



COMPLIANCE REVIEW REPORT

CALIFORNIA POLLUTION CONTROL FINANCING AGENCY

Compliance Review Unit
State Personnel Board
July 10, 2017

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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 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 Pollution Control Financing Agency (CPCFA) personnel practices in the areas of examinations, appointments, EEO, and PSC's from February 1, 2016 through January 31, 2017, and mandated training from January 1, 2015 through January 31, 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	Appointments Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
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
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 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 also administers the California Capital Access Program (CalCAP), which encourages financial institutions to make loans to small businesses and provides for specialty programs targeted toward building an improved infrastructure for zero- and partial-emission vehicles, helping small businesses comply with the federal Americans With Disabilities Act, and helping commercial and residential building owners find financing for seismic safety retrofits.

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, PSC's, from February 16, 2016, through January 31, 2017 and mandated training from January 1, 2015 through January 31, 2017. 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 for those deficiencies 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 (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 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).

CPCFA PSC's were also reviewed.¹ 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.

In addition, the CPCFA 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.

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.

The CPCFA declined to have an exit conference. The CPCFA was found to be in compliance in all areas reviewed during the compliance review period. Therefore, no departmental response is required.

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 CPCFA conducted two examinations. The CRU reviewed two of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Deputy Executive Director	CEA	Statement of Qualifications (SOQ) ²	03/25/2016	12
Treasury Program Manager I	Departmental Promotional	Qualification Appraisal Panel ³	12/16/2016	24

² 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.

³ 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.

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

The CPCFA administered one CEA examination, and one departmental promotional examination to create eligible lists from which to make appointments. The CPCFA published and distributed examination bulletins containing the required information for all examinations. Applications received by the CPCFA 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 CPCFA 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 CPCFA conducted during the compliance review period. Accordingly, 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 fourteen appointments. The CRU reviewed eight of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Career Executive Assignment (CEA) A, Deputy Executive Director	List Appointment	CEA	Full Time	1
Office Technician (Typing)	List Appointment	Limited Term	Full Time	1
Staff Services Analyst (General)	List Appointment	Permanent	Full Time	2
Staff Services Analyst (General)	List Appointment	Limited Term	Full Time	1
Treasury Program Manager I	List Appointment	Permanent	Full Time	1
CEA A	Retired Annuitant	Temporary	Intermittent	1
Staff Services Analyst (General)	Transfer	Limited Term	Full Time	1

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

The CPCFA 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 six list appointments reviewed, the CPCFA ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

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

The CPCFA made one appointment via transfer. A transfer of employee from a position under one appointing power to a position under another or same 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 CPCFA verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointments that the CPCFA conducted during the compliance review period. Accordingly, the CRU found that all the appointments the CPCFA 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 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 (CalHR) by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

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

FINDING NO. 3 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations

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, reports directly to the Executive Director of the CPCFA. In addition, the CPCFA has an established DAC that reports to the Director on issues affecting persons with disabilities. The CPCFA also provided evidence of 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. Accordingly, the CPCFA’s 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 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 two PSC's that were in effect and subject to the Department of General Services (DGS) approval. The CRU reviewed both of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
U.S. Bank National Association, Global Corporate Trust Service	Legal Consultant	1/1/2015-12/31/2016	\$200,000.00	Yes
Zions Bank	Legal Consultant	1/1/2017-12/31/2018	\$496,250.00	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 dollar amount of all the PSC's reviewed was \$696,250.00. 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 reviewed, the CPCFA provided specific and detailed factual information in the written justifications as to how each of the two contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CPCFA PSC's 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 California Department of Human Resources (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 career executive assignment (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 CPCFA's mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The CPCFA provided ethics training to its four new filers within six months of appointment and semiannual ethics training to its four existing filers during two-year calendar year period commencing in 2014. The CPCFA also provided supervisory training to its three new supervisors within 12 months of appointment. In addition, the CPCFA provided sexual harassment prevention training to its four new supervisors within six months of appointment, and sexual harassment prevention training to its four existing supervisors every two years. Thus, the CPCFA complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

No departmental response was required since all areas reviewed were in compliance.

SPB REPLY

The CPCFA was found to be compliance in all areas reviewed during the compliance review report. Therefore, no further action is required.