



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**

Compliance Review Unit  
State Personnel Board  
January 26, 2018

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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 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. 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 Corrections and Rehabilitation (CDCR) personnel practices in the areas of examinations, appointments, EEO, and PSC's from September 15, 2016, through February 15, 2017, and mandated training from April 15, 2015, through April 15, 2017. The following table summarizes the compliance review findings.

| Area         | Finding  | Severity      |
|--------------|--|---------------|
| Examinations | Examinations Complied with Civil Service Laws 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       |

| Area                         | Finding   | Severity      |
|------------------------------|---|---------------|
| Equal Employment Opportunity | A Written Upward Mobility Plan Has Not Been Established                                 | Very Serious  |
| Equal Employment Opportunity | Equal Employment Opportunity Officer Does Not Report Directly to the Head of the Agency | Very Serious  |
| Personal Services Contracts  | Personal Services Contracts Complied with Procedural Requirements                       | In Compliance |
| Mandated Training            | Ethics Training Was Not Provided for All Filers   | Very Serious  |
| Mandated Training            | Supervisory Training Was Not Provided for All Supervisors                               | Very Serious  |
| Mandated Training            | Sexual Harassment Prevention Training Was Not Provided for All Supervisors              | 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 CDCR protects the public from crime and victimization, upholding values in service, leadership, integrity, accountability, respect, trust, and collaboration. The mission of the CDCR is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

The CDCR employs civil servants who work in a variety of divisions and offices including Administration, Board of Parole Hearings, Offices of the Secretary, Adult Institutions, and Juvenile Facilities. Examples of employment classifications within the CDCR include Correctional Officers, Parole Agents, and Administrative staff. Throughout California, there are 35 adult institutions and four juvenile facilities ranging from minimum to maximum security custody. The CDCR currently has approximately 60,000 employees, of which approximately 35,000 are Peace Officers.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CDCR examinations, appointments, EEO program, and PSC's from September 15, 2016, through February 15, 2017, and mandated training from April 15, 2015, through April 15, 2017. The primary objective of the review was to determine if the CDCR personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of the CDCR examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CDCR provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) 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 CDCR 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).

CDCR PSC's were also reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether CDCR justifications for the contracts were legally sufficient. The review was limited to whether CDCR practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the CDCR 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 and sexual harassment prevention training within statutory timelines.

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<sup>1</sup>If 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.

On December 19, 2017, an exit conference was held with the CDCR to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDCR written response on January 19, 2018, which is attached to 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 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 minimum qualifications. (*Ibid.*) Every applicant for examination shall file an 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 CDCR conducted 70 examinations. The CRU reviewed 23 of those examinations, which are listed below:

| Classification  | Exam Type                         | Exam Components                                | Final File Date | No. of Apps |
|---|-----------------------------------|--|-----------------|-------------|
| Associate Director, Budget Management Branch, Division of Administrative Services | Career Executive Assignment (CEA) | Statement of Qualifications (SOQ) <sup>2</sup> | 7/15/2016       | 7           |

<sup>2</sup> In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

| Classification  | Exam Type                | Exam Components                            | Final File Date | No. of Apps |
|---|--------------------------|--|-----------------|-------------|
| Casework Specialist, Youth Authority                  | Open                     | Training and Experience (T&E) <sup>3</sup> | 11/4/2016       | 48          |
| Chief Deputy Administrator, Correctional Program, CEA | CEA                      | SOQ  | 6/30/2016       | 30          |
| Chief Deputy Administrator, Correctional Program, CEA | CEA                      | SOQ  | 1/7/2016        | 30          |
| Chief Deputy Administrator, Correctional Program, CEA | CEA                      | SOQ  | Continuous      | 12          |
| Chief Deputy Administrator, Correctional Program, CEA | CEA                      | SOQ  | Until Filled    | 30          |
| Chief, Office of Workforce Planning, Human Resources  | CEA                      | SOQ  | 12/28/2016      | 4           |
| Correctional Case Records Administrator               | Departmental Promotional | Qualification Appraisal Panel <sup>4</sup> | 9/30/2016       | 58          |
| Correctional Case Records Analyst                     | Departmental Promotional | Written <sup>5</sup>                       | 10/28/2016      | 459         |
| Deputy Director, Human Resources, CEA                 | CEA                      | SOQ  | 10/24/2016      | 6           |
| Native American Spiritual Leader                      | Open                     | Education and Experience <sup>6</sup>      | Continuous      | 7           |

<sup>3</sup> The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

<sup>4</sup> The 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.

<sup>5</sup> A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

<sup>6</sup> In an education and experience 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.

| Classification   | Exam Type | Exam Components | Final File Date | No. of Apps |
|--|-----------|-----------------|-----------------|-------------|
| Office of the Ombudsman, CEA   | CEA       | SOQ             | 10/21/2015      | 32          |
| Prison Canteen Manager I/II  | Open      | T&E             | 12/16/2016      | 210         |
| School Psychologist  | Open      | T&E             | Continuous      | 0           |
| Special Assistant to the Undersecretary, Administration & Offender Services, CEA | CEA       | SOQ             | 10/14/2016      | 14          |
| Special Assistant to the Undersecretary, Operations, CEA                         | CEA       | SOQ             | 11/2/2016       | 9           |
| Vocational Instructor, Autobody and Fender Repair                                | Open      | T&E             | Continuous      | 10          |
| Vocational Instructor, Building Maintenance                                      | Open      | T&E             | Continuous      | 6           |
| Vocational Instructor, Computer and Related Technologies                         | Open      | T&E             | Continuous      | 15          |
| Vocational Instructor, Culinary Arts   | Open      | T&E             | Continuous      | 2           |
| Vocational Instructor, Masonry   | Open      | T&E             | Continuous      | 1           |
| Vocational Instructor, Refrigeration and Air Conditioning Repair                 | Open      | T&E             | Continuous      | 4           |
| Water and Sewage Plant Supervisor  | Open      | T&E             | Continuous      | 11          |



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

The CRU reviewed two departmental promotional, 10 CEA, and 11 open examinations, which the CDCR administered in order to create eligible lists from which to make appointments. The CDCR published and distributed examination bulletins containing the required information for all examinations. Applications received by the CDCR were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examinations. The CDCR notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications 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 CDCR conducted during the compliance review period. Accordingly, the CDCR 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 CDCR made 5,031 appointments. The CRU reviewed 251 of those appointments, which are listed below:

| Classification  | Appointment Type | Tenure    | Time Base | No. of Appts |
|---|------------------|-----------|-----------|--------------|
| Administrative Law Judge II, Board of Parole Hearings | List Appointment | Permanent | Full Time | 1            |

| Classification  | Appointment Type | Tenure       | Time Base    | No. of Appts |
|---|------------------|--------------|--------------|--------------|
| Assistant Chief Counsel                                     | List Appointment | Permanent    | Full Time    | 3            |
| Assistant Correctional Food Manager                         | List Appointment | Permanent    | Full Time    | 4            |
| Assistant Correctional Food Manager                         | List Appointment | Limited Term | Full Time    | 1            |
| Associate Governmental Program Analyst                      | List Appointment | Permanent    | Full Time    | 3            |
| Associate Governmental Program Analyst                      | List Appointment | Limited Term | Full Time    | 1            |
| Captain (Adult Institution)                                 | List Appointment | Permanent    | Full Time    | 2            |
| Captain (Adult Institution)                                 | List Appointment | Limited Term | Full Time    | 1            |
| Catholic Chaplain   | List Appointment | Permanent    | Full Time    | 1            |
| Chief of Mobile Equipment Operations                        | List Appointment | Permanent    | Full Time    | 1            |
| Community Resources Manager, Correctional Institution       | List Appointment | Permanent    | Full Time    | 2            |
| Construction Supervisor III, Correctional Facility          | List Appointment | Permanent    | Full Time    | 1            |
| Correctional Business Manager I                             | List Appointment | Permanent    | Full Time    | 4            |
| Correctional Business Manager I                             | List Appointment | Limited Term | Full Time    | 1            |
| Correctional Business Manager II, Department of Corrections | List Appointment | Permanent    | Full Time    | 1            |
| Correctional Case Records Manager                           | List Appointment | Permanent    | Full Time    | 2            |
| Correctional Lieutenant                                     | List Appointment | Permanent    | Full Time    | 4            |
| Correctional Officer  | List Appointment | Permanent    | Intermittent | 1            |
| Correctional Plant Manager I                                | List Appointment | Permanent    | Full Time    | 1            |
| Correctional Plant Supervisor                               | List Appointment | Permanent    | Full Time    | 1            |
| Correctional Sergeant                                       | List Appointment | Permanent    | Full Time    | 6            |
| Correctional Sergeant                                       | List Appointment | Limited Term | Full Time    | 2            |

| Classification                                       | Appointment Type | Tenure       | Time Base | No. of Appts |
|--|------------------|--------------|-----------|--------------|
| Departmental Construction and Maintenance Supervisor | List Appointment | Permanent    | Full Time | 1            |
| Electronics Technician                               | List Appointment | Permanent    | Full Time | 1            |
| Hazardous Materials Specialist                       | List Appointment | Permanent    | Full Time | 1            |
| Labor Relations Manager I                            | List Appointment | Permanent    | Full Time | 1            |
| Legal Secretary                                      | List Appointment | Permanent    | Full Time | 3            |
| Office Assistant (General)                           | List Appointment | Permanent    | Full Time | 3            |
| Office Services Supervisor I (Typing)                | List Appointment | Permanent    | Full Time | 1            |
| Parole Administrator I, Adult Parole                 | List Appointment | Permanent    | Full Time | 2            |
| Parole Agent II, Adult Parole (Specialist)           | List Appointment | Permanent    | Full Time | 7            |
| Parole Agent II, Adult Parole (Supervisor)           | List Appointment | Permanent    | Full Time | 2            |
| Parole Agent II, Adult Parole (Supervisor)           | List Appointment | Limited Term | Full Time | 1            |
| Personnel Supervisor II                              | List Appointment | Permanent    | Full Time | 4            |
| Personnel Supervisor II                              | List Appointment | Limited Term | Full Time | 2            |
| Plumber II   | List Appointment | Permanent    | Full Time | 2            |
| Prison Canteen Manager I                             | List Appointment | Permanent    | Full Time | 2            |
| Project Director III                                 | List Appointment | Permanent    | Full Time | 1            |
| Protestant Chaplain                                  | List Appointment | Permanent    | Full Time | 2            |
| Senior Accounting Officer (Supervisor)               | List Appointment | Permanent    | Full Time | 4            |
| Senior Architect                                     | List Appointment | Permanent    | Full Time | 1            |
| Senior Information Systems Analyst                   | List Appointment | Permanent    | Full Time | 1            |
| Senior Librarian, Correctional Facility              | List Appointment | Permanent    | Full Time | 4            |
| Senior Management Auditor                            | List Appointment | Permanent    | Full Time | 1            |
| Senior Special Agent                                 | List Appointment | Permanent    | Full Time | 2            |
| Special Agent in Charge, Department of Corrections   | List Appointment | Permanent    | Full Time | 2            |
| Special Agent, Department of Corrections             | List Appointment | Permanent    | Full Time | 5            |

| Classification   | Appointment Type        | Tenure       | Time Base | No. of Appts |
|--|-------------------------|--------------|-----------|--------------|
| Staff Services Analyst (General)   | List Appointment        | Permanent    | Full Time | 3            |
| Staff Services Analyst (General)   | List Appointment        | Limited Term | Full Time | 1            |
| Staff Services Manager I   | List Appointment        | Permanent    | Full Time | 3            |
| Staff Services Manager I   | List Appointment        | Permanent    | Full Time | 1            |
| Staff Services Manager II (Supervisory)  | List Appointment        | Permanent    | Full Time | 4            |
| Supervisor of Academic Instruction, Correctional Facility                                | List Appointment        | Permanent    | Full Time | 4            |
| Systems Software Specialist I (Technical)  | List Appointment        | Permanent    | Full Time | 2            |
| Systems Software Specialist II (Supervisory)   | List Appointment        | Permanent    | Full Time | 2            |
| Systems Software Specialist III (Technical)  | List Appointment        | Permanent    | Full Time | 1            |
| Teaching Assistant, Correctional Facility  | List Appointment        | Permanent    | Full Time | 1            |
| Television Specialist  | List Appointment        | Permanent    | Full Time | 2            |
| Vocational Instructor (Computer and Related Technologies) (Correctional Facility)        | List Appointment        | Permanent    | Full Time | 1            |
| Vocational Instructor (Office Services and Related Technologies) (Correctional Facility) | List Appointment        | Permanent    | Full Time | 2            |
| Vocational Instructor (Office Services and Related Technologies) (Correctional Facility) | List Appointment        | Limited Term | Full Time | 1            |
| Vocational Instructor (Small Engine Repair)  | List Appointment        | Permanent    | Full Time | 1            |
| Water and Sewage Plant, Supervisor   | List Appointment        | Permanent    | Full Time | 1            |
| Accounting Officer (Specialist)  | Mandatory Reinstatement | Permanent    | Full Time | 1            |
| Associate Estimator of Building Construction   | Mandatory Reinstatement | Permanent    | Full Time | 1            |
| Associate Hazardous Materials Specialist   | Mandatory Reinstatement | Permanent    | Full Time | 1            |

| Classification  | Appointment Type         | Tenure       | Time Base | No. of Appts |
|---|--------------------------|--------------|-----------|--------------|
| Attorney IV   | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Correctional Administrator, Department of Corrections                     | Mandatory Reinstatement  | Permanent    | Full Time | 3            |
| Correctional Officer  | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Correctional Plant Manager II   | Mandatory Reinstatement  | Permanent    | Full Time | 2            |
| Electrician II  | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Heavy Equipment Mechanic, Correctional Facility                           | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Locksmith I   | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Native American Spiritual Leader  | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Parole Service Associate  | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Parole Service Associate  | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Personnel Supervisor I  | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Property Controller II  | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Staff Services Manager II (Supervisory)                                   | Mandatory Reinstatement  | Permanent    | Full Time | 1            |
| Teacher, Emotionally Learning/Handicapped, Correctional Facility          | Mandatory Reinstatement  | Permanent    | Full Time | 2            |
| Vocational Instructor, Auto Body and Fender Repair, Correctional Facility | Mandatory Reinstatement  | Permanent    | Full Time | 2            |
| Case Records Technician   | Permissive Reinstatement | Permanent    | Full Time | 1            |
| Chief Engineer I (Correctional Facility)                                  | Permissive Reinstatement | Permanent    | Full Time | 1            |
| Correctional Counselor I  | Permissive Reinstatement | Permanent    | Full Time | 1            |
| Correctional Counselor I  | Permissive Reinstatement | Limited Term | Full Time | 1            |

| Classification   | Appointment Type                          | Tenure       | Time Base    | No. of Appts |
|--|---|--------------|--------------|--------------|
| Materials and Stores Supervisor I, Correctional Facility                               | Permissive Reinstatement                  | Permanent    | Full Time    | 2            |
| Materials and Stores Supervisor I, Correctional Facility                               | Permissive Reinstatement                  | Limited Term | Full Time    | 1            |
| Office Technician (Typing)   | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Self-Help Sponsor (Part-Time)  | Permissive Reinstatement                  | Limited Term | Intermittent | 1            |
| Staff Services Analyst (General)   | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Staff Services Manager I   | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Substitute Academic Teacher  | Permissive Reinstatement                  | Temporary    | Intermittent | 1            |
| Teacher, Elementary - Multiple Subjects, Correctional Facility                         | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Teacher, High School - General Education, Correctional Facility                        | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Teaching Assistant, Correctional Facility  | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Vocational Instructor, Auto Mechanics, Correctional Facility                           | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Vocational Instructor, Office Services and Related Technologies, Correctional Facility | Permissive Reinstatement                  | Permanent    | Full Time    | 1            |
| Associate Governmental Program Analyst   | Retired Annuitant                         | Limited Term | Intermittent | 1            |
| Skilled Trades Journeyperson, Casual Employment, Laborer                               | Retired Annuitant                         | Limited Term | Intermittent | 1            |
| Special Consultant   | Retired Annuitant                         | Limited Term | Intermittent | 1            |
| Seasonal Clerk   | TAU (Temporary Authorization Utilization) | Temporary    | Intermittent | 4            |
| Self-Help Sponsor  | TAU                                       | Temporary    | Intermittent | 5            |

| Classification   | Appointment Type | Tenure       | Time Base    | No. of Appts |
|--|------------------|--------------|--------------|--------------|
| Skill Trades Apprentice, Casual Employment, Plumber      | TAU              | Temporary    | Intermittent | 2            |
| Skill Trades Journeyman, Casual Employment, Metal Trades | TAU              | Temporary    | Intermittent | 3            |
| Skill Trades Journeyman, Casual Employment, Plasterer    | TAU              | Temporary    | Intermittent | 1            |
| Skill Trades Journeyman, Casual Employment, Steamfitter  | TAU              | Temporary    | Intermittent | 1            |
| Skill Trades Supervisor, Casual Employment, Laborer      | TAU              | Temporary    | Intermittent | 3            |
| Student Assistant  | TAU              | Temporary    | Intermittent | 3            |
| Substitute Academic Teacher                              | TAU              | Temporary    | Intermittent | 5            |
| Office Assistant (Typing)                                | TAU - LEAP       | Temporary    | Full Time    | 1            |
| Office Technician (Typing)                               | TAU - LEAP       | Temporary    | Full Time    | 4            |
| Administrative Law Judge I, Board of Parole Hearings     | Transfer         | Permanent    | Full Time    | 2            |
| Associate Accounting Analyst                             | Transfer         | Permanent    | Full Time    | 1            |
| Associate Governmental Program Analyst                   | Transfer         | Permanent    | Full Time    | 1            |
| Associate Personnel Analyst                              | Transfer         | Permanent    | Full Time    | 1            |
| Business Service Officer I (Specialist)                  | Transfer         | Permanent    | Full Time    | 1            |
| Case Records Technician                                  | Transfer         | Permanent    | Full Time    | 2            |
| Correctional Administrator, Department of Corrections    | Transfer         | Limited Term | Full Time    | 1            |
| Correctional Counselor II (Specialist)                   | Transfer         | Permanent    | Full Time    | 1            |
| Correctional Counselor III                               | Transfer         | Permanent    | Full Time    | 1            |
| Correctional Officer                                     | Transfer         | Permanent    | Full Time    | 6            |
| Fire Captain, Correctional Institution                   | Transfer         | Permanent    | Full Time    | 1            |

| Classification   | Appointment Type | Tenure       | Time Base    | No. of Appts |
|--|------------------|--------------|--------------|--------------|
| Groundskeeper  | Transfer         | Permanent    | Full Time    | 1            |
| Library Technical Assistant (Safety)   | Transfer         | Permanent    | Full Time    | 1            |
| Locksmith I (Correctional Facility)  | Transfer         | Permanent    | Full Time    | 1            |
| Office Assistant (General)   | Transfer         | Permanent    | Full Time    | 2            |
| Parole Agent II, Adult Parole (Specialist)   | Transfer         | Permanent    | Full Time    | 1            |
| Parole Service Associate   | Transfer         | Permanent    | Full Time    | 1            |
| Plumber II, Correctional Facility  | Transfer         | Permanent    | Full Time    | 2            |
| Prison Canteen Manager II  | Transfer         | Permanent    | Full Time    | 1            |
| Program Technician II  | Transfer         | Permanent    | Full Time    | 1            |
| Self-Help Sponsor (Part-Time)  | Transfer         | Limited Term | Intermittent | 2            |
| Special Agent, Department of Corrections   | Transfer         | Permanent    | Full Time    | 2            |
| Staff Services Analyst (General)   | Transfer         | Permanent    | Full Time    | 6            |
| Staff Services Analyst (General)   | Transfer         | Limited Term | Full Time    | 1            |
| Stationary Engineer  | Transfer         | Temporary    | Intermittent | 1            |
| Supervising Correctional Cook, Department of Corrections                               | Transfer         | Permanent    | Full Time    | 1            |
| Supervising Groundskeeper II, Correctional Facility                                    | Transfer         | Permanent    | Full Time    | 1            |
| Vocational Instructor, Building Maintenance, Correctional Facility                     | Transfer         | Permanent    | Full Time    | 1            |
| Vocational Instructor, Office Services and Related Technologies, Correctional Facility | Transfer         | Permanent    | Full Time    | 1            |
| Water and Sewage Plant Supervisor  | Transfer         | Permanent    | Full Time    | 1            |

For each of the 130 list appointments the CDCR properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, and cleared the



certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The CDCR made 23 appointments via mandatory reinstatement. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*) The CDCR complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed three retired annuitant appointments. The individuals submitted their applications and were eligible to be hired as retired annuitants, not to exceed 960 hours in a fiscal year.

The CRU reviewed 32 TAU appointments. When there is no employment list from which a position maybe filled, the appointing power, with the consent of the department, may fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The CDCR complied with the rules and laws governing TAU appointments.

The CRU reviewed 46 CDCR appointments made via transfer and 17 appointments made via permissive reinstatement. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the Executive Officer. (Cal. Code Reg., tit. 2, § 425.) The CDCR verified the eligibility of each candidate to their appointed class.

However, the CDCR failed to remove the EEO questionnaires from applications on 144 occasions as described in finding two. Additionally, the CDCR did not provide probation evaluations for all appointments reviewed as described in finding three.

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

**Summary:** The CDCR did not separate 144 EEO questionnaires from their respective applications.

**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, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). 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 CDCR states that due to the high volume of applications received and human error, EEO questionnaires were inadvertently not removed from 144 (4.6 percent) of the approximately 3,100 applications reviewed during the audit period.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDCR submit to the CRU a written corrective action plan that the department will implement to ensure that 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 CDCR did not provide 25 probationary reports of performance for 23 of the 251 appointments reviewed by the CRU, as reflected in the table below.

| Classification  | Appointment Type | Number of Appointments Missing Probation Reports | Total Number of Missing Probation Reports |
|---|------------------|--|---|
| Assistant Chief Counsel                               | List Appointment | 1  | 1   |
| Associate Governmental Program Analyst                | Transfer         | 1  | 1   |
| Business Service Officer I (Specialist)               | Transfer         | 1  | 1   |
| Community Resources Manager, Correctional Institution | List Appointment | 1  | 1   |
| Correctional Counselor I                              | Transfer         | 1  | 1   |
| Correctional Sergeant                                 | List Appointment | 1  | 1   |
| Electronics Technician                                | List Appointment | 1  | 2   |
| Legal Secretary                                       | List Appointment | 1  | 1   |
| Office Assistant (General)                            | Transfer         | 1  | 1   |
| Office Services Supervisor I (Typing)                 | List Appointment | 1  | 1   |
| Parole Agent II, Adult Parole (Specialist)            | List Appointment | 2  | 2   |
| Parole Agent II, Adult Parole (Supervisor)            | List Appointment | 2  | 2   |
| Protestant Chaplain                                   | List Appointment | 1  | 1   |
| Senior Special Agent, Department of Corrections       | List Appointment | 1  | 1   |
| Staff Services Manager I                              | List Appointment | 1  | 1   |
| Supervising Groundskeeper II, Correctional Facility   | Transfer         | 1  | 1   |
| Teaching Assistant, Correctional Facility             | List Appointment | 1  | 2   |

| Classification   | Appointment Type | Number of Appointments Missing Probation Reports | Total Number of Missing Probation Reports |
|--|------------------|--|---|
| Television Specialist  | List Appointment | 2  | 2   |
| Vocational Instructor, Building Maintenance, Correctional Facility | Transfer         | 1  | 1   |
| Water and Sewage Plant Supervisor                                  | List Appointment | 1  | 1   |
| Total  |                  | 23   | 25  |

**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 CalHR 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 CDCR states that they do not have a central tracking system to monitor the completion of probationary reports; however, they are currently reviewing options to create an electronic central system of record.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDCR submit to the CRU 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. 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 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).)

The CRU reviewed the CDCR EEO program that was in effect during the compliance review period.

## FINDING NO. 4 – A Written Upward Mobility Plan Has Not Been Established

**Summary:** The CDCR did not have a written upward mobility plan at the time of the compliance review.

**Criteria:** Each appointing authority shall develop and maintain a written upward mobility plan as specified in the SPB “Guidelines for Administering Departmental Upward Mobility Employment Programs,” revised July 25, 2000.

The plan shall include: (a) A policy statement regarding the appointing authority's commitment to providing equal upward mobility opportunity for its employees in low-paying occupations. (b) A description of the components of its program consistent with Government Code section 19401, how employees may access the program, and where information about the program may be obtained. (c) The roles and responsibilities of the employee, the employee's supervisor, the coordinator, the personnel office, the training office, and the equal employment opportunity office regarding the mobility program. (d) Criteria for selecting employees in low-paying occupations to participate in the upward mobility efforts described in Government Code section 19401. (e) The number of employees in classifications in low-paying occupations used by the appointing authority; career ladders, bridging classes, and entry technical, professional, and administrative classes targeted for upward mobility; and planned upward mobility examinations. (Cal. Code Regs., tit. 2, § 599.983.)

**Severity:** Serious. The department did not have a plan to ensure it has an effective upward mobility program to develop and advance employees in low-paying occupations.

**Cause:** The CDCR states that during the audit period their Upward Mobility Unit did not have a central database and the unit was decentralized.

**Action:** It is recommended that within 60 days of the Executive Officer's approval, the CDCR must submit to the CRU a written corrective action plan that the department will implement to ensure conformity

with upward mobility requirements of Government Code section 19401. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 5 – Equal Employment Opportunity Officer Does Not Report Directly to the Head of the Agency**

**Summary:** The CDCR EEO Officer is supervised by the Deputy Director of the Office of Internal Affairs, which is three reporting levels below the Secretary of CDCR. The CDCR’s DOM Chapter 3, Article 1 provides that “the Chief of the Civil Rights Office shall serve as the department’s EEO Officer. As needed, the Chief, CRO reports to the CDCR Secretary on matters related to EEO.” While the CDCR DOM provides that the EEO Officer reports to the Secretary on EEO matters, our review revealed limited communications between the Secretary and EEO Officer during the compliance review period.

**Criteria:** 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.)

**Severity:** Very Serious. Not only is the EEO Officer not directly supervised by the Secretary, but there was no meaningful reporting relationship on EEO matters. To have an effective EEO program, the head of the organization must be actively involved.

**Cause:** According to the CDCR and the Department Operations Manual, Chapter 3, Article 1, the EEO Officer reports to the CDCR Secretary on matters related to EEO “as needed”, however the CDCR did not have a formalized process or structure to ensure that the Secretary is informed of and engaged on EEO matters affecting the organization. As a result, the compliance review revealed only one direct contact between the EEO Officer and the Secretary within a three-year period. While it is reasonable to have the EEO Officer reporting to a lower level manager on operational matters in

an organization the size of CDCR, there should be direct reporting to the Secretary on EEO matters.

**Action:** It is recommended that within 120 days of the Executive Officer's approval of these findings and recommendations, the CDCR submit to the CRU written verification of a formal structure that ensures that the EEO Officer directly reports to the Secretary on EEO matters in order to ensure conformity with the requirements of Government Code section 19795.

### **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 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 compliance review period, the CDCR had one PSC that was in effect and subject to the Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed one contract, which is listed below:

| Vendor            | Services         | Contract Dates        | Contract Amount | Justification Identified? |
|-------------------|------------------|-----------------------|-----------------|---------------------------|
| Downey Brand, LLP | Legal Consultant | 7/1/2016 to 6/30/2019 | \$193,765       | Yes                       |



**FINDING NO. 6 – Personal Services Contracts Complied with Procedural Requirements**

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.)

It was beyond the scope of the review to make conclusions as to whether the CDCR justification for the contract was legally sufficient. The CDCR provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CDCR PSC complied with civil service laws and board rules.

**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).) 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 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 CDCR's mandated training program that was in effect during the compliance review period.

### **FINDING NO. 7 – Ethics Training Was Not Provided for All Filers**

**Summary:** The CDCR did not provide ethics training to 3,326 of 3,504 existing filers. In addition, the CDCR did not provide ethics training to 430 of 734 new filers within six months of their appointment.

**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 CDCR states that they send direction annually to all Conflict of Interest (COI) filers notifying them of their responsibility to complete ethics training. However, they do not currently have a written

directive to training coordinators, COI liaisons, or personnel offices outlining responsibilities to track and upload into CDCR's training tracking system.

**Action:** The CDCR 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 CDCR 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. 8 – Supervisory Training Was Not Provided for All Supervisors**

**Summary:** The CDCR did not provide basic supervisory training to 323 of 1,333 new supervisors within twelve months of appointment.

**Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a CEA position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (e).)

**Severity:** Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

**Cause:** The CDCR states that the majority of the supervisors found to be out of compliance were Correctional Sergeants, who had a vacancy rate of approximately 26 percent during the SPB audit period. This vacancy ratio prevented institutions from being able to send staff to basic supervisory training as it would have caused unfunded overtime and staffing shortages. Compounding this problem was the rate at which appointments occurred within the department, as well as the training unit's workload capacity, class size, and staffing restrictions.

**Action:** The CDCR must take appropriate steps to ensure that new supervisors are provided supervisory training within twelve months of appointment. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CDCR must submit a written corrective action plan to ensure compliance with basic supervisory training mandates. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 9 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

**Summary:** The CDCR did not provide sexual harassment prevention training to 101 of 1,333 new supervisors within six months of their appointment. In addition, the CDCR did not provide sexual harassment prevention training to 581 of 7,395 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 CDCR states that the last coordinated supervisory training occurred in 2016, at which time all supervisors who were not on long-term sick leave or otherwise exempt received the mandatory training. However, during the audit period, CDCR had numerous new supervisors that had not yet received the training.

**Action:** The CDCR 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 CDCR must submit a written corrective action plan to ensure compliance with sexual harassment prevention training mandates. Copies of any relevant documentation should be included with the plan.

### **DEPARTMENTAL RESPONSE**

The CDCR's response is attached as Attachment 1.

### **SPB REPLY**

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

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



**OFFICE OF THE SECRETARY**

P.O. Box 942883  
Sacramento, CA 94283-0001



January 19, 2018

Ms. Suzanne M. Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Dear Ms. Ambrose:

The California Department of Corrections and Rehabilitation (CDCR) submits this letter in response to the State Personnel Board's (SPB) compliance review of CDCR's personnel practices related to examinations, appointments, equal employment opportunity (EEO), and personal services contracts for the period September 15, 2016 through February 15, 2017, and mandated training from April 15, 2015 through April 15, 2017. CDCR appreciates SPB's review and the opportunity to respond to the findings.

The following are in response to SPB's Compliance Review Report:

**Finding 2: Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

CDCR recognizes the importance of protecting and ensuring confidentiality of EEO information during the hiring process. Numerous applications are received for each vacancy where recruitment efforts are made. Due to the volume of applications received and human error, EEO Questionnaires were inadvertently not removed from 144 (4.6 percent) of the approximately 3,100 applications reviewed during the audit period. As of October 1, 2017, CDCR has implemented the electronic application process through the Examination and Certification Online System statewide. As a result, hard copy applications may now only be accepted by personnel office staff, thereby ensuring that the EEO Questionnaire and any other confidential information are removed prior to forwarding to hiring managers/supervisors. Additionally, we will reiterate to personnel office staff the importance of removing the EEO Questionnaire from all paper employment applications received.

**Finding 3: Probationary Evaluations Were Not Provided for all Appointments Reviewed**

Managers and supervisors are responsible for providing probationary evaluations for all staff required to complete a probationary period. This requirement is discussed in the Basic Supervision Training *Performance Management and Progressive Discipline* modules provided to newly appointed managers/supervisors. In addition to the probationary evaluation requirement, this training component also explains the length of probationary periods for state employees and the supervisor's responsibility to review the respective Memorandum of Understanding for the employees under their supervision to determine if there are additional stipulations covered in those documents. We will continue to reiterate the importance of completing probationary evaluations in a timely manner to all supervisors and managers. CDCR does not have a central tracking system to monitor the completion of probationary reports; however, the Department is currently reviewing options to create an electronic central system of record.

**Finding 4: A Written Upward Mobility Plan Has Not Been Established**

CDCR has centralized and relocated its Upward Mobility Unit (UMU) to a more effective functional area within the Office of Training and Professional Development. Since its centralization, the UMU completed a departmental guide for the Upward Mobility Program and is currently in the process of establishing a database and selection process to handle applications to the program.

**Finding 5: Equal Employment Opportunity Officer Does Not Report Directly to the Head of Agency**

The CDCR Chief of Civil Rights Operations (CRO) also serves as the Department's EEO Officer. The SPB's report asserts the Chief CRO reports to the Deputy Director, Office of Internal Affairs (OIA), and does not report directly to the Secretary CDCR. For clarification, the Chief CRO has a dual reporting relationship to the Deputy Director OIA and the CDCR Secretary. Specifically, the Chief reports directly to the Deputy Director OIA regarding the day-to-day operations of the CRO Unit. In addition, Department Operations Manual (DOM) Chapter 3, Article 1 states that the Chief of Civil Rights shall *"serve as the Department's EEO Officer. As needed, the Chief, CRO reports to the CDCR Secretary on matters related to EEO."* This policy allows the EEO Officer to go outside the chain of command and have regular unencumbered access to the CDCR Secretary regarding EEO issues, as they deem necessary.

Additionally, per Government Code (GC) 19795(b) the CDCR Secretary established the CDCR Disability Advisory Committee (DAC) (see attached), which is responsible for ensuring compliance with State and Federal mandates that prohibit discrimination against qualified persons with disabilities. The Chief CRO serves in an oversight and advisory capacity on CDCR's DAC, and further serves as the liaison to the CDCR Secretary per the DAC bylaws. The Chief CRO is also responsible for preparing and submitting the annual Workforce Analysis Report to the CDCR Secretary (see attached), which ensures compliance with GC 19795 and 19797. The DOM Section 31140.6 vests authority to initiate and conduct investigations of employee misconduct from the CDCR Secretary directly to the Deputy Director OIA. This authority makes the Deputy Director OIA the highest-level decision maker, outside of the CDCR Secretary, with regards to initiating and conducting investigations into employee misconduct. The CRO has a direct relationship with the OIA function of investigating violations of Department policy and the law, as defined in the California Penal Code and in the DOM. In an agency the size and scope of CDCR, it is not practical or feasible for a direct reporting relationship to the Secretary for the day-to-day operational functions. Moreover, this reporting structure was in place during SPB's last compliance review of CDCR completed in 2013, which concluded that the CDCR EEO program properly complied with civil service laws and regulations.

The CRO Chief has the ability to report directly to the CDCR Secretary as established by policy, practice, and law. CDCR recognizes the importance of ongoing communication between the Secretary and the CRO concerning EEO matters, and will ensure that regularly scheduled meetings occur on a bi-monthly basis with additional meetings held as necessary, as determined by the CRO. CDCR has updated the organizational chart and duty statement of the CRO to accurately reflect the reporting relationship the CRO Chief has with the CDCR Secretary (see attached).

**Finding 7: Ethics Training Was Not Provided for All Filers**

CDCR sends direction annually to all Conflict of Interest (COI) filers notifying them of their responsibility to complete ethics training. However, CDCR does not currently have written directive to training coordinators, COI liaisons, or personnel offices outlining responsibilities to track and upload into



CDCR's training tracking system. Therefore, COI filers may have taken the training, but with the transition to the new automated tracking system not all training dates were entered into this system during the time of the audit. CDCR has found an additional 688 training dates not previously provided to SPB (see attached). Clear directions will be provided in future filing years to ensure employee compliance with the training requirements.

**Finding 8: Supervisory Training Was Not Provided for All Supervisors**

The majority of the supervisors found to be out of compliance were Correctional Sergeants. CDCR had a Correctional Sergeant vacancy rate of approximately 26 percent during the SPB audit period. This vacancy ratio prevented institutions from being able to send staff to Basic Supervision Training as it would have caused unfunded overtime and staffing shortages. Compounding this problem was the rate at which appointments occurred within the Department and our training unit's workload capacity. CDCR averages 120 to 140 appointments to supervisory positions per month but the Department's training capacity is only 80 to 100 employees per month due to class size and staffing restrictions which then extends the training wait list. The Department's practice of deploying Basic Supervision training to both custody and non-custody personnel means the high number of Correctional Sergeants on the backlog would also impact the ability of non-custody staff to receive training in a timely manner. However, in the last year, CDCR hired new management and staff dedicated to training promotional employees as soon as possible.

**Finding 9: Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

CDCR recognizes the importance of the Sexual Harassment Training and currently ensures sexual harassment training is provided to all supervisors every two years. The last coordinated supervisory training occurred in 2016. At that time, all supervisors who were not on long-term sick leave or otherwise exempt received the mandatory training. However, during the audit period, CDCR had numerous new supervisors that had not yet received the training.

CDCR would like to thank SPB for their work and will address the specific recommendations in the 60-day corrective action plan. If you have further questions, please contact me at (916) 323-6001.

Sincerely,



KENNETH J. POGUE  
Undersecretary, Administration and Offender Services

**Attachments**

cc: Katherine Minnich, Deputy Director, Human Resources  
Joseph Galvan, Deputy Director, Office of Internal Affairs  
Stacy Lopez, Deputy Director, Peace Officer Selection and Employee Development