



COMPLIANCE REVIEW REPORT

SCHOLARSHARE INVESTMENT BOARD

Compliance Review Unit
State Personnel Board
April 14, 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 Scholarshare Investment Board (SIB) 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	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
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
- Gray = Observation
- Blue = Best Practice

BACKGROUND

The SIB sets investment policies and oversees all activities of Scholarshare, the state’s 529 college investment plan. The program enables Californians to save for college by putting money in tax-advantaged investments. After-tax contributions allow earnings to grow tax-deferred, and disbursements, when used for tuition and other qualified expenses, are federal and state tax-free.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing SIB 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 SIB 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 SIB 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 SIB provided, which included examination plans, examination bulletins, job analyses, 511b’s, scoring results, notice of personnel action forms, vacancy posting advertisements, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the SIB 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 SIB staff.

All of the SIB's PSC's were reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether SIB justifications for the contracts were legally sufficient. The review was limited to whether SIB practices, policies, and procedures relative to personal services complied procedural requirements.

The SIB declined to have an exit conference. The SIB was given until March 25, 2015 to submit a written response to the CRU's draft report. On March 25, 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

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.

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 State Treasurer’s Office (STO) under an interagency agreement conducted two examinations on behalf of the SIB. The CRU reviewed all of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Executive Assistant	Promotional	Qualification Appraisal Panel (QAP) ²	05/12/2014	11
Staff Services Manager I	Promotional	QAP	01/20/2014	27

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

The STO on behalf of the SIB administered two promotional examinations to create eligible lists from which to make appointments. For all of the examinations, the STO published and distributed examination bulletins containing the required information. Applications received by the STO were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. The STO notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the STO conducted during the compliance review period. Accordingly, the STO, on behalf of the SIB, fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

² 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.

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 SIB, made four appointments. The CRU reviewed all 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	2
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1

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

Summary: The SIB did not prepare, complete, and/or retain required probationary reports of performance for two of the four appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Governmental Program Analyst	Certification List	2	4
Total		2	4

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 period 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 department did not have adequate procedures in place to track the completion of probationary reports of performance.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SIB submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity 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.) In a state agency with less than 500 employees, like Scholarshare Investment Board, 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 SIB's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate SIB staff.

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 SIB'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 is at a managerial level and is the personnel officer and reports directly to the State Treasurer. In addition, the SIB has an established DAC that reports to the State Treasurer on issues affecting persons with a disability. The SIB also provided evidence of its efforts to promote equal employment opportunity 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 personal services contract (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 SIB had three 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
AKF Consulting	Consulting Services	04/17/2011 - 04/16/2014	\$226,043	Yes
Pension Consulting Alliance	Investment Consultant	04/17/2011 - 04/16/2014	\$363,750	Yes

FINDING NO. 5 – 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 all the PSCs reviewed was \$589,793. It was beyond the scope of the review to make conclusions as to whether SIB justifications for the contract were legally sufficient. For all PSC’s reviewed, the SIB provided specific and detailed factual information in the written justifications as to how each of the two contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the SIB’s PSC’s complied with procedural requirements.

DEPARTMENTAL RESPONSE

The SIB acknowledges the findings and have taken actions to ensure compliance in future reviews. (Attachment 1)

SPB REPLY

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

It is further recommended that the SIB 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.


SCHOLARSHARE INVESTMENT BOARD

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EXECUTIVE DIRECTOR
 Julio Martinez

Date: March 24, 2015

To: Suzanne Ambrose
 Compliance Review Unit
 State Personnel Board

From: Julio Martinez, Executive Director
 ScholarShare Investment Board *jm*

Cc: Debby Silva, Chief
 Management Services
 State Treasurer's Office

Re: State Personnel Board Compliance Review Report for the ScholarShare Investment Board

Thank you for the recent completion of the State Personnel Board's Compliance Review Report for the ScholarShare Investment Board (SIB) for the period from July 1, 2013 through March 31, 2014.

We acknowledge the Compliance Review Unit's (CRU) findings represented in Finding No. 2 regarding the required probationary reports of performance (for two of the four appointments) not being completed and submitted during the audit review period. During the audit review period, when the probationary reports were due in October and December 2013, SIB experienced management changes and increased workload, extraordinary to normal business expectations. Due to our oversight, coupled with the absence of an effective probationary report tracking system, these reports were not completed in accordance with the required schedule. Although the first and second probationary reports were not completed for these two appointments in the required manner, management did meet with the staff regularly to discuss work performance and assignments and offered both positive and corrective feedback to address staff progress. Final probation reports were completed for both appointments in February 2014.

SIB understands the severity of this finding and that providing employees with the appropriate level of performance evaluation is of great importance. SIB has worked to ensure that this issue is corrected going forward and that all probationary reports are completed for all appointments in accordance with the required timelines. Additional measures that have been put into place include establishing regular and multiple reminders (prior to and at the report deadline) from both the management team as well as the personnel office. SIB will comply with the CRU's findings and recommendations and provide the CRU with a Corrective Action Plan.

Thank you again for your report. SIB takes these findings very seriously and appreciates your assistance in identifying this particular lapse in compliance. SIB will ensure appropriate measures are implemented and that all areas are in compliance going forward.