A Performance Audit of the Department of Administration, Alaska Public Offices Commission

March 3, 2015

Audit Control Number 02-30072-15

Report Highlights

Why DLA Performed This Audit

In an effort to address concerns regarding the Alaska Public Offices Commission's (APOC) performance, fairness, and integrity, an audit of the agency was requested. This audit examines and reports on the select APOC operations.

What DLA Recommends

1. APOC's executive director, in consultation with the Commission, should develop and implement comprehensive written audit procedures.

2. APOC's executive director, in consultation with the Commission, should develop and implement comprehensive written procedures for the civil penalty assement and appeal processes.

3. APOC's executive director should consider automating certain workload tasks as a way to obtain efficiencies and meet timelines.

REPORT CONCLUSIONS

The audit concludes that APOC is operating within its statutory duties; however, operational improvements are needed. Implementing internal controls such as comprehensive written procedures and improving documentation will help promote fair and objective operations.

The audit was unable to conclude as to the objectivity and fairness of APOC's auditing process due to a lack of documentation. APOC's audit process is made less objective by the agency's inability to meet its statutory mandate to audit 100 percent of filings given that the determination of which filings to audit is left up to staff with no comprehensive written guidance. Comprehensive written procedures should be implemented to improve the audit process. (See Recommendation 1.)

This report concludes that APOC's methodology for assessing civil penalties is objective and defined in statute. However, mitigating factors used to reduce the penalty amount were not applied consistently. (See Recommendation 2.)

The audit found that APOC experienced significant and consistent staff turnover during the six-year period 2009 through 2014. APOC management and the Commission took limited actions to address turnover. Complaint investigations, advisory opinions, and civil penalty assessment notices were not consistently issued within required timelines. Missed timelines were partially attributed to staff turnover. (See Recommendation 3.)

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DLA ALASKA STATE LEGISLATURE
DIVISION OF LEGISLATIVE AUDIT

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

May 4, 2015

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF ADMINISTRATION
ALASKA PUBLIC OFFICES COMMISSION

March 3, 2015

Audit Control Number
02-30072-15

This audit examines and reports on the objectivity, consistency, and fairness of select operations of the Alaska Public Offices Commission. The audit was conducted 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. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
APOC	Alaska Public Offices Commission
AS	Alaska Statute
CISA	Certified Information Systems Auditor
CPA	Certified Public Accountant
DOA	Department of Administration
DOP	Division of Personnel
OAH	Office of Administrative Hearings
OMB	Office of Management and Budget

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ORGANIZATION AND FUNCTION

Alaska Public Offices Commission

The Alaska Public Offices Commission (APOC) was created in 1974 to administer and enforce disclosure laws for elected and appointed officials; candidates and political groups; and lobbyists and employers of lobbyists. APOC's self-defined mission is:

To encourage the public's confidence in their elected and appointed officials by administering Alaska's disclosure statutes and publishing financial information regarding the activities of election campaigns, public officials, lobbyists, and lobbyist employers.

The Commission consists of five members appointed by the governor to serve staggered five-year terms. (See Exhibit 1.) The governor appoints two commissioners from the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The four commissioners then nominate an individual to serve as the fifth member.

Exhibit 1

APOC Commissioners as of March 31, 2015

Kenneth C. Kirk, Chair
Term expires March 2016

Vance A. Sanders, Vice Chair
Term expires March 2017

Irene A. Catalone
Term expires March 2019

Ronald G. King
Term expires March 2018

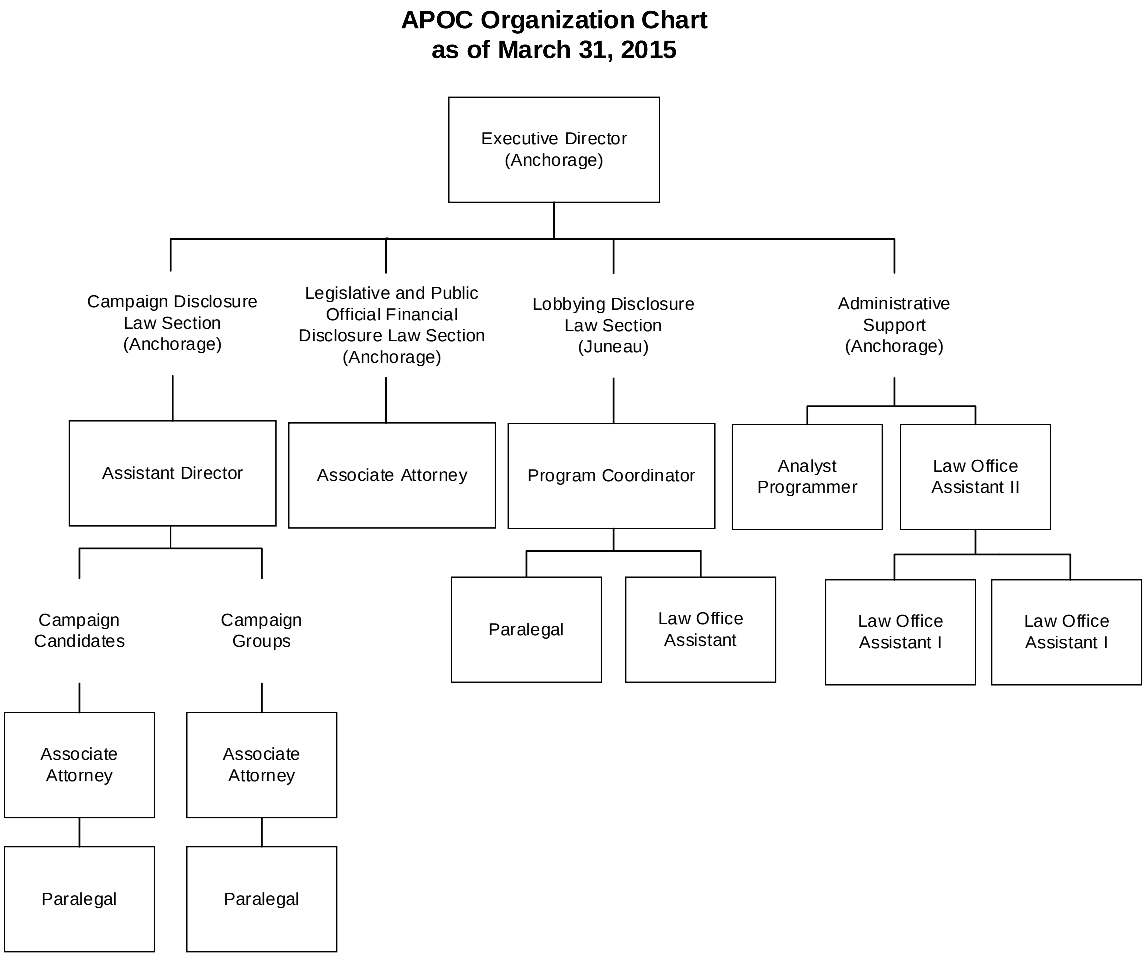
William Lee McCord
Term expires March 2020

Source: Office of the Governor, Boards and Commissions

The Commission meets at least three times per year. Commissioners receive compensation of $50 a day while attending meetings, and are entitled to travel expenses and per diem.

In order to fulfill their statutory duties, the Commission employs 13 full-time and one part-time staff. Staff is organized into sections that correspond to one of four disclosure laws APOC administers and enforces. APOC's organization chart is shown in Exhibit 2. The agency's FY 15 operating budget is approximately $1.5 million.

Exhibit 2



Source: APOC documents.

APOC's duties, as described below, are defined in Alaska Statutes.[1]

- Develop and provide all forms for registrations, reports, statements, notices, and other required documents.
- Prepare and publish instructions setting out the methods of accounting, bookkeeping, and reporting for use by persons required to make reports and statements. Assist all persons in complying with their requirements.

[1]Alaska Statute 15.13.030, AS 24.45.031, AS 24.60.220, and AS 39.50.050.

- Receive and hold open for public inspection reports and required statements, and upon request, furnish copies at cost to interested persons.

- Compile and maintain a list of all filed reports and statements.

- Prepare a summary of each report filed and make copies of this summary available to interested persons at cost.

- Notify, by registered or certified mail, all persons who are delinquent in filing required reports and statements.

- Examine, investigate, and compare all required reports, statements, and actions.

- Report all possible legislative financial disclosure violations to the Select Committee on Legislative Ethics.

- Report suspected lobbying violations to the attorney general.

- Prepare and publish a biennial report concerning APOC's activities and effectiveness, the enforcement actions by the attorney general's office, and recommendations and proposals for change; notify the legislature when the report is available.

- Adopt regulations necessary to implement and clarify statutory requirements.

- Consider written requests for advisory opinions concerning statute application.

- Administer an annual training course that promotes adherence to high ethical standards of professional conduct, and teaches lobbyists and employers of lobbyists how to comply with laws that regulate lobbyists.

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BACKGROUND INFORMATION

The Alaska Public Offices Commission (APOC) is charged with administering and enforcing Alaska's disclosure laws. In general, disclosure laws enable citizens to identify the influence of private interests on public decision-making. Alaska's disclosure laws are contained in separate areas of statute that encompass the following four distinct groups.

- State Election Campaigns Disclosure (AS 15.13) – requires state and municipal candidates, and political groups to file periodic, detailed reports disclosing all campaign contribution and expenditure activities.
- Regulation of Lobbying Disclosure (AS 24.45) – requires lobbyists to register with APOC and to file monthly reports of income from lobbying and lobbying expenditures during any month in which the legislature is in session, including special session. If the legislature is not in session, lobbyists file quarterly reports. Employers of lobbyists are required to file quarterly reports of lobbying payments and expenditures.
- Legislative Standards of Conduct Financial Disclosure (AS 24.60.200-.260) – requires legislators, legislative directors, and members of the Select Committee on Legislative Ethics to file personal financial disclosure statements listing business relationships, sources of income (and for legislators, the amount of income), and indebtedness.
- Public Official Financial Disclosure (AS 39.50) – requires state and any municipal candidates, elected officials, and many appointed state and local officials to file personal financial disclosure statements that include listing business relationships, the source of all income, and indebtedness.

Since electronic filing regulations went into effect December 2011, most required disclosure reports are filed electronically. According to APOC management, electronic filing has allowed APOC staff to spend more time auditing reports and providing direct services to the public and less time performing data entry.

An overview of APOC processes for auditing reports, investigating complaints, and assessing civil penalties is presented below.

APOC Audit Process

The statutory requirement to examine, investigate, and compare filed reports is referred to by APOC staff as *auditing*. Based on interviews with staff, the audit process involves examining reports for completeness, and if time permits, comparing current year reports to prior year reports.

As described in the Organization and Function section of this report, APOC staff is organized into sections that correspond to one of the four disclosure laws. Each disclosure law section has its own process for selecting reports for examination, performing the reviews, and documenting the audit results. APOC staff will either send a letter, email, or make contact by telephone to inform the person or entity who filed the report of any items that need to be corrected. Correspondence may also be sent to inform the filer there were no deficiencies detected. Audit correspondence is retained in an electronic central repository or hard copy files at APOC offices.[2] Audit information is tracked in spreadsheets or a filer database.

Currently, there are no requirements that filed reports be audited within a specific timeframe. During the course of auditing reports, APOC staff may determine further investigation of a potential violation of law is necessary and initiate a complaint against the filer.

APOC Complaint Investigation Process

Under the authority of APOC statutes, members of the public or APOC staff may file a complaint that alleges a disclosure law was violated.[3] Complaints must be in writing, signed, notarized, and have sufficient details to support the violation in order for the complaint to be accepted. APOC staff is required to notify the complainant and the person alleged to be in violation (referred to as the *respondent*) within seven days of accepting a complaint. The respondent has 15 days to answer the complaint.

A complaint is assigned to the appropriate disclosure law section for investigation. As part of the investigation, APOC staff may request information from the respondent. Staff has 30 days from the complaint acceptance date to draft an investigative report. At

[2]Audit correspondence may also be maintained within staff emails.
[3]Alaska Statute 15.13, AS 24.45, AS 24.60.200-260, and AS 39.50.

the conclusion of the investigation, the report is submitted to all respective parties and the Commission for consideration at the next regularly scheduled meeting.

At any time during the investigation, the respondent may request a consent agreement. A *consent agreement* is a written mutual agreement between the respondent and APOC regarding the violation that includes the assessed penalty amount and remedy. Consent agreements are subject to Commission approval.

The investigation process requires the Commission hold a complaint hearing in accordance with statutes. During a hearing, APOC staff presents the investigative report and bears the burden of proving a violation occurred by preponderance of the evidence. Evidence is presented, parties may provide testimony, and witnesses may be called to testify. The Commission may accept the proposed civil penalty documented in staff's investigative report or determine a different penalty amount after considering evidence.

The Commission must issue an order within 10 days of the hearing. After the decision is rendered, the respondent may request the Commission reconsider its decision. A request for reconsideration[4] must be filed no later than 15 days after the final order is delivered. Respondents may appeal the Commission's decision to Superior Court.

APOC Civil Penalty Assessment Process

APOC statutes and regulations outline the methodology for assessing civil penalties. When a disclosure report is not received after the filing due date, APOC staff is required to send out a delinquency notice to the filer within 10 days and another after 25 days. If APOC does not receive the required report, a civil penalty notice is issued within 30 days after the filing due date. Penalty notices include a calculation of the penalty assessment. Penalties equal the daily maximum penalty rate per statutes[5] multiplied by the number of days a report is late. This is referred to by APOC staff as *assessing*

[4]Per regulation, the Commission will reconsider its decision only if (1) a substantial procedural error occurred; (2) the order was based on fraud, misrepresentation, or a material mistake of fact or law; or (3) new evidence has been discovered that could not have been discovered before the hearing using reasonable diligence.
[5]Alaska Statute 15.13.390, AS 24.45.141, AS 24.60.240, and AS 39.50.135.

the fine at the maximum penalty. Notices also state the amount will continue to increase each day until the required report is filed.

Exhibit 3

Civil Penalty Regulation Change

During 2011, APOC regulations were revised to assess civil penalties at the maximum amount and allow for reduction based on mitigating factors. The change to regulations codified management's informal policy to use mitigating factors as a basis for reducing penalties.

Once a late report is received, APOC has 14 days to send out a civil penalty notice. A 14-day penalty notice includes the maximum civil penalty calculation and information on how to appeal a penalty. It also includes an appeal affidavit form and a list of mitigating factors that may reduce the penalty. Mitigating factors defined in regulation are described in Exhibit 4 on page 10.

A person or entity has the option to either pay the maximum penalty amount or submit an appeal affidavit.[6] If the penalty is appealed, APOC staff will review the affidavit for applicable mitigating factors and complete a recommendation report that supports or reduces the maximum penalty based on applicable mitigating factors. The report is presented to the Commission at the next scheduled meeting. If the person or entity does not pay and does not appeal the penalty assessment amount, the Commission refers the filer to the Department of Law for collection.

Civil penalties can also be assessed for incomplete filed reports; however, APOC typically does not assess penalties for incomplete reports. Instead, APOC staff works with a filer to obtain the missing information. Depending on the results of staff's attempt to work with filers and the extent of missing information, APOC staff may initiate a complaint. If, during the course of a complaint investigation, staff concludes that a violation of law occurred, a penalty will be recommended as part of the investigation report. The report is presented to the Commission at the next scheduled meeting.

[6]The person or entity has 30 days from the date the notice was mailed to submit an appeal affidavit.

At a hearing, the Commission considers staff recommendations and investigation reports supporting a proposed penalty amount. APOC staff and filers may be further questioned by the Commission, which issues a final determination to either affirm the staff recommendation or assess a new penalty amount based on the facts presented at the hearing and the Commission's historical knowledge of similar circumstances. If a person or entity disagrees with the Commission's final penalty assessment amount, the decision may be appealed to the Superior Court.

The Commission's final orders, penalty notices, and staff reports are available on APOC's website. Additionally, civil penalty notices, staff recommendations and appeal affidavits are maintained in an electronic central repository or in hard copy files at APOC offices. APOC staff use spreadsheets to record and track notices, appeals, hearings, and final order dates, as well as the maximum penalties assessed, staff recommendations, and final order amounts.

Exhibit 4

Regulations Defining

Mitigating Factors for Civil Penalty Reductions

(2 AAC 50.865)

(a) A civil penalty determined under 2 AAC 50.855 may be reduced by up to 50 percent if:

(1) a person required to file a statement or other filing

(A) has a good filing history; in this subparagraph, "good filing history" means

(1) no late filings in the immediately preceding five years; and

(2) no activity shown on the overdue report;

(B) is an inexperienced filer; in this subparagraph, "inexperienced filer" means a person required to file reports under this chapter if that person has been subject to a registration or reporting requirement for less than 365 days;

(2) a technical error at the commission, including a communication, facsimile machine, computer program, or other equipment problem may have contributed to the late or incomplete filing;

(3) any unreported or mistakenly reported information had a value of $100 or less; or

(4) any unreported or mistakenly reported information had a value higher than $100 but no more than $1,000, and a factor listed in (b) of this section also applies.

(b) A civil penalty set out in 2 AAC 50.855 may be reduced by a percentage greater than 50 percent, or waived entirely based on the following factors:

(1) the person required to file, or a family member of the person required to file, experienced a personal emergency, including a call for military service, a natural disaster, a civil disturbance, or an incapacitating illness that prevented the person from filing on or before the due date; this mitigating factor is only available to a natural person;

(2) a significant cause of the late filing is commission staff error, including

(A) furnishing reporting materials too late for filing on or before the due date;

(B) giving incorrect oral or written information to a person required to submit a statement or other filing;

(C) failing to deliver required notices when due; or

(D) confirmed technical problems with operation of commission equipment, including the electronic filing program;

(3) a municipal clerk or the clerk's designee failed to notify a municipal official, as provided in 2 AAC 50.850(f), that the municipal official's filing is delinquent or incomplete;

(4) a late or erroneous report included only administrative costs in a group report;

(Continued on page 11)

Exhibit 4 (Continued)

(5) a late or incomplete report did not cause significant harm to the public, and aggravating factors under (d) of this section do not exist; for purposes of this paragraph, a late or incomplete report did not cause significant harm to the public if

(A) the dollar amount missing from a form or disclosure is $100 or less;

(B) the dollar amount for the information missing from a form or disclosure is more than $100 but no more than $1,000, and the filer self-reported the error; or

(C) the missing or incomplete information is readily available to the public through another forum;

(6) the civil penalty assessment is significantly out of proportion to the degree of harm to the public for not having the information; or

(7) a unique circumstance justifies reducing or waiving the penalty.

(c) The commission will not accept any of the following as mitigating factors to reduce the amount of a penalty:

(1) relying on another person or mailroom to mail, postmark, or submit the statement on or before a due date;

(2) forgetting to file;

(3) being a volunteer;

(4) having no change in reportable information from previous filed statements;

(5) relying on the responsible person's staff to remind the person of the filing deadline;

(6) being too busy to file;

(7) experiencing staff turnover, unless the turnover created turmoil serious enough to justify a finding of unique circumstances;

(8) absence caused by travel, unless the travel was unplanned or unavoidable, including travel for a personal emergency, or weather-related travel problems.

(d) A civil penalty determined under 2 AAC 50.855 may be increased to the maximum amount allowed under the applicable statute if a person required to file a statement or other filing has

(1) failed to substantially comply with financial disclosure requirements by omitting a significant source of income, interest in real property, business interest, loan, trust, or other substantial financial interest; in this paragraph, "substantial financial interest" means an interest with a value greater than $1,000; or

(2) a poor reporting history; indicators of a poor reporting history include any of the following:

(A) more than one late filing in the immediately preceding five years;

(B) evidence suggesting deliberate non-reporting;

(C) failure to cooperate with staff.

Source: Alaska Administrative Code.

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REPORT CONCLUSIONS

In an effort to address concerns regarding the Alaska Public Offices Commission's (APOC) performance, fairness, and integrity, an audit of the agency was requested. The audit objectives were to:

- Evaluate whether APOC is operating within its statutory duties.
- Evaluate the objectivity and fairness of APOC's auditing process.
- Evaluate APOC's process for assessing civil penalties, and determine whether the methodology is objective and whether penalties are assessed consistently.
- Review workload measures as a way to evaluate APOC productivity.
- Identify and report APOC staff turnover rates and determine whether the agency has taken appropriate steps to minimize turnover and its impact on operations.
- Identify contributing factors for the increase in APOC's personal services budget.

The audit concludes that APOC is operating within its statutory duties; however, operational improvements are needed. Implementing internal controls such as comprehensive written procedures and improving documentation will help promote fair and objective operations.

The audit was unable to conclude as to the objectivity and fairness of APOC's auditing process due to a lack of documentation. APOC's audit process is made less objective by the agency's inability to meet its statutory mandate to audit 100 percent of filings given that the determination of which filings to audit is left up to staff with no comprehensive written guidance. Comprehensive written procedures should be implemented to improve the audit process. (See Recommendation 1.)

This report concludes that APOC's methodology for assessing civil penalties is objective and defined in statute. However, mitigating factors used to reduce the penalty amount were not applied consistently. (See Recommendation 2.)

Comprehensive workload statistics could not be calculated due to insufficient APOC recordkeeping. Productivity measures presented in this report include number of complaints investigated, advisory opinions drafted, and trainings provided.

The audit found that APOC experienced significant and consistent staff turnover during the six-year period 2009 through 2014. APOC management and the Commission took limited actions to address turnover. Complaint investigations, advisory opinions, and civil penalty assessment notices were not consistently issued within required timelines. Missed timelines were partially attributed to staff turnover. (See Recommendation 3.)

APOC's personal service budget increased in FY 09 by one full-time position and again in FY 11 by one full-time and one part-time position. Positions were added to perform auditing and enforcement functions as well as to provide customer service when a new electronic filing system was implemented. APOC's FY 15 budget includes 14 authorized positions.

Detailed report conclusions are presented below.

APOC is operating within its statutory duties.

The review found that APOC's activities are rooted in the agency's statutorily mandated powers and duties. APOC was created to administer and enforce the State's disclosure laws. Facilitating the disclosure process, auditing filings to ensure they are complete, evaluating and investigating complaints, and assessing penalties in the event of noncompliance are all activities that directly support the agency's authorized mission.

Although its activities are securely rooted in statute, the agency's procedures and practices could be improved to promote confidence in its operations. Suggested improvements are contained in the Findings and Recommendations section of this report.

APOC lacks comprehensive written guidance for auditing disclosures.

Although APOC is required by statute to examine, investigate, and compare *all* reports, statements, and actions from *all* filers; due to limited resources and conflicting priorities, the agency annually attempts to audit only 80 percent of the information. APOC staff determines which filings to audit with no formal written guidance.

Furthermore, there are no regulations or comprehensive written procedures that dictate the manner in which staff should complete audits or the expected timeline for completion. Some disclosure law sections use checklists; however, checklists are not always retained by staff once the audits are completed. It was also noted that APOC's internal audit tracking spreadsheets were unreliable and did not consistently identify whether the audit findings were corrected. (See Recommendation 1.)

Exhibit 5 reports the length of time to complete audits based on a sample of audits tested. The time for completion was measured from the date a disclosure report was received to the date APOC issued audit correspondence. Not all sampled audits were evaluated for timeliness due to missing documents or data. Additionally, audits of lobbyists and lobbyists' employers were not included in the timeline analysis because specific dates were not tracked or maintained.

Although there are no statutory, regulatory, or written procedures for completing audits within certain timeframes, Exhibit 5 provides perspective on timeliness and shows APOC staff completed 72 percent of sampled audits within 90 days. Of the four groups shown in the exhibit, campaign candidates and campaign groups were more likely to have audits completed within 90 days. Legislative filings were the least timely with six of 14 audits taking longer than 120 days to complete. This audit noted that APOC's executive director assumed the responsibility for completing audits for legislative filers in October 2012 when an associate attorney position became vacant. Although the position was filled in December 2012, the executive director continued to audit the legislative filers through 2014.

Exhibit 5

Sample Results – Time to Complete APOC Audits

	Campaign Candidates	Campaign Groups	Legislators	Public Officials	Total	Percent
Less than 10 days	13	4	5	2	24	29%
11 to 15 days	2	2	0	1	5	6%
16 to 30 days	2	2	0	0	4	5%
31 to 60 days	7	6	3	1	17	21%
61 to 90 days	4	4	0	1	9	11%
91 to 120 days	3	0	0	3	6	7%
121 to 365 days	6	2	2	2	12	15%
Greater than 365 days	0	1	4	0	5	6%
Total	37	21	14	10	82	100%

Source: APOC documents.

Implementing certain internal controls would promote objective and fair operations.

APOC's mission is to encourage the public's confidence in elected and appointed officials by administering Alaska's disclosure statutes and by publishing financial information about election campaigns and public officials, lobbyists, and lobbyists' employers. To effectively accomplish its mission, APOC must maintain its credibility as an agency that fairly and impartially carries out its powers and duties. This audit did not conclude that APOC is operating unfairly or in a biased manner. However, the audit does conclude that the lack of comprehensive written procedures, including insufficient supervisory review, makes APOC more open to allegations of unfair, inconsistent, or biased activities.

Certain internal controls help promote a fair and impartial operational environment. Recommendations 1 and 2 in the Findings and Recommendations section of this report recommend APOC management implement comprehensive written procedures to guide the audit and civil penalty assessment processes. Written procedures are internal controls that should help APOC promote a fair and impartial environment by ensuring activities are conducted in a consistent and objective manner.

APOC's methodology for assessing civil penalties is objective; however, reduced penalties are not always assessed in accordance with regulations or in a consistent manner.

As described in the Background Information section, APOC enforces disclosure laws by assessing penalties for noncompliance. Statutes dictate the method APOC must use to calculate penalties. Penalties are calculated at the *maximum* amount but are often reduced through an appeal process by applying mitigating factors established in regulation.

This audit does not comment on whether assessing a maximum penalty and using an appeal process to reduce the penalty is the best possible enforcement alternative. Rather, the audit evaluated APOC's procedures for carrying out its responsibilities as defined in statute. APOC's processes for assessing penalties related to both disclosure filings and complaint investigations were reviewed.

The audit found that APOC appropriately calculated the maximum penalties; however, penalties were not always reduced in accordance with regulations or in a consistent manner. A lack of written procedures and supervisory review contributed to the noted errors. Deviating from regulations and applying regulations inconsistently leaves the agency open to criticism regarding its fairness and objectivity. (See Recommendation 2.)

To evaluate APOC's process for assessing penalties related to disclosure filings, this audit reviewed a sample of 88 civil penalty assessments for disclosures filed with APOC between January 2010 and April 2014.[7] Of the 88 selected for review, seven lacked the documentation[8] necessary to evaluate the reasonableness and accuracy of the initial civil penalty assessment. The remaining 81 were assessed at the maximum penalty as required by statutes and regulation. The penalty amounts were correctly calculated using the statutorily mandated maximum fine multiplied by the number of days out of compliance.

Maximum penalties were reduced once a filer appealed the assessment and provided *mitigating factors*. From the sample of 88 civil penalty assessments, 71 assessments were further reviewed

[7]The sample consisted of a random sample of 60 and a judgmental sample of 28. The sample population of 349 included appealed penalties and unpaid penalties not appealed but referred to the Commission for further action.
[8]Missing documents lacked penalty notices.

to evaluate the reduction of the assessed penalty. Seventeen assessments were not reviewed due to missing documents or because filers paid the penalty without an appeal or the penalties were referred to the Department of Law for collections. Exhibit 6 summarizes the reduction percentage for the 71 assessments. Twenty-nine of the 71 assessments had the fine reduced to $0. Another 16 had the penalties reduced by at least 90 percent. The fine was not reduced in five of the 71 assessments.

Exhibit 6

Civil Penalty Reductions Based on Sample of Civil Penalties

Percent Reduction	Count	Percent
100%	29	42%
99%	5	7%
98%	2	3%
97%	1	1%
96%	1	1%
93%	1	1%
90%	6	9%
88%	1	1%
75%	2	3%
70%	4	6%
67%	1	1%
50%	12	17%
25%	1	1%
0%	5	7%
Total	71	100%

Source: APOC documents.

A review of supporting documentation concluded that all final penalty amounts were reasonable; however, APOC staff and the Commission did not always apply mitigating factors in accordance with regulation or in a consistent manner. The review found one or more of the following deficiencies in 20 of the 71 assessments:

- Staff recommendations or Commission final orders did not cite specific mitigating factors for reducing the civil penalty for nine assessments;

- APOC staff or the Commission applied a percentage reduction that did not agree with the mitigating factor percentage reduction for 14 assessments; and

- Commission orders reduced the civil penalty amount based on a methodology that was not outlined in regulations for three assessments.

To evaluate APOC's process for assessing penalties as a result of complaint investigations, this audit sampled and reviewed 17 of 86 complaints[9] filed and accepted for investigation between January 2009 and April 2014. Of the 17 sampled, four were dismissed; six were assessed civil penalties; and seven entered into consent agreements, of which six resulted in a civil penalty. The review of the penalties found the following deficiencies:

- Two of six complaint penalty assessments were reduced based on a methodology that was not outlined in regulations;
- Two of six consent agreements did not cite mitigating factors in support of the reduced final penalty amount; and
- Three of six consent agreements cited mitigating factors, but the reduction percentage was not consistent with regulation.

Although penalties were not always reduced in accordance with regulations or in a consistent manner, the final amounts did not appear unreasonable or egregious.

APOC has experienced significant and consistent turnover.

APOC staff turnover has been significant and consistent throughout the six-year period of 2009 through 2014. As illustrated in Exhibit 7, overall turnover ranged from a high of 38 percent for calendar years 2011 and 2012 to a low of 15 percent in 2010. Professional staff had a 50 percent turnover rate during 2011, 40 percent for 2012, and decreased to 11 percent for 2013 and 2014.

Exhibit 7

APOC Turnover Rates
Calendar Years 2009 through 2014

	2009	2010	2011	2012	2013	2014
All APOC Staff	31%	15%	38%	38%	23%	23%
Professional Staff*	33%	10%	50%	40%	11%	11%
Administrative Staff	25%	33%	0%	33%	50%	50%

Source: State payroll records.
*Professional staff includes executive director, assistant director, program coordinator, associate attorney, and paralegal positions.

[9]Sixteen complaints were randomly selected, and one complaint was judgmentally selected for testing.

Twelve individuals were employed by APOC in three associate attorney positions over the six-year period. There were 10 individuals in four paralegal positions during the time period.[10] Exhibit 8 shows the tenure for APOC employees as of December 2014.

Exhibit 8

APOC Employee Tenure as of December 31, 2014

Job Title	Years
Executive Director	3.86
Assistant Director	Vacant
Program Coordinator	6.26
Associate Attorney	5.20
Associate Attorney	2.33
Associate Attorney	2.08
Paralegal	4.50
Paralegal	2.25
Paralegal	1.95
Law Office Assistant	7.18
Law Office Assistant	.46
Law Office Assistant	.10
Law Office Assistant	1.15
Analyst/Programmer	.83

Source: State payroll system.

Turnover impacted APOC's ability to meet workload timelines.

To gain an understanding of the factors that impacted turnover, interviews were conducted with 12 of the 20 employees who left APOC's employment between January 2009 and May 2014. Six of the interviewed employees cited management style and practices for leaving APOC. Four employees left to pursue other career opportunities, and two employees moved out of state.

This audit reviewed 40 of the 86 complaints APOC received and accepted between January 2009 and April 2014 for timeliness. The other forty-six complaints were not reviewed for timeliness because complaints were either dismissed, withdrawn, in court proceedings, granted an extension, or the parties entered into a consent agreement. Of the 40 complaints reviewed, 23 (58 percent) did not have an investigation report issued within the regulatory timeline of 30 days.

Of the 104 advisory opinion requests APOC received and accepted between January 2009 and April 2014, four were withdrawn, and 100 required a draft advisory opinion. Thirty-three advisory opinions were not drafted within seven days as required by statute.

[10]One paralegal position was reclassified to an analyst/programmer position as of June 2012.

This audit also reviewed 88 civil penalty assessments. Seven lacked documentation to evaluate the timeliness and 30 (37 percent) did not have penalty notices sent within the required regulatory timelines. (See Recommendation 3.)

Further review of complaints, advisory opinions, and civil penalty assessments showed turnover was a contributing factor in APOC not meeting statutory and regulatory timelines. Appendices A and B of this report provide additional details regarding APOC complaint and advisory opinion timelines.

APOC management and the Commission took limited actions to address turnover.

According to APOC commissioners, the high rate of staff turnover primarily resulted from the 2011 change in the executive director position and subsequent actions taken by the executive director to address poor performance. Exhibit 7 shows a spike in turnover rates at the time a new executive director was hired. However, the exhibit also shows significant turnover before and after the change in the executive director position.

To help reduce staff turnover, the executive director reported changing the associate attorney position title during recruitment efforts in November 2012. According to the executive director, the change was made to more clearly communicate expectations for the position.

Towards the end of 2012, turnover concerns were reported to the Department of Administration commissioner, who responded by directing the Division of Personnel (DOP) to conduct post-employment interviews of prior APOC employees. This action was taken without the knowledge of APOC commissioners. The results of the DOP interviews were provided to the Commission. The Commission stated that it took no action on the DOP interviews, in part, because of concerns involving ongoing litigation. The Commission reported that the executive director kept them informed on turnover and personnel issues on a regular basis. The Commission also reported providing feedback to the executive director regarding his management style.

Comprehensive workload measures were not evaluated due to lack of data.

Assessing APOC's productivity by reviewing workload measures is an objective of this audit. APOC's internal employee time tracking documentation could not be used as a basis of reporting workload measures because employees' time documentation was incomplete and time was not tracked by specific task. Workload measures that could be reported based on available data are shown in Exhibit 9 and include (1) complaints investigated, (2) advisory opinions drafted, and (3) trainings provided. (See Appendix C for additional details regarding APOC trainings.)

The limited data provided in Exhibit 9 did not allow for meaningful analysis of productivity. APOC staff stated that campaign activity greatly impacts APOC's annual workload as campaign years tend to result in more complaints and advisory opinions.

Due to the incomplete and inaccurate data, workload measures for the number of audits performed and civil penalties assessed could not be accurately reported as part of this audit. (See Recommendations 1 and 2.)

Exhibit 9

APOC Workload Measures
Calendar Years 2009 through 2014

	2009	2010	2011	2012	2013	2014
Complaints Investigated	10	24	19	19	12	14
Advisory Opinions Drafted	15	39	18	19	7	20
Trainings Provided	*	*	*	41	30	40

Source: APOC documents.
*APOC did not maintain data for this timeframe.

APOC's authorized positions increased in FY 09 and FY 11 which increased APOC's overall budget.

APOC personal services budgets increased each year from FY 09 through FY 14. However, the most significant increases came in FY 09 and FY 11. In FY 09, APOC's personal service budget increased by $137,700, of which $86,000 was for an associate attorney position that was added to perform auditing and enforcement functions, and to perform research in support of complaint investigations.

Due to a change in regulations and implementation of a new electronic filing system, APOC's FY 11 personal service budget increased by $153,100, of which $111,400 was for two positions. One full-time paralegal position was added to provide assistance to filers, prepare manuals, conduct trainings, perform audits, and track reports. One part-time law office assistant was added to provide customer service.

Exhibit 10 provides APOC's budget and actual expenditures for the period FY 09 through December 2014. Appendix D reports expenditures by account category.

Exhibit 10

Authorized and Actual Expenditures
Fiscal Year 2009 through December 2014
(in Thousands)

	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	July–Dec 2014
Authorized	$1,246.2	$1,276.4	$1,506.1	$1,470.9	$1,575.4	$1,536.9	$1,517.3
Actual	$1,208.6	$1,261.2	$1,374.5	$1,341.8	$1,368.8	$1,422.1	$694.2
Authorized Positions	12	12	14	14	14	14	14

Source: Legislative finance documents and the state accounting system.

APOC management reported that implementing a new electronic filer database decreased the amount of time staff spends performing data entry thereby freeing up staff time for providing direct services to the public and auditing filed reports.

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FINDINGS AND RECOMMENDATIONS

Recommendation 1: The Alaska Public Offices Commission's (APOC) executive director, in consultation with the Commission, should develop and implement comprehensive written audit procedures.

APOC's audit documentation was insufficient to support a conclusion that the audit process is thorough and effective. Additionally, an examination of APOC staff's audit tracking spreadsheets found 86 of 201 sampled audits lacked sufficient documentation to fully evaluate the audit process. Testing also found APOC audit tracking spreadsheets were incomplete[11] and lacked details about the results of the audits performed or whether corrective action had been taken by the filer. Furthermore, there are no statutory, regulatory, or written procedures for completing audits within a specific timeframe.

The general lack of audit documentation can be attributed to a lack of comprehensive written procedures for conducting audits. Lack of comprehensive written procedures exposes APOC to allegations of unfair and/or inconsistent treatment of filers.

Alaska Statutes 15.13.030 and AS 24.60.220 requires APOC to examine, investigate, and compare *all* reports, statements, and actions from *all* filers. Alaska Statute 40.21.060 requires the management and preservation of public records.

We recommend the executive director, in consultation with the Commission, develop and implement comprehensive written audit procedures, including timelines, to guide staff and to promote objectivity and fairness in APOC's audit process.

Recommendation 2: APOC's executive director, in consultation with the Commission, should develop and implement comprehensive written procedures for the civil penalty assessment and appeal processes.

A sample of 88 civil penalty assessments showed:

- Ten assessments were missing the supporting documents[12] necessary to evaluate the reasonableness and accuracy of the assessment. Alaska Statute 40.21.060 requires the management and preservation of public records.
- Thirty assessments[13] did not have penalty notices sent to filers in accordance with regulatory timelines contained in 2 AAC 50.855.

[11]Audits of eight campaign candidates and five campaign group filers were not recorded in the audit tracking spreadsheets.
[12]Missing documents included penalty notices, appeal affidavits, staff recommendations and final orders.
[13]Only 81 of the 88 assessments were evaluated for timelines because seven lacked adequate documentation for evaluation.

- Nine staff recommendations or Commission final orders did not cite specific mitigating factors for reducing the assessment; 14 had incorrect mitigating factor percentages utilized to reduce the assessment in accordance with 2 AAC 50.865; and, three Commission orders reduced the penalty based on a methodology not outlined in regulation.[14]

- APOC's civil penalty tracking spreadsheets contained a multitude of errors[15] including incorrect dates, incorrect amounts, and missing data.

Additionally, testing found one campaign group and three public official filers who were assessed a penalty were not included on APOC's penalty tracking spreadsheets. Testing identified at least 60 duplicate records in the spreadsheets.

Complaint testing also identified inconsistencies in the application of mitigating factors to reduce penalties.

While turnover was a contributing factor for APOC not meeting timelines, the lack of comprehensive written procedures was also a factor leading to noncompliance with regulations and inaccurate reporting. Lack of comprehensive written procedures increases APOC's risk for incorrectly determining and adjusting civil penalties. Furthermore, the incorrect application of mitigating factors used in reducing penalties exposes APOC to allegations of unfair and/or inconsistent enforcement of the disclosure laws.

We recommend the executive director, in consultation with the Commission, develop and implement comprehensive written procedures to guide staff in the civil penalty assessment and appeal processes.

[14]Of the 88 penalty assessments, only 71 were reviewed for mitigating factors because 17 lacked supporting doumentation.
[15]Twenty errors (33 percent) were from the random sample of 60 and fourteen errors (50 percent) were from the judgmental sample of 28.

Recommendation 3: APOC's executive director should consider automating certain workload tasks as a way to obtain efficiencies and meet timelines.

A review of APOC's operational activities found APOC was not in compliance with statutory and regulatory timelines. Complaint investigations and draft advisory opinions from January 2009 through April 2014 were tested. Civil penalties from January 2010 through April 2014 were also tested. Testing showed that:

- Twenty-three of 40 complaints did not have an investigation report issued within 30 days as required by 2 AAC 50.875.
- Thirty-three of 100 draft advisory opinions issued were not drafted within seven days as required by AS 15.13.374.
- Twenty-eight of 88 civil penalty assessments did not have penalty notices issued within 30 days of the due date in accordance with 2 AAC 50.855.
- Eleven of 88 civil penalty assessments did not have penalty notices issued within 14 days of receiving a report in accordance with 2 AAC 50.855.

Additionally, APOC is not able to meet its statutory duty to audit all filings.

APOC's failure to audit all filings and timely investigate complaints, draft advisory opinions, and issue civil penalty notices increases the risk for continued violations and higher assessments. Failure to react timely also exposes APOC to allegations of unfair and/or inconsistent treatment of filers.

While turnover was a contributing factor for APOC not meeting timelines, management also stated that competing priorities, implementation of the new electronic filing system, and time for Department of Law review were factors that led to missing timelines. According to APOC management, future budget cuts are expected to significantly reduce available resources, thereby making it more difficult to meet agency responsibilities.

We recommend APOC's executive director consider automating certain workload tasks as a way to obtain efficiencies and meet timelines.

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of the Department of Administration (DOA), Alaska Public Offices Commission (APOC).

Objectives

The audit objectives were to:

- Evaluate whether APOC is operating within its statutory duties.
- Evaluate the objectivity and fairness of APOC's auditing process.
- Evaluate APOC's process for assessing civil penalties, and determine whether the assessment methodology is objective and whether penalties are assessed consistently.
- Review APOC workload measures as a way to evaluate productivity.
- Identify and report APOC staff turnover rates and determine whether the agency has taken appropriate steps to minimize turnover and its impact on operations.
- Identify contributing factors for the increase in APOC's personal services budget.

Scope

The audit reviewed APOC operations for the period January 1, 2009, through April 30, 2014. APOC staff turnover was analyzed from January 1, 2009, through December 31, 2014.

Methodology

During the course of the audit, the following were reviewed and evaluated:

- APOC statutes and regulations to gain an understanding of required duties and processes related to issuing advisory opinions, investigating complaints, assessing civil penalties, and auditing disclosure reports.
- APOC annual reports and the Office of Management and Budget (OMB) performance measures to identify APOC's mission and staff

workload activities.

- APOC audit documentation to gain an understanding of the audit process.
- DOA, Division of Personnel and Labor Relations (DOP) and the Department of Labor and Workforce Development websites to gain an understanding of turnover methodology.
- DOP's post-employment interviews with APOC's prior employees to identify the reasons for leaving APOC employment.
- Personal service reports from the State's payroll system to calculate APOC staff turnover rates.
- Position descriptions from DOP's website to identify job titles and reclassification of positions.
- Complaint investigations, advisory opinions, civil penalty assessments, and audits between January 2009 and April 2014 to evaluate APOC processes, workload measures, and turnover.
- Draft advisory opinions received and accepted from January 2009 through April 2014 for statutory compliance.
- APOC correspondence, emails, and various documents to assist in evaluation of APOC operations.
- APOC management's budget requests; proposed and enacted budgets from OMB; Legislative Finance documents; fiscal notes; and financial records from the state accounting system from fiscal year 2009 through December 2014 to identify the reasons for personal services budget increases.
- APOC's internal employee time tracking spreadsheet from January 2011 to April 2014 to assist in identifying staff workload activities.

During the course of the audit, the following samples were selected:

- A random sample of audits was selected for the period January 2009 through April 2014 to evaluate whether the audit process is objective and fair. In determining sample size, the applicable controls were considered highly significant, and the inherent risk was considered high. The following samples were selected.

Twelve of 41 legislator audits were randomly selected for the period January 2012 through April 2014. Database information or audit tracking spreadsheets were not available prior to January 2012.

Sixty of 636 lobbyist or employers-of-lobbyist audits were randomly selected for the period January 2009 through April 2014 from agency documentation.

Thirty-one of 144 campaign group audits were selected; 30 were randomly selected and one was judgmentally selected for the period January 2010 through April 2014. Audit tracking spreadsheets were not available prior to January 2010.

Thirty-seven of 130 campaign candidate audits were selected; 26 were randomly selected and 11 were judgmentally selected for the period January 2010 through April 2014. Audit tracking spreadsheets were not available prior to January 2010.

Fifty-six of 279 public official audits were randomly selected for the period January 2012 through April 2014. Database information or audit tracking spreadsheets were not available prior to January 2012.

- A random sample of 60 and a judgmental sample of 28 appealed civil penalties or unpaid penalties not appealed but referred to the Commission for further action was selected to evaluate whether the civil penalty assessment process is objective and consistent. In determining sample size, the applicable controls were considered significant, and the inherent risk was considered high.

  Fifty of the 60 random samples and 21 of 28 judgmental samples from the 88 appealed civil penalties or unpaid civil penalties were reviewed to determine if the mitigating factor percentage reductions were reasonable, consistent, and in accordance with regulations. Seventeen of the selected samples lacked supporting documentation for evaluation.

- A random sample of 16 and a judgmental sample of one were selected from 86 complaints received and accepted from January 2009 through April 2014 to determine if the civil penalties are objective and consistent. Additionally, all complaints were reviewed to determine if an investigation report was issued in accordance with regulatory timelines.

Supporting documentation for the sample of APOC audits and civil penalties were reviewed for: data reliability in tracking spreadsheets, effectiveness of internal controls, and compliance with statutory and regulatory requirements. The audit did not statistically project the error rates due to incomplete and inaccurate data.

To evaluate the civil penalty and audit tracking spreadsheets for completeness and accuracy, a random sample of filers were selected for review based on data from the filer databases used between January 2009 and April 2014. Comparison of the supporting documents to the civil penalty spreadsheets was limited to January 2010 through April 2014 because 2009 spreadsheets were not complete. Furthermore, comparison of the supporting documents to the audit tracking spreadsheets were limited due to unmaintained documentation. The audit did not statistically project the error rate due to incomplete and inaccurate data. The following random samples from each disclosure law section were selected:

- Twenty-eight of 92 legislator filers;
- Forty-seven of 233 lobbying filers;
- Eight-seven of 337 campaign group filers;
- Seventy-two of 794 campaign candidate filers; and
- Sixty random and two judgmental of 1,377 public official filers.

Interviews were conducted with APOC management, current and prior employees, and commissioners regarding APOC processes and concerns with turnover. Interviews regarding turnover were also conducted with DOA management, including DOP management.

Inquiries were made with the Alaska State Commission of Human Rights; DOP; United States Equal Employment Opportunity Commission; and Office of the Ombudsman regarding any APOC related complaints.

Additional audit procedures necessary to address the audit objectives included:

- Reviewing Commission meeting minutes from January 2009 to February 2014 and attending the February and March 2014 meetings to gain an understanding of civil penalty assessments, complaint investigations, advisory opinions, and public comments regarding APOC and Commission activities.

- Attending APOC trainings related to disclosure reporting requirements for public and legislative officials, and campaign candidates and groups to gain an understanding of report filing and civil penalty assessment processes.

- Reviewing DOA's Office of Administrative Hearings (OAH) assistance in APOC proceedings from January 2009 through April 2014. Also, conducted interviews of OAH management regarding the type of assistance provided.

- Reviewing court decisions and documents from January 2009 through April 2014 of appealed APOC decisions by filers to gain an understanding of the basis for appeal.

- Reviewing APOC's records retention schedule from Division of Libraries, Archives, and Museums' website to determine APOC requirements for retaining documents.

- Interviewing representatives from similar out-of-state commissions to gain a general understanding of how their procedures compare to APOC.

- Generating expenditure reports from the state accounting system to document expenditures by account category by fiscal year.

- Scheduling complaints and advisory opinions received and accepted from January 2009 through December 2014 for presentation as a workload activity.

- Compiling trainings provided to filers by APOC staff from January 2012 through December 2014.

APPENDICES

Appendix A – Complaint investigation timelines from January 2009 through April 2014 are shown in two tables. Table 1 shows the number of days from the date the complaint was accepted to the staff investigation report date. Table 2 reports the number of days from the date the complaint was accepted to the Commission's final order date.

Appendix B – Advisory opinion timelines from January 2009 through April 2014 are shown in two tables. Table 1 reports the number of days from the date an advisory opinion request was accepted to the date staff drafted the opinion. Table 2 shows the number of days from the date an advisory opinion request was accepted to the Commission's final order date.

Appendix C – Alaska Public Offices Commission (APOC) trainings and the number of attendees by location from January 2012 through December 2014.

Appendix D – APOC expenditures by account category from July 2009 through December 2014.

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APPENDIX A

Table 1

APOC Investigation Report Timeline
Complaints Received and Accepted
Calendar Years 2009 through April 2014

	2009	2010	2011	2012	2013	Jan-April 2014	Total
Less than 30 days	2	2	6	5	2		17
31 to 60 days		5	6	5	3	1	20
61 to 90 days				2	1		3
91 to 120 days							0
121 to 364 days							0
Greater than 365 days							0
Extension Orders	5	12	1				18
Consent Agreements	2	4	5	6	5	1	23
Dismissed		1	1				2
Withdrawn	1				1		2
In Court Proceedings				1			1
Total Complaints	10	24	19	19	12	2	86

Source: APOC documents.

Table 2

APOC Commission Final Order Timeline
Complaints Received and Accepted
Calendar Years 2009 through April 2014

	2009	2010	2011	2012	2013	Jan-April 2014	Total
Less than 30 days		2	2			1	5
31 to 60 days	1	2	1	2	3		9
61 to 90 days		1	5	9	4		19
91 to 120 days	1	1	2	4	1	1	10
121 to 364 days	5	15	8	3	3		34
Greater than 365 days	2						2
Dismissed		1	1				2
Withdrawn	1				1		2
In Court Proceedings				1			1
Missing Documents		2					2
Total Complaints	10	24	19	19	12	2	86

Source: APOC documents.

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APPENDIX B

Table 1

APOC Staff Draft Advisory Opinions Timeline
Advisory Opinions Received and Accepted
Calendar Years 2009 through April 2014

	2009	2010	2011	2012	2013	Jan-April 2014	Total
Less than 7 days	2	25	15	14	5	5	66
8 to 15 days	2	7	1	1	1		12
16 to 30 days	3	4	1	1	1		10
31 to 60 days	5	1	1			1	8
61 to 90 days	2	1					3
Greater than 121 days							0
Extension Orders				1			1
Withdrawn	1	1		2			4
Total Advisory Opinions	15	39	18	19	7	6	104

Source: APOC documents.

Table 2

APOC Commission Final Order Advisory Opinions Timeline
Advisory Opinions Received and Accepted
Calendar Years 2009 through April 2014

	2009	2010	2011	2012	2013	Jan-April 2014	Total
Less than 7 days		4		2			6
8 to 15 days		10	1	1			12
16 to 30 days	1	9	3	4	3	3	23
31 to 60 days	7	7	7	6	4	2	33
61 to 90 days	2	1	1			1	5
91 to 120 days	1	2	1				4
Greater than 121 days			1				1
Withdrawn	1	2		3			6
Missing Documents	3	4	4	3			14
Total Advisory Opinions	15	39	18	19	7	6	104

Source: APOC documents.

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APPENDIX C

APOC Provided Trainings and Number of Attendees by Disclosure Law and Location
Calendar Years 2012 through 2014
(Unaudited)

	No. of Sessions	Number of Attendees by Location			
2012		**Anchorage**	**Juneau**	**Fairbanks**	**Other**
Campaign Candidates	9	117			26
Campaign Groups	7	58			
Lobbyists	11	61	18	6	154
Public and Legislative Officials	7	56			
Public Officials/Campaign Financial Disclosures	4		66		
Other Topics	3	41			
Total	41	333	84	6	180
2013		**Anchorage**	**Juneau**	**Fairbanks**	**Other**
Campaign Candidates	6	29	6		7
Campaign Groups	3	42			
Campaign Candidates and Groups	1			25	
Lobbyists	4	35	19		
Public Officials/Campaign Financial Disclosures	2			12	5
Public Officials/Legislative Financial Disclosures	3		8		
Total	19	106	33	37	12
2013 - Outreach[16]	11	52		66	233
2014		**Anchorage**	**Juneau**	**Fairbanks**	**Other**
Campaign Candidates	14	82			
Campaign Groups	5	71			
Lobbyists	9	36	17	7	
Public Officials/Legislative Financial Disclosures	7	23			
Other - Independent Expenditures	1	29			
Total	36	241	17	7	0
2014 - Outreach[17]	4	48	22		

Source: APOC documents.

[16]In 2013, outreach topics included APOC's mission, independent expenditures, and report filing demonstrations. Outreach was provided to the University of Alaska Anchorage graduate class; rotary clubs in Homer, Kenai, Susitna, Wasilla, and Palmer; Wasilla, Southeast, Fairbanks, and Seward Chambers of Commerce; and to the Alaska Association of Municipal Clerks.

[17]In 2014, outreach topics included APOC's mission, APOC's activities, and expenditure reporting. Outreach was provided to the International Fire Fighters Association, Wayland Baptist University, Southeast Alaska non-profit organizations, and to the Legislative Information Offices.

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APPENDIX D

APOC Expenditures
by Account Category
Fiscal Years 2009 through 2014
(in Thousands)

	Personal Services	Travel	Contractual	Commodities	Capital Outlay	Total
FY 09	$ 873.8	$ 32.4	$ 285.6	$ 16.8	$ -0-	$ 1,208.6
FY 10	969.0	27.2	233.0	20.5	11.5	1,261.2
FY 11	1,113.4	32.7	200.5	22.0	5.9	1,374.5
FY 12	1,140.6	27.9	155.0	16.3	2.0	1,341.8
FY 13	1,183.9	22.9	138.4	23.6	-0-	1,368.8
FY 14	1,246.2	18.2	142.6	15.1	-0-	1,422.1
July-Dec 2014	557.5	14.3	117.8	4.6	-0-	694.2

Source: State accounting system.

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Agency Response from the Department of Administration

THE STATE of ALASKA
GOVERNOR BILL WALKER

D(,_.. tment of Administration
SHELDON FISHER, COMMISSIONER
10th Fl. State Office Building
PO Box 110200
Juneau, AK 99811-0200
Main: 907.465.2200
Fax: 907.465.2135
www.doa.alaska.gov

June 10, 2015

Ms. Kris Curtis, CPA, CISA
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
PO Box 113300
Juneau, AK 99811-3300

Dear Ms. Curtis:

Thank you for the opportunity to respond to the Special Audit of the Alaska Public Offices Commission (APOC). APOC fulfills an important role in Alaska to keep the public's confidence in their elected and appointed officials. Their duty to publish financial information regarding the activities of election campaigns, public officials, lobbyists, and lobbyist employers is a crucial part of this role.

The Department of Administration (DOA) oversees APOC's budget and operations, but APOC is an independent agency. On behalf of the Administration, DOA is very interested in ensuring APOC operates within the law and provides service to its customers and the public in an efficient and fair manner. DOA is committed to working with APOC to address the manner in which audits are conducted and fines are assessed.

We agree with Commissioner Kirk that lack of funding hampers the activities at APOC. In the FY 16 budget for APOC, their operating funds were cut leaving them about $880K for operations. Because of the cut, APOC did laid off half their staff. However, even with this year's deep budget cuts, we still believe in the current budget climate that more cuts will be coming to all areas of government. Therefore, it is imperative that APOC's approach to these Audit Recommendations reflect the current budget realities by establishing clear guidelines for the Commission and staff that allows them to operate and fulfill their mission with the funding they do have.

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Ms. Kris Curtis
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page 2

To respond to your findings and recommendations:

Recommendation number 1: APOCs executive director, in consultation with the Commission, should develop and implement written audit procedures.

DOA agrees with this recommendation.

There is an impression among many that APOC conducts audits in an arbitrary manner with arbitrary timelines. Without clear audit procedures, this impression will continue.

The Executive Director recommends in the APOC response to your report suggests new methodologies for handling the different reports. Time will tell if the new methods help to make their audits seem less arbitrary. No matter the methodology, the backlog on auditing reports will remain.

Recommendation number 2: APOCs executive director, in consultation with the Commission, should develop and implement written procedures for the civil penalty assessment and appeal processes.

DOA agrees with this recommendation.

Similarly, there is an impression that fines are assessed and negotiated in an arbitrary manner. This arises when APOC is delayed in reviewing a report (for the lack of resources or otherwise), causing a potential fine that starts to accumulate at the date the report is due resulting in excessive fines for filers. Were the report to have been audited in a timely manner, the filer would have been notified and been afforded the opportunity to make a correction in a timely manner. We acknowledge Commissioner Kirk's position that those fines are usually reduced. However, imposing an excessive fine, only to reduce it in a non-transparent manner has contributed to perception that penalties are administered in an arbitrary manner.

Under foreseeable budgetary constraints, APOC's current methodology will only exacerbate the risk of excessive and arbitrarily high fines as APOC fall further and further behind in completing Audits. APOC should establish clear rules that allow them— absent bad faith on the part of the filer—to cap a fine based on the statutory mandate for completing the

Ms. Kris Curtis
June 10, 2015
page 3

audits. In this way, if APOC is not able to complete audits in a timely manner (due to budgetary constraints or otherwise), the filer would not face the prospect of unlimited fines.

It would then be less troublesome should APOC apply principles of "equity" to mitigate those penalties. APOCs proposed rule changes are a step in the right direction, but would seem to allow fines to grow to excessive levels. We do agree with APOC they should still maintain some flexibility to negotiate a fine even lower if the commission feels it is appropriate.

Recommendation number 3: APOCs executive director should consider automating certain workload tasks as a way to obtain efficiencies and meet timelines.

DOA agrees with this recommendation.

We agree the agency must make every attempt to meet mandated timelines. However, we do agree with Commissioner Kirk that lack of funding and staff makes very difficult without re-tooling their methods for audits and fine.

We recognize that recent funding levels for APOC make the need for APOC to strengthen their internal controls and establishing clearer guidelines even more critical to maintaining and restoring public trust. DOA looks forward to working with APOC and the legislature on these issues.

Thank you for the opportunity to comment on your audit.

Sincerely,

Sheldon Fisher
Commissioner

cc: Kenneth Kirk, Chair, Alaska Public Offices Commission
Paul Dauphinais, Executive Director, Alaska Public Offices Commission

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Agency Response from the Alaska Public Office Commission

THE STATE of ALASKA

GOVERNOR BILL WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

2221 E. Northern Lights Blvd., Rm. 128
Anchorage, AK 99508-4149
Main: 907.276.4176
Fax: 907.276.7018
www.doa.alaska.gov/apoc

June 7, 2015

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Kris Curtis, CPA, CISA
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

Dear Ms. Curtis:

RE: Response to Audit Report, Audit Control Number 02-30072-15, dated March 3, 2015, A Performance Audit of the Department of Administration, Alaska Public Offices Commission (APOC)

This is in response to Recommendations No. 1, No. 2 and No. 3 and the conclusions in the Audit Report concerning the Alaska Public Offices Commission (APOC), dated March 3, 2015.

There are several areas where the Commission and the agency's executive director agree with the management letter. There are also areas where there appears to be either a misunderstanding of the agency's mission or a lack of clarity regarding the processes staff deal with, and the competing demands on staff's time in completing its work. Finally, there are some specifics in the letter with which we disagree. However, there are certainly areas in which agency operations can improve.

It appears that the auditing team has captured the essence of APOC's organization and function. The background information presented concerning the agency appears to be correct and generally complete.

Before specifically addressing the recommendations of Department of Legislative Audit (DLA), the Commission wishes to make the context of the upcoming fiscal year clear to all readers. In FY 2015 the budget of APOC was approximately $1.5 million. For FY 2016 the agency's budget has been cut to approximately $1 million. However, over 10% of the one million dollar budget will not be available to the agency as that money is locked into program receipts and the agency has not been provided authority to collect that additional $120,000. As a result APOC has an effective budget of approximately $880,000 for FY 2016.

CONCLUSIONS

The Commission agrees with the conclusion that APOC is operating within its statutory duties. It is also true that operations could be improved. The Commission will specifically address improving operations under the recommendations section.

The Commission agrees with portions of the conclusion that APOC lacks written guidance for auditing disclosures and agree that this aspect of the agency could be improved. However, there are aspects not reported that are worth noting for the record. The agency has no written guidelines for how to select a disclosure report for audit and lacks a policy of when to complete all audits. However, the agency does have written guidelines on how to conduct the audits of the various disclosure reports developed by staff. These guidelines were provided to the audit team at the entry conference and later via e-mail in early 2014. This conclusion goes on to state that the auditing of legislative financial disclosure filings was the least timely of all audits. While the relatively small sample taken may show what is presented in the management letter, a review of the entire population of legislative financial disclosure audits paints a different picture. In 2012 48 of 72 filings were audited in 20 – 100 days; in 2013 57 of 78 filings were audited within 5 days and 68 within 100 days, in 2014 52 of 77 filings were audited with 5 days and 61 within 100 days, and in 2015 76 of 77 reports were audited within 50 days. The management letter suggests that audits should be completed within 90 days of submission. Given the resources currently and projected to be available to the agency this is not realistic for several reasons to be addressed later.

The Commission agrees that implementing internal controls would promote objective and fair operations. However, it is worth noting that given the reactive nature of nearly all aspects of APOC's mission there will be constant exceptions to when and how specific tasks are accomplished based on circumstances. The many conflicting statutory requirements placed on the agency make automatically following a checklist of how or when to do something a recipe for failing to meet many deadlines and adds a level of complexity to staff's current direction..

The Commission agrees that APOC's methodology for assessing civil penalties is objective and further agree that reduced penalties are not always assessed strictly in accordance with regulations. While there may be an appearance of inconsistent application of regulations, each situation is quite different based on the election, alleged infraction, newness of regulation and experience of the filer and each requires the application of both reason and intent to the alleged violation. Staff and the Commission seek to balance the spirit and the letter of the law when assessing penalties. This conclusion will be more fully discussed in the recommendations section.

The Commission concurs that APOC has experienced significant turnover. There were numerous reasons for the high turnover. Most of the positions in APOC are relatively high stress, involving public contact with individuals who are sometimes upset or angry. Many of these positions are jobs which are in high demand in other places; for example it is difficult to keep an analyst/programmer because they can make so much more money elsewhere, and a number of the attorneys working for the agency have found that they can do more "real" attorney work elsewhere than they can with the agency. Additionally, when the new Executive Director was hired in 2011, it was his understanding that he was expected to "tighten the ship" as the agency had been run too loosely in the past. A number of the mid-level employees resented this and eventually left. The audit report fails to note that professional staff turnover has been significantly reduced in the past two years and that the high level of administrative turnover deals with a small number of positions.

The Commission concurs with the conclusion that turnover impacted the agency's ability to meet workload timelines. The Commission would add that the effort to meet deadlines and conduct audits has directly led to some staff departures. The substantial change in organizational priorities made some employees uncomfortable and in other cases led to departures. Over the past four years the agency has made significant improvements in meeting deadlines and conducting more audits.

The Commission disagrees with the conclusion that APOC management and the Commission took limited action to address turnover. The ability of the Commission to address this issue was hampered by inappropriate actions taken by the Department of Administration (DOA) (in the previous administration). A DOA deputy commissioner, rather than bringing an alleged potential bias issue to the attention of the Commissioners as required by the Executive Ethics Act, contacted the attorney for a party in an ongoing APOC case and provided information to him. The Commissioners only learned of the issue when a lawsuit was filed attempting to disqualify both the entire Commission and the entire staff. This ongoing litigation hamstrung the Commission by causing an inability to have discussions with their Executive Director because such discussions would necessarily have violated the rights of that litigant (in other words it would have required *ex parte* communications between the Executive Director and the Commissioners which were related to that individual's case). While that was going on, the Division of Personnel conducted interviews with selected former employees, and sent summaries privately to the Commissioners at their home addresses, but told them that these interviews must be kept confidential from the Executive Director. It was impossible to address these interviews in any detail without having discussions with the Executive Director. The Commissioners were eventually able to hold a number of meetings with the Executive Director, including one in which the Commissioners reviewed the circumstances of every single departure during the first few years of that Executive Director's tenure in detail. The Commissioners felt that the issues were suitably addressed. This did include suggestions by Commissioners for changes in the Executive Director's management style which were made and are believed to have been successful. The Commission did successfully and lawfully address this issue in spite of significant legal barriers. The auditing team was made aware of these actions during interviews with the commissioners.

The conclusion regarding a lack of data to evaluate workload measures is confusing. APOC staff keeps a time-on-task record similar to, but not as detailed as, time recording in a law office. That information was provided to the auditing team in early April of 2014. No other information was requested concerning workload records.

Recommendation 1. DLA recommends that APOC's executive director, in consultation with the Commission, should develop and implement comprehensive written audit procedures.

The Commission agrees with this recommendation regarding comprehensive audit procedures. The Commission also notes that auditing is a three part process; first, selecting a file for review, second, conducting the review, and, third, documenting the results of the review. Procedures

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exist regarding how to conduct an audit. Procedures regarding which reports to select for an audit and following up on the audit have required more development. The Commission invites the Committee's attention to the proposed auditing guidelines attached as Appendix 1 to this letter. The Commission has not yet approved these guidelines.

The Commission notes that written comprehensive procedures may do little to increase the number of audits performed. Given that 14 staff members could not complete 100% of all audits, it is highly doubtful that a staff of eight can do more than 14 people. The following is provided for illustrative purposes:

Overall the agency receives over 4,000 reports each year—this does not include amendments or staff required corrections.

Figure 1
Reports Received in 2013 and 2014, Available Staff in FY 15 and FY 16

	2013	2014	# Staff in area FY 2015	# Staff FY 2016
POFD/LFD	1,029	1,242	1	0[1]
Candidates	364	2,092	2	1
Groups/IEs	671	2,470	2	1
Lobbying	2,428	2,437	2	1
TOTAL	4,492	8,241		

Given the number of staff and total number of reports in 2013, 7 staff members would be required to audit 642 reports each on average. Let's say that each of these audits takes on average ½ hour to complete, if there are deficiencies then another ½ hour is required to document the deficiencies, and then another ½ hour to create and send a certified letter informing the filer. If one-half of the reports have an error then in addition to the 341 hours each staff member spends on the initial audit another 642 hours are required of each staff member for documentation and letter creation. Each of these seven staff members would then spend 983 hours each year dealing only with audits. A state worker works a 37.5 hour work week for 1,950 working hours per year; assuming a two week vacation each year the worker completes 1,875 productive hours each year. Since all these employees are overtime eligible employees and no over time is available then 52% of these employees' time would be spent on nothing but audits; leaving 48% of their time to deal with civil penalty assessments, complaints, or drafting advisory opinions. This assumes all members of the staff are fully cross trained to perform each type of audit.

Considering that the number of staff available will be reduced to three positions primarily doing audits and two others conducting audits on an as available basis, the number of audits to be done by each staff member will now be over 1,123. Using the same formula as above these four staff members now have 1,121 hours each year consumed by audits, or 60% of their total time available, based on the numbers from 2013, not a busy even-numbered year.

Given the number of reports to be reviewed and the paucity of staff to do the reviewing the Commission is hesitant to direct timelines to conduct audits. Placing staff in a position to meet

[1] To be covered by the executive director as time is available.

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deadlines that conflict with each other places staff in a position where they can only fail to meet one or another required deadline when dealing with multiple and conflicting requirements. This is not good management and will potentially lead to more staff turnover.

Placing a strong emphasis on audits, while certainly congruent with the agency's mission and statutory requirements, puts other mission areas at considerable risk of not being completed. One activity that makes reviewing reports less burdensome is dealing directly with filers to respond to questions before filers make mistakes that would be found during an audit. Providing direct service to the public can occupy as much as 20% of staff's time during any given month with more time on this activity closer to any election of filing deadline. An increased emphasis on auditing and follow up will also adversely affect training by limiting the time devoted that that activity which also helps to decrease the number of reporting errors that require amendments.

In order to ensure that audits are completed and followed up on staff may provide an audit letter with a deadline for amendments to be completed. Staff currently does this, but also provides more follow up and letters when amendments are not made. In the future, if those deadlines from the initial deadline are not met a complaint may be initiated by staff which will be less time intensive than multiple follow ups and multiple audits since each amendment requires a review to ensure the amendments corrected the problems identified earlier.

Recommendation 2. DLA recommends that APOC's executive director, in consultation with the Commission, should develop and implement comprehensive written procedures for the civil penalty assessment and appeal processes.

The Commission partially agrees with this recommendation. Current regulations clearly point out the processes and timelines to be followed. More guidance would be redundant. The Commission has been in the process of reviewing and potentially revising those regulations now that a few years of experience can be applied to them to determine specific and necessary revisions. Current draft revisions are designed to make the process less time consuming by setting particular parameters at the beginning of the process for staff and to eliminate the potentially large maximum fines that have occurred, but have not been levied, in the past.

The Commission believes that additional written procedures would only be duplicative. A copy of those proposed regulations revisions is attached as Appendix 2 to this letter. The Commission recommends that these be instituted as emergency regulations so that they can be in place prior to the next general election cycle which starts immediately. In that appendix new language is in red.

Civil penalty assessments also take considerable time from staff. The following information is provided for contextual purposes.

Figure 2
Civil Penalties Assessed 2013 and 2014, Available Staff FY 15 and FY 16

	Number of CPAs			
	2013	2014	# Staff in area FY 2015	# Staff FY 2016
POFD/LFD	106	128	1	0[2]
Candidates	24	65	2	1
Groups/IEs	68	204	2	1
Lobbying	85	77	2	1
TOTAL	283	474		

Each type of CPA takes a different amount of time. Candidates take approximately 8 hours each, Groups about 4 hours, POFD about 3 hours, and lobbying about 2 hours. Using 2013 as the baseline again the candidate staff in 2016 will spend approximately 192 hours on CPAs; the single Group person about 272 hours in 2016; POFD 318 hours; and, the lobbying staff person 170 hours each in 2016 on CPAs. Add this to the hours spent auditing has the candidate staff spending 1,079 of the 1,875 hours available on audits and CPAs—58% of their time. For POFD the amount goes to 1,301 hours or 69% of staff time (with no dedicated staff member to deal with POFDs); for groups 1,255 or 67%; and for lobbying 1,153 hours or 62% of their time.

New procedures will not add more time or people to the workforce making combined effort of audits and CPAs take on average 65% of staff's time.

The auditors appear to believe that there is too much subjectivity in Commission determinations, particularly in regard to reduced penalties. Subjectivity is sometimes necessary and desirable. The Commissioners expect APOC staff to present proposed penalties in an objective manner. The Commissioners then apply their best judgment to the situation, often substantially reducing proposed penalties. Each case is different, involving a variety of relevant factors such as the amount or nature of the error, the experience and filing history of the individual, the potential harm to the public, and the reason the filer made the mistake, among many other potential factors.

It is the Commission's opinion that it is necessary and desirable that a certain amount of human judgment, compassion, and common sense be applied. Moreover, it should be noted that there has been a significant difference of opinion among Commissioners on just how much subjectivity is desirable. With that in mind, it should be noted that the complexion of the Commission, under its current structure, changes at least once each year, which necessarily makes it difficult to develop a significant amount of consistency. During the four years the current Commission Chair has been on the commission, he has served with 9 other Commissioners. Each time a new Commissioner comes on board, the philosophical and experiential makeup of the Commission changes.

One of the reasons subjective assessment is necessary and desirable, is that many of the penalties would be draconian if substantial reductions were not made. It is often the case that an error will be made in a filing, which goes unnoticed or unfound for months before being caught. If the

[2] To be covered by the executive director as time is available.

error occurred on a report in the time immediately before an election, when daily penalties are significant, the potential penalties can run into the thousands or tens of thousands of dollars. Without the Commissioners having the ability to substantially reduce such penalties to something more sensible, these disclosure laws could have a significant chilling effect on the willingness of the citizenry to participate in public affairs.

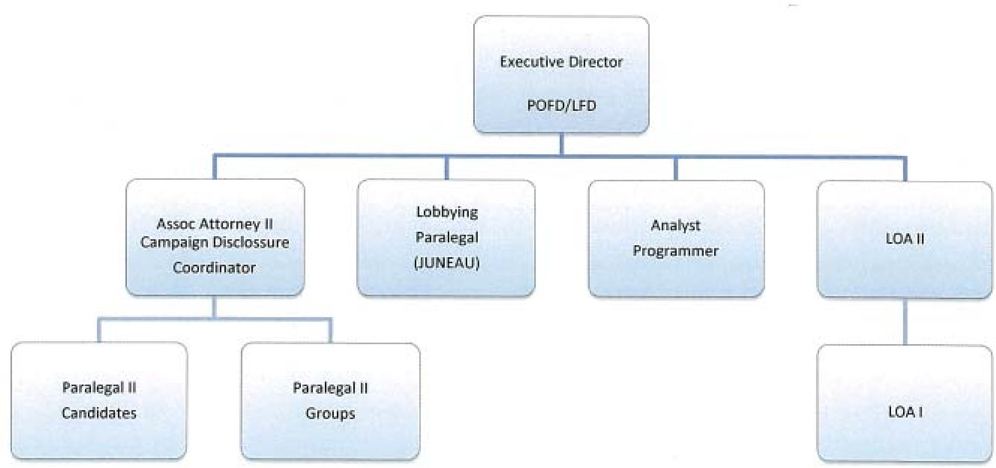
Recommendation 3. DLA recommends that APOC's executive director should consider automating certain workload tasks as a way to obtain efficiencies and meet timelines.

The Commission partially agrees with this recommendation. The executive director has been directed to review all aspects of staff work and make comprehensive recommendations to the Commission by February 2016. In the meantime the prioritization of work will be done according to the list provided in Enclosure 3 to this letter. The Commission has provided a significant amount of time to accomplish this review as the agency's FY 2016 budget has been cut by nearly 50% compared to FY 2015. The executive director has more immediate issues to contend with, such as ensuring tasks can even be assigned after leaving 5 full time and one ½ time position vacant reducing the staff from 14 people to eight people, before considering automating specific workload tasks.

The prioritization of work provided in Appendix 3 will affect the actions directed toward Recommendations 1 and 2 and may be detrimental to the rapid completion of audits and the timely assessment of fines. This is based on comments from legislators in calendar year 2015 and input from staff and filers.

Finally, attention is invited to the organizational chart provided below in comparison to the organizational chart contained in the audit report.

Figure 3
APOC Organizational Chart as of July 1, 2015



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Clearly, the decrease in staff size and increased workload on each staff member will make dealing with tasks difficult. The loss of senior positions such as an assistant director, an associate attorney, and a program manager will make supervision of current tasks in a changing environment challenging. Making recommendations to automate those tasks with fewer staff before understanding the new work place dynamic could lead to a decrease in efficiencies and the inability to meet timelines.

From a broader perspective there are other points that need to be considered but are not noted in the audit or the management letter.

First, the audit fails to address the central question of whether the agency is being given adequate resources for the duties with which it must comply. Lack of adequate staff has been an ongoing concern for this agency.

This will likely become an even greater concern in the immediate future. As this response is written, the proposed FY 2016 budget for the agency is 1,002,900, as opposed to the 1.5 million from FY 2015. This proposed budget is however, not the full picture. Part of that budget is $120,000 in receipt authority which the agency does not have authority to receive. In other words the effective budget for APOC n FY 2016 is $882,900, a crippling 43% cut. The FY 14 actual personnel expenditure was $1,246,200; the FY 15 management plan personnel line is $1,285,800; the currently proposed personnel budget for FY 16 is approximately $818,500; but with $120,000 unavailable to the agency the personnel budget for FY 16 is more realistically $698,500—54% of the previous year's personnel budget.

In a recent committee hearing, one State Senator complained that the agency did not work closely enough with filers. This, despite significant efforts the agency has been making to be less punitive and more assistive. APOC has been attempting to hold more training sessions, answer more questions over the phone, provide more courtesy reminders, provide more informal warnings to filers, and otherwise help filers to comply initially with the law instead of punishing them after the fact. However, these assistive duties are neither statutorily mandated nor addressed in the management letter. If APOC is to be held to every statutory requirement without exception, even in the very busy times around elections and filing deadlines, these non-mandatory outreach and assistance efforts will necessarily suffer. In fact if currently proposed budget is enacted, it will be all but impossible to provide training.

Second, the audit covers a long period going back to 2009. This could be useful in assessing the current operations of the agency. Significant changes have occurred during that timeframe; in 2011 the agency hired a new Executive Director, and in 2011-13 transitioned to electronic filing (as a result of a legislative mandate to do so). Data is not examined by year to see if any improvements have been made or if the agency is regressing. Information from the entire period reviewed is lumped together with the early years of the audit period skewing the numbers so that many of the findings are not presented in any useful context. The samples taken and expounded upon are small. For instance the sample of civil penalty assessments was 88; yet there were 1,498 CPAs from 2010 to 2014. The sample size of 5.8% does not provide a good base for a judgement. There has been little critical analysis reported in the audit report. How many of those reports noted as missing an appeal affidavit required an appeal affidavit if the filer paid the penalty without appeal?

As just one example, Appendix A, Table 2 of the audit report showing commission final orders, shows significantly more cases in which final orders are significantly delayed in the 2009-11 years than in 2012 through 2014. This shows a trend of faster completion that is not reported in the letter and has implications for staff turnover. The table also does not reflect those complaints where there were stipulations agreed to by all parties to waive deadlines. Moreover, the audit report provides little information regarding any trend analysis for the various areas covered.

Third, while not a question asked of the auditors, the timelines imposed on staff are unrealistic. APOC does not, never has, and will never be able to, meet all of the statutory requirements which the Legislature has imposed upon it. For example, AS 15.13.020(j) requires the agency to maintain offices in or near each State Senate district. In reality there are only two offices, and both of them are being significantly downsized because of the budget. Requirements which the agency usually complies with, but is not always able to comply strictly with, include issuing advisory opinions within seven days (AS 15.13.374), providing staff reports concerning complaints within 30 days (AS 15.13.380(e)), and resolving requests for expedited consideration within two days (AS 15.13.380(c)).

The problem in complying with all of these deadlines is that workflow is not predictable within the agency because it is reactionary, based on external factors. State and local elections significantly influence workload, and disputes can be unpredictable even without reference to upcoming elections. For example, any case involving the proposed Pebble Mine brings with it significant pleadings and litigation from advocates on both sides of the issue. At times it is simply necessary to deal with the immediate issues, and pick the statutory deadlines back up as soon as the emergencies are resolved. The Commission believes working toward meeting statutory deadlines and ignoring other issues would take the agency in exactly the opposite direction from which it should be moving.

There are some useful suggestions in the management letter which the agency will act upon. The audit team has done the job of auditors, by responding to the questions asked of them and checking specific boxes. What the audit did not do was to identify the basic underlying problem with APOC, because the answer is well known. The agency is understaffed and underfunded to meet the requirements placed upon it. If APOC conducted its business in such a dispassionate, rigid manner, it would decrease public transparency and accountability, impede the participation of the citizens of Alaska in the public process, and have a chilling effect on those wishing to serve the State of Alaska.

Thank you for the opportunity to respond.

Sincerely,

Kenneth Kirk, Chair
Alaska Public Offices Commission

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Appendix 1

1. Develop Audit procedures

Auditing procedures are a three part matter; first how to pick a report to audit, then the audit itself, and then what to do once a particular report is selected. The purpose of auditing is to provide the public with accurate information.

Staff does not view auditing as a measure to create more penalties; rather, it is an activity to help reduce the number of complaints and penalties by facilitating consistent and accurate disclosure to the public. Doing them as quickly as possible furthers this objective.

No single method will work for all various areas (lobbying, candidates, groups, or POFD). Each area has differing methods on how to conduct an audit and differing issues to deal with during an audit. For instance, candidate reports are reviewed to ensure that cash contributions do not exceed $100, or that the aggregate contribution from an individual to a candidate does not exceed $500 in a year (AS 15.13.070). Lobbying compares the report of the employer of a lobbyist to the report of the lobbyist to ensure that costs and expenditures are congruent (AS 24.45.051). Reviewing a Public Official Financial Disclosure (POFD) filing requires a review of business interests, gifts, loans, and contracts (AS 39.50.030). Given the level of staffing, it is improbable that 100% auditing can be achieved for any area.

A. How to pick a report for auditing:

POFD—can use a First In First Out auditing (FIFO) model. Filings start to come in January, and with continued reminders, through the annual deadline on March 15 when most of the reports are filed. Trying to keep up with them on a daily basis means a good deal of time is spent the first quarter of the year doing just audits. With the budget cuts, staff will not be able to meet the 100% criteria as time must be devoted to developing CPA documents, dealing with commission meetings, potential complaints and advisory opinions given the competing statutory issues have resulted in only 78% of the required audits during the two months following the filing deadline.

Lobbying—uses a system of reviewing all year end reports and uses a random number generator for monthly and quarterly report reviews. This is the system currently employed by lobbying and will continue in this manner.

Candidates—Random number generator – In recent years, staff has been able to complete audits of all municipal candidate reports (Anchorage and statewide municipal). However, given staffing levels, the number of candidates, and number of reports involved, this has not been possible for state filers.

In 2014 staff initially placed a higher priority on gubernatorial candidates because generally they have the most financial activity and are typically the subject of most public scrutiny. However, these reports take a significant amount of time as they are generally the largest and most complex (several reports were in excess of 125 pages, with nearly 2000 transactions, which grow exponentially during the cycle). Staff spent over 80 hours auditing each "year start" report filed by the 13 candidates for Governor and Lt. Governor.[1] This had mixed results. The upside was that it started each of those campaigns out on the right foot, provided guidance for future filings, and encouraged communication between the campaigns and staff. The down side was that given the staff time involved, many other reports were not audited.[2]

In an effort to find a balance and review reports from as broad a spectrum as possible, staff will identify a percentage of reports to audit and using a random number generator to identify reports to be audited for each reporting cycle.[3] To maximize the total number of candidates chosen for audit over an election cycle, names chosen for audit during one reporting period would then be culled from future reporting periods during that election cycle.

Groups—Random number generator-- Groups audited 100% of 2013 CD reports and is on track to audit 100% of 2014 CD reports (897 were filed and there are 92 2014 "year end" reports yet to be audited). This has come at the cost of not auditing independent expenditure reports of which there were 552 filed in 2014. This approach was taken because most independent expenditure reports are filed by groups that also report all of their income and expenditures on CD reports (325 of the independent expenditure reports were filed by registered groups and 227 were filed by individuals and entities that are not required to file CD reports). Another cost of this approach is that none of the 2015 Anchorage Municipal reports have been audited and will not be audited until the 2014 "year end" reports are complete.

Based on the above, the Group area will conduct a 100% review of Statewide ballot proposition group and major political party reports and then a random number generator to review other reports.[4] The first reports reviewed are generally the largest and most complex and often the most reviewed by the public. Use of a random number generator to identify a percentage of the remaining reports to audit may help insure that audits are performed in a timelier fashion, and may free up time to audit independent expenditure reports filed by individuals and entities who do not also file CD reports.

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1 This includes generating an audit results letter, time spent answering questions related to the audit, following up with and/or assisting with needed corrections, and reviewing submitted corrections to ensure compliance.

2 In 2014, 729 state candidate reports were filed with another 163 from municipal candidates (does not include amended reports).

3 For example:
-2014 State – 30D Primary Reports = 142
-20% of 142 = approximately 28 reports
-142/28 = 5
-Random number generated = 9
-Start at 9, selecting every 5th report for a total of 28 reports

4 Reports will be issued an identification number and then the random number generator will generate random numbers and those reports that have their numbers generated will be reviewed.

The Group area is also responsible for Statement of Contributions reports. There were 565 of them filed in 2014. Although the Group area has been auditing all Statement of Contribution reports (for the most part this involves little more than checking that the receiving group properly reported the contribution) this crosscheck has proved unproductive in the sense that we have found no inaccurate reporting through the cross check. Much more productive has been auditing the CD reports of the receiving groups for contributions of $500 or more and then cross checking to see if a corresponding Statement of Contributions report was filed by the contributor. Accordingly, the Group area will cease auditing Statement of Contribution reports.

It is worth noting that a report may lead the auditor back into earlier reports as an error on a 7 day report may lead the auditor back to a 30 day report submitted earlier in the election cycle since errors are often magnified from report to report. This would be a particular issue with groups and candidates.

Issues:

A. Random Number Generator Only

1. Using only a random number generator method will mean that a number of higher profile reports like ballot proposition groups, major parties and gubernatorial candidates may not be reviewed;

2. Audits of close out candidate reports to ensure timely disbursements of leftover funds and transfers within allowable limits would be done on same percentage basis and many would not be reviewed. This could cause issues to carry forward funds from one election cycle to the next;

3. In recent years, staff has been able to audit 100% of municipal candidate reports every year. Continuing this effort will decrease the percentage of state candidate reports audited during even year state election cycles.

B. Continuing to strive for 100% auditing

1. Given staffing levels, it is improbable that staff could achieve 100% auditing in odd numbered years; in even numbered years it is an even more unrealistic expectation. Currently some areas are still working on 2014 election reports;

2. A great many campaign disclosure audits will occur post-election.

3. Dependent on whether the agency goal is 100% review as required by statute, or to provide better and more transparent information to the public leads into how or whether to conduct audit follow up which takes considerable time. In some cases multiple reviews are conducted and multiple letters need to be generated;

i) Generate audit letter language that puts filer on notice that failure to correct leaves them open to complaints/civil penalties; staff would pursue substantial issues as necessary;
ii) Continue to follow up until corrections are made;
iii) When follow up is initiated by the filer who wants/needs a staff member to walk them through the process step by step, this too takes considerable time, does staff continue to provide this level of service or expect filers to do things by themselves;

4. An activity that takes substantial time away from auditing is responding to phone calls from people regarding reports. This may be more properly addressed under prioritizing work, but its impact on auditing cannot be underestimated.

B. Conducting the Audit

POFD

Basic check: Upon initial receipt of the POFD.

1. Make sure there are 7 pages- (1 through 7 numbered). Electronic POFDs always produce the pages needed.

2. Make sure it is signed and dated. Submitted electronic POFDs are signed when submitted.

3. Make sure there is contact information, including a mailing address, email address, and/or a phone number.

4. Make sure the year is correct-the year of submission should be the year of report.

5. Make sure it is in the correct format-only municipal officers in municipalities of less than 15,000 can file paper. Paper POFDs from other filers are unacceptable.

6. Make sure it is legible.

If any of these 6 checks are missing, send the POFD back to the clerk or filer and ask them to complete or correct it.

Standard Audit: Done routinely.

(POFD disclosure requirements are for more than $1,000, except gifts which are more than $250)

1. Redo a basic check.

2. Make sure Branch, Position, Department and Report Type are complete.

3. Check each section and make sure there is information filled in or boxes are checked NONE. Electronic POFD'S automatically require one or the other. If there is nothing on the form, or it is all checked NONE, request confirmation of completeness via email or phone from the filer, because having no income to report for an entire year is highly unusual.

4. If a spouse/domestic partner is listed make sure their name and income is disclosed (same as required for the filer). There may not be income of any kind from the spouse/partner, but it is unusual. *Domestic Partner is not required for Muni filers. *Leg filers must include non-dependent children living with them.

5. If a dependent is listed make sure a name is provided and their income information is disclosed (same as is required for the filer). It is not unusual for a dependent not to have any income.

6. Make sure Salaried Employment has dates, name of business, work performed and income amount. There needs to be a comprehensive description. If the only thing listed is "Fishing," it is not a reasonable description. However, if the filer lists Wasilla as his business address and describes his business as "Wasilla's bait and tackle shop," this is reasonable.

7. Self-Employment must include the same information as salaried, and also must show clients that paid more than $1,000 during the report year. If the business is "Jane's Arts and Craft's" and the income amount is $15,000, there are likely no clients. However, if the business is "Joe's Law Firm" and the income amount is $200,000, there should probably be clients listed. Filers may submit exemption requests; check to make sure they do not have exemption request on file.

8. If rental income is disclosed, make sure a renter is listed by name and amount paid to the filer. Look for inconsistencies with rental income. For example, if the filer lists ownership of five apartment complexes under the real estate section of the POFD, but no renters under rental income or self-employment, this is probably a mistake. Similarly, if a filer lists a renter, but no real estate owned, it may be a mistake.

9. Dividends, Interests, and Other Business Investments should have a description and amount. Listing "Dividends" and $8,000 is not acceptable. Dividends should be described, such as PFD, or NANA Corp, and listed separately. Unless it was less than $1,000, make sure the PFD is listed.

10. Other Income should have a description and amount. "Income" and $20,000 is not descriptive enough. "Social Security" and $20,000 is reasonable.

11. Gifts should not be reported by Legislators, they report gifts to Leg Ethics. Other filers should include a source, description, and value. "Democrats," "gift" and $2,000, is not a

sufficient disclosure. "Iowa Democratic Association," "Round trip tickets" and $2,000 is acceptable.

12. Business Interests disclosed should include name, address and description of the business. There also needs to be a position/type of interest. Stocks either need to be listed separately if managed by the filer and/or family member, or the name of the bank/trust/firm…etc., if not managed by the filer and/or family member.

13. Real Property Interests should include owner(s), a description and address. Only two properties can be described by zip code only (one residential, one recreational).

14. Trusts, Retirements Accounts or Other Beneficial Interests must include name of the interest holder, who manages it, percent owned and the identity of the fund or company. It should be comprehensive. "100" percent Owned by "filer," interest held by "Filer," managed by "filer," and "Personal Fund," is not adequate. "100" percent Owned by "filer," Interest holder "Joe Smith," Managed by "Wells Fargo bank," and "Trust Fund" is sufficient. Stocks must be listed separately only if the filer/family member is the manager. If someone else manages the stocks, they may be combined and listed as "Various Stocks" or something similar. The manager must be disclosed.

15. Loans and Debts should include the debtor, debt type, and name. "Spouse," "Lender" and "Chase Manhattan Bank," OR "John Smith," is sufficient. Legislators must include the original loan amount (if there is a substantial interest (AS 24.60.200(3)), balance owed, interest rate, number of years in term, and whether or not it was a written agreement. If they put N/A, this is unacceptable. Everything must show a value.

16. Gov't Contract/Leases and Natural Resource Leases, if applicable need to be filled in entirely. If the lease number is missing, make sure to annotate it and request it from the filer.

17. Close Economic Associations must be reported by State Public Officials and Legislative Branch Filers. Municipal/Local Officials and members of State Boards and Commissions are exempt. All the sections must be filled in with names and a reasonable description. Listing "John B." as the person with whom the association exists and "business," is not adequate. "Senator John Bravo" and "partner in Juneau real estate venture," is adequate.

18. Certifications. If electronic, the submission serves as a signature and date. If paper, there must be a signature, name of the filer, and a date. It is preferable to have the place where it was signed as well.

IN DEPTH AUDITING: Done when circumstances permit.

1. Compare the filers' previous POFD with the current one. If the previous one is vastly different from the recent one, inquire. If it is because they forgot to put certain income on the

previous ones, recommend they amend the inaccuracies. If you discover they need to amend the current one, send them an email to correct it.

2. Check filer history and see if they had past penalties or complaints. If they do, compare the penalties to what they have disclosed on the current POFD, it may help them avoid the same mistakes.

3. Pay attention to the news. Especially for state filers, it is possible to catch things that were not disclosed. For example, you may hear an announcement that Commissioner Name Madeup and his wife attended a banquet, and then realize he never disclosed a spouse on his POFD. Or you may hear that Joe Nobody's medical clinic is under investigation for fraud, and realize Joe Nobody is a board member and he never disclosed his clinic.

Finishing your Audit: What to do when information doesn't make sense or something is missing.

Notify the filer. If it something that is uncertain, make a phone call. For example, if there is a spouse listed, but the last name is different from the filers, you may want to make sure they did not mean to select domestic partner. They may just have a different name and there is no correction to be made.

For corrections you are confident need to be made, such as not listing an income amount for a job, send an email that explains the discrepancy, list the statute and/or regulation and ask the filer to fix it.

For omissions, such as knowing a filer did not disclose their self-employment, just send the facts and avoid making accusations. "Mr. Nobody: Anchorage Daily News reported that you were part-owner of a law firm during the 2012 year. You did not disclose this law firm on your 2013 annual POFD. The disclosure of your law firm is required according to statute. Please make the correction and contact or our offices if you need assistance."

Candidates

1. Verify correct Report Type / Reporting Period
2. Verify Beginning Cash on Hand with Closing Cash on Hand from previous report
3. Verify Previous Income/Expense with previous report

CONTRIBUTIONS

4. Review contribution dates for correct reporting period
5. Review payment method;
- "Check" - verify there is a corresponding #
- "Non-Monetary" – verify there is a description; note any that appear to be from anything other than individual or group
- "Cash" – verify it is not more than $100
6. Review contributor names/addresses to make sure they are complete, note any that appear to be from anything other than individual or group
7. Verify Occ/Emp information included over $50
8. Review amounts for limits ($500 individual; $1000 groups)
9. Review for any returns, verify they are reported as negative contributions/expenses

EXPENDITURES

10. Review expense dates for correct reporting period
11. Review payment method;
- "Check" - verify there is a corresponding #
- "Non-Monetary" – verify there is a description
12. Review vendor names/addresses to make sure they are complete
13. Check purpose for accurate description [check specific expenses for consulting/ management/advertising for complete detail [2 AAC50.321(d)] of expenditure
14. Check any reimbursements are to registered Treasurer/Deputy Treasurers
15. Review for any refunds, verify they are reported as negative expenses

DEBTS

16. Review date incurred, if outside reporting period, check previous report for consistency (payments made vs. remaining balance)
17. Review vendor names/addresses to make sure they are complete
18. Review purpose for accurate description
19. Compare original amount/balance; if different check expenses to verify payment made corresponds with balance difference

Groups

Check each item on the list below for each report selected for review.

1. **Cover Page**
a. **Name**
b. **Address**
c. **Period Covered**
d. **Report Type**
2. **Campaign Summary**
a. **Beginning Cash On Hand**
b. **Total Income matches Income**
c. **Total Expenses matches Expenses**
d. **Total Debts matches Debts**
e. **Closing Cash On Hand**
f. **Entire Campaign Amounts Completed**
3. **Campaign Income**
a. **Contribution Dates**
b. **Check #s**
c. **Contributor Names/Addresses**
d. **Occupation/Employer Info**
e. **Amounts**
4. **Campaign Expenses**
a. **Expenditure Dates**
b. **Check #s**
c. **Vendor Names/Addresses**
d. **Purpose of Expenditure**
e. **Amounts**
5. **Campaign Debts**
a. **Debt Dates**
b. **Names/Addresses**
c. **Purpose/Description**
6. **General**
a. **Cash Limits?**
b. **IE 15-6 or SC 15-5?**
c. **24 Hour Report Needed?**
7. **Follow Up**

8. **Results Email Sent/Called (Date)**
9. **Response Required (Y/N)**
10. **Copy to File**
11. **Corrected?**
12. **Make any required notes**

Lobbying

The general APOC audit procedures for all laws form the overarching policy for audits performed by APOC staff and should be reviewed prior to staff performing any auditing activity. To ensure that lobbyists and employers are following Alaska's lobbying law (AS 24.45) and administrative regulations (2 AAC 50), the following specific procedures should be used to guide auditing of lobbyist and employer of lobbyist filings.

The following items should be audited as indicated:

I. **Registration Forms:** Lobbying start date; lobbying interest statement; amount of compensation; reimbursement of expenses
II. **Lobbyist Report Form:** Gifts and exchanges; notice of termination; Schedule A/Reimbursable and Non-reimbursable expenditures; Schedule A-1/Food and beverages > $15
III. **Employer of Lobbyist Report Form:** Lobbyist and Employer compensation totals (Schedule A); Schedule B

Procedures:

I. Registration Forms

A. Start Dates for Lobbying:

1. **An audit of at least 10 % of the total number of lobbyist registrations will be made three times a year** to coincide with the busiest season for new lobbyist registrations. Samples will be selected from the Insight lobbyist registration summary report, which should be run and saved as a pdf file during the last week of the months of January, February and March.
2. Randomly select 10% of the registrations for auditing. This auditing universe is not individual lobbyists but rather registration forms. Determine the selection process to ensure that 10% of the forms are audited (i.e. if there were 400 lobbyist registrations on the January report, 40 registration forms would be audited, selection would be every 10th form on the list). When performing the registration audits in February and March of each year, ensure that none of the registrations audited in prior months are selected.
3. After selection of individual registration forms has been made, go into the Insight admin manager application and open the submitted registration form.

4. Compare the lobbying start with the submittal date of the registration to ensure the lobbyist was appropriately registered prior to lobbying.
5. If a registration form was not submitted prior to the lobbying start date, a civil penalty assessment letter should be mailed to the lobbyist indicating the fine owed for late submission of the registration.

B. Lobbying Interests:

1. Follow steps 1-3 in IA: procedures for auditing lobbying start dates on registration forms. **The same sample will be used to audit the lobbying interests section of the registration form, also performed three times per year.**
2. Once the selection of individual registration forms has been made, go into the Insight admin manager application and open the submitted registration form.
3. Review the lobbying interests section of the registration to ensure it is sufficiently descriptive of the subject matter being lobbied. A subject matter described as "matters of interest to the employer" or a similarly general or vague description is not sufficient.
4. If the lobbying interest statement is too vague, notify the lobbyist and employer listed on the registration form that the section should have more detail and they should amend the registration.

C. Amount of Compensation: **Annual Year-End Audit**

1. Unlike the selection process in A and B above, the sample for auditing compensation amounts will be randomly selected lobbyists rather than registration forms. If there is an error in compensation amounts on a single lobbyist schedule A for the year, it is likely the same lobbyist repeated the error in other schedule A's, so auditing all registration forms for selected lobbyists when reviewing this data element is justified.
2. Samples will be selected from the Insight lobbyist directory report. The report should be generated in approximately mid-late February each year, since the due date for year-end reports is January 31.
3. From the report, randomly select 10% of lobbyists registered for the year being audited. Go into the Insight admin manager application and review every submitted registration form for the lobbyists selected in the audit sample.
4. Compare the compensation amount listed in each of the selected lobbyists' registration forms with the annual total reported compensation for each employer listed by the lobbyist being audited. These amounts should match.
5. If there are any discrepancies, contact the lobbyist to determine the reason. Possibilities include data entry error, reporting on a cash versus accrual method, changes in the lobbying compensation amount during the filing year without the lobbyist having done a registration amendment or other.
6. Based on the reason for the discrepancy, instruct the filer regarding the appropriate resolution to correct the error.
7. Determine whether a civil penalty assessment is appropriate due to lack of filing a timely registration amendment, per AS 24.45.041(d).

D. Reimbursement of Expenses:

1. Use the same randomly selected sample of lobbyists identified in IC above (see steps 1-3) to audit this data element. **This audit component will also be completed once a year in mid-late February, in conjunction with auditing annual compensation amounts.**
1. As in C 3 above, review each of the selected lobbyists' registration forms.
2. Determine whether the lobbyist's registration form contains a checkmark in the box for reimbursement of expenses.
3. Check the Insight lobbyist summary report to see if there have been any reimbursable expenses claimed.
4. If there are reimbursable expenses claimed on the lobbyist report and the reimbursement for expenses box is not checked on the registration form, the lobbyist will need to amend the lobbyist registration.

II. Lobbyist Report Form

A. Gifts and Exchanges

1. **An audit of at least 10% of the total number of filed lobbyist report forms per year will be completed.** The audit sample will be selected from the Insight lobbyist summary report. To ensure sampling is spread out throughout the filing year, selections of lobbyist reports should be made twice during the 1st quarter and once during each of the 2nd, 3rd and 4th quarters. Make sure that the random sample selected during each of the five audit periods add up to the total annual target of auditing 10% of all filed lobbyist reports in a year. Note that in normal years where there are no special sessions, lobbyists file 7 reports per year. Based on approximately 180 lobbyists per year, this equates to 1,260 reports filed annually.

2. Once the selection of lobbyist report forms has been made, go into the Insight admin manager application and open the submitted report form. For any lobbyist report that checked yes on the gift disclosure section, cross check the POFD/LFD filing of the public official if/as relevant.

3. Gift disclosures on lobbyist report forms to legislators should also be provided to the Select Committee on Legislative Ethics.

B. Notice of Termination:

1. Use the same randomly selected sample of lobbyist report forms from IIA above. **Follow the same sampling schedule of 5 times per year as noted in the gifts and exchange audit.**

2. Review the notice of termination section of the submitted lobbyist report form in Insight. For any reports that have a termination date in a particular schedule A, note the date.
3. Open the corresponding employer report and go to the termination date section of the report.
4. Any termination date should be listed as the same by both the lobbyist and employer. For any discrepancy or missing termination in one of the reports, contact the filer and have him amend the report to reflect the accurate date of termination.

C. Schedule A/ Reimbursable and Non-reimbursable Expenditures:

1. **Use the same randomly selected sample of lobbyist reports used in IIA and B above and the same sampling schedule of 5 times per year.**
2. Review each of the schedule A's for the selected lobbyist report, looking at both reimbursable and non-reimbursable expenditures within each of the categories.
3. Particularly during a legislative session, the auditor should expect to see some level of disclosure of expenses for travel, food and beverages and living accommodations. The auditor should be reviewing for compliance with AO 08-03-LOB, which notes that according to AS 24.45.051(a)(2), expenses in these three categories are disclosable even if they are not reimbursed by an employer.
4. Staff should use the audit of schedule A reports, expenditure section to identify trends, update filers on any reporting problems that are noted and to improve the lobbying manual and or issue new FAQ's if/as necessary.

D. Schedule A-1: Food and Beverage > $15, per AS 24.45051(b)

1. Review Insight lobbyist summary report and identify all lobbyist reports that containing A-1 expenditures. Given the infrequency of this particular schedule, 100% of the schedule A-1 forms that are not zero reports will be audited each year.
2. Open the corresponding lobbyist report in Insight and review the detail of each Schedule A-1 report to ensure the section is accurately completed.
3. If any of the A-1 expenses are listed as reimbursed by a client, check the corresponding employer of lobbyist report to ensure the expense is listed as reimbursed on the Schedule A to that particular lobbyist.

III. Employer of lobbyist report form

A. Lobbyist and Employer Compensation Totals (Schedule A):

1. **An audit of at least 10% of the total number of employer reports will be completed per year.** Random samples will be drawn twice a year, after the filing of the 2nd quarter report and the 4th quarter/year end summary report. Staff will ensure that the random samples selected during each of the two periods add up to the total annual target of auditing 10% of filed employer reports per year.

2. Open the selected employer of lobbyist report, schedule A and compare the compensation totals to the lobbyist report, Schedule A compensation totals for each of the two audit periods described above (mid-year and year-end).
3. If totals do not match, staff will contact individual filers to determine the cause of the error. Instruct the filer(s) regarding appropriate resolution of the error, including if/as necessary filing a report amendment.

B. Employer Report/Schedule B:
1. When the employer mid-year/Year-to-Date Summary is generated, 25% of employer Schedule B reports will be audited.
2. Reports will be reviewed to determine if expenses reported are required and accurate.
3. Careful attention will be paid to expenses that perhaps should be reported as gifts, if the item is > $100 and the recipient is a public official.
4. Staff will also ensure compliance with AO 08-06-LOB by reviewing the level of detail reported. **For the most part, large companies with continued 0 reports for all Schedule B's year round would be an anomaly rather than the norm.**
5. Identify trends if any for Schedule B reporting. Ensure employers are reporting uniformly. Send clarifying emails to all filers if/as necessary to educate and improve filer compliance. Update lobbying manual if/as necessary.

C. Gift Disclosure:
1. Using the same random selection of employer reports found in IIIA above, audit 10% of filed employer reports per year to ensure compliance with statute.
2. For any employer report that checked disclosed gifts in this section of the report, cross-check the POFD/LFD filing of the public official if/as relevant.
3. Gift disclosures on employer of lobbyist report forms to legislators should also be provided to the Select Committee on Legislative Ethics.
4. As mentioned in III B 3, ensure that gift disclosure are not more appropriately listed as a schedule B employer expense.

C. After the Audit is completed:

1. Document that a review has been completed;
2. If there are no issues to further document move to the next filing to review;
3. If there are minor issues to document and notify the filer of do so and document that you have notified the filer and set a date for any amendments to be made. Calendar the amendment due date;
4. If there are major issues to deal with list those issues and continue reviewing the next report. Come back to major issues later in the week at a set time of your choosing and do all major contacts at one sitting to utilize your time better;
5. Check your amendment calendar weekly to ensure amendments are being competed.

Appendix 2

2 AAC 50.855. Penalty assessment procedure

(a) If, no later than 30 days after the due date, a person responsible for filing a registration, statement, or report required under AS 15.13, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50 that is late or incomplete corrects the deficiency, the commission staff shall assess a penalty. The amount of the penalty must be determined by multiplying the applicable daily maximum penalty set out in AS 15.13.390 , AS 24.45.141 , AS 24.60.240 , or AS 39.50.135 by the number of days the registration, statement, or report was late or incomplete. The number of late or incomplete days includes each day following the due date of the registration, statement, or report through the day a registration, statement, or report that substantially complies with the filing requirement is mailed or delivered to the commission.

(1) For late filings required under AS 39.50 and AS 24.60.200 – 24.60.260, the commission staff shall document the violation and

(A) not assess a penalty under (a) of this section if

(i) the late filing is an initial report due from a first-time filer and a first-time member of a board or commission who was not notified of the required filing by the board or commission staff; or

(ii) the late filing is from a member of the active duty military sent on deployment or a member of the national guard or military reserves called to active duty or deployed during the period from 60 days prior to the due date to 60 days after the due date;

(B) reduce the maximum penalty by 75% under AS 39.50.135 or AS 24.60.240 if the filer is a first-time filer and the late filing is a candidate disclosure statement; however, the filer may submit an affidavit stating facts in mitigation, which the staff may apply to further reduce the penalty;

(C) reduce the maximum penalty by 50% if

(i) the filer is not a first-time filer; or

(ii) the late filing is a final statement due after leaving office;

(D) reduce the maximum penalty by 25% for all other late filings under (a)(1) of this section.

(2) For late filings required under AS 15.13, the commission staff shall

(A) not assess the penalty assessed under (a) of this section if

(i) the filer is a first-time filer;

(ii) there were multiple or multi-day technical issues with the electronic filing system including MyAlaska access, or a day-long problem on the filing due date, that prevented the filer from filing in a timely fashion;

(iii) (i)the late filing is from a member of the active duty military sent on deployment or a member of the national guard or military reserves called to active duty or deployed during the period from 60 days prior to the due date to 60 days after the due date; but the violation will be documented;

(iv) for a statement of contributions (form 15-5), the reporting error was the filer's first error, and the error was reported by the recipient of the contribution within 30 days after the due date; or

(v) for an independent expenditure report (form 15-6), the reporting error was the filer's first error, and the filing is not a 15-6 report required to be filed within 24 hours;

(B) reduce the maximum penalty by 75% if

(i) it is the filer's first election cycle and it is the filer's first late-filed report; or

(ii) the filer self-reports the missing information to staff and discloses the missing information to the public within seven days. The penalty will be tolled as of the date the filer self-reported the error; the filer must notify staff of the error or late filing; filing the late or missing information without notifying staff does not constitute self-reporting;

(C) reduce the maximum penalty by 50% if

(i) it is the filer's first election cycle; or

(ii) the amount missing or erroneously reported on a filing is under $100;

(3) For incomplete filings of all types, the commission staff shall:

(A) not assess a penalty if the missing or incomplete information was readily available to the public through another forum;

(B) reduce the maximum penalty by 50% if the missing or incomplete information was not readily available to the public through another forum, but the late or incomplete report is the first alleged violation;

(C) assess the maximum penalty for all other incomplete reports not addressed under (a)(1) or (a)(2) of this section.

(b) Notwithstanding (a) of this section, the staff shall

(1) not assess a penalty if a deficiency is less than $100 and is promptly corrected

(A) without receiving a notice from the staff; or

(B) within the time allowed by any notice of deficiency from the staff; or

(2) assess a penalty of not more than $500 per day for reports required by AS 15.13.110(a)(2) or (b) for each day before the relevant election and $50 per day after the relevant election;

~~(A) the amount of the penalty is less than $100;~~

~~(B) the person against whom the penalty is assessed shows by means of an affidavit that one or more mitigating factors set out in 2 AAC 50.865(b) (1) - (5) would justify reducing the penalty; and~~

~~(C) staff has received no evidence of an aggravating factor under 2 AAC 50.865(d) .~~

(3)-The amount of the penalty under (a) of this section is limited to no more than five (5) times the amount of the expenditure or contribution erroneously reported or unreported.

(c) When the staff assesses a penalty in compliance with (a) of this section, the staff shall, no later than 14 working days after receiving the materials that correct the deficiency, mail or deliver a written penalty assessment to the person responsible for filing the registration, statement, or report. The written penalty assessment must show the calculation of the penalty, and must state that the person responsible may appeal the penalty assessment as provided in 2 AAC 50.831 and 2 AAC 50.860.

(d) If the commission does not receive a required registration, statement, or report, or material information needed to complete a registration, statement, or report, or receives it later than 30 days after the due date, the staff shall assess a penalty as set out in this section. The written penalty assessment must also inform the person responsible for the registration, statement, or report that the amount of the penalty will continue to increase each day until the registration, statement, or report, and all material information required in the registration, statement, or report, is mailed or delivered to the commission. The staff shall also inform the person responsible for the registration, statement, or report that the staff will initiate action to enforce the remedies described in the applicable provisions of 2 AAC 50.850.

History: Eff. 12/22/2011, Register 200; am 1/16/2015, Register 213

Authority: AS 15.13.030 AS 15.13.390 AS 24.45.021 AS 24.45.141 AS 24.60.220 AS 24.60.240 AS 24.60.260 AS 39.50.050 AS 39.50.060 AS 39.50.070 AS 39.50.080 AS 39.50.135

2 AAC 50.860. Procedure for disputing penalty

(a) A person who receives a penalty assessment under 2 AAC 50.855 may appeal the assessment to the commission by submitting a written statement

(1) explaining any reason the person disputes any fact relevant to the assessment;

(2) including an affidavit that states facts to support any mitigating factor listed in 2 AAC 50.865 that is applicable to that person; and

(3) showing that any aggravating factor listed in 2 AAC 50.865(d) does not apply to that person.

(b) If, after applying the criteria in 2 AAC 50.855 or the mitigation criteria in 2 AAC 50.865, the assessed penalty amounts to $100 or less and the filer pays the assessed penalty within 30 days of being notified of the penalty, the matter will not be heard by the commission.

(~~b~~c) The staff shall review any facts disputed in an appeal, including facts relevant to mitigating and aggravating factors. For any appeal of a penalty less than $250, if the staff has no evidence of an aggravating factor, the staff may determine that facts shown in mitigation under 2 AAC 50.865(b) (1) - (5) justify reducing the penalty by 50 percent, and may calculate the reduced penalty. If the person who appealed the penalty assessment agrees to the revised penalty assessment and pays the amount due no later than 30 days after receiving the revised penalty assessment, the appeal will be considered withdrawn, and the matter resolved. If the person who appealed does not agree to the revised penalty, staff shall provide a written recommendation to the commission and serve a copy on the person who appealed.

(~~c~~d) The commission will hear a penalty assessment appeal in compliance with the procedure for administrative appeals set out in 2 AAC 50.831. After considering the statement of reasons, the affidavit, and other relevant evidence, the commission may

(1) affirm the civil penalty if the commission determines that the penalty is computed in compliance with 2 AAC 50.855 and justified either because

(A) no mitigating factors have been shown; or

(B) aggravating factors under 2 AAC 50.865(d) require imposition of the maximum penalties allowed under the relevant statutes;

(2) reduce or waive the civil penalty if the commission finds that mitigating factors justify a reduction in the amount of the assessed penalty; or

(3) reject the penalty assessment, or remand to the staff if the commission finds the penalty assessment is based on incomplete or inaccurate facts or application of the law.

(~~d~~e) If the commission determines to impose part or all of a civil penalty assessed under 2 AAC 50.855, the penalty is due no later than 30 days after the date the notice of the commission's decision is mailed or delivered.

(~~e~~f) A decision of the commission to impose any civil penalty may be appealed to the superior court as provided in AS 44.62.560 and Rules 601 - 612 of the Alaska Rules of Appellate Procedure. The commission will stay an obligation to pay the penalty as provided in (d) of this section when the commission decision is appealed to the superior court, but the stay terminates if the superior court affirms the commission's decision or if the appeal is withdrawn. A penalty imposed by the commission must be paid within 30 days after the superior court affirms the commission's decision or if the appeal is withdrawn.

History: Eff. 12/22/2011, Register 200

Authority: AS 15.13.030 AS 24.45.021 AS 24.60.220 AS 39.50.050

2 AAC 50.865. Mitigating factors; aggravating factors

(a) A civil penalty determined under 2 AAC 50.855 may be reduced by up to 50 percent if

(1) a person required to file a statement or other filing

(A) has a good filing history; in this subparagraph, "good filing history" means

(1) no ~~late filings~~ violations in the immediately preceding five years; and

(2) for groups, no more than $500 in non-administrative ~~no~~ activity shown on the group's overdue report;

(B) is an inexperienced filer; in this subparagraph, "inexperienced filer" means a person required to file reports under this chapter if that person has been subject to a registration or reporting requirement for less than 365 days~~;~~, or a person engaged in the person's first election cycle;

(2) a technical error at the commission, including a communication, facsimile machine, computer program, or other equipment problem may have contributed to the late or incomplete filing;

(3) any unreported or mistakenly reported information had a value of $100 or less; or

(4) any unreported or mistakenly reported information had a value higher than $100 but no more than $1,000, and a factor listed in (b) of this section also applies.

(b) A civil penalty set out in 2 AAC 50.855 may be reduced by a percentage greater than 50 percent, or waived entirely based on the following factors:

(1) the person required to file, or a family member of the person required to file, experienced a personal emergency, including a call for military service, a natural disaster, a civil disturbance, or an incapacitating illness that prevented the person from filing on or before the due date; this mitigating factor is only available to a natural person;

(2) a significant cause of the late filing is commission staff error, including

(A) furnishing reporting materials too late for filing on or before the due date;

(B) giving incorrect oral or written information to a person required to submit a statement or other filing;

~~(C) failing to deliver required notices when due;~~ or

(~~D~~C) confirmed technical problems with operation of commission equipment, including the electronic filing program;

(3) a municipal clerk or the clerk's designee failed to notify a municipal official, as provided in 2 AAC 50.850(f), that the municipal official's filing is delinquent or incomplete;

(~~4~~3) a late or erroneous report included only administrative costs ~~in a group report~~;

(~~5~~4) a late or incomplete report did not cause significant harm to the public, and aggravating factors under ~~(d)~~ (a)(ii)(B) and (C) of this section do not exist; for purposes of this paragraph, a late or incomplete report did not cause significant harm to the public if

(A) the dollar amount missing from a form or disclosure is $100 or less;

(B) the dollar amount for the information missing from a form or disclosure is more than $100 but no more than $1,000, and the filer self-reported the error; ~~or~~ for purposes of this subparagraph, "self-reported" means that the filer notified staff of the error, filing the late or missing information without notifying staff does not constitute self-reporting.

(C) the missing or incomplete information is readily available to the public through another forum;

(~~6~~5) the civil penalty assessment is significantly out of proportion to the degree of harm to the public for not having the information; for purposes of this subparagraph, absent the presence of aggravating factors in (a)(ii)(B) or (C) of this section, an assessed penalty is significantly out of proportion if it exceeds the value of the transactions that were not reported or were reported late, or, in the case of 7-day or 24-hour reports, exceeds twice the value of the transactions that were not reported or reported late; or

(~~7~~6) a unique circumstance justifies reducing or waiving the penalty.

(c) The commission will not accept any of the following as mitigating factors to reduce the amount of a penalty:

(1) relying on another person or mailroom to mail, postmark, or submit the statement on or before a due date;

(2) forgetting to file;

(3) being a volunteer;

(4) having no change in reportable information from previous filed statements;

(5) relying on the responsible person's staff to remind the person of the filing deadline;

(6) being too busy to file;

(7) experiencing staff turnover, unless the turnover created turmoil serious enough to justify a finding of unique circumstances;

(87) absence caused by travel, unless the travel was unplanned or unavoidable, including travel for a personal emergency, or weather-related travel problems.

(d) A civil penalty determined under 2 AAC 50.855 may be increased up to the maximum amount allowed under the applicable statute if a person required to file a statement or other filing has

(1) failed to substantially comply with financial disclosure requirements by omitting a significant source of income, interest in real property, business interest, loan, trust, or other substantial financial interest; in this paragraph, "substantial financial interest" means an interest with a value greater than $1,000; or

(2) a poor reporting history; indicators of a poor reporting history include any of the following:

(A) more than one late filing in the immediately preceding five years;

(B) evidence suggesting deliberate non-reporting;

(C) failure to cooperate with staff;

(D) a violation of any provision in AS 15.13, AS 39.50, AS 24.45, or AS 24.60.200 – 24.60.260 or related regulations in the preceding five years.

History: Eff. 12/22/2011, Register 200

Authority: AS 15.13.030 AS 15.13.390 AS 24.45.021 AS 24.45.141 AS 24.60.220 AS 24.60.240 AS 39.50.050 AS 39.50.135

Appendix 3

There are three broad categories of work at APOC; daily ongoing tasks, special events, and other work. The order of those broad categories and the tasks within them is:

Daily on-going tasks--

1. **Responding to filer inquiries;**
   There has been discussion of making this the lowest priority; however, both staff and the Commission realize this is an activity from which much can be gained. By being available to respond to filer questions numerous complaints and many penalties can be avoided. Staff has received comments from legislators and other constituencies praising interaction with staff. The draw back to this being such a high priority is that other work is often interrupted and pushed to a lower priority, for instance making the completion of all audits virtually impossible. Currently, direct service to the public has increased as a percentage of time spent each of the past three years; 13% of all staff time in 2013, 15% in 2014, and so far in 2015 16%--some months ran as high as 19% of the agency's total time. The years 2014 and 2015 may be more indicative for the future than earlier years since there are fewer staff members in late 2014 and all of 2015; and there will be even fewer in FY 2016. On average in 2014 staff spent 310 hours each month handling direct inquiries from the public; or about 30 hours per month per staff position.

2. **Audits;**
   Addressed heavily in the Legislative Audit report this activity is a daily task. When there are no active filer inquiries this will be the highest priority if complaints, advisory opinions, or filing referrals to the Attorney General's office are not in the work mix. In 2013 the seven staff who generally audit reports spent on average 90 hours each month completing auditing tasks. Combined with responding to public questions each APOC staff member now has 120 hours per month accounted for when the average state employee works 150 hours per month.

3. **Notices of deficiency;**
   This activity is tied to auditing, but is not auditing. APOC staff has no good data regarding how much time is spent on this activity.

4. **File CPAs;**
   Civil Penalty Assessments (CPA) are often the result of audits, but not always. APOC has only kept records of time spent on this activity beginning in 2015. The record for 2015 indicates that APOC staff spends approximately 90 hours per month on working with civil penalty assessments. Just the daily tasks listed in this section have more than filled the allotted time for staff to complete their work. The special events and other

issues listed below only take away from completing these daily tasks specifically identified by the Legislative Audit report.

Special Events--

5. **Advisory Opinions will take priority with their 7 day deadline (AS 15.13.374);**
   The average advisory opinion takes at least 10 hours to complete. While APOC has seven days to issue a draft opinion the time line is considerably shorter as each opinion is reviewed by multiple layers of management at APOC and then must also be reviewed by the Department of Law (DOL). In reality a draft advisory opinion is generally completed within APOC in three or four days to enable DOL sufficient time to read and reflect upon the matter. For any given area, POFD, candidates, groups, or lobbying, all other work essentially stops to complete an advisory opinion.

6. **Complaints with their 30 day deadline(AS 15.13.380);**
   Complaints come behind advisory opinions as they have a longer time line for completion. An average complaint takes approximately 50 staff hours to complete.

7. **File referrals to the Attorney General's office for unpaid CPAs;**
   The vast majority of civil penalties are completed with the filer paying the fine or appealing the penalty and having the Commission review the staff recommendation. There are times when a penalty is neither paid not appealed, and occasions when a Commission order to pay a penalty is ignored. These are occasional, but time intensive tasks.

Other--

8. **Preparing and conducting training;**
   Something has to come last on the priority list. As time allows, APOC staff will create web based training for filers to use. Lobbyist training is already mandated under AS 24.45.041; training regarding POFD, candidate filing, or group filing is not required by statute. The FY 2016 budget will not provide the resources in time or personnel for the agency to continue to provide training as it has in the past. While education is often the best preventative regarding potential errors, the reduced staff size coupled with less money for travel will require a different approach to training based on the recommendations made by the Legislative Audit.

Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

June 16, 2015

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Department of Administration and the Alaska Public Offices Commission (APOC) responses to this audit report. Nothing contained in the responses causes us to revise or reconsider the report conclusions and recommendations. We emphasize that implementing internal controls (e.g. comprehensive written procedures including supervisory reviews) promotes a fair and impartial operational environment by ensuring APOC activities are conducted in a consistent and objective manner. Additionally, automating workload tasks creates efficiencies to the greatest extent possible within available resources.

In summary, we reaffirm the audit report conclusions and recommendations.

Sincerely,

Kris Curtis, CPA, CISA
Legislative Auditor

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