

## **SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES**

### **I.**

#### **Introduction**

The State Personnel Board (Board) proposes to repeal Section 262 and amend Sections 170, 249.1.1, 249.1.2, 249.2, 249.4, 321, 438, 438.1, 439.2, and 439.4 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 15-day public comment period on this rulemaking action was held from October 6, 2023 through October 23, 2023. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board’s responses are below.

### **II.**

#### **Summary of Written Comments from Penny Nerona, Section Manager – Classification & Hiring, Selections & Exams, and Talent Acquisition, California Public Utilities Commission**

##### Comment I. Section 249.1.1.

The CPUC would like clarification regarding California Code of Regulations, section 249.1.1 Job Announcements. Subsection (d) states that the hiring authority has the option to advertise multiple vacancies within different units on the same job announcement when they are the same classification. The CPUC believes having the term ‘same’ in subsection (d) can be interpreted to mean that only one classification can be considered in a job announcement and conflicts with what is written in subsection (a) subdivision (1)(A) that requires that a job announcement include each classification to be considered for a vacancy. The CPUC questions if the proposed language would support and allow one job vacancy be announced with different classifications (e.g. Associate Governmental Program Analyst/Staff Services Analyst) and across multiple units.

##### Response I.

The Board thanks and appreciates CPUC comments on this regulatory package. The Board agrees that proposed subsection (d)’s use of the term “same classification” may be interpreted to mean that appointing powers may not advertise multiple classifications (e.g. Associate Governmental Program Analyst/Staff Services Analyst) in order to fill multiple vacancies

across multiple units. For purposes of clarity, the Board further amends the term “same classification” to state “same classification(s)”.

Comment II. Section 249.1.1.

The CPUC acknowledges under California Code of Regulations, section 249.1.1 Job Announcements, subsection (d) the vacancies should involve identical or similar standards of assessments when comparing qualification of candidates during the application screening to get into an interview, however, the CPUC would like confirmation that the same standard shall apply during the interview process.

Response II.

Based on the proposed amendments, departments may conduct interviews for each unit’s specific vacancy. For instance, if a department advertises several Staff Services Analyst positions across multiple units in varying occupational areas, there may be distinct interview questions and/or interview panels for an open position in the contracts unit versus a position in the human resources unit. During the hiring process, the department may assess which applicants’ education, experience, and competencies make them competitive for and warrant selection to an interview in each specific vacancy. Moreover, the department may communicate directly with the applicants to ascertain their interest in or preference for a specific vacancy, especially in those instances where they may be competitive for more than one position. As long as the standards used in each separate interview process for each vacancy are applied uniformly to the respective interviewees and are job-related, there should be no negative impact to the hiring process. Overall, these amendments should promote a more efficient hiring process while maintaining the integrity of the merit civil service system.

Comment III. Section 438.1.

The CPUC would like clarification regarding California Code of Regulations, section 438.1 Period of time for the Temporary Assignment or Loan. Subsection (f) states employees shall have no right of appeal, to include if they were selected or not for a temporary assignment/loan or whether the assignment/loan was terminated prior to anticipated end date. A training and development assignment (T&D) is considered a Temporary Assignment or Loan and can occur and be the outcome from a competitive process. The CPUC argues that a candidate that has competed for a vacancy that considers T&D eligibility, should have the ability to appeal and challenge the merit process.

Response III.

Pursuant to California Code of Regulations, section 439, the opportunity for training and development assignments shall be competitive and advertised in accordance with section 249.1 except in certain circumstances provided by Board rule. Therefore, the Board further amends section 438.1, subsection (f), to carve out an exception for training and

development assignments.

### III.

#### **Summary of Written Comments from Peter Brown, Chief – Career and Classification Services, Covered California (Covered CA)**

##### Comment IV. Section 249.4

Covered CA would like clarification on the proposed amendments to California Code of Regulations, section 249.4 regarding meeting the minimum qualifications for mandatory reinstatements when a position requires valid licensure, certification, or similar credential. Covered CA believes that as currently proposed section 249.4 allows, or mandates, the appointing power to deny a mandatory reinstatement in those instances where the candidate does not possess valid licensure, certification, or similar credential.

##### Response IV.

Pursuant to Government Code section 19140.5, a permanent employee shall be reinstated to his or her former position after termination from a temporary or limited-term appointment; rejection during probation; or, demotion from a managerial position when the employee accepted the appointment without a break in the continuity of state service and the reinstatement is requested within 10 working days after the effective date of the termination.

It is not the Board's intention to deny an employee their right to reinstate to their former position when the criteria provided by Government Code section 19140.5 are met.

As such, the Board further amends section 249.4 to ensure that in those instances where the employee exercises their mandatory reinstatement rights and it is determined that the employee no longer possesses valid licensure, certification, or similar credential, to meet the requirements for continuing employment in the position's classification, the employee shall first be reinstated to their former position.

After reinstatement, the appointing power shall act in accordance with Government Code section 19585 which provides that an appointing power may terminate, demote, or transfer an employee who fails to meet the requirement for continuing employment, or grant the employee a leave of absence in lieu of one of the specified actions.

### IV.

#### Conclusion:

The Board appreciates the comments and feedback it received regarding this proposed amendment. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.