



COMPLIANCE REVIEW REPORT

CALIFORNIA ARTS COUNCIL

Compliance Review Unit
State Personnel Board
March 19, 2019

TABLE OF CONTENTS

Introduction	1
Executive Summary	2
Background	3
Scope and Methodology.....	3
Findings and Recommendations.....	5
Appointments	5
Equal Employment Opportunity	7
Personal Services Contracts.....	10
Compensation and Pay.....	15
Leave	16
Policy and Processes.....	20
Departmental Response.....	23
SPB Reply.....	23

INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code section 18502(c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Arts Council (CAC)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The following table summarizes the compliance review findings.

Area	Finding
Appointments	Probationary Evaluations Were Not Timely
Equal Employment Opportunity	An Equal Employment Opportunity Policy Was Not Issued
Equal Employment Opportunity	A Disability Advisory Committee Has Not been Established
Personal Services Contracts	Written Justification Was Not Provided for All Personal Services Contracts
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Sexual Harassment Prevention Training Was Not Provided For All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Actual Time Worked Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed
Policy	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Area	Finding
Policy	Performance Appraisals Were Not Provided to All Employees

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The CAC's mission is to advance California through arts and creativity. The four goals of the agency include: (1) building public will and resources for the arts ensuring strong support for the arts statewide among the public, elected officials, and decision makers, (2) diversity, access and partnerships ensuring the CAC's work is reflective of California's diverse populations and accessible to all, (3) thought leadership to establish the CAC as a leading authority and champion for the arts in California, regionally, and nationally, (4) programs and services- Ensure programmatic excellence, effectiveness, and relevance in all of the CAC's programs and services. Our agency mission, goals, and objectives are intended to ensure that the arts are recognized, celebrated, and supported in communities across the state.

Overseen by an 11-member council, CAC staff is responsible for over \$32 million dollars in direct funding to California communities. The CAC issues over \$24 million dollars in grant funding through eighteen different grant programs in three categories: arts education, project support, and operational support.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CAC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes². The primary objective of the review was to determine if CAC personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR

² Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CAC did not conduct any examinations or permanent withhold actions during the compliance review period.

A cross-section of the CAC's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CAC provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The CAC did not conduct any unlawful appointment investigations and additional appointments during the compliance review period.

The CAC's appointments were also selected for review to ensure the CAC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CAC provided, which included employee's employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application.

During the compliance review period, the CAC did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, or out-of-class assignments.

The review of the CAC's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CAC's PSC's were also reviewed.³ It was beyond the scope of the compliance review to make conclusions as to whether the CAC's justifications for the contracts were legally

³If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

sufficient. The review was limited to whether the CAC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CAC's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory training and sexual harassment prevention training within statutory timelines.

During the compliance review period, the CAC did not have any employees who have "over-the-cap" leave balances.

The CRU reviewed the CAC's Leave Activity and Correction certification forms to verify that the CAC created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the CAC's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of CAC employees tracked by actual time worked (ATW) during the compliance review period in order to ensure that ATW was appropriately utilized.

The CAC did not have any employees with non-qualifying pay period transactions and authorize Administrative Time Off (ATO).

Moreover, the CRU reviewed the CAC's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the CAC's policies and processes adhered to procedural requirements.

On Monday, February 4, 2019, an exit conference was held with the CAC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CAC's written response on Thursday, March 7, 2019, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness,

which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the period under review, August 1, 2017 through July 31, 2018, the CAC made six appointments. The CRU reviewed all six appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	2
Associate Arts Grants Administrator	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1

The Department of General Services (DGS) administers CAC’s appointments. On behalf of the CAC, the DGS measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the six list appointments reviewed, the DGS ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

However, in reviewing the CAC’s appointments that were made during the compliance review period, the CRU determined the following:

FINDING NO. 1 – Probationary Evaluations Were Not Timely

Summary: The CAC did not complete four probationary reports of performance within 10 days of the due date for two of the six appointments reviewed by the CRU.

Criteria: The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency

of a probationer in the manner and at such periods as CalHR may require. (Gov. Code § 19172.) CalHR's regulatory scheme provides that "a report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job." (Code Reg., tit. 2, § 599.795.) Specifically, a written appraisal of performance shall be made to the department within 10 days after the end of each one-third portion of the probationary period. (Ibid.) The Board's record retention rules require that appointing powers retain all probationary reports. (Code Reg., titl. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The CAC states that they are understaffed and do not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR. There was no tracking mechanism in place to ensure that all Supervisors and Managers complete probationary reports and performance evaluations for all staff.

Action: It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CAC submit to SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents

and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the Director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

FINDING NO. 2 – An Equal Employment Opportunity Policy Was Not Issued

Summary: The CAC did not have an Equal Employment Opportunity Policy.

Criteria: The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO. (Gov. Code, § 19794, subd. (a))

Severity: Very Serious. A policy statement committing to EEO is a vital step in preventing discrimination in the work place. Without an EEO policy in place, the agency cannot establish its expectation as an equal opportunity employer to its employees.

Cause: The CAC states that it is understaffed and does not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR.

Action: It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CAC

submit to SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the EEO requirements of Government Code section 19794.

FINDING NO. 3 – A Disability Advisory Committee Has Not Been Established

- Summary:** The CAC does not have an active DAC.
- Criteria:** Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)
- Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency’s ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.
- Cause:** The CAC states that it is understaffed and does not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR.
- Action:** The CAC must continue to take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The CAC must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB Executive Officer’s approval of these findings and recommendations.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, September 1, 2017 through August 31, 2018, the CAC had five PSC's that were in effect and subject to the Department of General Services (DGS) approval. The CRU reviewed all five of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
The Poet Tree, Inc	Poet Laureate Recruitment Process	6/25/18 – 8/31/18	\$4,900	Yes
Christi Welter	Poet Out Loud Consultant	2/5/18 - 3/31/18	\$4,800	No
Excel Interpreting and Translating	Translation and Transcription Services	8/10/18 – 6/30/19	\$20,000	No
One Ergo Net, Inc	Ergonomic Training	1/18/18 – 1/31/18	\$4,500	No
Shelly Willis	Public Art Consultant	1/1/18 – 1/1/19	\$11,000	No

FINDING NO. 4 – Written Justification Was Not Provided for All Personal Services Contracts

Summary: The CAC did not properly document the reasons why the following four contracts satisfied Government Code section 19130, subdivision (b).

Vendor	Services	Contract Amount
Christi Welter	Poet Out Loud Consultant	\$4,800
Excel Interpreting and Translating	Translation and Transcription Services	\$20,000
One Ergo Net, Inc	Ergonomic Training	\$4,500
Shelly Willis	Public Art Consultant	\$11,000

Criteria: Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). The agency shall maintain the written justification for the duration of the contract and any extensions of the contract or in accordance with the record retention requirements of section 26, whichever is longer. (Cal. Code Reg., tit. 2, § 547.60.)

Severity: Serious. Without properly documenting the reasons why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not substantiate that the department’s PSC’s complied with current procedural requirements.

Cause: The CAC states that it had 100% turnover in Procurement staff. The current staff are new to state service and were unaware that this was a requirement.

Action: It is the contracting department’s responsibility to properly document the reasons why a PSC satisfies one or more conditions specified in Government Code section 19130. It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CAC submit to the CRU a written corrective action plan that addresses the corrections the department will

implement to ensure conformity with the requirements of Government Code section 19130. Copies of any relevant documentation should be included with the plan.

FINDING NO. 5 – Unions Were Not Notified of Personal Services Contracts

- Summary:** The CAC did not notify unions prior to entering into five of five PCS's.
- Criteria:** Government Code section 19132, subdivision (b)(1), mandates that “the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted.”
- Severity:** Serious. Unions must be notified of impending PSC's in order to ensure they are aware contracts are being proposed for work that their members could perform.
- Cause:** The CAC states that it has had 100% turnover in Procurement staff. The current staff are new to state service and were unaware that this was a requirement.
- Action:** It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CAC submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132 and AB 906. Copies of any relevant documentation should be included with the plan.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months

of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), (c), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CAC's mandated training program that was in effect during the compliance review period. The CAC's supervisory training was found to be in compliance. However, the CAC's ethics and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 6 – Ethics Training Was Not Provided for New Filers

- Summary:** The CAC did not provide ethics training to one out of one new filer within six months of their appointment. The CAC did not have any existing filers.
- Criteria:** New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)
- Severity:** Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.
- Cause:** The CAC states that it is understaffed and does not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR.
- Action:** The CAC must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CAC must submit a written corrective action plan to ensure compliance with ethics training mandates. Copies of any relevant documentation should be included with the plan.

FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

- Summary:** The CAC did not provide sexual harassment prevention training to one of three new supervisors within six months of their appointment. In addition, the CAC did not provide sexual harassment prevention training to one of three existing supervisors every two years.
- Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

Severity: Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The CAC states that information regarding the sexual harassment training was provided to supervisors within six months of their appointment and for existing supervisors. However, the non-compliant supervisors did not attend the sexual harassment training.

Action: The CAC must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CAC must establish a plan to ensure compliance with sexual harassment training mandates and submit to the SPB a corrective action plan.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Regs., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee's salary rate⁴ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

During the period under review, September 1, 2017, through August 31, 2017, the CAC made six appointments. The CRU reviewed the six appointments to determine if the CAC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

⁴ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accountant I (Specialist)	Certification List	Permanent	Full Time	\$3,120
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,177
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,177
Associate Arts Grants Administrator	Certification List	Permanent	Full Time	\$4,784
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,784
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$3,977

FINDING NO. 8 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the six salary determinations that DGS made on behalf of the CAC during the compliance review. The DGS appropriately calculated and keyed the salaries for each appointment and correctly determined employees’ anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Leave

Actual Time Worked

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee’s time to ensure that the Constitutional limit of nine months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. Time is accrued by months so that the immediate prior 12-calendar months are the ones used to count the 189 working days. ATW includes; any day on which the employee physically worked, regardless of the length of time worked on

that day⁵, any day for which the employee is on paid absence⁶, any holiday for which the employee receives either full or partial pay. If the employee works on the holiday, the day is counted only once regardless of the rate of pay⁷.

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. Therefore, departments must monitor the actual number of days worked in order to ensure that they do not exceed 189 days in any 12-consecutive month period. (Cal. Code Regs., tit. 2, § 265.1, subd. (a).)

At the time of the review, the CAC had two employees on ATW. The CRU reviewed two of those ATW appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Base	Time Frame	No. of Days on ATW
Seasonal Clerk	Intermittent	10/31/17 – 9/30/18	109
Student Assistant	Intermittent	2/5/18 – 9/30/18	63

FINDING NO. 9 – Actual Time Worked Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the two employees placed on ATW that DGS made on behalf of the CAC during the compliance review period. The DGS provided the proper documentation justifying the use of ATW and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction (Cal. Code Reg., tit. 2, § 599.665).

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting

⁵ For example, two hours or ten hours counts as one day.
⁶ For example, vacation, sick leave, compensating time off, etc.
⁷ For example, straight time, time and one-half, double time, etc.

system is keyed accurately and timely. If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, March 1, 2018, through May 31, 2018, the CAC reported three units comprised of 23 active employees during the March 2018, April 2018 and May 2018 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Number of Units Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
March 2018	3	23	23	0
April 2018	3	23	23	0
May 2018	3	23	23	0

FINDING NO. 10 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: The DGS administers the CAC’s leave accounting services. On behalf of the CAC, the DGS provided documentation demonstrating that they currently administer an effective monthly internal audit process to verify that all leave input into their leave accounting system was keyed accurately and timely. After reviewing leave records over three pay periods, it was determined that the DGS correctly keyed all leave types accrued/earned or used, and corrected any identified errors in the leave accounting system in a timely manner.

However, the DGS failed to provide completed Leave Activity and Correction Certification forms at the time of the review for all three units reviewed during the March 2018, April 2018, and May 2018 pay periods.

Criteria: In accordance with California Code of Regulations, title 2, section 599.665, departments are responsible for maintaining accurate and timely leave accounting records for their employees. In an effort to

ensure departmental compliance, CalHR mandates that departments audit processes include the comparison of “what has been recorded in the leave accounting system as accrued/earned or used by each employee to their attendance record for the pay period” (CalHR Online Manual Section 2101). CalHR also directs departments to identify and record all leave errors found using a Leave Activity and Correction Certification form (Ibid.). Moreover, CalHR requires that departments certify that all leave records for the unit/pay period identified on the certification form be reviewed regardless of whether errors were identified.

Severity: Non-serious or Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: The CAC states that the DGS failed to complete the Leave Activity and Correction Certification forms for pay periods March 2018 through May 2018 for the three units reviewed. The DGS has implemented a monthly process for the CAC, effective October 2018, in which all leave usage on the Std. 634 is validated against the Leave Accounting & Balances reports (LAB) provided by SCO. This process ensures leave usage and leave earned is reported correctly and that CAC receives a copy of the LAB report with updated balances.

Action: The CAC must take appropriate steps to ensure that their monthly internal audit process was documented.

It is therefore recommended that no later than 60 days after the SPB’s Executive Officer’s approval of these findings and recommendations, the CAC must incorporate completion of Leave Activity and Correction Certification forms for all leave records reviewed even when errors are not identified or corrected.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to these policies. Overall, departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit (CalHR Online Manual Section 1204).

FINDING NO. 11 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The CAC does not maintain a current written nepotism policy.

Criteria: Departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit. (PML, "Statewide Guidance on Nepotism Policies," 2015-14)

Severity: Very Serious. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. The maintaining of a current written nepotism policy, and its dissemination to all staff, is the basis for achieving these ends.

Cause: The CAC states that it has had 100% turnover in operational staff. The current staff are new to state service and were unaware that this was a requirement.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CAC submit to the CRU a written corrective action plan that the department will implement to ensure conformity with PML 2015-14.

Workers' Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under Workers' Compensation Law. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

According to Labor Code section 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees. This is specific to the legally uninsured state departments participating in the Master Agreement. Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (SCIF) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments that have volunteers should have notified or updated their existing notification to the SCIF by April 1, 2015, whether or not they have decided to extend workers' compensation coverage to volunteers. In this case, CAC did not employ volunteers during the compliance review period.

FINDING NO. 12 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guideline

After reviewing the CAC's workers' compensation process that was in effect during the compliance review period, the CRU verified that when the CAC provides notice to their employees to inform them of their rights and responsibilities under CA Workers' Compensation Law. Furthermore, the CRU verified that when the CAC received worker's compensation claims, the CRU properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, departments must “prepare performance reports.” Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

The CRU selected four permanent CAC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines.

In reviewing the CAC performance appraisals policies and processes, the CRU determined the following:

FINDING NO. 13 – Performance Appraisals Were Not Provided to All Employees

Summary: The CAC did not provide performance appraisals to four of four employees reviewed at least once in each twelve calendar months after the completion of the employee’s probationary period.

Classification	Date Performance Appraisal(s) due
Associate Arts Grants Administrator	6/22/17
Graphic Designer II	3/13/17
Information Officer II	11/30/17
Supervising Arts Grants Administrator	7/26/17

Criteria: Departments are required to “prepare performance reports and keep them on file as prescribed by department rule” (Gov. Code § 19992.2). Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

Severity: Serious. The department does not ensure that all employees are apprised of work performance issues and/or goals in a fair and systematic manner.

Cause: The CAC states that it has had 100% turnover in operational staff. The current staff are new to state service and were unaware that this was a requirement. There was no tracking mechanism in place to ensure that all Supervisors and Managers complete probationary reports and performance evaluations on all staff.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CAC submit to the SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of any relevant documentation should be included with the plan.

DEPARTMENTAL RESPONSE

The CAC's Response is attached as Attachment 1.

SPB REPLY

Based upon the CAC's written response, the CAC will comply with the CRU recommendations and findings and provide the CRU with an action plan.

It is further recommended that the CAC comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

March 12, 2019

State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Subject: The California Arts Council response to the State Personnel Board Draft Compliance Report.

The California Arts Council has received the draft of the State Personnel Board's Compliance Review Report. The year's 2017 and 2018 were a time of transition. Our Executive Director retired in mid-2017. The Deputy Director stepped in as Interim Executive Director for 9 months until a new Executive Director was appointed in early 2018. Additionally, the agency has operated with increased funds every year but no increased position authority. The CAC recognizes the importance of compliance reviews and agrees with the SPB's findings and appreciates the opportunity to respond to the Draft Report. Below are the actions that the CAC will take to ensure compliance with the State of California's personnel practices.

Finding 1: Probationary Evaluations were not completed within 10 days of the Due Date

Summary: The CAC did not complete four probationary reports of performance within 10 days of the due date for two of the six appointments by the CRU.

Cause: The CAC is understaffed and does not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR. There was no tracking mechanism in place to ensure that all Supervisors and Managers complete probationary reports and performance evaluations on all staff.

Solution: A tracking mechanism has been established and reminders are sent to managers and supervisors.

Finding 2: An Equal Opportunity Policy was not issued

Summary: The CAC did not have an Equal Employment Opportunity Policy.

Cause: The CAC is understaffed and does not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR.

Solution: The CAC will draft and implement an Equal Employment Opportunity Policy by June 30, 2019.

Finding 3: A Disability Advisory Committee has not been established.

Summary: The CAC does not have an active DAC.

Cause: The CAC is understaffed and does not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR.

Solution: The CAC will explore the option of joining the Disability Advisory Committee at Department of General Services as part of our annual HR Services contract.

Finding 4: Written Justification was not provided for all personal services contracts.

Summary: The CAC did not provide written justification for four of five PSC's.

Cause: The CAC has had 100% turnover in operational staff. The current staff are new to state service and were unaware that this was a requirement.

Solution: The CAC has included this step in the department's Procurement policy.

Finding 5: Unions were not notified of Personal Services Contracts.

Summary: The CAC did not notify state employee unions prior to entering into five of five PCS's.

Cause: The CAC has had 100% turnover in operational staff. The current staff are new to state service and were unaware that this was a requirement.

Solution: The CAC has included this step in the department's Procurement policy.

Finding 6: Ethics Training was not provided for new filers

Summary: The CAC did not provide ethics training to one out of one new filer within six months of their appointment. The CAC did not have any existing filers.

Cause: Upon further research, it was determined that twenty-one positions that are currently designated as having a Conflict of Interest did not undergo Ethics training. The CAC is understaffed and does not have a position that is dedicated to Human Resources responsibilities not covered by the contract with DGS-HR.

Solution: The CAC is requiring all positions that are designated as Conflict of Interest to undergo Ethics training by April 1, 2019 before the annual Statement of Economic Interest renewal. A tracking mechanism has been established and reminders are sent to employees.

Finding 7: Sexual Harassment Prevention Training was not provided for All Supervisors.

Summary: The CAC did not provide sexual harassment prevention training to one of three new supervisors within six months of their appointment. In addition, the CAC did not provide sexual harassment prevention training to one of three existing supervisors every two year.

Cause: Information regarding the sexual harassment training was provided to supervisors within six months of their appointment and for existing supervisors. The non-compliant supervisors did not attend the Sexual Harassment training.

Solution: The non-compliant managers and supervisors will attend Sexual Harassment training by June 30, 2019.

Finding 10: Leave Activity and Correction certification forms were not completed for all Leave Records Reviewed.

Summary: The DGS administers the CAC's leave accounting services. On behalf of the CAC, the DGS provided documentation demonstrating that they currently administer an effective monthly internal audit process to verify that all leave input into their leave accounting system was keyed accurately and timely. After reviewing leave records over three pay periods, it was determined that the DGS correctly keyed all leave types accrued/earned or used and corrected any identified errors in the leave accounting system in a timely manner.

However, the DGS failed to provide completed Leave Activity and Correction Certification forms at the time of the review for all three units reviewed on behalf of CAC during the March 2018, April 2018, and May 2018 pay periods.

Cause: The Department of General Services (DGS) failed to complete the Leave Activity and Correction Certification forms for pay periods March 2018 through May 2018 for the three (3) units reviewed. The DGS has implemented a monthly process for CA Arts Council (CAC), effective October 2018, in which all leave usage on the Std. 634 is validated against the Leave Accounting & Balances reports (LAB) provided by SCO. This process ensures leave usage and leave earned is reported correctly and that CAC receives a copy of the LAB report with updated balances.

Solution: The Leave Activity and Correction Certification form(s) will be documented, filed, and maintained according to the retention schedule.

Finding 11: Department does not maintain a current written nepotism policy

Summary: The CAC does not maintain a current written nepotism policy

Cause: The CAC has had 100% turnover in operational staff. The current staff are new to state service and were unaware that this was a requirement.

Solution: The CAC will draft and implement an Equal Employment Opportunity Policy by June 30, 2019.

Finding 13: Performance Appraisals were not provided to all employees

Summary: The CAC did not provide performance appraisals to four of four employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period.

Cause: The CAC has had 100% turnover in operational staff. The current staff are new to state service and were unaware that this was a requirement. There was no tracking mechanism in place to ensure that all Supervisors and Managers complete probationary reports and performance evaluations on all staff.

Solution: The CAC requires all performance evaluations to be completed in January of each year. A tracking mechanism has been established and reminders are sent to managers and supervisors.

Sincerely,



Ayanna L. Kiburi
Deputy Director