

**BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND
FINDINGS BY THE SPB COMPLIANCE REVIEW UNIT OF
THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of March 3, 2014, carefully reviewed and considered the attached Compliance Review Report of the California Pollution Control Financing Authority submitted by SPB's Compliance Review Unit.

WHEREAS, the Report was prepared following a baseline review of the California Pollution Control 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 POLLUTION CONTROL FINANCING AUTHORITY FINDINGS AND RECOMMENDATIONS MARCH 3, 2014

Examinations

During the period under review, May 1, 2011 through October 31, 2012, the State Treasurer's Office (STO), under an interagency agreement, conducted five examinations on behalf of the California Pollution Control Financing Authority (CPCFA). 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 (AGPA)	Departmental Promotional	Written Exam	1
Associate Treasury Program Officer (ATPO)	Departmental Promotional	Qualifications Appraisal Panel ¹	2
Executive Assistant (EA)	Departmental Promotional	Qualifications Appraisal Panel	1
Staff Services Analyst (SSA)	Departmental Transfer (within STO or any of its Authorities)	Written Exam	1
Treasury Program Manager I (TPA I)	Departmental Promotional	Qualifications Appraisal Panel	3

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

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 in a job classification.

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.) 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.)

As part of the examination process, the STO appropriately published and distributed examination bulletins for each of the five classifications. 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 and 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 process for the 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. Competitors were then notified in writing of their final scores.

For the SSA transfer examination, competitors were notified in writing of their individual outcomes, and those who passed were then eligible to apply for transfer to an STO or STO Authority position within another classification that met the transfer criteria.

The SPB found no deficiencies in the examinations that the STO conducted during the compliance review period. Accordingly, the CPCFA, 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, the CPCFA made 14 appointments. The SPB reviewed 12 of the appointments, which are listed below:

Classification	Appointment Type	Tenure	No. of Employees
Associate Treasury Program Officer (ATPO)	Certification List	Permanent	2
Treasury Program Manager I (TPMI)	Certification List	Permanent	1
Staff Services Analyst (SSA)	Certification List	Limited Term	4
Associate Treasury Program Officer (ATPO)	Transfer	Limited Term	1
Office Technician (Typing) (OT-T)	Mandatory Reinstatement	Permanent	1
Associate Treasury Program Officer (ATPO)	Mandatory Reinstatement	Permanent	1
Staff Services Analyst (SSA)	Mandatory Reinstatement	Limited Term	1
Youth Aid (YA)	Temporary Authorized (TAU)	Temporary	1

FINDING NO. 2 – CPCFA Properly Complied with Civil Service Laws and Board Rules for All the Reviewed 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.) 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).)

In addition, departments are 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 CPCFA, advertised all the positions that were reviewed by the SPB, except for the positions filled by way of mandatory reinstatements.

For the seven list appointments, the STO, on behalf of CPCFA, ordered a certification list of candidates and properly cleared any reemployment and SROA² candidates. CPCFA interviewed eligibles who were reachable within the first three ranks of the certification list. Regarding the transfer appointment, the STO verified the transfer eligibility of the candidate to the appointed class. Accordingly, as to those appointments, CPCFA complied with civil service laws and Board rules.

As to 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.*)

CPCFA properly ensured that the employees who were appointed by way of mandatory reinstatement had no break in service and had requested reinstatement

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.

within the required timeframe. Accordingly, those appointments also complied with civil service laws and rules.

The law requires that "limited term appointments shall be made only for temporary staffing needs and shall not individually or consecutively exceed one year, provided that the Board may authorize limited term appointments of up to a total of two years' duration when a permanent appointment would be likely to cause a layoff, demotion, or mandatory transfer requiring a change of residence upon the conclusion of the temporary staffing need." (Gov. Code, § 19080.3.) Such appointments may be made from certification lists, by transfer, or through permissive reinstatement from the same or similar classification.

The ATPO and SSA limited-term appointments were made for temporary staffing needs. CPCFA ensured that the duration of those appointments did not, individually or consecutively, exceed one year. Additionally, on behalf of CPCFA, the STO notified the employees in writing of their separation from the positions. (Cal Code Regs., tit. 2, § 282). Those appointments were thus made in compliance with civil service laws and Board rules.

Generally, when no employment list exists from which a position may be filled, an appointing power may fill the position by TAU. (Gov. Code, § 19058.) If fewer than three names of persons willing to accept an appointment are on the open eligible list for the class to which a position belongs and no other employment list for such class is available, a temporary appointment may be allowed. (Cal. Code Regs., tit. 2, § 265.) A TAU appointment shall not exceed nine months in a 12-month period. (Cal. Const., art. VII, § 5.) In addition, when a temporary appointment is made to a permanent position, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment. (Gov. Code, § 19058.)

Regarding the TAU appointment, the STO, on behalf of CPCFA, properly considered all required and applicable recruitment options prior to making the appointment. The Youth Aid classification is a non-testing classification, and no employment list exists for it. The SPB thus found that this appointment complied with civil service laws and Board rules.

Equal Employment Opportunity

The STO, via an interagency agreement, administers the equal employment opportunity (EEO) program for the STO's 11 authorities, including CPCFA. 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.

FINDING NO. 3 – The EEO Officer Does Not Report Directly to CPCFA's Executive Director and Is Not Under the Executive Director's Supervision to Develop, Implement, Coordinate, and Monitor CPCFA'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 (CalHR) 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 CPCFA 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 CPCFA's supervisors and manager. The STO ensures that all CPCFA managers, supervisors, and employees participate in sexual harassment prevention training. The STO also prepares CPCFA's annual workforce analysis report and associated materials, and expedites reasonable accommodation requests and discrimination complaints filed by CPCFA employees.

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

Those components of CPCFA'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 CPCFA'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 CPCFA. 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 must 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 CPCFA's Executive Director to develop, implement, coordinate, and monitor CPCFA's EEO program.

It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CPCFA 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 – CPCFA Did Not Establish That Its Disability Advisory Committee (DAC) Advises the Head of CPCFA 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).)

CPCFA partners with the STO to share resources for a single DAC composed of STO employees and the Authority employees, including CPCFA. CPCFA did not provide evidence that the DAC advises CPCFA's Executive Director on issues of concern to employees with disabilities.

Within 60 days of the Board's Resolution adopting these findings and recommendations, CPCFA must ensure that the DAC advises the head of CPCFA 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 10 of the 14 personal services contracts (PSC)s in effect with CPCFA during the compliance review period. It was beyond the scope of the review to make conclusions as to whether CPCFA's justifications for the contracts were legally sufficient. The review was limited to whether CDIAC'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
Law Offices of Alexis S. M. Chiu	Specialized legal counsel services.	March 1, 2011 – Feb. 28, 2012	\$100,000
Law Offices of Alexis S. M. Chiu	Specialized legal counsel services.	March 1, 2012 – Feb. 28, 2014	\$135,000
Law Offices of Leslie M. Lava	Specialized legal counsel services.	March 1, 2011 – Feb. 28, 2012	\$100,000
Law Offices of	Specialized legal counsel	March 1, 2012 –	\$135,000

Leslie M. Lava	services.	Feb. 28, 2014	
Montague, DeRose and Associates, LLC	Financial advisory services, analysis and assistance to the Authority's Bond Issuance Program.	June 29, 2011 – June 28, 2013	\$300,000
Nixon Peabody, LLP	Specialized legal counsel services.	May 1, 2002 – April 30, 2014	\$100,000
Orrick, Herrington & Sutcliffe LLP	Specialized legal counsel services.	March 1, 2012 – Feb. 28, 2014	\$135,000
Orrick, Herrington & Sutcliffe LLP	Specialized legal counsel services.	March 1, 2011 – Feb. 28, 2012	\$150,000
Quarterman LLP	Specialized legal counsel services.	March 1, 2011 – Feb. 28, 2012	\$100,000
Stradling Yocca Carlson & Rauth	Specialized legal counsel services.	March 1, 2011 – Feb. 28, 2012	\$100,000

FINDING NO. 5 – The Authority's Personal Services Contracts Complied with the Procedural Requirements Civil Service Law

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 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The Authority's contract with Montague, DeRose and Associates, LLC was for financial advisory services, analysis, and assistance to the Authority's Bond Issuance Program. The Authority maintained that the scope of work was highly specialized and required expertise in the development of bond programs, equipment financing, and provision of

assistance to CPCFA staff on structuring complex financial models for various bond financing programs.

Nine contracts were for legal services, and had been approved by the state Attorney General's office via letter, which amended the original contracts. With all these contracts, the CPCFA maintained that staff with the knowledge and experience to fulfill the tasks required under this contract was not available within civil service.

One of these contracts was with the law firm Nixon Peabody, LLP. CPCFA was required to retain outside counsel assistance in an application for a final resolution from Poseidon Resources (Channelside) LP, which was planning an approximately \$750 million desalinization plant near San Diego. The endeavor included a range of complicated securities, tax, and structuring issues

The remaining eight contracts were with the Law Offices of Alexis S. M. Chiu (two contracts), the Law Offices of Leslie M. Lava (two), Orrick, Herrington & Sutcliffe LLP (two), Quaterman LLP (one), and Stradling Yocca Carlson & Rauth (one). CPCFA entered into these contracts in order to obtain highly specialized legal expertise and counsel related to bond financings, tax and legal matters, IRS audits, environmental issues and other related bond services.

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

DEPARTMENTAL RESPONSE

The State Treasurer's Office, on behalf of the California Pollution Control Financing Authority, was provided a copy of the initial report to review. A copy of CPCFA's response is attached as Attachment 1.

SPB REPLY

Based upon CPCFA's response, CPCFA's EEO officer will now report directly to the director and will ensure the DAC advises the director on any issues of concern.

It is recommended that CPCFA comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of the CPCFA and the State Treasurer's Office.


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MEMBERS

BILL LOCKYER, CHAIRMAN
 State Treasurer

JOHN CHIANG
 State Controller

MICHAEL COHEN
 Director of Finance

EXECUTIVE DIRECTOR
 Reneé Webster-Hawkins

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 Pollution Control Financing Authority (CPCFA) 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 Pollution Control Financing Authority as well as our other Boards, Commissions, 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 CPCFA 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 performing 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.