



COMPLIANCE REVIEW REPORT
CALIFORNIA FAIR POLITICAL PRACTICES
COMMISSION

Compliance Review Unit
State Personnel Board
February 22, 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 DTSCs 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 Fair Political Practices Commission (FPPC) personnel practices in the areas of examinations, appointments, EEO, PSC's, and mandated training from September 1, 2014, through September 30, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Appointments Complied with Civil Service Laws and Board Rules	In Compliance
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
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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 FPPC is a 5-member independent, non-partisan commission that has primary responsibility for the impartial, effective administration, and Implementation of the Political Reform Act. The Commission’s objectives are to ensure that public officials act in a fair and unbiased manner in the governmental decision making process, promote transparency in governmental processes, and foster public trust in the political and public officials. Generally, the Act regulates campaign financing and spending, financial conflicts of interest, lobbyist registration and reporting, and governmental ethics. As of July 1, 2015, the FPPC has approximately 80 employees and 4 divisions:

- The Administration Division advises the Commission on fiscal, technology, personnel, and business services issues and provides critical support to FPPC staff. The Administration Division is responsible for the annual preparation and ongoing monitoring of the FPPC’s budget, managing the Commission’s IT infrastructure, as well as carrying out other core administrative functions for the agency.
- The Legal Division is led by the General Counsel, who serves as the legal advisor for the Chair and Commissioners on a full range of policy matters. The General Counsel also advises Commissioners and staff on the interpretation and analysis of laws, court decisions, and rules and regulations affecting the Commission. The Legal Division’s responsibilities include acting as legal counsel for the Commission by representing the Commission in court and administrative proceedings, as well as promoting compliance with the law by providing verbal and written legal advice to individuals.

- The Enforcement Division is committed to providing timely and impartial investigations and prosecution of alleged violations of the Act. The Enforcement Division's jurisdiction covers all levels of government. In fulfilling its mission, the Division handles over a thousand complaints and prosecutes hundreds of cases per year. The Enforcement Division also operates a campaign audit program of both mandatory and discretionary audits, with a sharp focus on pre-election compliance.
- The Technical Assistance Division (TAD) is primarily responsible for the Commission's educational outreach and for administering the Form 700 program. Additionally, TAD operates an advice line where candidates, elected officials, campaign treasurers, ballot measures committees, various officials of state and local government agencies, lobbyists, their clients and employers, and city and county election officials can call for expert advice on how to comply with the Act.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing FPPC examinations, appointments, EEO program, PSC's and mandated training from September 1, 2014, through September 30, 2015. The primary objective of the review was to determine if FPPC's 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 FPPC 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 FPPC 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 FPPC's 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 FPPC PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether the FPPC justifications for the contracts were legally sufficient. The review was limited to whether the FPPC practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the FPPC's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all supervisors were provided supervisory and sexual harassment training within statutory timelines.

On February 16, 2016, an exit conference was held with the FPPC to explain and discuss the CRU's initial findings and recommendations. The FPPC 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 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

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

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 FPPC conducted 2 examinations. The CRU reviewed the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
CEA B, Chief of Enforcement	CEA	Statement Of Qualifications (SOQ's) ²	5/27/15	6
CEA B, General Counsel	CEA	SOQ	Until Filled	9

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

The FPPC administered two CEA examinations that were tailored for each position to create eligible lists from which to make appointments respectively. For the two CEA examinations, the FPPC published and distributed examination bulletins containing the required information. Applications and SOQ's were received by the FPPC and were thereafter properly assessed to determine applicant ranks from one to six. The FPPC then hired candidates in the top three ranks.

The CRU found no deficiencies in the CEA examinations that the FPPC conducted during the compliance review period. Accordingly, the FPPC 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,

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.

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reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) 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 FPPC made 22 appointments. The CRU reviewed 12 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Program Specialist I, Franchise Tax Board	Certification List	Permanent	Full Time	1
Senior Commission Counsel (Specialist), FPPC	Certification List	Permanent	Full Time	1
Staff Services Analyst, FPPC	Certification List	Permanent	Full Time	1
Staff Services Analyst, FPPC (LEAP)	Certification List	Temporary	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Systems Software Specialist I (Technical)	Certification List	Permanent	Full Time	1
Fair Political Practices Commission Counsel	Permissive Reinstatement	Permanent	Full Time	1
Research Analyst II	Transfer	Permanent	Full Time	1
Senior Information Systems Analyst (Specialist)	Transfer	Permanent	Full Time	1
Special Investigator	Transfer	Permanent	Full Time	1

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

The FPPC 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 8 list appointments reviewed, the FPPC 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 3 FPPC 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 FPPC verified the eligibility of each candidate to their appointed class.

The FPPC made 1 appointment via permissive reinstatement. An appointing power may, in his or her discretion, reinstate any person having probationary or permanent status who was separated from his or her position by: (1) resignation; (2) service retirement; (3) termination from limited-term, temporary, career executive assignment, or exempt appointment; (4) absence without leave, as defined; or (5) without a break in continuity of state service to accept another civil service or exempt appointment. (Gov. Code, § 19140.) The FPPC followed applicable law and rule in making the permissive reinstatement appointments.

The CRU found no deficiencies in the appointments that the FPPC conducted during the compliance review period. Accordingly, the CRU found that all the appointments the FPPC made during the compliance review period satisfied civil service laws and board rules.

Equal Employment Opportunity (EEO)

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 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.) In a state agency with less than 500 employees, like the FPPC, 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 FPPC's EEO policies, procedures, and programs in effect during the compliance review period.

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

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the FPPC's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the FPPC. In addition, the FPPC has an established DAC that reports to the director on issues affecting persons with a disability. The FPPC 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 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 FPPC had one PSC that was in effect. This PSC was subject to Department of General Services (DGS) approval, and thus our procedural review, which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Lawprose	Legal Writing Workshop	8/11/14 - 6/30/15	\$16,904.00	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 amount of the PSC reviewed was \$16,904.00. It was beyond the scope of the review to make conclusions as to whether the FPPC justification for the contract was legally sufficient. For the PSC reviewed, the FPPC provided specific and detailed factual information in the written justification as to how the contract met at least one condition

set forth in Government Code section 19131, subdivision (b). Accordingly, the FPPC PSC's complied with procedural requirements.

Mandated Training

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

Each department must provide its new supervisors supervisory training within 12 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 2 hours of sexual harassment training every 2 years. New supervisors must be provided supervisory training within 6 months of appointment. (Gov. Code, § 12950.1 subd. (a).)

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

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The FPPC provided semiannual ethics training to its 55 filers during the 2-year calendar year period commencing in 2013. The FPPC also provided supervisory training to 5 new supervisors within 12 months of appointment. In addition, the FPPC provided sexual harassment prevention training to its 5 new supervisors within 6 months of appointment and semiannual training to its 4 existing supervisors. Thus, the FPPC 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 FPPC was found to be in compliance in all areas reviewed during the compliance review period. Therefore, no further action is required.