days for posting exam bulletins.” ⁸⁷

⁸⁶On January 20, 2005, SOS sent SPB an e-mail modifying the language to: “SOS will not transfer CEA’s from one CEA level to a higher CEA level.”

⁸⁷On January 20, 2005, SOS sent SPB an e-mail modifying the language to: “All examination bulletins posted by SOS will be publicized for a minimum of 10 working days. We note, however, that this requirement took effect only recently and was not in effect during the period covered by the audit, when guidelines required exam bulletins to be posted for a minimum of five working days.”

(D 16)	<p>Effective immediately, SOS shall ensure that all examination bulletins comply with statutory and regulatory requirements pertaining to the correct application of veterans' preference points.</p>
	<p><u>SOS Response</u>: "SOS will ensure that all future examination bulletins reflect correct information regarding Veterans' Preference Points. SOS did not overlook these points for any eligible candidates, but did inadvertently omit the information on three exam bulletins."</p>
(D 17)	<p>Effective immediately, SOS shall date stamp all applications/resumes for examinations or maintain postmarked envelopes to demonstrate competitors meet filing requirements.</p>
	<p><u>SOS Response</u>: "The practice at SOS is to date stamp all applications/resumes for CEA examinations or maintain postmarked envelopes to demonstrate that competitors met filing requirements. We will endeavor to be more diligent in this practice."</p>
(D 18)	<p>Effective immediately, SOS shall maintain documentation to clearly demonstrate how competitors meet the minimum qualifications of the classification being examined.</p>
	<p><u>SOS Response</u>: "SOS will ensure that all applications for future examinations contain clear and concise notes as to how each applicant met the minimum qualifications."</p>
(D 19)	<p>Effective immediately, SOS shall designate a person, who is not directly involved in the selection process, to remove the voluntary ethnic, gender, and disability document/flap attached to the state application form. This shall be done prior to forwarding the applications to the appointing power as required by applicable law and regulations.</p>
	<p><u>SOS Response</u>: "The practice of SOS is to remove ethnic, gender and disability application flaps before forwarding the applications to examination panels or hiring supervisors. The flap(s) the auditors found still attached was/were an oversight. We will endeavor to be more diligent in this regard."</p>

<p>(D 20)</p>	<p>Effective immediately, to ensure the competitiveness and fairness of all examinations, SOS shall include proper documentation in each examination file to demonstrate that the selection instrument and its rating scale appropriately assess the competitor’s qualifications and the required knowledge, skills, and abilities for the classification.</p>
	<p><u>SOS Response</u>: “The historical practice of SOS has been to begin the examination process for all future examinations with a review of the previous exam’s history file to ensure that the selection instrument and rating scale are job-related and appropriate to assess each competitor’s qualifications. We will endeavor to be more diligent in including documentation in the examination files.”</p>
<p>(D 21)</p>	<p>Effective immediately, SOS shall maintain in all examination files, documentation to ensure that proper and measurable rating criteria are applied correctly. It is recommended that SOS develop benchmarks and a coinciding rating scale as part of the rating criteria for QAP interviews.</p>
	<p><u>SOS Response</u>: “SOS will maintain documentation to ensure that proper and measurable rating criteria are applied correctly. Such documentation shall be kept in the examination file of each exam.”</p>
<p>(D 22)</p>	<p>Effective immediately, all E & E examinations shall utilize proper scores and the rating criteria shall contain job-related rating criteria. SOS shall maintain its job-related documentation in all examination files to support the rating criteria used.</p>
	<p><u>SOS Response</u>: “As is our practice, all E & E examinations will utilize proper scores and the rating criteria will contain job-related rating criteria. SOS will maintain its job-related documentation in all examination files to support the rating criteria used.”</p>
<p>(D 23)</p>	<p>Effective immediately, SOS shall maintain proper documentation in all examination files to clarify any discrepancies in competitors’ scores. Documentation shall be maintained until completion of a new examination.</p>
	<p><u>SOS Response</u>: “SOS will ensure the exam analyst keeps written documentation for all future exams that contain scoring discrepancies. This documentation will describe the nature of the discrepancy and the action taken.”</p>

(D 24)	<p>Effective immediately, SOS shall review applicant and hiring data for every examination administered to determine if adverse impact has resulted from any phase of the selection process. Such documentation shall be maintained in the examination file until completion of a new examination. Where adverse impact is identified, SOS will either re-evaluate selection procedures prior to releasing eligible lists or identify the job-relatedness of selection procedures by a supportable job analysis.</p>
	<p><u>SOS Response</u>: “SOS typically reviews bottom-line hiring data from the prior exam administration when planning new exams. Before finalizing examination results, we consider whether there is adverse impact and make adjustments as needed when there has been no job analysis conducted. When a job-related examination has been constructed as the end product of a job analysis, adverse impact is acceptable per the Federal Uniform Guidelines on Employee Selection. We acknowledge the need to maintain documentation in the examination history files of reviews on adverse impact and will comply with this recommendation for all examinations.”</p>
(D 25)	<p>Effective immediately, SOS shall ensure that appropriate clearance of certifications are obtained, documented, and maintained in each appointment package.</p>
	<p><u>SOS Response</u>: “SOS will review its procedures to ensure appropriate documentation is maintained with each appointment package.”</p>
ACTION ITEMS	
(A 1)	<p>SPB directs, in accordance with its EEO and Sexual Harassment Prevention Policies and applicable laws and rules, that SOS respond to the two missing complaints it initially reported as having no record of receiving. One option is that the SOS follow the same practice it did with Mr. X and retain an independent counsel to commence an independent fact-finding investigation.</p>
	<p><u>SOS Response</u>: “Following receipt of the two complaints in question from the SPB, SOS will commence an investigation. We have been unable to document that these reports were ever filed with the office, despite extensive searches for them.”</p>
	<p><u>SPB Reply</u>: SPB hereto forwards the two complaints to SOS under separate cover.</p>

<p>(A 2)</p>	<p>SOS shall notify SPB in writing and provide supporting documentation for the basis of accepting those applicants who met the minimum qualifications resulting from an application review for all the CEA examinations administered by SOS during the review period.</p>
	<p><u>SOS Response</u>: “SOS will prepare and maintain such documentation for all CEA examinations administered during the review period, as well as all future CEA exams, and will so notify the SPB in writing.”</p>
<p>(A 3)</p>	<p>Effective immediately, SOS shall explain to SPB the TAU appointment to the <u>Chief, Strategic Communications , CEA I</u> position. The purpose of this is to determine whether this is an illegal appointment that may need to be voided.</p>
	<p><u>SOS Response</u>: “The incumbent, an employee of the Assembly, accepted a job offer and began working in the agency before the appointment paperwork had been generated and approved. Through a clear breakdown in communication, he began working in the agency on September 22, 2003, but HR was unaware of his presence in the agency until approximately October 13, 2003. He continued to work under the assumption that the paperwork would be sorted out and he would eventually be paid for his work. To resolve the immediate need to employ this individual, HR placed the employee into a TAU position pending his participation in the subsequent examination for the Chief, Strategic Communications, position.”⁸⁸</p>
	<p><u>SPB Reply</u>: Regardless of SOS’s intent, which was to compensate the individual, the TAU appointment to a CEA will be reviewed by SPB through the illegal appointment process.</p>

⁸⁸On January 20, 2005, SOS sent SPB an e-mail modifying the language to: “The incumbent, an employee of the Assembly, accepted a job offer and began working in the agency before the appointment paperwork had been generated and approved. Through a clear breakdown in communication, he began working in the agency on September 22, 2003, but HR was unaware of his presence in the agency until approximately October 13, 2003. He continued to work under the assumption that the paperwork would be sorted out and he would eventually be paid for his work. To resolve the immediate need to employ this individual, the employee was placed into a TAU position pending his participation in the subsequent examination for the Chief, Strategic Communications, position.”

(A 4)	<p>Effective immediately, SOS shall explain to SPB the transfer of an employee from a CEA I level to the <u>Chief, Legislative and Constituent Services CEA II</u> position. The purpose of this is to determine whether this is an illegal appointment that may need to be voided.</p>
	<p><u>SOS Response</u>: “Subsequent to the use of the TAU process for the above employee, the SOS Human Resources Unit announced the examination for the recently vacated Chief, Strategic Communications (CEA I) position. The referenced employee was found to be the most qualified candidate for the position and was appointed. With the current Chief of Legislative and Constituent Services working on HAVA and the recall, and then departing for a role on the Governor’s California Performance Review project, the new Chief, Strategic Communications assumed the duties of the CEA II Chief of Legislative and Constituent Services, based on his extensive legislative experience. When the CEA II, Legislative and Constituent Services position became vacant, the CEA I performing this role was appointed to it as a CEA II.”</p>
	<p><u>SPB Reply</u>: Regardless of the individual’s assumption of higher level duties, eligibility for appointment to a higher CEA level must be accomplished through a competitive examination. SPB will be reviewing this appointment through the illegal appointment process.</p>
(A 5)	<p>Effective immediately, SOS shall explain the multiple improprieties regarding the <u>Associate Small Business Officer; Political Reform Program Senior Specialist; and Program Technician II (San Diego)</u> examinations, in particular, the concern or issue of possible pre-selection.</p>
	<p><u>SOS Reply</u>: “SOS disagrees that improprieties occurred in the subject examinations. Examinations were given to qualified candidates meeting minimum requirements and appointments were made from those lists. Two of the lists (Associate Small Business Officer and Program Technician II) resulting from the subject three exams had only one eligible candidate, each of which was appointed, and the other list (Political Reform Program Senior Specialist) had two eligible candidates, one of which was appointed on a TAU basis via the Los Angeles spot exam.”</p>
	<p><u>SPB Reply</u>: While SOS disagrees with concerns raised by SPB, one of the examination processes (Associate Small Business Officer) has been referred to the California Attorney General’s Office.</p>

(A 6)	<p>Effective immediately, SOS shall advise SPB as to how the department determined whether the applicants for <u>Associate Small Business Officer</u> and <u>Program Technician II</u> met the minimum qualifications for the examinations.</p>
	<p><u>SOS Response</u>: “The application for the candidate for the Associate Small Business Officer spot exam in San Francisco indicated that he met Pattern II of the minimum qualifications including more than three years relevant experience and a Bachelor of Science degree in Business Administration and Management. The candidate in the San Diego spot examination for Program Technician II exceeded the minimum qualifications since she had more than four years experience as an Office Assistant, Case Service Assistant and Program Technician in state service. Complete documentation has been compiled and is being sent under separate cover.”</p>
(A 7)	<p>Effective immediately, SOS shall clarify to SPB the inconsistencies in the final scores for the following examinations: <u>Corporation Assistant</u> and <u>Program Technician II</u>.</p>
	<p><u>SOS Response</u>: “Both the Corporation Assistant and the Program Technician II examinations were given as E & E (Education and Experience) examinations. E & E examinations are allowed only three ranks/scores, and candidates were assigned scores accordingly. When the data was entered into the SPB’s online examination system, the exam control erroneously contained a different limited score allocation and changes scores accordingly, causing scores to be out of synch with the original documented scores we had assigned. The discrepancy was noticed by our examination analyst; however, since each exam had only one candidate and neither candidate was negatively impacted by the score change, SOS decided not to pursue corrections through SPB.”</p>
	<p><u>SPB Reply</u>: Regardless of whether there was no negative impact to candidates, SOS has a responsibility to properly update its exam control to reflect proper scoring and issue correct scores to candidates.</p>

(A 8)	<p>Effective immediately, SOS shall provide SPB with a plan to conduct job analyses to ensure that all future examinations are job-related, competitive, and fairly test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class.</p>
	<p><u>SOS Response:</u> “SOS will develop and submit a plan for conducting job analyses, per SPB’s suggestion. For rank and file positions within the agency, we have an aggressive program for conducting these types of job analyses. Currently, 14 staff from HR and most programs have completed SPB’s WRIPAC training. Over the last few years, the WRIPAC team completed full job analyses for the following classifications: Program Technician/Program Technician II; Supervising Program Technician II; Archivist I/II; and Elections Specialist. “Mini” job analyses were performed for the following classifications: Executive Assistant; Associate Personnel Analyst; Associate Budget Analyst; and Associate Governmental Program Analyst. Job analyses in the current FY are planned for Document Preservation Technician and Senior Information Systems Analyst. A listing of other classes used at SOS and a timeline for conducting job analyses will be provided to SPB.”</p>
(A 9)	<p>Effective immediately, SOS shall review and clarify to SPB its determination that all TAU appointments met the minimum qualifications for their respective classifications.</p>
	<p><u>SOS Response:</u> “Documentation has been compiled and is being sent under separate cover to support the appropriateness of the five TAU appointments.”</p>
(A 10)	<p>SOS shall review the Office Assistant (Typing) transfer and notify SPB, in writing, what conditions of 2CCR § 277 were met.</p>
	<p><u>SOS Response:</u> “SOS routinely determines, as historically has been our practice, eligibility of employees prior to making such appointments whenever an increase in time base is involved. We did so in this instance as well. SOS has re-verified that the subject employee’s part-time hours at DMV far exceeded the 1,920 hours in at least two years, as required in Section 277, to make her eligible for full-time appointment when she transferred to Secretary of State. Transactions staff will reinforce the practice of maintaining documentation in the appointment file to ensure substantiation is available.”</p>

APPENDICES

- A. CEA Examinations**
- B. Regular (Non-CEA) Examinations**
- C. Listing of Personal Services Contracts**
- D. Memorandum dated October 15, 2004**
- E. Authorities**
- F. SOS Response dated January 18, 2005**
- G. SPB Reply dated January 25, 2005**

APPENDIX A

SECRETARY OF STATE CEA EXAMINATIONS

EXAM TITLE	FINAL FILING DATE	PUBLICITY PERIOD (Calendar Days)	EXAM BASE	EXAM METHOD	NUMBER ACCEPTED	NUMBER OF ELIGIBLES
Chief, Public Affairs CEA	4-11-03 extended to 5-2-03	--- ¹ 16 days	CEA II	Statement of Qualifications	8	6
Chief, Management Services Division CEA	8-15-03 extended to 11-21-03 extended to 3-5-04	44 days	CEA II	Statement of Qualifications	8	8
Chief, Strategic Communications CEA	10-17-03 extended to 11-21-03	57 days	CEA I	Statement of Qualifications	8	8
Assistant Secretary of State CEA	12-19-03	19 days	CEA IV	Statement of Qualifications	12	12
Chief, Public Affairs CEA	3-19-04	8 days	CEA II	Statement of Qualifications	2	2
Chief, California State Archives and Museum CEA	4-23-04	29 days	CEA II	100% Questionnaire	6	6
Chief, Information Technology CEA	4-23-04	44 days	CEA II	Statement of Qualifications	13	12

¹It could not be determined from the examination file when the initial publicity period for this examination began.

APPENDIX B

SECRETARY OF STATE REGULAR (NON-CEA) EXAMINATIONS

EXAM TITLE	FINAL FILING DATE	PUBLICITY PERIOD (Calendar Days)	EXAM BASE	EXAM METHOD	NUMBER ACCEPTED	NUMBER OF ELIGIBLES
Executive Assistant	4-18-03	8 days	Open Spot San Francisco	100% QAP Pass/Fail Self-Assessment	23	17
Associate Small Business Officer	11-26-03	7 days	Open Spot San Francisco	100% QAP	1	1
Corporation Assistant	3-9-04	12 days	Promo. Spot - San Francisco	100% E & E	1	1
Political Reform Program Senior Specialist	3-26-04	8 days	Open Spot Los Angeles	100% E & E	2	2
Program Technician II	3-26-04	8 days	Promo. Spot – San Diego	100% E & E	1	1
Chief, California State Archives and Museum	4-16-04	47 days	Open Statewide	100% Questionnaire	6	6