

Oregon Department of Justice

Review of the Oregon Secretary of State's 2023 Audit Titled "Oregon Needs to Modernize Cannabis Laws to Help Grow the State's Economy and to Ensure Equitable Opportunities and Benefits for all Communities"

October 2023



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Executive Summary

The Oregon Department of Justice (DOJ) hired Sjoberg Evashenk Consulting, Inc. to provide expert services to assist DOJ in its examination of the Secretary of State's (SOS) performance audit of the Oregon Liquor and Cannabis Commission (OLCC) titled "*Oregon Needs to Modernize Cannabis Laws to Help Grow the State's Economy and to Ensure Equitable Opportunities and Benefits for all Communities*," and determine whether the OLCC audit was selected, planned, performed, and reported in accordance with Generally Accepted Government Auditing Standards (GAGAS).

As part of this review, we performed various steps and activities including, but not limited to, the following:

- Conducted interviews with key staff from the SOS, OLCC, and Business Oregon and reviewed correspondence between the audit team, SOS executive team, and stakeholders;
- Reviewed the process the SOS and its Division of Audits used in the developing the 2021 Annual Audit Plan, which prioritized the OLCC audit to be initiated that year;
- Reviewed and evaluated the Division of Audit's performance audit protocols and adherence to those protocols for the OLCC audit including assessing information related to independence evaluation; and
- Examined all audit documentation, workpapers, meeting notes, and analysis related to the OLCC audit.

While our review was based on a selective, but detailed examination of the OLCC audit documentation, we did not re-perform the audit nor did we conduct a review of other audits, risk assessments, or other work performed by the Audits Division. Thus, our results are specific to the work performed in selecting and performing the OLCC audit, including the impact former Secretary Fagan's recusal and resignation had on the OLCC audit.

Key Results

- *The 2021 Annual Audit Plan, which included the OLCC Audit, suggested a more rigorous risk assessment process was employed by the Secretary of State's Office than was demonstrated.*

Although GAGAS does not prescribe how audits are selected, Oregon law requires the Secretary of State to prepare an annual audit plan for performance audits and that the plan be based on a risk assessment methodology. The 2021 Annual Audit Plan, which identified the OLCC audit, includes a description of the risk assessment methodology used in identifying the audits included in the annual audit plan. In reviewing the support for the audit plan, we concluded that the risk assessment methodology described in the 2021 Annual Audit Plan implied a greater level of rigor and formality than was employed by the Division of Audits. The audit plan states that the risk assessment included an analysis of two dozen risk factors, but we observed no systematic analysis. Audit topics were identified primarily through interviews with state agencies, familiarity with state programs, and the Secretary of State's priorities. The OLCC audit was not derived from the deliberations or considerations of the Division of Audits, but it was rather an audit topic that the Secretary of State wanted on the audit plan. In fact, of the 9 performance audits in the 2021 audit plan, there was one other audit that former Secretary Fagan determined to include in the audit plan. Oregon law does not preclude the Secretary

of State from including audits on the audit plan at their sole discretion—a power that is often inherent to the position of an elected audit official in state and local governments. Nevertheless, Oregon law does require the audit plan to be based on a risk assessment methodology.

- *The Division of Audits did not take the necessary steps to mitigate potential threats to independence when such threats became evident, nor did it reassess the sufficiency and appropriateness of the evidence used to support the OLCC audit as “audit risk” increased.*

When the circumstances surrounding former Secretary Fagan’s recusal and resignation became known to the Division of Audits, it did not take sufficient steps to identify and assess threats to independence (either “of mind” or “of appearance”) at all levels—the individual, the audit team, and the audit organization—as GAGAS requires. Nor did it adequately reassess those threats as new facts became known, including information related to media articles, public records requests, and concerns raised by OLCC and stakeholders. When considered cumulatively as each event unfolded, this information could cause a reasonable person to question whether the integrity, objectivity, or professional skepticism of the audit organization—the Office of the Secretary of State—had been compromised.

Despite the OLCC audit team’s adherence to ordinarily acceptable GAGAS protocols, GAGAS requires the audit organization to recognize the impact that even a perceived threat to independence could have, and to implement safeguards to mitigate the threat to an acceptable level. Examples of such safeguards include adding specialists, additional reviewers, and other resources to conduct the audit; obtaining additional evidence, higher-quality evidence, or alternative forms of corroborating evidence; re-aligning the findings and conclusions to reflect the evidence obtained; or reconsidering the views and perspectives of responsible officials. Considering this, the Division of Audits should have identified and applied safeguards to bolster the work performed during the audit; demonstrate that evidence obtained was sufficient and reliable; and show that reporting was accurate and balanced. Although we recognize the uniqueness of the circumstances that confronted the Division of Audits, the Division of Audits did not take sufficient action upon learning of the circumstances surrounding former Secretary Fagan.

- *We did not find that the independence of the OLCC audit team or the Division of Audits was impaired; nor did we find that audit planning, fieldwork, or reporting processes deviated from the SOS’ Division of Audits’ typical standards and practices, which were consistent with GAGAS requirements. We found no evidence in the documents we reviewed that the audit team was compromised, that former Secretary Fagan exerted undue influence, or that the audit team failed to follow its internal policies and procedures.*

Recommendation

Given the known threat to independence introduced by former Secretary Fagan’s actions and the impact the perception of this threat had on the OLCC audit report, we recommend that the SOS pull the audit report from the publicly accessible website and reassess its issuance, including augmenting audit evidence to counteract the increase in audit risk.

Introduction and Background

The Comptroller General of the United States Government Accountability Office issues [generally accepted government auditing standards \(GAGAS or standards\)](#) for audit work involving government and public sector agencies. These standards provide a framework for performing high-quality audit work with competence, integrity, and objectivity. Covering provisions related to ethics, independence, competency, professional judgment and more, the standards guide auditor efforts in planning an audit, conducting audit fieldwork, and reporting results, and provide assurances to government executives, legislators, and the public that the results of the audit can be relied upon. Audit work conducted in accordance with these standards serves as a foundation for public accountability and as a resource to improve government operations and services.

In 2021, most state audit offices across the country conducted performance audits with 35 state audit offices doing so in accordance with GAGAS. Of those 35 state audit offices, 29 state auditors are required to follow GAGAS by statute, although other state auditors chose to follow GAGAS because it adds credibility and rigor to the audit work and results achieved. The Oregon Secretary of State (SOS) is one of the many state audit offices that follow GAGAS when conducting its performance audits and is required to follow those standards per Oregon Revised Statutes (ORS) 297.070.

Oregon SOS Audit of Oregon Liquor and Cannabis Commission

In April 2023, the Oregon SOS released [Audit Report 2023-15](#), a performance audit of the Oregon Liquor and Cannabis Commission (OLCC)'s Cannabis program, titled "*Oregon Needs to Modernize Cannabis Laws to Help Grow the State's Economy and to Ensure Equitable Opportunities and Benefits for all Communities*" (OLCC audit).

In February 2021, the Oregon SOS memorialized the initial objective of this audit in its [2021-22 Annual Audit Plan](#); specifically, the objective was to:

“OLCC regulatory oversight of Oregon cannabis industry. Audit objectives may include examining the effectiveness and equity of OLCC licensing, compliance, and enforcement actions. The audit will likely make recommendations for the structure and resources needed to ensure an effective licensing and compliance system that supports equitable business growth. This audit may also use available disaggregated data regarding disproportional impacts. This audit may also consider BIPOC- and tribal-owned businesses vs. venture capital ownership.”

According to the former Secretary of State (Secretary Fagan)'s cover letter accompanying the 2021-22 Annual Audit Plan, she summarized that the audit of the licensing and regulation of cannabis businesses was intended to evaluate “how licensing can be used to right historical wrongs to Black, Indigenous, and people of color communities.”

After the audit was started in January 2022, the audit team subsequently modified the audit objective in March 2022 based on the scoping and planning work performed by the audit team to the following:

“Identify business equity challenges within Oregon's existing cannabis regulatory framework and how the state can address those challenges and determine how Oregon may address social equity issues within the Oregon Cannabis industry.”

GAGAS permits such changes in scope.¹ According to audit records, the audit team determined that there was insufficient data available to determine the extent to which OLCC’s compliance and enforcement disciplines regulate licensees in an equitable fashion. Instead, the audit team focused the scope on whether (a) state laws and regulations place a burden on marijuana businesses and creating inequities; (b) the OLCC addresses social inequities in business development, licensing, and regulation of cannabis businesses; and (c) the OLCC has prepared for Federal legalization.

Prior to issuing the audit report, former Secretary Fagan recused herself, on February 15, 2023, from all subsequent work on the OLCC audit because she would soon be consulting for a company involved in the cannabis industry in multiple states. Subsequently, the SOS’ Division of Audits learned that its auditors had interviewed the company with which former Secretary Fagan had entered a contractual consulting arrangement as part of the OLCC audit, at former Secretary Fagan’s request. Former Secretary Fagan had also interacted with the same cannabis company in determining language used to frame the audit scope and the original objectives set forth in the SOS’s 2021-22 Annual Audit Plan. This contributed to questions from Oregon State government representatives and the media’s perception regarding the integrity of the audit itself, including whether former Secretary Fagan’s potential conflict of interest impaired the independence and objectivity of the auditors, audit team, or audit organization.

The Oregon Department of Justice (DOJ) engaged Sjoberg Evashenk Consulting to assist DOJ in determining whether the OLCC audit was selected, planned, conducted, and results reported in accordance with GAGAS. This included, but was not limited to, the standards for ethics, independence, and professional judgment.

Generally Accepted Government Auditing Standards

To ensure objective analysis and high-quality audit work, the standards include general fundamental requirements for all audit types in addition to fieldwork and reporting requirements specific to the type of audit conducted. GAGAS contains guidance to assist auditors in “objectively obtaining and evaluating sufficient, appropriate evidence and reporting the results.”² Although GAGAS also provides auditors with guidance in applying standards, it prescribes two types of requirements—(1) unconditional requirements, where GAGAS states auditors and audit organizations “must” comply, and (2) presumptively mandatory requirement, in which GAGAS uses the term “should” but with rare exception must also be followed in practice. If in those rare circumstances auditors deem it necessary to depart from a relevant presumptively mandatory requirement, GAGAS requires auditors to perform alternative procedures that achieve the intent of that requirement and document justification for the departure.³ Other GAGAS provisions “could” or “may” be followed. Key GAGAS provisions relevant to this engagement include:

¹ GAGAS paragraph 8.09

² GAGAS paragraph 1.07.

³ GAGAS paragraphs 2.02-2.04.

- Chapter 3: Ethics, Independence, and Professional Judgement
- Chapter 5: Quality Control and Peer Review
- Chapter 8: Fieldwork Standards for Performance Audits
- Chapter 9: Reporting Standards for Performance Audits

Key to applying GAGAS is the auditor’s reliance on professional judgement. GAGAS defines professional judgement as “exercising reasonable care and professional skepticism” in carrying out audit planning, analysis, and reporting—including demonstrating competence and exhibiting a “questioning mind.”⁴ The use of professional judgement guides the application of all GAGAS requirements when auditors are planning, assessing risk, evaluating audit evidence, and reporting results. Professional judgement could reasonably vary between professional and competent auditors, audit teams, and audit organizations using the same facts.

Other State Auditor Offices

State auditors are typically either officials elected by the public or appointed by authorized government officials or legislative bodies.⁵ Approximately two-thirds of the states across the country have a state auditor that is appointed, although over a third have an elected state auditor. The majority of the states have only one state auditor, but there are a few states that elect or appoint more than one state auditor, such as in Connecticut where two state auditors are appointed but work together. In Minnesota, an elected state auditor conducts audits of local governments, although the appointed Legislative Auditor conducts statewide financial and performance audits. Of the 19 elected auditors, 15 conduct performance audits (including Oregon) where the head of the audit agency can select audits. In most of those audit offices, auditors prepare an annual audit plan with many stating the audit plan is based on a risk assessment. In many cases, these risk assessments are not always publicly available.

Most of the audit offices with appointed state auditors conduct performance audits—of which, the majority conduct performance audits that are either mandated by law or are requested and approved by a legislative body. For the remaining appointed state auditor offices, the head of the audit agency determines what subject or agency will be audited. Nonetheless, most performance audit subjects conducted by state audit offices in the country are generated by and are influenced in varying degrees by elected officials—either by elected state auditors or legislatures.

Oregon’s State Auditor Model

In Oregon, [Article VI, Section 2 of the Constitution](#) establishes the Secretary of State as the “Auditor of Public Accounts.” Further, ORS 297.210 states that the “Secretary of State, as State Auditor, shall have the accounts and financial affairs of state departments, boards, commissions, institutions and state-aided institutions and agencies of the state reviewed or audited as the Secretary of State considers advisable or

⁴ GAGAS paragraphs 3.110 and 3.112.

⁵ Throughout the report we use the term “state auditor” as the official constitutionally or statutorily charged with conducting independent audits regardless of the official title as states differ in the title of the officer charged with the responsibility.

necessary.” The Oregon Secretary of State is elected to a four-year term (limited to two consecutive terms in office during any 12-year period) to fulfill its constitutional audit responsibilities. Within the SOS, ORS establishes the Division of Audits and prescribes that the SOS’ Division of Audits be maintained under the supervision and control of the Oregon Secretary of State. According to [ORS 297.010](#), the Secretary of State must assign or appoint a director of the division. ORS further stipulates that performance audits conducted by the SOS’ Division of Audits must be based on standards established by nationally recognized entities including, but not limited to, the United States Government Accountability Office ([ORS 297.070](#)).

Although no other state charges its elected Secretary of State function with state audit responsibilities, at least two other states establish state auditor offices with additional responsibilities akin to the Oregon SOS. In New York, the elected State Comptroller serves as the State Controller, State Pension Manager, and State Auditor. Similarly, in Tennessee, the Comptroller of the Treasury (elected by the Legislature) is charged with multiple responsibilities relating to property tax, finance, and small businesses along with state auditor responsibilities.

Project Scope and Methodology

DOJ hired Sjoberg Evashenk Consulting, Inc. to provide expert consultant services to assist DOJ in its examination of the SOS' Audit Report 2023-15—a performance audit of the Oregon Liquor and Cannabis Commission titled “*Oregon Needs to Modernize Cannabis Laws to Help Grow the State’s Economy and to Ensure Equitable Opportunities and Benefits for all Communities.*” Specifically, Sjoberg Evashenk Consulting, Inc. assisted DOJ in determining whether the OLCC audit was selected, planned, conducted, and results reported in accordance with GAGAS, including, but not limited to, the standards for ethics, independence, and professional judgment as set out in standards. Sjoberg Evashenk Consulting, Inc. did not review or assess any other SOS performance audit; only the OLCC audit was reviewed as part of this engagement.

Sjoberg Evashenk Consulting, Inc. performed the following steps and activities:

- Reviewed SOS' Audit Report 2023-15, “*Oregon Needs to Modernize Cannabis Laws to Help Grow the State’s Economy and to Ensure Equitable Opportunities and Benefits for all Communities.*”
- Conducted in-person individual interviews with the OLCC audit team, peer team, quality control team, and key members of the SOS Executive Office to understand each person’s perception of how the OLCC audit was conducted, the level of SOS influence, how processes differed on this audit compared to other audits, the role of each person on the audit, and their perspectives on their experiences with the audit, sequence of events, and their independence and that of the audit team and audit organization.
- Conducted onsite interviews with OLCC and Business Oregon to obtain their insights on the OLCC audit process and any perceived biases; concerns about testing and evidence for findings, recommendations, and reporting; or observations/beliefs the OLCC audit team was being pressured in a particular direction.
- Evaluated the SOS' Division of Audits 2021 Annual Audit Plan and process for selecting or prioritizing audits, including risk assessment methodology, and compared its process to the process used by other state auditors and/or identified by best practices.
- Assessed the SOS' Division of Audits policies and procedures on ethics, independence, conflicts of interest, audit planning, audit implementation, management and oversight of audits, audit fieldwork, quality control, and audit reporting for adherence to GAGAS and audit industry practices.
- Gathered and reviewed emails to and from former Secretary Fagan, SOS' Executive Office, SOS' Division of Audits, OLCC audit team members, La Mota, OLCC, and Business Oregon from November 2020 through May 9, 2023, to extent available.
- Reviewed documents related to OLCC audit staff and the SOS' Executive Office associated with the OLCC audit to determine whether appropriate independence steps were taken, documented, and completed in addition to conflicts of interest identified or reviewed.
- Developed a timeline using OLCC audit documentation (including, but not limited to, scoping, start of audit, team meetings, stakeholder meetings, auditee meetings, exit conference, report draft, and

report issuance), emails, or other information to identify former Secretary Fagan or SOS' Executive Office touch points in the OLCC audit and any threats to independence.

- Evaluated SOS steps taken to mitigate threats to independence or eliminate threats identified on the OLCC audit.
- Requested and assessed OLCC audit documentation, audit job files, audit workpapers, quality control copies of report, draft report versions with comments, and comments received from audited entities for adherence with GAGAS.
- Evaluated whether GAGAS and SOS' Division of Audits policies, procedures, and protocols were adhered to throughout the OLCC audit, and whether there was evidence suggesting improper influences were placed on the auditors, teams, or other staff during any phase of the OLCC audit.
- Reviewed quality control efforts and reassessed whether audit work papers supported the conclusions presented in the OLCC audit report.
- Reviewed two audit peer review reports on the SOS' Division of Audits system of quality control and any related observations noted by the peer review teams for 2019 and 2022.

Our review was based on a selective, but detailed examination of OLCC audit documentation gathered and produced by the SOS auditors during scoping, fieldwork, and reporting. However, we did not re-perform the sizeable audit effort undertaken to produce the OLCC audit, nor did we conduct audit supervisory review of the evidence and resulting work that would be performed on an audit. For instance, although we obtained thousands of emails between key personnel involved in the audit, we did not conduct a forensic examination of all correspondence received through all possible channels (e.g., text, messaging apps, personal email accounts, etc.) between relevant parties. Thus, with all such reviews, there remains the possibility that our review did not identify all potential audit activities that could have been taken, minor areas of non-compliance with GAGAS requirements, or correspondence through all possible channels between former Secretary Fagan and members of the SOS' Division of Audits.

Observations & Conclusions

Sjoberg Evashenk Consulting's review of the OLCC audit sought to address four central questions:

1. Did the SOS' Division of Audits follow standards taking necessary steps for mitigating potential threats to independence when threats became evident?
2. Was the development of the Annual Audit Plan and the selection of the OLCC audit compliant with Oregon law and/or consistent with best practices and other independent state auditors?
3. Did the SOS' Division of Audits adhere to audit standards in conducting the planning, fieldwork, and reporting phases of the OLCC audit?
4. What actions should the SOS' Division of Audits have taken regarding the OLCC audit and/or what should the SOS' Division of Audits do now?

The remainder of this report represents our responses to each question, and our observations and conclusions regarding the work of the Oregon SOS' Division of Audits as it relates to the OLCC audit.

Did the SOS' Division of Audits Follow Standards Taking Necessary Steps for Mitigating Potential Threats to Independence When Threats Became Evident?

In addition to setting forth standards for how auditors or audit organizations should conduct audit engagements—including how they should plan, conduct fieldwork, or report on results—GAGAS focuses on general qualities, skills, and competencies fundamental for auditors in the government environment. For instance, maintaining integrity and objectivity when auditors perform work is fundamental and essential to the credibility and reliability of audits. Requiring auditors to perform audit work with integrity means that they must do so with an attitude that is objective, fact-based, nonpartisan, and nonideological, and that to be objective in their work they must exhibit independence of mind *and* appearance when conducting engagements, maintain an attitude of impartiality, demonstrate intellectual honesty, and be free of conflicts of interest. Impairments to independence affect auditors' objectivity, which in turn affects the integrity of their work.⁶

Considering GAGAS' emphasis on the importance of independence and the essential function to government auditing for providing accountability, we found that the Oregon SOS and its Division of Audits did not take necessary steps to mitigate potential threats to independence when such threats became evident. Our discussion in the sections that follow describes why we believe more could have, and should have, been done to mitigate the potential effects of former Secretary Fagan's actions related to her relationship with the cannabis industry, which posed a threat to the appearance of the independence of the audit organization in conducting the OLCC audit as the entity that regulates the cannabis industry. In reaching this conclusion, we also recognize that this was an unprecedented situation during which the SOS' Division of Audits had to respond quickly, interpreting standards, and determining how to best proceed as new information was revealed. Nevertheless, there were numerous instances during the OLCC

⁶ GAGAS paragraphs 3.09 to 3.11.

audit where the SOS' Division of Audits could have taken steps to mitigate the potential threats to independence introduced by former Secretary Fagan's actions.

Ultimately, based on our interviews of the SOS' Division of Audits staff, review of the OLCC audit working papers that supported the audit report, examination of emails, and consideration of other documentation such as notes from meetings and interviews or comments to draft reports as related to the audit, we did not find that the OLCC audit team had impairments to independence; nor did we find that the audit planning, fieldwork, or reporting deviated from the SOS Division of Audits' typical standards and practices as prescribed in their formal policies and procedures. We found no evidence in the documents we reviewed that the audit team was compromised, that former Secretary Fagan exerted undue influence, or that the audit team failed to follow the Division of Audit's policies and procedures.

What Does GAGAS Generally Require Related to Independence?

GAGAS dedicates an entire chapter to the ethics, independence, and professional judgment of auditors and audit organizations in conducting their work. Since auditing is essential for government accountability to the public, the public expects auditors and audit organizations to perform their work with integrity and objectivity. Maintaining independence of mind and in appearance (public perception) throughout the audit is essential. Integrity, objectivity, and independence “helps auditors serve the public interest and honor public trust” and form the basis for credibility of auditing.

GAGAS requires auditors and audit organizations to be independent from an audited entity during the period covered by the audit and throughout the engagement, and to avoid situations that could lead reasonable and informed third parties to question whether the independence of the auditor, the audit team, or the audit organization has been compromised. Further, GAGAS notes that “independence” comprises both “independence of mind” and “independence in appearance”⁷ and specifies that “auditors and audit organizations maintain their independence so that audit opinions, findings, conclusions, judgments, and recommendations will be viewed as impartial by reasonable and informed third parties.”⁸

To assist auditors in maintaining and evaluating threats to independence related to both independence of mind and independence in appearance, GAGAS establishes a conceptual framework approach to independence. Auditors are required to use and apply the conceptual framework at the levels of audit organization, audit team, and individual auditors to identify, evaluate, and apply safeguards to eliminate threats to independence or reduce them to an acceptable level—although it allows the use of professional judgement when applying the conceptual framework.⁹ When applying the conceptual framework to evaluate threats to independence and ensuring auditors are free from potential impairments to their independence, GAGAS requires auditors to evaluate broad categories of threats such as financial interests or their own

⁷ GAGAS paragraph 3.21 defines “independence of mind” as the state of mind that permits the conduct of an engagement without being affected by influences that compromise professional judgment.” It further defines independence in appearance as “the absence of circumstances that would cause a reasonable and informed third-party to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the engagement team had been compromised.”

⁸ GAGAS paragraph 3.22.

⁹ GAGAS paragraph 3.27 requires auditors to “apply the conceptual framework” approach to independence “at the audit organization, engagement team, and individual audit levels to identify threats to independence; evaluate the significance of the threat identified, both individually and in the aggregate; and apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level.”

involvement in the work of the audited entities, potential biases, familial or other close relationships with the audited entities, and the presence of undue external influence, among other factors that may impede independence.¹⁰

Thus, audit organizations should implement controls to identify threats to independence, such as requiring those involved in the audit activity to disclose economic interests, familial or close relationships within audited or impacted entities, or other factors that may impede independence. GAGAS states that a threat to independence is not acceptable if it “could expose the auditors or audit organization to circumstances that would cause a reasonable and informed third party to conclude that the integrity, objectivity, or professional skepticism of the audit organization, or an auditor, had been compromised.”¹¹ Further GAGAS paragraph 3.28 requires auditors to reevaluate threats to independence whenever “auditors become aware of new information or changes in facts or circumstances” that could threaten independence.

Did the SOS’ Division of Audits Take the Necessary Steps to Identify and Mitigate Potential Threats to Independence When Threats Became Evident?

The SOS’ Division of Audits did not take sufficient steps to identify threats to independence at all levels (individual, audit team, and audit organization), nor did it adequately reassess those threats to independence as audit management became aware of new information that could threaten independence. Upon learning about the potential conflicts of interest of former Secretary Fagan, and the potential threats to the appearance of the Office’s independence that such conflicts could foster, the SOS’ Division of Audits should have taken a broader view of the potential threats to independence of the audit organization—that is, the Office of SOS. In doing so, the SOS’ Division of Audits should have identified potential safeguards that could have been applied at the individual auditor, audit team, and audit organization levels in accordance with GAGAS—to determine whether the threats could be eliminated or reduced to an acceptable level.¹²

This could have included taking additional steps, beyond what would typically be required in conducting an audit in accordance with the standards, to determine whether the audit was impacted; bolster the work performed during the planning, fieldwork, and reporting phases; and demonstrate that despite the evident threat to independence, the integrity of the audit remains undeniable. Implementing such “safeguards” as the standards refer to them, may mean taking extra steps not typically required by the standards, but become necessary in cases when independence is questioned to ensure the work was performed objectively without bias, evidence obtained was sufficient and reliable, and reporting was accurate and balanced.

With this in mind, we evaluated the steps taken by the SOS’ Division of Audits before the audit started, during the audit engagement, and after the audit report was released. Specifically, we noted the following:

- **Before the Audit Engagement:** Before commencing an audit, GAGAS requires auditors to “determine whether identified threats to independence are at an acceptable level or have been

¹⁰ GAGAS paragraph 3.30.

¹¹ GAGAS paragraph 3.47.

¹² GAGAS paragraph 3.28.

eliminated or reduced to an acceptable level, considering both qualitative and quantitative factors to determine the significance of a threat.”¹³ Further, GAGAS requires that, at least annually, the audit organization obtain written affirmation of compliances with its policies and procedures on independence from all personnel required to be independent.¹⁴

At the SOS’ Office, the Division of Audits requires its auditors, the Secretary of State, and executive management to annually review the GAGAS independence requirements and submit an Annual Statement of Independence certification. In these certifications, staff assert they have read the SOS’ Division of Audits policy, examples of circumstances that can create threats, and GAGAS requirements.¹⁵ Further, each SOS individual certifies whether they have threats to independence and that they agree to notify division management in the event of any changed circumstances. These annual certifications are retained on the SOS network for reference and audit managers are required to review the relevant certifications prior to starting an audit engagement. Although these certifications are prepared annually, they are not prepared in connection with a specific assignment. According to Division of Audits policy, once a team is assigned, the audit manager is instructed to check the appropriate network files to verify the Secretary of State, the Deputy Secretary of State, and the Director and Deputy Director of the SOS’ Division of Audits do not have independence impairments identified in their annual certifications. Further, independence for audit team members is to be verified again during the team building and expectations meeting that a lead auditor conducts near the beginning of an audit.

For the OLCC audit, the audit manager reviewed the annual statements for former Secretary Fagan and other executive management staff, as per policy, as well as the annual statements for each team member. Additionally, the team lead auditor verified independence for each team member during the expectations meeting at the start of the OLCC audit. However, this was only performed with the audit team and not with other persons in a position to influence the planning, fieldwork, or reporting of the OLCC audit, including “peer team” personnel that participate in planning meetings, quality control team personnel that review the final report and all evidence in support of the report, or the SOS’ Executive Office (including reviewing statements of economic interests).

- **During the Audit Engagement:** GAGAS states that “auditors should reevaluate threats to independence, including any safeguards applied, whenever the audit organization or the auditors become aware of new information or changes in facts and circumstances that could affect whether a threat has been eliminated or reduced to an acceptable level.”¹⁶ As shown in Exhibit 1, on several occasions prior to release of the OLCC audit on April 28, 2023, the audit team became aware of new information that could have led a reasonable and informed third party to question the independence or objectivity of the audit organization.

¹³ GAGAS paragraph 3.31.

¹⁴ GAGAS paragraph 5.09.

¹⁵ GAGAS paragraphs 3.36 to 3.44.

¹⁶ GAGAS paragraph 3.28.

EXHIBIT 1. INFORMATION RECEIVED DURING THE AUDIT REGARDING POTENTIAL THREATS TO INDEPENDENCE

Date	Information Received on Potential Independence Threats
06/25/2021	Former Secretary Fagan forwards an email from Rosa Cazares to the Director of the SOS' Division of Audits and asked the Director and OLCC Audit Manager to reach out to Ms. Cazares. ¹⁷ Former Secretary Fagan stated that Ms. Cazares "will provide helpful industry-side scoping."
12/13/2021	Former Secretary Fagan asks the OLCC audit team if they had interviewed La Mota and shared that the initial impetus for the audit is a belief that folks who are running cannabis businesses are treated differently.
06/14/2022	Former Secretary Fagan asks the audit team about licensees and store owners and specifically asked about "stories like Rosa's (La Mota)" and if the concerns carried any weight behind them.
02/14/2023	After the OLCC audit team provided the final report to OLCC for review and comment on 02/08/2023, the former OLCC management and team reminded the Auditors about the OLCC mission and pointed out assumptions in the report that remained to be seen but agreed with the audit recommendations in the draft final report, OLCC had previously (02/01/2023) provided comments—some were considered and others were not—regarding the audit analysis and conclusions, as well as OLCC's perception of errors in the draft report and the audit team's interpretation of facts.
02/15/2023	Because the OLCC draft audit report included recommendations for the Governor and Legislature to direct Business Oregon to make programs available to cannabis businesses, the SOS' Division of Audits provided Business Oregon a draft copy of the report on 02/07/2023 to review and provide corrections. ¹⁸ On 2/15/2023, the Director of Business Oregon requested a meeting to discuss perceived inaccuracies in the report and the overall emphasis on Business Oregon.
02/15/2023	Former Secretary Fagan notifies the Director and Deputy Director of the SOS' Division of Audits by email of her recusal from all further work on the OLCC audit indicating she will be consulting for a company involved in the cannabis industry. The notice was sent after the Division of Audits conducted a quality control review of the evidence used in support of the draft report.
02/23/2023	Business Oregon provides verbal feedback on a draft report as part of Teams meeting with OLCC audit team and the Director of the Division of Audits regarding the OLCC audit report's emphasis on Business Oregon, questions on stakeholders interviewed, and the need to highlight employee liability and potential loss of federal funding.
02/24/2023	Former Secretary Fagan signs a consulting contract with Veriede Holding LLC, an affiliate of La Mota, the cannabis company which is owned by Rosa Cazares and Aaron Mitchell. Contract effective 2/20/23.
03/01/2023	After a meeting to discuss the report with the OLCC audit team, the Director of Business Oregon provided written edits and comments on the first draft audit report (sent by the OLCC audit team on 02/07/2023) regarding concerns on perceived inaccuracies and the emphasis on Business Oregon.

¹⁷ La Mota is one of the largest cannabis companies in Oregon and is owned by Rosa Cazares and Aaron Mitchell.

¹⁸ Business Oregon is the state's economic development agency.

Date	Information Received on Potential Independence Threats
03/03/2023	Deputy Director of the SOS' Division of Audits forwards recusal email from 2/15/23 to OLCC audit team. Auditors update their independence assessment stating that audit fieldwork was completed prior to 2/15/23; thus, there is no threat to auditor independence.
03/03/2023	Willamette Week reporter submits a public records request to SOS for all drafts of audit scope for the pending OLCC audit and any conversations between former Secretary Fagan and cannabis retailer La Mota.
03/13/2023	New OLCC management and team provided comments on the final draft audit report (sent by the OLCC audit team on 03/07/2023) on audit comparisons, verification of testimonial evidence, support for statements, and its perception of errors in the draft report and the audit team's interpretation of facts.
04/12/2022	Willamette Week publishes an article reporting that the Oregon Bureau of Labor & Industries terminated a half-million-dollar grant awarded to a brand-new nonprofit co-founded by Rosa Cazares and asked for the money back. The article also stated that the current and former head of the bureau and top Democratic Party candidates had received campaign contributions from Rosa Cazares.
04/24/2023	OLCC audit team lead learns the company former Secretary Fagan was consulting with La Mota, which former Secretary Fagan had asked the audit team to interview on at least two occasions during the audit planning process.
04/27/2023	Willamette Week article published describing former Secretary Fagan's contract with La Mota.
04/28/2023	SOS issues OLCC audit.

According to interviews with the SOS' Division of Audits staff and management, the Director and Deputy Director in the SOS' Division of Audits convened a meeting and informed the OLCC audit team in March 2023 after becoming aware of the recusal of former Secretary Fagan. During this meeting, we were informed that the OLCC audit team and SOS' Division of Audits management discussed whether they believed the team or individual team members were unduly influenced by former Secretary Fagan, and concluded the independence of the OLCC audit team was not compromised. They determined that the OLCC audit team had not been unduly influenced by former Secretary Fagan, as her level of involvement in the OLCC audit was not unlike other audits the SOS' Division of Audits conducted, and that former Secretary Fagan had not made any changes to the draft report and concluded the OLCC audit report stood on its own.

Based on this assessment, the SOS' Division of Audits believed the correct course of action was to issue the audit report. GAGAS stresses the importance of timely issuing audit reports and that is an important goal for auditors.¹⁹ The report's issuance had already been delayed due to recent changes in OLCC management, the Division had received press inquiries related to the audit report, and continued delays could be viewed as obstructing transparency in the audit process. Finding that the audit team or individual team members were not compromised, the SOS' Division of Audits found no reason to further delay issuance of the audit report.

¹⁹ GAGAS paragraph 9.17g.

However, in its assessment, the SOS' Division of Audits considered the independence threat at the individual auditor and audit team level but did not also consider the independence threat at the audit organization level as required by GAGAS. The SOS' Division of Audits did not delve into the conflict to fully understand its source or how the conflict could impact the organization. As such, the SOS' Division of Audits did not fully vet the situation to evaluate whether the independence threat at the organization level was acceptable or not, and what safeguards could be implemented to mitigate the threat to an acceptable level.²⁰ Instead, the SOS' Division of Audits focused on how the individual auditors conducted their work ("independence of mind" within the SOS' Division of Audits) and not on the "independence of mind" and "independence in appearance" at the organizational level that would have included former Secretary Fagan and the SOS' Executive Office.

This is important because, as we noted earlier, the Secretary of State is constitutionally the State Auditor and both the Secretary of State and the Executive Office have some influence over the Division of Audits as they collaboratively set the audit agenda, define the audit plan, ask the audit team to talk with certain stakeholders, and provide input during the audit scoping and reporting process. We do not find this level of involvement particularly problematic in general or out of the ordinary, and such involvement need not compromise the integrity of the OLCC audit team or individual auditors. Nonetheless, the broader audit organization must be understood to be the Office of the SOS and consideration of whether a reasonable and informed third party could conclude that the audit organization or auditor's objectivity had been compromised. Such an evaluation could only be effective if it included the role of former Secretary Fagan as the source of the threat to audit independence along with all other persons in a position to influence the planning, fieldwork, or reporting of the audit—including former Secretary Fagan, SOS' Executive Office, quality control team, and peer team.

Further, some of the OLCC audit team members informed us they did not know that former Secretary Fagan had signed a contract with an affiliate of a stakeholder (La Mota) that they interviewed on the OLCC audit, at the direction of former Secretary Fagan, until the week before the report was issued on April 28, 2023. This was after the OLCC audit team met to discuss whether former Secretary Fagan's recusal because of employment with an unnamed cannabis company posed a threat to independence. Had the OLCC audit team fully reevaluated the changing audit circumstances with the recusal email received back in February and March 2023, the SOS' Division of Audits could have inquired further about former Secretary Fagan's relationship with the unnamed cannabis company to possibly uncover that the relationship was with La Mota and considered any influence that may have had on the audit plan, fieldwork, reporting, or other parts of the audit engagement.

As additional information came to the audit team's attention—press articles, public records requests, concerns raised by OLCC and stakeholders—the SOS' Division of Audits should have

²⁰ GAGAS paragraph 3.49 defines safeguards as "actions or other measures, individually or in combination that auditors and audit organizations take that effectively eliminate threats to independence or reduce them to an acceptable level. Safeguards vary depending on the facts and circumstances." Examples of safeguards as a starting point are provided in GAGAS paragraphs 3.50 – 3.63.

considered the cumulative impact of the continued concerns raised as each event unfolded to reevaluate whether the threat to independence remained at an acceptable level and if the circumstances could lead a reasonable and informed third party “to conclude that the integrity, objectivity, or professional skepticism of the audit organization, or an auditor, had been compromised.”²¹ GAGAS requires that threats to independence be evaluated both individually and in aggregate, as threats can have a cumulative effect on auditors’ independence.²²

Yet, because the Director and Deputy Director of the SOS’ Division of Audits and the OLCC audit team determined the team members had not been unduly influenced, and because they had completed the draft report prior to the recusal of former Secretary Fagan, no steps were taken to implement additional procedures as the report was complete. The SOS’ Division of Audits did not implement additional safeguards to mitigate threats to independence, reevaluate audit procedures implemented and evidence obtained, reexamine and modify the draft report as needed, or reassess its public issuance to ensure the integrity, objectivity, and reliability of the audit. No safeguards were implemented because the Division of Audits believed there was no independence threat, the audit team had conducted their work independent from former Secretary Fagan, and they adhered to their established policies and protocols.

- **After Issuance of Audit Report:** GAGAS requires that if auditors identify a threat to independence after the audit report is issued, the “auditors should evaluate the threat’s effect on the engagement and on GAGAS compliance.”²³ After the SOS released the audit report, new information continued to be made public and the circumstances surrounding the audit continued to evolve in the public arena, as shown in Exhibit 2, with additional potential threats to independence.

EXHIBIT 2. INFORMATION RECEIVED AFTER THE AUDIT REGARDING POTENTIAL THREATS TO INDEPENDENCE

Date	Information Received on Potential Independence Threats After Audit Issued
04/28/2023	SOS issues OLCC audit.
05/01/2023	Former Secretary Fagan releases copy of employment contract with Veriede Holding LLC, an affiliate of La Mota.
05/01/2023	Willamette Week reporter submits a public records request for emails between former Secretary Fagan and Rosa Cazares and/or Aaron Mitchell from January 1, 2021, until present day.
05/02/2023	Oregon DOJ asks SOS to withdraw the OLCC audit pending completion of their internal review.
05/02/2023	Former Secretary Fagan emails all staff that she will be resigning and will continue in her official duties until 5/8/23, at which point Deputy Secretary Cheryl Myers will serve as Acting Secretary.
05/03/2023	Willamette Week publishes timeline showing La Mota relationship with former Secretary Fagan including donations to former Secretary Fagan’s campaign. The article raised concerns about emails that discuss the scope of the audit and directing auditors to speak with Rosa Cazares.
05/04/2023	Willamette Week publishes an article that says former Secretary “Fagan Allowed La Mota’s Co-Owner to Edit Language Describing Scope of State Audit.” The article includes information from the SOS about how the OLCC audit scope evolved and quoted a SOS office spokesman as saying “...it

²¹ GAGAS paragraphs 3.28 and 3.47.b.

²² GAGAS paragraph 3.45.

²³ GAGAS paragraph 3.34.

Date	Information Received on Potential Independence Threats After Audit Issued
	appears as though Secretary Fagan did share the draft 2021-22 audit plan with Ms. Cazares for feedback in January 2021.”
05/04/2023	The SOS’ Division of Audits posts a notice on the OLCC audit report website title page stating that shortly before the OLCC audit report was published the SOS’ Division of Audits identified a threat to the independence of the audit, but determined the threat did not affect the audit report. It did not remove the report from the website to reevaluate the work performed, but noted that it was cooperating with an examination of the OLCC audit being undertaken by the Oregon DOJ and the audit report would remain on the website until the examination was completed
05/08/2023	Former Secretary Fagan officially steps down from her position.
05/20/2023	Willamette Week reports that Acting Secretary Myers said: “Senior staff advised former Secretary Fagan against working with La Mota from the very beginning...We advised her against taking the contract, and when she recused herself, we advised her to disclose the relationship publicly. We again advised her to quit the contract when we learned about the company’s tax and legal troubles from the <i>Willamette Week</i> .” Contemporaneous notes from Acting Secretary Myers showed discussions with former Secretary Fagan regarding the La Mota employment contract on 2/2/23 and 3/24/23.

The revelation of these emerging events and actions shown in Exhibit 2 should have triggered a reevaluation, when each new instance occurred, of the circumstances that spurred former Secretary Fagan’s recusal and resignation, and the impact of these events on the public’s perception of the independence of her Office to conduct such an audit, and whether the integrity of the audit itself had been compromised.

By this point, it appears that the SOS’ Division of Audits and its OLCC audit team began to consider that the evidence known to them could cause a reasonable and informed third party to question whether the integrity, objectivity, or professional skepticism of the audit organization, or an auditor, had been compromised. The SOS’ Division of Audits and OLCC audit team’s determination continued to be that the threat was entirely external to the audit team and that the audit team, and its work, was insulated from the independence threat.

Given the stated motive of former Secretary Fagan in placing the OLCC audit on the audit plan—i.e., to evaluate “how licensing can be used to right historical wrongs to Black, Indigenous, and people of color communities”—and the subsequent revelation that former Secretary Fagan had a personal interest that could have affected the outcome of the audit, we believe that the facts and circumstances known to the SOS’ Division of Audits would cause a reasonable and informed third party to question whether the integrity, objectivity, or professional skepticism of the audit organization had been compromised and that there was a threat to independence.

Despite the OLCC audit team’s adherence to ordinarily acceptable protocols and stated intentions to uphold the integrity of the audit, the standards require additional safeguards when impairments to independence—whether in mind or in appearance—are evident. The Division of Audits should have implemented such safeguards, and the OLCC audit could have benefited had the audit team reassessed the threats to independence as facts and circumstances changed. Potential safeguards are discussed later in this report.

Was the Development of the Annual Audit Plan and the Selection of the OLCC Audit Compliant with Oregon Law and/or Consistent with Best Practices and Other Independent State Auditors?

We found that the Oregon SOS' [2021-22 Annual Audit Plan](#) complied with applicable laws, but that the Annual Audit Plan implied a level of rigor and formality in the risk assessment methodology, upon which the selection of audit topics within the Annual Audit Plan was based, that was not employed by the SOS' Division of Audits. Specifically, the determination to include selected audits, including, the OLCC audit, in the audit plan was not based on the results of the risk assessment analysis performed or based on the Director of the SOS Division of Audit's recommendation after the annual risk assessment had been completed. The selection of a few audits, including the OLCC audit, were included in the Annual Audit Plan based on the direction and prerogative of former Secretary Fagan. Although Oregon law does not preclude the Secretary of State from including audits on the audit plan at a Secretary of State's sole discretion, it does require the SOS audit plan be based on a risk assessment methodology.

As part of this review, the SOS' Division of Audits provided us with documentation used in the development of the annual risk assessment and audit plan. In assessing this information and the risk assessment methodology employed by the SOS' Division of Audits to select all audits, including the OLCC audit, in its 2021-2022 Annual Audit Plan, we found that it lacked the type of systematic analysis of risk factors as described in the Annual Audit Plan as well as recognized as industry standard risk assessment criteria typically employed in risk assessments. An audit risk assessment is intended to identify ways to optimize the value of limited audit resources. This includes identifying (a) "high-risk" programs or operations, such as areas involving the most resources, impacting the most residents, or experiencing the greatest challenges; (b) systematic ways to ensure broad audit coverage over a defined period, such as ensuring each department is subject to an audit once every five years; and (c) emerging priorities, policy questions, or topics of importance to executives, legislative bodies, or the public. Requirements that audit plans be based on risk, or a risk assessment methodology, provide assurances to stakeholders that audit topics are not only important and will add value, but also that the selection of audits is based on acceptable criteria and not self-interest motives.²⁴

What Does Oregon Law Require?

[ORS 297.076](#) requires that the SOS, "on a fiscal year basis, prepare an annual audit plan for performance audits" and that the "audit plan must be based on a risk assessment methodology." Further, it requires the SOS' Division of Audits provide a draft audit plan and description of the risk assessment methodology to the Joint Legislative Audit Committee and notify the committee of any substantive changes to the audit plan that occurs after it is published.

²⁴ Requirements that annual audit plans be based on a risk assessment methodology are common. For instance, the [International Standards for the Professional Practice of Internal Auditing](#), issued by the Institute of Internal Auditors, states that "the internal audit activity's plan of engagements must be based on a documented risk assessment, undertaken at least annually" (Standard 2010).

How Do Other State Auditors Select Performance Audits to Conduct?

GAGAS does not prescribe how audits should be selected.²⁵ Throughout the country, state auditors who conduct performance audits typically conduct those audits as they are (a) statutorily required; (b) selected by the Legislature, Governor, or other committee of elected officials or legislative body; (c) selected at the discretion of the state auditor; or (d) a combination of all these different methods. In some cases, state auditors have discretion to initiate audits without a requirement to justify the need for the audit or requiring approval of other parties. Elected auditors tend to have more discretion, although appointed state auditors typically have less discretion to select audits without the approval of a legislative body. In fact, many states that self-initiate audits, like Oregon, assert that they use a risk assessment in preparing an audit plan and identifying which audits to conduct. For example:

- In California, the state auditor can self-initiate audits, when resources are available and only after conducting mandated work, on state agencies and statewide issues that the state auditor has identified and placed on a biennial state high risk list. In determining whether a state agency or statewide issue should be identified as high-risk, the auditors consider several qualitative and quantitative factors in addition to criteria set forth in their regulations.
- The U.S. Comptroller General's also employs a High-Risk Program, which provides a basis upon which the Comptroller General may self-initiate engagements.
- In New York, the Office of the State Comptroller conducts audits of local governments and school districts after conducting a risk assessment process to identify which audits to perform.
- In Tennessee, most of the performance audits they conduct are mandated, but some are conducted based on the identification of risks in statewide processes and programs or agency-specific operations and activities.
- In Minnesota, the legislative auditor recommends topics for approval from their Legislative Audit Commission based on specific criteria including social and/or economic impact, significance of state resources, level of state control over the program, and other factors.

Although there are no GAGAS provisions describing how audits should be selected, there is authoritative guidance that provides accepted industry practices for assessing risk in determining what to audit. For example, the Federal Office of Management and Budget requires auditors to use a risk-based approach to determine which federal programs should be audited annually and which federal programs can be audited on a cyclical basis. This risk-based approach is defined in the regulations and prescribes the specific factors to use in assessing risk.²⁶ This is also consistent with the [International Standards for the Professional Practice of Internal Auditing](#), issued by the Institute of Internal Auditors, which states that “the internal audit activity’s plan of engagements must be based on a documented risk assessment, undertaken at least annually.”²⁷

²⁵ GAGAS paragraphs 8.03 to 8.07.

²⁶ Federal Office of Management and Budget’s Single Audit Uniform Guidance in 2 CFR Part 200.

²⁷ [International Standards for the Professional Practice of Internal Auditing](#), Standard 2010.

Was the Risk Assessment Methodology Conducted by the SOS’ Division of Audits Generally Consistent with Best Practices?

Although the SOS complied with Oregon Law to provide an annual audit plan based on a risk assessment methodology, the SOS’ Annual Audit Plan implies a degree of formality in the risk assessment process that was not evident in the SOS Division of Audits’ approach. The published 2021-22 Annual Audit Plan—which identified the OLCC entity as a planned performance audit—stated that the selection and prioritization of audits was based on a risk assessment approach that considered various risk factors. Specifically, in the published 2021-22 Annual Audit Plan, the SOS’ Division of Audits states: “We select and prioritize audits using a risk-assessment approach. Our risk assessment is based on specific risk factors related to the quality of internal controls and the liability and level of exposure to the state of various agencies, programs, or activities.” The Annual Audit Plan listed specific factors considered in identifying the audits to be performed, as shown in Exhibit 3.

EXHIBIT 3. RISK ASSESSMENT FACTORS CONSIDERED IN THE 2021-22 ANNUAL AUDIT PLAN

RISK ASSESSMENT CRITERIA

ACCORDING TO 2021-2022 ANNUAL AUDIT PLAN

<ul style="list-style-type: none"> • THE DIRECTION OF THE ELECTED SECRETARY OF STATE • INDUSTRY-STANDARD RISK ASSESSMENT CRITERIA • PREVIOUS AUDITS OF AGENCY OPERATIONS AND INTERNAL CONTROLS • TREND ANALYSES TO IDENTIFY RECURRING AUDIT FINDINGS AND CONTROL DEFICIENCIES • AUDIT FOLLOW-UP AND RECOMMENDATION TRACKING • THE STATE’S COMPREHENSIVE ANNUAL FINANCIAL REPORTS (CAFRS), SINGLE AUDIT REPORTS, AND AUDIT MANAGEMENT LETTERS • INPUT FROM ELECTED OFFICIALS, INCLUDING THE GOVERNOR’S OFFICE AND MEMBERS OF THE JOINT LEGISLATIVE AUDIT COMMITTEE (JLAC) • INPUT FROM AGENCY MANAGEMENT, OTHER PUBLIC SECTOR AUDIT ORGANIZATIONS, AND MEMBERS OF THE PUBLIC • PRIORITIES AND WORK PRODUCTS OF OTHER LEADING GOVERNMENT AUDIT FUNCTIONS • TOPICS INFORMED AND SUGGESTED BY RESEARCH CONDUCTED BY AUDITS DIVISION STAFF • CURRENT EVENTS AND TRENDS, FINANCIAL CONDITIONS, AND PUBLIC POLICY ISSUES, INCLUDING EMERGING POLICY 	<ul style="list-style-type: none"> • EQUITY, INCLUSION, AND DIVERSITY RISKS AND FRAMEWORKS • SIZE OF AUDITED AGENCY OR PROGRAM • COMPLIANCE AND REGULATION • PENDING OR RECENT LITIGATION • COMPLEXITY OF TRANSACTIONS • FISCAL SUSTAINABILITY • MANAGEMENT ACCOUNTABILITY • QUALITY OF INTERNAL CONTROL SYSTEM • AGE OF PROGRAM OR OPERATION • AUDIT HISTORY • PUBLIC HEALTH AND SAFETY • CRITICAL INFRASTRUCTURE • SHORT- AND LONG-TERM STRATEGIC RISKS • RELATED LITIGATION AND RELEVANT CASE LAW • EMERGING RISK AREAS
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These factors are generally consistent with factors considered in other public sector risk assessments we have observed and are typical of industry risk assessments conducted for audit planning purposes. Although the Annual Audit Plan states that the SOS’ Division of Audits risk assessment factors included industry-standard risk assessment criteria, trend analyses to identify recurring audit findings and control deficiencies, and input from a variety of executive and legislative entities, there was no documentation of the analysis performed or systematic consideration of the very risk factors that were identified in the SOS’ Annual Audit Plan.

Risk assessment approaches can vary widely and range from primarily qualitative to highly quantitative, but they are expected to be systematic and documented. While notations in certain documents provided showed that some risk assessment criteria were considered, such as the direction of the elected Secretary of State, we did not see documentation that most of the items listed as risk assessment criteria were considered. Ultimately, we found that the methodology employed was not consistent with the methodology described regarding the selection of audit topics in the SOS' published 2021-22 Annual Audit Plan.

Did the SOS' Division of Audits Adhere to Audit Standards in Conducting the Planning, Fieldwork, and Reporting Phases of the OLCC Audit?

As previously mentioned, GAGAS requires auditors and audit organizations to exercise professional judgement in the application of GAGAS provisions including planning, risk assessment, evaluation of audit evidence, and ultimate results reported. The exercise of professional judgement can vary between professional auditors and audit organizations, and improvements or alternative practices can always be incorporated into audit activities.

Adherence to GAGAS and External Peer Review Requirements

In compliance with GAGAS, the SOS' Division of Audits undergoes an external quality control review every three years. Its most recent quality control review was completed in [April 2022](#) by the National State Auditors Association.²⁸ These external reviews are a rigorous process that nearly all state audit offices utilize to provide reasonable assurance that the audit organization is performing audits and reporting results in conformity with GAGAS. A team composed of peer auditors from other state audit offices reviews the audit organization's system of quality control, policies and procedures, a variety of documentary evidence, and a sample selection of audit projects to opine whether the audit organization performs and reports in conformity with GAGAS.

GAGAS requires audit organizations conducting GAGAS audits to "establish and maintain a system of quality control that is designed to provide the audit organization with reasonable assurance that the organization and its personnel comply with professional standards and applicable legal and regulatory requirements."²⁹ In its most recent external quality control review conducted in 2022, the SOS' Division of Audits received a rating of "pass" which is given when the peer review team concludes that the organization's system of quality control was suitably designed and that the organization is complying with its quality control system so that it has reasonable assurance that it is performing audits and reporting results in conformity with GAGAS in all material respects.

Based on our review of the SOS' Division of Audits policies and procedures, which aligned with GAGAS, and the OLCC audit workpapers, we did not find evidence related to this particular audit that would cause us to disagree with the reasonable assurance "pass" rating determined by the peer review team—apart

²⁸ <https://sos.oregon.gov/audits/Documents/2022-peer-review-qualified-opinion.pdf>

²⁹ For Quality Control & Assurance, we considered GAGAS paragraphs 5.02, 5.04 to 5.06, 5.08, 5.09, 5.22 to 5.25, 5.36, 5.37, and 5.60 to 5.62.

from the standard surrounding independence threats and the implementation of safeguards, as well as audit risk surrounding sufficiency of evidence as described in the next section.³⁰

Specifically, as it relates to the OLCC audit, we concluded the following:

- **Audit Planning.** GAGAS provides requirements that auditors must adequately plan and document the work necessary to address audit objectives, assess risk, design methodology to obtain evidence, and identify and use suitable criteria.³¹ Execution of the GAGAS requirements is based on professional judgement. Based on our review of the SOS' Division of Audits working papers for the OLCC audit, there was documentation of adherence to standards including, but not limited to, the following:
 - Communicating the audit objectives, scope, and timing to the auditee through an audit letter and as part of entrance conferences
 - Preparing written procedures for completing the selected audit
 - Understanding the nature of the program under audit
 - Assessing systems of internal control and potential risks of fraud related to the audited entity and audit objectives
 - Identifying significant laws and criteria based on audit objectives

- **Audit Fieldwork.** GAGAS provides requirements for conducting an audit to obtain sufficient, appropriate evidence that provides a reasonable basis for findings and conclusions, supervising staff, and preparing audit documentation.³² Execution of the GAGAS requirements is based on professional judgement. Based on our review of the SOS' Division of Audits working papers for the OLCC audit, there was documentation of adherence to standards including, but not limited to, the following:
 - Identifying sources of evidence, including interviews with auditee staff and stakeholders, federal and state legislation, research of practices in other states, OLCC and stakeholder publications, and documentation of relevant historical events, among others.
 - Supervising audit staff and the review of work
 - Obtaining evidence for addressing audit objective and supporting findings and conclusions
 - Developing criteria, condition, cause, and effect of the findings
 - Preparing and maintaining audit documentation to understand the objectives, scope, methodology, work performed, and evidence obtained

³⁰ We reviewed OLCC audit workpapers representing work related to planning the audit, conducting fieldwork and gathering evidence, and reporting on results of the audit.

³¹ We considered GAGAS Planning Requirement paragraphs 8.03 to 8.07, 8.20 to 8.22, 8.33, 8.36, 8.39 and 8.40, 8.49, 8.54, 8.59 to 8.62, 8.68, 8.71, and 8.72.

³² For fieldwork, we considered GAGAS paragraphs 8.77 and 8.78, 8.87, 8.90 to 8.94, 8.108 to 8.110, 8.116 and 8.117, and 8.132 to 8.136.

- **Audit Reporting.** GAGAS provides requirements for communicating results of a performance audit including auditors' compliance with GAGAS, report contents, and obtaining the views of responsible officials.³³ Based on our review of the SOS' Division of Audits working papers for the OLCC audit, there was documentation of adherence to standards including, but not limited to, the following:
 - Reporting compliance with applicable GAGAS requirements
 - Preparing and issuing audit reports containing the objectives, scope, methodology; audit results including findings, conclusions, and recommendations; and views of responsible officials
 - Describing limitations with the reliability or validity of evidence as warranted
 - Including written comments received from responsible officials in the report

Sufficiency of Evidence

GAGAS requires that auditors “obtain sufficient, appropriate evidence to provide a reasonable basis for addressing the audit objectives and supporting their findings and conclusions,” and that the sufficiency of evidence may be determined based on the extent to which a knowledgeable person would be persuaded that the findings are reasonable.³⁴ Further, GAGAS states that the sufficiency of evidence required to support the auditors' findings and conclusions is a matter of the auditors' professional judgment and that “the greater the audit risk, the greater the quantity and quality of evidence required.”³⁵ GAGAS discusses this concept of “audit risk” as the possibility that auditors' findings, conclusions, or recommendations may be improper or incomplete as a result of a variety of factors.³⁶

However, based on the documentation we reviewed, the SOS' Division of Audits did not demonstrate that it reassessed the OLCC audit risk as changes in circumstances became evident to reconsider or implement actions or safeguards regarding the quantity or quality of evidence obtained. Such a consideration would entail ensuring that the evidence, in aggregate, was both sufficient and appropriate to persuade a knowledgeable person that the audit findings are reasonable even if such a knowledgeable person believes there is the potential that the integrity, objectivity, or professional skepticism of the audit organization (the Office of the SOS) had been compromised.

When reviewing draft audit findings between January 2023 and April 2023, the OLCC and Business Oregon raised concerns regarding the sufficiency of the evidence used in supporting the conclusions raised in the OLCC audit. These concerns about specific audit findings include the following:

- The audit report concludes that implementing recommendations will “help grow the State's economy.” However, questions were raised regarding whether additional investment in cannabis businesses, as recommended by the audit, will help an already saturated market.

³³ For reporting, we considered GAGAS paragraphs 9.03 to 9.07, 9.10 to 9.14, 9.18 to 9.123, 9.50 to 9.53, and 9.56 to 9.58.

³⁴ GAGAS paragraphs 8.90 and 8.92; the sufficiency and nature of audit evidence in performance audits is discussed in paragraphs 8.90 to 8.115.

³⁵ GAGAS paragraph 8.101.

³⁶ GAGAS paragraph 8.16.

- The audit report relies strongly on testimonial evidence, and both the OLCC and Business Oregon questioned whether the auditors corroborated the testimonial evidence that it relied on to base its conclusions, and whether the audit team sought sufficiently diverse perspectives from a variety of stakeholder groups.
- The audit compared the cannabis industry to the alcohol industry; yet the OLCC questioned the comparison at several points during the audit because of the many differences between the two industries. OLCC raised concerns regarding whether the auditors conducted an extensive comparison that included the unique aspects of regulating each industry as some regulations are needed for one industry that may not be needed for the other.
- The audit report stated that “One licensee we spoke with estimated they spend \$100,000 per year using these tags,” despite the OLCC questioning the amount a few times and stating that it was not possible and providing the Division of Audits with calculations that demonstrated the maximum that could be spent on cannabis plant or product tags was \$66,000. The Division of Audits did not readdress or respond back to OLCC’s questioning to clarify the difference in the amounts.

The sufficiency and appropriateness of evidence are relative concepts and assessing them is largely a matter of professional judgment. According to GAGAS, auditors may acknowledge “some limitations or uncertainties about the sufficiency or appropriateness of evidence” and “may nonetheless determine that in total there is sufficient, appropriate evidence to support the findings and conclusions.”³⁷ In our professional judgment, the concerns raised by the OLCC and Business Oregon—along with the subsequent revelations of former Secretary Fagan’s recusal and resignation, the involvement of La Mota in the planning phase of the audit, and the increased scrutiny placed on the audit organization and audit report—increased audit risk regarding the sufficiency or appropriateness of the evidence obtained and used in support of the audit findings and conclusions.

To address these situations, GAGAS states that “audit risk can be reduced by taking actions such as increasing the scope of work; adding specialists, additional reviewers, and other resources to conduct the audit; changing the methodology to obtain additional evidence, higher-quality evidence, or alternative forms of corroborating evidence; or aligning the findings and conclusions to reflect the evidence obtained.”³⁸ Although we recognize the uniqueness of the circumstances that confronted the Division of Audits, we did not see indication that the Division of Audits took any such action.

What Actions Should the SOS’ Division of Audits Have Taken Regarding the OLCC Audit and/or What Should the SOS’ Division of Audits Do Now?

GAGAS is clear that independence should be reassessed throughout the audit to ensure the integrity, objectivity, and reliability of the audit. With the known circumstances surrounding the potential threats to independence on the OLCC audit that were learned prior to issuing the report, the SOS’ Division of Audits should have applied safeguards to mitigate or eliminate the identified threats to independence on the OLCC audit—not only to better adhere to GAGAS, but also to be more transparent, assure the integrity of the

³⁷ GAGAS paragraph 8.112.

³⁸ GAGAS paragraph 8.16.

engagement, and promote the public's trust. GAGAS provides examples of general safeguards such as involving another audit organization to perform or re-perform part of the engagement or having an audit manager or Deputy who was not a member of the audit team review the work performed.³⁹

Because of this, we find that the release of the OLCC audit report should have been postponed considering the circumstances known prior to publishing the audit. At that point, the SOS' Division of Audits could have reassessed the work to mitigate the threat to independence to an acceptable level, thereby increasing the likelihood that a third party knowledgeable of the circumstances surrounding former Secretary Fagan and the OLCC audit would still conclude that the audit findings are reasonable and unbiased. Potential safeguards that could have been considered prior to issuing the report are shown in the bullets that follow.

- Discussed the independence threat as soon as identified with former Secretary Fagan, SOS Executive Office, quality control team, and peer team, in addition to the OLCC audit team, to ensure everyone had a firm understanding of potential conflicts or threats to independence and determine what actions could have been taken to mitigate the threat. Although the OLCC audit team was informed in March 2023 and met to discuss the potential threat to independence, this meeting did not include all parties that influenced the audit, including the former Secretary Fagan, SOS Executive Office, quality control team, and peer team.
- Reconsidered fieldwork audit planning to ensure auditors considered the inherent risk due to former Secretary Fagan placing the item on the audit plan and providing input for scoping and audit step development.
- Reassessed the audit scoping and fieldwork to expand the breadth of stakeholders interviewed. Given that the threat to independence derived, to some extent, from stakeholders with whom they conducted interviews, the OLCC audit team could have reassessed who they interviewed, considered expanding the group of stakeholders from whom perspectives were solicited, and reexamined information reviewed during scoping and fieldwork. These efforts could have ensured the OLCC audit team considered all perspectives, mitigated perceptions of potential bias, and ensured there was an appropriate balance of views shaping the audit and that all views were considered or given similar treatment.
- Revisited audit procedures performed, and evidence gathered to ensure that evidence was sufficient, appropriate, relevant, valid, and reliable to support findings and conclusions. This could have involved ensuring testimonial evidence was corroborated or securing additional evidence from other sources without bias to ensure appropriate consideration was given to all viewpoints. Evidence must be sufficient to withstand scrutiny; a critical safeguard when scrutiny is elevated is to identify all possible ways to strengthen evidence, including considering evidence supporting opposing viewpoints.
- Assigned another highly experienced quality control team to re-review the audit work and assess sufficiency of evidence and methodological approaches after the facts regarding former Secretary Fagan had become known.

³⁹ GAGAS paragraphs 3.50 to 3.63.

- Reconsidered the views of the responsible officials. When information provided by responsible officials and related organizations was inconsistent with other evidence gathered or in conflict with the audit findings, the OLCC audit team could have further evaluated the validity of the entity’s comments and considered additional ways to incorporate feedback received. In fact, GAGAS states that auditors should be alert to “evidence that contradicts other evidence obtained or information that brings into question the reliability of documents or responses to inquiries to be used as evidence.”⁴⁰ Feedback received from key stakeholders, particularly when concerns are raised as they were by OLCC and Business Oregon, provides insight into potential criticisms an audit might receive with heightened scrutiny. As scrutiny increased, reconsideration of the points raised by OLCC and Business Oregon could have provided an opportunity for the SOS’ Division of Audits to identify ways to mitigate even the appearance of bias.

After the report was issued in April 2023, additional information (as shown in prior Exhibit 2) came to the forefront whereby the SOS’ Division of Audits should have pulled the report from its website to allow the OLCC audit team another opportunity to reassess and reexamine audit work conducted and determine if additional work was necessary to reissue the report. This included the potential need for any revised findings or conclusions, or to repost the original report if the additional work did not result in a change in findings or conclusions as prescribed by GAGAS. According to our interviews, the Division of Audits’ decision to release the report was based on its determination that the OLCC audit team was independent, audit work was not influenced by former Secretary Fagan, further delays hampered transparency, and that it was proper to do so given the recent completion of audit work.

Yet, GAGAS states that if “auditors determine that the newly identified threat’s effect on the engagement would have resulted in the audit report being different from the report issued had the auditors been aware of it, they should communicate in the same manner as that used to originally distribute the report,” so people do not continue to rely on findings or conclusions that were affected by the threat to independence. If posted to publicly accessible website, GAGAS requires auditors to remove the report from the website and post a public notification that the report was removed—as well as perform additional work necessary to reissue the report if there are revised results or repost the original report if the additional work does not result in a change in results.⁴¹

Given the known threat to the independence of the audit organization (the Office of the Secretary of State) and the impact the perception of this threat has had on the OLCC audit report, we recommend that the SOS pull the audit report from the publicly accessible website and perform additional audit work. Specifically, the SOS’ Division of Audits should review how the work was scoped, planned, conducted, and reported on to determine that it considered a broad mix of stakeholders to ensure balanced perspectives; appropriately implemented audit procedures to ensure sufficient, reliable evidence was corroborated as warranted; and fairly considered and reflected views from officials in the audit work and report—including investigated contradicting evidence provided by auditees.

⁴⁰ GAGAS paragraph 3.110.

⁴¹ GAGAS paragraph 3.34.

If the additional work results in changes to conclusions and recommendations, the SOS' Division of Audits should adhere to GAGAS and repost the revised report to its website and otherwise distribute the (revised, if applicable) report in the same manner as the initial report.

Appendix A. Documents Reviewed

To assist the Oregon DOJ in determining whether the OLCC audit was selected, conducted, and results reported in accordance with GAGAS, we gathered, reviewed, and assessed information and documents listed in the table that follows.

Documents Reviewed
Organizational charts for the Secretary of State’s Office and detailed organizational charts for the Division of Audits and Executive Office.
Names and contact information for staff from the Division of Audits and executive management involved with the audit selection, scoping, planning, fieldwork, and reporting of the OLCC audit.
Names and contact information for key points of contact at the OLCC and Business Oregon.
Division of Audits policies, procedures, and guidelines on ethics, independence, conflicts of interests, audit planning, audit implementation, management and oversight of audits, audit fieldwork, quality control, and audit reporting.
Division of Audits Performance Audit Manual which contains detailed policies, procedures, and the mechanics of carrying out those protocols while conducting performance audits.
Division of Audits Performance Audit Process Reference Tool which provides more details about the role of executive office during performance audits.
Prior three annual audit plans for fiscal years 2020-2021, 2021-2022, 2022-2023 and any underlying documentation of the risk assessment process used in selecting and developing the annual audit plans.
Completed independence and conflict of interest forms, checklists, and workpapers documenting independence assessments including annual independence statements, emails confirming or involving independence assessments or issues, and other workpapers related to the OLCC audit.
Network Drive files—any files, documents, emails related to the audit, but not a part of the formal workpapers supporting the audit report.
Audit peer review reports on the SOS’ Division of Audits system of quality control and any related observations noted by the peer review teams for 2019 and 2022.
Audit workpapers and documentation for the OLCC audit, job files, quality control copies of the report, draft versions of the report with comments, and comments received from OLCC and Business Oregon.
Emails available to and from former Secretary Fagan, SOS’ Executive Office, Division of Audits, OLCC audit team members, La Mota, OLCC, Business Oregon, and stakeholders from November 2020 to May 9, 2023.
Communications regarding draft reports to and from the OLCC audit team provided by Business Oregon and OLCC related to the audit for the period January 2023 and April 2023.
Information regarding audit initiation practices and standards followed by other state audit offices throughout the country in addition to information regarding risk assessments.
Press reports, public records requests, and other material pertinent to the SOS and the OLCC audit.