

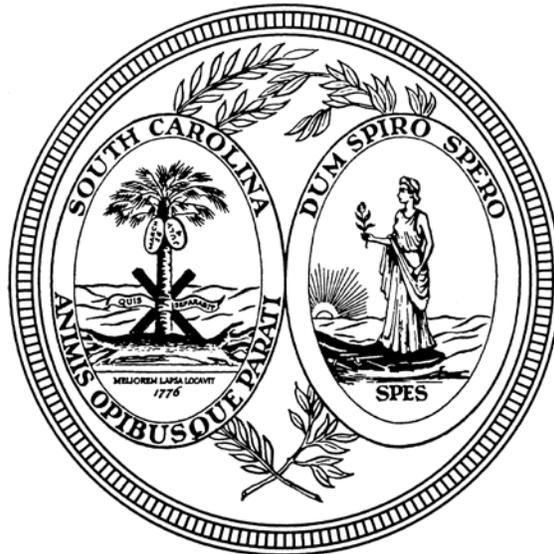


SOUTH CAROLINA GENERAL ASSEMBLY

Legislative Audit Council

December 2014

A LIMITED REVIEW OF THE S.C. HUMAN AFFAIRS COMMISSION



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Legislative Audit Council

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Introduction and Background

Audit Objectives

Members of the General Assembly requested that we conduct an audit of the South Carolina Human Affairs Commission (SCHAC). We were asked to review human resources issues and the use of agency funds. Additionally, we were asked to address board vacancies, constituent services, and complaint investigations. Our audit objectives are listed below.

- Determine if the agency's management staff has the adequate training and experience to carry out the mission of the agency.
- Determine the current status of board membership and what is required of the board members regarding the management of the agency.
- Review the staffing levels, salaries, and employment status of agency staff.
- Review processes in place to determine if agency funds have been expended appropriately, specifically including funds for outside consultative services.
- Identify what constituent services for the General Assembly are handled by the agency and determine if they are handled appropriately.
- Review the contracts with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing & Urban Development (HUD) to determine if the S.C. Human Affairs Commission handles its cases according to the contracts' requirements.

Scope and Methodology

We reviewed the operations of the S.C. Human Affairs Commission, including its human resources files, use of agency funds, and documentation regarding the agencies contracts with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing & Urban Development (HUD).

The period of our review was generally FY 09-10 through FY 13-14, with consideration of earlier and more recent periods when relevant. To conduct this audit, we used a variety of sources of evidence, including the following:

- Interviews of SCHAC employees, employees of other state agencies, employees of federal agencies, and private individuals.
- SCHAC contracts, financial records, procurement records, human resources records, and agency reports.
- Federal and state laws and regulations.
- SCHAC board meetings and minutes.

- Audits, reports, and studies conducted by external entities regarding SCHAC's operations, including EEOC and HUD.
- SCHAC's strategic plan.
- SCHAC's budget requests.
- Office of Human Resources records.

Criteria used to measure performance included state and federal laws and regulations, agency policies, EEOC and HUD contracts with SCHAC, and principles of good business practices. We used nonstatistical samples, which are described in the audit report. We reviewed internal controls in several areas including SCHAC's procurement and human resources. Our findings are detailed in the report.

We interviewed staff regarding the various information systems used by SCHAC. We determined how the data was maintained and what the various levels of control were. We reviewed internal controls of systems in some areas. The use of computerized data was not central to our audit objectives.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those generally accepted government auditing 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.

Background

The S.C. Human Affairs Commission (SCHAC) is responsible for administering and enforcing laws to prevent and eliminate unlawful discrimination. These laws include:

- South Carolina Human Affairs Law (S.C. Code §1-13-10 *et seq.*)
- South Carolina Fair Housing Law (S.C. Code §31-21-10 *et seq.*)
- Equal Enjoyment and Privileges to Public Accommodations Act (S.C. Code §45-9-10 *et seq.*)

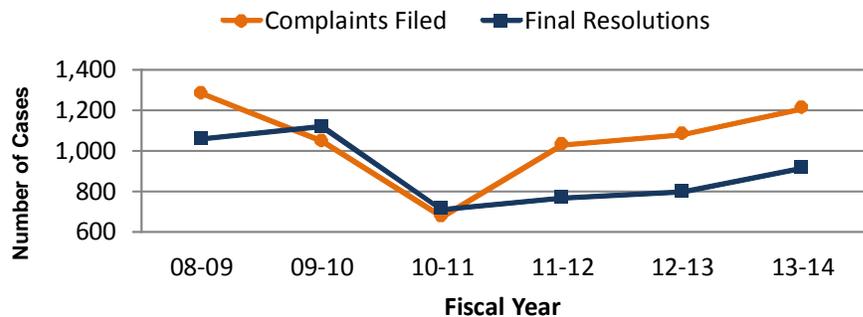
SCHAC was created in 1972 and the agency is governed by a nine-member board. The board consists of one representative from each of the seven Congressional districts appointed by the Governor, with the advice and consent of the Senate, and two at-large members appointed by the Governor.

The agency's office is located in Columbia, South Carolina. As of August 1, 2014, SCHAC had 29 full-time equivalent (FTE) positions. For FY 14-15, the agency's budget was \$2,242,042, of which \$1,613,939 are state general funds. SCHAC receives federal funds from EEOC and HUD. The majority of these funds are payments for cases closed under contracts with those federal agencies. The agency also offers consultative services. These include providing assistance to state agencies with the development and implementation of their affirmative action plans and programs, training employers to prevent workplace discrimination, and supporting local community relations councils.

Compliance

SCHAC's largest division is its compliance division. This division's expenditures were \$957,147 in FY 13-14. This division serves as the investigative and enforcement arm of the agency. The primary duties of the compliance division are to receive, investigate, and resolve complaints alleging unlawful discriminatory employment and housing practices. Figure 1.1 shows the number of employment cases that SCHAC has completed since 2009.

Figure 1.1: Employment Cases at SCHAC



Source: SCHAC and LAC

Employment

The South Carolina Human Affairs Law prohibits discriminatory employment practices. Complainants alleging unlawful discrimination or retaliation for filing may file on the basis of race, color, sex, age, religion, national origin, and disability. Under federal law, the EEOC is responsible for enforcing laws related to employment discrimination. The EEOC has since entered into contracts with SCHAC that allow SCHAC to investigate employment discrimination complaints on behalf of the EEOC. In return, EEOC compensates SCHAC for each closed case. SCHAC notifies EEOC of all of the complaints filed and EEOC reviews 10% of the closed cases.

In FY 13-14, SCHAC completed 985 employment cases alleging discrimination. As per its contract with EEOC, SCHAC received \$650,250 for completing cases and training staff. As of August 1, 2014, SCHAC had 16 staff assigned to intake (4), mediate (1), and investigate (11) employment discrimination complaints.

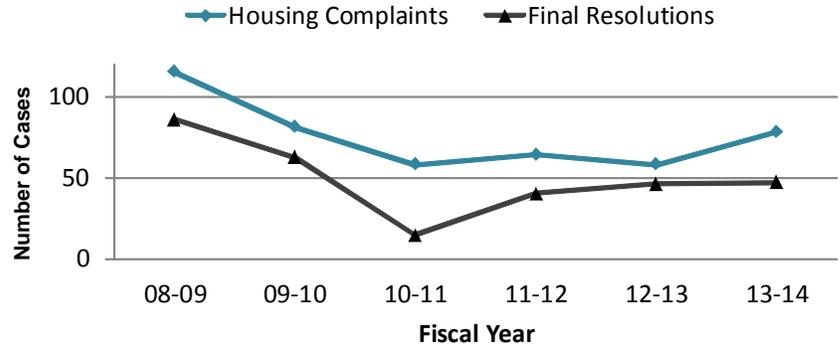
Housing

Both the federal act and the state law indicate that it is unlawful to discriminate on the basis of race, color, religion, sex, familial status, or national origin, and, in some cases, handicap, in relation to:

- The sale or rental of property.
- Residential real-estate transactions.
- The provision of brokerage services.
- The interference, coercion, or intimidation of the abovementioned rights.

SCHAC is certified to resolve cases on behalf of HUD. HUD and SCHAC have a cooperative agreement under which HUD reimburses the agency for each case completed. HUD also provides funds for administrative and training costs. Figure 1.2 shows the number of housing cases that SCHAC has completed over the last 6 years.

Figure 1.2: Fair Housing Cases at SCHAC



Source: SCHAC and LAC

SCHAC completed 47 fair housing cases during FY 13-14. Per its agreement, SCHAC received \$142,469 from HUD for administrative costs, staff training, and completed fair housing cases. SCHAC had six employees assigned to the fair housing investigations unit as of August 1, 2014.

SCHAC also investigates complaints filed under the state Equal Employment and Privileges to Public Accommodations Act. During FY 13-14, the agency received 11 public accommodations cases.

Chapter 1
Introduction and Background

Employment and Housing Cases

Employment Cases

The U.S. Equal Employment Opportunity Commission (EEOC) is authorized by federal laws to prevent unlawful employment practices and retaliation for filing. Furthermore, federal law permits EEOC to cooperate with state agencies administering state fair employment practice laws, pay them for their assistance, and enter into agreements for processing charges (i.e. completing cases).

The S.C. Human Affairs Commission (SCHAC) is the agency in South Carolina authorized to administer the state's fair employment practice law and is the only agency in South Carolina certified by the EEOC to process employment cases on its behalf. EEOC contracts with SCHAC to resolve allegations of employment discrimination in the state and reimburses SCHAC for services rendered up to its contracted caseload. Also, both agencies adhere to a worksharing agreement which allocates the workload in concurrent jurisdictions according to capability.

Employment Caseloads

At the beginning of each federal fiscal year, SCHAC requests from EEOC a fixed number of cases to complete during the contractual term. According to an SCHAC official, the agency requests caseloads based on the number of investigators and previous number of cases completed. EEOC then allocates caseloads according to requested amounts and available federal funding. An SCHAC official also stated that the agency expects to receive approximately 80% – 85% of the number of cases requested; however, this percentage may vary depending on EEOC funding. For example, in FFY 13-14, SCHAC requested 1,200 cases, expecting to receive approximately 960 according to the 80% rule. Rather, the agency was awarded 1,113 cases or 93% of its request.

Transferred Cases

The number of employment cases SCHAC resolves is also dependent on the number of claims made by the public. When the agency receives fewer than expected cases, SCHAC may request from EEOC cases that were filed with the EEOC. EEOC may then transfer these cases to SCHAC, which can then be used to satisfy the contractual balance. According to an EEOC official, having SCHAC assist EEOC in these cases is extremely helpful.

Modifications to Caseloads

EEOC may also modify the contracted caseloads to assist fair employment agencies in meeting their contracted obligations. During the third quarter of the federal fiscal year, the EEOC prompts fair employment practice agencies for caseload modifications, either upward or downward. According to an EEOC official, these modifications are not uncommon. Depending on the type of modification, SCHAC then receives an increased or decreased number of cases.

In August 2014, the agency requested a downward modification from 1,113 to 985. Despite this downward modification, the agency still resolved more employment cases than it was expecting (960) at the beginning of the federal fiscal year. According to an SCHAC official, the agency has met past EEOC caseload obligations, however, these amounts have been modified in the past.

Cases Waived to EEOC

EEOC also contracts with SCHAC to conduct intake services. Intake is a screening process in which a claim is evaluated to determine whether the allegation is covered by fair employment law (e.g., covered by a protected class, timely). Claims meeting the criteria are formally processed into a charge for investigation. However, SCHAC is only authorized to process cases under state law. Therefore, SCHAC receives reimbursement for conducting intake services and waiving some cases to the EEOC for federal resolution. SCHAC may also waive cases for reasons including a conflict or apparent conflict of interest, an alleged class action violation, or when a claimant requests the case be processed by EEOC.

Unlike case resolutions, there is no way to manipulate the number of claims to satisfy the contracted quantity of intake services. Intake services are dependent on the number of viable claims made by the public.

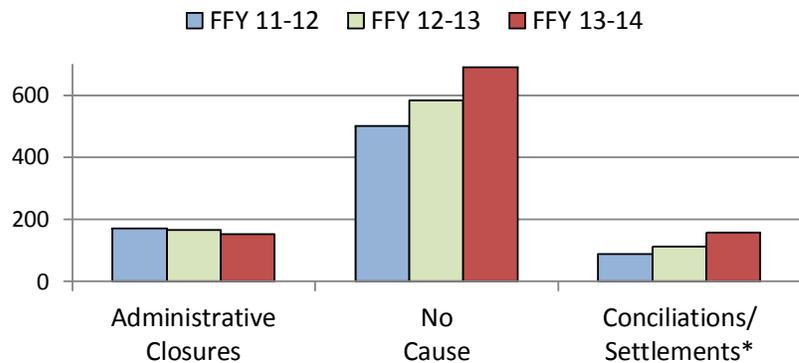
Employment Case Resolutions by Quantity, Type, and Timeliness

We also reviewed SCHAC's records for the quantity of resolved cases, the manner in which these cases were resolved, and the agency's timeliness for resolving cases. We found that, in the past three federal fiscal years, the agency has increased its total number of completed cases; however, the average time to resolve a case has also increased.

Quantity and Type

In the past three federal fiscal years, SCHAC has increased its output of completed cases incrementally from 767 in FFY 11-12 to 985 in FFY 13-14. Cases may be resolved by settlement agreements, conciliations, no cause findings, or administrative closures. In this same time period, SCHAC had decreased the number of administrative closures, increased the number of settlements and conciliations, and increased the number of no cause findings. The following chart compares the various types of cases for FFYs 11-12, 12-13, and 13-14.

Chart 2.1: Employment Case Resolutions



* Cause cases are included in this category.

Source: SCHAC and LAC

Resolved cases are reimbursed the same by EEOC, regardless of the disposition. In FFY 12-13 and FFY 13-14, EEOC reimbursed SCHAC \$650 per case resolution and \$50 per intake service. SCHAC submitted vouchers to EEOC for services rendered biannually in FFY 12-13 and FFY 13-14.

Timeliness

We reviewed SCHAC's contract with EEOC and state law and regulations for a timeliness requirement for resolving employment cases. We found that there is no timeliness criterion and the agency does not have a formal standard. However, SCHAC's goal is to resolve cases in 180 days.

SCHAC measures timeliness by case resolution time, which measures from the point at which the case is formalized to the time the case is resolved by the agency. In the past three federal fiscal years, the average case resolution time has increased by a total of 23% from 202 to 249 days. Table 2.2 shows the increase from FFY 11-12 – FFY 13-14 and the change over time.

Table 2.2: Average Employment Case Resolution Time

FEDERAL FISCAL YEAR	AVERAGE CASE RESOLUTION TIME	CHANGE OVER TIME
11-12	202 days	
12-13	227 days	12%
13-14	249 days	10%

Source: EEOC and LAC

According to an agency official, the average case resolution time is affected by the experience of investigators. According to records from the Office of Human Resources (OHR), as of August 2014, the average length of service for the agency's employment investigators was approximately six years. However, six of the nine employment investigators have worked at the agency for two years or less.

An agency official also stated that the number of cases transferred from EEOC to SCHAC affects the case resolution time. When EEOC transfers cases to SCHAC for investigation, time has already elapsed. However, SCHAC has no record of the number of cases received from EEOC or the amount of time that has elapsed for each case received. Therefore, it is not possible to determine whether cases transferred from EEOC have actually increased the agency's average case resolution time. The agency's average case resolution time may be better explained in conjunction with data on dependent variables, such as EEOC transfers.

Recommendations

1. The S.C. Human Affairs Commission should establish a formal standard for the time it should take to resolve a case.
2. The S.C. Human Affairs Commission should maintain data on the variables that may affect the agency's average case resolution time.

Housing Cases

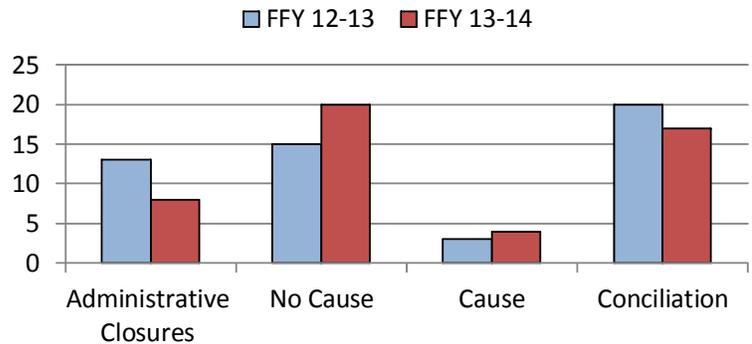
The S.C. Human Affairs Commission maintains a separate cooperative agreement with U.S. Department of Housing and Urban Development (HUD) to process housing discrimination complaints in South Carolina. The federal Fair Housing Act authorizes HUD to administer the act and states that the agency may cooperate with state and local agencies charged with the administration of the state and local fair housing laws, through written agreements, and reimburse such agencies for services rendered in carrying out the act. In South Carolina, SCHAC is the only agency operating a fair housing assistance program. Furthermore, South Carolina's Fair Housing Law permits cooperation with HUD.

SCHAC can receive alleged discriminatory housing complaints either from the public or from complaints referred by HUD. Federal law requires the referral of these complaints to the state fair housing assistance program as long as it is certified and the complaint occurred within the state's jurisdiction. State law requires these complaints to be filed within 180 days from the date of the discriminatory incident. Both federal and state law require a resolution to housing cases within 100 days of filing. However, extensions are permissible in both laws, as long as the agency notifies both parties.

The contract between SCHAC and HUD does not specify a quantity of cases to be resolved, rather, the contract outlines performance criteria for reimbursement. Regional fair housing offices conduct performance assessments to determine whether the agency is timely, comprehensive, and conducts thorough fair housing compliant investigation, conciliation, and enforcement activities. In FFY 12-13 and FFY 13-14, SCHAC met the majority of performance requirements in administering the law and reviewers recommended the agency for recertification.

SCHAC is reimbursed annually, according to the federal fiscal year, for case processing, and also receives a set amount for administrative costs and training. In FFY 12-13, SCHAC was reimbursed as much as \$2,600 per case processed and an additional \$1,000 for each cause case (a determination that discrimination had occurred). In FFY 13-14, SCHAC was reimbursed the same amount for processed cases with an additional \$4,000 for each cause case. Chart 2.3 indicates the quantity of cases processed, according to type of closure.

Chart 2.3: Housing Case Resolutions



Source: SCHAC and LAC

Mediation

Mediation is an informal and confidential way for the parties to resolve disputes with the help of a neutral mediator who is trained to help them discuss their differences. SCHAC's mediation program is a free service. Once a case of discrimination is filed, SCHAC contacts both parties to determine interest in participating in mediation; the decision to mediate is completely voluntary, however, both sides must agree. The purpose of mediation is to reach an agreement that is satisfactory to both parties. According to SCHAC's website, the average processing time for mediation is 84 days, as opposed to 6 months or more for an investigation. The agency uses mediation for both employment and housing discrimination cases.

In FY 13-14, H.4366 was introduced to amend S.C. Code §1-13-90 to revise the procedures applicable to complaints involving a covered state agency or department to include a requirement for preliminary mediation conferences. The House referred the bill to committee, however, the committee did not take action on the bill.

Mandatory mediation for state agencies may preempt an investigation, resulting in a more efficient resolution, and may be less costly for the state. However, requiring state agencies to undergo mandatory mediation may first necessitate a change to the Insurance Reserve Fund regulations. These regulations may not provide for relief unless a court judgment is made. Therefore, if SCHAC's mediation were to result in a provision of financial relief, the regulations may not currently allow the fund to make a payout.

Table 2.5: Organizational Structures for Southeastern States

	FAIR EMPLOYMENT AGENCY	FAIR HOUSING AGENCY
South Carolina	S.C. Human Affairs Commission	S.C. Human Affairs Commission
North Carolina	State Office of Administrative Hearings (state and local government employees only)	Human Relations Commission
Georgia	Office of Fair Employment Practices (state government employees only)	Not applicable
Tennessee	Human Rights Commission	Human Rights Commission
Florida	Commission on Human Relations	Commission on Human Relations

Source: LAC

Alabama and Mississippi are the only two states in the United States that do not operate any fair employment and fair housing agencies. Alleged discrimination complaints must be filed with the federal government.

Benefits of State Fair Employment Practice Agencies

There are several benefits to states operating a fair employment practice agency despite the existing EEOC. The S.C. Human Affairs Commission provides awareness to employment discrimination issues in the state. Whereas EEOC is tasked with the prevention of employment discrimination, SCHAC is tasked with the elimination *and* prevention of employment discrimination. According to the agency's FY 13-14 accountability report, SCHAC conducted 24 training sessions with various entities on employment discrimination. Furthermore, SCHAC is in the process of establishing or revitalizing 20 community relations councils which serve as a discussion forum for discrimination. SCHAC's outreach and training efforts throughout the state may help preempt discrimination claims rather than resolving discrimination once it has occurred.

Also, there is an extended filing period for alleged discrimination claims for states with fair employment practice agencies. According to South Carolina Human Affairs Law, a person shall make a complaint to the commission within 180 days from the date of violation. However, federal regulation authorizes the EEOC to investigate claims occurring in states with fair employment practice agencies up to 300 days from the date of violation.

Human Resources

We were asked to review human resources areas including the experience and training of the management staff and the executive director (Commissioner), staffing levels, promotional practices, the employment status of agency staff, salaries, and diversity of staff. We found that the agency can improve its human resources operations by evaluating staff on a regular basis.

Employee Qualifications

We were asked to determine if the agency's management staff and other employees have the adequate training and experience to carry out the mission of the agency. We reviewed human resources records of management staff and a random sample of employees. Based on available documentation, we found that employees have the necessary qualifications for their positions. However, we found that SCHAC should update its position descriptions and require college transcripts, when appropriate, to verify minimum educational requirements.

We defined "agency management" as the agency's Commissioner and four division managers listed on the May 2014 organizational chart. In addition to these employees, our sample also included 13 people employed by the agency as of August 1, 2014. These individuals were either chosen randomly or because OHR records indicated that the employees may not meet the minimum qualifications for their positions. For each employee in our sample, we reviewed position descriptions, applications, and other documentation in the human resources files.

Of the files reviewed, 9 of 18 did not include a current position description. Position descriptions should include an accurate description of assigned duties and responsibilities and other pertinent information concerning a position. According to State Human Resources Regulation 19-702.04, each individual position should have an up-to-date position description on file with both the agency and OHR. Without a position description, there is no written understanding between employees and supervisors about what duties are expected of them. Also, if there is no position description, it is more difficult to determine if the employee is fully qualified for a job. We found that the employees in our sample with current position descriptions seem to have the necessary qualifications for their positions or have the appropriate documentation for exceptions granted by OHR.

Education Verification

In our sample, we also found that the agency does not require college transcripts for positions that require post-secondary education. OHR does not require applicants to provide transcripts as part of the application process. In at least six cases, we found that documentation from OHR was incorrect; this group of incomplete files included new hires and long-term employees. For this reason, SCHAC should request copies of college transcripts for positions that require any post-secondary education to ensure that employees meet the educational requirements for their positions.

Recommendations

3. The S.C. Human Affairs Commission should ensure that all permanent employees have signed position descriptions reflecting their current job duties and job titles.
4. The S.C. Human Affairs Commission should require documentation, such as official college transcripts, during the hiring process to verify that the new employee meets the minimum educational standard for the position.

Commissioner Experience

The current Commissioner has 30 years of experience with SCHAC. Prior to his retirement in 2007, he served as the agency's Deputy Director. According to various board members, the hiring process for the Commissioner position was thorough. The members felt confident that, with the current Commissioner's experience at the agency and his knowledge of and familiarity with the investigative process, he was the best person to run the agency.

Staffing Levels

Staffing levels at the agency have varied greatly since the beginning of 2010. Based on OHR records, SCHAC had a total of 38 state employees, both full and part time, at the beginning of 2010. By the end of January 2011, that number was reduced to 17 employees. The reason for the dramatic reduction in staff was that the agency's state appropriations were reduced significantly.

When the appropriations were reduced during 2010, 20 employees were separated from SCHAC for various reasons, including retirement, reduction in force (RIF), and resignations. State law requires agencies to give priority consideration to RIFed employees when filling vacancies. If hired back within one year, an employee retains his continuous service status and his sick leave is reinstated.

Of the ten people who separated from the agency due to a reduction in force, five were called back within the first year, and the agency rehired four more RIFed employees after the one-year period. The agency also rehired three people who left voluntarily, but they were rehired after the one-year call back period so those three employees could not have taken positions that would have been reserved for RIFed employees. The agency has also hired new employees since that time and is close to the pre-RIF staffing level. As of August 1, 2014, SCHAC had 34 employees.

As of August 1, 2014, the agency employed 29 FTEs, 4 full-time temporary employees, and 1 agency head, according to OHR. Four of those FTEs were also current TERI employees. SCHAC hired six retired staff — one as an FTE, four as temporary employees, and one as the agency head.

Promotions and Salaries

SCHAC follows OHR's human resources policies. According to OHR, SCHAC has promoted three people since 2009; however, two of those promotions were actually transfers from other state agencies. Thus, SCHAC had just one internal promotion since 2009. The promotion occurred when an employee changed jobs from a lower classification to a higher classification with different responsibilities. According to documentation reviewed, this employee was qualified for the new job, and had experience with the duties of the new position. This promotion was only one step above the previous position. OHR does not require an agency to advertise for a one-step promotion. Therefore, the promotion seems to have been conducted appropriately.

Salaries at SCHAC range from \$22,440 to \$58,920, except for the Commissioner's state-appropriated salary of \$104,070. The average pay for administrative staff (not including attorneys) is \$35,254, and the average salary for an investigator is \$38,725.

As of January 1, 2014, all employees received a base cost-of-living raise of 2%. In addition, one employee was given a raise for taking on additional duties and another employee received a raise when moved to another division to bring the salary in line with others in similar positions.

Some employees were given merit raises due to "outstanding performance and commitment to the S.C. Human Affairs Commission and its mission." The largest merit raise was 5% and three employees received this amount. Since SCHAC has not regularly conducted formal employee evaluations since 2011, we could not clearly determine if the merit raises given were appropriate.

Diversity

We were asked about the diversity of SCHAC employees. We compared the racial composition of SCHAC to that of Richland and Lexington counties, because the agency would most likely hire from these two counties. Data for the counties, as well as the state, came from the U.S. Census Bureau, and demographic data about the agency comes from the agency.

Table 3.1: Race and Gender Composition

	HUMAN AFFAIRS COMMISSION	RICHLAND COUNTY	LEXINGTON COUNTY	SOUTH CAROLINA
White	28.6%	48.1%	80.9%	68.3%
Black	68.6%	46.8%	15.1%	27.9%
Asian	2.9%	2.6%	1.7%	1.5%
Female	65.7%	51.4%	51.2%	51.3%

Source: LAC and the U.S. Census Bureau

The proportion of African Americans is more than 20 percentage points higher in the agency than in Richland County and more than 40 percentage points higher than the make-up of the state as a whole. The proportion of women at SCHAC is about 15 percentage points higher than the proportion in Richland and Lexington Counties and the state as a whole.

Evaluations

SCHAC has not regularly conducted Employee Performance Management System (EPMS) reviews since 2010. However, the agency gave raises based on performance in 2013 and 2014, and one person was promoted in 2013. The agency does not have a record of a systematic and uniform review that shows how one employee deserves a merit pay raise over another, since the agency ceased completing EPMSs. Three employees who were hired after 2011 received raises, though they do not have a record of any performance reviews. In our review of human resources files, we found that, in most cases, the employee would get a letter with a very short justification for the raise. Conducting formal evaluations will allow the agency to have systematic and reliable justification for promotions and raises.

Recommendation

5. The S.C. Human Affairs Commission should complete annual evaluations through the Employee Performance Management System.

Use of Agency Funds

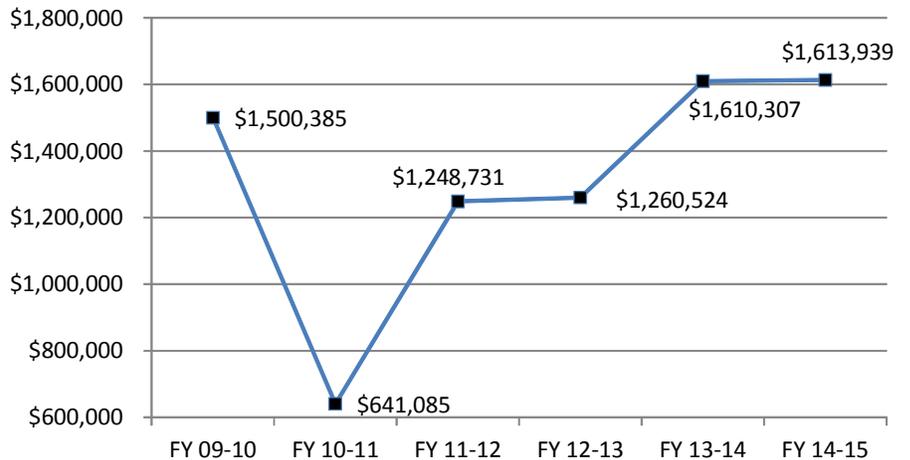
We were asked to review whether SCHAC used agency funds appropriately and effectively to carry out its mission and whether the agency was too reliant on outside consultative services and other non-agency staff. We reviewed the agency’s management of funds and expenditures and found that the agency expended 80% of state funds on personnel with the purpose of preventing and eliminating employment and housing discrimination. In addition, we found minor infractions in the use of grant funds and agency procurements.

We also reviewed the frequency, amount, and source of outside consultative services and other non-agency staff. We did not find that the procurement of these services were excessive or inappropriate.

Funding and Expenditures

SCHAC receives funds from both the state and federal government. The agency’s FY 14-15 state appropriation was \$1.6 million. In FY 10-11, a sustained veto reduced the agency’s state appropriation by more than half. It is only in FY 13-14 that SCHAC was appropriated state funds at least as equal to its FY 09-10 level.

Chart 4.1: SCHAC State Appropriations



Source: S.C. Appropriations Acts

SCHAC also receives funds from the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). Both the EEOC and HUD reimburse the S.C. Human Affairs Commission for the number of alleged employment and housing discrimination cases processed, respectively. Combined reimbursements from the EEOC and HUD totaled \$688,632 in FFY 12-13 and \$792,719 in FFY 13-14. The following table shows SCHAC's state appropriations, federal funds, and total agency funds for 2012 - 2014.

Table 4.2: Total Agency Funds

	2012-2013	2013-2014
State Appropriations*	\$1,260,524	\$1,610,307
Federal HUD Funds**	133,282	142,469
Federal EEOC Funds**	555,350	650,250
TOTAL	\$1,949,156	\$2,403,026

- * State appropriations include provisos and vetoes.
- ** Funds allocated by federal fiscal year.

Source: S.C. Appropriations Acts, HUD, EEOC

The S.C. Human Affairs Commission expends most of its funds on personnel costs. For FY 12-13 and FY 13-14, the agency averaged nearly 80% of its total expenditures in personnel costs, including salaries and employer contributions, with the remainder expended on operating costs such as rent and supplies. With the exception of three SCHAC employees, the agency's personnel are all tasked with the agency's mission of eliminating and preventing discrimination in the state.

Use of HUD Funds

We reviewed SCHAC's contracts with the EEOC and HUD to determine whether there were any financial stipulations relating to the expenditure of federal funds. SCHAC's contract with the EEOC obligates a training requirement, however, there were no other financial restrictions on the use of reimbursed EEOC funds. In SCHAC's cooperative agreement with HUD, HUD maintains the following requirements for the management and use of funds:

- HUD funds are limited to HUD-stipulated activities.
- HUD funds are required to remain segregated from other agency funds.
- A minimum of 20% of non-HUD funds are to be expended on HUD activities.

HUD conducts periodic performance assessments to assess the agency's compliance with contractual requirements. According to the FFY 12-13 HUD performance assessment, the reviewer indicated that the agency did not fully meet the requirements for reporting and recordkeeping, stating that the reviewer was unable to readily identify the source of funds used to pay for routine HUD investigative activities.

A letter issued by the agency to HUD in response to the performance assessment disclosed that the agency had applied HUD grant funds toward unauthorized administrative costs. The letter also outlined a corrective plan to reimburse the grant's unauthorized administrative costs with the agency's other funds until the appropriate balance is returned. According to an SCHAC official, the overage was approximately \$30,000 and will be repaid to HUD during FFY 14-15. The HUD FFY 13-14 performance assessment indicated that the agency had met the reporting and recordkeeping requirements and the reviewer commended the agency on its improvement.

Outside Consultative and Non-Agency Services

We were also asked to determine the agency's reliance on outside consultative services. We reviewed the agency's frequency, amount, and source of funds expended on these services from FY 10-11 to FY 13-14. We found that the agency procured outside consultative services on seven occasions in the last four fiscal years and in doing so expended less than 1% of its total funds. According to agency records, all consultative services were procured according to state purchasing code and the agency expended only state funds for these services.

We also reviewed other procured non-agency services and found that the agency relied on a temporary staffing agency to procure former agency staff. In 2010, budget cuts forced the agency to reduce full-time staff from 38 to 17 employees. Over time, the agency rehired former staff as non-state, temporary staff from the staffing agency to conduct in-house consultative services and investigations. As of July 1, 2014, SCHAC transitioned all but one individual from the staffing agency to either state full-time or state temporary positions.

Questionable Procurements

We reviewed SCHAC's expenditures for FY 13-14. We did not find that the agency procured any questionable types of goods or services; however, we found two questionable procurement transactions. The agency authorized two purchase orders to the same vendor within nine days of each other, each only a few dollars below the \$2,500 bid competition threshold. We also found that the agency employed a sole source procurement which did not meet the criteria. The amount of this procurement was approximately \$5,000. We found no other violations of the procurement code. The agency's most recent procurement audit by the state was published in 1999.

Administrative Issues

Board Members and Vacancies

The audit requesters asked what impact the lack of a full board has had on the agency and the justifications as to why the board has had so many vacancies. In addition, the requesters asked if the current board members are knowledgeable or qualified to assist the Commissioner in improving the agency. As of October 23, 2014, the board had seven of nine members. While there has been a history of vacancies on the S.C. Human Affairs Commission board over the years, the composition of the board was changed in 2012 requiring fewer members. State law does not require particular qualifications for members to be appointed to the board, but state law does outline specific duties of the board including the review of files, holding hearings, employing a Commissioner (agency head), and submitting a written report of its activities and recommendations to the Governor and General Assembly annually.

Prior to amendments to the law in 2012, the board was supposed to have 15 members — 2 from each congressional district, appointed by the Governor with the advice and consent of the Senate, and 3 at-large members appointed by the Governor. S.C. Code §1-13-40(b), amended June 2012, now states that the commission (board) shall consist of one member from each congressional district appointed by the Governor, with the advice and consent of the Senate, and two members at large, appointed by the Governor. Each member shall serve for a term of three years and until their successors are appointed and qualify. The majority of members are serving their second terms and have served past their term limits because no appointments for their seats have been made.

The agency is not responsible for finding or appointing members to its board. This is a function of the Governor's Office. However, according to the board chair, he has spoken with staff of both the current Governor and former Governor about board vacancies. Also, agency officials mention vacancies to the Governor's staff when discussing its annual budget request.

Table 5.1: Board Vacancies

DISTRICT	2010	2011	2012	2013	2014*
First	1	1	1	1	-
Second	-	-	-	-	-
Third	-	-	2	2	-
Fourth	-	-	1	1	-
Fifth	2	2	2	2	1
Sixth	2	2	2	2	1
Seventh	-	-	-	-	-
At-Large	1	-	-	-	-
TOTAL	6	5	8	8	2

* Membership as of October 23, 2014. 2014 was the first year the Legislative Manual indicated 9 members instead of 15.

Source: Legislative manuals and SCHAC

We attempted to determine why representation of the fifth and sixth districts has been problematic; however, neither the agency nor the Governor's Office could provide reasons for the vacancies over the years.

File Reviews

S.C. Code §1-13-90(c) states that for complaints of a violation by a state agency, the Commissioner shall designate a board member to supervise the processing of the complaint. S.C. Regulation 65-3(3) states that the board member shall review the results of the investigation for dismissal or other action. In practice, the complaint files involving a state agency are distributed to the board members for them to determine if they agree with the investigators' conclusions of whether a complaint meets the definition of the law regarding discrimination.

This review of files by board members is not, however, addressed in the board's by-laws. Also, the agency does not track the number of files reviewed by board members. According to staff, the EEOC does not track the number of investigations involving state agencies. According to several board members interviewed, the number of complaints could vary from several per month to less than ten per year. These members also commented that they were able to review the necessary files and the lack of members over the years did not hinder the agency in any way. The agency should track which files are reviewed by which board members to show compliance with state law and ensure that files are equally distributed to all board members.

Review of Other Files

We asked why board members only review employment files involving a state agency employee instead of a sample of all employment files, regardless of the employer, and housing files. According to agency management, it is not necessary for the board members to review other employment or housing files because the EEOC and HUD review samples of the other case files.

Board Member Training

There are no specified, minimum qualifications for board membership in state law. Currently, board members include business owners, a county employee, a retired school teacher, and a pastor. When a new board member is appointed, the agency conducts orientation training. This training is initially a day-long session. Agency staff present an overview of the agency, including the agency's legislative mandate, mission, vision, and values. Each department presents information about how it operates, including the Fair Housing Division, Age & Disability, Legal, Technical Services, Community Relations, and Compliance. Additionally, according to officials, staff go through employment files with the new board members explaining how the file is organized and what is required to have a complete investigative file. According to board members, training for board members is also ongoing because presentations are made at every board meeting and cases are discussed.

Hearings

State law allows the agency to hold hearings with board members serving as hearing Commissioners. According to agency management, however, the agency has not held a hearing since the 1980s. For example, a hearing would be needed for cause cases which have failed to be conciliated. Instead of a hearing, the agency will send the case to the EEOC. The primary reason given for not conducting hearings was the cost associated with such a proceeding.

Recommendations

6. The S.C. Human Affairs Commission board by-laws should be updated every two years and should address the duties of board members, including the review of employment case files.
7. The S.C. Human Affairs Commission should track files reviewed by board members each year.
8. The Governor should appoint citizens to serve as board members for those current board members serving expired terms and for vacancies on the board.

Constituent Services

We were asked how constituent services are handled by the agency and if they are handled appropriately. The audit requesters asked specifically about constituent services for members of the General Assembly. We reviewed how the agency handles constituent services, including FOIA requests, and found the agency has handled these appropriately.

We contacted several entities, including the Governor's Office of Ombudsman and the House Office of Research and Constituent Services, to determine if anyone from these offices has had an issue with how an inquiry or request was handled by SCHAC. According to these entities, there have been no issues with how the few constituent questions or issues forwarded to the agency have been handled. While the agency does not have a formal, written policy regarding constituent services, according to agency officials, if a member of the General Assembly contacts the agency regarding a constituent issue, the call is directed to the Commissioner to handle. The Commissioner noted that all inquiries, whether they are from the General Assembly, Governor, or a citizen, are handled in a timely manner.

The agency has tracked FOIA requests since August 2013. Approximately 90% of the 147 FOIA requests received August 2013 through October 2014 were from attorneys handling employment cases for either the complainants or respondents. The remaining requests came directly from the complainant or the respondent requesting copies of their files.

S.C. Code §30-4-10 *et seq.* requires state agencies to, upon written request for records, notify requesters of records within 15 days (excepting Saturdays, Sundays, and legal public holidays) of its determination regarding providing information, which is not required by law to be closed to the public. State law also provides for agencies to establish and collect fees not to exceed the actual cost of searching for and making copies of records. SCHAC collects a service charge of \$1.50 per request and 25¢ per page. In all but 18 (12%) cases, the agency responded within the required time.

Annual Reports

S.C. Code §1-13-40(j) requires the S.C. Human Affairs Commission to annually submit a written report to the Governor and to the General Assembly of its activities and recommendations. The agency's last annual report addressing this section of law was in FY 00-01; however, the accountability report encompasses all the information which was previously in the annual report.

SCHAC's annual reports included information about the history and purpose of the agency, descriptions of the various programs administered, and statistics on the number of employment and fair housing complaints investigated. Summaries of all the laws enforced by the agency were also included. There were no recommendations in the annual reports.

The agency has consistently filed accountability reports since FY 99-00 and these reports include the pertinent information found in the annual reports. There is no need for the agency to publish the same information in a separate format.

Recommendation

9. The General Assembly should amend S.C. Code §1-13-40(j) to delete the requirement of filing this annual report to the Governor and to the General Assembly.

Chapter 5
Administrative Issues

Agency Comments



Raymond Buxton, II
Commissioner

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December 16, 2014

Mr. Perry K. Simpson, Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

RE: *Legislative Audit Council's Review of the SC Human Affairs Commission*

Dear Mr. Simpson:

The South Carolina Human Affairs Commission (SCHAC), its commissioners and management team, have reviewed the Legislative Audit Council's (LAC) report and recommendations for the agency resulting from the LAC's review. SCHAC welcomes the examination, the recommendations, and the opportunity to respond.

Although we have areas where we can improve, we are gratified that the Audit Council's report revealed that nothing unlawful has occurred here at the Agency. SCHAC is an agency that strives to continuously improve and is committed to serving the citizens of South Carolina at the highest level. As we continue to recover from the drastic budget cut that took place in 2010, audits like this allow us to identify areas in which we can improve.

Where the LAC has identified deficiencies and recommendations for improvement, SCHAC will take immediate action to make corrections and implement appropriate changes. Some of those corrective actions have already been implemented, as indicated below in our formal response to the LAC investigation. For the remaining findings and recommendations, SCHAC will incorporate action steps into its strategic plan and/or policies for achieving the desired outcomes, if practical. Specific responses for each recommendation and other notable areas are listed individually below.

Again, thank you for your constructive criticism and for giving us the opportunity to reply.

Sincerely,

Raymond Buxton, II
Commissioner

South Carolina Human Affairs Commission's Response to Recommendations & Other Parts of the 2014 Legislative Audit Counsel Limited Review of the S.C. Human Affairs Commission Report

1. Page 10, Recommendation 1: "The S.C. Human Affairs Commission should establish a formal standard for the time it should take to resolve a case."

The Commission has already established a formal standard for the time that it should take to resolve cases: *within 180 days after a case has been assigned to an investigator*. On our Employee Performance Management System (EPMS) yearly review, investigators are measured on their ability to resolve 85 percent of their cases within 180 days. The 85 percent metric has been applied to experienced investigators since 2012. We use the Equal Employment Opportunity Commission's (EEOC) Integrated Mission System (IMS) reports to measure investigator productivity and the amount of time cases have been in our inventory. The IMS is used nationwide by the EEOC and state-equivalent agencies like SCHAC for monitoring efficiency. If investigators do not comply with the 85 percent standard, this can affect their EPMS score and future employment status at SCHAC. Currently, none of our new investigators have been formally measured by the 85 percent metric due to their new hire status. However, the 85 percent standard will become effective for new employees upon the completion of their first year with the agency.

Presently, because of the number of variables that can factor into the amount of time that elapses before investigators receive cases, the 180-day time period with which the investigators are assessed begins the moment the case is officially assigned to an investigator. Although we hope to process each case as expeditiously as possible, investigators still need time to thoroughly investigate the cases. Over the coming months we will assess the 180-day standard for investigators and, if feasible, develop a written formal policy for investigators in the employment division.

2. Page 10, Recommendation 2: "The S.C. Human Affairs Commission should maintain data on the variables that may affect the agency's average case resolution time."

There are a number of variables that play a role in case resolution time for employment discrimination cases. These variables include:

- 1) The date the charge of discrimination is physically received by the respondent;
- 2) The date the respondent replies to the charge of discrimination and initial request for information;
- 3) If the respondent fails to reply to the charge of discrimination and/or initial request for information, how long it takes the respondent to respond to the thirty-day letter for failure to initially reply;
- 4) If respondent does not reply to the thirty-day letter, how long it takes the respondent to reply to an agency-issued subpoena;
- 5) If the respondent fails to reply to the subpoena, how long it takes the court to hear the Motion for Rule to Show Cause for failure to reply to the subpoena;

- 6) Whether the address for the respondent is correct on the charge of discrimination filed by the Complainant;
- 7) If the case originated with EEOC, the date the case is received from EEOC;
- 8) The time a case spends in SCHAC's voluntary mediation process;
- 9) The time it takes to conciliate all the terms of discrimination case; and
- 10) Failure of the respondent and/or complainant to cooperate in the investigation.

These are just some of the variables that play a role in case resolution time. There are other known and unknown variables that can also delay case resolution. As an agency, it is impossible for us to track and maintain data on every variable that may affect our case resolution; there are too many variables to track. Because of our limited staff and budget, in addition to other factors, it is simply not feasible for us to track all the variables. Also, the Commission has no control over the date that EEOC formalizes a case until it is waived to SCHAC. For instance, the EEOC could have a case in its possession for 6 to 9 months and then waive the case to SCHAC. Thus, a large amount of time has elapsed from the date that the charge was formalized until it was waived. This results in a larger case processing time over which SCHAC has no control. Although an EEOC case may be "aged" according to IMS, we as an agency still have a statutory duty to investigate the case.

Another factor that increased case resolution time was the budget cuts that this agency received in 2010. In the state fiscal year 2010-2011, the agency almost went out of business due to a 50 percent reduction in State funding. Although we are slowly rebuilding the agency's staff as funding permits, our near-closure in 2011 continues to have a negative impact on the agency because of the time that it takes to properly train new staff members. As the LAC report notes, the agency's staff was cut from 39 employees in January 2010 to 17 employees in January 2011. Of the 17 employees all were part-time due to furloughs. When an agency is decimated as SCHAC was in 2010-2011, it takes time to rebuild. While we have been able to rehire some of our veteran investigators over the past two years (as State funding has increased), two-thirds of our employment investigators have worked at SCHAC for two years or less. This has a direct impact on the increase in our case resolution time as it takes time for investigators to grasp the investigation process.

Despite the plethora of known and unknown variables that may affect case resolution time, as an agency we will do a better job of tracking some of the variables that factor into the investigator receiving the case in order to formally begin the investigation. Those variables primarily involve the time it takes for the respondent to submit a position statement in response to the complainant's charge of discrimination. If upon monitoring these variables we discover that there is something that the agency can do in order to decrease the amount of time it takes to initiate the formal investigation, we will take the necessary steps to achieve that.

3. Pages 15-16, Employee Qualifications & Recommendations

The recommendation for signed position descriptions for new hires and existing staff has already been implemented by SCHAC as of March 15, 2013. Presently all of our position descriptions are up to date and interviewees are required to submit college transcripts before their second interviews. Our current Human Resources Manager is bringing all employee records up to date.

Due to agency reorganization, the Commissioner decided to merge the Human Resources, Finance, & Procurement Divisions into one position, held by one person as a cost-saving measure. Sections of our agency handbook and EPMS have either been updated or have been in the process of being updated prior to the LAC investigation.

4. Page 17, Promotions & Salaries

The LAC investigation referenced merit raises that some employees received. These raises were based on a number of factors. Some received raises because of their dedication to and number of years with the agency. For those who had been with the agency for a number of years, many of them first received drastic pay cuts during the 2010-2011 furlough, prior to the raises referenced in the investigation. Notwithstanding the pay cuts, many of these staff members stayed with the agency through the lean years and these employees were subsequently given raises in order to bring their level of pay closer to the pre-budget cut years once the agency received additional funding. Some of these veteran staff members also received additional responsibilities as the agency began to grow again and were given raises based on those increased responsibilities.

5. Page 18, Evaluations & Recommendation

During the budget cuts that took place in 2010-2011, SCHAC ceased regularly conducting EPMS evaluations although some evaluations still took place. As we have worked to restore the agency, we have hired seventeen new employees—including a new HR manager—and some of these employees have not yet received a performance evaluation because they have not finished their probationary period. The process of updating our EPMS for the agency began in January 2014 and was approved by State Human Resources in October 2014. We are working toward an agency universal employee review date of February 1, 2015. The updating of our EPMS was in process prior to the LAC investigation.

The LAC investigation also mentions that three employees received raises despite not having any record of performance reviews. At the time those raises were received our EPMS was outdated due to budgetary restrictions and the retirement of our former HR director in January 2013. However, despite our outdated EPMS, those raises were not without reason; two of the three employees were already state workers and received a modest increase in pay upon completing their six-month trial period because of the essential Administrative Division roles that they hold. The other employee was originally a temporary staffing employee and was then hired by the agency as a full-time employee. During this employee's probationary period, she was given additional employment duties beyond what she was originally hired to perform and was accordingly given an increase in pay to reflect her increased responsibilities.

6. Pages 20-21, Use of HUD Funds

The “unauthorized administrative costs” noted in this section of the investigation involve a Partnership Initiative Grant that was awarded to the agency from the U.S. Department of Housing and Urban Development (HUD). The award money from this grant is earmarked for certain types of transactions in the Fair Housing Division and the use of those funds for other

purposes is prohibited. The Fair Housing Division also receives HUD funding which may be used for salaries, case processing, and other administrative costs. The unauthorized use of funds towards administrative costs involved the use of HUD grants for the purpose of general salary payments where other HUD funding should have been used. As noted by the LAC investigation, SCHAC used other funding to reimburse the grant balance and HUD commended our agency for its recordkeeping improvements.

7. Page 22, Questionable Procurements

In regard to the sole source procurement which the Report stated did not meet criteria, that purchase involved the Agency's move from the Forest Drive location to the new location at 1026 Sumter Street. DHEC notified us that they had surplussed some office furniture and invited us to come view it. The Agency was given just a few days to move the furniture or it would be claimed by another agency. McWaters and Smith Dray Line were on site for anyone that needed furniture moved that day. The McWaters' quote was more expensive than the Smith Dray Line quote; therefore, we chose Smith Dray Line to move the surplussed DHEC furniture to a warehouse until the Agency was able to complete the move to the new location on August 31, 2013.

In reference to the two purchase orders to the same vendor, this involved promotional supplies for the Fair Housing Division. The initial quote for \$2497.50 was for Fair Housing promotional items for general outreach purposes as needed throughout the year. A few days after this purchase, it was determined that the Fair Housing Division should participate in the 2013 South Carolina State Fair in order to promote fair housing within the State as required by the HUD Partnership Initiative Grant. This grant requires that the Fair Housing Division conduct a certain number of outreach initiatives during the course of the grant. Additional items were purchased in the amount of \$2,515.28 solely as promotional items to be distributed at the SC State Fair to promote fair housing as stipulated by the HUD grant. We acknowledge the error and we will take the necessary steps to ensure that actions such as these will not occur again in the future.

8. Page 26, Administrative Issue Recommendation 6: "The S.C. Human Affairs Commission board by-laws should be updated every two years and should address the duties of board members including the review of employment case files."

This recommendation is presently being addressed by the agency head and the SCHAC Board of Commissioners.

9. Page 26, Administrative Issue Recommendation 7: "The S.C. Human Affairs Commission should track files reviewed by board members each year."

This recommendation has been duly noted and we are working towards tracking case files reviewed by board members on an annual basis.

S.C. OFFICE OF THE GOVERNOR reviewed portions of the preliminary and final draft of this report and did not wish to have comments included in the final report.

This report was published for a
total cost of \$21.24;
36 bound copies were printed
at a cost of 59¢ per unit.

