



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued January 13, 2023

Secretary of the Commonwealth of Massachusetts

For the period January 1, 2020 through December 31, 2021





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Office of the State Auditor
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Making government work better

January 13, 2023

The Honorable William F. Galvin, Secretary of the Commonwealth of Massachusetts
One Ashburton Place, 17th Floor
Boston, MA 02108

Dear Secretary Galvin:

I am pleased to provide this performance audit of the Secretary of the Commonwealth of Massachusetts. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, January 1, 2020 through December 31, 2021. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Secretary of the Commonwealth of Massachusetts for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular stamp.

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

CARES	Coronavirus Aid, Relief, and Economic Security
CMR	Code of Massachusetts Regulations
COVID-19	2019 coronavirus
CTR	Office of the Comptroller of the Commonwealth
EOTSS	Executive Office of Technology Services and Security
ICP	internal control plan
SOC	Secretary of the Commonwealth of Massachusetts

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Secretary of the Commonwealth of Massachusetts (SOC) for the period January 1, 2020 through December 31, 2021. The purpose of our audit was to determine the following:

- whether SOC processed Articles of Organization¹ for domestic profit² and foreign corporations³ in accordance with Sections 113.06(4) and 113.16(3) of Title 950 of the Code of Massachusetts Regulations (CMR)
- whether SOC ensured that Articles of Organization were approved promptly in accordance with Section V of its Corporations Division’s “Policies and Procedures”
- whether SOC ensured that domestic profit and foreign corporations filed their annual reports in accordance with 950 CMR 113.57(1) and (2)
- whether SOC updated its internal control plan (ICP) as required by the “[2019 Coronavirus (COVID-19)] Pandemic Response Internal Controls Guidance” issued by the Office of the Comptroller of the Commonwealth
- whether SOC employees responsible for the management of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds received cybersecurity awareness training in accordance with Section 6.2.4 of the Executive Office of Technology Services and Security’s Information Security Risk Management Standard IS.010.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 12	SOC did not ensure that all Articles of Organization were properly signed.
Recommendation Page 12	SOC should create policies and procedures to ensure that all Articles of Organization filed with it are signed by an authorized person and include their role in the corporation and date they signed.
Finding 2 Page 14	SOC did not incorporate a COVID-19 response plan into its ICP.
Recommendation Page 15	SOC should draft a COVID-19 Pandemic Response Plan Appendix, incorporate it into its ICP, and annually review and update the ICP and appendix with any necessary changes.

1. Articles of Organization outline the intent to form a corporation in the Commonwealth of Massachusetts.
2. According to Section 113.02 of Title 950 of the Code of Massachusetts Regulations a domestic profit corporation is “a corporation established, organized, or chartered under the Massachusetts General Laws having capital stock whether established before or after July 1, 2004 for the purpose of carrying on business for profit.”
3. According to Section 113.02 of Title 950 of the Code of Massachusetts Regulations, a foreign corporation is “a for-profit or non-profit corporation incorporated under a law other than the laws of the Commonwealth.”

Finding 3 Page 16	SOC did not ensure that Elections Division employees, who were responsible for the management of CARES Act funds, completed annual cybersecurity awareness training.
Recommendations Page 16	<ol style="list-style-type: none">1. SOC should ensure that cybersecurity awareness training is provided annually for all employees, including Elections Division employees.2. SOC should implement internal controls to ensure that all employees complete the required cybersecurity awareness training annually.

OVERVIEW OF AUDITED ENTITY

The Secretary of the Commonwealth of Massachusetts (SOC) operates under the authority of Chapter 9 of the Massachusetts General Laws and various statutes related to corporations, securities, and elections. SOC is the principal public information office for state government and is organized into the following 16 major divisions: Executive Office, Address Confidentiality Program, Administration, Massachusetts Archives, Citizen Information Service, Commonwealth Museum, Corporations Division, Elections Division, Massachusetts Historical Commission, Lobbyist Division, Public Records Division, Registries of Deeds, Securities Division, State Records Center, State House Tours and Government Education Division, and State Publications and Regulations Division. Each division, accompanied by descriptions, is listed in the [Appendix](#).

SOC has multiple office locations, which include One Ashburton Place in Boston, the Commonwealth Museum and State Archives building in Boston, the Southeast District Office in Fall River, and the Western Office in Springfield.

As of December 31, 2021, SOC had 572 full-time employees, of which 44 were in the Corporations Division. The Corporations Division comprises 10 departments, led by a director. The fiscal years 2020 and 2021 General Appropriations Act appropriated \$48,259,494 and \$54,234,127 for SOC, respectively, of which \$352,868 each year was allocated for the Corporations Division to implement a corporate dissolution program.⁴

Corporations Division

The Corporations Division is the repository for certain records for an estimated 217,000 active corporations, 165,000 active limited liability companies, and an additional 20,000 entities that are registered to conduct business or organized in Massachusetts. The Corporations Division also manages the records of limited partnerships and business trusts. Filings made with the Corporations Division by these entities include service marks⁵ and trademarks.

4. According to the Commonwealth Budget website, the corporate dissolution program “shall have a specific focus on limited liability corporations and limited liability partnerships that have failed in their statutory responsibility to file an annual report.”

5. According to Section 62.02 of Title 950 of the Code of Massachusetts Regulations, a service mark is “a word, name, symbol or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown.”

In 2001, the Corporations Division implemented the business and Uniform Commercial Code electronic filing and imaging system. The system consists of three components: (1) the SOC Staging⁶ database; (2) the EDSStaging⁷ database, for SOC Corporations Division staff members only; and (3) the Corpprod⁸ database, which is accessible to the public. The Corpprod database gives the public a mechanism to use nearly all Corporations Division services, which include many of the filings made with the Corporations Division.

Corporations Division's Filing Process

Sections 1.25 and 16.22 of Chapter 156D of the General Laws identify SOC's duties related to the general filing requirements for all domestic profit and foreign corporations permitted to conduct business in Massachusetts. The four filing methods for Articles of Organization and annual reports are in-person, mail, fax, and online. There are two phases to the Articles of Organization approval process: an initial review by a document examiner and a final review and approval by a staff attorney or compliance manager.

Articles of Organization

When filings are submitted through the mail or in person, they are first separated based on the type of entity, such as a domestic profit or foreign corporation. A document examiner then reviews each filing to ensure that it contains all the statutory requirements. If the filing does not have all the statutory requirements, it is rejected and returned to the filer. If all the statutory requirements are included, the payment, which is based on the type of corporation, is processed at the cashier window. A document examiner reviews the check or money order to verify payment. Once the filer makes the payment, the document examiner endorses the administrative page,⁹ attaches the appropriate coversheet, and forwards the filing to a staff attorney or compliance manager for final review and approval. If the filing is approved by a staff attorney or compliance manager, they endorse the administrative page. A data entry clerk scans a copy of the filing into the SOC Staging database, and the filing is made immediately available to the public through the Corpprod database.

6. The SOC Staging database supports the scanning and quality control of applications for processing business entity filings.

7. The EDSStaging database supports processing for data entry and clerk approval.

8. The Corpprod database contains data for business entities, trademarks, reservations of corporation names, certificate requests, and certified copy requests. The database contains data from both internal data entry by data entry clerks and external data entry from online filings.

9. The administrative page lists the type of organization and applicable filing fee.

Articles of Organization submitted online or through fax are automatically scanned into the SOC Staging database. The Quality Control Unit reviews faxed filings to ensure that they are legible, then a document examiner reviews each filing (both faxed and online) to ensure that it contains all the statutory requirements. If a filing does not have all the statutory requirements, it is sent to the rejected queue and the filer is notified.

Once a filing is approved, a document examiner endorses the administrative page and sends the filing to a staff attorney or compliance manager for a final review to ensure that all requirements are met, including whether the filer made the payment. If a faxed filing is approved by a staff attorney or compliance manager, it is then forwarded to the data entry queue through the EDSStaging database. A data entry clerk enters the filing into the Corpprod database, and the filing is made immediately available to the public.

All Articles of Organization must be signed by an incorporator, which connects the corporation to the individual who intends to create a business in the Commonwealth. The Articles of Organization are public information, and the incorporator is required to verify that all information outlined in the document is accurate.

Annual Reports

According to the Section 113.57 of Title 950 of the Code of Massachusetts Regulations,

[All corporations] authorized to transact business in the Commonwealth shall file an annual report with the [Corporations Division] within 2½ months after the close of the corporation's fiscal year end. . . . The annual report shall set forth:

- (a) the name of the corporation;*
- (b) the state or country under whose law it is incorporated;*
- (c) the street address of the corporation's registered office in the commonwealth;*
- (d) the name of the registered agent at that office;*
- (e) the street address of the corporation's principal office;*
- (f) the names and business addresses of its board of directors and its president, treasurer and secretary, and if different, its chief executive officer and chief financial officer;*
- (g) a brief description of the nature of its business;*

-
- (h) the total number of authorized shares, itemized by class and series, if any, within each class;*
 - (i) the total number of issued and outstanding shares, itemized by class and series, if any, within each class;*
 - (j) the stock of the corporation is publicly traded; and*
 - (k) fiscal year end.*

A document examiner reviews annual reports submitted by mail or in person to ensure that each report contains all the statutory requirements. If the report does not have all the statutory requirements, it is rejected and returned to the filer. If all the statutory requirements are included, payment—which is based on the type of organization—is processed at the cashier window. A document examiner reviews the check or money order to verify the payment. Once the payment is finalized, the data entry clerk scans the report into the SOC Staging database, and it is immediately made available to the public through the Corpprod database.

Annual reports that are submitted online or through fax are automatically scanned into the SOC Staging database. Any annual report filed online with no changes from the prior year is automatically approved by the Corpprod database. The Quality Control Unit reviews faxed reports to ensure that they are legible, then a document examiner reviews each faxed report, or online report with changes, to ensure that it contains all the statutory requirements. If the report does not have all the statutory requirements, it is sent to the rejected queue and the filer is notified. Once it is approved, a faxed report is forwarded to the data entry queue through the EDSStaging database. A data entry clerk enters the filing into the Corpprod database, and the filing is made immediately available to the public.

The Office of the Comptroller of the Commonwealth’s Pandemic Response Guidance

On September 30, 2020, the Office of the Comptroller of the Commonwealth provided guidance in response to the 2019 coronavirus (COVID-19) pandemic for state agencies. The guidelines help state agencies experiencing significant changes to their business processes to identify their goals, objectives, and risks associated with COVID-19. Objectives can include telework; return-to-office plans; a risk assessment of the impact of COVID-19 on state agency operations; changes to the business process; safety protocols for staff members and visitors; and tracking of COVID-19–related awards and expenditures, which are tracked separately from other federal, state, and local expenditures. The guidance also states

that Commonwealth agencies experiencing a significant impact should draft separate COVID-19 Pandemic Response Plan Appendixes to their internal control plans.

The Coronavirus Aid, Relief, and Economic Security Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020. According to the United States Department of the Treasury’s website, the CARES Act “provided fast and direct economic assistance for American workers, families, small businesses, and industries.” SOC received \$8,325,918 in Election Security Grants, which provided CARES Act funds to help states prevent, prepare for, and respond to COVID-19 during the 2020 election cycle. SOC distributed the funds to municipalities to cover the costs of expanded voting by mail, the costs of personal protective equipment and social distancing measures for in-person voting, and the costs of communications about changes in the voting process for both the state primary and general elections.

Cybersecurity Awareness Training

The Executive Office of Technology Services and Security (EOTSS) has established policies and procedures that apply to all Commonwealth agencies using EOTSS-managed information technology infrastructure, such as email, websites, etc. EOTSS’s Information Security Risk Management Standard IS.010 requires that all Commonwealth personnel are trained annually for cybersecurity awareness. According to Section 6.2 of EOTSS’s Information Security Risk Management Standard IS.010, “The objective of the Commonwealth information security training is to educate users on their responsibility to help protect the confidentiality, availability and integrity of the Commonwealth’s information assets.”

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of Secretary of the Commonwealth of Massachusetts (SOC) for the period January 1, 2020 through December 31, 2021.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did SOC process Articles of Organization for domestic profit and foreign corporations in accordance with Sections 113.06(4) and 113.16(3) of Title 950 of the Code of Massachusetts Regulations (CMR)?	No; see Finding <u>1</u>
2. Did SOC ensure that Articles of Organization were approved promptly in accordance with Section V of its Corporations Division’s “Policies and Procedures”?	Yes
3. Did SOC ensure that domestic profit and foreign corporations filed their annual reports in accordance with 950 CMR 113.57(1) and (2)?	Yes
4. Did SOC update its internal control plan (ICP) as required by the Office of the Comptroller of the Commonwealth’s (CTR’s) “[2019 Coronavirus (COVID-19)] Pandemic Response Internal Controls Guidance”?	No; see Finding <u>2</u>
5. Did SOC employees who were responsible for the management of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds receive cybersecurity awareness training in accordance with Section 6.2.4 of the Executive Office of Technology Services and Security’s Information Security Risk Management Standard IS.010?	No; see Finding <u>3</u>

To accomplish our objectives, we gained an understanding of SOC’s internal control environment related to the objectives by reviewing applicable agency policies and procedures, as well as conducting interviews with SOC management. We evaluated the design and implementation of the internal controls related to

our audit objectives. We evaluated the operating effectiveness of internal controls related to the approval process of Articles of Organization and annual report filings.

To obtain sufficient, appropriate audit evidence to address our audit objectives, we conducted further audit testing as follows.

To determine whether SOC processed Articles of Organizations for domestic profit and foreign corporations as required by 950 CMR 113.06(4) and 950 CMR 113.16(3), we performed the following procedures.

- Based on a high risk level, we selected a random, statistical sample with a 95% confidence level, 5% tolerable error rate, and 0% expected error rate. Our sample consisted of 60 out of 28,293 Articles of Organization that were filed during our audit period. We examined each Articles of Organization to ensure that it included the following: name of the corporation; purpose; authorized shares; any limitation or class listing; restrictions on transfer; effective date; the registered agent's name and address; and the names and addresses of the individuals who will serve as the initial president, treasurer, secretary, and directors of the corporation. In addition, we examined each Articles of Organization filing to determine whether the authorized person¹⁰ signed it, stated their role in the corporation, and included the date they signed.

To determine whether SOC approved the Articles of Organization for domestic profit and foreign corporations that were filed during the audit period in a timely manner, we performed the following procedures:

- Based on a high risk level, we selected a random, statistical sample with a 95% confidence level, 5% tolerable error rate, and 0% expected error rate. Our sample consisted of 60 out of 28,293 Articles of Organization that were filed during our audit period. We examined the submission date (when the filing was approved) and insert date (when the filing was uploaded to the public website) and compared them to ensure that Articles of Organization submitted before 4:00 p.m. were approved that day or the next business day.

To determine whether SOC verified that annual reports for domestic profit and foreign corporations filed during the audit period were filed within two and a half months after a corporation's fiscal year ended, we performed the following procedures:

- Based on a high risk level, we selected a random, statistical sample with a 95% confidence level, 5% tolerable rate, and 0% expected error rate. Our sample consisted of 60 out of 308,311 annual

10. According to 950 CMR 113.02, an authorized person is "a person authorized to execute documents. . . . (a) the chairman of the board of directors; (b) the president or other officer of the corporation; (c) if directors have not been selected or the corporation has not been formed, the incorporator or incorporators; or (d) a receiver, trustee or other court appointed fiduciary."

reports that were filed during the audit period. We inspected the annual reports to determine the date of each corporation's fiscal year end. We used Microsoft Excel to calculate each corporation's last date to file. The calculation included the fiscal year end date and the addition of two and half months. Finally, we used Microsoft Excel again for our comparison of the submission date and the last date to file. For any annual reports submitted after the last date to file, we examined the annual report in addition to the annual report's detail record¹¹ to ensure that the appropriate fee was assessed.

- We examined the sample of 60 annual reports to determine whether they included all the required information listed in 950 CMR 113.57.

To determine whether SOC updated its ICP in accordance with CTR's "COVID-19 Pandemic Response Internal Controls Guidance," we performed the following procedure:

- We asked SOC officials whether they updated the ICP during the audit period with the COVID-19 guidance established by CTR's "COVID-19 Pandemic Response Internal Controls Guidance" because COVID-19 caused a significant change to the work environment. We examined copies of the ICP that was updated in 2019 and SOC's COVID-19 response plan to determine whether they contained the components required by CTR's "COVID-19 Pandemic Response Internal Controls Guidance."

To determine whether SOC ensured that each employee who was responsible for managing CARES Act funds completed cybersecurity awareness training, we performed the following procedure:

- We obtained from SOC a list of the 14 employees, which included 10 Elections Division employees and 4 administrative employees, who were responsible for managing CARES Act funds during the audit period. We examined copies of each employee's certificate of completion for cybersecurity awareness training during our audit period to determine whether each employee responsible for managing CARES Act funds received cybersecurity awareness training.

Data Reliability Assessment

Corporations Division Database

SOC uses the business and Uniform Commercial Code electronic filing and imaging system to house all Articles of Organization, annual reports, and other types of filings made with SOC. We assessed the reliability of the data obtained from the system by conducting interviews with SOC employees who were knowledgeable about the data, examining system documentation, testing for duplicate records, and examining the data for any dates outside the audit period. We also tested certain general

11. An annual report's detail record is an internal document that lists information such as filing type, submission date, approval date, and payment information.

information system controls (access controls, security management, configuration management, contingency planning, and segregation of duties).

To confirm the completeness and accuracy of the list of Articles of Organization and annual report filings made during the audit period from SOC's filing and imaging system that we used for our testing, we selected a judgmental sample of 20 annual report filings from the list provided. We determined whether the information in SOC's filing and imaging system matched information from the filings on the public search database. We selected a judgmental sample of 20 hardcopy Articles of Organization filings made during the audit period and traced them to SOC's filing and imaging system for completeness.

List of Employees

To confirm the completeness and accuracy of the SOC-provided list of employees responsible for the management of CARES Act funds, we extracted employee lists from the CTHRU¹² database for calendar years 2020 and 2021 and combined the two lists to test for duplicate records. We then compared the list of employees extracted from CTHRU to the list provided by SOC to determine whether employee names and titles, as well as the number of employees, matched.

Based on the results of our data reliability assessments, we determined that the information obtained for our audit period was sufficiently reliable for the purpose of our audit objectives.

12. According to CTR's website, "CTHRU is an innovative open records platform that offers transparency into the finances of the Commonwealth of Massachusetts. CTHRU provides users with an intuitive experience for exploring how and where our tax dollars are utilized."

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Secretary of the Commonwealth of Massachusetts did not ensure that all Articles of Organization were properly signed.

During our audit, we identified 1 out of the 60 Articles of Organization in our sample where the Secretary of the Commonwealth of Massachusetts (SOC) did not ensure that the Articles of Organization contained all the information required to be included by the incorporator. This Articles of Organization was filed online with SOC. The authorized signature did not include the incorporator's name, their role in the corporation, and the date they signed the Articles of Organization.

Without a complete signature, including the incorporator's name, their role in the corporation, and the date they signed the Articles of Organization, SOC cannot know who is responsible for the corporation. The signature requirement ensures that all organizations complete the form consistently, providing a level of accountability and transparency.

Authoritative Guidance

According to Section 113.06(4) of Title 950 of the Code of Massachusetts Regulations,

[Articles of Organization] shall be signed by an authorized person, and further, unless submitted by authorized electronic or facsimile transmission, such signature must be original. The authorized person must state beneath or opposite his signature his name, the capacity [their role in the corporation] in which he signs and the date.

Reasons for Noncompliance

SOC did not create policies and procedures to review authorized signatures, nor did it provide staff attorneys or compliance managers with internal policies as to what an authorized signature should include.

Recommendation

SOC should create policies and procedures to ensure that all Articles of Organization filed with it are signed by an authorized person and include their role in the corporation and date they signed.

Auditee's Response

The [draft audit report] found that the SOC did not ensure that all Articles of Organization were properly signed and recommended that the SOC create policies and procedures to ensure that all

Articles of Organization filed with the SOC are signed by an authorized person and include their role in the corporation and date they signed. The SOC believes we have complied with state law and regulations relative to processing Articles of Incorporation and argue that the finding makes several errors in its assessment that the SOC "did not ensure that all Articles of Organization were properly signed."

Section 2.01 of chapter 156D of the Massachusetts General Laws provides that "one or more persons may act as the incorporator or incorporators of a corporation by signing articles of organization and delivering them to the secretary of state for filing." While section 1.20 of chapter 156D of the General Laws provides that the person executing the document must state their name and capacity, this is not applicable to the Articles of Organization. The person signing the Articles of Organization's role is defined by section 2.01 of chapter 156D as the incorporator. The sole function of the incorporator is to sign the articles of organization and deliver them or cause them to be delivered to this office. Upon the creation of the entity, the incorporator holds no official position in the corporation. Therefore, the articles of organization in question, complied with law and this office had no authority at the time of its presentment to reject the articles of organization. We are unable to create policies and procedures as suggested in the [draft audit report] as they would be contrary to law. . . .

Additionally, listing this as a "significant finding" completely disregards the fact that even if the articles of organization did not comply with law, which they, in fact did, one out of sixty reviewed documents is not significant. The error rate in this instance would be .01%, rendering this statistically insignificant. With only this one so-called error, it is clear that the SOC has policies and procedures in place to ensure that the Articles of Organization are filed in compliance with law.

Auditor's Reply

As stated above, SOC did not ensure that the Articles of Organization contained all the information required to be included by the incorporator. SOC's assertion that the incorporator holds no role is inaccurate. Section 1.20(g) of Chapter 156D of the Massachusetts General Laws states, "The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs."

The incorporator is an official position, especially in instances before the formation of a corporation where the incorporator has a very specific role to execute documents such as Articles of Organization. The General Laws make no provision to relieve the incorporator of their duty to sign their name and include the capacity in which they sign. We believe that the signature requirement ensures that all organizations complete the form consistently.

In response to SOC's comment about the significance of the finding, our audit testing was designed with the expectation of not finding any exceptions in our sample of 60 instances. Therefore, even one exception identified is considered significant based on the design of our testing.

The Office of the State Auditor reiterates its recommendation that SOC should create policies and procedures to ensure that all Articles of Organization filed with it are signed by an authorized person and include their role in the corporation and date they signed.

2. SOC did not incorporate a 2019 coronavirus response plan into its internal control plan.

SOC did not update its internal control plan (ICP) with a 2019 Coronavirus (COVID-19) Response Plan Appendix. During the audit period, SOC did create a separate "COVID-19 Response Plan," but it did not incorporate it into the ICP. Additionally, SOC's ICP was last updated in 2019 before the start of the COVID-19 pandemic.

By not updating its ICP with a COVID-19 Pandemic Response Plan Appendix, SOC could be vulnerable to not effectively and efficiently achieving its mission and objectives.

Authoritative Guidance

The Office of the Comptroller of the Commonwealth's (CTR's) "COVID-19 Pandemic Response Internal Controls Guidance," issued September 30, 2020, states,

Department internal control plans must be based on risk assessments and updated annually, or when significant changes occur. Because the COVID-19 Pandemic has affected all departments, The Comptroller, in consultation with the State Auditor's Office, is providing two options for updating internal controls.

- 1. If the impact to your department is such that it can be reflected in your Internal Control Plan (ICP), then update the ICP as you would for any other mid-year changes.*
- 2. Departments experiencing a significant impact, and requiring the accumulation of substantial documentation (e.g. changes to business processes, requirements of federal and state specific laws or guidance, new funds or new programs), can draft a separate COVID-19 Pandemic Response Plan Appendix to the ICP as an organized set (hard or soft copies) of emails, documents, risk assessments, policies, and procedures.*

Reasons for Noncompliance

SOC officials told us that the "COVID-19 Response Plan" was an evolving document during the pandemic. Therefore, it was not finalized and included as a COVID-19 Pandemic Response Plan Appendix within SOC's ICP.

Recommendation

SOC should draft a COVID-19 Pandemic Response Plan Appendix, incorporate it into its ICP, and annually review and update the ICP and appendix with any necessary changes.

Auditee's Response

The [draft audit report] found that the SOC did not incorporate a COVID-19 Response Plan into our Internal Control Plan (ICP) and therefore "the SOC could be vulnerable to not effectively and efficiently achieving its mission and objectives."

The audit finding acknowledges that the SOC did have a COVID-19 Response Plan, but essentially discredits it since it was not specifically incorporated into the ICP and not labeled as an appendix. The finding is without merit and is based solely on where the documents sit. Maintaining our COVID-19 Response Plan separately has had no adverse effect on our operations and, in fact, has been very successful in enhancing our control environment during the pandemic. While the COVID-19 Response Plan was not incorporated into the ICP, the SOC internal controls were updated in the Response Plan, focusing primarily on the potential impact of COVID on our operations.

There is no justifiable basis for describing the "error" to be significant and therefore the finding should be deleted. . . .

The finding also references updating the ICP itself, which is outside the scope of the objective listed on page 8 of the [draft audit report] that was limited to a COVID-19 Response Plan and not the ICP itself. In any event, the SOC is committed to ensuring that the ICP is updated as necessary and required.

Auditor's Reply

The audit objective related to this finding involved reviewing SOC's ICP during the audit period to determine whether the ICP included a COVID-19 response plan, as required by CTR's "COVID-19 Pandemic Response Internal Controls Guidance." Because the ICP was not updated during the audit period (during our fieldwork, SOC provided its most recent ICP that was updated before our audit period), the COVID-19 response plan was not incorporated into the ICP as required by this guidance. During our audit, SOC officials provided the components of the COVID-19 response plan in a separate document.

The Office of the State Auditor reiterates its recommendation that SOC should include those components as an appendix to its ICP to comply with CTR's "COVID-19 Pandemic Response Internal Controls Guidance."

3. SOC did not ensure that Elections Division employees, who were responsible for the management of Coronavirus Aid, Relief, and Economic Security Act funds, completed annual cybersecurity awareness training.

SOC did not ensure that Election Division employees, who were responsible for the management of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds, completed the required annual cybersecurity awareness training.

Based on our audit testing, we determined that 10 of the 14 individuals identified as being responsible for the management of CARES Act funds did not complete the required annual cybersecurity awareness training in the 2020 calendar year. These 10 individuals were all Elections Division employees.

If SOC does not always ensure that its employees complete cybersecurity awareness training, SOC is exposed to a higher risk of cyberattacks and financial losses.

Authoritative Guidance

Section 6.2.4 of the Executive Office of Technology Services and Security's (EOTSS's) Information Security Risk Management Standard IS.010 states, "All personnel will be required to complete Annual Security Awareness Training."

Section 3.1 of EOTSS's Acceptable Use of Information Technology Policy IS.002 requires SOC to comply with its security standards because SOC uses services provided by EOTSS.

Reasons for Noncompliance

SOC does not have internal controls in place to ensure that all employees complete cybersecurity awareness training annually. Additionally, SOC officials told us that it did not provide cybersecurity awareness training to all employees in the Elections Division during 2020 because of the COVID-19 pandemic and because these employees were busy during the 2020 election season.

Recommendations

1. SOC should ensure that cybersecurity awareness training is provided annually for all employees, including Elections Division employees.

2. SOC should implement internal controls to ensure that all employees complete the required cybersecurity awareness training annually.

Auditee's Response

The [draft audit report] found that 10 out of 14 SOC employees who were responsible for the management of CARES funds had not completed cybersecurity training. First, we'd like to dispute the methodology used to determine the number of employees who managed CARES funds. The [draft audit report] states that 10 employees of the Elections Division were responsible for management of CARES funds, which is not accurate. Any federal spending, whether for CARES funding or other federal grants received by the Elections Division, must be approved by the Director and has been recognized by the awarding agency, the Election Assistance Commission, as appropriate.

We acknowledge that not all employees completed cybersecurity training in 2020. While many state offices shifted to an entirely remote workforce, the Elections Division and most of the other departments within the SOC remained working fully in person in their normal place of business and following strict COVID-19 protocols. During the state of emergency, Elections Division employees needed to be physically present to accept nomination papers and perform other functions as required by state law necessary for the orderly administration of the 2020 state primaries and election as well as support the local election officials for their municipal elections. As a result, the Elections Division successfully administered the 2020 state primaries and election, which saw the highest voter turnout in Massachusetts history, and without any cyber incidents.

The SOC has implemented mandatory, robust cybersecurity training for all staff, including the Elections Division. All employees in the Elections Division have completed annual cybersecurity training and have successfully responded to orchestrated phishing tests randomly administered throughout the past year. . . .

[The First Deputy Secretary Director/Legal Counsel of the Elections Division] is the Elections Division employee who is responsible for the approval of expenditures of any federal grant funds relating to elections. We acknowledge that she did not complete the required SOC issued cybersecurity training in 2020, but has since completed SOC cybersecurity training annually as well as federal cybersecurity training through the Department of Homeland Security.

Auditor's Reply

As noted in this audit report, during the audit we found that not all Elections Division employees completed the required annual cybersecurity awareness training. During the audit, we asked SOC officials for a list of employees responsible for CARES Act funds and SOC provided us with a list that included the 10 Elections Division employees. We understood that the Elections Division received CARES Act funds during our audit period and used this list for our audit testing. This list included the First Deputy Secretary Director/Legal Counsel of the Elections Division, who SOC cites in its response as an employee responsible for the management of CARES Act funds. None of the 10 Elections Division employees received

cybersecurity awareness training during 2020, including the First Deputy Secretary Director/Legal Counsel. Therefore, we believe that our finding that not all Elections Division employees received the required annual cybersecurity awareness training during the audit period is accurate.

Based on its response, it appears that SOC has taken measures to address this issue.

APPENDIX

Divisions of the Secretary of the Commonwealth of Massachusetts

According to the Secretary of the Commonwealth of Massachusetts' (SOC's) internal control plan, the divisions within SOC are as follows.

Executive Office

The Secretary, the Communications Division and Legislative Affairs Division are located in the Executive Office. In addition, staff coordinate the Secretary's schedule and renders constituent services.

Address Confidentiality Program

The [Address Confidentiality Program] provides a means by which victims of domestic violence, sexual assault and stalking use a confidential address when dealing with local and state agencies. The program ensures that their residential address does not become a public record thereby assisting in keeping them safe from threatened violence.

Administration

Comprised of the Budget Office, Human Resources, Legal Counsel and the Information Technology Division, these functions provide essential services to support the program and service delivery.

Massachusetts Archives

The Massachusetts Archives is responsible for securing, preserving and managing for the public good the noncurrent records of state government deemed to have permanent value. Those records relate to government goals, objectives and actions, or represent documentation of the state's citizens and history.

The Archives is mandated to acquire, describe, preserve and provide access to those records, and the division's Records Management Unit works with state and local agencies to ensure that records are properly maintained. In addition, this division trains records custodians in appropriate management techniques, including the appraisal and disposition of government records.

The Archives is also the repository of more than 370 years of Massachusetts history, housing such artifacts and documents as early probate and court records, genealogical and immigration information, and other historical data.

Citizen Information Service

Citizen Information Service (CIS) has made state government more accessible to residents of the Commonwealth. It has responded to nearly two million telephone inquiries, and has been able to provide immediate answers to approximately 99 percent of those calls.

Commonwealth Museum

The Commonwealth Museum brings Massachusetts history alive through exhibits, lectures and student programs and publications. In a major new initiative the museum is planning to display rare "foundation documents" from the collections of the Massachusetts Archives. Massachusetts students and general visitors will see original copies of the Declaration of Independence and Bill of Rights and other materials comparable in importance to those on display at the National Archives. An engaging interactive exhibit will explain their significance and the role of Massachusetts in the development of rights shared by all Americans.

Corporations Division

The Corporations Division administers the business entity laws in Massachusetts. Included are those statutes applicable to Massachusetts business corporations (M.G.L. c. 156D), foreign corporations (M.G.L. c. 156D), professional corporations (M.G.L. c. 156A), and non-profit corporations (M.G.L. c. 180A), limited liability companies (M.G.L. c. 156C), limited liability partnerships (Chapter 281 of the Acts of 1995), limited partnerships (M.G.L. c. 109). Filings made under Article 9 of the Uniform Commercial Code and trademarks and servicemarks are also filed with the Division.

The Corporations Division is primarily the filing and public information office for more than 300,000 registered corporations and more than 85,000 limited liability companies in the Commonwealth. The public may gain access to this information at the office each weekday during business hours, by mail request or online at any time.

Elections Division

The Secretary of the Commonwealth is the state's chief election official. The Elections Division administers federal and state elections, from the distribution and receipt of nomination papers to the printing of ballots for all federal, state and county elections in Massachusetts.

In addition, the division conducts public education, outreach and voter registration campaigns, and is constitutionally required to print the "Information for Voters" booklet, which describes all statewide ballot questions and is mailed to every household in the Commonwealth.

The Elections Division is also responsible for implementing federal legislation regarding elections including:

- The Americans with Disabilities Act, which assures polling places are accessible for the disabled and elderly;*
- The Voting Rights Act, which requires voting materials be available in alternate languages for certain jurisdictions as determined by the director of the U.S. Census Bureau;*
- The National Voter Registration Act ("Motor Voter"), which established a state central voter registry and allows persons to register to vote at numerous public agencies throughout the state including the Registry of Motor Vehicles; and*

- *The Help America Vote Act which provides certain new procedures for registering and voting and requiring accessible equipment in each polling place to allow voters with disabilities the opportunity to mark their ballot independently and privately. In Massachusetts, this was done through the implementation of the AutoMARK Voter Assist Terminal.*

Massachusetts Historical Commission

The Massachusetts legislature established the Massachusetts Historical Commission in 1963 to identify, evaluate, and protect the significant historic and archaeological assets of the commonwealth. The [Massachusetts Historical Commission, or MHC] is the State Historic Preservation Office (SHPO) and the Office of the State Archaeologist and has a staff of architectural historians, preservation planners, historians, architects, geographers, and archaeologists distributed among three divisions: preservation planning, technical services, and grants.

The Preservation Planning Division and the State Archaeologist maintain the Inventory of Historic and Archaeological Assets of the Commonwealth, which is the foundation for most preservation activities. Staff of the Preservation Planning Division act as liaison to local governments to help with local preservation initiatives such as local historic districts, preservation bylaws, local historical commissions, and the Certified Local Government program. The MHC administers the National Register program in Massachusetts and is a national leader in nominating properties. The Preservation Planning Division maintains the State Register of Historic Places, which is the master list of all designated properties in the Commonwealth.

When funds are available the MHC's grants division administers the Massachusetts Preservation Projects Fund, a matching grant program for historic and archaeological properties owned by municipalities or nonprofit organizations. Survey & Planning grants provide matching federal funds to Certified Local Governments and other qualifying organizations for preservation projects including preparing community architectural and archaeological surveys, preservation plans, historic district design guidelines, and National Register nominations.

The Technical Services Division manages both the Federal Investment Tax Credit program and State Historic Rehabilitation Tax Credit. As the SHPO, the MHC consults with federal agencies in reviewing federal projects for their effects on significant historic and archaeological properties. The MHC has similar authorization under state law to comment on projects that are licensed, permitted, or funded by a state agency.

The State Archaeologist oversees archaeological excavations on public lands and issues permits for excavations to ensure that archaeological resources are properly excavated and conserved. The State Archaeologist sponsors Massachusetts Archaeology Month every October and oversees the curation and exhibit of archaeological collections through the Commonwealth's Archaeological Curation Center at the MHC.

Lobbyist Division

The Lobbyist Division is responsible for the oversight and enforcement of lobbyist registration and disclosure reporting. The Division functions to ensure that lobbyists register with this office when

required, and that the registered lobbyists and clients fully disclose all information required by the Massachusetts Lobbying Law.

Public Records Division

The Public Records Division is the principal arbiter of the state's Freedom of Information Act. The legal section of the division annually processes nearly 1800 formal appeals from citizens, public officials and members of the media who have been denied information by public agencies. The division, in approximately 96 percent of the cases, has ruled on behalf of the public's right to gain access to that information. The legal staff also issues advisory opinions and answers thousands of questions each year involving interpretation of the public records statute.

The division also contains the Commissions Section, which tracks the appointments of more than 200,000 notaries public in Massachusetts, and administers the oaths of office to those notaries, justices of the peace and other gubernatorial appointments. It also maintains the governor's appointment system, prepares certifications of official signatures, and reviews and accepts information by clergy requesting authorization to solemnize marriages in the Commonwealth.

Registries of Deeds

The thirteen Registries of Deeds, under the jurisdiction of the Secretary of the Commonwealth pursuant to M.G.L. c. 34B, are responsible for maintaining a permanent public record of all properly drawn legal documents submitted by the public relative to real estate including deeds, mortgages, surveyor and architect plans, liens, Certificates of Title, and other records as mandated by statute.

Securities Division

The Securities Division regulates the offer and sale of securities and the people who sell or give advice about securities in the Commonwealth. The Massachusetts Uniform Securities Act requires that the securities be registered or exempt, and that most broker-dealers, agents, investment advisers and their representatives be registered with the Division. Citizens are encouraged to contact the Division for the registration status of the securities and the registration and disciplinary history of broker-dealers, agents, investment advisers and representatives.

Enforcement is a key component of the Division's operation. The Enforcement Section vigorously pursues those individuals, who sell investments fraudulently, as well as brokers, investment advisers, and others who make misrepresentations relating to securities transactions.

The Securities Division works with smaller businesses in Massachusetts to assist them in the securities registration process. It also participates in a New England project to make securities registration easier for small companies.

The Securities Division conducts investor education and outreach programs to help protect investors before any fraud or misconduct occurs. The Division provides speakers on investor protection and distributes numerous pamphlets and other materials dealing with investor protection and financial literacy.

State Records Center

The State Record Center provides a climate controlled off-site storage facility for 200,000 cubic feet of inactive records generated and collected by state agencies and is responsible for delivering, retrieving and refiling records for executive offices.

State House Tours and Government Education Division

Established by an act of the legislature in 1969, the State House Tours Division is responsible for guiding approximately 100,000 visitors annually through the halls of the state's capitol building. Offerings include an Architectural/Historical Tour and a Legislative Process Tour, as well as a number of brochures explaining the history of the State House and the passage of legislation.

The division, in addition to providing State House information in eight different languages, operates an Information desk, which assists with questions on state government, locating personnel and various tourist inquiries. It also has resource notebooks containing a wealth of information for school groups, journalists, historians and travel professionals. In addition, the Tours Division manages the operation of the State House Gift Cart, which has souvenirs, books and other materials relating to the State House.

State Publications and Regulations Division

This division, consisting of two components, Regulations and the State Bookstore, is responsible for publishing and distributing a wide variety of documents of pertinent interest to persons throughout Massachusetts.

Regulations

The Regulations section produces the Code of Massachusetts Regulations (CMR), which is 25,000 pages of the state's administrative law. It also publishes, for subscribers only, such documents as the "Massachusetts Register," a bi-weekly publication that includes amendments to the CMR; the "Central Register," a weekly which contains listings of bids for design and construction-related public projects; the "Goods and Services Bulletin," a weekly which lists bid opportunities for goods and professional services; and the "Cumulative Table," a monthly that lists all the current changes to CMR. Regulations also annually publish the "Acts and Resolves of Massachusetts," which is a compilation of all laws enacted by the state legislature for the year.

State Bookstore

The State Bookstore, a component of the State Publications and Regulations Division, is responsible for the sale of state regulations, as well as numerous other state publications, such as the "School Directory," "State Register of Historic Places" and "Massachusetts Election Statistics." It also has copies of recently passed state laws and a collection of souvenirs to accommodate the 100,000 tourists who visit the State House each year. Continually expanding its retail scope, the State Bookstore now averages more than \$400,000 in annual sales.