



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

Compliance Review Unit  
State Personnel Board  
March 19, 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 Pollution Control Financing Authority (CPCFA) personnel practices in the areas of examinations, appointments, EEO, and PSC's from November 1, 2012, through November 1, 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	Probationary Evaluations Were Not Provided for All Appointments	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

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 CPCFA has been providing low-cost innovative financing to California businesses since 1972.

As a “conduit issuer” of tax-exempt private activity bonds, the CPCFA is able to facilitate low cost financing to qualified waste and recycling projects. Other projects to control pollution can qualify for tax-exempt financing as allowed by federal tax law. Examples of recent assistance include projects to purchase clean-air vehicles by waste companies, recycle used oil, convert animal waste to clean burning fuel, and develop construction and demolition debris recycling programs.

The CPCFA works with participating financial institutions to assist small businesses with loans up to \$2.5 million. The CPCFA also assists with the clean-up of contaminated sites through a \$60 million grant and loan program and a site-assessment loan program.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing CPCFA examinations, appointments, EEO program, and PSC’s from November 1, 2012, through November 1, 2013. The primary objective of the review was to determine if CPCFA 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 CPCFA 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 CPCFA 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 CPCFA 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 CPCFA staff.

CPCFA PSC's were also randomly selected to ensure that various types of contracted services and contract amounts were reviewed. The CPCFA contracted for legal services, trustee services, and financial advisory services, among others.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether CPCFA justifications for the contracts were legally sufficient. The review was limited to whether CPCFA practices, policies, and procedures relative to PSC's complied with procedural requirements.

On March 2, 2015, an exit conference was held with the CPCFA to explain and discuss the CRU's initial findings and recommendations. The CPCFA was given until March 16, 2015 to submit a written response to the CRU's draft report. On March 16, 2015, the CRU received and carefully reviewed the response, 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 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

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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.

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 State Treasurer’s Office (STO) under an interagency agreement conducted three examinations on behalf of the CPCFA. 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	20
Associate Treasury Program Officer	Departmental Promotional	Qualification Appraisal Panel (QAP) <sup>3</sup>	2/11/2013	20
Treasury Program Manager I	Departmental Promotional	QAP	11/01/2013	6

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

The STO on behalf of the CPCFA administered three departmental promotional examinations to create eligible lists from which to make appointments. For all of the examinations, the STO published and distributed examination bulletins containing the required information. Applications received by the STO were accepted prior to the final

<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.

filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. The STO notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs 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 STO conducted during the compliance review period. Accordingly, the STO on behalf of the CPCFA 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 CPCFA made 17 appointments. The CRU reviewed 16 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	2
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	2
Staff Services Analyst	Certification List	Limited Term	Full Time	5
Administrative Assistant I	Transfer	Permanent	Full Time	1
Associate Treasury Program Officer	Transfer	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Limited Term	Full Time	2

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

**Summary:** The CPCFA did not prepare, complete, and/or retain required probationary reports of performance for 2 of the 16 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. Uncompleted Prob. Reports
Associate Treasury Program Officer	List	2	2
Staff Services Analyst	List	2	3
Total		4	5

**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:** Processes were not in place to ensure that all probationary reports were completed.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CPCFA 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 § 19172.

### Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to 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 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.) In a state agency with less than 500 employees, like the CPCFA, the EEO officer may be the personnel officer. (*Ibid.*)

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 CPCFA's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate CPCFA staff.

**FINDING NO. 4 – 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 CPCFA 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 and reports directly to the Chief Deputy Treasurer and State Treasurer on EEO matters. In addition, STO on behalf of CPCFA has an established DAC that reports to the director on issues affecting persons with a disability.

Personal Services Contracts

A personal services contract (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 CPCFA had 23 PSC's that were in effect. Eight contracts were subject to Department of General Services (DGS) approval and thus our procedural review, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Deutsche Bank National Trust Company	Trustee Services	1/10/2011-1/09/2013	\$125,000.00	Yes
Deutsche Bank National Trust Company	Trustee Services	1/01/2013-12/31/2014	\$700,000.00	Yes
Hawkins Delafield and Wood LLP	Legal Counsel Services	3/01/2012-2/28/2015	\$135,000.00	Yes
Law Offices of Alexis S. M. Chiu	Legal Counsel Services	3/01/2012-2/28/2015	\$135,000.00	Yes
Law Offices of Leslie M. Lava	Legal Counsel Services	3/01/2012-2/28/2015	\$135,000.00	Yes
Montague DeRose and Associates, LLC	Financial Advisory Services	6/29/2011-6/28/2013	\$300,000.00	Yes
Nixon Peabody, LLP	Legal Counsel Services	5/01/2012-4/30/2014	\$100,000.00	Yes
Sjoberg Evashenk Consulting, Inc.	Consulting Services	3/10/2011-3/09/2013	\$300,000.00	Yes

**FINDING NO. 5 – 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 PSCs reviewed was \$1,930,000. It was beyond the scope of the review to make conclusions as to whether CPCFA justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the CPCFA provided specific and detailed factual information in the written justifications as to how each of the eight contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CPCFA's PSC's complied with procedural requirements.

**DEPARTMENTAL RESPONSE**

The CPCFA's response is attached as Attachment 1.

**SPB REPLY**

Based upon the CPCFA's written response, the CPCFA will comply with the CRU recommendations and findings and provide the CRU a Corrective Action Plan.

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


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 Reneé Webster-Hawkins

March 16, 2015

State Personnel Board (SPB)  
 Compliance Review Unit  
 Attn: Suzanne Ambrose

**RE: Compliance Review Report for California Pollution Control Financing Authority (CPCFA) dated February 2015**

Dear Ms. Ambrose,

On March 2, 2015, a meeting was conducted between your staff, and the State Treasurer's Office (STO) Personnel staff (Debby Silva and Kimberly Dean) and CPCFA executive management staff (myself and Patricia Tanous) to review the draft Compliance Review Report of CPCFA. The report was a result of a routine compliance review of CPCFA's personnel practices between the dates of November 1, 2012 and November 1, 2013.

SPB described a negative finding as "Probationary Evaluations were not provided for all Appointments." The criteria are such that all probationary employees receive a first, second and final probation report as a new employee. It was found that out of six employees' files that were reviewed, four of the six employees were missing their first probation report and one was also missing the second probation report. All six employees did receive their final probation report. As noted previously, the time period for the review was November 2012 through November 2013.

Beginning June 2013 when I was appointed, I directed that all probation and personnel evaluations be completed on a timely basis, to provide clear feedback and evaluation of employee performance. Since then, CPCFA's management team has been developing and implementing new procedures and processes to ensure that all staff receives probationary reports on a timely basis. This includes a tracking log that is reviewed during bi-weekly management meetings, and having STO Personnel staff include me on email alerts to management regarding pending probationary reports. In September 2013 two of CPCFA's managers attended a training on preparing effective IDP's. STO Personnel is also implementing a new process of following up with managers if a probationary report has not been received within a week of the due date. These processes have been implemented to ensure that CPCFA will be in compliance with the Probationary Evaluations criteria.

Sincerely,

Reneé Webster-Hawkins  
 Executive Director

CC: Debby Silva, STO Personnel Director