



# **COMPLIANCE REVIEW REPORT**

**CALIFORNIA DEPARTMENT OF FINANCE**

Compliance Review Unit  
State Personnel Board  
October 23, 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 California Department of Finance (DOF) personnel practices in the areas of examinations, appointments, EEO, and PSC's from July 1, 2013 through March 31, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Exam Bulletin Did Not Include All Requirements	Non serious or Technical
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Job Opportunities Were Not Properly Advertised	Very Serious
Appointments	Unlawful Appointment By Way of Transfer	Very Serious
Appointments	Unlawful Promotion-In-Place Appointments	Very Serious

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

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 DOF is a fiscal control agency with approximately 470 employees. The Director of Finance is appointed by the Governor and functions as the Governor's chief fiscal policy advisor with emphasis on the financial integrity of the state. The Director sits as a member of the Governor's cabinet and senior staff. Finance employees work on issues and programs that are of concern to the Governor, the Legislature, and the people of California.

Primary functions of the department include the following:

- Establish appropriate fiscal and accounting policies to carry out the state's programs.
- Prepare, explain, and administer the state's annual financial plan (budget), which the Governor is required under the State Constitution to present by January 10 of each year.
- Analyze legislation which has a fiscal impact.
- Develop and maintain the California State Accounting and Reporting System (CALSTARS).
- Monitor/audit expenditures by state departments to ensure compliance with law, approved standards, and policies.
- Develop economic forecasts and revenue estimates.
- Develop population and enrollment estimates and projections.
- Review expenditures for information technology activities of state departments.

- Provide fiscal and accounting training, advice, and consulting services to state departments. (GC 13000 et seq.)

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing DOF examinations, appointments, EEO program, and PSC's from July 1, 2013 through March 31, 2014. The primary objective of the review was to determine if the DOF 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 the DOF's 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 DOF 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 DOF 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 DOF staff.

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

On August 5, 2015, an exit conference was held with the DOF to explain and discuss the CRU's initial findings and recommendations. The DOF was given until August 18, 2015, to submit a written response to the CRU's draft report. The DOF asked for an

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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.

extension and on August 24, 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 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 in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the DOF conducted 13 examinations. The CRU reviewed 10 of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Assistant Chief, Office of State Audits & Evaluations	Career Executive Assignment (CEA)	Statement Of Qualifications (SOQ's) <sup>2</sup>	1/9/2014	10

<sup>2</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 Applications
Assistant Finance Budget Analyst	Open	Supplemental Application (SA) <sup>3</sup>	3/19/2014	140
Financial & Performance Evaluator I, DOF	Open	Qualification Appraisal Panel (QAP) <sup>4</sup>	3/17/2014	132
Financial & Performance Evaluator III	Departmental Promotional	Work Sample (WS) <sup>5</sup> and QAP	8/15/2013	15
Principal Program Budget Analyst II & III	Departmental Promotional	SA and QAP	7/23/2013	23
Program Budget Manager	CEA	SOQ's	9/4/2013	5
Research Program Specialist I (Demography)	Departmental Promotional	Education & Experience (E&E) <sup>6</sup>	9/16/2013	1
Research Program Specialist II (Demography)	Departmental Promotional	E&E	12/24/2013	2
Senior Administrative Analyst (Accounting System)	Departmental Promotional	QAP	12/26/2013	11
Supervisor, Financial & Performance Evaluator	Departmental Promotional	WS and QAP	10/27/13	13

<sup>3</sup> In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

<sup>4</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.

<sup>5</sup> Work sample examinations (WS) are a broad class of assessment techniques that replicate job tasks and/or job behavior, are administered in a standardized manner, and allow for the observation of candidate behavior in performing the prescribed tasks. Verbal work samples involve a problem situation requiring language skills (written or verbal) and may include interaction with people. There are numerous designs, such as role-play exercises or oral presentation examinations.

<sup>6</sup> In an education and experience (E&E) 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.

## FINDING NO. 1 – Examination Bulletins Did Not Include All Requirements

**Summary:** For the Financial & Performance Evaluator III and the Supervisor, Financial & Performance Evaluator exams, the DOF did not include information regarding the relative weight of several parts of the test utilized on the bulletin. Specifically, both exams utilized multiple types of tests, however, did not include the relative weight of each part of the tests and only stated, “The entire examination is weighted 100%”.

**Criteria:** Government Code section 18933 states that a department or a designated appointing power shall announce or advertise examinations for the establishment of eligible lists. The announcement shall include the following:

- (1) The date and place of the examination.
  - (2) The nature of the minimum qualifications.
  - (3) The general scope of the examination.
  - (4) ***The relative weight of its several parts if more than one type of test is to be utilized.***
  - (5) Any other information the department deems proper.
- (b) The department shall notify the Department of Veterans Affairs when any promotional examination for the establishment of an eligible list is announced or advertised to eligible candidates. The notification shall state the job position and include all of the information listed in paragraphs (1) to (5), inclusive, of subdivision (a).

**Severity:** Non-Serious or Technical. Although examination bulletins should include the relative weight of each part of the tests being utilized, in this case, it did not appear to compromise the results of the examination process.

**Cause:** The DOF states that when examination bulletins are released, in some instances, Human Resources (HR) staff may still be in the process of identifying various testing methods and discussing options with Exam Consultants. As a result, the specific weight of each component is not known upon release of the examination bulletin. Therefore, we considered the examination components



used as part of the FPE III and Supervisor, FPE examinations to be part of the entire Qualifications Appraisal Panel (QAP) Interview weighted 100% in its entirety.

**Action:** The DOF has submitted a corrective action plan for ensuring full compliance in meeting the requirements of Government Code section 18933 as part of its department response, therefore no further action is required at this time.

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 DOF made 95 appointments. The CRU reviewed 77 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Finance Budget Analyst	Certification List	Permanent	Full Time	4
Business Service Officer I (Spec)	Certification List	Permanent	Full Time	1
Data Processing Manager III	Certification List	Permanent	Full Time	1
Financial and Performance Evaluator II, DOF	Certification List	Permanent	Full Time	7
Financial and Performance Evaluator III, DOF	Certification List	Permanent	Full Time	6
Office Technician (Typing)	Certification List	Permanent	Full Time	3
Personnel Specialist	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Principal Program Budget Analyst II	Certification List	Permanent	Full Time	7
Principal Program Budget Analyst III	Certification List	Permanent	Full Time	3
Research Manager III	Certification List	Permanent	Full Time	1
Research Program Specialist I (Demography)	Certification List	Permanent	Full Time	1
Research Program Specialist II (Demography)	Certification List	Permanent	Full Time	4
Research Program Specialist II (Economics)	Certification List	Permanent	Full Time	1
Research Program Specialist III (Demography)	Certification List	Permanent	Full Time	1
Senior Administrative Analyst - Accounting Systems	Certification List	Permanent	Full Time	3
Staff Finance Budget Analyst	Certification List	Permanent	Full Time	1
Staff Information Systems Analyst	Certification List	Permanent	Full Time	1
Supervising Administrative Analyst Accounting Systems	Certification List	Permanent	Full Time	1
Supervisor, Financial and Performance Evaluator	Certification List	Permanent	Full Time	2
Assistant Chief, Office of State Audits and Evaluations,	Information List	CEA	Full Time	1
Assistant Program Budget Manager	Information List	CEA	Full Time	3
Chief, Office of State Audits and Evaluation,	Information List	CEA	Full Time	1
Program Budget Manager	Information List	CEA	Full Time	1
Business Service Assistant (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1
Principal Program Budget Analyst III	Mandatory Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Finance Budget Analyst	Permissive Reinstatement	Permanent	Full Time	1
Staff Services Manager I	Permissive Reinstatement	Permanent	Full Time	1
Associate Administrative Analyst (AS)	Transfer	Permanent	Full Time	1
Associate Finance Budget Analyst	Transfer	Permanent	Full Time	5
Attorney IV	Transfer	Permanent	Full Time	1
Financial and Performance Evaluator III	Transfer	Permanent	Full Time	1
Personnel Technician I	Transfer	Permanent	Full Time	1
Principal Program Budget Analyst III	Transfer	Permanent	Full Time	1
Staff Administrative Analyst (Accounting Systems)	Transfer	Permanent	Full Time	1
Staff Finance Budget Analyst	Transfer	Permanent	Full Time	3
Staff Programmer Analyst (Specialist)	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	2
Supervisor, Financial & Performance Evaluator, DOF	Transfer	Permanent	Full Time	1

## **FINDING NO. 2 – Job Opportunities Were Not Properly Advertised**

**Summary:** The DOF made appointments to fill 19 vacant positions that it failed to properly advertise on the Vacant Position Database (VPOS), the state’s centralized recruitment portal. By not advertising, the DOF’s recruitment strategy was not designed to be as broad and inclusive as necessary to ensure the identification of appropriate candidate groups.

Of the 19 vacant positions, the DOF either sent an email to qualified candidates as well as employment inquiries to eligibles on the list or formally announced the advertisement internally. The

DOF failed to post bulletins for the following vacancies: 4 Principal Program Budget Analyst II, 1 Supervising Administrative Analyst Accounting Systems, 6 Financial and Performance Evaluator II, 4 Financial and Performance Evaluator III, 2 Supervisor-Financial and Performance Evaluator, and 2 Research Program Specialist II (Demography).

**Criteria:** Departments are required to have recruitment strategies designed to be “as broad and inclusive as necessary to ensure the identification of an appropriate candidate group.” (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification in which the vacancy exists; determining whether an eligible list is necessary to fill the vacancy; advertise the vacancy, which may include certifying the eligible list; receive applications, and if no applications are received, re-advertise the position with increased recruitment efforts; screen applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conduct hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

**Severity:** Very Serious. All interested individuals, including external candidates who were reachable on the list or eligible for transfer or reinstatement, were not provided the opportunity to apply as only internal candidates were notified. By failing to advertise, the department cannot be certain that it has hired the most qualified workforce.

**Cause:** The DOF states that many of the classifications used by the DOF are departmental specific. As such, there are unique knowledge, skills and abilities required of these classifications. As a result, our hiring process for these classifications has included an internal e-mail to assess the level of interest among current DOF employees. Additionally, contacts are made with candidates on our departmental specific promotional lists to assess the level of interest. Generally, we have not advertised externally as many of our internal employees already possess the unique knowledge,

skills and abilities required for successful job performance in our department specific positions.

**Action:** The DOF has submitted a corrective action plan that addresses the corrections the department will implement to ensure that all vacant positions are advertised on VPOS, therefore no further action is required at this time.

**FINDING NO. 3 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications**

**Summary:** Out of 77 appointments reviewed, 9 files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 30 of the 432 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

**Severity:** Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

**Cause:** The DOF states that some hiring managers are not aware of the requirement to separate the EEO questionnaires from the completed applications. Additionally, applicants are unaware that completion of the questionnaire is only required when applying for state examinations and is not required when applying for vacant positions.

**Action:** The DOF has submitted a corrective action plan for ensuring EEO questionnaires are separated from the STD 678 employment application as part of its department response, therefore no further action is required at this time.

#### **FINDING NO. 4 – Unlawful Appointment By Way of Transfer**

**Summary:** The DOF made one unlawful appointment on January 13, 2014 by way of transfer. Specifically, the incumbent transferred from an Associate Management Auditor to a Staff Finance Budget Analyst. The Associate Management Auditor classification is at the first full journey level whereas the Staff Finance Budget Analyst is at the working specialist or full journey level. These two classifications do not involve substantially the same level of duties or responsibilities and as a result, Rule 430 was not met.

**Criteria:** Government Code section 19050.4 provides, in part, that a transfer may be accomplished without examination pursuant to rule.

CCR, title 2, section 430 (Rule 430) provides that classes meeting the criteria established by this article shall be considered to involve substantially the same level of duties, responsibility and salary for the purposes of Government Code Section 19050.4; provided that the board or the executive officer may prohibit transfer between such classes based on a specific finding that they are in a promotional relationship.

**Severity:** Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful

appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action. The CRU finds that the appointment was made in good faith, was not the fault of the appointed employee, and did not merit being voided since it has been over one year since the unlawful appointment occurred.

**Cause:** The DOF states that although we respectfully disagree with this finding, we also recognize that transfers between departmental specific classification series can be challenging and confusing to our human resources staff. These types of transfers are also very unique and are rare.

**Action:** The California Department of Human Resources (CalHR) Personnel Management Division also reviewed this transfer and concurred that this was an unlawful appointment. More than one year has elapsed, and the candidate accepted the offer in good faith. The DOF submitted a corrective action plan that shows it is committed to ensuring that appointments of this nature are lawful and will consult with SPB and CalHR staff before making similar transfers in the future. Therefore, no further action is required at this time.

## FINDING NO. 5 – Unlawful Promotion-In-Place Appointments

**Summary:** The DOF made three appointments utilizing the promotion-in-place (PIP) process in which not all requirements of the PIP were met. Specifically, a change in supervisory/subordinate relationship occurred, therefore criteria (2) of the PIP requirements was not met.

The three appointments included a change where the incumbents did not supervise any staff prior to the promotion but do supervise staff after the promotion.

**Criteria:** The requirements to PIP, as mandated by California Code of Regulations, section 599.854.4, are as follows:

- (1) There is no true vacancy;
- (2) There is no change of position, assignment, or supervisory/subordinate relationship of employee; and
- (3) The promotion is where the employee moves to the next higher level in a class series.

**Severity:** Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the



unlawful appointment and may also be subject to disciplinary action.

**Cause:** The DOF states that there has been limited training for both HR staff and hiring managers regarding the definition of promotions-in-place.

**Action:** The CalHR Personnel Management Division also reviewed these three appointments and concurred that they were unlawful appointments. The Personnel Management Division has informed DOF of the findings with instructions to investigate and take corrective action. The DOF has committed to providing formal training to HR staff, hiring managers, and support staff to ensure future promotions-in-place are consistent with California Code of Regulations, section 599.854.4 and will consult with SPB and CalHR staff when clarification is needed. 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 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 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.

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

**FINDING NO. 6 – 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 DOF 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 director of the DOF. In addition, the DOF has an established Disability Advisory Committee (DAC), that reports to the director on issues affecting persons with a disability. The DOF 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.

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 DOF had five PSC's that were in effect. Two 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
Overland, Pacific & Cutler, Inc.	Asset Transfer Valuation Expert	12/02/13 - 12/01/16	\$300,000	Yes
Bender Rosenthal, Inc.	Asset Transfer Valuation Expert	12/02/13 - 12/01/16	\$300,000	Yes

**FINDING NO. 7 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the Department of General Services (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 \$600,000. It was beyond the scope of the review to make conclusions as to whether DOF justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the DOF 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, DOF PSC's complied with procedural requirements.

## **DEPARTMENTAL RESPONSE**

The DOF's response is attached as Attachment 1.

## **SPB REPLY**

Based upon the DOF's written response, the DOF will comply with the CRU recommendations and findings. The DOF submitted corrective action plans for the 5 departmental findings that were out of compliance.



EDMUND G. BROWN JR. ■ GOVERNOR

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September 29, 2015

Suzanne M. Ambrose  
Executive Officer  
State Personnel Board  
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Sacramento, CA 95814

Dear Ms. Ambrose:

On behalf of the Department of Finance (Finance), thank you for the opportunity to review the draft Compliance Review Report and for having your staff meet with my staff on August 5, 2015 to discuss the initial findings. The following reflects our response to the findings:

Finding #1 – Examination Bulletins Did Not Include All Requirements:

This finding was related to the Financial and Performance Evaluator III (FPE III) and the Supervisor, Financial and Performance Evaluator examinations. In these instances, the examination bulletin indicated that the entire examination is weighted 100% rather than identifying weights to the specific components (i.e. role play and QAP).

**Cause:**

When examination bulletins are released, in some instances, Human Resources (HR) staff may still be in the process of identifying various testing methods and discussing options with Exam Consultants. As a result, the specific weight of each component is not known upon release of the examination bulletin. Therefore, we considered the examination components used as part of the FPE III and Supervisor, FPE examinations to be part of the entire Qualifications Appraisal Panel (QAP) Interview weighted 100% in its entirety.

**Action Plan:**

During the meeting earlier this month, your staff recommended we include specific details regarding the weight of each examination component within the "Notices To Appear" for the examination sent to candidates. However, subsequently, clarifying information was provided by your staff regarding Government Code Section 18933. Based on this additional information, we agree with the findings and plan to immediately include on all examination announcements the specific relative weight of each test type if more than one test type is utilized.

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#2 – Job Opportunities Were Not Previously Advertised:

This finding identified 19 vacant positions that were not advertised on the Vacant Position Database (VPOS).

**Cause:**

Many of the classifications used by Finance are departmental specific. As such, there are unique knowledge, skills and abilities required of these classifications. As a result, our hiring process for these classifications has included an internal e-mail to assess the level of interest among current Finance employees. Additionally, contacts are made with candidates on our departmental specific promotional lists to assess the level of interest. Generally, we have not advertised externally as many of our internal employees already possess the unique knowledge, skills and abilities required for successful job performance in our department specific positions.

**Action Plan:**

We agree with the findings and will be implementing changes to our hiring processes including posting employment opportunity bulletins for vacant positions on VPOS for 10 working days. We will also be revising existing hiring procedures and developing a training program for Human Resources (HR) staff, hiring managers and support staff to ensure successful implementation of these changes. Additionally, in accordance with State Personnel Board Rule 250(g), we are working on processes to permit internal transfer opportunities as part of our staff development and succession planning efforts. As unique situations arise in this area, we are committed to working with your staff to ensure we address the recent compliance findings and comply with the requirement to advertise.

Finding #3 – Equal Employment Opportunity (EEO) Questionnaires Were Not Separated From Applications:

This finding identified 9 applications where the completed EEO questionnaires were not separated from the STD 678 employment application form for specific job vacancies.

**Cause:**

Some hiring managers are not aware of the requirement to separate the EEO questionnaires from the completed applications. Additionally, applicants are unaware that completion of the questionnaire is only required when applying for state examinations and is not required when applying for vacant positions.

**Action Plan:**

We agree with the findings and will address this topic through additional training for HR staff, hiring managers and support staff.

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Finding #4 – Unlawful Appointment By Way of Transfer:

This finding identified one unlawful appointment where an employee transferred from the Associate Management Auditor classification to the Staff Finance Budget Analyst classification.

Cause:

The findings stated that the two classifications do not involve substantially the same level of duties or responsibilities and as a result, State Personnel Board (SPB) Rule 430 was not met and therefore the transfer was unlawful.

Action Plan:

This appointment complies with SPB Rule 431 as the salary of both classifications is substantially the same. The appointment also complies with Rule 250 as the employee has the required experience to meet the minimum qualifications.

With regard to Rule 430, we believe the duties and responsibilities of both classifications are substantially the same. As noted in the class specifications, the Associate Manage Auditor classification is the full journey person level requiring independence and proficiency in handling complex and difficult assignments. The Staff Finance Budget Analyst classification is also the full journey level and identifies and resolves complex budgetary problems and performs complex analytical duties.

Although we respectfully disagree with this finding, we also recognize that transfers between departmental specific classification series can be challenging and confusing to our Human Resources staff. These types of transfers are also very unique and are rare. To ensure that appointments of this nature are lawful, we will continue to provide appropriate training to HR staff. Additionally, as these situations arise, we are committed to ensuring compliance with Rule 430 and will consult with your staff and CalHR when making a final transfer determination.

Finding #5 – Unlawful Promotion-In-Place Appointments:

This finding identified three appointments which did not meet the legal definition of a promotion-in-place. Specifically the incumbents did not supervise staff prior to the promotion but did supervise staff after the promotion.

Cause:

There has been limited training for both HR staff and hiring managers regarding the definition of promotions-in-place.

Action Plan:

We agree with the findings and, as part of our efforts noted under finding #2, we will be implementing changes to our hiring and appointment processes to provide clarifying information regarding promotions-in-place. Defining true promotions in place can be challenging and

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confusing. Therefore, formal training will be provided to HR staff, hiring managers and support staff to ensure future promotions-in-place are consistent with California Code of Regulations, section 599.854.4. Further, as unique situation arise, we will consult with your staff and CalHR to obtain clarification as needed.

Closing:

Finance thanks the State Personnel Board for its review and report of our department's personnel practices in the areas of appointments, examinations, EEO and Personnel Services Contracts from July 1, 2013 through March 31, 2014. Finance is committed to complying with all related statutory and regulatory requirements. In order to achieve full compliance, my staff in the Administrative Services Unit will revise existing procedures and develop and implement training to HR staff, departmental managers, and support staff to ensure successful implementation of appropriate procedural changes.

If you have any questions, please feel free to contact me at 445-1546.

Sincerely,



David Botelho  
Program Budget Manager

cc: Estella Simoneau  
Chief, Administrative Services