

**BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND
FINDINGS BY THE SPB COMPLIANCE REVIEW DIVISION OF
THE CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY**

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of November 7, 2013, carefully reviewed and considered the attached Compliance Review Report of the California Health Facilities Financing Authority submitted by SPB's Compliance Review Division.

WHEREAS, the Report was prepared following a baseline review of the California Health Facilities Financing Authority's personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.


SUZANNE M. AMBROSE
Executive Officer

COMPLIANCE REVIEW REPORT CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY FINDINGS AND RECOMMENDATIONS OCTOBER 30, 2013

Examinations

During the period under review, from May 1, 2011 through October 31, 2012, the State Treasurer's Office (STO), under an interagency agreement, conducted four examinations on behalf of the California Health Facilities Financing Authority (CHFFA). The SPB reviewed each of those examinations, which are listed below:

Classification Title	Examination Type	Examination Component(s)	No. of Eligibles
Associate Governmental Program Analyst	Departmental Promotional	Written Exam	1
Executive Assistant	Departmental Promotional	Qualifications Appraisal Panel ¹ (QAP)	1
Staff Services Analyst	Departmental Transfer (within STO or any of its authorities)	Written Exam (Pass/Fail)	1
Treasury Program Manager I	Departmental Promotional	QAP	3

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¹ 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 the duties of the job classification for which he or she seeks appointment.

FINDING NO. 1 – The STO on Behalf of CHFFA Properly Complied with Civil Service Laws and Board Rules for All Examinations That Were Conducted During the Compliance Review Period

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 a formal signed application in the office of the department or a designated appointing power within a reasonable length of time before the date of examination. (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.)

For all four of the examinations STO administered on behalf of CHFFA, the STO published and distributed examination bulletins prior to the final filing date of the examination. Each bulletin contained the required information. The STO received and only accepted State applications (STD. 678) that were signed by the applicants. The STO properly determined whether each applicant met the minimum qualifications (MQs) for admittance to the examination. The STO notified applicants as to whether they qualified to take the examination. Those applicants who met the MQs were also notified about the next phase of the examination process.

After all phases of the departmental promotional examinations were completed, the STO computed the score of each competitor and established a list of eligible candidates. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The STO notified the competitors in writing of their final scores.

Likewise, for the SSA transfer examination, the STO determined whether competitors passed or failed the examination. The STO then notified each competitor in writing of their results on the examination.

The SPB found no deficiencies in the reviewed examinations. Accordingly, CHFFA, via the STO, fulfilled its responsibilities to administer those examinations in compliance with civil service laws and Board rules.

Appointments

During the compliance review period, CHFFA made eight appointments. The SPB reviewed seven of the appointments, which are listed below:

Classification	Appointment Type	No. of Employees
Treasury Program Manager II	Certification List	1
Associate Treasury Program Officer	Mandatory Reinstatement	2
Treasury Program Manager I	Mandatory Reinstatement	1
Associate Treasury Program Officer	Permissive Reinstatement	1
Office Technician (Typing)	Transfer	2

FINDING NO. 2 – The STO on Behalf of CHFFA Properly Complied with Civil Service Laws and Board Rules for All the Appointments Made During the Compliance Review Period

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.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

Departments are also required to have recruitment strategies designed to be "as broad and inclusive as necessary to ensure the identification of an appropriate candidate group." (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg.,

tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification in which the vacancy exists; determining whether an eligible list is necessary to fill the vacancy; advertise the vacancy, which may include certifying the eligible list; receive applications, and if no applications are received, re-advertise the position with increased recruitment efforts; screen applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conduct hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

The STO, on behalf of CHFFA, advertised all the positions that were reviewed by the SPB, except for the two positions that were filled by way of mandatory reinstatement.

For the Treasury Program Manager II appointment, the STO, on behalf of CHFFA, ordered a certification list of candidates and properly cleared any reemployment and SROA² candidates. CHFFA interviewed eligibles who were reachable within the first three ranks of the certification list and hired the best suited candidate. Regarding the transfer appointments, the STO verified the transfer eligibility of each candidate to the appointed class. Accordingly, these appointments complied with civil service laws and Board rules.

As to appointments that are mandatory reinstatements, a state agency or department is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) However, the following conditions must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within 10 working days after the effective date of the termination. (*Ibid.*)

The three employees who were appointed as mandatory reinstatements to CHFFA accepted the appointments without a break in the continuity of their state service and requested reinstatement within 10 working days after the effective date of the

² The State Restriction of Appointments (SROA) Program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

termination of their other position. Thus, these appointments were made in compliance with civil service laws and Board rules.

Civil service laws also allow permissive reinstatements but only in certain circumstances. An appointing power may, in his or her discretion, reinstate any person having probationary or permanent status who was separated from his or her position by: (1) resignation; (2) service retirement; (3) termination from limited-term, temporary, career executive assignment, or exempt appointment; (4) absence without leave, as defined; or (5) without a break in continuity of state service to accept another civil service or exempt appointment. (Gov. Code, § 19140.)

The Associate Treasury Program Officer was permissively reinstated to CHFFA after a break in state service due to her resignation. CHFFA interviewed the applicant and verified that she had permanent status in a classification similar in duties and responsibilities. Thus, in making the appointment, CHFFA exercised its discretion within the civil service laws and rules.

CHFFA appointed two employees by way of transfer; one from a different position within CHFFA, and one from another agency. "A transfer of an employee from a position under one appointing power to a position under another appointing power may be made, if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer." (Cal. Code Reg., tit. 2, § 425.) STO, on behalf of CHFFA, verified the transfer eligibility of each candidate, and CHFFA conducted hiring interviews before making the appointments. CHFFA thus complied with civil service laws and Board rules in making those appointments.

Equal Employment Opportunity (EEO)

The STO, via an interagency agreement, administers the EEO program for the STO's 11 Authorities, including CHFFA. The SPB reviewed relevant documentation, including the STO's EEO policies, procedures, and programs that were in effect during the compliance review period. In addition, the SPB communicated with appropriate STO staff.

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FINDING NO. 3 – The EEO Officer Does Not Report Directly to CHFFA's Executive Director and Is Not Under the Executive Director's Supervision to Develop, Implement, Coordinate, and Monitor CHFFA's EEO Program

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.)

The STO's EEO program provides employees of CHFFA with guidance on the EEO process, including instructions on how to file discrimination claims. The EEO policy requires, among other things, that the Executive Directors in each authority are responsible for assuring that EEO is integrated into division planning and operations, and for achieving specific EEO goals and objectives.

In addition, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as the duties of CHFFA's supervisors and manager. The STO ensures that all CHFFA managers, supervisors, and employees participate in sexual harassment prevention training. The STO also prepares CHFFA's annual workforce analysis report and associated materials, and expedites reasonable accommodation requests and discrimination complaints filed by CHFFA employees.

The STO, on behalf of CHFFA, provided evidence of its efforts to promote equal employment opportunity in CHFFA's hiring and employment practices, to increase CHFFA's hiring of disabled persons, and to offer upward mobility opportunities for CHFFA's entry-level staff. The evidence included setting upward mobility and disabled persons hiring goals for the coming year.

Those components of CHFFA's EEO program comply with civil service laws and Board rules. A deficiency, however, was found in the EEO Officer's reporting structure.

Pursuant to CHFFA's agreement with STO, the EEO Officer during the compliance review period was a Staff Services Manager (SSM) III working for the STO. Part of her written job duties as EEO Officer includes "support" of the STO and Authorities, such as CHFFA. The job duty statement for the SSM III also shows that as the EEO Officer she is required to report directly to the State Treasurer and Chief Deputy State Treasurer. Although the STO presented evidence that in practice the EEO Officer is in "constant communication" with each Executive Director of an Authority, the job duty statement does not reflect that the EEO Officer has a direct reporting relationship to each Executive Director or that the EEO Officer is under the supervision of each Executive Director to develop, implement, coordinate, and monitor each Authority's EEO program.

To ensure compliance with EEO laws, the duty statement of the appointed EEO Officer should be revised to reflect that the EEO Officer not only reports directly to the State Treasurer and Chief Deputy State Treasurer but shall also report directly to, and be under the supervision of, the CHFFA's Executive Director to develop, implement, coordinate, and monitor CHFFA's EEO program.

It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CHFFA submit to the Board a written report of compliance that includes a copy of the revised duty statement of the appointed EEO Officer.

FINDING NO. 4 – CHFFA Did Not Establish That Its Disability Advisory Committee (DAC) Advises the Head of CHFFA On Issues of Concern to Employees with Disabilities

Each state agency shall 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. (*Ibid.*) 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).)

CHFFA partners with the STO to share resources for a DAC composed of STO employees and CHFFA employees, including one representative from CHFFA. CHFFA did not provide evidence any evidence that the DAC advises CHFFA's Executive Director on issues of concern to employees with disabilities.

Within 60 days of the Board's Resolution adopting these findings and recommendations, CHFFA must ensure that the DAC advises the head of CHFFA on issues of concern to employees with disabilities and submit to the Board a written compliance report that includes copies of any relevant documents.

Personal Services Contracts

The SPB reviewed 13 of 15 personal services contract (PSC)s in effect with CHFFA during the compliance review period. It was beyond the scope of the review to make conclusions as to whether CHFFA's justifications for the contracts were legally sufficient. The review was limited to whether CHFFA's practices, policies, and procedures relative to the PSCs complied with applicable statutory law and board regulations. The reviewed contracts are listed below:

Vendor	Services	Contract Dates	Total Amount
Legal Services			
Hawkins Delafield & Wood LLP	Issuer's Counsel Services	July 1, 2011 – June 30, 2013	\$100,000
Hawkins Delafield & Wood LLP	Issuer's Counsel Services	Oct. 1, 2006 – June 30, 2011	\$150,000
Law Offices of Alexis S. M. Chiu	Issuer's Counsel Services	July 1, 2011 – June 30, 2012	\$100,000
Law Offices of Alexis S. M. Chiu	Issuer's Counsel Services	Oct. 1, 2006 – June 30, 2011	\$150,000
Law Offices of Leslie M. Lava	Issuer's Counsel Services	July 1, 2011 – June 30, 2013	\$100,000
Law Offices of Leslie M. Lava	Issuer's Counsel Services	Oct. 1, 2006 – June 30, 2011	\$150,000
Orrick, Herrington & Sutcliffe LLP	Issuer's Counsel Services	Oct. 1, 2006 – June 30, 2011	\$150,000
Sidley Austin LLP	Issuer's Counsel Services	July 1, 2011 – June 30, 2013	\$100,000
Squire, Sanders & Dempsey LLP	Issuer's Counsel Services	Oct. 1, 2006 – June 30, 2011	\$150,000
Financial Advisory Services			
KKN Public Finance, a	Tertiary Firm	July 11, 2011 – July 10, 2013	\$200,000

Division of Zions First National Bank			
Public Financial Management, Inc.	Primary Firm	July 11, 2011 – July 10, 2013	\$200,000
Sperry Capital Inc.	Secondary Firm	July 11, 2011 – July 10, 2013	\$200,000
Financial Review			
Macias Gini & O'Connell, LLP	Financial review and analysis	Oct. 1, 2006 – Sep. 30, 2012	\$250,000

FINDING NO. 5 – CHFFA’s Personal Services Contracts Complied with the Procedural Requirements of the Civil Service Laws and Board Rules

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 (b), however, codifies exceptions to the civil service mandate where, for instance, the PSC is for a new state function, services that are not available within state service, and services that are of an urgent, temporary, or occasional nature. 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 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

Nine contracts were for legal services. The contractors, other than Orrick, Herrington & Sutcliffe LLP (Orrick)) were to act as "Issuer’s Counsel" by representing CHFFA, as Issuer, in connection with Authority bond financings. The bond transactions would be assigned individually by CHFFA when CHFFA was notified by the Attorney General’s Office that they could not provide legal representation on specific transactions. The Attorney General’s Office provided consent for CHFFA to issue a Request for Proposal and retain contracts for a pool of Issuer’s Counsel firms through June 30, 2013.

The remaining contract for legal services (Orrick et al.) was to obtain assistance on disclosure matters for CHFFA bond transactions that were backed by CalMortgage insurance. The Attorney General's Office notified CHFFA that it currently lacked the expertise and staffing to provide the services, and consented that CHFFA retain outside counsel for these purposes.

For all nine legal services contracts, CHFFA maintained that the services were of such a highly specialized or technical nature that the necessary expert knowledge, experience and ability were not available through the civil service system.

Three contracts were financial advisory services for the bond sale process utilized by CHFFA in its role as a conduit issuer of tax-exempt bonds for qualified non-profit health facilities. CHFFA maintained that these services were of a highly specialized nature and were only available to the Authority by contracting out.

One contract was for financial review and analysis, and performance of a variety of tasks related to Authority program operations. CHFFA maintained that the services were outside of the scope and subject-matter expertise of any known State fiscal agency or department, and/or state personnel classifications.

CHFFA sought DGS's approval for all the contracts. The written justification for the contracts presented sufficient facts and details to demonstrate why CHFFA viewed the contracts as meeting the conditions specified in Government Code section 19130, subdivision (b). Accordingly, the SPB finds that in executing these 13 contracts, CHFFA followed the procedural requirements of civil service laws and Board rules.

DEPARTMENTAL RESPONSE

The STO, on behalf of CHFFA, was provided a copy of the draft Findings and Recommendations Report. The STO submitted the CHFFA's written response, which is attached as Attachment No. 1.

SPB REPLY

The SPB's review of the written response finds that the corrective actions taken by the STO on behalf of CHFFA sufficiently comply with the recommendations made in the Findings and Recommendations Report. The SPB appreciates the professionalism and cooperation of STO and CHFFA during this compliance review.



CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY

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JACK BUCKHORN

SAMUEL QIU

EXECUTIVE DIRECTOR
Barbara J. Liebert

DATE: October 28, 2013

TO: Compliance Review Division
Attn: Madeline Olson
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

FROM: Debby Silva, Program Manager *ds*
Human Resources

SUBJECT: State Personnel Board Compliance Review

Thank you for the opportunity to provide comments on your Compliance Review Report for CA Health Facilities Financing Authority (CHFFA) findings and recommendations. I concur with the SPB findings that the State Treasurer's (STO), EEO Officer duty statement must be revised to reflect that the EEO Officer not only reports to the State Treasurer and Chief State Treasurer but does also have a direct reporting relationship to the Executive Director of CA Health Facilities Financing Authority as well as our other Boards, Commission, and Authorities (BCA's). Included is a copy of the revised EEO Officer duty statement.

We take our Disability Advisory Committees (DAC) very seriously. Since our agency is small, we do try to have a DAC member representative from each BCA to advise their director of issues of concerns. At this time, we do have a DAC member representing CHFFA that meet together with our STO DAC Chair, Co-Chair and other BCA's DAC members regularly to discuss ideas, propose solutions, and provide information and training on disability issues.

Please don't hesitate to contact me if you have any additional questions on this matter or if I can be of service. I can reach by phone at (916) 653-7275.

**DUTY STATEMENT
STATE TREASURER'S OFFICE
Division: Administration**

PART A	
Position No: 820-200-4802-001	Date:
Class: Staff Services Manager III	Name:
<p>Under the general direction of the Director, Administration (CEA 1), the Chief of Management Services Section (SSM II) is responsible for directing and managing the Personnel Office, Business Services Office, and the Management Analysis and Training Office. In addition, this position functions as the Department's Personnel Officer, Labor Relations Officer, Equal Employment Opportunity Officer, and Business Services Officer in support of the State Treasurer's Office and Authorities, Boards, Commissions and Authorities (BCAs); provides advice and expert consultation to top-level management on all personnel, business services, training and management analysis matters; and undertakes the most complex and sensitive assignments relating to personnel, business services, and management analysis. Reports directly to the State Treasurer and Chief Deputy State Treasurer in the capacity as the EEO Officer. Serves as Assistant Director in the absence of the Director of the Administration Division, as appropriate.</p>	
Percentage of time includes duties	ESSENTIAL FUNCTIONS
35%	<p>Advises the Director and the Executive Office, top-level management, and Executive Directors, on all personnel, business services, training and management analysis matters; liaison with control agencies and other Constitutional Offices to resolve the most sensitive and complex program issues; consults and advises managers, supervisors, and employees on rules and regulations, policies and issues relating to program responsibility; consults and advises managers and supervisors on disciplinary actions and prepares adverse actions; manages the business services activities for the State Treasurer's Office and BCAs which includes reviewing and processing all contracts, purchasing equipment, and authorizing expenditures within the legal limitations; develops and implement new programs and procedures; and administers the implementation and application of the Department's training plan.</p>
20%	<p>Develops, recommends, and implements Departmental policies and procedures in the programs of personnel management, labor relations, equal employment opportunity, business services, management analysis and training for the State Treasurer's Office and BCAs; and develops and advises on statewide policies for Executive Office and management staff. Represents the STO in discussions and communications with employees and labor unions regarding grievances, complaints, and negotiations of terms and conditions of employment; and provides clarification and interpretation to management and to employees of negotiated and signed MOU provisions. Conducts the meet and confer meetings with the bargaining unit Unions to ensure compliance with the provisions of the MOU's.</p>

20%	Plans, organizes, and directs the work of the Personnel Office, Business Services Office, and Management Analysis and Training Office for the State Treasurer's Office and BCAs. Sets priorities, goals, objectives and work assignments to assure all reports and projects are completed successfully and within the deadlines. Functions as the Personnel Officer, Labor Relations Officer, Employee Assistance Coordinator, and Business Services Officer.
10%	Reports directly to the State Treasurer, Chief Deputy State Treasurer, and Executive Directors in CA Tax Credit Allocation Committee, CA Debt & Investment Advisory Commission, CA Pollution Control Financing Authority, CA Health Facilities Financing Authority, CA Debt Limit Allocation Committee, Scholarshare Investment Board, CA School Finance Authority, CA Education Facilities Authority, CA Alternative Energy and Advanced Transportation Financing, and CA Industrial Development Financing Advisory Commission as the Equal Employment Opportunity Officer (EEO) to develop, implement, coordinate, and monitor the agency's equal employment opportunity program to ensure that the STO and BCAs have non-discriminatory employment policies and practices and provide equal opportunity to all job applicants and employees.
10%	Represents STO management in meetings and personally negotiates on sensitive and complex issues within the position's scope of responsibility with Department of Finance, Department of Personnel Administration, State Controllers Office, FISCAL, State Personnel Board and others.
NON-ESSENTIAL FUNCTIONS	
5%	Other duties as assigned.