



# **COMPLIANCE REVIEW REPORT**

**DEPARTMENT OF BUSINESS OVERSIGHT**

Compliance Review Unit  
State Personnel Board  
July 13, 2016

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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), and 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 Department of Business Oversight (DBO) personnel practices in the areas of examinations, appointments, and EEO from June 1, 2015, through February 29, 2016, and mandated training from February 28, 2014, through February 29, 2016. There were no PSC's executed during the compliance review period. 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
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 DBO serves as the state’s primary regulator of financial service providers. At the end of 2014, the DBO licensed and supervised more than 360,000 individuals and businesses. Its regulatory purview extends over banks, credit unions, payday lenders, mortgage lenders and servicers, escrow companies, broker-dealers, financial advisers, and money transmitters (Western Union, PayPal, and others).

The DBO has two primary regulatory responsibilities: to protect consumers and to protect the health of financial service markets. In carrying out its duties, the DBO often must perform a balancing act – ensure the marketplace remains fair for consumers, but not wield such a heavy hand that consumers suffer reduced access to lending and other financial services.

The statutes that govern the DBO’s regulatory authority and its licensees are found in the Financial Code and Corporations Code. The DBO’s FY 2015-16 budget totaled \$89.6 million and authorized 618 positions, including 369 examiner positions. The DBO is funded entirely with special funds derived mainly from fees paid by licensees.

The DBO was formed July 1, 2013, from the merger of the Department of Corporations (DOC) and Department of Financial Institutions (DFI). The DOC and DFI each had existed for more than 100 years.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing DBO examinations, appointments, EEO program, and mandated training from May 1, 2015, through January 31, 2016. The primary objective of the review was to determine if DBO 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 DBO 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 DBO 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 DBO 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 DBO did not execute any PSC's during the compliance review period.

In addition, the DBO 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.

On June 22, 2016, an exit conference was held with the DBO to explain and discuss the CRU's initial findings and recommendations. The CRU received and reviewed the DBO written response on June 29, 2016, which is included in this final compliance review report.

## FINDINGS AND RECOMMENDATIONS

### Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) the advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the DBO conducted 11 examinations. The CRU reviewed seven of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA (Career Executive Assignment) A, Deputy Commissioner of Administration	CEA	Statement of Qualifications (SOQ) <sup>1</sup>	12/11/2015	13
CEA B, Deputy Commissioner of Banks	CEA	SOQ	7/23/2015	5

<sup>1</sup> In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Corporation Examiner	Departmental Promotional	Education and Experience <sup>2</sup>	9/24/2015	20
Corporation Examiner IV (Specialist/Supervisor)	Departmental Promotional	Training and Experience (T&E) <sup>3</sup>	10/20/2015	64
Financial Institutions Examiner	Open	Written <sup>4</sup>	8/27/2015	78
Financial Institutions Manager	Departmental Promotional	Qualification Appraisal Panel <sup>5</sup>	6/4/2015	26
Supervising Corporation Examiner	Departmental Promotional	T&E	6/9/2015	41

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

The DBO administered two CEA, one open, and four departmental promotional examinations in order to create eligible lists from which to make appointments. The DBO published and distributed examination bulletins containing the required information for all examinations. Applications received 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 DBO 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

<sup>2</sup> In an education and experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

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

<sup>4</sup> 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>5</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.

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 DBO examinations reviewed during the compliance review period. Accordingly, the DBO 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 DBO made 128 appointments. The CRU reviewed 27 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Financial Institutions Manager	Certification List	Permanent	Full Time	3
Attorney III	Certification List	Permanent	Full Time	2
Senior Financial Institutions Examiner	Certification List	Permanent	Full Time	2
Office Technician (Typing)	Certification List	Permanent	Full Time	2
Staff Services Manager II (Supervisor)	Certification List	Permanent	Full Time	1
Systems Software Specialist III (Supervisory)	Certification List	Permanent	Full Time	1
Administrative Assistant I	Certification List	Permanent	Full Time	2
Corporation Examiner IV (Supervisor)	Certification List	Permanent	Full Time	3
Office Assistant (General)	Certification List	Limited Term	Intermittent	1
Staff Services Analyst (General)	Certification List	Limited Term	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Personnel Specialist	Mandatory Reinstatement	Permanent	Full Time	1
Corporation Examiner	Permissive Reinstatement	Permanent	Full Time	3
Staff Services Manager III	Retired Annuitant	Limited Term	Intermittent	1
Limited Examination And Appointment Program Candidate (Identified Class) [LEAP]	Temporary Authorization Utilization	Temporary	Full Time	1
Consumer Assistance Technician	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Financial Institutions Examiner	Transfer	Permanent	Full Time	1

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

The DBO 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 18 list appointments reviewed, the DBO 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 three DBO appointments made to 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 DBO verified the eligibility of each candidate to their appointed class.

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 10 working days after the effective date of the termination. (*Ibid.*) The mandatory reinstatement met the conditions allowing for mandatory reinstatement.

The DBO also made one retired annuitant appointment. The individual submitted their application and was eligible to be hired as a temporary employee, not to exceed 960 hours in a fiscal year.

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

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the DBO EEO program that was in effect during the compliance review period. Accordingly, the DBO EEO program complied with civil service laws and board rules.

**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 DBO 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 Commissioner of DBO. In addition, the DBO has an established DAC which reports to the Commissioner on issues affecting persons with disabilities. The DBO 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 DBO EEO program complied with civil service laws and board rules

**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) New filers must be trained within six months of appointment. (Gov. Code §, 11146.3)

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 must provide its supervisors two hours of sexual harassment prevention 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 DBO mandated training program that was in effect during the compliance review period.

#### **FINDING NO. 4 – Mandated Training Complied with Statutory Requirements**

The DBO provided ethics training to its 159 new filers within six months of appointment and semiannual ethics training to its 296 filers during the two-year calendar year period commencing in 2014. The DBO also provided supervisory training to 17 new supervisors within 12 months of appointment. In addition, the DBO provided sexual harassment prevention training to its 36 new supervisors within six months of appointment, and semiannual sexual harassment prevention training to its 102 existing supervisors. Thus, the DBO complied with mandated training requirements within statutory timelines.

#### **DEPARTMENTAL RESPONSE**

The DBO would like to thank the State Personnel Board's Compliance Review Unit for undertaking the 2016 DBO compliance review. I have confidence that DBO staff will continue to strive to abide by all applicable laws and rules while conducting recruitment, appointment, and civil service examination processes and procedures. The Training Unit will also continue to timely provide and monitor all mandated training to the DBO employees, including managers and supervisors. In addition, the EEO office will continue to abide by the requirements, laws, and regulations as it pertains to performing the scope of EEO duties.

Jan Lynn Owen, Commissioner

#### **SPB REPLY**

The DBO was found to be in compliance in all areas; therefore, no further action is required at this time.