

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 1700	Department Fair Employment and Housing	Priority No. 1
Budget Request Name 1700-002-BCP-BR-2016-GB		Program 1490 - ADMINISTRATION OF CIVIL RIGHTS LAW	Subprogram

Budget Request Description
 Enforcement Resources

Budget Request Summary

The Department of Fair Employment and Housing (DFEH) is requesting \$2.5 million and 28.0 positions in 2016-17 and \$2.8 million in 2017-18 and ongoing from the General Fund to provide resources for 1) enforcement investigation of complaints of civil rights violations, and 2) to respond to Public Records Act (PRA) requests in order to meet its statutory requirements.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Need code section related to certified mail
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Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
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For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Joan Keegan <i>[Signature]</i>	Date 1/5/16	Reviewed By	Date
Department Director Kevin Kish <i>[Signature]</i>	Date 1/5/16	Agency Secretary <i>[Signature]</i>	Date 1-6-16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA <i>[Signature]</i>	Date submitted to the Legislature 1/7/16
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BCP Fiscal Detail Sheet

BCP Title: Enforcement Resources

DP Name: 1700-001-BCP-DP-2016-GB

Budget Request Summary

	CY	BY	FY16			
			BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	21.0	28.0	28.0	28.0	28.0
Total Positions	0.0	21.0	28.0	28.0	28.0	28.0
Salaries and Wages						
Earnings - Permanent	0	1,281	1,709	1,709	1,709	1,709
Total Salaries and Wages	\$0	\$1,281	\$1,709	\$1,709	\$1,709	\$1,709
Total Staff Benefits	0	589	786	786	786	786
Total Personal Services	\$0	\$1,870	\$2,495	\$2,495	\$2,495	\$2,495
Operating Expenses and Equipment						
5301 - General Expense	0	196	56	56	56	56
5304 - Communications	0	28	17	17	17	17
5320 - Travel: In-State	0	54	54	54	54	54
5322 - Training	0	55	55	55	55	55
5324 - Facilities Operation	0	236	101	101	101	101
539X - Other	0	83	25	25	25	25
Total Operating Expenses and Equipment	\$0	\$652	\$308	\$308	\$308	\$308
Total Budget Request	\$0	\$2,522	\$2,803	\$2,803	\$2,803	\$2,803
Fund Summary						
Fund Source - State Operations						
0001 - General Fund	0	2,522	2,803	2,803	2,803	2,803
Total State Operations Expenditures	\$0	\$2,522	\$2,803	\$2,803	\$2,803	\$2,803
Total All Funds	\$0	\$2,522	\$2,803	\$2,803	\$2,803	\$2,803
Program Summary						
Program Funding						
1490 - Administration of Civil Rights Law	0	2,522	2,803	2,803	2,803	2,803
Total All Programs	\$0	\$2,522	\$2,803	\$2,803	\$2,803	\$2,803

Personal Services Details

Positions	Salary Information								
	Min	Mid	Max	CY	BY	BY+1	BY+2	BY+3	BY+4
1139 - Office Techn (Typing) (Eff. 10-01-2016)				0.0	0.8	1.0	1.0	1.0	1.0
4800 - Staff Svcs Mgr I (Eff. 10-01-2016)				0.0	1.5	2.0	2.0	2.0	2.0
4801 - Staff Svcs Mgr II (Supvry) (Eff. 10-01-				0.0	1.5	2.0	2.0	2.0	2.0
5157 - Staff Svcs Analyst (Gen) (Eff. 10-01-2016)				0.0	3.0	4.0	4.0	4.0	4.0
5393 - Assoc Govtl Program Analyst (Eff. 10-01-				0.0	12.0	16.0	16.0	16.0	16.0
9547 - Consultant III (Spec) (Eff. 10-01-2016)				0.0	2.3	3.0	3.0	3.0	3.0
Total Positions				0.0	21.0	28.0	28.0	28.0	28.0
Salaries and Wages	CY	BY	BY+1	BY+2	BY+3	BY+4			
1139 - Office Techn (Typing) (Eff. 10-01-2016)	0	28	37	37	37	37			
4800 - Staff Svcs Mgr I (Eff. 10-01-2016)	0	107	143	143	143	143			
4801 - Staff Svcs Mgr II (Supvry) (Eff. 10-01-	0	118	157	157	157	157			
5157 - Staff Svcs Analyst (Gen) (Eff. 10-01-2016)	0	129	172	172	172	172			
5393 - Assoc Govtl Program Analyst (Eff. 10-01-	0	746	994	994	994	994			
9547 - Consultant III (Spec) (Eff. 10-01-2016)	0	154	205	205	205	205			
Total Salaries and Wages	\$0	\$1,281	\$1,709	\$1,709	\$1,709	\$1,709			
Staff Benefits									
5150900 - Staff Benefits - Other	0	589	786	786	786	786			
Total Staff Benefits	\$0	\$589	\$786	\$786	\$786	\$786			
Total Personal Services	\$0	\$1,870	\$2,495	\$2,495	\$2,495	\$2,495			

**Department of Fair Employment and Housing
FY 2016-17 Budget Change Proposal
Enforcement Staffing and Resources**

A. Budget Request Summary

The Department of Fair Employment and Housing (DFEH) is requesting \$2,522,000 and 28.0 positions in 2016-17 and \$2,803,000 in 2017-18 and ongoing from the General Fund to provide enforcement staff and resources to investigate complaints of civil rights violations and to respond to Public Records Act (PRA) requests.

B. Background/History

The right to seek and hold employment and to access housing and public accommodations, free of discrimination, is recognized as a civil right for all individuals within the State of California. (Gov. Code § 12921) and denial of equal employment opportunity "... foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interest of employees, employers and the public in general." (Gov. Code § 12920.) DFEH receives, investigates, conciliates, mediates, and prosecutes complaints of alleged violations of the Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, and Ralph Civil Rights Act. At the core of the DFEH's mission is the mandate to provide thorough, timely and fair investigations of discrimination complaints received from the public. DFEH Enforcement Division is charged with conducting these investigations.

DFEH receives approximately 23,000 employment and housing discrimination complaints annually and is required to investigate all complaints. Approximately 50 percent of the claims are requests for "Right to Sue". This occurs when complainants decide to immediately sue rather than proceed through DFEH's investigation process and the Right to Sue letter from DFEH is required to file the lawsuit. The remaining 50 percent of claims are investigated by DFEH. When DFEH finds a complaint has merit, the FEHA requires that DFEH file a civil complaint within 365 days from the date the complaint was filed.

With respect to housing complaints, as a condition of federal funding from the US Department of Housing and Urban Development (HUD), DFEH is required to file a civil action within 100 days from the date the complaint is filed for at least fifty percent of claims, but in no event later than one year from the date the complaint is filed. In addition, thorough and timely complaint resolutions provide just outcomes for individuals and businesses, reduces the risk of litigation, and supports a social and economic landscape in California that is free of discrimination, retaliation, and harassment. It also ensures ongoing federal financial support from the HUD and the US Equal Employment Opportunity Commission (EEOC), which provided 18 percent or about \$3.8 million of the DFEH's Budget in 2014-15.

In regards to PRA, DFEH receives approximately 300 to 400 PRA requests each month from the media, interest groups, and attorneys for information regarding DFEHs enforcement efforts. Requests may include involve multiple files and/or require DFEH to prepare multiple reports. In addition, some of the documents requested include confidential information that must be redacted of confidential information before they are provided to the PRA requester. Per statute, the DFEH has ten days to respond to the PRAs.

C. State Level Considerations

The California Legislature has expressed the state's public policy: The civil rights of each and every Californian must be protected. California provides broader civil rights than does the federal

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government, as set forth in the Government Code, which states, in pertinent part, that "this state's law has always, even prior to passage of the federal act, afforded additional protections." (Gov. Code, § 12926.1)

The services of DFEH are "necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation." (Gov. Code, §12920.) Additionally, public policy prohibits discrimination in housing accommodations because of race, color, religion, sex, marital status, national original, ancestry, disability, familial status, or sexual orientation. (Gov. Code, § 12920.)

California's public policy against discrimination recognizes that the practice of denying opportunities and discriminating in terms of employment, housing and public accommodations, and acts of hate violence "foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects" Californians. (Gov. Code, § 12920.) Accordingly, in order to eliminate discrimination, DFEH is responsible for providing "effective remedies that will both prevent and deter unlawful... practices and redress the adverse effects of those practices on aggrieved persons." (Gov. Code, § 12920.5.)

This budget request directly supports the strategic goals of DFEH. While DFEH is currently in the process of developing a strategic plan, the Executive Team did adopt interim strategic goals for DFEH after the current Director and Chief Deputy Director were appointed by the Governor in February 2015. The five adopted goals are:

- Provide fair, accurate and timely investigation and resolution of complaints filed
- Increase the public's awareness of their rights and responsibilities under the law
- Help to foster an environment in California that is free of discrimination
- Manage our programs in an efficient and effective manner
- Create a positive and productive work environment for DFEH's employees

D. Justification

Current Staffing Level Inadequate to Meet Workload Demands

Current staffing levels within the Enforcement Division at DFEH are inadequate to address the approximately 23,000 complaints received by DFEH annually thus impeding DFEH's ability to timely and thoroughly investigate claims. Therefore, DFEH is requesting twenty-four (24.0) positions in the Enforcement Division to provide resources to address complaint investigation workloads. The specific positions requested are as follows (refer to Attachment A for costs associated with the enforcement staffing and resources):

- Two (2.0) Staff Services Analysts
- Fifteen (15.0) Associate Governmental Program Analysts
- Three (3.0) Consultants III (Specialist)
- One (1.0) Office Technician
- Two (2.0) Staff Services Managers I
- One (1.0) Staff Services Manager II

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The table below compares the average number of cases per investigator in 2006-07 and in 2014-15. The number of cases includes all Pre-Complaint Inquiries including both intake and investigation workloads. It does not include requests for our immediate right to sue, which makes up the difference between the number of cases shown in the table and the more than 23,000 complaints received each year, because responding to these requests does not generate a large workload for DFEH.

	2006-2007	2014-15
Total Cases	21,454	23,091
Number of Cases Investigated	13,504	11,675
Number of investigators ¹	87.7	47
Average number of cases per investigator	154	248.4

As shown in the table, the number of cases per investigator has increased substantially between 2006-07 and 2014-15, from 154 in 2006-07 to 248 in 2014-15. Not only do caseloads of this magnitude impede DFEH's ability to effectively meet its overall mission, they prevent DFEH from providing an adequate level of service to individual members of the public and businesses and result in high levels of staff burnout and turnover. We note that the Enforcement Division is currently budgeted with a total of 59 Investigator positions. However, even with all vacancies filled, caseloads would still be 198 per Investigator and the current number of investigators will not be sufficient to meet workload demands. Attachment B shows workload data on the specific primary tasks carried out by investigators, which fall largely into two categories: 1) intake, which takes an estimated 2.25 hours (see Tasks 1 and 2 on Attachment B) and 2) investigations, which takes an estimated 13.5 hours (see Tasks 3 through 6 on Attachment B). During intake, investigators interview complainants regarding the specific facts of the case and make a determination as to whether DFEH has jurisdiction to move forward with an investigation. As stated above, DFEH estimates that it takes 2.25 hours on average to schedule and complete an interview and all of the associated paperwork, including preparing a complaint to be mailed to the complainant for signature.

DFEH has historically placed inquiries in a "holding tank" prior to being assigned to investigators to make contact with complainants. However, the number of inquiries in the holding tank awaiting contact from DFEH has grown to over 1,500. The long delays between the complainants' submissions of inquiry to the initial intake appointment impedes DFEH's investigation as pertinent information or witnesses may no longer be available.

The current caseload demands has required DFEH to adjust its procedures, which could compromise the quality and effectiveness of the investigations. Many of DFEH's cases are appropriate for site visits. However, due to the large caseloads and time involved in conducting site visits, site visits have come to a halt in employment complaints and only minimal site visits have been done in housing complaints. Failure to conduct site visits impacts the quality of the work performed and has a negative impact on meeting federal performance requirements because investigators must make determinations on cases without conducting site visits. When investigating discrimination complaints, it is essential to view the work environment, conduct face-to-face interviews with complainants, respondents, or witnesses, view the tenant premises for requests for reasonable modification issues, to expedite a priority case such as one that may involve a terminally ill person or an act of violence claim, etc.

¹ This includes staff in the FEH Consultant I, II, and III Specialist classifications. The count does not include retired annuitants or Consultant III Supervisors who carry a limited caseload.

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Finally, site visits by a state official has a great impact on deterring further discrimination, harassment, and retaliation.

We also note that there is currently no basis for comparisons of DFEH caseloads to caseloads of other states. DFEH has reached out to three other states to gather case work information and has received responses from Michigan and New York State. This preliminary information indicates that the caseloads of these other entities are substantially lower than DFEH. In addition, California has several additional protected bases that are not covered in other states.

Inability to Meet Federal Requirements

It is essential for DFEH to process complaints timely. The FEHA requires that DFEH file civil actions in employment, Unruh, Ralph and Disabled Persons rights cases within 365 days from the date a complaint is filed. With respect to housing cases, DFEH is required to file civil actions within 100 days from the date the complaint is filed to comply with HUD standards, unless it is impracticable to do so, but in no event no later than one year. In 2014-15, DFEH was unable to close 175 cases within the one year statute of limitations to file a civil action. When this occurs, DFEH no longer has the authority to pursue a civil action, even if the case should have been prosecuted. Complainants who wish to pursue these cases lose their rights to DFEH's administrative process and face financial costs and other barriers (language, access to lawyers) to pursue their cases in court.

Additionally, the lag in filing of complaints can result in a decline in the number of dual-filed cases submitted to the EEOC under the terms of the Workshare Agreement, which allows DFEH to forward any cases that have a federal implication to the EEOC, thereby resulting in a decrease of federal funds for DFEH.

Additionally, on September 30, 2015, HUD issued a final audit report finding that DFEH did not meet HUD's goal to close at least 50 percent of its housing cases within 100 days. In fact, DFEH only closed 39.8 percent of its housing cases within the 100 days. HUD also found that DFEH's performance does not conform to the Memorandum of Understanding and Cooperation Agreement between DFEH and HUD (refer to Attachment C for HUD audit results).

Efforts to Improve Efficiency Will Unlikely Address Caseload Issue

Prior to requesting these positions, DFEH has undertaken a number of efforts to improve efficiency and focus our resources in an effort to improve the effects of the staggering caseloads within our Enforcement Division. Although some of these efforts are good business practices and will yield positive results, they will not be sufficient to address the workload issues. Current efforts to increase efficiency include the following:

- Change in timeframe for initial response to claims – Due to the significant workload, DFEH has not been able to respond to claims filed in a timely manner. To decrease the number of inquiries of claim status and duplicate filings, DFEH increased the timeframe for the initial investigator to contact complainants from 10 days to 30 days. While this has reduced the number of inquiries and duplicated claims, this timeframe is still not sufficient to address the backlog.
- Intake process streamlining project – In an effort to streamline the intake process, DFEH expects to implement a statewide appointment system and a pilot intake unit within the next 30

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days. This is the process by which filed claims are assigned to investigators or issued an immediate Right to Sue letter.

- Workload Shift – Referring more cases to the Dispute Resolution Division for mediation. However, cases that are not resolved through mediation are referred back to the Enforcement Division.
- Increasing involvement of Legal Division Attorneys in the claim risk assessment process to determine the most egregious violations – While this is good practice, the attorneys can only assess the claims they are presented and more egregious violations may still be awaiting contact from the investigator.
- Lean Six Sigma Project – In November 2014, DFEH began a Lean Six Sigma Project as part of a larger effort involving many departments receiving training through the Governor's Office of Business and Economic Development. DFEH's project looked at ways to improve the pre-complaint process and a total of six recommendations have been or will be implemented as a result of the project.
- Exploring use of student and other volunteers to do intake – This would require too many resources to train, schedule and oversee the work relative to the number of interviews they would be able to complete.
- Referral of dual filed cases – Requesting federal agencies (EEOC and HUD) to take more cases in an attempt to defer dual-filed cases to them for investigation. While this would immediately result in reduced caseloads, neither agency is in a position to assist due to their own caseload challenges.
- Change in hiring classification – DFEH has had difficulty filling all of the vacancies in the Enforcement Division in the past due, in large part, to its use of the Fair Employment and Housing Consultant series for its investigator positions which requires specific types of experience to meet the minimum qualifications for this series. To address this issue, in August 2015, DFEH received approval from the California Department of Human Resources (CalHR) to use service-wide classifications for its entry-level (Staff Services Analyst) and journey-level (Associate Governmental Program Analyst) investigator positions. DFEH is currently in the process of filling existing vacant investigator positions using these service-wide classifications.

Training and Resources for Investigators are Inadequate

Large caseloads have also precluded DFEH from providing needed training to new and less seasoned investigators and to keep reference manuals up-to-date. While supervisors and managers within the Enforcement Division have provided some training to fill the need, additional training is needed to perform investigations at the desired level. Additionally, the lack of training is problematic given the sensitive nature of the investigations. Therefore, DFEH is requesting one (1.0) Staff Services Manager II-Specialist and one (1.0) Associate Governmental Program Analyst (AGPA) in the Enforcement Division to establish a Training Unit. The Training Unit will provide necessary initial and ongoing training to all investigators as well as provide the necessary manuals and resource materials on an ongoing basis. This will help ensure investigation and outcome uniformity. Focus on staff development through training will improve DFEH's ability to enforce the law and remedy violations.

DFEH anticipates that training for new investigators will take approximately four (4) months. Therefore, ongoing workloads for the training unit will include the following:

- "Refresh" training for all investigators to improve understanding and consistency
- Maintaining and providing updates on emerging issues related to investigations
- Training on new policies or procedures

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- Training for support staff, supervisors and managers
- Coordinating training offered by other entities, e.g., the EEOC or HUD
- Continually updating all manuals and reference materials

Insufficient Staff to Respond to PRA Requests

The current level of staffing is also insufficient to address the 300 to 400 of PRA requests received by DFEH each month. Therefore, DFEH is requesting two (2.0) Staff Services Analysts in the Legal Division to provide sufficient resources to process this high volume of PRA requests received by DFEH in a timely and accurate manner. This will provide sufficient resources to meet the PRA workload and allow existing staff to remain allocated to the workload for which they were originally budgeted.

DFEH receives PRA request in writing, by email, by phone, or submitted directly by the requester using DFEH's Case Management System (Houdini). Regardless of how they are submitted, all requests are entered into Houdini, assigned a PRA number, and assigned to a custodian of records for processing. While the PRA requests were centralized with the implementation of Houdini in 2012, the number of PRA requests received by DFEH each year has increased, as shown below.

Fiscal Year	Number of PRA Requests Received	Percentage Increase from Prior Year
2012-13	3,324	Not Available
2013-14	3,603	8.4%
2014-15	4,404	22.2%

DFEH notes that a single PRA request may include multiple files or reports. For example, a recent request was made for information regarding complaints involving 37 companies. Generally, there are four types of PRA requests as follows:

- Requests for complete case files – All documents related to a specific claim.
- Requests for statistical information – All documents pertaining to a specific employer, time period, or specific discrimination violation.
- Media/Press requests – All documents pertaining to a specific company, public official, or cases publically disclosed to the news media.
- Requests for audit or compliance reviews.

The PRA requests are for information not available from other sources and require response within ten days unless additional time is granted by the requester. Additionally, some documents include confidential information that must be redacted of confidential information before they are provided to the PRA requester. DFEH has historically used Legal Analysts to respond to PRA requests. However, the increasing volume of PRA requests has outstripped the ability of the Legal Analysts to both respond to PRA requests and meet the need for paralegal support within the Legal Division. Specifically, Legal Analysts in the Legal Division who are budgeted to spend 40 percent of their time responding to PRA requests are generally spending 70 to 80 percent of their time responding to PRA requests. Rather than expending 2.0 positions responding to PRA requests, the Department is expending 4.0 positions.

This leaves insufficient time for paralegal support to assist attorneys in litigation, including trial preparation such as organizing and reviewing discovery responses, preparing exhibits and evidence, preparing trial binders of all necessary pleadings, exhibits, jury instructions, etc., and contact with

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witnesses. Because DFEH is challenged to direct resources to respond to PRA requests, each Legal Analyst is responding to approximately 92 PRA requests per month.

E. Outcomes and Accountability

Approval of this proposal will result in the following outcomes:

- Investigator caseloads will be reduced to levels of approximately 148 cases per investigator per year resulting in more timely and thorough investigations.
- There will be sufficient resources to conduct regular ongoing training for existing and new investigators resulting in more thoughtful, timely, and thorough investigations.
- DFEH will have sufficient resources to respond to PRA requests allowing the paralegals and attorneys to return to their litigation caseloads.

F. Analysis of All Feasible Alternatives

1. Provide resources as requested

Pros:

- Provides resources and staffing required by DFEH to conduct additional investigations and respond to PRA requests and achieve the outcomes outlined in Section E, above.
- Provides protection and opportunity for redress for victims of discrimination and harassment and hate crimes in the State of California.

Cons:

- Direct cost to the General Fund.

2. Redirect staff to meet needs

Pros:

- No additional direct costs to the General Fund

Cons:

- There are no staff resources that can be redirected to meet these needs and attempting to do so would require taking staff from one mission-critical function to meet another mission-critical function, resulting in further erosion in DFEH's ability to meet its statutory mandates.
- There are currently insufficient resources to fulfill the mission of DFEH. This may result in increased backlogs and impedes DFEH's ability to provide thorough and timely investigations.
- Lack of protection and opportunity for redress for victims of discrimination and harassment and hate crimes in the State of California.
- Potential indirect costs to the General Fund and State special funds resulting from lack of training and information available to state departments on the prevention of discrimination and harassment.
- Potential increased costs to employers, housing providers and other businesses in California resulting from lack of training and information available to them on the prevention of discrimination and harassment.

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3. Status Quo

Pros:

- No additional direct costs to the General Fund

Cons:

- There are currently insufficient resources to fulfill the mission of DFEH. This may result in increased backlogs and impedes DFEH's ability to provide thorough and timely investigations.
- Lack of protection and opportunity for redress for victims of discrimination and harassment and hate crimes in the State of California.
- Potential indirect costs to the General Fund and State special funds resulting from lack of training and information available to state departments on the prevention of discrimination and harassment.
- Potential increased costs to employers, housing providers and other businesses in California resulting from lack of training and information available to them on the prevention of discrimination and harassment.

G. Implementation Plan

DFEH is requesting 75 percent of the funding needed to fully fund requested positions in 2016-17 to accommodate the hiring process. DFEH will begin the recruitment process in July 2016 and expects to fill positions beginning mid-August with all positions filled by December 31, 2016. All newly hired Investigators will receive on-the-job training from the time of hire and will participate in DFEH's formal Training Academy to be implemented in January 2017.

This budget request includes funds needed to expand DFEH's Headquarters (HQ) facility to accommodate 18 of the 28 requested staff. Per Department of General Services (DGS) Real Estate Services Division space standards and guidelines, DFEH's HQ facility can accommodate a maximum of 80 staff and is currently at full capacity. Therefore, DFEH will need to expand its HQ facility by an additional 4,433 square feet to accommodate 18 of the 28 staff. The remaining 10 staff will be housed in two of the field offices that currently have available space. The HQ expansion will include three new offices, 15 new cubicles, a reception area, conference room that can be used for training, space for copiers and printers, and two quiet rooms. Space is currently available next door to DFEH's existing HQ space at a rental rate of \$1.87 per square foot for an annual rent increase of \$99,486 and a one-time cost of \$132,059 for tenant improvements, access card system, new telephone system, moving and voice/data costs. The Business Services Office is currently working with the Department of General Services on expanding the headquarters location. It is anticipated that the work for the expansion will begin in July of 2016 with the expectation of it being complete by January 2017. During this period, DFEH plans to lease temporary space in Elk Grove. There is also a one-time cost for furniture/modular furniture in the amount of \$140,000 (\$5,000 per position), which has been included within the standard Operating Equipment and Expenses complement for each position (see Attachment D for expanded detail).

H. Supplemental Information

- Attachment A – Enforcement Staffing and Resources
- Attachment B – Investigation Process
- Attachment C – HUD Performance Assessment Report dated September 30, 2015.
- Attachment D – Facility Operations Costs

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I. Recommendation

Approve funds and staffing as requested (Alternative 1).

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Enforcement Staffing and Resources (Attachment A)**

						FY 2016-17 (BY)		FY 2017-18 (BY+1)	
	Positions	Mid-Rage Annual Salary	Benefits (46% of Salaries)	One-Time Operating Expenses and Equipment	Ongoing Operating Expenses and Equipment	One-Time*	Ongoing*	One-Time	Ongoing*
Enforcement Division									
Investigative Staffing									
Staff Services Analyst	2.0	43,086	19,820	7,500	7,500	15,000	109,000		141,000
Associate Governmental Program Analyst	15.0	62,148	28,588	7,500	7,500	113,000	1,134,000		1,473,000
Consultant III - Specialist	3.0	68,268	31,403	7,500	7,500	23,000	248,000		322,000
Staff Services Manager I	2.0	71,454	32,869	7,500	7,500	15,000	171,000		224,000
Staff Services Manager II	1.0	78,450	36,087	7,500	7,500	8,000	93,000		122,000
Communication Center									
Office Technicians	1.0	37,278	17,148	4,600	6,700	5,000	48,000		61,000
Training Staff									
Staff Services Manager II-Specialist	1.0	78,450	36,087	7,500	7,500	8,000	93,000		122,000
Associate Governmental Program Analyst	1.0	62,148	28,588	7,500	7,500	8,000	76,000		98,000
Legal Division									
Support for PRA Request									
Staff Services Analyst	2.0	43,086	19,820	7,500	7,500	15,000	109,000		141,000
Dispute Resolution Division									
Administrative Services Division									
Facility Costs and Administrative Workload									
Facility Expansion				132,059		132,000			
Rent Increase					99,486		99,000		99,000
Total	28.0					342,000	2,180,000	-	2,803,000

* All amounts have been rounded to the nearest thousand to tie to the Governor's Budget

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Investigation Process (Attachment B)

Task/Sub-Task Description		Hours per Task	Qty/Freq	Total Hours	PY(s)
1	Pre-Complaint Inquiry	0.5	11,675.00	5,837.50	3.24
a	Assess complaint				
b	Verify information				
c	Schedule interview				
2	Conduct Intake	1.75	11,675.00	20,431.25	11.35
a	Conduct intake interview with complainants to determine jurisdiction				
b	If...				
	Department does not have jurisdiction				
	Then...				
	Issue Pre-Complaint Inquiry Closure Letter				
	Department has jurisdiction				
	Draft complaint				
c	Research data base to identify proper respondent or property				
d	Prepare service documents and relevant federal dual-filing paperwork and other general correspondence				
3	Negotiate Settlements	0.75	8,679.00	6,509.25	3.62
a	Contact parties to determine interest in settlement				
b	Prepare for and participate in settlement discussions with complainant(s) and respondent(s) or their authorized representative(s)				
c	Prepare settlement documents				
d	Monitor Settlement or Conciliation Agreements for compliance				
e	Review and identify cases for referral to formal mediation				
4	Conduct Investigation	10	8,679.00	86,790.00	48.22
a	Contact respondents and co-respondents to secure response to complaint				
b	Prepare Supplemental Questionnaire and issue formal discovery, if needed				
c	Analyze issues with reference to the appropriate interpretation and application of laws				
d	Interview and gather information from complainants, respondents, and witnesses, and review documentary evidence				
e	Conduct on-site visits, as needed				
f	Determine whether a violation of the law has occurred				
g	Conduct exit interviews				
h	Respond to rebuttal information and prepare closure letter				
i	Participate in case review meeting with supervisor and assigned staff attorney				
5	Write Reports	1.5	8,679.00	13,018.50	7.23
a	Develop reports pertaining to investigation including Case Grading Memo, Investigative Guide, and Final Investigative Report				
6	Case Management	1.25	8,679.00	10,848.75	6.03
a	Update records in Houdini and TEAPOTS throughout investigation				
				143,435.25	79.69
				Current Year Authority	59.00
				Net Remaining	20.69

Attachment C



U.S. Department of Housing and Urban Development
San Francisco Regional Office - Region IX
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San Francisco, California 94104-4430
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SEP 30 2015

Mr. Kevin Kish, Director
California Department of Fair Employment and Housing (DFEH)
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758

Dear Mr. Kish:

Subject: California Department of Fair Employment and Housing
Fair Housing Assistance Program Annual Performance Assessment Report
Performance Periods: Complaint Processing: July 1, 2014 - June 30, 2015
Training: October 1, 2014 – September 30, 2015
FHAP Cooperative Agreement: FF209K149002

This office has completed its annual Performance Assessment Report (PAR) of the California Department of Fair Employment and Housing (DFEH). The PAR covered the period of July 1, 2014 through June 30, 2015 for Case Processing and Administrative Costs, and October 1, 2014 through September 30, 2015 for Training. The purpose of this PAR is to determine DFEH's compliance with the Memorandum of Understanding (MOU) between our agencies dated April 1, 1997; the first addendum to that MOU dated April 20, 2004; the second addendum dated on or about July 9, 2009; the third addendum dated November 24, 2014; the respective Cooperative Agreement FF209K149002; and the nine performance standards set forth in the Department's implementing regulations for the Fair Housing Assistance Program (FHAP) at 24 CFR Part 115.

The findings contained in this letter are based upon:

- (i) HUD's review of case closures submitted by DFEH during the performance period;
- (ii) HUD's review of complaints submitted by DFEH for dual filing during the performance period;
- (iii) information contained in DFEH's August 27, 2015, response to our PAR data request letter announcing the commencement of this review;
- (iv) our onsite at DFEH's Elk Grove office August 25-26, 2015, and;
- (v) HUD's working relationship with DFEH during the performance period.

In the attached PAR, we find that DFEH is in noncompliance with FHAP Performance Standard #1 (Commence complaint proceedings, carry forward such proceedings, complete investigations, issue determinations, and make final administrative dispositions in a timely manner.) [24 CFR § 115.206(e)(1)]; FHAP Performance Standard #8 (The agency must report to HUD on the final status of all dual-filed complaints where a determination of reasonable cause was made.) [24 CFR § 115.206(e)(8)]; and FHAP Performance Standard #9 (The agency must conform its performance to the provisions of any written agreements executed by the agency and HUD related to substantial equivalence certification, including but not limited to the interim agreement or MOU. [24 CFR § 115.206(e)(9)])

Regarding Performance Standards #1 and #9, HUD finds that DFEH did not meet HUD's goal for a FHAP agency, to close at least 50% of its cases within 100 days. During the performance period, DFEH only closed 39.88% of its cases within 100 days, well below HUD's goal. Therefore, DFEH's performance does not conform to the MOU and respective Cooperative Agreement.

Regarding Performance Standard #8, HUD is aware that DFEH is currently taking steps to improve its reporting to HUD of the disposition of cause cases to comply with HUD's Criteria for Processing.

At this time, we do not see the immediate need for placing DFEH back under a Performance Improvement Plan (PIP). However, we will continue to monitor DFEH's progress in closing cases already aged beyond 100 days. In the months ahead, we hope to see the percentage of cases closed within 100 days to begin a steady increase from the current percentage (hovering under 40% in recent months) to HUD's goal for FHAP agencies of at least 50% of cases closed within 100 days. We will look for greater parity between the number of cases newly filed and the number of cases DFEH closes on a monthly basis to ensure that the gap between filings and closures does not continue to widen. We also want to reiterate the importance of high quality work and expect all merit (cause and no cause) closures to reflect independent corroboration of the respondents' defenses, which in a greater percentage of cases should include an on-site component of the investigation.

On a quarterly basis, commencing in December 2015, I will ask my staff to report to me on DFEH's progress towards improved compliance with the goal identified in the paragraph above. If substantive improvements are not noted on a quarterly basis, it will be necessary for me to re-consider issuance of a PIP to DFEH, pursuant to HUD's FHAP regulations at 24 CFR 115.210. As you may know from a previous period when DFEH was placed under a PIP, a FHAP agency's failure to correct identified performance deficiencies can lead in the short term to ineligibility for non-formulaic funding such as Partnership Initiative funds. Longer-term non-compliance can also lead to actions to suspend or de-certify an agency from continued participation in the program.

I commend DFEH's leadership and staff for their continued commitment to vigorous and effective fair housing enforcement activities in the state of California. My staff and I look forward to working again this coming year with DFEH in furtherance of that effort.

No written response to this PAR is required. However, should DFEH choose to respond or comment, you may contact me personally at (415) 489-6526; or Government Technical Representative/Equal Opportunity Specialist Rosalind Evans at (415) 489-6614; or Government Technical Monitor/Lead Equal Opportunity Specialist Jane Shandler at (415) 489-6563.

Sincerely,



Anné Quesada

Director

Office of Fair Housing and Equal Opportunity

Attachment: PAR

cc: HUD-FHEO Headquarters, FHAP Division (with attachment)

**Department of Fair Employment and Housing
 FY 2016-17 Budget Change Proposal
 Enforcement Staffing and Resources
 Facility Operations (Ongoing Costs) - Attachment D**

Classification	# of Staff	Required Space (Square Feet)	Total Space Required (Square Feet)
Enforcement BCP:			
SSAs/AGPAs	15.0	64	960
Staff Services Manager I/II	3.0	150	450
	18.0		1,410
Reception		200	200
Conference Room/Training Room		800	800
Restrooms		240	240
Storage Room		120	120
Breakroom		150	150
copier/printer area		64	64
Two Quiet room @ 150 Square Feet each		300	300
Total Common Areas		1874	1,874
Subtotal			3,284
Circulation (35%)			1149.4
TOTAL SPACE REQUIRED			4,433
4,433 sq. ft. @ 1.87		monthly	\$ 8,290.46
		annual	\$ 99,485.50
15/16 annual rent			\$ 405,603.00
16/17 annual rent (with no changes)			\$ 416,448.00
16/17 including additional rent			\$ 515,933.50
Estimated Tenant Improvements			\$ 221,670.00
Voice/Data/Electrical (\$150 per hr @ 18 hours)			\$ 2,700.00
Card Key System/hardware/wiring for two doors			\$ 10,000.00
Moving Expenses/boxes and internal excess \$(127 per hr @ 4/after hours for three movers)			\$ 1,524.00
Office furniture (office, msf, chairs) (50 Cubicles/Offices @ \$5,000 each)			\$ 90,000.00
New telephone systems (Program Installation)			\$ 7,000.00
Total estimated expansion costs			\$ 332,894.00
Tenant Improvement Allowance			\$ (110,835.00)
Less costs for Office Furniture (included in standard OE&E compliment)			\$ (90,000.00)
Total one-time funding required for Enforcement Staff Elk Grove Office Expansion			\$ 132,059.00