



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION**

Compliance Review Unit  
State Personnel Board  
May 26, 2015



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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 the California Debt and Investment Advisory Commission (CDIAC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from January 1, 2013, through December 31, 2013. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Appointments Complied with Civil Service Laws and Board Rules	In Compliance
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance

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 CDIAC provides information, education, and technical assistance on debt issuance and public fund investments to local public agencies and other public finance professionals. The Commission was created in 1981 with the passage of Chapter 1088, Statutes of 1981 (Assembly Bill 1192, Costa). This legislation established the CDIAC as the state’s clearinghouse for public debt issuance information and required it to assist state and local agencies with the monitoring, issuance, and management of public debt. The Commission’s name was changed to the California Debt and Investment Advisory in 1996 and its mission was expanded to cover public investments.

The Commission consists of nine members, including the State Treasurer, the Governor of the Director of Finance, the State Controller, two local government finance officials, two Assembly Members, and two Senators.

In performance of its mission, CDIAC engages in a range of activities classified into three general program areas: data collection and analysis, policy research, and education.

## **SCOPE AND METHODOLOGY**

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

All CDIAC examinations and appointments were reviewed. The CRU examined the documentation that the CDIAC 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 CDIAC 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 CDIAC staff.

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

The CDIAC was given a copy of the draft report on May 8, 2015, and declined an exit conference. The CDIAC submitted a written response to the CRU's draft report on May 18, 2015, which is attached to this final compliance 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

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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.

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 an examination shall file an application in the office of the department or a designated appointing power as directed in 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 CDIAC conducted three examinations. The CRU reviewed all of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Governmental Program Analyst	Departmental Promotional	Written <sup>2</sup>	7/29/2013	2
Staff Services Manager II	Departmental Promotional	Qualification Appraisal Panel (QAP) <sup>3</sup>	8/23/2013	2
Staff Services Manager III	Departmental Promotional	QAP	7/22/2013	1

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

The CDIAC administered three examinations to create eligible lists from which to make appointments. For all of the examinations, the CDIAC published and distributed

<sup>2</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>3</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.

examination bulletins containing the required information. Applications received by the CDIAC were accepted prior to the final filing date and were thereafter properly assessed. The CDIAC administered three examinations to create eligible lists from which to make appointments. For all of the examinations, the CDIAC published and distributed examination bulletins containing the required information. Applications received by the CDIAC 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 examination. The CDIAC notified applicants as to whether they qualified to take the 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 CDIAC conducted during the compliance review period. Accordingly, the CDIAC 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 CDIAC made nine appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Executive Assistant	Certification List	Permanent	Full Time	1
Office Technician	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Research Program Specialist II	Mandatory Reinstatement	Permanent	Full Time	1
Student Assistant	Temporary Appointment Utilization (TAU)	Temporary	Intermittent	1
Research Program Specialist II	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	2

**FINDING NO. 2 – Appointments Complied with Civil Service Laws and Board Rules**

The CDIAC measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the four list appointments, the CDIAC ordered a certification list of candidates ranked competitively. After properly clearing the SROA<sup>4</sup> list, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification list.

The CDIAC made appointments to three positions via transfer. 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 CDIAC verified the eligibility of each candidate to their appointed classes.

<sup>4</sup> The State Restriction of Appointments (SROA) Program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.



For appointments that are mandatory reinstatements, a state agency or department 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.) However, the following conditions 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 employee who was appointed as a mandatory reinstatement accepted the appointment without a break in the continuity of their state service and requested reinstatement within ten working days after the effective date of the termination of their other position.

The CDIAC made one appointment via TAU. Generally, when no employment list exists from which a position may be filled, an appointing power may fill the position by temporary appointment. (Gov. Code, § 19058.) If fewer than three names of persons willing to accept an appointment are on the open eligible list for the class to which a position belongs and no other employment list for such class is available, a temporary appointment may be allowed. (Cal. Code Regs., tit. 2, § 265) A TAU appointment shall not exceed nine months in a 12-month period. (Cal. Const., art. VII, § 5.) In addition, when a temporary appointment is made to a permanent position, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment. (Gov. Code, § 19058.) The CDIAC followed applicable law and rule in making the TAU appointment.

The CRU found no deficiencies in the appointments that the CDIAC conducted during the compliance review period. Accordingly, the CRU found that all the appointments the CDIAC made during the compliance review period satisfied civil service laws and board rules.

### 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 committing 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 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.)

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 CDIAC EEO policies, procedures, and programs in effect during the compliance review period. In addition, the CRU interviewed appropriate CDIAC staff.

**FINDING NO. 3 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules**

After reviewing the policies, procedures, and programs that were in effect during the compliance review period the CRU determined that the CDIAC provided employees with guidance on the EEO process, including instructions on how to file discrimination claims. The EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the director of the CDIAC. The CDIAC provided evidence showing its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. In addition, the CDIAC has an established DAC. The CDIAC completed a workforce analysis, which was submitted to the CRU. Accordingly, the CDIAC EEO program complied with civil service laws and board rules.

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.)

During the compliance review period, the CDIAC had six PSC's that were in effect. Two of the PSC's were subject to Department of General Services (DGS) approval and thus CRU procedural review, and are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Blue Sky Consulting	Bay Delta Conveyance Project	5/2012 – 9/2012	\$155,275	Yes
Nixon Peabody	Legal Services	2/2013 – 9/2014	\$175,000	Yes

**FINDING NO. 4 – 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.)

The total amount of the PSC's reviewed was \$330,275. It was beyond the scope of the review to make conclusions as to whether the CDIAC justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the CDIAC provided specific and detailed factual information in the written justifications as to how each contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CDIAC PSC's complied with procedural requirements.

## **DEPARTMENTAL RESPONSE**

The CDIAC concurs with the findings of the SPB compliance review report dated May 26, 2015.

## **SPB REPLY**

The SPB appreciates the cooperation of the CDIAC during the compliance review.