



COMPLIANCE REVIEW REPORT

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY

Compliance Review Unit
State Personnel Board
January 11, 2016

TABLE OF CONTENTS

Introduction	1
Executive Summary	1
Background	2
Scope and Methodology.....	2
Findings and Recommendations.....	3
Examinations	3
Appointments	5
Equal Employment Opportunity	7
Personal Services Contracts.....	8
Mandated Training	10
Departmental Response.....	10
SPB Reply.....	11

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 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 Health Facilities Financing Authority (CHFFA) personnel practices in the areas of examinations, appointments, EEO, PSC's, and mandated training from September 1, 2014, through August 31, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for all Appointments Reviewed	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance

Area	Finding	Severity
Mandated Training	Mandated Training Complied with Statutory 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 mission of the CHFFA is to help eligible and credit worthy nonprofit and public health facilities reduce their cost of capital, and promote important California health access, health care improvement, and cost containment objectives by providing cost-effective tax-exempt bond, low-cost loan, and direct grant programs.

The CHFFA issues revenue bonds to assist eligible private nonprofit corporations or associations, counties, and hospital districts in financing or refinancing the construction or acquisition cost of health facilities or equipment. The CHFFA also administers the Children's Hospital Program established by Proposition 61 of 2004 and Proposition 3 of 2008, the Cedillo-Alarcon Clinic Grant Program of 2000, the Anthem WellPoint Grant Program of 2004, the Health Expansion Loan Program II, the California Health Access Model Program of 2012, and the Investment in Mental Health Wellness Act of 2013.

The CHFFA has 16 staff members along with 9 board members: the State Treasurer, the Director of the Department of Finance, the State Controller, 2 public members appointed by the Senate, 2 public members appointed by the Assembly, and 2 public members appointed by the Governor.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CHFFA examinations, appointments, EEO program, PSC's, and mandated training from September 1, 2014, through August 31, 2015. The primary objective of the review was to determine if CHFFA 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 CHFFA 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 CHFFA 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 CHFFA 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).

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

In addition, the CHFFA's mandated training 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 training within statutory timelines.

On December 9, 2015, an exit conference was held with the CHFFA to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CHFFA's written response on January 7, 2016, 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

¹ 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.

perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications (MQ's) for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) the advertisement shall contain such information as the date and place of the examination and the nature of the MQ's. (*Ibid.*) Every applicant for examination shall file 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 CHFFA conducted two examinations. The CRU reviewed both examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Career Executive Assignment (CEA) A, 001	CEA	Statement of Qualifications (SOQ's) ²	1/5/2015	1
Treasury Program Manager I	Departmental Promotional	Qualification Appraisal Panel (QAP) ³	4/27/2015	24

² In a 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.

³ The 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.

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

The CHFFA administered CEA and departmental promotional examinations to create information and eligible lists from which to make appointments respectively. For all of the examinations, the CHFFA published and distributed examination bulletins containing the required information. Applications received by the CHFFA 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 CHFFA 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 CHFFA conducted during the compliance review period. Accordingly, the CHFFA 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 CHFFA made 11 appointments. The CRU reviewed 7 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Treasury Program Officer	Certification List	Permanent	Full Time	3
Staff Services Analyst	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Treasury Program Manager I	Transfer	Permanent	Full Time	1
Career Executive Assignment (CEA) A, 001	Information List	Permanent	Full Time	1
Office Technician (Typing)	Retired Annuitant	Temporary	Intermittent	1

FINDING NO. 2 – Probationary Evaluations Were Not Provided for all Appointments Reviewed

Summary: The CHFFA did not prepare, complete, and/or retain required probationary reports of performance for 2 of the 7 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Treasury Program Officer	Certification List	2	4

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

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently

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

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

Cause: The CHFFA states that due to an oversight, along with the absence of an effective probationary reporting tracking system, 4 probationary reports were not completed.

Action: The CHFFA has submitted a corrective action plan for ensuring full compliance in meeting the probationary requirements of Government Code section 19172 as part of its departmental response; therefore, no further action is required at this time.

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. In a state agency with less than 500 employees, like the CHFFA, the EEO Officer may be the Personnel Officer.

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 CHFFA EEO program that was in effect during the compliance review period.

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

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CHFFA’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, 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 and is the Personnel Officer, reports directly to the Director of the CHFFA. In addition, the CHFFA has an established DAC. The CHFFA completed a workforce analysis, which was submitted to the CRU. The CHFFA also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the CHFFA 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 CHFFA had 12 PSC's that were in effect. Only 5 contracts were subject to Department of General Services (DGS) approval, and thus our procedural review, and are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Orrick Herrington & Sutcliffe	Insurer's Counsel Services	7/1/2014 - 6/30/2017	\$75,000	Yes
Squire Patton Boggs	Insurer's Counsel Services	7/1/2014 - 6/30/2017	\$75,000	Yes
Hawkins, Delafield & Wood	Insurer's Counsel Services	7/1/2014 - 6/30/2017	\$75,000	Yes
Macias Gini & O'Connell, LLP	Financial Advisor	7/1/2015 - 6/30/2017	\$150,000	Yes
Orrick Herrington & Sutcliffe	Legal Services	7/1/2015 - 6/30/2017	\$60,000	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 all the PSC's reviewed was \$435,000. It was beyond the scope of the review to make conclusions as to whether CHFFA justifications for the contract were

legally sufficient. For all PSC's subject to DGS approval, the CHFFA provided specific and detailed factual information in the written justifications as to how each of the five contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CHFFA PSC's complied with procedural requirements.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1.)

Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4 subd. (b).)

Additionally, each department having 50 or more employees must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

The CRU reviewed the CHFFA's mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The CHFFA provided semiannual ethics training to its 4 filers during the 2-year calendar year period commencing in 2013. The CHFFA also provided supervisory training to its 3 new supervisors within 12 months of appointment. In addition, the CHFFA provided sexual harassment training to its 3 new supervisors within 6 months of appointment, and sexual harassment training to its 4 supervisors every 2 years. Thus, the CHFFA complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The CHFFA response is attached as Attachment 1.

SPB REPLY

Based upon the CHFFA's written response, the CHFFA will comply with the CRU recommendations and findings. The CHFFA submitted a corrective action plan for the departmental finding that was out of compliance.

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



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DATE: January 7, 2016

TO: Compliance Review Division
 Attn: Diana Campbell
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FROM: Debby Silva, Chief *DS*
 Management Services /HR

SUBJECT: State Personnel Board Compliance Review for the California Health Facilities
 Financing Authority

Thank you for the recent completion of the State Personnel Board's Compliance Review Report for the California Health Facilities Financing Authority (CHFFA) for the period from September 1, 2014, through August 31, 2015.

We acknowledge the findings represented in Finding No. 2 regarding that Probationary Evaluations were not provided for all Appointments reviewed. Due to our oversight, coupled with the absence of an effective probationary reporting tracking systems, these reports were not completed in accordance with the required schedule.

CHFFA understands the severity of this finding and that providing employees with the appropriate level of performance evaluation is of great importance. CHFFA has worked to ensure that this issue is corrected going forward and that all probationary reports are completed for all appointments in accordance with the required timelines. Additional measures that have been put into place include establishing regular and multiple reminders (prior to and at the report deadline) from both the management team as well as the personnel office.

Thank you again for your report. CHFFA takes these findings very seriously and appreciates your assistance in identifying this particular lapse in compliance. CHFFA will ensure appropriate measures are implemented and that all areas are in compliance going forward.