



## Trade Apprenticeship Programs

The State Needs to Better Oversee Apprenticeship Programs, Such as the Air Conditioning Trade Association's Sheet Metal Program

Report 2016-110

COMMITMENT  
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November 15, 2016

2016-110

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the State's oversight of its apprenticeship programs, in particular, the Air Conditioning Trade Association (ACTA).

This report concludes that the State needs to better oversee apprenticeship programs such as ACTA. Although the Division of Apprenticeship Standards (apprenticeship division) of the Department of Industrial Relations has primary responsibility for overseeing apprenticeship programs, it has not been adequately performing its duties. For example, the apprenticeship division is not consistently conducting audits, as required by state law, and it is not using its audit authority to ensure that apprenticeship programs are spending state funds appropriately. Furthermore, inadequate oversight by the California Community Colleges Chancellor's Office (Chancellor's Office) and the Central Unified School District (Central Unified)—the K–12 local educational agency that has the fiscal contract with ACTA—resulted in ACTA receiving an estimated \$51,000 in unallowable reimbursements in fiscal years 2010–11 through 2014–15. Finally, the U.S. Department of Labor (U.S. Labor) completed a civil investigation of ACTA in December 2014 and determined that between 2005 and 2012 ACTA misused \$800,000 in apprenticeship training funds. The apprenticeship division currently does not have a process in place to learn if the federal government has investigated certain apprenticeship programs.

We recommend that the apprenticeship division resume conducting program audits by December 2016. We also recommend that Central Unified work with the Chancellor's Office to determine how to best recover the unallowable amounts it reimbursed to ACTA. Finally, we recommend that the apprenticeship division periodically contact the U.S. Labor to inquire about recent investigations of apprenticeship programs and determine whether it should conduct its own audits to ensure apprenticeship programs are using state funds appropriately.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## SUMMARY

The Air Conditioning Trade Association (ACTA) is a nonprofit organization that provides apprenticeship training and education in the use of sheet metal for heating, ventilation, and air conditioning (HVAC) systems. The Division of Apprenticeship Standards (apprenticeship division) of the Department of Industrial Relations (Industrial Relations) has primary responsibility for overseeing apprenticeship programs, and it also provides grants to State-approved apprenticeship programs. The California Community Colleges Chancellor's Office (Chancellor's Office) and local educational agencies (LEAs), such as the Central Unified School District (Central Unified), also provide funding to apprenticeship programs. The Chancellor's Office allocates apprenticeship instruction funding to specific LEAs, which act as fiscal agents for distributing the apprenticeship training funds to the apprenticeship programs.

For this audit, we reviewed and assessed how well the apprenticeship division and the Chancellor's Office oversee ACTA, and to the extent possible, how well they oversee other apprenticeship programs throughout the State. This report draws the following conclusions:

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### **The apprenticeship division is not overseeing apprenticeship programs adequately**

The apprenticeship division does not conduct audits consistently, and it is not using its audit authority to ensure that apprenticeship programs are spending state funds appropriately.

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### **Insufficient oversight resulted in ACTA receiving unallowable reimbursements**

Because of inadequate oversight from the Chancellor's Office and Central Unified, which is the K-12 LEA that has the fiscal contract with ACTA, we estimate that nearly \$51,000 of the \$142,000 Central Unified provided to ACTA from fiscal years 2010-11 through 2014-15 was for unallowable activities. Specifically, Central Unified does not verify whether the instructional hours that ACTA claims for reimbursement are for activities that state law allows. Furthermore, the Chancellor's Office does not issue guidance to K-12 LEAs on how they should verify attendance records for apprenticeship programs.

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### **It is unclear whether transfers among ACTA's funds were allowable, but a recent federal investigation found that ACTA improperly spent apprenticeship training funds**

ACTA is a nonprofit organization and therefore our access was limited to verifying its use of state funds. As a result, we were unable to determine if the transfers ACTA made among its funds were allowable. However, the U.S. Department of Labor (U.S. Labor) completed a civil investigation of ACTA in December 2014 and determined that between 2005 and 2012, ACTA misused \$800,000 in apprenticeship training funds for activities that included legal fees and vacations for apprentices and instructors.

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#### **Summary of Recommendations**

To better oversee state apprenticeship programs and to ensure that they spend funds appropriately, the apprenticeship division should resume conducting program audits by December 2016.

To ensure that ACTA was reimbursed only for allowable costs between fiscal years 2010–11 through 2014–15, Central Unified should determine how much it reimbursed ACTA for unallowable activities and work with the Chancellor's Office to determine how best to recover those funds.

To ensure that Central Unified correctly reimburses state funds to ACTA, Central Unified should develop a process to verify that ACTA's apprentices attended the online training courses for the corresponding hours ACTA reports and that it reimburses only apprenticeship programs for allowable activities.

#### **Agency Comments**

The Chancellor's Office and Central Unified agreed with our conclusions and recommendations. Industrial Relations generally agreed with our conclusions and recommendations but had concerns about its authority to implement some of our recommendations.

# INTRODUCTION

## Background

Apprenticeship programs help prepare individuals for careers in skilled crafts and trades by providing classroom or online instruction and on-the-job training. Classroom and online instruction give apprentices an understanding of the theoretical aspects of their crafts or trades, while on-the-job training lets them put into practice what they learn under the supervision of an experienced journeyman. Apprenticeship programs cover a wide range of crafts and trades, but most apprentices participate in programs related to the construction industry. Individual employers, joint employer and labor groups, and employer associations sponsor apprenticeship programs.

As the Joint Legislative Audit Committee (Audit Committee) requested, this audit focused on two agencies, the apprenticeship division and the Chancellor's Office, and their oversight of ACTA and its Commercial Sheet Metal Apprentices program (sheet metal program). Additionally, we assessed the two agencies' oversight of apprenticeship programs throughout the State for the key oversight controls that we identified. ACTA is a nonprofit contractor-member trade association that files under section 501(c)(6) of the Internal Revenue Code, and it must maintain its tax-exempt status with the Internal Revenue Service (IRS) by not engaging in activities that ordinarily earn a profit and by devoting itself instead to improving business conditions for its industry. ACTA, which is based in Manteca and covers Mariposa, Merced, Stanislaus, and Tuolumne counties, serves free-enterprise nonunion contractors in the HVAC industry—and their employees and industrial suppliers—by providing apprenticeship training and education in the use of sheet metal to fabricate HVAC systems and service them. It offers a four-year program primarily through online instruction and four hands-on labs each year that teach apprentices how to install, fabricate, and read blueprints for HVAC systems as well as how to supervise jobs once they become journeymen. Apprentices receive a journeyman's card and a certificate of completion upon successfully completing all class requirements, finishing 6,500 work hours, and passing the journeyman exit exam.

## Entities Overseeing Apprenticeship Programs

The apprenticeship division has primary responsibility for overseeing apprenticeship programs. State law requires the apprenticeship division to foster, promote, and develop the welfare of the apprentices and the industry; to improve the working conditions of apprentices and advance their opportunities for profitable employment; to ensure that selection procedures are impartially administered to all applicants for apprenticeship; and to cooperate in the development of programs and audit them. Within the apprenticeship division is the California Apprenticeship Council (Apprenticeship Council), whose membership includes representatives from sponsors of apprenticeship programs, the director of Industrial Relations,

the superintendent of public instruction, and the chancellor of the California Community Colleges. The Apprenticeship Council's duties include issuing rules and regulations to establish standards for minimum wages, maximum hours, and working conditions for apprentices and aiding the apprenticeship division in formulating policies.

The apprenticeship division also distributes grants to apprenticeship programs to train apprentices. Contractors for public works projects that employ journeymen or apprentices are generally required by state law to make contributions to the Apprenticeship Training Contribution Fund established by the State. The apprenticeship division uses the proceeds from this fund to pay for its expenses and to provide training grants to State-approved apprenticeship programs, such as ACTA's sheet metal program. The apprenticeship division distributes grants to apprenticeship programs based on the number of programs in a county serving the same craft or trade for which the training contributions were made and on the number of registered apprentices. In fiscal years 2010–11 through 2014–15, the apprenticeship division provided \$14.1 million in grants to more than 70 apprenticeship programs throughout the State, with \$9,800 going to ACTA, as shown in Table 1.

**Table 1**  
**State Funding Allocated to the Air Conditioning Trade Association**  
**Fiscal Years 2010–11 Through 2014–15**

TYPE OF STATE FUNDING RECEIVED	ENTITY PROVIDING FUNDING	FISCAL YEAR					FIVE-YEAR TOTAL
		2010-11	2011-12	2012-13	2013-14	2014-15	
Grants	Department of Industrial Relation's Division of Apprenticeship Standards (apprenticeship division)	–	\$1,600	–	\$6,600	\$1,600	\$9,800
	California Community Colleges Chancellor's Office (Chancellor's Office)	–	–	–	29,600	33,900	63,500
Reimbursements	California Department of Education (Education)	\$23,100	28,200	\$26,900	–	–	78,200
<b>Total State Funding</b>		<b>\$23,100</b>	<b>\$29,800</b>	<b>\$26,900</b>	<b>\$36,200</b>	<b>\$35,500</b>	<b>\$151,500</b>

Sources: California State Auditor's analyses of accounting records of the apprenticeship division, Chancellor's Office, and Education.

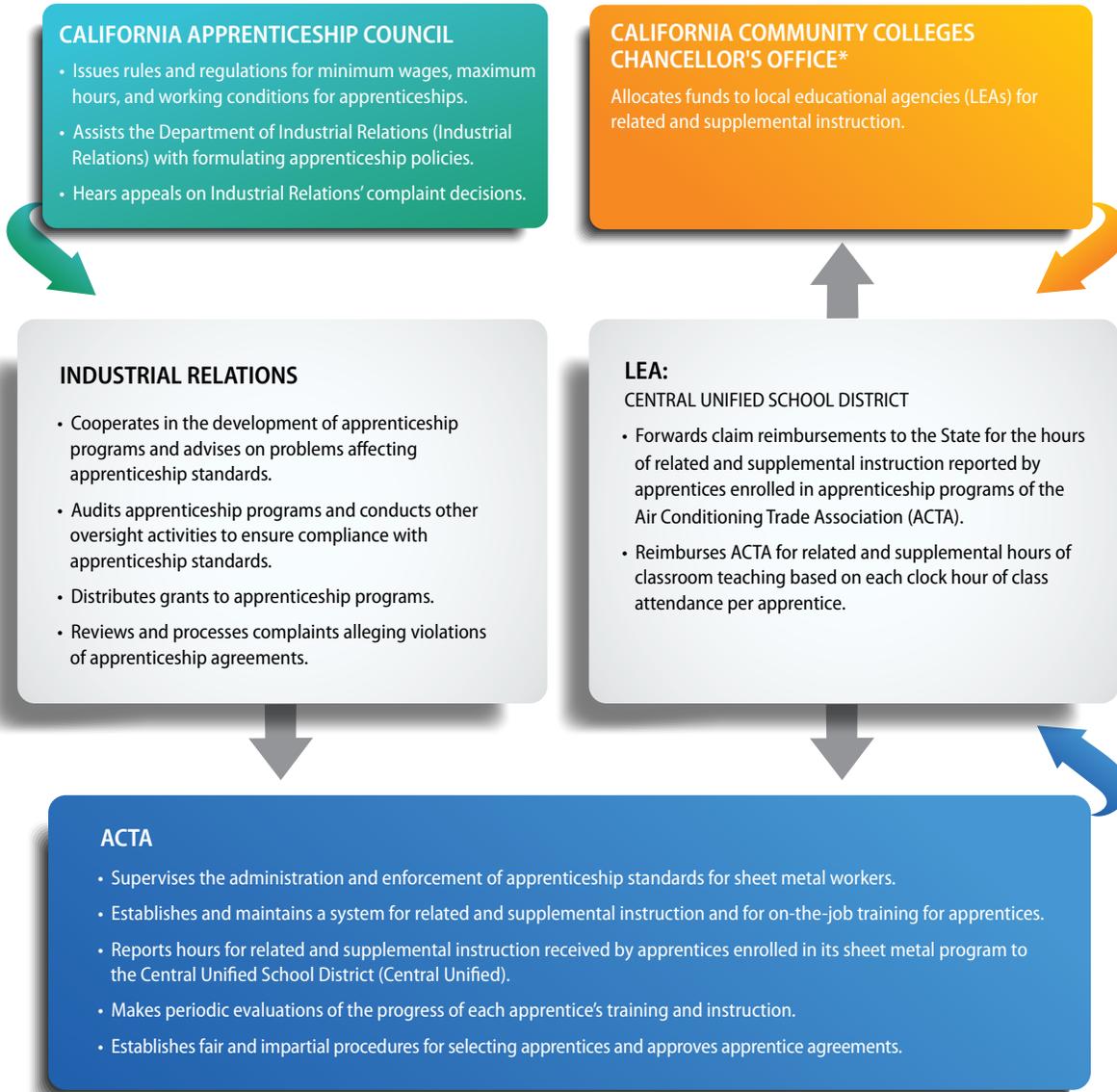
Notes: Education administered apprenticeship training and instruction reimbursements for the Air Conditioning Trade Association's Apprenticeship Program until fiscal year 2012–13. Beginning in fiscal year 2013–14, the Chancellor's Office assumed these responsibilities.

Amounts in table rounded to the nearest hundred.

The Chancellor's Office and LEAs—such as secondary schools, regional occupational centers and programs, adult schools, and community colleges—allocate state funding for the classroom portion of apprenticeship training (apprenticeship instruction funds). The State's budget includes appropriations for minimum annual funding levels set by Proposition 98 for K–12 schools and community colleges. Included in Proposition 98 funds are apportionments for apprenticeship instruction funds, which are used to reimburse apprenticeship programs for providing what is known as *related and supplemental instruction* to apprentices, as shown in Figure 1 on the following page. Before fiscal year 2013–14, the California Department of Education (Education) was responsible for allocating apprenticeship instruction funding to apprenticeship programs that were administered by K–12 LEAs, while the Chancellor's Office was responsible for allocating this funding to programs administered by community college LEAs. However, state law shifted the responsibility of allocating apprenticeship instruction funding for all LEAs to the Chancellor's Office, beginning in fiscal year 2013–14. The Chancellor's Office allocates this funding directly to LEAs that have contracts with apprenticeship programs that have been approved by the apprenticeship division. The Chancellor's Office reimburses LEAs based on the number of hours of teaching time reported; these hours should not include time that apprentices spend on homework assignments. The Chancellor's Office and Education provided \$78.5 million to more than 260 other apprenticeship programs throughout the State during the same period. As shown in Table 1, ACTA received \$78,200 from Education and \$63,500 from the Chancellor's Office, totaling \$141,700 from fiscal years 2010–11 through 2014–15.

Central Unified, a K–12 LEA, contracts with ACTA to provide administration and fiscal support for its apprenticeship training program. Based on an agreement with Central Unified, which they entered in 2004, ACTA acts as the program sponsor and provides all instructional materials, lesson plans, and credentialed instructors for its online training. For its part, Central Unified acts as the fiscal agent between the Chancellor's Office and ACTA, as shown in Figure 1, by forwarding the number of class attendance hours ACTA reports to the Chancellor's Office and then reimbursing ACTA from the allocation Central Unified receives from the Chancellor's Office, less an 18 percent administrative fee.

**Figure 1**  
**State Oversight of the Air Conditioning Trade Association's Apprenticeship Program**



Sources: State laws, Industrial Relations' Division of Apprenticeship Standards' operations manual, ACTA's apprenticeship standards, interviews with the director of Central Unified, and the 2004 agreement between ACTA and Central Unified.

\* Before fiscal year 2013–14, the California Department of Education oversaw K–12 LEAs.

### ACTA's Three Funds

In addition to its primary ACTA fund—which it uses to support day-to-day operations—ACTA has established the Training Trust Fund (Training Fund) and the Wage and Hour Fairness Fund (Wage Fund). As shown in Table 2, the Training Fund provides for the training and education of apprentices in the sheet metal, heating,

and air conditioning trade. Federal law requires apprenticeship training programs to hold their funds in trust. Federal law also requires apprenticeship programs to use training trust funds exclusively for providing benefits to participants—in this case, for training and educating apprentices—and to defray the program’s reasonable administrative expenses. ACTA’s Training Fund may include money from state funds and employer contributions. For example, state law requires contractors employing registered apprentices on public works projects to make apprenticeship training contributions. The contributions are then used in part to make grants, like those ACTA receives, to approved apprenticeship programs for training apprentices. In contrast, ACTA’s Wage Fund supports a variety of nontraining purposes related to nonunion employment, including representing the interests of the contractor members engaged in the HVAC industry and protecting employment opportunities through participation in litigation and legislation.

**Table 2**  
**Air Conditioning Trade Association’s Funds and Revenue**

FUND	PURPOSE	REVENUE IN 2014
Air Conditioning Trade Association (ACTA) Fund	Serves as the primary fund for ACTA and finances its day-to-day operations.	\$80,900
Training Trust Fund	Provides apprenticeship training and education for the sheet metal, heating, and air conditioning (HVAC) trade.	320,300
Wage and Hour Fairness Fund	Accounts for a variety of activities intended to represent the interests of the members engaged in the HVAC industry.	134,800

Source: California State Auditor’s analysis of the Internal Revenue Service Form 990 for each of ACTA’s funds for 2014.

Note: Amounts rounded to the nearest hundred.

### The Federal Government’s Role

Federal law governs the expenditures of apprenticeship training trust funds. Under the Employee Retirement Income Security Act of 1974 (ERISA), apprenticeship training trusts like ACTA’s are subject to federal law as part of ERISA’s general regulation of employee welfare benefit plans. The individuals who manage a training trust must discharge their duties solely in the interests of the program participants for the exclusive purpose of providing apprenticeship or training benefits to participants and of defraying reasonable expenses of administration. U.S. Labor, oversees and enforces these requirements. To carry out its responsibilities, U.S. Labor conducts investigations of apprenticeship training funds, and it conducted such an investigation of ACTA’s Training Fund and issued a report in 2014, which we discuss later in this report.

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# The Apprenticeship Division Is Not Overseeing Apprenticeship Programs Adequately

## Key Points:

- The apprenticeship division is in the process of restructuring its audits unit; as a result, it completed only two audits in fiscal year 2014–15. Additionally, because of ACTA’s low apprentice completion rates for 2013, the apprenticeship division determined in October 2015 that it was required under state law to schedule and conduct an audit of ACTA, but it has yet to begin that audit as of October 2016.
- Although the apprenticeship division’s regulations give it the authority to audit apprenticeship programs and to ensure that public funds are spent appropriately, the apprenticeship division does not verify that apprenticeship programs are using the public funds they receive for training apprentices.

## Poor Audit Oversight

The apprenticeship division is responsible for auditing its apprenticeship programs; however, it has not been conducting audits regularly. Audits are the means by which the apprenticeship division can ensure that apprenticeship programs are following State-approved apprenticeship standards. The text box shows the scope of such audits as well as the circumstances under which state law requires the apprenticeship division to conduct them. Our 2006 audit of the apprenticeship division found that it had stopped conducting audits in 2004.<sup>1</sup> Even though it resumed them in 2007, the apprenticeship division began restructuring its audits unit in August 2014. As a result, it only completed two audits in fiscal year 2014–15. The apprenticeship division’s deputy chief explained that this restructuring is intended to improve the efficiency of audits and to shorten the time it takes for the apprenticeship division to complete them. Once the apprenticeship division resumes conducting audits, it plans to use staff

### Division of Apprenticeship Standards' Audits

State law requires the Division of Apprenticeship Standards (apprenticeship division) to audit apprenticeship programs to ensure that they do the following:

- Comply with its own program standards.
- Ensure a journeyman supervises all on-the-job training.
- Provide all the related and supplemental training required by the apprenticeship standards.
- Cover all work process standards.
- Ensure that the apprenticeship program’s graduates have completed their requirements.

State law authorizes the apprenticeship division to conduct audits whenever it identifies deficiencies in programs. For programs in the construction trade, however, state law also sets forth these specific circumstances that require an audit:

- One year after the creation of a new apprenticeship program or one year after the expansion of an existing apprenticeship program.
- When the apprenticeship program has been the subject of two or more meritorious complaints concerning apprentice recruitment, training, or education within a five-year period.
- When an apprenticeship program, having had at least two graduating classes, has an annual apprentice completion rate below 50 percent of the State average graduation rate in its trade.

Source: Labor Code section 3073.1.

<sup>1</sup> Department of Industrial Relations: *Its Division of Apprenticeship Standards Inadequately Oversees Apprenticeship Programs*, Report 2005-108, September 2006.

assigned as apprenticeship division consultants (consultants) who are responsible for monitoring and overseeing apprenticeship programs, to conduct audits as part of their responsibilities. According to the deputy chief, the audit restructuring process has not yet been completed because the statutory and regulatory changes regarding audits are significant, its audit staff has needed retraining, and it needs to ensure that programs the apprenticeship division previously audited have addressed all recommendations. The apprenticeship division expects to complete the restructuring of its audit unit by December 2016.

The apprenticeship division does not consistently track the number of apprenticeship programs it identifies for an audit. Although it does have an audit log to keep track of the status of its audits, we found the information in the log to be incomplete. As a result, the apprenticeship division was not always able to provide us information regarding the status of its audits over the most recent five fiscal years. For example, it could not provide the status of any programs identified for audit in fiscal years 2010–11 and 2011–12, as shown in Table 3. Better tracking of audit status will help the apprenticeship division ensure that it is complying with state law and that it completes audits in a timely manner. To address these issues, the apprenticeship division is currently looking into adopting new database software to allow it to more accurately track the status of audits.

**Table 3**  
**Status of the Division of Apprenticeship Standards' Audits**

	FISCAL YEAR					TOTAL
	2010–11	2011–12	2012–13	2013–14	2014–15	
Number of apprenticeship programs identified for audit	—*	—*	79	0	25	—*
Number of audits initiated	34	28	39	15	0	116
Number of audits completed (reports written)	25	34	34	22	2	117

Source: The audit log of the Department of Industrial Relations' Division of Apprenticeship Standards (apprenticeship division) and information that its deputy chief provided.

Note: Because 26 audits in the log lacked an initiation date and 79 audits lacked a report completed date, these statistics may underestimate the number of audits initiated or completed in a given year.

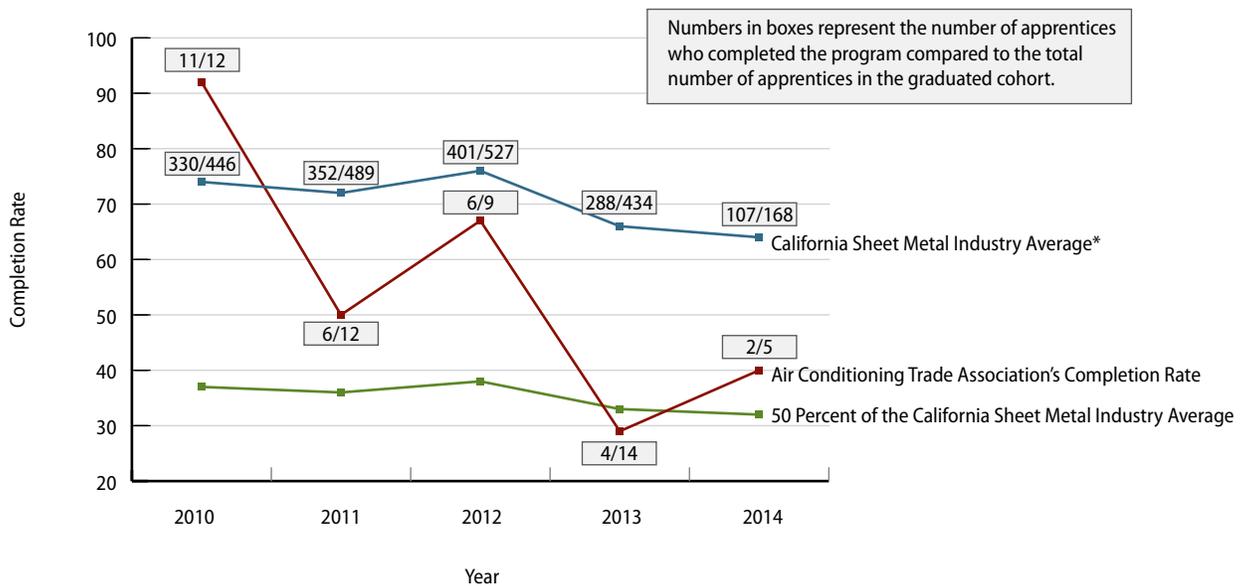
\* The deputy chief of the apprenticeship division was unable to provide us with the number of programs identified for an audit in these years.

### **Audit of ACTA**

As described earlier, state law requires for a variety of reasons that the apprenticeship division audit apprenticeship programs. For instance, it is required to schedule an audit when a building and

construction trades apprenticeship program, which has had at least two graduating classes, has an annual completion rate that falls below 50 percent of the state average completion rate in its trade. As shown in Figure 2, the completion rates for ACTA's sheet metal program have been below the state industry average since 2011, and they dropped below 50 percent of the state industry average in 2013. In October 2015, the apprenticeship division determined that because of ACTA's low completion rate for 2013, it was required to schedule and conduct an audit of ACTA to determine whether it was complying with standards for apprenticeship training and other requirements under state law. However, as of October 2016, the apprenticeship division had not begun that audit.

**Figure 2**  
**Air Conditioning Trade Association's Apprenticeship Completion Rates Generally Fell Below the State's Industry Average**



Source: California State Auditor's analysis of completion data from the Division of Apprenticeship Standards (apprenticeship division).  
 Note: Under state law, within three months of determining that a building and construction trades apprenticeship program has an annual completion rate below 50 percent of the average completion rate in its industry, the apprenticeship division shall schedule that apprenticeship program for an audit. This requirement applies to apprenticeship programs that have had at least two graduating classes.  
 \* Data is unaudited.

In response to our inquiry, ACTA's executive director (ACTA director) attributed the decline in the completion rates of both ACTA and the State's sheet metal industry to the State's recession and asserted that if an apprentice is not performing according to ACTA's rules, ACTA will not allow him or her to graduate just to maintain higher completion rates. Further, a consultant stated that the weak economy affected many apprentices who were not

able to fulfill their on-the-job training requirements in order to graduate because work was not available. It is also worth noting that because ACTA serves only four counties, as described in the Introduction, the number of apprentices enrolled at ACTA is relatively small compared to the total number of apprentices enrolled in sheet metal apprenticeships in California—ranging from five to 14 at ACTA in any given year, as shown in Figure 2—and therefore even a small change in the number of apprentices that graduate can cause ACTA’s graduation rates to increase or decrease significantly. However, until the apprenticeship division completes its audit of ACTA and addresses its backlog of incomplete audits, it is unclear whether apprenticeship programs, including ACTA, are complying with their standards for apprenticeship training and other requirements under state law.

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#### ***Authority to Determine How Grant Funds Are Spent***

As part of an apprenticeship program audit, the apprenticeship division is authorized to determine whether grant funds are being appropriately spent to train apprentices. However, until we inquired about whether it was confirming the appropriate use of grant funds, the apprenticeship division had not considered including that confirmation as part of its audit process.

Legal counsel for Industrial Relations acknowledged that during the course of an audit, the apprenticeship division can request that an apprenticeship program provide information—such as invoices, receipts, or cancelled checks—to demonstrate that it appropriately spent grant funds. However, in light of ERISA’s regulation of the operation of apprenticeship trust funds, the legal counsel cautioned that ERISA prevents Industrial Relations from reviewing information that pertains to the conduct of a financial audit. For example, during the course of one of its program audits, the apprenticeship division could not access the financial statements or accounting records of an apprenticeship training trust.

The apprenticeship division's grant application states that apprenticeship programs are required to provide an accounting of grant funds previously received. However, the deputy chief stated that he considers this to be a request rather than a legal requirement. Legal counsel for Industrial Relations does not believe that the apprenticeship division has the authority to independently request verification of grant fund expenditures outside of a program audit. In other words, Industrial Relations believes that for the apprenticeship division to determine how grant funds were spent, it would have to conduct a full program audit of the apprenticeship program, which would need to cover all the areas described earlier. We agree that state law does not expressly provide the apprenticeship division with this independent authority, nor does it provide a remedy if state funds are used improperly. For the apprenticeship division to determine outside of a program audit that grant funds are being spent appropriately, the Legislature would need to amend state law in a manner consistent with ERISA.

### ***Complaints Regarding ACTA***

During the past five fiscal years, the apprenticeship division has received two complaints against ACTA. However, because it could not substantiate them, it dismissed them. The apprenticeship division is responsible for overseeing apprenticeship complaints. An apprentice may file a complaint against an apprenticeship program to appeal a discipline or termination decision. Additionally, any interested person can also file a complaint when there is cause to believe that a decision, order, or action has been unfair or unreasonable, or to allege a violation of state law. Regulations require complainants to include specific information, such as the full names of the parties involved and a clear statement of facts constituting the basis for the complaint as well as the specific standard that the apprenticeship program is alleged to have violated. However, the apprenticeship division determined that the complaints it received from two apprentices of ACTA, one in 2011 to appeal a termination and the other in 2014 to appeal a disciplinary action, lacked the information needed to investigate the complaints. The apprenticeship division requested more information from the complainants and notified them that their complaints would be dismissed without more information. Receiving no response from either complainant, the apprenticeship division closed the cases within three months after receiving each complaint.

### ***Other Oversight Activities***

The consultants could improve the quality of the other oversight activities of apprenticeship programs that the consultants conduct. Specifically, the consultants are responsible for a variety of oversight activities, including attending committee meetings, conducting site visits of apprenticeship programs, and reviewing the apprenticeship programs' annual self-assessments in which each program appraises its status in a number of areas related to apprentice training, including curriculum, use of facilities, and industry involvement. These oversight activities allow the consultants to review and assess the performance of the apprenticeship programs while ensuring that the programs are following training standards. According to our review of the consultants' oversight of ACTA during fiscal years 2010–11 through 2014–15, the apprenticeship division could do more to ensure that its consultants are properly overseeing apprenticeship programs. For example, the consultants conduct site visits of apprenticeship programs to review operations, ensure that their records are accurate, and discuss possible improvements to the programs. However, the template for the apprenticeship division's site visit reports does not require a narrative about the findings of the visit or how the apprenticeship program is performing, and these omissions limit the site reports' value as oversight tools. The apprenticeship division acknowledged that it could make improvements to the consultants' oversight activities of apprenticeship programs by, for example, revising the site visit template to require such information as a narrative of visit findings. It is in the process of adopting new software for tracking these oversight activities and also revising its consultant training.

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**The apprenticeship division's template for site visit reports does not require a narrative about the findings of the visit or how the apprenticeship program is performing.**

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Furthermore, the apprenticeship division could not always demonstrate that its consultants conducted the required oversight activities of ACTA. For example, it could not provide committee meeting logs from 2012 through 2015. Committee meeting logs are records that show a consultant attended a committee meeting. At committee meetings, ACTA's executive director, board members, and other ACTA staff may hold hearings regarding apprentice termination, discuss revisions of apprenticeship standards, and approve changes in apprentice status. The apprenticeship division's

deputy chief stated that it is important for consultants to attend every committee meeting, if possible, in order to ensure that the programs are following rules and regulations and to provide advice for program improvement. It is especially important for consultants to attend meetings involving disciplinary actions to ensure that apprenticeship programs treat apprentices fairly. Although the consultants asserted to us that they attended many of the committee meetings, one senior consultant indicated that he did not complete some logs on the apprenticeship division's case management software because of technical issues, and another senior consultant did not complete some logs because of time constraints. However, if consultants do not document their oversight activities regularly, it is difficult for the apprenticeship division's management to ensure that its consultants are fulfilling their responsibilities consistently. The deputy chief stated that the apprenticeship division plans to adopt new case management software by April 2017, which along with training they will receive, should better ensure that consultants are tracking their oversight activities. Additionally, according to the deputy chief, the new software will better allow management to track the consultants' oversight activities.

### **Recommendations**

To better oversee state apprenticeship programs, the apprenticeship division should resume conducting program audits by December 2016. As part of such audits, the apprenticeship division should ensure that apprenticeship programs receiving grants are appropriately spending the money to train apprentices.

The Legislature should amend state law to provide the apprenticeship division with explicit authority to verify that as a condition of receiving future grant funds, apprenticeship programs are using state funds solely for training apprentices. In addition, if an apprenticeship program is unable to demonstrate how state funds are used or if it is found to be using funds for inappropriate purposes, the apprenticeship division should have the authority to deregister that particular program.

Until it implements new case management software in April 2017, the apprenticeship division should ensure that consultants perform and track their oversight activities. Furthermore, once the software is implemented, the apprenticeship division should ensure that consultants consistently use the software to document their oversight activities. Finally, the apprenticeship division should improve the usefulness of the site visit reports to provide the findings and an evaluation of each apprenticeship program, and

it should periodically verify that consultants are performing their required oversight activities, including attending apprenticeship committee meetings and performing site visits.

## Insufficient Oversight Resulted in ACTA Receiving Unallowable Reimbursements

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### Key Points:

- ACTA claimed homework assignment hours for reimbursement from Central Unified, but such claims are not allowable under state law. Central Unified was unaware that ACTA was claiming these hours for reimbursement because it does not verify whether the apprenticeship attendance hours that ACTA reports are only for allowable activities. As a result, between fiscal years 2010–11 through 2014–15, nearly \$51,000 of the \$142,000 reimbursement that Central Unified paid to ACTA was unallowable because the \$51,000 was for hours that apprentices used for homework assignments.
- The Chancellor's Office was also unaware that ACTA had claimed homework assignment hours for reimbursement, and it does not provide guidance to K–12 LEAs to verify attendance hours, even though the Chancellor's Office expects all LEAs to do so.

### *ACTA's Unallowable Reimbursements*

We estimate that between fiscal years 2010–11 through 2014–15, ACTA claimed at least 10,100 hours for unallowable reimbursements, with a cost of nearly \$51,000 in apprenticeship instruction funding. Under state law, the Chancellor's Office can only reimburse LEAs for the hours of classroom instruction that the apprenticeship programs provide to their students. ACTA provides training and instruction for its sheet metal program and forwards its classroom attendance hours for reimbursement to Central Unified, the K–12 LEA that contracts with ACTA. However, the ACTA director explained that in addition to claiming class attendance hours, ACTA also claims time that apprentices use on homework assignments as part of its attendance hours for reimbursement. Examples of homework assignments that ACTA's apprentices performed include math review as well as drawings and fabrication of various ductwork pieces. Our review of ACTA's records determined that it had indeed claimed time spent on homework assignments as teaching time for reimbursement. The ACTA director believes that the homework assignments are eligible for reimbursement because a teacher is available by telephone to answer questions for students. However, we disagree with the ACTA director's statement because the time spent completing homework is not considered teaching time under state law.

Central Unified was not aware that ACTA was claiming homework assignment time for reimbursement because it does not verify whether the apprenticeship attendance hours that ACTA reported are for allowable activities. ACTA provides Central Unified with a monthly attendance report that summarizes total hours, by apprentice, that it is claiming for reimbursement. According to the director of Central Unified's adult school site (adult school director), his staff do not request documentation from ACTA, such as sign-in sheets, to verify that the reported attendance hours are only for classroom

instruction because it has never collected that type of information. In addition, he stated that the Chancellor's Office has not provided Central Unified with guidance for overseeing apprenticeship programs, including how to verify attendance hours. Lastly, he agreed that Central Unified's failure to verify attendance creates a risk that Central Unified is reimbursing ACTA for attendance that did not occur because it cannot be certain that the apprentices actually attended ACTA's online courses.

Central Unified could limit this risk by using its contractual authority to review ACTA's student records, which the adult school director agrees would be an important form of monitoring. He noted that his staff already receives and verifies the attendance records for two other apprenticeship programs, which have classes that use Central Unified's facilities and thus are not taught online, to ensure that they are claiming reimbursement only for classroom instruction. However, the adult school director believes that the agreement between Central Unified and ACTA, which they entered into in 2004, is outdated and that it would be beneficial to revise its agreement with ACTA to reflect each party's current roles and responsibilities. For example, the agreement states that Central Unified is responsible for the curriculum, even though it currently has no such role, and the agreement lists Education as the overseeing state department, even though state law shifted that role to the Chancellor's Office in fiscal year 2013–14. Despite acknowledging the need to update its 12-year-old agreement with ACTA, the adult school director stated that he is waiting for guidance from the Chancellor's Office for the best way to do so.

The Chancellor's Office could provide guidance to Central Unified by developing two important documents already required by state law: a model agreement that Central Unified and other LEAs could use as a basis for updating their agreements with apprenticeship programs and a common administrative practices document—which was to be completed by March 2014—meant to clarify the roles and responsibilities of the different entities involved in the apprenticeship system. Although state law required the Chancellor's Office and the apprenticeship division to jointly develop a model format for agreements between apprenticeship programs and LEAs, neither entity has developed one.

When we inquired why, after more than two years, this joint effort was still incomplete, the deputy chief of the apprenticeship division explained that the primary concern for the apprenticeship division and the Chancellor's Office was to first develop the common administrative practices document for the Apprenticeship Council's approval before developing the model agreement. Although the Chancellor's Office and the apprenticeship division finished developing the common administrative practices document

in 2014, the deputy chief stated that the Apprenticeship Council has not yet approved this document because of other priorities. However, the deputy chief agrees that it would be beneficial for the Apprenticeship Council to do so because the document would provide greater clarity over the roles and responsibilities of the many parties involved in the State's apprenticeship system.

Because the Chancellor's Office has not overseen adequately Central Unified's interactions with ACTA, it was also unaware that ACTA had claimed homework assignment hours for reimbursement and that Central Unified had not verified the course attendance hours of ACTA's apprentices. As described in the Introduction, state law shifted the administrative responsibility to allocate apprenticeship instruction funding for K-12 LEAs from Education to the Chancellor's Office in fiscal year 2013-14. However, neither Education nor the Chancellor's Office developed formalized guidelines, procedures, or other attendance-reporting requirements for K-12 LEAs to follow for verifying the attendance hours of its apprenticeship programs. Further, both Education and the Chancellor's Office confirmed that they do not independently audit the apprenticeship attendance hours that K-12 LEAs report to them.

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**Neither Education nor the Chancellor's Office developed formalized guidelines, procedures, or other attendance-reporting requirements for K-12 LEAs to follow for verifying the attendance hours.**

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Despite the lack of guidance and oversight, a specialist in the Chancellor's Office's Workforce and Economic Development Division stated that the Chancellor's Office expects all K-12 LEAs to verify actual class attendance hours of apprentices before submitting those hours for reimbursement. However, until the Chancellor's Office provides specific guidance and begins actively monitoring K-12 LEAs, it will not have reasonable assurance that the K-12 LEAs are appropriately verifying apprenticeship class attendance and reimbursing their apprenticeship programs correctly.

Although the Chancellor's Office does have regulations and accounting procedures outlining how it expects community colleges to verify attendance records for apprenticeship programs, the

director of Fiscal Standards and Accountability for the Chancellor's Office (fiscal director) stated that those procedures were specifically designed to guide community college LEAs. The fiscal director explained that the current regulations and accounting procedures of the Chancellor's Office are based on its existing statutory authority over community college LEAs, which predates when the Chancellor's Office began allocating apprenticeship instruction funding in fiscal year 2013–14 to K–12 LEAs.

The fiscal director does not believe that the Chancellor's Office currently has the legal authority to impose similar regulatory and accounting requirements on K–12 LEAs or to audit their attendance records. The fiscal director agrees that the Chancellor's Office should clarify its guidance to K–12 LEAs, but he believes that its statutory authority should be updated to reflect the Chancellor's Office's new responsibilities. However, although it has had the responsibility to allocate apprenticeship instruction funding to K–12 LEAs since fiscal year 2013–14, the Chancellor's Office has not sought legislative assistance to clarify its authority with respect to overseeing them.

### Recommendations

To ensure that ACTA was reimbursed only for allowable costs from fiscal years 2010–11 through 2014–15, Central Unified should determine how much it reimbursed ACTA for unallowable activities and work with the Chancellor's Office to determine how to recover those funds from ACTA.

To ensure that Central Unified correctly reimburses state funds to ACTA, Central Unified should develop a process—like the one it currently has for its other two apprenticeship programs—to verify that ACTA's apprentices have attended the online training courses for the corresponding hours ACTA reports. Further, Central Unified should ensure that it reimburses apprenticeship programs only for allowable activities.

To limit its risk and to clarify its roles and responsibilities as they relate to ACTA, Central Unified should update its agreement with ACTA to reflect each party's current roles and responsibilities. Further, Central Unified should periodically update this agreement to ensure that the agreement continues to reflect current roles and responsibilities.

To ensure that LEAs develop sound contract agreements with apprenticeship programs, the Chancellor's Office and the apprenticeship division should develop a model agreement to outline the types of information, roles, and responsibilities for

both parties as the Education Code requires and make this model agreement available to K–12 LEAs by April 2017. In addition, this model agreement should specify that K–12 LEAs will verify that the apprentices have attended the instructional courses by collecting supporting documentation such as sign-in sheets or rosters.

To ensure the proper oversight of funding for related and supplemental instruction and to clarify the roles of the entities involved in the State’s apprenticeship system, the apprenticeship division should work with the Apprenticeship Council to formally approve the common administrative practices document by April 2017 and distribute it to all relevant parties within that system. In addition, to ensure the proper reimbursement of apprenticeship programs, the common administrative practices document should specify that K–12 LEAs take steps to verify that the apprentices actually attended the courses and that the apprenticeship attendance hours reported are for allowable activities only.

To ensure accountability, the Legislature should amend state law to clarify that the Chancellor’s Office has the authority to provide accounting guidance to and conduct audits of the K–12 LEAs’ oversight of apprenticeship training funds.

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## It Is Unclear Whether Transfers Among ACTA's Funds Were Allowable, but a Recent Federal Investigation Found That ACTA Improperly Spent Apprenticeship Training Funds

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### Key Points:

- ACTA is a nonprofit organization and therefore our access was limited to verifying its use of state funds. As a result, we were unable to determine why ACTA transferred money between its funds.
- U.S. Labor completed a civil investigation of ACTA in December 2014 and determined that ACTA misused apprenticeship training funds totaling \$800,000.

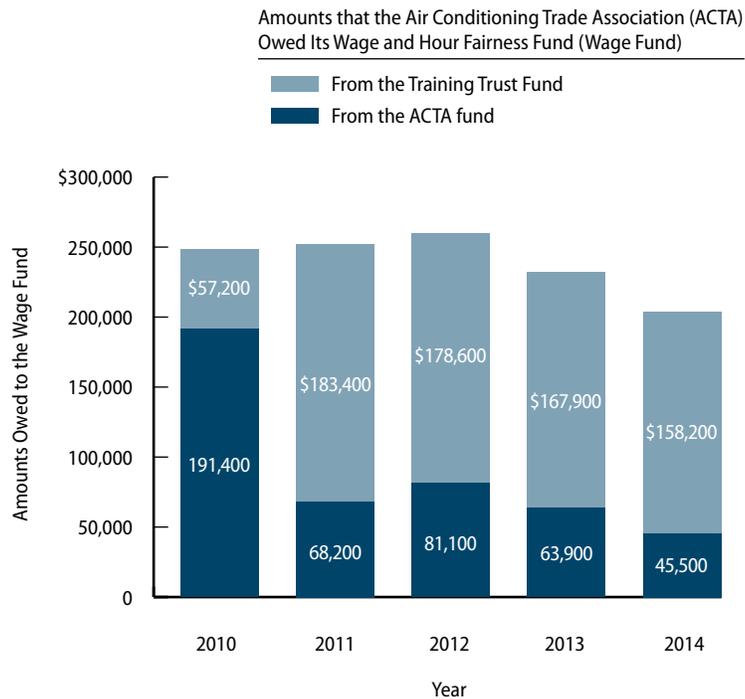
### Transfers Among Funds

According to its publicly available tax-exempt filings with the IRS, ACTA and the Training Fund owe the Wage Fund \$203,700 as of December 31, 2014. Specifically, the amount the Training Fund owed the Wage Fund increased substantially from \$57,200 in 2010 to \$183,400 in 2011, and it decreased to \$158,000 in 2014, as shown in Figure 3 on the following page. To reduce the Training Fund's liability to the Wage Fund, either ACTA transferred Training Fund money to the Wage Fund or the debt was forgiven. In response to our inquiry about the reasons for these transfers and the sources of funding it used, ACTA asserted that its tax-exempt filings reflect a transfer of funds *from* the Wage Fund *to* its other two funds. However, ACTA's assertion is not logical because the tax-exempt filings of the two funds show that they *owe* money to the Wage Fund by listing an amount under their liabilities as "due to the [Wage Fund]" and that the amount they owe has decreased over the past five years. Ultimately, it is unclear to us whether these transfers were appropriate because our access to these funds is limited to verifying the use of the apprenticeship division grants ACTA received from the State.

As described in the Introduction, under federal law, individuals who control a training trust fund must use those funds for the sole benefit of the apprentices in the program. ACTA may not favor the interests of another entity, like the Wage Fund, over those of the apprentices in its training program when managing Training Fund assets. In addition, state law requires that apprenticeship division grants be used for the purpose of training apprentices. On multiple occasions we asked ACTA to provide documentation showing that it spent the \$9,800 in apprenticeship division grants that it received from Industrial Relations solely for the purpose of training apprentices. Although ACTA failed to provide any documentation, it asserted that the Wage Fund does not receive state money, and that all state funds that ACTA receives are deposited directly into its Training Fund and not in either of its other two funds. However, without any additional information from ACTA we are unable to conclude whether or not it used the \$9,800 in apprenticeship division grants for allowable purposes. We did not continue to pursue access to ACTA's records through our statutory authority

to subpoena those documents because the legal costs associated with obtaining this information through the courts would be much greater than the \$9,800 in question.

**Figure 3**  
**Air Conditioning Trade Association's Obligations to Its Wage and Hour Fairness Fund**



Source: California State Auditor's analysis of the Internal Revenue Service Form 990 (IRS Form 990) tax returns, *Return of Organization Exempt From Income Tax*, for each of ACTA's funds from 2010 through 2014. ACTA reported the amounts shown above as "due to the Wage and Hour Fairness Fund" on its IRS Form 990 tax returns.

### ***ACTA's Misuse of Apprenticeship Training Funds***

A recent civil investigation by U.S. Labor points to the need for better oversight by the apprenticeship division. Specifically, U.S. Labor completed an investigation of ACTA in December 2014 that found numerous violations involving inappropriate spending from the Training Fund which, under federal law, ACTA must use exclusively to train and educate apprentices and to defray the reasonable expenses of administering the apprenticeship program. U.S. Labor determined that from 2005 through 2012, ACTA spent approximately \$800,000 in apprenticeship training funds for expenditures unrelated to the Training Fund, including legal fees, payments to the former executive director, and payments for

apprentices and instructors to go on vacations. Although most of these funds likely came from employers, Table 1 on page 4 shows that ACTA's Training Fund did receive approximately \$1,600 in grants from the apprenticeship division in fiscal year 2011–12 during the period covered by the investigation. U.S. Labor attributed these inappropriate expenditures to ACTA's poor internal controls and inadequate oversight. According to U.S. Labor, ACTA disputed all violations but subsequently offered to settle for \$75,000 and to take certain actions, including adopting a travel expense policy and having management attend ERISA training courses. U.S. Labor decided not to pursue further corrective action against ACTA because it determined it was unlikely that ACTA could afford to pay more than \$75,000. Furthermore, in March 2015 ACTA began working with an ERISA consultant who periodically reviews the Training Fund's records. In June 2015, U.S. Labor informed ACTA that it had closed the investigation based on the corrective action ACTA had taken, and U.S. Labor would not take any further action.

We followed up with the apprenticeship division to understand what process it has in place to ensure that it is aware of federal investigations of apprenticeship programs. The apprenticeship division acknowledged that it was aware of the investigation of ACTA that U.S. Labor conducted, but it explained that it does not believe it has the authority to pursue any financial investigations of apprenticeship programs the federal government conducts because ERISA preempts these investigations. Therefore, the apprenticeship division does not ask U.S. Labor about any investigations of apprenticeship programs that U.S. Labor conducts. However, in addition to its audit authority described earlier, the apprenticeship division also has the authority to conduct audits at its discretion. Thus, if it had a process in place to learn if the federal government was investigating apprenticeship programs, it could use this information to determine whether it should conduct its own program audit of a given apprenticeship program to ensure that state funds are used appropriately.

### **Recommendation**

To ensure that the apprenticeship division is overseeing apprenticeship programs adequately, it should consider periodically checking with U.S. Labor to determine what investigations it has recently conducted on apprenticeship programs. The apprenticeship division could use this information as a basis for conducting its own audit to ensure apprenticeship programs are using state funds appropriately.

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## SCOPE AND METHODOLOGY

The Audit Committee directed the California State Auditor to review the state funds that Industrial Relations and the Chancellor’s Office provides to ACTA. Table 4 lists the objectives that the Audit Committee approved and the methods we used to address those objectives.

**Table 4**  
**Audit Objectives and the Methods Used to Address Them**

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant state and federal laws, regulations, and other information relating to apprenticeship programs.
2	Assess the policies and procedures in place at the Department of Industrial Relations (Industrial Relations) to ensure that the Air Conditioning Trade Association’s (ACTA) apprenticeship program is meeting the requirements of Industrial Relations’ Division of Apprenticeship Standards (apprenticeship division) to train apprentices.	<ul style="list-style-type: none"> <li>Reviewed available documentation and interviewed the apprenticeship division staff in order to identify and assess the policies and procedures that ensure that all apprenticeship programs meet the requirements to train apprentices.</li> <li>Reviewed available documentation and interviewed staff at the apprenticeship division to assess whether it performed oversight of ACTA adequately during the audit period.</li> </ul>
3	Identify the policies and procedures in place at Industrial Relations to ensure that ACTA spends public funds appropriately.	<ul style="list-style-type: none"> <li>Reviewed state laws and interviewed the chief legal counsel of Industrial Relations to determine the authority it has to regulate, audit, or monitor the spending of public funds from an apprenticeship program’s trust fund.</li> <li>Reviewed relevant federal laws to determine any limitations placed on the State’s role in overseeing the spending of public funds from an apprenticeship program’s trust fund.</li> </ul>
4	For fiscal years 2010–11 through 2014–15, determine the amounts and sources of public funds provided through Industrial Relations and/or other state agencies for the Training Trust Fund (Training Fund). Further, determine whether expenditures of these funds were allowable and reasonable.	<ul style="list-style-type: none"> <li>Reviewed available documentation to evaluate and understand how Industrial Relations’ grant funding process works for apprenticeship programs.</li> <li>Obtained and evaluated the grants Industrial Relations provided to ACTA during the audit period.</li> <li>Reviewed available documentation and interviewed staff at the California Community Colleges Chancellor’s Office (Chancellor’s Office) to evaluate its oversight processes for validating the apprenticeship attendance hours reported to it by K–12 local educational agencies.</li> <li>Obtained and evaluated ACTA’s detailed attendance records to determine if it was reimbursed for allowable activities.</li> </ul>
5	For fiscal years 2010–11 through 2014–15, determine the amounts of funds allocated to the Central Unified School District (Central Unified) in Fresno by the Chancellor’s Office to offset the Training Fund’s operating expenses.	Reviewed accounting records and other files of Central Unified, the Chancellor’s Office, and the California Department of Education (Education) to identify and evaluate the amount of public funds reimbursed to ACTA for the related and supplemental instruction costs it incurred to educate sheet metal apprentices.

*continued on next page...*

	AUDIT OBJECTIVE	METHOD
6	Determine whether ACTA diverted any public funds allocated to the Training Fund to other funds or programs. If funds were diverted, determine the reasons for the diversion of funds, and whether the diverted funds were repaid or a repayment plan has been established. Further, determine what action Industrial Relations has taken in such instances.	<ul style="list-style-type: none"> <li>• ACTA is a nonprofit entity, and therefore our access to its funds was limited to the \$9,800 it received in state funds from fiscal years 2010–11 through 2014–15.</li> <li>• Obtained and evaluated ACTA's tax-exempt filings and articles of incorporation to understand the sources of revenue and the nature of the transfers among its three funds.</li> <li>• Contacted the U.S. Department of Labor to ascertain the extent to which it has provided oversight of ACTA.</li> </ul>
7	To the extent that funds were diverted from the Training Fund during fiscal years 2010–11 through 2014–15, assess the impact this may have had on the apprenticeship program and its graduation rates.	Interviewed the executive director and legal counsel for ACTA and asked if it used public funds for the purposes of training apprentices.
8	Identify the completion rates for the ACTA's apprenticeship program for fiscal years 2010–11 through 2014–15, as well as any trends in the completion rates and the reason for such trends.	<ul style="list-style-type: none"> <li>• Obtained and evaluated ACTA's completion rates from the apprenticeship division's database.</li> <li>• Performed a data reliability assessment on the apprenticeship division's apprenticeship data for ACTA during the audit period and found no errors.</li> <li>• Interviewed the apprenticeship division staff and the executive director and legal counsel for ACTA to understand the reasons for its declining completion rates.</li> </ul>
9	Review and assess any other issues that are significant to the audit.	<ul style="list-style-type: none"> <li>• During fieldwork, we were informed that other entities may be providing ACTA with state funding. Therefore, we contacted the Employment Development Department, Fresno County Workforce Investment Board, California Employment Training Panel (Training Panel), Fresno County Office of Education, and California Partnership Academies to determine if they provided any public funding to ACTA during the audit period.</li> <li>• We determined that the only additional entity providing ACTA with state funding was the Training Panel. Specifically, the Training Panel entered an agreement with ACTA to provide \$28,360 for training from March 2015 through March 2017. However, the Training Panel did not make any payments because ACTA cancelled the agreement.</li> </ul>

Sources: California State Auditor's analysis of the Joint Legislative Audit Committee's audit request number 2016-110, and information and documentation identified in the column titled *Method*.

### Assessment of Data Reliability

In performing this audit, we relied on electronic data files extracted from the apprenticeship division's California Apprenticeship System database (apprenticeship database). The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of the computer-processed information that we use to support our findings, conclusions, or recommendations. Table 5 describes the analyses we conducted using the data from the apprenticeship database, our methods for testing it, and the results of our assessments.

**Table 5**  
**Methods Used to Assess Data Reliability**

INFORMATION SYSTEM	PURPOSE	METHODS AND RESULTS	CONCLUSION
California Apprenticeship System database (apprenticeship database)	To gain assurance that the data the Department of Industrial Relations used to calculate apprenticeship completion rates for the Air Conditioning Trade Association (ACTA) was accurate and complete from fiscal year 2010–11 through 2014–15.	<ul style="list-style-type: none"> <li>We performed data-set verification procedures and electronic testing of key data elements and did not identify any significant issues.</li> <li>To test the accuracy of the apprenticeship database, we traced key data elements to supporting documentation for a selection of 29 ACTA apprentices and found no errors.</li> <li>To test the completeness of the apprenticeship database, we haphazardly selected 35 ACTA apprentices from the Division of Apprenticeship Standards' source documents and traced them back to the apprenticeship database. We found the data to be complete.</li> </ul>	Sufficiently reliable for the purpose of this audit.

Source: California State Auditor's analysis of data obtained from the apprenticeship database.

We conducted this audit under the authority vested in the California State Auditor by section 8543 et seq. of the California Government Code and according to 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 specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: November 15, 2016

Staff: John Baier, CPA, Audit Principal  
Amber Ronan  
Oswin Chan, MPP, CIA  
Bill Eggert, MPA  
Matthew McAuley

Legal Counsel: Heather Kendrick, Sr. Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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STATE OF CALIFORNIA

ERIK E. SKINNER, INTERIM CHANCELLOR

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October 27, 2016

Ms. Elaine Howle, State Auditor  
621 Capitol Mall Suite, Suite 1200  
Sacramento, CA 95814

Dear Ms. Howle:

The California Community Colleges Chancellor's Office appreciates the opportunity to review and comment on your audit report titled *Trade Apprenticeship Programs*. In general, we find the report to be a thorough and accurate assessment of the state's need to better oversee apprenticeship programs such as the Air Conditioning Trade Association (ACTA) Sheet Metal Program. The report effectively raises a number of administrative concerns that warrant attention by all involved parties and we look forward to working collaboratively to ensure these deficiencies are addressed.

Your audit report identified that inadequate oversight by the Chancellor's Office resulted in ACTA receiving unallowable reimbursement. We are in concurrence with the report's finding and recommendations and provide the following comments:

**Recommendation #1**

*To ensure that ACTA was only reimbursed for allowable costs from fiscal year 2010-2011 through 2014-15, the Central Unified School District should determine how much it reimbursed ACTA for unallowable activities and work with the Chancellor's Office to determine how to recover those funds from ACTA.*

The Chancellor's Office will work with the Central Unified School District to determine how much it reimbursed ACTA for unallowable activities and recover those funds from ACTA through an appropriate mechanism.

**Recommendation #2**

*To ensure accountability, the Legislature should amend state law to clarify that the Chancellor's Office has the authority to provide accounting guidance to and conduct audits of the K-12 LEAs' oversight of apprentice training funds.*

The Chancellor's Office would support any legislative proposals or amendments to state law to clarify that the Chancellor's Office has authority to provide accounting guidance to and conduct audits of the local educational agencies. Such authority would improve oversight of apprenticeship training funds.

**Recommendation #3**

*To ensure that LEAs develop sound contract agreements with apprenticeship programs, the Chancellor's Office shall develop a model contract agreement to outline the types of information, roles, and responsibilities for both parties, as Education Code requires, and make this model contract available to K-12 LEAs by April 2017. In addition, this model contract should specify that K-12 LEAs will verify that the apprentices attended the instructional courses by collecting supporting documentation such as sign-in sheets or rosters.*

The Chancellor's Office is currently developing a model contract agreement and anticipates its release date sometime in the spring of 2017. The model contract agreement will specify that K-12 LEAs will verify that apprentices attended instructional courses by collecting supporting documentation, such as sign-in sheets or rosters.

Again, we appreciate the opportunity to review and comment on this report. We look forward working with you and your staff in the future. If you have any questions, please contact Javier Romero at (916) 322-1677.

Sincerely,



Erik E. Skinner

Interim Chancellor

cc: Van Ton-Quinlivan, Vice Chancellor, Workforce and Economic Development, California Community Colleges Chancellor's Office

Mario Rodriguez, Vice Chancellor, College Finance and Facilities Planning Division, California Community Colleges Chancellor's Office

Javier Romero, Grant Unit Manager, Workforce and Economic Development, California Community Colleges Chancellor's Office

November 2016



**CENTRAL UNIFIED SCHOOL DISTRICT**  
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 Cesar Granda  
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**SUPERINTENDENT**  
 Mark G. Sutton

October 25, 2016

Dear Elaine Howle,

We have reviewed the redacted copies of the Trade Apprenticeship Programs: The State Needs to Better Oversee Apprenticeship Programs Such as the Air Conditioning Trade Association's Sheet Metal Program. We understand the recommendations and plan to do the following:

- 1. Ensure that ACTA was the only reimbursed for allowable costs from fiscal years 2010-11 through 2014-15. Central Unified should determine how much it reimbursed ACTA for unallowable activities and work with the Chancellor's Office to determine how to recover those funds from ACTA.**

We understand the recommendation and will plan to work with the Chancellor's office in the near future in order to recover funds from ACTA. The planning and outline of this recommendation will require CUSD and the Chancellor's to meet as soon as the report is final.

As we go through this process, it would be beneficial to our site and the state to have some type of guidance in this process as we do not have any past references to draw from. Any exemplars of past audits or resources regarding steps in recovering funds would be helpful.

*District Administration*

*Laurel Ashlock, Ed.D, Assistant Superintendent, Chief Academic Officer · Ketti Davis, Assistant Superintendent, Professional Development  
 Jack Kelejian, Assistant Superintendent, Human Resources · Kelly Porterfield, Assistant Superintendent, Chief Business Officer  
 Paul Birrell, Director, 7-12 and Adult Education · Tami Boatright Ed.D, Director, K-8 Education · Andrea Valadez, Administrator, Special Education & Support Services*

2. **To ensure that Central Unified correctly reimburses state funds to ACTA, Central Unified should develop a process-like it currently has for its two other apprenticeship programs- to verify that ACTA's apprentices attended the online training courses for the corresponding hours ACTA reports. Further, Central Unified should ensure that it only reimburses apprenticeship programs for allowable activities.**

We have currently addressed past and proposed future practices with ACTA for reimbursement of funds. We plan to align the practices of all apprenticeship programs in order to have clarity and articulation. In doing so, continuity of programs will be evident. Additionally, ACTA and CUSD have met face to face and plan on working together for fidelity of program.

3. **To limit the risk and to clarify its roles and responsibilities as they relate to ACTA, Central Unified should update its agreement with ACTA to reflect each party's current roles and responsibly. Further, Central Unified should periodically update this agreement to ensure that the agreement continues to reflect current roles and responsibilities.**

We understand the recommendation and agree that the agreement between ACTA and CUSD need to be updated. We will continue the planning process and have a working document shortly after the states report is finalized. Additionally, the agreement will be periodically updated to reflect any changes in program and the roles of its members.

Sincerely,



Mark G. Sutton  
Superintendent

*District Administration*

*Laurel Ashlock, Ed.D, Assistant Superintendent, Chief Academic Officer · Ketti Davis, Assistant Superintendent, Professional Development  
Jack Kelejian, Assistant Superintendent, Human Resources · Kelly Porterfield, Assistant Superintendent, Chief Business Officer  
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STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

Christine Baker, Director

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October 27, 2016

Elaine M. Howle, State Auditor\*  
California State Auditor's Office  
621 Capitol Mall, Suite 1200  
Sacramento, California 95814

Re: Response to the State Auditor's Draft Report "Trade Apprenticeship Programs:  
The State Needs to Better Oversee Apprenticeship Programs Such as the Air  
Conditioning Trade Association's Sheet Metal Program"

Dear Ms. Howle:

On behalf of the Labor and Workforce Development Agency, as Director of the Department of Industrial Relations, I appreciate the opportunity to respond to the State Auditor's draft audit report of the Division of Apprenticeship Standards' oversight of state-approved apprenticeship programs.

The State Auditor identified some areas where there can be opportunities for improvement, and made insightful recommendations. We welcome the State Auditor's recommendations and take them very seriously. In fact, we have already taken specific action to implement some of those recommendations, as discussed in detail below.

We also appreciate that you recognized that the Division is performing well in some areas that you examined. In other areas, you agree that the Division is restricted by existing law from doing more.

As you may know, we are continuing to perform Division-wide software and technology upgrades to standardize the Division's procedures and make the Division run more efficiently. The Department of Industrial Relations has committed significant resources to ensure the Division promptly carries out its mandate to foster, promote and protect California's apprentices and expand apprentice employment and training opportunities. Given that the Division is already in the process of implementing significant changes, our goal is to fully comply with most of the recommendations by the first 60-day response period.

*Complaints Regarding Air Conditioning Trade Association*

The Director of the Department of Industrial Relations is ex officio the Administrator of Apprenticeship tasked with investigating and issuing decisions on complaints. The Division, as the Administrator of Apprenticeship's designee, investigates thoroughly all complaints brought against

\* California State Auditor's comments appear on page 41.

Letter to Elaine M. Howle  
Re: Response to Draft Audit Report  
Page 2

state-approved apprenticeship programs. As the draft report notes, the Division received two complaints against the Air Conditioning Trade Association (ACTA) in the past five fiscal years. After a thorough investigation and consultation with legal counsel, the Division ultimately dismissed the complaints because the complaints were unsubstantiated. The Division allowed up to three months for the complainant-apprentices to supply the information necessary to process the complaints and dismissed the complaints when no information was received. The Division followed standard procedure in processing and resolving the complaints.

#### *Authority to Determine How Grant Funds Are Spent*

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Current state law provides that the California Apprenticeship Council “shall” make grants to “approved apprenticeship programs for the purpose of training apprentices.” In other words, the Council must unconditionally distribute the money, as long as a program submits an application. Because of the Division’s limited audit authority under state law and concerns with the federal Employee Retirement Income Security Act’s (ERISA) broad preemption language, the Division concluded, through advice from legal counsel, that it did not have the necessary legal authority to verify grant funds are spent appropriately. The draft audit report recognizes this limitation on the Division. In addition, the fact that ACTA received a total of less than \$10,000 in grants over the course of five years makes it unlikely that any portion of the public money was spent for non-training purposes. ACTA, like most other programs, receives the bulk of its funding from contributions made directly by member-contractors. Compared to direct contractor contributions, Council grants represent a very small portion of an apprenticeship program’s funding.

#### *Tracking of Apprenticeship Programs Identified for Audit*

The draft report describes concerns with the tracking of the audit status of apprenticeship programs identified for audit. The Division is undergoing extensive technology upgrades to streamline its processes. New database software is currently being installed on the Division’s systems to allow Division staff to more accurately track the status of audits, which is slated to become fully operational by next year, as noted in the draft report.

#### *Audit Recommendation 1*

*To better oversee state apprenticeship programs, the apprenticeship division should resume conducting program audits by December 2016. As part of such audits, the apprenticeship division should ensure that apprenticeship programs receiving grants are appropriately spending the money to train apprentices.*

#### Division’s Response

The Division accepts this recommendation. Before this audit was initiated, the Division was in the process of restructuring its audit unit and had already planned to resume program audits no later than December 2016. Restructuring of the audit unit was necessary because of major statutory and regulatory changes to the audit process, as mentioned in the draft report. The Division also had to ensure that a significant number of audited programs had complied with the Division’s recommendations. The restructuring – which included reassignment and training of staff, revamped audit procedures, and an updated audit manual – was completed ahead of schedule. The

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Division has scheduled audits to commence in November, beginning with the audit of ACTA's Sheet Metal Worker program, which is scheduled to begin on November 7, 2016. Notice of the audit was sent to ACTA on October 17, 2016. Audits of three other programs will also commence in November. In total, over 30 audits have been scheduled between now and July 2017.

With regard to audits to ensure programs are appropriately spending money to train apprentices, the Division agrees with the recommendation, but as the draft report indicates, under current law, the Division can only *request* information such as invoices, receipts, or cancelled checks within the context of a full audit. Nothing explicit in state law, however, permits the Division to *require* a program to turn over invoices, receipts, or cancelled checks to substantiate the proper use of grant funds. Even if a program voluntarily turned over such records within the context of an audit, the Division would not be able to independently corroborate those records, because ERISA would likely bar the Division's access to the financial statements or accounting records of an apprenticeship training trust. With that said, the Division will begin requesting invoices, receipts, and other similar records, where appropriate, when conducting program audits.

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#### *Audit Recommendation 2*

*The Legislature should amend state law to provide the apprenticeship division with explicit authority to verify that state funds are being used solely for training apprentices as a condition of receiving future grant funds. In addition, if an apprenticeship program is unable to demonstrate how state funds are used or if it is found to be using funds for inappropriate purposes, the apprenticeship division should have the authority to decertify that particular program.*

#### Division's Response

The Division will make every effort to effectively utilize its existing authority as well as any additional tools authorized by the Legislature. Regarding this particular recommendation, the Division awaits further direction from the Legislature. As already noted, even with state authority, ERISA's broad preemption language may prevent the Division from independently corroborating financial records, because ERISA may bar access to the financial statements or accounting records of an apprenticeship training trust.

#### *Audit Recommendation 3*

*Until it implements the new case management software in April 2017, the apprenticeship division should ensure that consultants perform and track their oversight activities. Furthermore, once the software is implemented, the apprenticeship division should ensure that consultants consistently use the software to document their oversight activities. Finally, the apprenticeship division should improve the usefulness of the site visit reports to provide the findings and an evaluation of each apprenticeship program and it should periodically verify that consultants are performing their required oversight activities, including attending apprenticeship committee meetings and performing site visits.*

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### Division's Response

The Division accepts this recommendation and is taking immediate action to comply. Specifically, the Division has nearly completed its revisions to the Division's Operations Manual, which is essentially a handbook that spells out the Division's policies and procedures and what is expected of each staff member. There will be strong, express references to an apprenticeship consultant's responsibilities to regularly attend committee meetings, conduct site visits, and perform other oversight activities. The revised Operations Manual includes an updated template for site visit reports to require that a consultant detail his or her findings, an evaluation of the program, and recommendations for improvement. The Operations Manual will also specify the frequency, and the procedures, under which supervisors must verify that consultants and other staff are fulfilling their job responsibilities.

### *Audit Recommendation 4*

*To ensure the proper oversight of funding for related and supplemental instruction and to clarify the roles of the entities involved in the State's apprenticeship system, the Apprenticeship Council should, by December 2016, formally approve the common administrative practices document and distribute it to all relevant parties within that system. In addition, to ensure the proper reimbursement of apprenticeship programs, the common administrative practices document should specify that K-12 LEAs take steps to verify that the apprentices actually attended the courses and that the apprenticeship attendance hours reported are only for allowable activities.*

### Division's Response

- ③ While the Division agrees, the Division has no authority to implement this recommendation. The Council is a body largely independent from the Division, the Department, and the Agency. The Council is comprised of eleven total members and a secretary: eight members appointed by the Governor, plus three ex officio members and the Chief of the Division as secretary. The Council issues rules and regulations and formulates policy. Under the Shelley-Maloney Act, the Council is only nominally "in" the Division. (See Lab. Code, § 3070 "There is in the Division of Apprenticeship Standards the California Apprenticeship Council.")
- ③ The Division understands that the State Auditor has not contacted the Council about this recommendation or any other findings expressed in the draft report. The recommended action that the Council formally approve the common administrative practices document was recently brought to the attention of the Council, and at the current quarterly Council meeting held on October 26-27, 2016, the Council discussed the issue and decided that further discussion was necessary. Discussion will continue at the next quarterly Council meeting in January 2017.

### *Audit Recommendation 5*

*To ensure that LEAs develop sound contract agreements with apprenticeship programs, the Chancellor's Office and the apprenticeship division should develop a model contract agreement to outline the types of information, roles, and responsibilities for both parties, as the Education Code requires, and make this model contract available to K-12 LEAs by April 2017. In addition, this*

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*model contract should specify that K-12 LEAs will verify that the apprentices attended the instructional courses by collecting supporting documentation such as sign-in sheets or rosters.*

Division's Response

The Division accepts this recommendation. The Division is working with the Chancellor's Office on developing the model contract consistent with this recommendation. On October 27, 2016, representatives from the Division and the Chancellor's Office met in person to discuss and agreed on a plan to expeditiously implement this recommendation.

*Audit Recommendation 6*

*To ensure the apprenticeship division is adequately overseeing apprenticeship programs it should consider periodically checking with U.S. Labor to determine what investigation it has recently conducted on apprenticeship programs. The apprenticeship division could use this information as a basis for conducting its own audit to ensure apprenticeship programs are using state funds appropriately.*

Division's Response

The Division accepts this recommendation. Shortly after learning of the Department of Labor's (DOL) audit of ACTA, the Division made a Freedom of Information Act request on DOL's Employee Benefits Security Administration (EBSA) for a copy of the report. At the same time, the Division also made a request to receive reports of EBSA's future investigations into training trust funds of state-approved apprenticeship programs. EBSA advised that they are preparing an information sharing agreement to facilitate the disclosure of EBSA's investigation records.

If you need additional information regarding the Division's responses, please do not hesitate to contact Ken Lau, counsel in my office's legal unit at (510) 286-3800.

Sincerely,



Christine Baker  
Director of Industrial Relations

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## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM INDUSTRIAL RELATIONS

To provide clarity and perspective, we are commenting on the response from Industrial Relations to our audit. The numbers below correspond to the numbers we have placed in the margin of the response from Industrial Relations.

To clarify, we agree that ERISA would preempt the apprenticeship division from being able to request certain records, such as financial statements, general ledgers, or other documents that pertain to the conduct of a financial audit (i.e. an independent assessment of whether an entity's financial position as of a certain date is reported fairly and in accordance with accounting standards). However, we believe, and as noted on page 12 of our report, legal counsel for Industrial Relations acknowledged that the apprenticeship division can make requests to apprenticeship programs for specific records containing financial information needed to verify that state grant funds were spent appropriately, such as invoices, receipts, or cancelled checks.

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We disagree with the assertion of Industrial Relations that it lacks the authority to compel an apprenticeship program to demonstrate the appropriate spending of state funds. State regulations give Industrial Relations the authority to review program records as part of a program audit. Further, legal counsel for Industrial Relations confirmed to us during the audit that if an apprenticeship program does not comply with a program audit, Industrial Relations could initiate the process of deregistering the apprenticeship program in accordance with state regulations.

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Industrial Relations is significantly downplaying its involvement with the Apprenticeship Council. Specifically, because the director of Industrial Relations is a member of the Apprenticeship Council, the chief of the apprenticeship division serves as its secretary, and the apprenticeship division provides staff services to it, Industrial Relations is significantly involved in the activities of the Apprenticeship Council. However, to address the concern of Industrial Relations, we refined the recommendation on page 21 to state that the apprenticeship division should work with the Apprenticeship Council to formally approve the common administrative practices document by April 2017. Moreover, we did not directly contact the Apprenticeship Council because of Industrial Relations' significant involvement described above and because this audit was primarily focused on the entities that provide state funding to ACTA.

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