



# **COMPLIANCE REVIEW REPORT**

## **SCHOLARSHARE INVESTMENT BOARD**

Compliance Review Unit  
State Personnel Board  
June 26, 2018

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## **INTRODUCTION**

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), 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 comply with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code Section 18502(c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, by mutual agreement, expanded the scope of items reviewed by the SPB's CRU beyond merit-related issues to more operational practices delegated to departments, and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and not monitored on a consistent, statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices and deter waste, fraud, and abuse.

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 the ScholarShare Investment Board (SIB) personnel practices in the areas of appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Union Was Not Notified In a Timely Manner
Mandated Training	Mandated Training Complied with Statutory Requirements
Compensation and pay	Incorrect Application of Salary Determination Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Were Not Provided to All Employees Whose Leave Balances Exceeded Established Limits
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

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 SIB sets investment policies and oversees all activities of ScholarShare, the state's 529 college savings 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 higher education expenses, are federal and state tax-free. As of June 30, 2017, there are more 291,000 ScholarShare 529 accounts with more than \$7.7 billion in total assets under management. The ScholarShare Investment Board also oversees the Governor's Scholarship Programs and the California Memorial Scholarship Program.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the SIB appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup> when applicable. 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, bargaining unit agreements, CalHR policies and guidelines, CalHR delegation agreements, and to recommend corrective action where deficiencies were identified.

The SIB did not conduct any examinations or permanent withhold actions during the compliance review period.

A cross-section of the SIB's appointments were selected to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the SIB provided, which generally included notice of personnel action (NOPA) forms, request for personnel actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The SIB did not conduct any unlawful appointment investigations

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<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

during the compliance review period. Additionally, the SIB did not make any additional appointments during the compliance review period.

The SIB's appointments were also selected for review to ensure the SIB applied salary regulations accurately and correctly processed employee's compensation and pay. The CRU examined the documentation that the SIB provided, which included employee's employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: bilingual pay. During the compliance review period, the SIB did not issue or authorize hiring above minimum (HAM) requests, arduous pay, out of class pay, red circle rates, or any other monthly pay differential.

The review of the SIB'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 SIB's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the SIB justifications for the contracts were legally sufficient. The review was limited to whether the SIB's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The SIB's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors and managers were provided supervisory and sexual harassment prevention training within statutory timelines.

The CRU also identified the SIB employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours. Additionally, the CRU asked the SIB to provide a copy of their leave reduction policy.

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<sup>3</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.

The CRU reviewed the SIB's Leave Activity and Correction certification forms to verify that the SIB created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the SIB's units in order to ensure they maintained accurate and timely leave accounting records. During the compliance review period, the SIB did not track any temporary intermittent employees by actual time worked or authorized Administrative Time Off (ATO) to its employees. The SIB also did not have any employees who had a non-qualifying pay period during the compliance review period.

Moreover, the CRU reviewed the SIB's policies and processes concerning nepotism and workers' compensation. The review was limited to whether the SIB's policies and processes adhered to procedural requirements. The SIB did not conduct any performance appraisals during the compliance review period.

On June 1, 2018, an exit conference was held with the SIB to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the SIB's written response on June 8, 2018, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **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 period under review, June 1, 2016 to May 31, 2017, the SIB made four appointments. The CRU reviewed all four appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Associate Governmental Program Analyst	List Appointment	Permanent	Full Time	2
Office Assistant (Typing)	List Appointment	Permanent	Full Time	1
Staff Services Analyst	List Appointment	Permanent	Full Time	1

In reviewing the SIB's appointments processes and procedures, the CRU has determined the following:

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

The SIB 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 four list appointments reviewed, the SIB 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 found no deficiencies in the appointments that the SIB initiated during the compliance review period. Accordingly, the CRU found that the SIB's appointments processes and procedures utilized during the compliance review period satisfied civil service laws and board rules.

**Equal Employment Opportunity**

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

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

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

**FINDING NO. 2 – Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Regulations**

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 SIB 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 SIB. In addition, the SIB has an established DAC, which reports to the Director on issues affecting persons with disabilities. The SIB also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the SIB EEO program complied with civil service laws and board rules.

**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 period under review, April 1, 2017 through September 30, 2017, the SIB had three PSC’s and one amendment that were in effect. The CRU reviewed all three PCS and amendment, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
AKF Consulting, LLC	Consulting Services	4/17/17 - 4/16/19	\$166,000.00	Yes
Pension Consulting Alliance	Consulting Services	4/17/17 - 4/16/19	\$195,750.00	Yes
Gilbert Associates, Inc.	Consulting Services	7/1/15 - 6/30/17	\$36,000.00	Yes
Gilbert Associates, Inc. <sup>4</sup>	Consulting Services	7/1/15 - 6/30/18	\$18,000.00	Yes

In reviewing the SIB’s PSC’s during the compliance review period, the CRU have determined the following:

**FINDING NO. 3 – Union Was Not Notified In a Timely Manner**

**Summary:** The SIB did not notify unions prior to entering into two of the three PSC’s.

**Criteria:** Government Code section 19132, subdivision (b)(1), mandates that “the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted.”

<sup>4</sup> Amendment to original contract

**Severity:** Serious. Unions must be notified of impending PSC's in order to ensure they are aware contracts are being proposed for work that their members could perform. Failing to notify the union is a violation of the law and jeopardizes the validity of the contract.

**Cause:** On one occasion, the email printout was not included with the contract file; and on the other occasion, the email printout did not contain a date the notification was sent.

**Action:** The STO had a union notification procedure in place; and a checklist is used to verify the inclusion of the required documentation into the contract file. Therefore, no further action is required at this time.

### **Mandated Training**

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-

conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

In reviewing the SIB's mandated training program that was in effect during the compliance review period, the CRU have determined the following:

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

The SIB provided semiannual ethics training to its three existing filers during two-year calendar year period commencing in 2017. The SIB also provided sexual harassment prevention training to its three existing supervisors every two years. The SIB did not hire any new filers or supervisors during the compliance review period. Thus, the SIB complied with mandated training requirements within statutory timelines.

### **Compensation and Pay**

#### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Reg., tit. 2, § 599.666). Several salary rules dictate how departments

calculate and determine an employee’s salary rate<sup>5</sup> upon appointment depending on the appointment type, and the employee’s state employment pay history and tenure.

During the period under review, July 1, 2016 to March 31, 2017, the SIB made four appointments. The CRU reviewed one of those appointments to determine if the SIB applied salary regulations accurately and correctly keyed employees’ compensation transactions. The appointment is listed below:

Classification	Appointment Type	Tenure	Time Base	Salary
Associate Governmental Program Analyst (AGPA)	List Appointment	Permanent	Full Time	\$5,027
AGPA	List Appointment	Permanent	Full Time	\$4,600
Office Assistant (Typing)	List Appointment	Permanent	Full Time	\$2,681
Staff Services Analyst	List Appointment	Permanent	Full Time	\$4,057

The CRU found one deficiency in one of four salary determinations that the SIB made during the compliance review period. The SIB appropriately calculated and processed the salaries for each appointment and correctly determined employees’ anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, board rules and CalHR policies and guidelines.

However, the SIB incorrectly applied compensation laws, rules and/or CalHR policies and guidelines for one salary determination reviewed.

**FINDING NO. 5 – Incorrect Application of Salary Determination Laws, Rules, and/or CalHR Policies and Guidelines**

**Summary:** The CRU found the following error in the SIB’s salary determination of employee compensation:

<sup>5</sup> “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

Classification	Description of Finding(s)	Criteria
Office Assistant (Typing)	An employee who served a year as limited-term Office Assistant (General) was promoted to Office Assistant (Typing). She never had permanent civil service status and should have received the entrance rate of \$2,429 to Range B upon her permanent appointment to Office Assistant (Typing) rather than \$2,628.	CCR 281 and 599.673

**Severity:** Very Serious. The SIB failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR’s policies and guidelines. This results in a civil service employee receiving an incorrect and/or inappropriate pay amount.

**Cause:** The Personnel Specialist miscalculated the salary rate on an existing employee who promoted from Office Assistant (General) to Office Assistant (Typing) effective 9/1/2016. This error occurred when CCR 599.674 (a) was applied incorrectly.

**Action:** The STO on behalf of the SIB, has developed backup measures to ensure the two-part verification process already in place is followed even when the unit is understaffed. Therefore no further action is required at this time.

**Pay**

**Bilingual Pay**

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the Pay Scales, specifically Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position,

not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, March 1, 2016 to February 28, 2017, the SIB issued Bilingual Pay to two employees. The CRU reviewed these bilingual pay authorizations, to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base
Associate Governmental Program Analyst (AGPA)	R01	Full Time
AGPA	R01	Full Time

**FINDING NO. 6 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found that the bilingual pay authorized to the employee during the compliance review period satisfied civil service laws, board rules and CalHR policies and guidelines.

**Leave**

**Leave Auditing and Timekeeping**

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction (Cal. Code Reg., tit. 2, § 599.665).

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, December 1, 2016 to February 28, 2017 the SIB reported two units comprised of ten active employees during the December, 2016 pay period, two units comprised of nine active employees during the January, 2017 pay

period, and two units comprised of nine active employees during the January, 2017 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Number of Units Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
December 2016	2	10	10	0
January 2017	2	9	9	0
February 2017	2	9	9	0

### Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted (Cal. Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, “the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than” the established limit as stipulated by the applicable bargaining unit agreement<sup>6</sup>. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the “employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days” (Cal. Code Regs., tit. 2, § 599.738).

In accordance with CalHR Online Manual section 2124, departments must create a leave reduction policy for their organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place.

As of May 31, 2017, one SIB employee exceeded the established limits of Vacation or Annual Leave. The CRU reviewed the employee’s leave reduction plans to ensure

<sup>6</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and bargaining unit 5 the established limit is 816 hours.

compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit <sup>7</sup>	Leave Reduction Plan Provided
Staff Services Manager II (Supervisor)	S01	545.75	No
<b>Total</b>		545.75	

**FINDING NO. 7 – Leave Reduction Plans Were Not Provided to All Employees Whose Leave Balances Exceeded Established Limits**

**Summary:** The SIB provided a memorandum demonstrating that they encourage their employees to participate in the leave buy-back program in an effort to reduce “over the cap” leave balances. However, the SIB did not provide a leave reduction plan for the employee reviewed whose leave balance significantly exceeded established limits. Additionally, the SIB did not provide a general departmental policy addressing leave reduction.

**Criteria:** It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1), ensuring employees maintain the capacity to optimally perform their jobs. The employee shall also be notified by July 1 that if the employee fails to take off the required number of hours by January 1 for reasons other than those listed in sections 599.737 and 599.738 of these regulations the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (Cal. Code Regs., tit. 2, § 599.742.)

According to Cal HR PML 2016-029, “It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for

the organization and monitor employees' leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant 'over-the-cap' leave balances have a leave reduction plan in place and are actively reducing hours”.

**Severity:** Technical. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each passing promotion and salary increase. Accordingly, leave balances exceeding established limits need to be addressed immediately.

**Cause:** The STO/SIB currently has a published policy that addresses leave balances that are in excess of the established limits. However, there has not been an enforcement mechanism established to address these excess balances.

**Action:** The STO on behalf of the SIB, will immediately begin providing quarterly reports to the SIB management team to assist them with monitoring excess leave balances. Additionally, on a regular basis, SIB will (1) require all supervisory staff to monitor their employees' vacation/annual leave balances for excess time, (2) encourage staff to use excess time in the pay period accrued when possible, and (3) require the completion of an annual reduction plan for staff with excess leave balances. The STO on behalf of SIB has submitted its corrective action plan. Therefore, no further action is required at this time.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or

cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to these policies. Overall, departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit (Cal HR Online Manual Section 1204).

**FINDING NO. 8 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

After reviewing the SIB's nepotism policy in effect during the compliance review period, the CRU verified that the policy was disseminated to all staff and emphasized the SIB's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the SIB's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions as outlined in CalHR's Online Manual Section 1204.

Worker's Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

According to Labor Code section 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees. This is specific to the legally uninsured state departments participating in the Master Agreement. Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments that have volunteers should have notified or updated their existing notification to the State Compensation Insurance Fund (SCIF) by April 1, 2015 whether or not they have decided to extend workers'

compensation coverage to volunteers. In this case, the SIB did not employ volunteers during the compliance review period.

**FINDING NO. 9 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

After reviewing the SIB’s Workers’ Compensation process that was in effect during the compliance review period, the CRU verified that the SIB provides notice to their employees to inform them of their rights and responsibilities under CA workers’ compensation law. Furthermore, the CRU verified that when the SIB received worker’s compensation claims, the SIB properly provided claim forms within one working day of notice or knowledge of injury.

**DEPARTMENTAL RESPONSE**

The SIB’s response is attached as Attachment 1.

**SPB REPLY**

The SIB has processes and/or procedures in place to ensure future compliance in two areas and has submitted the required corrective action plan for the other. Therefore, no further action is required for any of the findings in this report.



## SCHOLARSHARE INVESTMENT BOARD

915 Capitol Mall, Room 590  
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June 7, 2018

Suzanne **M.** Ambrose, Executive Director  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814

Dear Ms. Ambrose,

### Response to Compliance Review Report

The State Treasurer's Office (STO) provides personnel services for the Scholarshare Investment Board (SIB). On behalf of SIB, the STO submits this letter in response to the State Personnel Board's (SPB) compliance review of the SIB's personnel practices for the period June 1, 2016 through May 31, 2017. SIB appreciates SPB's review and the opportunity to respond to its findings. Please reference the enclosed Attachment A for detailed responses.

SIB agrees with SPB's findings, and has taken or will take immediate steps to develop and submit a Corrective Action Plan within 60 days of the release of the report to address the deficiencies identified.

Thank you for the opportunity to respond to your draft report. If you have any questions, or require additional information, please do not hesitate to contact me at (916) 653-3382, or by email at [csneed@treasurer.ca.gov](mailto:csneed@treasurer.ca.gov).

Sincerely,

Christopher Sneed  
Chief of Management Services

Enclosure

cc: Rebecca Grajski, STO  
Vincent Brown, STO  
Julio Martinez, SIB

#### MEMBERS

JOHN CHIANG, CHAIRMAN  
State Treasurer

MICHAEL COHEN  
Director of Finance

KAREN STAFF WALTERS  
Executive Director  
State Board of Education

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Governor Appointee  
CA Student Aid Commission

PAUL MARTIN  
Governor Appointee  
Member at Large

CHRISTOPHER JENNINGS  
Speaker Appointee

VACANT  
Senate Rules Committee  
Appointee

EXECUTIVE DIRECTOR  
Julio Martinez

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**FINDING No. 1 - Examinations Complied with Civil Service Laws and Board Rules**

**Cause:** None

**Department's Response:** No adverse findings were reported during the Compliance Review.

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**FINDING No. 2 - Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules**

**Cause:** None

**Department's Response:** No adverse findings were reported during the Compliance Review.

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**FINDING No. 3- Union Was Not Notified In a Timely Manner**

**Cause:** On one occasion, the email printout was not included with the contract file; and on the other occasion, the email printout did not contain a date the notification was sent.

**Department's Response:** On behalf of SIB, the STO's procedure after notifying the applicable union of SIB's intent to enter into a personal services contract is to print out the email notification and include the document in the contract file. In response to the finding, and under normal circumstances, we would have asked the contract analyst to retrieve the email notifications from his or her Outlook archive.

Unfortunately, the contract analyst and the designated backup person are no longer employed with the department, and thus we are unable to provide the email notification to the union that would normally be part of the contract file.

Management has reminded all staff to strictly adhere to the union notification procedure; which includes printing out the email notification immediately after it is sent and including it in the contract file. A checklist is used to verify the inclusion of required documentation.

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**FINDING No. 4 - Mandated Training Complied with Statutory Requirements**

**Cause:** None

**Department's Response:** No adverse findings were reported during the Compliance Review.

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**FINDING No. 5 - Incorrect Application of Salary Determination Laws, Board Rules, and/or CalHR Policies and Guidelines**

**Cause:** The Personnel Specialist miscalculated the salary rate on an existing employee who promoted from Office Assistant (General) to Office Assistant (Typing) effective 9/1/2016. This error occurred when CCR 599.674 (a) was applied incorrectly.

**Department's Response:** On behalf of SIB, the STO employs a two-part verification process to ensure salary determinations are calculated accurately. However, during this period, there was one vacant transactional staff position in the two-position unit, who would normally verify the calculations from the other staff member. The STO has since developed backup measures to ensure the two-part verification process is followed even when the unit is understaffed.

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**FINDING No. 6- Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

**Cause:** None

**Department's Response:** No adverse findings were reported during the Compliance Review.

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**FINDING No. 7 - Leave Reduction Plan Were Not Provided to All Employees Whose Leave Balances Exceeded Established Limits**

**Cause:** The STO/SIB currently has a published policy that addresses leave balances that are in excess of the established limits. However, there has not been an enforcement mechanism established to address these excess balances.

**Department's Response:** On behalf of SIB, the STO will immediately begin providing quarterly reports to the SIB management team in an effort to assist them with monitoring excess leave balances. Additionally, on a regular basis, SIB will **(1)** require all supervisory staff to monitor their employees' vacation/annual leave balances for excess time, and **(2)** will encourage staff to use excess time in the pay period accrued when possible, and **(3)** will require the completion of an annual reduction plan for staff with excess leave balances.

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**FINDING No. 8 - Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

**Cause:** None

**Department's Response:** No adverse findings were reported during the Compliance Review.

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**FINDING No. 9- Worker's Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

**Cause:** None

**Department's Response:** No adverse findings were reported during the Compliance Review.

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