

# **CITY OF LOS ANGELES**

Audit Report

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

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

*July 1, 2003, through June 30, 2008*



**JOHN CHIANG**  
California State Controller

September 2009



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

September 29, 2009

The Honorable Antonio Villaraigosa  
Mayor of the City of Los Angeles  
200 North Main Street, Suite 303  
Los Angeles, CA 90012

Dear Mayor Villaraigosa:

The State Controller's Office audited the costs claimed by the City of Los Angeles for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2008.

The city claimed \$50,281,773 for the mandated program. Our audit disclosed that \$20,131,194 is allowable and \$30,150,579 is unallowable. The costs are unallowable primarily because the city claimed costs that are ineligible for reimbursement. The State will pay allowable costs claimed that exceed the amount paid, totaling \$5,938,160, contingent upon available appropriations.

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

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

Sincerely,

*Original signed by*

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

JVB/vb

cc: Wendy Greuel, City Controller  
City of Los Angeles  
Laura Filatoff, Commanding Officer  
Fiscal Operations Division  
Los Angeles Police Department  
Todd Jerue, Program Budget Manager  
Corrections and General Government  
Department of Finance  
Carla Castaneda  
Principal Program Budget Analyst  
Department of Finance  
Paula Higashi, Executive Director  
Commission on State Mandates

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# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Los Angeles for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2008.

The city claimed \$50,281,773 for the mandated program. Our audit disclosed that \$20,131,194 is allowable and \$30,150,579 is unallowable. The costs are unallowable primarily because the city claimed costs that are ineligible for reimbursement. The State paid the city \$14,193,034. The State will pay allowable costs claimed that exceed the amount paid, totaling \$5,938,160, contingent upon available appropriations.

## Background

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

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

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

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

In 2005, Statutes 2005, Chapter 72, section 6 (AB 138) added Government Code section 3313. This legislation directed the CSM to “review” the statement of decision, adopted in 1999, on the POBOR test claim to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4<sup>th</sup> 859 and other applicable court decisions. On April 26, 2006, the CSM reviewed its original findings and adopted a statement of decision on reconsideration, which became final on May 1, 2006. The CSM found that the above-mentioned court case supports the CSM’s 1999 statement of decision. The CSM further found that the test claim legislation constitutes a partial reimbursable state-mandated program for all activities previously approved by the CSM except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304.
- The activity of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause.

The CSM adopted amended parameters and guidelines on March 28, 2008. The amended parameters and guidelines allows claimants to be reimbursed for reimbursable activities by claiming costs pursuant to the reasonable reimbursement methodology or by filing an actual cost claim. The amended parameters and guidelines apply to costs incurred and claimed beginning on July 1, 2006.

The reasonable reimbursement methodology allows each eligible claimant to be reimbursed for fiscal year (FY) 2006-07 at the rate of \$37.25 per full-time sworn peace officer employed by the agency and reported to the Department of Justice. The rate per full-time sworn peace officer is adjusted each year by the Implicit Price Deflator referenced in Government Code section 17523.

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

We conducted the audit to determine whether costs claimed represent increased costs resulting from the POBOR Program for the period of July 1, 2003, through June 30, 2008.

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

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

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

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

## **Conclusion**

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

For the audit period, the City of Los Angeles claimed \$50,281,773 for costs of the POBOR Program. Our audit disclosed that \$20,131,194 is allowable and \$30,150,579 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$4,045,094 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$4,045,094, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city. Our audit disclosed that \$3,502,946 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$3,502,946, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the city \$6,863,452. Our audit disclosed that \$3,771,678 is allowable. The State will offset \$3,091,774 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State.

For the FY 2006-07 claim, the State paid the city \$7,329,582. Our audit disclosed that \$3,382,309 is allowable. The State will offset \$3,947,273 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State.

For the FY 2007-08 claim, the State made no payment to the city. Our audit disclosed that \$5,429,167 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$5,429,167, contingent upon available appropriations.

## **Views of Responsible Official**

We issued a draft audit report on August 12, 2009. William J. Bratton, Chief of Police, responded by letter dated September 15, 2009 (Attachment), disagreeing with the significant audit results in Finding 1, and agreeing with the remaining two findings. This final audit report includes the city's response.

**Restricted Use**

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

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

September 29, 2009

**Schedule 1—  
Summary of Program Costs  
July 1, 2003, through June 30, 2008**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 4,858,882	\$ 2,110,512	\$ (2,748,370)	Findings 1,2,3
Benefits	1,519,373	654,782	(864,591)	Findings 1,2,3
Services and supplies	708,683	—	(708,683)	Findings 1,2,3
Total direct costs	7,086,938	2,765,294	(4,321,644)	
Indirect costs	2,989,184	1,279,800	(1,709,384)	Findings 1,2,3
Total program costs	<u>\$ 10,076,122</u>	4,045,094	<u>\$ (6,031,028)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 4,045,094</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries	\$ 4,401,434	\$ 1,751,065	\$ (2,650,369)	Findings 1,3
Benefits	1,599,249	636,890	(962,359)	Findings 1,3
Total direct costs	6,000,683	2,387,955	(3,612,728)	
Indirect costs	2,748,667	1,114,991	(1,633,676)	Findings 1,3
Total program costs	<u>\$ 8,749,350</u>	3,502,946	<u>\$ (5,246,404)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 3,502,946</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 4,985,402	\$ 1,993,037	\$ (2,992,365)	Findings 1,3
Benefits	1,916,184	765,985	(1,150,199)	Findings 1,3
Total direct costs	6,901,586	2,759,022	(4,142,564)	
Indirect costs	2,493,899	1,012,656	(1,481,243)	Findings 1,3
Total program costs	<u>\$ 9,395,485</u>	3,771,678	<u>\$ (5,623,807)</u>	
Less amount paid by the State		(6,863,452)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (3,091,774)</u>		

## Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries	\$ 4,516,381	\$ 1,800,575	\$ (2,715,806)	Findings 1,3
Benefits	1,966,746	784,387	(1,182,359)	Findings 1,3
Total direct costs	6,483,127	2,584,962	(3,898,165)	
Indirect costs	1,974,526	797,347	(1,177,179)	Findings 1,3
Total program costs	<u>\$ 8,457,653</u>	3,382,309	<u>\$ (5,075,344)</u>	
Less amount paid by the State		(7,329,582)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (3,947,273)</u>		
<u>July 1, 2007, through June 30, 2008</u>				
Direct costs:				
Salaries	\$ 6,699,960	\$ 2,664,537	\$ (4,035,423)	Findings 1,3
Benefits	3,184,851	1,267,328	(1,917,523)	Findings 1,3
Total direct costs	9,884,811	3,931,865	(5,952,946)	
Indirect costs	3,718,352	1,497,302	(2,221,050)	Findings 1,3
Total program costs	<u>\$ 13,603,163</u>	5,429,167	<u>\$ (8,173,996)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 5,429,167</u>		
<u>Summary: July 1, 2003, through June 30, 2008</u>				
Direct costs:				
Salaries	\$ 25,462,059	\$ 10,319,726	\$ (15,142,333)	
Benefits	10,186,403	4,109,372	(6,077,031)	
Services and supplies	708,683	—	(708,683)	
Total direct costs	36,357,145	14,429,098	(21,928,047)	
Indirect costs	13,924,628	5,702,096	(8,222,532)	
Total program costs	<u>\$ 50,281,773</u>	20,131,194	<u>\$ (30,150,579)</u>	
Less amount paid by the State		(14,193,034)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 5,938,160</u>		
<u>Recap by Component</u>				
Administrative Activities	\$ 4,072,635	\$ 179,583	\$ (3,893,052)	
Interrogations	17,519,767	1,709,075	(15,810,692)	
Adverse Comment	28,689,371	18,242,536	(10,446,835)	
Total program costs	<u>\$ 50,281,773</u>	<u>\$ 20,131,194</u>	<u>\$ (30,150,579)</u>	

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

# Findings and Recommendations

**FINDING 1—  
Unallowable salaries,  
benefits, and related  
indirect costs**

The city claimed \$35,648,462 in salaries and benefits for the audit period. We determined that \$14,183,993 is allowable and \$21,464,469 is unallowable. The costs are unallowable because the activities claimed are not identified in the parameters and guidelines as reimbursable costs. The related unallowable indirect costs totaled \$8,307,090.

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

<u>Reimbursable Component</u>	<u>Amount Claimed</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
Direct costs:			
Administrative Activities	\$ 2,864,828	\$ 118,411	\$ (2,746,417)
Interrogations	12,505,518	1,216,206	(11,289,312)
Adverse Comments	<u>20,278,116</u>	<u>12,849,376</u>	<u>(7,428,740)</u>
Total direct costs	35,648,462	14,183,993	(21,464,469)
Indirect costs	<u>13,924,628</u>	<u>5,617,538</u>	<u>(8,307,090)</u>
Total	<u>\$ 49,573,090</u>	<u>\$ 19,801,531</u>	<u>\$ (29,771,559)</u>

We have broken down the audit findings for overstated salaries and benefits by individual cost component.

**Administrative Activities**

For the Administrative Activities cost component, the city claimed \$2,864,828 in salaries and benefits for the audit period. We determined that \$118,411 is allowable and \$2,746,417 is unallowable. The costs are unallowable because the city claimed reimbursement for unallowable activities. Related unallowable indirect costs totaled \$1,054,878.

The program’s parameters and guidelines allow reimbursement for the following activities under the cost component of Administrative Activities:

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

The city claimed costs for nine activities under this component. We determined that the following two activities are reimbursable:

- **Status:** This activity occurs in the Administrative Records Section (ARS) and involves the time needed to update status changes within POBOR case files. Per LAPD staff, the cases are updated for every activity and/or procedural change.
- **Assign:** This activity consists solely of updating the database and noting the case assignment to an investigator for adjudication.

We also determined that the following seven activities are not reimbursable:

- **Comment:** The ARS section in Internal Affairs performs this task by creating a file and a case number when the Professional Standards Bureau receives a “1.28” complaint form. Per LAPD staff, this activity is an internal procedure created by the LAPD to ensure compliance with the investigation time frame of one year.
- **Locate:** This activity denotes the time required for the Classifications Unit to read the “1.28” (complaint form) and determine the best entity to perform the investigation. After determining which entity will investigate, the form is sent to the ARS.
- **Invest:** When the investigation is complete, the case file is sent to the Review and Evaluation Section. This activity consists of updating the database to note this information.
- **IA Review:** This activity consists of the time it takes to update the database for Internal Affairs’ (IAG) review. Per LAPD staff, this activity is similar to Invest, but one IAG section or division will review the investigation of another IAG investigation unit for thoroughness, facts, results, and conclusions. It is another type of review and another change in status.
- **Appeal:** This activity takes place when the case is going to the Advocate Section, where another file is created and entered into the Advocate Database. Per LAPD staff, the case is in the appeal phase and is no longer being investigated or reviewed. This activity pertains to the procedural process of transferring a case in the Advocate Unit, tracking the appeal process, and tracking where the case is.
- **Note:** This activity consists of distributing copies of the face sheet (which contains the summary of allegations and the names of the involved parties) to concerned parties. This activity occurs in the ARS and is based on the time it takes to update the database for the activity.
- **Close Out:** The ARS closes out the case file and documents this activity. This activity is a database update function.

The CSM staff analysis (dated July 27, 2000) for the proposed parameters and guidelines noted that “before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary hearings, and maintaining files for those cases.”

Accordingly, it is our understanding that reimbursement is unallowable for activities related to managing case files. The parameters and guidelines allow reimbursement for activities that relate to updating the status report of the mandate-related activities.

Additional clarifying language was provided in the amended parameters and guidelines (section IV.A.—Administrative Activities), which states that “Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.”

## Interrogations

For the Interrogations cost component, the city claimed \$12,505,518 in salaries and benefits for the audit period. We determined that \$1,206,216 is allowable and \$11,289,312 is unallowable. The costs were unallowable because the city claimed reimbursement for unallowable activities. The related unallowable indirect costs totaled \$4,525,705.

The parameters and guidelines for the POBOR program allow the following activities for reimbursement under the Interrogations cost component:

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.
- Tape recording the interrogation when the peace officer employee records the interrogation.
- Providing the peace officer employee with access to the recording prior to any further investigation at a subsequent time, or if any further proceedings are contemplated.
- Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer.

The city claimed the following 15 activities under the cost component of Interrogations:

1. Admin Task (Administrative Task)
2. Call out
3. CO Contact (Commanding Officer Contact)
4. Evidence Collect
5. Interview in person
6. Interview Telephone
7. Kickback Editing
8. Meet/Brief/Notify
9. Non-Evidence Task
10. Paraphrasing
11. Prep for Interview
12. Report Formatting
13. Telephone contact
14. Travel
15. VI Computer Task

The city did not provide a formal description of these activities. LAPD staff stated that these activities involved time for conducting investigations, collecting evidence, writing reports, and editing reports. We determined that these activities are unallowable because they relate to the investigation process.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM final staff analysis to the adopted parameters and guidelines states:

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

In addition, the amended parameters and guidelines (section IV.C.–Interrogations) state that “Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses” are not reimbursable.

The amended parameters and guidelines (section IV.D.–Adverse Comment) also state that “investigating a complaint,” “interviewing a complainant,” and “preparing a complaint investigation report” are not reimbursable activities.

The activities numerated above were not included in the documents that were attached to the city's claims supporting its time study. We noted during the course of audit fieldwork that the city's time study included the five activities described below under the component of Interrogations. However, none of these activities were included in the city's claims.

- **Interview:** Conducting the interrogation of the accused officer. The start and end time of the interrogation is noted. Per LAPD staff, interrogations usually take place during normal working hours and rarely happen during overtime (accused officer's off-duty time). The city's time study did not specify if and when the officers were paid overtime for the interviews.
- **ID, ID-A, ID-W:** Providing prior notice to the officer (accused and/or witness) regarding the nature of the interrogation and identification of the investigating officer. This activity occurs in the Administrative or Criminal Investigation Division.
- **Determine:** Determination of the investigating officers. This activity is assigned to the section Officer-in-Charge (OIC).
- **Tape:** Tape recording the interrogation. Per LAPD staff, this activity rarely happens. In fact, no time increments were claimed for the tape recording activity.
- **Booking Tape:** Booking (storing) the tape at the Scientific Investigations Division.

We were able to calculate how much time was spent to conduct the five activities that were omitted from the city's claims. We also determined that four of the activities are allowable (ID, Determine, Tape, and Booking Tape) and one (Interview) is unallowable. Interview is unallowable because the city indicated that most peace officer interviews

occur during normal working hours. In addition, the city did not keep track of the instances when officers were compensated for interviews that took place during their off-duty time.

### **Adverse Comment**

For the Adverse Comment cost component, the city claimed \$20,278,116 in salaries and benefits for the audit period. We determined that \$12,849,376 is allowable and \$7,428,740 is unallowable. The costs were unallowable because the city claimed reimbursement for unallowable activities. The related unallowable indirect costs totaled \$2,726,507.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines allow these activities for reimbursement under the Adverse Comment cost component:

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

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

The city claimed costs for 16 activities under this cost component. We determined that the following 11 activities are reimbursable:

- **Review:** This activity involves the review of the "1.28" (complaint form) and the circumstances leading to the adverse comment. This is the preliminary review of the comment to determine if it is an adverse comment and warrants further investigation. The Complaint Classification Unit performs this activity. This activity also includes the time it takes to prepare a face sheet concerning the complaint.
- **Note:** This activity consists of providing notice to the peace officer of the adverse comment or complaint fact sheet. This activity is associated with the first notice of adverse comment to the officer and that an investigation is taking place.
- **Respond:** This activity is also associated with providing first notice of the adverse comment and that an investigation is taking place. The activity provides the officer an opportunity to respond within 30 days.

- **Sign:** This activity occurs when the officer under investigation reviews and signs the adverse comment or complaint fact sheet, which is the first notice of complaint from Internal Affairs.
- **Refuse:** If the accused officer refuses to sign the face sheet or initial the adverse comment, the time involved is noted.
- **Approval:** This activity consists of the review by Internal Affairs Management of a completed case prior to sending the case to an Area or Division for notification to the officer under investigation.
- **Adjudication:** This activity consists of the time spent by the Command Officer (accused officer's supervisor) of the Area to adjudicate the complaint. This activity would include a review of the completed complaint and the formulation of a Letter of Transmittal (LOT).
- **CO Review:** According to LAPD staff, "CO review" is closely tied with "Adjudication." This activity consists of the time spent by the commanding officer of the Area to review the complaint and LOT.
- **Preparation:** This activity consists of the preparation of the "Charge Sheet" for the Chief of Police to sign.
- **Serve:** This activity entails ensuring that the accused officer is served with the "Charge Sheet" and obtaining the officer's signature or noting the officer's refusal to sign the charge sheet.
- **Accuracy:** This activity involves reviewing the accused officer's response to the complaint or "1.28" (complaint form).

The city also claimed the following five activities that are not reimbursable.

- **Preliminary:** This activity involves investigating the circumstances surrounding the adverse comment.
- **Collect:** This activity consists of the preliminary investigation conducted by supervisors, detectives, and the command staff in the Area where the complaint was taken. This activity can include report writing, interviews, or any activity in which information is gathered for the "1.28" (complaint form).
- **Area Invest:** This activity consists of the time spent by an Area to investigate the complaint or "1.28" (complaint form). This activity occurs after the preliminary investigation.
- **Inspect:** This activity occurs when the assigned Advocate reviews the investigation for status and thoroughness.
- **RE Invest:** This activity involves the time needed to conduct any additional investigations.

These activities were unallowable because they are part of the city's investigative process. We noted in the Interrogations section of this finding that investigative activities are ineligible for reimbursement.

In addition, we noted that the amended parameters and guidelines (section IV.C.–Interrogations) state that “Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses” are not reimbursable.

The amended parameters and guidelines (section IV.D.–Adverse Comment) also state that “investigating a complaint,” “interviewing a complainant,” and “preparing a complaint investigation report” are not reimbursable activities.

### **Averaging Methodology and Calculation of Allowable Hours**

The city developed a time study to document activities and tasks that are related to the POBOR Program. The time study was conducted for the duration of one month and was completed in May 2004. The city recorded the time study results in an internal database that summarized average time increments spent for each activity by employee classification.

To calculate time increments applicable to each case, the city developed an averaging methodology that combined all task/activity entries per classification and per activity into one average time increment. The average time increments were then used to prepare the city’s claims. During the audit, we separated the time that was attributable to each individual task. We did this because not all activities recorded in the time study were allowable for reimbursement. As the database tracked all individual task entries for each classification, we were able to separate minute increments for individual activities in order to exclude time spent on unallowable activities.

We were able to use data from the time study to calculate the allowable time per case. We manually added all of the entries for each individual task and determined how much time was spent to perform each individual activity. We then took a percentage of minutes for allowable tasks and determined the amount of reimbursable time per each POBOR case.

After we determined the allowable time increments per case, the time increments were applied to the number of cases claimed in each fiscal year. We did not make any adjustments to the number of cases that were included in the city’s claims.

### **Case Statistics**

We noted that the city was inconsistent in its application of case statistics in its claims. Case counts included in the claims were based on closed cases in some years and based on in progress cases in other years. However, we did not adjust the number of cases that were claimed. The SCO time study guidelines indicate that agencies may employ any methodology as long as the agency consistently applies the chosen methodology. Neither the parameters and guidelines nor the SCO claiming instructions specify whether agencies should use the number of

closed cases or the number of cases in progress to calculate their costs for reimbursement. However, we recommend that the city use a more consistent approach in applying its case counts to calculate costs for reimbursement in future years.

### Database Rounding Errors

During our review of the time study and the internal database, we noted a few minor rounding errors in the city's database that calculates average minutes per case. In a few instances, the city's calculations of average minutes per case were off by about a minute per case. The discrepancies were due to errors in converting minutes to hours and vice versa. We manually added up all of the individual time entries and incorporated the rounding errors (in the city's favor) into the calculation of allowable hours.

### Summary

The following table summarizes the audit adjustments by fiscal year:

Cost Categories	Fiscal Year				
	2003-04	2004-05	2005-06	2006-07	2007-08
Salaries	\$ (2,837,773)	\$ (2,650,369)	\$ (2,998,526)	\$ (2,715,806)	\$ (4,119,748)
Benefits	(887,371)	(962,359)	(1,152,572)	(1,182,359)	(1,957,586)
Subtotal	(3,725,144)	(3,612,728)	(4,151,098)	(3,898,165)	(6,077,334)
Related indirect costs	(1,745,798)	(1,633,676)	(1,483,051)	(1,177,179)	(2,267,386)
Audit adjustment	<u>\$ (5,470,942)</u>	<u>\$ (5,246,404)</u>	<u>\$ (5,634,149)</u>	<u>\$ (5,075,344)</u>	<u>\$ (8,344,720)</u>

The parameters and guidelines for POBOR Program that were adopted by the CSM on July 27, 2000, and corrected on August 17, 2000, define the criteria for procedural protection for the city and county's peace officers. The parameters and guidelines, amended on December 4, 2006, and again on March 28, 2008, were applicable for claims filed for FY 2006-07 and beyond. A significant amount of clarifying language was included in the amended versions. The most recent version of the parameters and guidelines allow claimants the option of claiming costs using a reasonable reimbursement methodology.

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

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

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

The amended parameters and guidelines (section V.B.–Actual Cost Claims) indicate that the claimant is allowed to claim and be reimbursed only for increased costs for reimbursable activities. Increased costs are limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the SCO.

### Recommendation

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

### City's Response

The City claimed \$35,648,462 in salaries and benefits for the audit period. The Controller determined that \$14,183,993 is allowable and \$21,464,469 is unallowable. The costs are unallowable because the Administrative, Interrogation, and Adverse Comment Activities claimed are not identified in the Parameters and Guidelines as reimbursable costs.

#### *Administrative Activities*

The Controller determined that only \$118,411 of the \$2,864,828 is allowable because the City claimed reimbursement for unallowable activities.

The City disagrees with all of the State Controller's disallowances. It is the City's opinion that all of those activities are administrative in nature and reasonably necessary to carry out the POBOR program in such a large agency as the LAPD.

The City disagrees with what it perceives as the Controller's very narrow interpretation of the Administrative Activities component of the Commission on State Mandates' Parameters and Guidelines. When the Statement of Decision for the test claim was adopted nearly 10 years ago, there was no discussion of administrative activities for the POBOR Program. When the Parameters and Guidelines was adopted, it was assumed that, for the most part, any reasonably necessary administrative activities associated with the POBOR Program were eligible for reimbursement. A few activities, such as training, were normally addressed specifically, since the Controller often would not allow for training costs if they were specifically addressed in the Parameters and Guidelines. By including the Administrative Activities component, it is believed that the Commission intended to include anything reasonably necessary unless it was specifically excluded, such as the limitation on training for only human resources, law enforcement and legal counsel regarding the requirements of the mandate.

#### *Interrogation Activities*

The Controller determined that of the \$12,505,518 in salaries and benefits claimed for the audit period, \$1,206,216 is allowable and \$11,289,312 is unallowable. Once again, the Controller contends the City's costs were unallowable because they were for unallowable activities.

The City is appreciative of the fact the Controller allowed for the \$1,206,216 of costs which were not specifically addressed in its claims. But rather, the Controller, at its own initiative, based on the City's very detailed time study, calculated how much time was spent to conduct the five reimbursable activities it allows for as part of the Interrogation component in the parameters as noted on page ten (10) of the draft audit report.

The City, along with numerous other local agencies, disagrees with the State Controller's interpretation of the primary eligible costs for this component. The City believes the Parameters and Guidelines, as amended at the Controller's request in December 2006, do not accurately reflect the original Statement of Decision which found that eligible costs included: "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." The Controller has limited reimbursement to only officers being compensated for overtime. The City believes the costs for conducting interrogations during regular work time is reimbursable, as is preparation for those interrogations.

#### *Adverse Comment*

The City claimed \$20,278,116 in salaries and benefits for the audit period. The Controller determined that \$12,849,376 is allowable and \$7,428,740 is unallowable. The costs were deemed unallowable because the City claimed reimbursement for unallowable activities.

The City identified 16 activities in its time study under this cost component. The Controller found that 11 activities were eligible for reimbursement and 5 were not. The Controller points out that the 5 activities are part of the City's investigative process and are, therefore, not reimbursable. It is the City's contention that, for the most part, the 5 activities are necessary activities to prepare the Adverse Comment and therefore should be reimbursable. The City does not dispute the Controller's statement that the revised Parameters and Guidelines (section IV(D)-Adverse Comment) state that the "investigating a complaint," "interviewing a complainant," and "preparing a complaint investigation report" are not reimbursable activities.

#### SCO's Comment

The finding and recommendation remain unchanged.

We concur that the unallowable costs contained in the audit report were not caused by an inflation of costs by the city. Instead, costs were unallowable due to a misinterpretation of what is and what is not allowable for reimbursement from the State under the mandated program.

We will address the rest of our comments for the audit finding in the same order as they appear in the city's response.

## Administrative Activities

We do not dispute that the administrative activities included in the city's time study are necessary and reasonable for the conduct of the city's internal affairs investigations of police officer misconduct. The issue is the determination of whether the activities were eligible for reimbursement under the mandated program.

We concur that there was no discussion of administrative activities in the statement of decision adopted by the CSM on November 30, 1999. The purpose of the statement of decision is to determine whether or not the test claim statutes support or do not support a finding that costs are being mandated by the State. The CSM recognizes that certain administrative tasks are necessary to carry out mandated activities and typically includes these in the adopted parameters and guidelines. The city states its assumption that when the parameters and guidelines were adopted for this mandate, "any reasonably necessary administrative activities associated with the POBOR program were eligible for reimbursement." The city goes on to state that "By including the Administrative Activities component, it is believed that the Commission intended to include anything reasonably necessary unless it was specifically excluded, such as the limitation on training for only human resources, law enforcement, and legal counsel regarding the requirements of the mandate." However, we can find no language in the adopted parameters and guidelines or in the legal record for this mandate confirming this assumption.

In the staff analysis for the proposed POBOR Program's parameters and guidelines (Item #10 in the CSM hearing of July 27, 2000), the CSM discussed its analysis of the test claimant's proposed parameters and guidelines for administrative activities. The proposed activities included the following:

1. Developing or updating policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities,
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate,
3. Maintenance of the systems to conduct the mandated activities,
4. Providing direct supervision over the agency staff performing the mandated activities.

The CSM's staff analysis goes on to state:

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases. Thus, the component "maintenance of systems to conduct the mandated activities is too broad." Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBOR cases."

The CSM also considered the topic of Administrative Activities in its December 4, 2006, final staff analysis (Item #13–Request to Amend Parameters and Guidelines), which states:

**Section IV. A (3)**

Section IV. A (3) currently states the following: “Updating the status of the POBOR cases.”

SCO requests that Section IV. A (3) be amended as follows (proposed language is underlined):

Updating the status report of mandate-reimbursable POBOR cases. The updating relates to tracking the procedural status of cases. It does not relate to maintaining or updating the cases (e.g. setting up, reviewing, evaluating, or closing the cases).

In response to the SCO proposal, the City of Sacramento and the *City of Los Angeles* [emphasis added] filed comments contending that the proposal is too narrow because of the time constraints imposed by the POBOR legislation. The City of Sacramento states the following:

The proposal concerning administrative activities and updating the cases is much too narrowly drawn. There are strict time constraints imposed by POBOR: if the time limits are not met, the case must be dismissed and no discipline can be imposed. Therefore, not only must the case filed be updated, but they must be reviewed in order to make sure that all deadlines have been met. To restrict the language as desired by the Controller would make it next to impossible to assure that the time limits set forth in POBOR are met. In order to make sure that the time lines are met, the case must be reviewed at various points in order to make sure that all investigations are completed, as well as to make sure all interrogations are completed timely. This is reasonably necessary in order to make sure that the time lines are met.

Staff finds that the City’s comments go beyond the scope of the test claim statutes and are not consistent with the Commission’s findings in the Statement of Decision on reconsideration. As indicated in footnote 5, page 6 of the Commission’s Statement of Decision on reconsideration (05-RL-4499-01), the POBOR Act has been subsequently amended by the Legislature. One of those amendments imposed the time limitations described by the City. The subsequent amendments were not pled in this test claim and, thus, they were not analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6. The City’s arguments relating to the time limitations imposed by subsequent legislation are outside the scope of the Commission’s decision in POBOR (CSM 4499). Thus, the City’s rationale is not consistent with the Commission’s findings.

Staff further finds that the SCO proposal is consistent with the Commission’s findings when it adopted the parameters and guidelines. The Commission adopted the following finding:

The claimant's proposed parameters and guidelines include the following administrative activities:

[¶]

3. Maintenance of the systems to conduct mandated activities.

[¶]

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. [CSM] Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and maintaining files for those cases. Thus, the component "maintenance of the systems to conduct the mandated activities" is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBOR cases."

Staff has clarified the activity and added the following proposed language to Section IV. C (3):

Updating the status report of the mandate-reimbursable POBOR cases activities. "Updating the status report of mandate-reimbursable POBOR cases activities" means tracking the procedural status of cases the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

We believe that from this record of evidence, the position taken by the city in its response to our audit findings regarding allowable administrative activities has already been considered by CSM and denied for the reasons stated above. The amendments to the POBOR statutes cited by the CSM in its staff analysis of December 4, 2006, were contained in Statutes of 1997, Chapter 148. To date, no interested party has filed a test claim to determine whether this legislation imposes a state mandate. In the meantime, SCO will continue to use the criteria contained in the adopted parameters and guidelines to determine the allowable activities under this mandated program.

### **Interrogations**

The city is objecting to our finding that costs incurred for interrogating accused and witnessing officers during regular working hours and preparation for those interrogations are unallowable. Further, the city claims that the finding is based on SCO's "interpretation of the primary eligible costs for this component." We disagree. Rather, we contend that the finding is based on the language contained in the parameters and guidelines adopted by CSM for this mandated program.

The city is relying on specific language that appears on page 13 of the original statement of decision adopted by the CSM on November 30, 1999, for the mandated program. The city claims that the language cited in their response supports a CSM finding that interrogations conducted during on-duty hours and preparing for those interrogations are

reimbursable. However, the statement of decision does not define the reimbursable activities. The purpose of the statement of decision is stated on page 2 of that document as follows:

**Issue: Does the test claim legislation, which established rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?**

On November 30, 1999, the CSM adopted its statement of decision that the test claim legislation constitutes a partial reimbursable mandated program within the meaning of Article XIII B, section 6 of the California Constitution, and Government Code section 17514. On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by staff were issued to the interested parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the test claim legislation, and the CSM's statement of decision. Subsequently, the reimbursable activities were written into regulation when the CSM adopted the parameters and guidelines for POBOR on July 27, 2000, and corrected them on August 17, 2000.

We re-examined the statement of decision and noted that the city is taking the language cited in their response out of context. The language cited by the city is found in the section of the statement of decision titled "Compensation and Timing of an Interrogation." The purpose of this section was to address the test claimant's assertion that government code section 3303, subdivision (a) results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities.

The section begins on page 12 by stating that:

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer. This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

“If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section.

Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section.”

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government [sic] Code section 17514.

The city believes that the language used by the CSM in the paragraphs above support that costs incurred for interrogating officers during their regular on-duty time and preparing for those interrogations are reimbursable. We believe this to be an expanded interpretation, given that the issue under analysis in this section of the statement of decision was whether or not the test claim statute imposed the payment of overtime to the investigated employee, which it does. The city ignores the CSM’s language in the beginning of this section when it noted that the procedures under Government Code section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. The CSM even italicized the word “not” to make its point clear.

In addition, there is no language in this section of the statement of decision wherein the test claimant asserted that costs incurred to prepare for the interrogation of peace officers is reimbursable. Therefore, as this issue was not pled by the test claimant, the CSM did not determine that interrogation preparation costs are reimbursable.

We also re-examined CSM’s staff analysis for the proposed parameters and guidelines (Item #10 for its hearing of July 27, 2000) regarding the Interrogations cost component. This document contains the following language:

Section IV,(C)(1) and (2), Compensation and Timing of an Interrogation, Interrogation Notice

The Commission’s Statement of Decision includes the following reimbursable activity:

“Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)”

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a) requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking [sic] hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, *the claimant contended that this section resulted in the payment of overtime to the peace officer employee* [emphasis added]. (See page 12 of the Commission's statement of decision.)

The staff analysis goes on to state:

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

Based on the foregoing, staff has modified Section IV(C) as follows:

~~"1. Conducting an interrogation of a peace officer while the officer is on duty or compensating~~ When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)

We believe the city is trying to expand the CSM's staff analysis of the Interrogation cost component to include activities that were not included in the adopted parameters and guidelines. The adopted parameters and guidelines (section IV.C.–Interrogation) state that “claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or any other routine or unplanned contact with, a supervisor or any other public safety officer.” The document goes on to specify five activities that are reimbursable.

Section IV.C.1. describes the only reimbursable activity that relates to interrogations. It states “when required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.”

To state that interrogations conducted during an officer's regular on-duty time and preparing for those interrogations is reimbursable is contrary to the wording that appears in the statement of decision, the staff analysis for the proposed parameters and guidelines, and in the adopted parameters and guidelines. Therefore, the preponderance of evidence on this issue does not support the city's contention.

We also noted that CSM re-examined the issue of allowable costs under the Interrogation cost component in its December 4, 2006 final staff analysis (Item #13–Request to Amend Parameters and Guidelines), which states:

The County of San Bernardino, the City of Sacramento, and the *City of Los Angeles* [emphasis added] contend that investigation costs and the cost to conduct the interrogation are reimbursable.

However, as identified below, the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct the interrogation. Thus, staff finds that the SCO proposal is consistent with the Commission findings when adopting the parameters and guidelines and the Statement of Decision on reconsideration.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate and review complaints or to conduct interrogations. The Commission adopted the following findings when adopting the parameters and guidelines:

The Commission's Statement of Decision includes the following reimbursable activity:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission's Statement of Decision.)

This document also states:

In addition, staff has included the activities that are not reimbursable at the end of Section IV. C as follows:

The following activities are **not** reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.

3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

In addition, during testimony for this item, a San Bernardino County representative testified that the county had submitted an amendment to clarify what was adopted in the original statement of decision. The county representative believed the CSM staff's conclusion regarding interrogations was inconsistent with the original statement of decision. The Chief Legal Counsel for the CSM responded that some statements in the original statement of decision were being taken out of context. She clarified that the test claim legislation does not mandate local agencies to interrogate an officer and it does not mandate local agencies to investigate. Rather, these activities are based on local policy and regulation.

#### **Adverse Comment**

The city argues that the five time study activities that we found to be unallowable were for allowable activities. Similar to the discussion of unallowable costs for the administrative activities cost component, we do not dispute that these five activities are necessary and reasonable for the preparation of an adverse comment. The issue is the determination of whether the activities were eligible for reimbursement under the mandated program.

In the draft audit report, we stated the following:

The city also claimed the following five activities that are not reimbursable.

- **Preliminary:** This activity involves investigating the circumstances surrounding the adverse comment.
- **Collect:** This activity consists of the preliminary investigation conducted by supervisors, detectives, and the command staff in the Area where the complaint was taken. This activity can include report writing, interviews, or any activity in which information is gathered for the "1.28" (complaint form).
- **Area Invest:** This activity consists of the time spent by an Area to investigate the complaint or "1.28" (complaint form). This activity occurs after the preliminary investigation.
- **Inspect:** This activity occurs when the assigned Advocate reviews the investigation for status and thoroughness.
- **RE Invest:** This activity involves the time needed to conduct any additional investigations.

In the audit report, we determined that the activity “review” was reimbursable. This activity involves the review of the complaint form and the circumstances leading to the adverse comment. By contrast, the activity “preliminary” cited above, involves the actual investigation of the adverse comment circumstances. Similarly, the activities “collect,” “area invest,” and “re invest” involve investigation of the complaint. We also determined that the activities of “adjudication” and “CO review” were reimbursable. These activities involve review of the completed complaint and the letter of transmittal by the accused officer’s supervisor and the Commanding Officer. By contrast, the activity “inspect” involves review of the investigation.

City representatives did not dispute our interpretation of these five activities during the course of audit fieldwork and did not raise any objections during the audit exit conference. Subsequent to the exit conference and draft report, the city has not presented any evidence to us that there is a distinction between the five activities cited above and the language in the parameters and guidelines stating that costs for conducting investigations are not reimbursable. In addition, the city states in the response that it does not dispute the language in the audit report that investigating a complaint, interviewing a complainant, and preparing a complaint investigation report are not reimbursable activities.

**FINDING 2—  
Overstated services  
and supplies**

The city claimed services and supplies costs totaling \$708,683 in FY 2003-04. However, the claimed costs were actually salary, benefit, and related indirect costs incurred for non-sworn employees. The costs were incurred to perform the same activities discussed in Finding 1. Therefore, the adjustments in this finding are attributed to the same analysis that is presented in Finding 1. We determined that \$137,415 is allowable and \$571,268 is unallowable. The costs were unallowable because the city claimed reimbursement for unallowable activities.

We reclassified the allowable costs from services and supplies to salaries, benefits, and related indirect costs. The following table summarizes the adjustments to claimed services and supplies by individual cost component:

<u>Cost Component</u>	<u>Costs Claimed</u>	<u>Costs Allowed</u>	<u>Audit Adjustment</u>
Administrative Activities:			
Salaries	\$ 70,663	\$ 14,318	\$ (56,345)
Benefits	18,008	3,648	(14,360)
Related indirect costs	28,786	5,832	(22,954)
Subtotal	<u>117,457</u>	<u>23,798</u>	<u>(93,659)</u>
Adverse Comment Activities:			
Salaries	355,701	68,357	(287,344)
Benefits	90,638	17,418	(73,220)
Related indirect costs	144,887	27,842	(117,045)
Subtotal	<u>591,226</u>	<u>113,617</u>	<u>(477,609)</u>
Total	<u>\$ 708,683</u>	<u>\$ 137,415</u>	<u>\$ (571,268)</u>

The parameters and guidelines (section V.A.1.–Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits. Reimbursement includes compensation paid for salaries, wages, and employee benefits.

Recommendation

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

City’s Response

The City claimed \$708,683 for services and supplies in its Fiscal Year (FY) 2003/04 claim. The Controller found the costs were for actual salary, benefit and related indirect costs incurred for non-sworn employees. The City agrees that these costs were for salaries and were inadvertently included in the service and supplies areas. As such, the Controller considered these costs in the appropriate salary category and treated them in the same manner as all other salaries. Other than the City’s disagreement with how the Controller has interpreted the eligible activities in its Finding 1, the City has no disagreement with this finding.

SCO’s Comment

The finding and recommendation remains unchanged.

**FINDING 3—  
Misstated productive  
hourly rates**

The city understated allowable salary and benefit costs by \$141,364 during the audit period because it overstated and understated productive hourly rates. This amount also includes \$8,442 for the salary and benefit costs claimed as services and supplies in FY 2003-04 (as noted in Finding 2). The related indirect costs totaled \$50,884. All of these adjustments were made because of errors in the city’s calculation of productive hourly rates.

Productive hourly rates were erroneously misstated for all employee classifications in the city’s claim for FY 2007-08. The misstatements occurred for two reasons: (1) the city used 1,800 productive hours to calculate the rates instead of its calculated productive hours; and, (2) the average annual salaries the city used in the calculations for some employee classifications did not match the rates from the city’s report of average annual salaries. We recalculated the rates using the correct salary base and the correct annual productive hours provided by city staff.

We also identified errors with productive hourly rate calculations in FY 2003-04 and FY 2005-06. The city had claimed the rate for Police Services Representative I instead of Police Services Representative II.

The following table summarizes the audit adjustments:

Cost Category	Fiscal Year			Total
	2003-04	2005-06	2007-08	
Salaries	\$ 6,728	\$ 6,161	\$ 84,325	\$ 97,214
Benefits	1,714	2,373	40,063	44,150
Total direct costs	8,442	8,534	124,388	141,364
Related indirect costs	2,740	1,808	46,336	50,884
Total	\$ 11,182	\$ 10,342	\$ 170,724	\$ 192,248

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

Recommendation

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

City’s Response

The Controller found the City had understated the productive hourly rates for various employee classifications in the City’s FY 2007/08 claim. It also found errors with productive hourly rates in the FY 2003/04 and FY 2005/06. The Controller recalculated those rates and the result was an increase of \$192,248 in direct and indirect costs. The City concurs with this finding.

SCO’s Comment

The finding and recommendation remain unchanged.

**Attachment—  
City's Response to  
Draft Audit Report**

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# LOS ANGELES POLICE DEPARTMENT



**WILLIAM J. BRATTON**  
Chief of Police

**ANTONIO R. VILLARAIGOSA**  
Mayor

P. O. Box 30158  
Los Angeles, Calif. 90030  
Telephone: (213) 485-5296  
TDD: (877) 275-5273  
Ref #: 10.2

September 15, 2009

Mr. Jim L. Spano, Chief  
Mandated Cost Audits Bureau  
Office of the State Controller  
Division of Audits  
Post Office Box 942850  
Sacramento, California 94250-5874

RE: Response to the August 12, 2009, Draft Audit Report for the Peace Officers Procedural Bill of Rights (POBOR) Program

Dear Mr. Spano,

This letter is the City of Los Angeles' (City) response to the August 12, 2009, Draft Audit Report of the Los Angeles Police Department's (LAPD) Peace Officers Procedural Bill of Rights Program (commencing with Chapter 4654, Statutes of 1976) for the period of July 1, 2003 through June 30, 2008. We would like to commend the State Controller's (Controller) staff on the conduct of this audit. The City has experienced several audits of its Police Department's mandated cost claims and, in this case, the Police Department reported that while it disagrees with most of the proposed disallowances, there were no surprises or misunderstandings during the conduct of the audit, unlike in previous audits. Also, we would like to indicate that the high amount of unallowable costs is attributed to the Controller and Commission on State Mandates' interpretation of the Parameters and Guidelines for the POBOR Program, not an erroneous inflation of costs by the City. What follows below are the positions held by the City on the Controller's three findings from the audit.

## **Finding 1 – Unallowable salaries, benefits and related indirect cost**

The City claimed \$35,648,462 in salaries and benefits for the audit period. The Controller determined that \$14,183,993 is allowable and \$21,464,469 is unallowable. The costs are unallowable because the Administrative, Interrogation, and Adverse Comment Activities claimed are not identified in the Parameters and Guidelines as reimbursable costs.

### *Administrative Activities*

The Controller determined that only \$118,411 of the \$2,864,828 is allowable because the City

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Mr. Jim L. Spano, Chief

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claimed reimbursement for unallowable activities.

The City disagrees with all of the State Controller's disallowances. It is the City's opinion that all of those activities are administrative in nature and reasonably necessary to carry out the POBOR program in such a large agency as the LAPD.

The City disagrees with what it perceives as the Controller's very narrow interpretation of the Administrative Activities component of the Commission on State Mandates' Parameters and Guidelines. When the Statement of Decision for the test claim was adopted nearly 10 years ago, there was no discussion of administrative activities for the POBOR Program. When the Parameters and Guidelines was adopted, it was assumed that, for the most part, any reasonably necessary administrative activities associated with the POBOR Program were eligible for reimbursement. A few activities, such as training, were normally addressed specifically, since the Controller often would not allow for training costs if they were specifically addressed in the Parameters and Guidelines. By including the Administrative Activities component, it is believed that the Commission intended to include anything reasonably necessary unless it was specifically excluded, such as the limitation on training for only human resources, law enforcement and legal counsel regarding the requirements of the mandate.

#### *Interrogation Activities*

The Controller determined that of the \$12,505,518 in salaries and benefits claimed for the audit period, \$1,206,216 is allowable and \$11,289,312 is unallowable. Once again, the Controller contends the City's costs were unallowable because they were for unallowable activities.

The City is appreciative of the fact the Controller allowed for the \$1,206,216 of costs which were not specifically addressed in its claims. But rather, the Controller, at its own initiative, based on the City's very detailed time study, calculated how much time was spent to conduct the five reimbursable activities it allows for as part of the Interrogation component in the parameters as noted on page ten (10) of the draft audit report.

The City, along with numerous other local agencies, disagrees with the State Controller's interpretation of the primary eligible costs for this component. The City believes the Parameters and Guidelines, as amended at the Controller's request in December 2006, do not accurately reflect the original Statement of Decision which found that eligible costs included: "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." The Controller has limited reimbursement to only officers being compensated for overtime. The City believes the costs for conducting interrogations during regular work time is reimbursable, as is preparation for those interrogations.

#### *Adverse Comment*

The City claimed \$20,278,116 in salaries and benefits for the audit period. The Controller

Mr. Jim L. Spano, Chief  
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determined that \$12,849,376 is allowable and \$7,428,740 is unallowable. The costs were deemed unallowable because the City claimed reimbursement for unallowable activities.

The City identified 16 activities in its time study under this cost component. The Controller found that 11 activities were eligible for reimbursement and 5 were not. The Controller points out that the 5 activities are part of the City's investigative process and are, therefore, not reimbursable. It is the City's contention that, for the most part, the 5 activities are necessary activities to prepare the Adverse Comment and therefore should be reimbursable. The City does not dispute the Controller's statement that the revised Parameters and Guidelines (section IV(D) –Adverse Comment) state that the "investigating a complaint," "interviewing a complainant," and "preparing a complaint investigation report" are not reimbursable activities.

**Finding 2 – Overstate services and supplies**

The City claimed \$708,683 for services and supplies in its Fiscal Year (FY) 2003/04 claim. The Controller found the costs were for actual salary, benefit and related indirect costs incurred for non-sworn employees. The City agrees that these costs were for salaries and were inadvertently included in the service and supplies areas. As such, the Controller considered these costs in the appropriate salary category and treated them in the same manner as all other salaries. Other than the City's disagreement with how the Controller has interpreted the eligible activities in its Finding 1, the City has no disagreement with this finding.

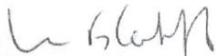
**Finding 3 – Misstated productive hourly rates**

The Controller found the City had understated the productive hourly rates for various employee classifications in the City's FY 2007/08 claim. It also found errors with productive hourly rates in the FY 2003/04 and FY 2005/06. The Controller recalculated those rates and the result was an increase of \$192,248 in direct and indirect costs. The City concurs with this finding.

If you have any questions concerning the City's position or request further information from the City concerning this matter, please contact Police Administrator Laura Filatoff, Commander Officer, Fiscal Operations Division, LAPD, at (213) 485-5296.

Very truly yours,

WILLIAM J. BRATTON  
Chief of Police



LAURA FILATOFF, Police Administrator  
Commanding Officer  
Fiscal Operations Division

**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250-5874**

**<http://www.sco.ca.gov>**