



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Compliance Review Unit
State Personnel Board
June 10, 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 SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Department of Housing and Community Development (HCD) 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 | Accepted Unverified Out-Of-Class Experience for an Applicant to Meet the Minimum Qualifications | Very Serious |
| Appointments | Probationary Evaluations Were Not Provided for All Appointments | Serious |

| Area | Finding | Severity |
|------------------------------|---|---------------|
| Equal Employment Opportunity | Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period | Very Serious |
| 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 HCD is headquartered in Sacramento and includes six smaller district offices throughout the state. The mission of the department is to provide leadership, policies, and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. As of January 2015, the department has a staff of approximately 550 employees who serve in seven divisions:

- Codes and Standards
- Financial Assistance
- Housing Policy Development
- Legal Affairs
- Legislation and Governmental Affairs
- Administration and Management
- Audit and Evaluation

Codes and Standards administers, adopts, and enforces uniform statewide housing standards to ensure the health and safety of Californians, to protect buyers from fraud and abuse, and safeguard the affordability of housing.

Financial Assistance administers more than 20 programs that award loans and grants for the construction, acquisition, rehabilitation, and preservation of affordable rental and

ownership housing, homeless shelters and transitional housing, public facilities and infrastructure, and the development of jobs for lower income workers.

Housing Policy Development (HPD) administers state housing element law, including the review of local general plan housing elements; prepares numerous state plans and reports and conducts research to facilitate housing development and improvement; and provides a wide range of technical assistance to local governments, public and private housing providers, business and industry groups, housing advocates, and interested citizens. In addition, the HPD prepares and implements the federal consolidated planning and performance reporting requirements for the United States Department of Housing and Urban Development, including the analysis of impediments to fair housing, ensuring California's receipt of millions of federal housing and community development dollars.

The Legal Affairs Division (LAD) performs an administrative support function in providing accurate, timely, prudent legal advice and assistance, and support to all divisions in the department. The LAD performs research and drafts legal opinions, represents the department in litigation, processes Public Records Act requests, drafts loan documents for recording, drafts legislative bills, promulgates 20 to 25 rulemaking/regulation packages annually, resolves legal issues pertaining to the registration and titling of manufactured housing, and provides general legal support.

Legislation and Governmental Affairs is the department's principal liaison to the Legislature. The division advises the Director and the Administration on housing-related legislative issues. It also promotes the Administration's housing policies and programs by testifying before legislative committees and negotiating with members of the Legislature and interest groups.

Administration and Management provides administrative support and mandates most of the general administrative functions described in the State Administrative Manual and is composed of the following branches.

- Fiscal Management
- Business and Contracts Services
- Bond Management
- Human Resources
- Accounting
- Information Technology



Audit and Evaluation provides independent assurance and consulting services for all of the HCD's divisions. For all external audits of the HCD, they provide a single-point-of-contact for external audit staff.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing HCD 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 HCD 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 HCD 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 HCD 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 HCD 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 HCD staff.

HCD PSC's were also reviewed. The HCD contracted for armored truck services, consulting services, mediation services, and processing of tax forms, among others.¹ It was beyond the scope of the compliance review to make conclusions as to whether HCD justifications for the contracts were legally sufficient. The review was limited to whether HCD practices, policies, and procedures relative to PSC's complied with procedural requirements.

¹If 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.

On May 13, 2015, an exit conference was held with the HCD to explain and discuss the CRU's initial findings and recommendations, and to provide the HCD with a copy of the CRU's draft report. The HCD was given until May 28, 2015, to submit a written response to the CRU's draft report. On May 28, 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 HCD conducted 21 examinations. The CRU reviewed 17 of these examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Applications |
|---|--------------------------|---|-----------------|---------------------|
| Accounting Administrator I (Supervisor) | Departmental Promotional | Education and Experience (E&E) ² | 4/14/2014 | 5 |
| Accounting Officer (Specialist) | Departmental Promotional | E&E | 4/14/2014 | 6 |
| Codes & Standards Administrator I | Open | Training & Experience (T&E) ³ | 5/31/2014 | 24 |
| Codes & Standards Administrator I | Open | T&E | 11/30/2013 | 2 |
| Codes & Standards Administrator I | Open | T&E | 5/31/2014 | 5 |
| Codes & Standards Administrator II | Open | T&E | 5/31/2014 | 18 |
| Codes & Standards Administrator II | Open | T&E | 11/30/2013 | 3 |
| Codes & Standards Administrator II | Open | T&E | 5/31/2014 | 3 |
| Codes & Standards Administrator III | Open | T&E | 5/31/2014 | 7 |
| Codes & Standards Administrator III | Open | T&E | 11/30/2013 | 1 |
| Codes & Standards Administrator III | Open | T&E | 5/31/2014 | 1 |
| District Representative I | Open | Written ⁴ | 6/7/2013 | 55 |

² 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.

³ 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, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

⁴ 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.

| Classification | Exam Type | Exam Components | Final File Date | No. of Applications |
|---|--------------------------|------------------------------|-----------------|---------------------|
| District Representative II | Open | Written | 6/7/2013 | 44 |
| Housing and Community Development Manager I | Open | QAP ⁵ /Written | 12/09/2013 | 38 |
| Management Services Technician | Departmental Promotional | Written | 7/22/2013 | 35 |
| Mobilehome Registration Manager | Departmental Promotional | QAP/Performance ⁶ | 11/01/2013 | 8 |
| Senior Accounting Officer (Specialist) | Departmental Promotional | E&E | 9/4/2013 | 5 |

FINDING NO. 1– Accepted Unverified Out-of-Class Experience for an Applicant to Meet the Minimum Qualifications.

Summary: An applicant was accepted into the Mobilehome Registration Manager examination by legally insufficient out-of-class experience resulting in placement on an eligible list.

Criteria: Government Code section 19050.8 mandates out-of-class experience as viable for meeting the minimum qualifications for an examination if it is “verified under the standards prescribed by board rule” (Gov. Code, § 19050.8. & Cal. Code Reg., tit. 2, §212.). Specifically, for verification of out-of-class assignments the applicant must perform the full range of duties for “30 consecutive calendar days”. (Cal. Code Reg., tit. 2, § 212, suds. (b)(1)(E)). In

⁵ 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.

⁶ A performance examination is a category of motor work sample tests where there is some physical activity or the physical implementation of things.



addition, state agencies are required to retain all verification statements for at least five years. (Cal. Code Reg., tit. 2, § 212, suds. (b)(2)(d).)

Severity: Very Serious. Allowing an individual to use uncertified out-of-class experience to meet the minimum qualifications for an examination could result in an illegal appointment.

Cause: HCD staff did not ensure “all of the criteria was met” as defined in SPB Rule 212.

Action: On March 25, 2015, the HCD confirmed that the candidate did not meet the minimum qualifications, and permanently withheld the candidate from the eligible list. 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 HCD made 59 appointments. The CRU reviewed 43 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appointments |
|---|--------------------|-----------|-----------|---------------------|
| Accountant I | Certification List | Permanent | Full Time | 1 |
| Accounting Administrator I (Supervisor) | Certification List | Permanent | Full Time | 2 |
| Accounting Officer Specialist | Certification List | Permanent | Full Time | 2 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appointments |
|--|--------------------|--------------|-----------|---------------------|
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | 2 |
| Attorney III | Certification List | Permanent | Full Time | 2 |
| Codes and Standards Administrator III (Non-Peace Officer) | Certification List | Permanent | Full Time | 1 |
| District Representative I, Division of Codes and Standards (Non-Peace Officer) | Certification List | Permanent | Full Time | 2 |
| Housing and Community Development Representative I | Certification List | Limited Term | Full Time | 4 |
| Housing and Community Development Representative II | Certification List | Permanent | Full Time | 6 |
| Management Services Technician | Certification List | Permanent | Full Time | 1 |
| Mobilehome Registration Supervisor II | Certification List | Permanent | Full Time | 1 |
| Office Technician (Typing) | Certification List | Permanent | Full Time | 1 |
| Program Technician | Certification List | Permanent | Full Time | 2 |
| Program Technician II | Certification List | Permanent | Full Time | 2 |
| Senior Legal Typist | Certification List | Permanent | Full Time | 2 |
| Staff Services Manager I | Certification List | Permanent | Full Time | 1 |
| Supervising Program Technician III | Certification List | Permanent | Full Time | 1 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appointments |
|--|------------------|-----------|-----------|---------------------|
| District Representative I, Division of Codes and Standards (Non-Peace Officer) | Reinstatement | Permanent | Full Time | 1 |
| Associate Accounting Analyst | Transfer | Permanent | Full Time | 2 |
| Associate Governmental Program Analyst | Transfer | Permanent | Full Time | 1 |
| Housing & Community Development Representative II | Transfer | Permanent | Full Time | 1 |
| Program Technician II | Transfer | Permanent | Full Time | 1 |
| Senior Personnel Specialist | Transfer | Permanent | Full Time | 1 |
| Staff Services Analyst (General) | Transfer | Permanent | Full Time | 1 |
| Staff Services Manager I | Transfer | Permanent | Full Time | 1 |
| Staff Services Manager II (Supervisor) | Transfer | Permanent | Full Time | 1 |

FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments

Summary: The HCD did not prepare, complete, and/or retain required probationary appraisals of performance for 8 of the 43 appointments reviewed by the CRU.

| Classification | Appointment Type | No. of Appointments | No. of Uncompleted Prob. Reports |
|---|--------------------|---------------------|----------------------------------|
| Accounting Administrator I (Supervisor) | Certification List | 2 | 3 |
| Accounting Officer Specialist | Certification List | 1 | 1 |

| Classification | Appointment Type | No. of Appointments | No. of Uncompleted Prob. Reports |
|---|--------------------|---------------------|----------------------------------|
| Housing and Community Development Representative II | Certification List | 1 | 1 |
| Management Services Technician | Certification List | 1 | 1 |
| Office Technician (Typing) | Certification List | 1 | 1 |
| Staff Services Manager I | Certification List | 1 | 1 |
| Associate Accounting Analyst | Transfer | 1 | 1 |
| Total | | 8 | 9 |

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully

perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The current process does not contain adequate steps to ensure all probationary reports are completed; however, HCD will continue to review the process to ensure timely submission.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the HCD submit to the CRU a written corrective action plan that addresses how the HCD will ensure full compliance from supervisory/managerial staff to meet with the probationary requirements of Government Code § 19172.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

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

FINDING NO. 3– Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period.

Summary: The HCD provided evidence that two out of the three discrimination complaints filed during the compliance review period are still outstanding without providing communication to the complainants the status of their complaint.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

Severity: Very Serious. Employees were not informed of the reasons for delays in decision for complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: The Department had the understanding that the 90-day window for issuing a decision on a discrimination complaint was only applicable for complaints based on mental disability, physical disability, and medical condition.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the HCD submit to the CRU a written corrective action plan that addresses the



corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a). Copies of any relevant documentation should be included with the plan.

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, HCD had five PSC's that were in effect. Only one contract was subject to Department of General Services (DGS) approval, and thus our procedural review, which is listed below:

| Vendor | Services | Contract Dates | Contract Amount | Sufficient Justification |
|--|---------------------|---------------------|-----------------|--------------------------|
| California Housing Partnership Corporation | Consulting Services | 9/03/2013-6/30/2016 | \$174,496.00 | Yes |

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the Department of General Services 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 \$174,496.00. It was beyond the scope of the review to make conclusions as to whether HCD justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the HCD provided specific and detailed factual information in the written justifications as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, HCD PSC's complied with procedural requirements.

DEPARTMENTAL RESPONSE

HCD has evaluated the compliance review and agrees with the findings, and has already taken immediate and appropriate actions to ensure compliance in future compliance reviews.

FINDING NO. 1

Upon notification that a violation of California Code of Regulations, title 2, section 212 occurred, the department took immediate and appropriate action of confirming that the candidate did not meet the minimum qualifications, and permanently withheld the candidate from the eligible list. Additionally all impacted staff were provided the finding and proper training to ensure the violation does not occur again.

FINDING NO. 2

After careful review of HCD's process of getting probationary reports submitted to the Human Resources Branch (HRB) it was determined that change in the current process is necessary to ensure 100% compliance with Government Code section 19172; California Code of Regulations., title. 2, section 599.795. Effective immediately the HRB has added an escalation protocol to its process.



FINDING NO. 3

After careful review of the regulations (Cal. Code Regs. tit. 2, section 64.4) the department has concluded that henceforth a written notice will be sent within 90 days to a complainant, regardless of the basis of the complaint, to provide a written decision or inform him/her as to the reasons we are unable to issue a decision within the required time period.

SPB REPLY

Based upon the HCD's written response, the HCD will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

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