



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF AGING

Compliance Review Unit
State Personnel Board
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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 authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) 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. 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 California Department of Aging (CDA) personnel practices in the areas of examinations, appointments, and EEO from April 1, 2013, through March 31, 2014. The CDA had no PSC's in effect during the compliance review period. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Law and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Appointments	Applications Were Not Date Stamped	Non-serious or Technical

Area	Finding	Severity
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established	Very Serious

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 CDA administers programs that serve older adults, adults with disabilities, family caregivers, and residents in long-term care facilities throughout the State of California. The CDA administers funds allocated under the Federal Older Americans Act, the Older Californians Act, and through the Medi-Cal program.

The CDA's mission is to promote the independence and well-being of older adults, adults with disabilities, and families through: access to information and services to improve the quality of their lives, opportunities for community involvement, and support for family members providing care.

CDA has approximately 104 employees in over 40 different classifications, reporting to either the Administration Division or Long-Term Care and Aging Services Division.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CDA examinations, appointments, EEO program, and PSC's from April 1, 2013, through March 31, 2014. The primary objective of the review was to determine if CDA personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

All CDA examinations and appointments were reviewed. The CRU examined the documentation the CDA provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria,

certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CDA EEO program included examining written EEO policies and procedures, the EEO officer's role, duties, and reporting relationship, the internal discrimination complaint process the upward mobility program, the reasonable accommodation program, the discrimination complaint process, and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CDA staff.

During the compliance review period, the CDA did not execute any PSC's; therefore, the CRU did not review any PSC's.

The draft compliance review report was sent to the CDA On May 28, 2015. On June 16, 2015, an exit conference was held with the CDA to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDA's written response, which is incorporated into this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications (MQ's) for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the MQ's. (*Ibid.*) Every applicant for examination shall file a formal signed application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the

examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CDA conducted eight examinations. The CRU reviewed all of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Accounting Officer (Specialist)	Departmental Promotional	Qualifications Appraisal Panel ¹ (QAP)	6/19/2013	10
Aging Programs Analyst II	Open	QAP	Continuous	25
Aging Programs Analyst II	Open	QAP	Continuous	53
Associate Information Systems Analyst (Specialist)	Department Promotional	Education and Experience ² (E&E)	12/02/2013	1
Business Service Officer I (Specialist)	Department Promotional	E&E	2/18/2014	2
General Auditor III	Department Promotional	QAP	3/13/2014	3
Office Technician (Typing)	Department Promotional	QAP	8/13/2013	27
Senior Accounting Officer (Supervisor)	Department Promotional	QAP	7/16/2013	3

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The CRU reviewed all eight of the examinations CDA administered to create eligible lists from which to make appointments. The CDA published and distributed examination bulletins containing the required information for all examinations. Applications received by the CDA were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the MQ’s for admittance to the examinations. The CDA notified applicants as to whether they qualified to take the

¹The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification..

² In an education and experience (E&E) examination, one or more raters reviews the applicants’ Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

examination, and those applicants who met the MQ's were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the CDA conducted during the compliance review period. Accordingly, the CDA fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

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 compliance review period, the CDA made 29 appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Aging Programs Analyst II	Certification List	Limited Term	Full Time	1
Aging Programs Analyst II	Certification List	Permanent	Full Time	2
Associate Information Systems Analyst	Certification List	Permanent	Full Time	1
Auditor I	Certification List	Permanent	Full Time	2
General Auditor II	Certification List	Permanent	Full Time	2
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Public Health Nutrition Consultant III (Specialist)	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Research Analyst II	Certification List	Permanent	Full Time	1
Senior Accounting Officer (Supervisor)	Certification List	Limited Term	Full Time	1
Senior Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Mandatory Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Permissive Reinstatement	Permanent	Part Time	1
Nurse Evaluator II	Permissive Reinstatement	Intermittent	Unknown	1
Aging Programs Analyst II	Reduction in Time Base	Permanent	Part Time	1
General Auditor III	Retired Annuitant	Intermittent	Part Time	1
Health Program Specialist I	Retired Annuitant	Intermittent	Part Time	1
Senior Accounting Officer (Specialist)	Retired Annuitant	Intermittent	Part Time	1
Associate Governmental Program Analyst	Training and Development	Permanent	Full Time	1
Accounting Administrator I	Transfer	Permanent	Full Time	1
Aging Programs Analyst II	Transfer	Permanent	Full Time	1
Associate Administrative Analyst (Accounting Systems)	Transfer	Limited Term	Part Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary:

Out of 29 appointments reviewed, 4 appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 8 of the 1,001 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application, for the Auditor I, Aging Program Analyst II, Associate Governmental Program Analyst, and Staff Services Manager I job recruitments.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The CDA states that EEO questionnaires were not separated from the applications due to oversight, and the result of multiple Human Resources (HR) staff handling the influx of the large volume of applications received.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDA submit to the CRU a written corrective action plan that the department will implement to ensure that future EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The CDA did not prepare, complete, and/or retain required probationary reports of performance for 10 of the 29 appointments reviewed by CRU, as reflected in the table below.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Accountant I (Specialist)	Certification List	1	1
Aging Programs Analyst II	Certification List	2	3
Auditor I	Certification List	1	1
General Auditor II	Certification List	2	6
Public Health Nutrition Consultant III (Specialist)	Certification List	1	3
Research Analyst II	Certification List	1	1
Senior Programmer Analyst (Specialist)	Certification List	1	2
Staff Information Systems Analyst (Specialist)	Certification List	1	2
Total		10	19

Criteria:

A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

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 CDA states that due to recent turnover in management staff and lack of training, probationary reports were not completed or not completed timely.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDA submit to the CRU a written corrective action plan that addresses how the CDA will ensure full compliance from supervisory/managerial staff to meet with the probationary requirements of Government Code § 19172.

FINDING NO. 4 – Applications Were Not Date Stamped

Summary: The CDA accepted and processed 1,326 applications that were not postmarked and/or not date stamped.

Criteria: California Code of Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the SPB offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or

before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, subs. (a), (b), (c), & (d).

These same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

Cause: The CDA states that the applications were accepted but not postmarked and/or date stamped because they typically recruit for vacant positions for 10 days/until filled in order to maximize the applicant pool.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDA submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

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 equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with CalHR 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.) In a state agency with less than 500 employees, like CDA, the EEO Officer may be the Personnel Officer. (*Ibid.*)

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).)

The CRU reviewed the CDA EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate CDA staff.

FINDING NO. 5 – A Disability Advisory Committee Has Not Been Established

Summary: The CDA does not have an active DAC.

During the CRU's baseline compliance review it was discovered that the CDA did not have an active DAC. The baseline compliance review report dated March 4, 2013, directed the CDA to establish a DAC no later than 60 days after the Board's Resolution adopting the findings and recommendations. However, during this compliance review it was found that the CDA still has not established 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 CDA states that the EEO Officer attempted to establish a DAC in May 2014, by sending an all-staff email to recruit volunteer participation, but was unsuccessful in gaining any interest.
- Action:** The CDA must take immediate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The CDA 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's Executive Officer's approval of these findings and recommendations. Since this is the second violation, failure to provide evidence of a DAC within 60 days could result in CDA executive management being called before the Board.

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 Reg., 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 the 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.)

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

During the compliance review period, the CDA did not execute any PSCs; therefore, the CRU did not review any PSCs.

DEPARTMENTAL RESPONSE

FINDING NO. 2

The CDA acknowledges that four appointment files included applications with EEO questionnaires still attached to the Examination/Employment Application (STD 678). The CDA now has a procedure in place as part of its recruitment process that requires the removal of the EEO questionnaires prior to forwarding applications to the hiring manager. HR staff has reviewed this process as a refresher and are now efficiently removing the EEO questionnaires from all applications received.

FINDING NO. 3

The CDA acknowledges that a Report of Performance for Probationary Employee (STD 636) was not completed and retained for the 10 appointments identified. All CDA managers receive a new hire package from HR upon appointment of new employees. Included in the package, when applicable, is the online link to the STD 636 form and the due dates of the new employee's probationary period. The CDA managers have recently been notified by the Director that completion of probationary reports is mandatory and the CDA will soon have a written policy stating this. HR has also developed a tracking system to be able to monitor whether reports have been completed or not and will notify management accordingly.

FINDING NO. 4

The CDA acknowledges that applications for job vacancies were accepted but not postmarked and/or date stamped. CDA typically recruits for a vacant position for 10

days/until filled in order to maximize the applicant pool. All applications are accepted and forwarded to the hiring manager for screening based on developed criteria. Although we use the "until filled" option, HR staff is now ensuring there is a date stamp on all applications received prior to forwarding to the hiring manager.

FINDING NO. 5

The CDA acknowledges that, while we do not have a formal DAC in place yet, the EEO Officer is committed to advising the CDA Director on any issues of concern to employees with disabilities and continuing to ensure persons with disabilities are not underrepresented at the CDA, as stated in Government Code Section 19795(b). The EEO Officer attempted to establish a DAC in May 2014, by sending an all-staff email to recruit volunteer participation, but was unsuccessful in gaining any interest.

The CDA recognizes the importance of providing a safe and accessible work environment and being in compliance with state and federal laws and regulations, including the Americans with Disabilities Act. Although the DAC has not yet been formalized, the CDA recently reached out to department staff for volunteers to participate on the DAC. On June 4, 2015, a request for volunteers to serve on the committee was issued to all employees, and we have already received several interested responses for participation this time around.

The CDA continually strives to ensure that accessibility issues are addressed, such as installing automatic door openers and addressing reasonable accommodation requests in a timely fashion. The CDA responses include meeting with employees to ensure opportunities for an interactive dialogue. This effort is supported statistically as evidenced in the CDA's 2014 Workforce Analysis which shows a disability parity of 31.6% for the CDA. The CDA's disability parity rate remains much higher than the state disability parity rate of 16.6%, which all State departments are encouraged to meet at a minimum.

The CDA prides itself on being proactive regarding all accessibility issues and ensures EEO for all. Even in the absence of a formal DAC, the CDA believes there is no adverse impact to persons with disabilities; however, as stated above, we are in the process of developing timelines to create and establish the CDA's DAC.

SPB REPLY

Based upon the CDA's written response, the CDA will comply with the CRU recommendations and findings and provide the CRU with a corrective action plan.

It is further recommended that the CDA 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.