

# **CITY AND COUNTY OF SAN FRANCISCO**

Audit Report

## **PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM**

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

*July 1, 2003, through June 30, 2007*



**JOHN CHIANG**  
California State Controller

April 2009



**JOHN CHIANG**  
**California State Controller**

April 10, 2009

The Honorable Gavin Newsom  
Mayor of the City and County of San Francisco  
City Hall, Room 200  
1 Dr. Carlton B. Goodlet Place  
San Francisco, CA 94102

The Honorable David Chiu  
President of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlet Place, Rm. 224  
San Francisco, CA 94102

Dear Mayor Newsom and Mr. Chiu:

The State Controller's Office audited the costs claimed by the City and County of San Francisco for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2007.

The city and county claimed \$11,973,575 for the mandated program. Our audit disclosed that \$1,338,701 is allowable and \$10,634,874 is unallowable. The costs are unallowable because the city and county claimed costs that were ineligible for reimbursement under the mandated program. The State paid the city and county \$5,057,395. The amount paid exceeds allowable costs claimed by \$3,718,694.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at [www.csm.ca.gov/docs/IRCForm.pdf](http://www.csm.ca.gov/docs/IRCForm.pdf).

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

*Original signed by*

**JEFFREY V. BROWNFIELD**  
Chief, Division of Audits

JVB/sk:vb

The Honorable Gavin Newsom  
The Honorable David Chiu

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April 10, 2009

cc: Benjamin Rosenfield, Controller  
City and County of San Francisco  
Todd Jerue, Program Budget Manager  
Corrections and General Government  
Department of Finance  
Carla Castaneda  
Principal Program Budget Analyst  
Department of Finance  
Paula Higashi, Executive Director  
Commission on State Mandates

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# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the City and County of San Francisco for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2007.

The city and county claimed \$11,973,575 for the mandated program. Our audit disclosed that \$1,338,701 is allowable and \$10,634,874 is unallowable. The costs are unallowable because the city and county claimed costs that were ineligible for reimbursement under the mandated program. The State paid the city and county \$5,057,395. The amount paid exceeds allowable costs claimed by \$3,718,694.

## Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code Sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. The CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, section 6, and Government Code section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. The CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

## **Objective, Scope, and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2007.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's and county's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the city's and county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

## **Conclusion**

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the City and County of San Francisco claimed \$11,973,575 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$1,338,701 is allowable and \$10,634,874 is unallowable.

For the fiscal year (FY) 2005-06 claim, the State paid the city and county \$2,163,215. Our audit disclosed that \$335,876 is allowable. The State will offset \$1,827,339 from other mandated program payments due the city and county. Alternatively, the city and county may remit this amount to the State.

For the FY 2006-07 claim, the State paid the city and county \$2,894,180. Our audit disclosed that \$370,143 is allowable. The State will offset \$2,524,037 from other mandated program payments due to the city and county. Alternatively, the city and county may remit this amount the State.

For the FY 2003-04 claim, the State made no payment to the city and county. Our audit disclosed that \$303,243 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$303,243, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city and county. Our audit disclosed that \$329,439 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$329,439, contingent upon available appropriations.

**Views of  
Responsible  
Official**

We issued a draft audit report on February 6, 2009. Ben Rosenfield, Controller, responded by letter dated March 16, 2009 (Attachment), disagreeing with the audit results for Finding 1. This final audit report includes the city and county's response.

**Restricted Use**

This report is solely for the information and use of the City and County of San Francisco, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

April 10, 2009

**Schedule 1—  
Summary of Program Costs  
July 1, 2003, through June 30, 2007**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 2,017,354	\$ 260,419	\$ (1,756,935)	Finding 1
Indirect costs	934,371	42,824	(891,547)	Findings 1, 2
Total program costs	<u>\$ 2,951,725</u>	303,243	<u>\$ (2,648,482)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 303,243</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 2,297,898	\$ 284,883	\$ (2,013,015)	Finding 1
Indirect costs	654,188	44,556	(609,632)	Findings 1, 2
Total program costs	<u>\$ 2,952,086</u>	329,439	<u>\$ (2,622,647)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 329,439</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 2,307,071	\$ 288,408	\$ (2,018,663)	Finding 1
Indirect costs	654,188	47,468	(606,720)	Findings 1, 2
Total program costs	<u>\$ 2,961,259</u>	335,876	<u>\$ (2,625,383)</u>	
Less amount paid by the State		(2,163,215)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (1,827,339)</u>		
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 2,454,064	\$ 322,263	\$ (2,131,801)	Finding 1
Indirect costs	654,441	47,880	(606,561)	Findings 1, 2
Total program costs	<u>\$ 3,108,505</u>	370,143	<u>\$ (2,738,362)</u>	
Less amount paid by the State		(2,894,180)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (2,524,037)</u>		

## Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>Summary: July 1, 2003, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 9,076,387	\$ 1,155,973	\$ (7,920,414)	
Indirect costs	<u>2,897,188</u>	<u>182,728</u>	<u>(2,714,460)</u>	
Total program costs	<u>\$ 11,973,575</u>	1,338,701	<u>\$(10,634,874)</u>	
Less amount paid by the State		<u>(5,057,395)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (3,718,694)</u>		
<u>Summary by Cost Component</u>				
Administrative Activities	\$ 4,056,064	\$ 224,252	\$ (3,831,812)	
Administrative Appeal	822,975	198,106	(624,869)	
Interrogation	2,402,918	705,791	(1,697,127)	
Adverse Comment	<u>4,691,618</u>	<u>210,552</u>	<u>(4,481,066)</u>	
Total program costs	<u>\$ 11,973,575</u>	<u>\$ 1,338,701</u>	<u>\$(10,634,874)</u>	

<sup>1</sup> See the Findings and Recommendations section.

# Findings and Recommendations

## FINDING 1— Unallowable salaries and benefits

The city and county claimed \$9,076,387 for salaries and benefits during the audit period. Related indirect costs totaled \$2,897,188. Claimed costs were based on a time study that was started and completed in FY 2003-04. We determined that salary and benefit costs totaling \$7,920,414 were unallowable because the activities claimed were not identified in the program's parameters and guidelines as reimbursable costs or were for certain administrative activities that were not eligible for inclusion in the time study because they are not tasks that are repetitive in nature. Related indirect costs totaled \$2,574,327.

The following table summarizes the claimed, allowable, and unallowable costs by individual cost component and department for the audit period:

<u>Reimbursable Component</u> <u>Department</u>	<u>Claimed</u> <u>Costs</u>	<u>Allowable</u> <u>Costs</u>	<u>Audit</u> <u>Adjustment</u>
<b>Administrative Activities:</b>			
Office of Citizen Complaints	\$ 1,432,011	\$ 121,278	\$ 1,310,733
Police Department	1,189,511	58,767	1,130,744
Sheriff's Department	538,514	17,265	521,249
Subtotal	<u>3,160,036</u>	<u>197,310</u>	<u>2,962,726</u>
<b>Administrative Appeals:</b>			
Office of Citizen Complaints	188,261	108,101	80,160
Police Department	70,758	67,443	3,315
Sheriff's Department	—	—	—
Subtotal	<u>259,019</u>	<u>175,544</u>	<u>83,475</u>
<b>Interrogations:</b>			
Office of Citizen Complaints	1,112,974	287,045	825,929
Police Department	332,446	193,872	138,574
Sheriff's Department	276,470	128,379	148,091
Subtotal	<u>1,721,890</u>	<u>609,296</u>	<u>1,112,594</u>
<b>Adverse Comment:</b>			
Office of Citizen Complaints	3,098,634	—	3,098,634
Police Department	189,567	102,801	86,766
Sheriff's Department	647,241	71,022	576,219
Subtotal	<u>3,935,442</u>	<u>173,823</u>	<u>3,761,619</u>
Total salaries and benefits	9,076,387	1,155,973	7,920,414
Related indirect costs	2,897,188	322,861	2,574,327
Total costs	<u>\$ 11,973,575</u>	<u>\$ 1,478,834</u>	<u>\$ 10,494,741</u>
<b>Recap by Department:</b>			
Office of Citizen Complaints	\$ 8,039,936	\$ 710,245	\$ 7,329,691
Police Department	2,083,305	494,247	1,589,058
Sheriff's Department	1,850,334	274,342	1,575,992
Total	<u>\$ 11,973,575</u>	<u>\$ 1,478,834</u>	<u>\$ 10,494,741</u>

### **Administrative Activities**

For the Administrative Activities cost component, the city and county claimed \$3,160,036 in salaries and benefits (\$538,514 by the Sheriff's Department; \$1,189,511 by the Police Department, and \$1,432,011 by the Office of Citizen Complaints [OCC]) for the audit period. We determined that \$2,962,726 was unallowable—\$521,249 due to ineligible Sheriff's Department activities, \$1,130,744 due to ineligible Police Department activities, and \$1,310,733 due to ineligible OCC activities.

The parameters and guidelines allow the following ongoing activities:

- Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities;
- Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and
- Updating the status of the POBOR cases.

The city and county claimed allowable costs for the activity of preparing and updating the caseload status report. However, the city and county departments also claimed costs for the ineligible activities of collecting case data, administering POBOR cases (copy cases, document the receipt and closure of cases, document the receipt of complaints, file and store cases, preparation of letters and miscellaneous mailings, and retrieve case files), preparing reports and documentation for submission of POBOR mandate claims, and maintaining an inventory of materials used to process cases.

In addition, various activities claimed for developing procedures on the collection of case data and developing a police misconduct database were not activities that are task-repetitive in nature and should not have been included in the time study. Costs for these activities must be based on actual costs incurred. One activity code included in the time study (A1-100—Administrative Procedure) included the allowable activity of developing procedures, but also included the ineligible activities of discussing case statute of limitations and responding to POBOR audits. We were unable to separate the eligible activity from the ineligible activities for this activity code.

### **Administrative Appeals**

For the Administrative Appeals cost component, the city and county claimed \$259,019 in salaries and benefits (\$70,758 by the Police Department, and \$188,261 by the OCC) for the audit period. We determined that \$83,475 is unallowable—(\$3,315 due to ineligible Police Department activities and \$80,160 due to ineligible OCC activities). The parameters and guidelines (section IV(B)) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

- Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);

- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit;
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship, and impact the career opportunities of the employee.

The parameters and guidelines (section IV(B)) also state:

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

The city and county departments claimed costs for the allowable activities of preparing and reviewing documents to commence and proceed with administrative hearings. However, the city and county also claimed costs for the unallowable activity of communicating with other agencies.

### **Interrogations**

For the Interrogations cost component, the city and county claimed \$1,721,890 in salaries and benefits (\$276,470 by the Sheriff's Department, \$332,446 by the Police Department, and \$1,112,974 by the OCC) for the audit period. We determined that \$1,112,594 was unallowable—\$148,091 due to ineligible Sheriff's Department activities, \$138,574 due to ineligible Police Department activities, and \$825,929 due to ineligible OCC activities).

The parameters and guidelines state that specific identified Interrogation activities are reimbursable when a peace officer is under investigation or becomes a witness to an incident under investigation and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department during off-duty time if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines (section IV(C)) state that claimants are not eligible for Interrogation activities when an interrogation of a peace officer is in the normal course of duty. It further states:

. . . when required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the Commission on State Mandates' (CSM) Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

The parameters and guidelines also state that tape recording the interrogation, when the peace officer employee records the interrogation, is reimbursable. Producing copies of taped interrogations, transcribed copies of notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or others when requested by the officer are also reimbursable activities.

The city and county claimed costs for the allowable activities of reviewing documents to prepare the interrogation notice, determination of investigating officers, preparing interrogation notices, serving notices, tape recording interrogations, and preparing copies of tapes and transcriptions. However, the city and county also claimed time for the ineligible activities of conducting investigations, establishing or verifying the identity of subject or witness officers, coordinating hearings between investigative staff and officers, preparing interview questions, conducting legal research, notifying officers and civilians of the status of case investigations, reviewing case findings with officers, and performing various undefined clerical tasks.

### **Adverse Comment**

For the Adverse Comment cost component, the city and county claimed \$3,935,442 in salaries and benefits (\$647,241 by the Sheriff's Department, \$189,567 by the Police Department, and \$3,098,634 by the OCC) for the audit period. We determined that \$3,761,619 was unallowable—\$576,219 due to ineligible Sheriff's Department activities, \$86,766 due to ineligible Police Department activities, and \$3,098,634 due to ineligible OCC activities.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines (section IV(D)) allow some or all of the following four activities upon receipt of an adverse comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines (section IV(D)) also state:

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment, preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The Police Department and the Sheriff's Department claimed costs for the allowable activities of reviewing case findings and reports, reviewing allegations of officer misconduct, and presenting adverse comments to officers. However, these two departments also claimed costs for the ineligible activities of taking in and documenting civilian complaints, determining the nature of complaints (in order to proceed with investigations), notifying civilians of the outcome of cases, preparing case summary reports (as part of the investigative process), preparing complaint forms and letters, seeking verification/refutation, and interviewing civilians.

None of the costs claimed by the OCC under this cost category were allowable because the department is ineligible to claim reimbursable activities due to the nature of their role in peace officer cases. We concur that costs were claimed by OCC for the reimbursable activities of reviewing complaints and reports. However, as noted above, the language in the parameters and guidelines states that these activities are to be conducted by the supervisor, command staff, human resources staff, or counsel. OCC is not part of this group because it is an advisory agency that is independent, by design, from the normal command structure of the city's Police Department. We believe that an independent review commission established by the voters of the city cannot be considered part of the command staff of the San Francisco Police Department.

We noted that the OCC has authority to conduct investigations based upon citizen complaints, develop case findings, and recommend disciplinary action. However, the city's Police Commission is not required to accept any sustained findings or disciplinary actions that OCC recommends. In addition, it is the Police Commission's responsibility to hear any appeals of sustained findings, take disciplinary actions against an officer, and to review and place adverse comments in a peace officer's personnel file. Accordingly, costs claimed by the San Francisco Police Department under the Adverse Comment cost component for the activities of analyzing case findings and reviewing complaints or reports were allowable.

## Summary

The following table summarizes the overstated costs by fiscal year.

	Fiscal Year				Total
	2003-04	2004-05	2005-06	2006-07	
Salaries and benefits:					
Police Department	\$ 316,104	\$ 326,148	\$ 331,797	\$ 385,350	\$ 1,359,399
Sheriff's Department	193,425	351,255	351,254	349,625	1,245,559
Office of Citizen Complainants	1,247,406	1,335,612	1,335,612	1,396,826	5,315,456
Subtotal	1,756,935	2,013,015	2,018,663	2,131,801	7,920,414
Related indirect costs	836,190	581,399	580,957	575,781	2,574,327
Audit adjustment	\$ 2,593,125	\$ 2,594,414	\$ 2,599,620	\$ 2,707,582	\$10,494,741

The parameters and guidelines for POBOR that were adopted by the CSM on July 27, 2000, and corrected on August 17, 2000, define the criteria for procedural protection for the city and county's peace officers.

The parameters and guidelines (section IV, Reimbursable Activities) outline specific tasks that are deemed to go beyond due process. The statement of decision, on which parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines (section V(A)(1), Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines (section VI, Supporting Data) require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

### Recommendation

We recommend that the city and county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

We also recommend that the city and county file future cost claims under this mandated program that are documented with actual costs incurred, are based on a newly developed time study, or use the reasonable reimbursement methodology that was adopted by CSM when the parameters and guidelines were amended on March 28, 2008 (applicable to claims filed for FY 2006-07 and beyond). We are willing to provide appropriate assistance if the city and county decides to develop a new time study.

## City and County's Response

Our response to this recommendation is substantially similar to our response to the same finding in the State Controller's Office audit of the POBOR program for the period of July 1, 1994 through June 30, 2003. The City believes that the costs claimed were eligible and properly supported based on documentation approved by the SCO.

### Costs Supported by Time Study

The costs claimed during the audit period are supported by a time study conducted by the City in 2004. Shortly after the state of the SCO's first audit of San Francisco's POBOR claims in December, 2003, the SCO determined that the City lacked adequate documentation to support costs claimed during the audit period. The City acknowledged that contemporaneous time records did not exist, and the parties agreed that this level of documentation could not have existed because much of the audit period occurred prior to the approval of the POBOR mandate by the Commission on State Mandates, the development of the subsequent parameters and guidelines (Ps and Gs), and the issuance of the POBOR claiming instructions.

On February 4, 2004, representatives from the City met with the SCO's auditor and audit manager to discuss the structure of the time study, eligibility of the components, and the manner by which the Ps and Gs for POBOR would impact the City's processes. A member of the OCC staff, a state-recognized expert in POBOR, was tasked with developing the City's POBOR time study and used the approved Ps and Gs as the basis for the study document. The time study document developed by the City was sent to the SCO's audit manager on March 4, 2004 for review and comments, and in a letter dated April 8, 2004, the SCO's audit manager provided written comments with proposed recommendations to the City's time study proposal.

On April 29, 2004, representatives from the City met with the SCO's audit manager and auditor to discuss the specifics of the time study. The audit manager incorporated a number of study requirements that the City adopted. The City understood the SCO's audit manager had approved the City's time study and associated methodology with all SCO-requested modifications being made. There was no objection to any of the activities included in the time study. The City followed up with a letter dated April 30, 2004 to the SCO audit manager thanking him for the meeting on April 29, 2004 and summarizing resolutions and agreements to time study timeline methodology, and date interpretation concerns. The study began in May 2004 and results were provided to the SCO in June 2004 for review and comments. While we appreciate the SCO's offer of assistance to develop a new time study, given our audit experience, such an investment would have not likely any (sic) effect on the portion of claimed amounts eventually deemed allowable.

### Role of the Office of Citizen Complaints

As in its first audit of the City's POBOR program, the SCO disallowed adverse comment costs due to an apparent misunderstanding of the OCC's purpose and function which, while it may be unique to San Francisco, does conduct adverse comment activities consistent with the POBOR Program. The POBOR Ps and Gs do not prescribe the organizational structure counties must use to conduct adverse comment activities.

### SCO's Comment

The finding and recommendation remain unchanged. We will address our comments in the same order as they were addressed by the city and county in its response to the draft audit report.

### **Costs Supported by Time Study**

The city and county's response related to our previous audit of its Peace Officers Procedural Bill of Rights claims for FY 1994-95 through FY 2002-03. Unfortunately, the city and county did not develop a new time study for the claims of the current audit period nor were actual costs tracked for reimbursable activities. Instead, they relied on the original time study conducted during FY 2003-04 to file claims for FY 2003-04 through FY 2006-07. The city and county has used the original time study for claims filed over a 13-fiscal-year period.

We noted in the final audit report for the previous audit that it was one of the first POBOR audits performed by our office. Throughout the entire course of the audit, there were various interpretations of what costs were reimbursable under the parameters and guidelines. The auditors had to determine how the activities described in the city and county's time study document fit within the reimbursable activities of the mandated program.

We disagree with the city and county's statement that our office had no objections to any of the activities included in its time study before the time study was actually conducted. In a letter to the city and county dated April 8, 2004, the Audit Manager in charge of the audit at that time commented on our review of the time study plan submitted to our office. Included in the letter were the following two statements: "Some of the activities and cases included in the time study may not be reimbursable. Further review of reimbursable activities and cases will be made upon completion of the time study." The city and county was on notice from that date that we would perform a further review of the activities included in the time study and determine which activities were reimbursable and which were not. We conducted a thorough review of time study activities after the city and county completed its time study and submitted the results to our office for review.

After we conducted the exit conference for the current audit period, we provided city and county officials with information detailing our position for each activity included in the time study. We have received no subsequent communication challenging our analysis of the time study activities or the conclusions that we reached other than a generic statement in the response to the draft report that the city believes that the costs claimed were eligible for reimbursement.

Our audit report adequately identifies why various activities claimed for reimbursement are unallowable. We believe that our audit findings accurately reflect the eligible activities as described in the adopted parameters and guidelines.

## Role of the Office of Citizen Complaints

We concur that the parameters and guidelines for the POBOR program do not prescribe the organizational structure counties must use to conduct adverse comment activities. However, the parameters and guidelines do prescribe who must perform the reimbursable activities. In this case, the activities in question are the review of complaints and reports under the Adverse Comment cost component. The parameters and guidelines prescribe that these activities are to be performed by supervisors, command staff, human resources staff, or counsel. We do not believe that an independent review commission established by the voters fits into this group. The San Francisco Police and Sheriff's departments performed these same activities, which were allowable costs. None of the other activities claimed by OCC under the Adverse Comment cost component were for activities that are eligible for reimbursement under the mandated program.

### **FINDING 2— Misstated indirect cost rates**

The city and county overstated indirect costs by \$140,133 during the audit period. Costs were understated by \$2,325 for the Police Department, overstated by \$279 for the Sheriff's Department, and overstated by \$142,179 for the OCC.

#### **Office of Citizen Complaints (OCC)**

The OCC did not prepare an indirect cost rate proposal (ICRP) during the audit period and chose the 10% of direct labor option to claim indirect costs. All four claims for the audit period stated that 25% of total salaries was being used as the basis for indirect costs for OCC and we noted that 10% of the salaries amount reported for each year was used to claim indirect costs. However, the city and county claimed in error the entire 10% of the total salaries amount for all four cost components within each year's claim.

For example, the OCC claimed salaries and benefits totaling \$1,545,380 in the FY 2006-07 claim. The claim schedules report that \$1,186,697 represents 25% of total salaries claimed for the OCC. Accordingly, \$118,670 should have been claimed for indirect costs. However, the OCC claimed \$118,670 in indirect costs for each of the four cost components, for a total of \$474,680. As a result, the total amount claimed for indirect costs represents more than 30% of the amount claimed by the OCC for salaries and benefits in FY 2006-07.

Based on the amount of salaries and benefits claimed by the OCC for each fiscal year, we determined that actual indirect cost rates of 58.02%, 32.20%, 32.20%, and 30.72% were claimed for FY 2003-04, FY 2004-05, FY 2005-06, and FY 2006-07, respectively. We determined that allowable indirect costs were overstated by \$142,179, based on allowable salaries and benefits and claimed indirect cost rates.

**Police Department**

The ICRP included with the city and county’s claim for FY 2003-04 showed an indirect cost rate of 19.24%. However, this rate was used only for costs claimed under the Administrative Activities cost component. For the other three cost components in the claim, the city and county applied an indirect cost rate of 17.11% to San Francisco Police Department salaries and benefits claimed. Accordingly, we determined that a “blended rate” of 18.53% was applied to all costs claimed by the San Francisco Police Department for this fiscal year. As a result, allowable indirect costs were understated by \$681 based on allowable salaries and benefits and the claimed indirect cost rate.

The ICRP included with the city and county’s claim for FY 2005-06 showed an indirect cost rate of 17.63%. However, we determined that the FY 2004-05 indirect cost rate of 16.09% was used to calculate indirect costs in the claim. Accordingly, indirect costs were understated by \$1,644, based on allowable salaries and benefits and the claimed indirect cost rate.

**Sheriff’s Department**

The ICRP included with the city and county’s claim for FY 2003-04 showed an indirect cost rate of 25.88%. However, this rate was used only for costs claimed under the Administrative Activities cost component. For the other three cost components, the city and county applied an indirect cost rate of 28.96% to Sheriff’s Department salaries and benefits claimed. Accordingly, we determined that a “blended rate” of 27.84% was applied to all costs claimed by the Sheriff’s Department for this fiscal year. As a result, allowable indirect costs were overstated by \$978, based on allowable salaries and benefits and the claimed indirect cost rate.

The ICRP included with the city and county’s claim for FY 2005-06 showed an indirect cost rate of 29.04%. However, we determined that the FY 2004-05 indirect cost rate of 27.77% was used to calculate indirect costs in the claim. Accordingly, indirect costs were understated by \$699, based on allowable salaries and benefits and the claimed indirect cost rate.

**Summary**

The table below summarizes the misstated indirect costs by department and fiscal year:

	Fiscal Year				Total
	2003-04	2004-05	2005-06	2006-07	
OCC:					
Allowable indirect cost rate	10.00%	10.00%	10.00%	10.00%	
Claimed indirect cost rate	(58.02)%	(32.30)%	(32.20)%	(30.72)%	
Misstated indirect cost rate	(48.02)%	(22.30)%	(22.20)%	(20.72)%	
Allowable salaries and benefits	×\$ 114,660	×\$ 126,605	×\$ 126,605	×\$ 148,554	
Total, OCC	(55,060)	(28,233)	(28,106)	(30,780)	\$ (142,179)

	Fiscal Year				Total
	2003-04	2004-05	2005-06	2006-07	
Police Department:					
Allowable indirect cost rate	19.24%	16.09%	17.63%	16.93%	
Claimed indirect cost rate	(18.53%)	(16.09)%	(16.09)%	(16.93)%	
Misstated indirect cost rate	0.71%	0.00%	1.54%	0.00%	
Allowable salaries and benefits	× 95,853	× 103,234	× 106,759	× 117,037	
Total, Police Department	681	—	1,644	—	2,325
Sheriff's Department:					
Allowable indirect cost rate	25.88%	27.77%	29.04%	23.31%	
Claimed indirect cost rate	(27.84)%	(27.77)%	(27.77)%	(23.31)%	
Misstated indirect cost rate	(1.96)%	0.00%	1.27%	0.00%	
Allowable salaries and benefits	× 49,906	× 55,044	× 55,044	× 56,672	
Total, Sheriff's Department	(978)	—	699	—	(279)
Total audit adjustment	\$ (55,357)	\$ (28,233)	\$ (25,763)	\$ (30,780)	\$ (140,133)

The parameters and guidelines state that indirect costs are eligible for reimbursement using the procedure provided in OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an ICRP for the department if the indirect cost rate exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87.

The parameters and guidelines state that all costs claimed shall be traceable to source documents that show evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the city and county establish and implement procedures to ensure that the calculation of indirect costs is consistent with the guidelines provided in OMB A-87.

City and County's Response

We have implemented the intent of this recommendation, and note that our office substantially revised the Indirect Cost Rate Proposal (ICRP) development process used in the preparation of the Fiscal Year 2007-08 claims filed in February, 2009. Each operating department provided direct participation and oversight in ICRP development. Indirect cost expenditure data were categorized as indirect, direct, or unallowable and reviewed in detail with department staff according to the cost principles established in OMB A-87. In addition, departments reviewed payroll lists for the year to identify indirect labor costs by employee. The resulting rates represent indirect costs more accurately and more consistently across departments.

SCO's Comments

The finding and recommendation remain unchanged.

While the city and county did not indicate agreement or disagreement with the findings, its response notes implementation of the intent of the recommendation, which was preparing ICRPs consistent with OMB A-87 guidelines.

**Attachment—  
City and County’s Response to  
Draft Audit Report**

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Ben Rosenfield  
Controller

Monique Zmuda  
Deputy Controller

March 16, 2009

Mr. Jim L. Spano  
Chief of Compliance Audits Bureau  
State Controller's Office, Division of Audits  
300 Capitol Mall  
Sacramento, CA 95814

Dear Mr. Spano:

The City and County of San Francisco has received the State Controller's Office (SCO) draft audit findings for the Peace Officer Procedural Bill of Rights (POBOR) state mandated cost program for the period July 1, 2003 through June 30, 2007 and appreciates the opportunity to respond.

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***Finding 1: Unallowable salaries and benefits cost***

***Recommendation:*** We recommend that the city and county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported. We also recommend that the city and county file future cost claims under this mandated program that are documented with actual costs incurred, are based on the a newly developed time study, or use the reasonable reimbursement methodology that was adopted by the CSM when the parameters and guidelines were amended on March 28, 2008. We are willing to provide appropriate assistance if the city and county decides to develop a new time study.

Our response to this recommendation is substantially similar to our response to the same finding in the State Controller's Office audit of the POBOR program for the period July 1, 1994 through June 30, 2003. The City believes that the costs claimed were eligible and properly supported based on documentation approved by the SCO.

**Costs Supported by Time Study**

The costs claimed during the audit period are supported by a time study conducted by the City in 2004. Shortly after the start of the SCO's first audit of San Francisco's POBOR claims in December, 2003, the SCO determined that the City lacked adequate documentation to support costs claimed during the audit period. The City acknowledged that contemporaneous time records did not exist, and the parties agreed that this level of documentation could not have existed because much of the audit period occurred prior to the approval of the POBOR mandate by the Commission on State Mandates, the development of the subsequent parameters and guidelines (Ps and Gs), and the issuance of the POBOR claiming instructions.

On February 4, 2004, representatives from the City met with the SCO's auditor and audit manager to discuss the structure of the time study, eligibility of the components, and the manner

by which the Ps and Gs for POBOR would impact the City's processes. A member of the OCC staff, a state-recognized expert in POBOR, was tasked with developing the City's POBOR time study and used the approved Ps and Gs as the basis for the study document. The time study document developed by the City was sent to the SCO's audit manager on March 4, 2004 for review and comments, and in a letter dated April 8, 2004, the SCO's audit manager provided written comments with proposed recommendations to the City's time study proposal.

On April 29, 2004, representatives from the City met with the SCO's audit manager and auditor to discuss the specifics of the time study. The audit manager incorporated a number of study requirements that the City adopted. The City understood the SCO's audit manager had approved the City's time study and associated methodology with all SCO-requested modifications being made. There was no objection to any of the activities included in the time study. The City followed up with a letter dated April 30, 2004 to the SCO audit manager thanking him for the meeting on April 29, 2004 and summarizing resolutions and agreements to time study timeline, methodology, and data interpretation concerns. The study began in May 2004 and results were provided to the SCO in June 2004 for review and comments. While we appreciate the SCO's offer of assistance to develop a new time study, given our audit experience, such an investment would have not likely any effect on the portion of claimed amounts eventually deemed allowable.

#### Role of the Office of Citizen Complaints

As in its first audit of the City's POBOR program, the SCO disallowed adverse comment costs due to an apparent misunderstanding of the OCC's purpose and function which, while it may be unique to San Francisco, does conduct adverse comment activities consistent with the POBOR Program. The POBOR Ps and Gs do not prescribe the organizational structure counties must use to conduct adverse comment activities.

#### ***Finding 2: Misstated indirect cost rates***

***Recommendation:*** We recommend that the city and county establish and implement procedures to ensure that the calculation of indirect costs is consistent with the guidelines provided in OMB A-87.

We have implemented the intent of this recommendation, and note that our office substantially revised the Indirect Cost Rate Proposal (ICRP) development process used in the preparation of the Fiscal Year 2007-08 claims filed in February, 2009. Each operating department provided direct participation and oversight in ICRP development. Indirect cost expenditure data were categorized as indirect, direct, or unallowable and reviewed in detail with department staff according to the cost principles established in OMB A-87. In addition, departments reviewed payroll lists for the year to identify indirect labor costs by employee. The resulting rates represent indirect costs more accurately and more consistently across departments.

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Thank you for the opportunity to respond to the audit. Please contact me or Leo Levenson of my staff at (415) 554-4809 if you have any questions.

Sincerely,



Ben Rosenfield  
Controller

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