

**BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND
FINDINGS BY THE SPB COMPLIANCE REVIEW DIVISION OF
THE CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION**

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 Debt and Investment Advisory Commission submitted by SPB's Compliance Review Division.

WHEREAS, the Report was prepared following a baseline review of the California Debt and Investment Advisory Commission'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 DEBT AND INVESTMENT ADVISORY COMMISSION FINDINGS AND RECOMMENDATIONS OCTOBER 30, 2013

Examinations

During the period of review, from May 1, 2011 through October 31, 2012, the State Treasurer's Office (STO) conducted three examinations on behalf of the California Debt and Investment Advisory Commission (CDIAC) pursuant to an interagency agreement. 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	6
Graphic Designer II	Departmental Promotional	Education and Experience (E&E) ¹	1
Staff Services Analyst	Departmental Transfer (within STO or any of its authorities)	Written Exam (Pass/Fail)	1

FINDING NO. 1 – The STO on Behalf of CDIAC 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

¹ In an Education and Experience (E&E) examination, one or more raters scores and ranks applicants based upon the applicant's Standard 678 application form. The raters use a predetermined rating scale that includes years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

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.)

For all three of the examinations STO administered on behalf of CDIAC, 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, CDIAC, via the STO, fulfilled its responsibilities to administer those examinations in compliance with civil service laws and Board rules.

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Appointments

During the compliance review period, CDIAC made 16 appointments. The SPB reviewed 15 of those appointments, which are listed below:

Classification	Appointment Type	No. of Employees
Assistant Program Specialist	Certification List	1
Executive Assistant	Certification List	1
Graphic Designer II	Certification List	1
Office Technician (Typing)	Certification List	1
Staff Services Analyst (SSA)	Mandatory Reinstatement	3
Research Program Specialist I (Economics)	Transfer	1
SSA	Transfer	7

FINDING NO. 2 – CDIAC 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).)

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 CDIAC, advertised all the positions that were reviewed by the SPB, except for the SSA positions that were filled by way of mandatory reinstatement. For each of the four list appointments, the STO, on behalf of CDIAC, ordered a certification list of candidates and properly cleared any reemployment and SROA² candidates. CDIAC interviewed eligibles who were reachable within the first three ranks of the certification list and hired the best suited candidates. Accordingly, as to those appointments, CDIAC complied with civil service laws and Board rules.

CDIAC hired eight employees by way of transfer from other agencies. "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 CDIAC, verified the transfer eligibility of each candidate, and CDIAC conducted hiring interviews before making the appointments. CDIAC thus complied with civil service laws and Board rules in making those appointments.

As to appointments made by mandatory reinstatement, 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.) The following conditions, however, 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.*)

CDIAC properly ensured that the three employees who were mandatory reinstatements had no break in service and had requested reinstatement within the required timeframe. Accordingly, those appointments also complied with civil service laws and rules.

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.

Equal Employment Opportunity (EEO)

The STO, via an interagency agreement, administers the EEO program for the STO's 11 authorities, including CDIAC. 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 CDIAC's Executive Director and Is Not Under the Executive Director's Supervision to Develop, Implement, Coordinate, and Monitor CDIAC'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 CDIAC 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 CDIAC's supervisors and manager. The STO ensures that all CDIAC managers, supervisors, and employees participate in sexual harassment prevention training. The STO also prepares CDIAC's annual workforce analysis report and associated materials, and expedites reasonable accommodation requests and discrimination complaints filed by CDIAC employees.

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

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

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

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

Within 60 days of the Board's Resolution adopting these findings and recommendations, CDIAC must ensure that the DAC advises its Executive Director 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 CDIAC's only personal services contract (PSC) that was in effect during the compliance review period. The contract was with Blue Sky Consulting Group to produce a study analyzing the financial viability of the Bay Delta Conservation project. The contract was in place from May 31, 2012 until September 28, 2012, in the total amount of \$155,275. It was beyond the scope of the review to make conclusions as to whether CDIAC's justifications for the contract were legally sufficient. The review was limited to whether CDIAC's practices, policies, and procedures relative to the PSC complied with applicable statutory law and board regulations.

FINDING NO. 5 – CDIAC's Personal Services Contract Complied with the Procedural Requirements of 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.)

CDIAC certified that the financial viability services procured through the contract were highly specialized, and that the expertise, experience and ability were not available within CDIAC, the STO, or the civil service system. The study was a one-time project necessitated by the request of another state agency, the Natural Resources Agency.

CDIAC sought DGS's approval for the contract. The written justification for the contract presented sufficient facts and details to demonstrate why CDIAC viewed the contract as meeting the conditions specified in Government Code section 19130, subdivision (b). Accordingly, the SPB finds that in executing the PSC with Blue Sky Consulting Group, CDIAC followed the procedural requirements of civil service laws and Board rules.

DEPARTMENTAL RESPONSE

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

SPB REPLY

In its written response, CDIAC states that the agency takes the Disability Advisory Committee (DAC) very seriously, but at the present time, CDIAC does not have a CDIAC employee on the DAC that it shares with STO and the other Boards, Commissions, and Authorities (BCAs) that are, like CDIAC, under STO. The response also states that in the event a BCA has a vacancy on the DAC the STO DAC Chair advises the director of the BCA with the vacancy on any issues of concern to the DAC. During the compliance review, the STO submitted information showing that once a year CDIAC invites its employees to participate on the DAC.

The SPB finds that the CDIAC's corrective actions sufficiently satisfy 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 DEBT AND INVESTMENT ADVISORY COMMISSION

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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

MEMBERS

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 Tax Collector
 City and County of
 San Francisco

JAY GOLDSTONE
 Chief Operating Officer
 City of San Diego

EXECUTIVE DIRECTOR
 Mark B. Campbell

Thank you for the opportunity to provide comments on your Compliance Review Report for CA Debt and Investment Advisory Commission (CDIAC) 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 Debt and Investment Advisory Commission 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 have a vacant CDIAC DAC member representative who would normally meet together with our STO DAC Co-Chair and other BCA's DAC members regularly to discuss ideas, propose solutions, and provide information and training on disability issues. When a DAC member position is vacant the STO DAC Chair responsibilities is to advise the director of any issues of concerns.

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.