



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF JUSTICE

Compliance Review Unit
State Personnel Board
June 20, 2016

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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 are in compliance with merit-related laws, rules, and policies and to identify and share best practices identified during the reviews. 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 Department of Justice (DOJ) personnel practices in the areas of examinations, appointments, EEO, and PSC's from October 1, 2014, through October 1, 2015 and mandated training from October 1, 2013, through October 30, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated From Applications	Very Serious
Appointments	Inappropriate Appointment via Departmental Reemployment	Very Serious

Area	Finding	Severity
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Appointments	Applications Were Not Date Stamped and/or Accepted After the Final File Date	Non-Serious or Technical
Appointments	Job Opportunities Were Not Properly Advertised	Observation
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious
Mandated Training	Sexual Harassment Training Was Not Provided for All Supervisors	Very Serious

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
- Gray = Observation

BACKGROUND

The DOJ provides leadership, information, and education to ensure justice, safety, and liberty are available for all Californians. In doing so, the DOJ provides legal counsel to state officers, aids agencies in the administration of justice, and represents the people of California in civil and criminal matters. The DOJ also establishes and operates projects and programs that are dedicated to upholding California's integrity and safeguarding California's human, natural, and financial resources for this and future generations.

Furthermore, the DOJ employs approximately 4,513 employees in the following seven statewide divisions: Directorate (82), Administrative Support (830), Law Enforcement (962), California Justice Information Services (1,037), Civil Law (615), Criminal Law (621), and Public Rights (366).

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing DOJ examinations, appointments, EEO program, and PSC's from October 1, 2014, through October 1, 2015 and mandated training from October 1, 2013, through October 30, 2015. The primary objective of the review was to determine if DOJ personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of DOJ examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the DOJ provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the DOJ 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 DOJ's PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether DOJ justifications for the contracts were legally sufficient. The review was limited to whether DOJ practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the DOJ's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

¹ 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 PSCs were challenged.

On May 11, 2016, an exit conference was held with the DOJ to explain and discuss the CRU's initial findings and recommendations. On June 2, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as to fairly 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 of 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 an application in the office of the department or a designated appointing power as directed in the examination announcement. (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.)

During the period under review, the DOJ conducted 53 examinations. The CRU reviewed 22 of those examinations, which are listed below:

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Associate Personnel Analyst	Departmental Promotional	T&E ² and Presentation	10/20/2014	39

² The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Associate Personnel Analyst	Departmental Promotional	T&E and Presentation	6/9/2015	14
CAAG, CEA, Criminal Law Division	Open	Supplemental ³	9/26/2014	3
CEA A, Director, DR3	Open	Supplemental	6/3/2015	3
CEA B, Bureau Chief of BCIS	Open	Supplemental	9/16/2015	2
CEA B, Chief, Office of Human Resources	Open	Supplemental	12/26/2014	8
CEA C, Director, CJIS	Open	Supplemental	9/11/2015	6
Crime Studies Technician II	Open	QAP ⁴	10/23/2014	12
Criminal Identification & Intelligence Supervisor	Open	QAP	12/19/2014	56
Criminal Identification Specialist III	Departmental Promotional	QAP	1/26/2015	43
Criminalist	Open	T&E	11/21/2014	57
Criminalist	Open	T&E	2/27/2015	56
Criminalist	Open	T&E	8/18/2015	40
Digital Print Operator II	Open	Supplemental	6/5/2015	22

³ In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

⁴ 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.

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Field Representative	Open	QAP	1/26/2015	72
Legal Analyst	Open	T&E	9/16/2014	79
SAAG, CEA, Appeals, Writs, and Trials	Open	Supplemental	12/15/2014	3
SAAG, CEA, Employment & Admin Mandate Section	Open	Supplemental	4/24/2015	7
SAAG, CEA, Opinion Unit	Open	Supplemental	4/14/2015	4
Special Agent	Open	Written & Physical Abilities Test	5/18/2015	125
Special Agent Trainee	Open	Written & Physical Abilities Test	10/23/2014	179
Supervising Librarian I	Departmental Promotional	T&E	8/3/2015	3

FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of 22 exams reviewed, six exams included applications where EEO questionnaires were attached to the STD 678 employment application. Specifically, 64 of the 831 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to voluntarily provide ethnic data about themselves where such data is determined by CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

Severity: Very Serious. The applicants’ protected classes were visible, subjecting the agency to potential liability.

Cause: The DOJ states that it is the regular process of the DOJ Exam Unit to remove the EEO form from all applications. The DOJ believes that one exam analyst may not have understood that process and therefore did not remove the forms from all of his/her examination applications.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the DOJ submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

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 compliance review period, the DOJ made 1,288 appointments. The CRU reviewed 144 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Personnel Analyst	Certification List	Permanent	Fulltime	3
Auditor I	Certification List	Permanent	Fulltime	4
Criminal Identification Specialist II	Certification List	Permanent	Fulltime	2
Criminal Intelligence Specialist I	Certification List	Permanent	Fulltime	1
Criminal Intelligence Specialist II	Certification List	Permanent	Fulltime	6
Department of Justice Administrator II	Certification List	Permanent	Fulltime	10
Deputy Attorney General III	Certification List	Permanent	Fulltime	9
Deputy Attorney General IV	Certification List	Permanent	Fulltime	10
Deputy Attorney III	Certification List	Permanent	Fulltime	1
Latent Print Analyst II	Certification List	Permanent	Fulltime	1
Office Technician (Typing)	Certification List	Permanent	Fulltime	5
Program Technician	Certification List	Permanent	Fulltime	11
Senior Personnel Specialist	Certification List	Permanent	Fulltime	2
Special Agent	Certification List	Permanent	Fulltime	2
Special Agent (Supervisor)	Certification List	Permanent	Fulltime	8
Special Assistant Attorney General	Exempt	Permanent	Fulltime	1
Senior Advisor to the Attorney General	Exempt	Permanent	Fulltime	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Office Assistant (General)	Limited Employment Appointment Program (LEAP)	Temporary	Fulltime	4
Office Technician (Typing)	LEAP	Temporary	Fulltime	6
Staff Services Analyst	LEAP	Temporary	Fulltime	1
Assistant Information Systems Analyst	Mandatory Reinstatement	Permanent	Fulltime	2
Business Services Assistant (Specialist)	Mandatory Reinstatement	Permanent	Fulltime	2
Department of Justice Administrator II	Mandatory Reinstatement	Permanent	Fulltime	1
Investigative Auditor III, DOJ	Mandatory Reinstatement	Permanent	Fulltime	4
Investigative Auditor IV, DOJ	Mandatory Reinstatement	Permanent	Fulltime	1
Legal Analyst	Mandatory Reinstatement	Permanent	Fulltime	4
Legal Assistant	Mandatory Reinstatement	Permanent	Fulltime	1
Property Controller II	Mandatory Reinstatement	Permanent	Fulltime	2
Senior Legal Analyst	Mandatory Reinstatement	Permanent	Fulltime	2
Staff Program Analyst (Specialist)	Mandatory Reinstatement	Permanent	Fulltime	2
Staff Services Manager I	Mandatory Reinstatement	Permanent	Fulltime	2
Associate Governmental Program Analyst	Permissive Reinstatement	Permanent	Fulltime	2
Systems Software Specialist I (Technical)	Retired Annuitant	Temporary	Intermittent	1
Systems Software Specialist III (Technical)	Retired Annuitant	Temporary	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Special Consultant	Temporary Authorization Utilization (TAU)	Temporary	Fulltime	2
Department of Justice Administrator I	Training and Development (T&D)	Permanent	Fulltime	1
Legal Secretary	T&D	Permanent	Fulltime	2
Associate Governmental Program Analyst	Transfer	Permanent	Fulltime	9
Criminal Identification Specialist I	Transfer (Demotion)	Permanent	Fulltime	1
Criminal Identification Specialist I	Transfer	Permanent	Fulltime	1
Criminal Identification Specialist II	Transfer	Permanent	Fulltime	1
Criminal Intelligence Specialist I	Transfer	Permanent	Fulltime	1
Criminal Intelligence Specialist III	Transfer	Permanent	Fulltime	1
Department of Justice Administrator I	Transfer	Permanent	Fulltime	2
Department of Justice Administrator I	Transfer	Permanent	4/5	1
Information Systems Technician Supervisor II	Transfer	Permanent	Fulltime	1
Investigative Auditor III	Transfer	Permanent	Fulltime	1
Office Assistant (General)	Transfer	Permanent	Fulltime	1
Special Agent	Transfer (Reemployment)	Permanent	Fulltime	1
Special Agent (Supervisor)	Transfer	Permanent	Fulltime	2
Special Assistant Attorney General	Transfer	Permanent	Fulltime	1

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications

Summary: Out of 144 appointment files reviewed, 54 files included applications with EEO questionnaires attached to the STD 678 employment application. Specifically, 595 of the 2,926 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The DOJ states its current process is to remove the EEO questionnaire from applications; however, training inconsistencies with staff persist.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DOJ submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

FINDING NO. 3 – Inappropriate Appointment via Departmental Reemployment

- Summary:** The DOJ did not provide any documentation to the CRU to show that the individual hired was reachable on the departmental reemployment list for the Special Agent, DOJ classification. Specifically, the candidate was in rank 30 at the time of the hire, a rank that was not reachable. While ranks one through 12 and ranks 14 through 29 had been cleared, an individual in rank 13 was coded as “interested” and was not cleared from the list at the time of appointment. The department claims that their certification technician coded the individual in rank 13 incorrectly and that they never received a response letter or application from this individual. The DOJ was unable to provide documentation demonstrating that the individual in rank 13 was not interested in the position.
- Criteria:** California Government Code section 19056 mandates that the individual standing highest on a departmental reemployment list shall be certified and appointed. Therefore, the rule of one name applies to subdivisional and departmental reemployment lists wherein the first interested individual on the list must be selected if a list appointment is to be the method of appointment.
- Severity:** Very Serious. Without documentation establishing the basis for not hiring the highest ranked individual on the departmental reemployment list, the CRU could not verify whether the appointment was properly conducted.
- Cause:** The DOJ states that documentation for the reemployment list was not sufficient to ensure compliance with California Government Code section 19056.
- Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the DOJ submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of California Government Code section 19056. Copies of any relevant documentation should be included with the plan.

FINDING NO. 4 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The DOJ did not prepare, complete, and/or retain 30 required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Personnel Analyst	List Appointment	2	2
Auditor I	List Appointment	1	1
Criminal Intelligence Specialist I	List Appointment	1	3
Criminal Intelligence Specialist II	List Appointment	1	3
Deputy Attorney General III	List Appointment	3	6
Deputy Attorney General IV	List Appointment	3	5
DOJ Administrator II	List Appointment	2	3
Office Technician (Typing)	List Appointment	2	3
Program Technician	List Appointment	1	1
Criminal Identification Specialist I	Transfer	1	1
DOJ Administrator I	Transfer	1	2
Total		18	30

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with

substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The DOJ states that it is incumbent upon the supervisor to not only provide the reports on a timely basis to the employees but also to ensure the original signed report is forwarded to the Office of Human Resources for placement into the employee's official personnel file. This is a highly manual process and the cause for missing evaluations is due to constraints on being able to follow up on a timely and more frequent basis with supervisors.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DOJ submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

FINDING NO. 5 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The DOJ failed to retain personnel records such as NOPA's, VPOS Bulletins, and applications. Specifically, of the 144 appointments

reviewed, the DOJ did not retain the following: 19 VPOS Bulletins and 21 NOPAs. Additionally, seven of the 144 appointments reviewed were missing the hired applicant's application and two of the 144 appointment files reviewed were missing all but the hired applicant's application.

Criteria: As specified in section 26 of the Board's regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Reg., tit. 2, § 26.) Section 174 of the Board's regulations specifically applies to examination applications and requires a two year retention period.

Severity: Serious. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The DOJ states that they were unable to locate a portion of the required supporting appointment documentation, which was likely caused by various factors. Some documents were not filed due to errors/backlog caused by a shortage of administrative staff (for the time period of the audit). In addition, some documents were not signed by the employee or returned to the OHR.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DOJ submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations title 2, section 26. Copies of any relevant documentation should be included with the plan.

FINDING NO. 6 – Applications Were Not Date Stamped and/or Accepted After the Final File Date

Summary: The DOJ accepted and processed 1,278 out of 2,926 applications that were not date stamped and 132 applications that were date stamped after the final filing date.

Criteria: California Code Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, subs. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

Cause: The DOJ states that they did not have a centralized process for receiving applications from candidates to ensure all applications received were date stamped and received by the final filing date.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DOJ submit

to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

OBSERVATION 1 – Position Tenure Change

The DOJ advertised and filled four positions on a limited-term basis. The DOJ later converted the tenure of the positions to permanent. While not a violation of any specific law or rule, it is considered a best hiring practice for departments to conduct recruitment strategies that are “as broad and inclusive as necessary to ensure the identification of appropriate candidate groups.” (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, §50.) By not indicating the possibility that the positions could become permanent in the future, the DOJ narrowed its candidate group to a smaller group of individuals who had interest in a less than permanent appointment.

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 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.)

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).)

The CRU reviewed the DOJ's EEO program that was in effect during the compliance review period.

FINDING NO. 7 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules

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 DOJ 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 DOJ. In addition, the DOJ has an established Disability Advisory Committee (DAC) that reports to the director on issues affecting persons with a disability. The DOJ also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

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 PSCs, a state agency is required to notify the 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 compliance review period, the DOJ had 59 PSC's that were in effect and subject to Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed 22 of those PSC's, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
A & P Helicopters, Inc.	Service/Maintenance	7/1/15-6/30/17	\$600,000.00	Yes
Ace Attorney Services, Inc.	Service/Maintenance	6/3/13-8/31/15	\$839,000.00	Yes
Confidential Expert Witness	Expert Witness	5/1/12-5/1/16	\$1,700,000.00	Yes
Confidential Expert Witness	Expert Witness	12/8/14-12/8/15	\$200,000.00	Yes
Confidential Expert Witness	Expert Witness	6/1/12-6/30/16	\$1,840,000.00	Yes
Confidential Expert Witness	Expert Witness	5/1/14-12/31/15	\$320,000.00	Yes
Confidential Expert Witness	Expert Witness	11/3/2010-6/30/16	\$242,000.00	Yes
Confidential Expert Witness	Expert Witness	10/23/14-6/30/16	\$150,000.00	Yes
Confidential Expert Witness	Expert Witness	2/24/10-6/30/16	\$530,000.00	Yes
Confidential Expert Witness	Expert Witness	12/30/10-6/30/16	\$525,000.00	Yes
First Data Merchant Services Corp.	Service/Maintenance	6/1/15-5/31/17	\$1,214,000.00	Yes
First Data Merchant Services Corp.	Service/Maintenance	1/1/11-5/31/17	\$2,444,000.00	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Hawke McKeon & Sniscak LLP.	Legal Consultant	7/1/05-12/31/16	\$13,885,000.00	Yes
Heli-Flite Inc. dba Aris Helicopters	Service/Maintenance	7/1/15-6/30/17	\$600,000.00	Yes
Imperial Parking (U.S.), LLC.	Service/Maintenance	12/1/14-6/30/16	\$430,996.00	Yes
Inter-Con Security Systems, Inc.	Service/Maintenance	7/21/07-12/31/15	\$3,279,343.07	Yes
K&D Installation Inc. dba Boyer Moving & Storage	Service/Maintenance	3/1/15-6/30/15	\$207,400.00	Yes
Life Technologies Corporation	Service/Maintenance	10/1/14-9/30/16	\$1,073,117.76	Yes
PJ Helicopters Inc.	Service/Maintenance	7/01/15-6/30/17	\$600,000.00	Yes
Schneider Electric IT USA, Inc.	Service/Maintenance	7/1/15-6/30/18	\$293,044.96	Yes
Shields For Families	Training & Service/Maintenance	9/1/15-8/31/17	\$190,000.00	Yes
Tecan US, Inc.	Service/Maintenance	2/1/15-1/31/17	\$270,921.84	Yes

FINDING NO. 8 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS 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 total amount of all the PSC’s reviewed was \$31,433,823.63. It was beyond the scope of the review to make conclusions as to whether DOJ justifications for the

contract were legally sufficient. For all PSCs subject to DGS approval, the DOJ provided specific and detailed factual information in the written justifications as to how each of the 22 contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the DOJ PSCs complied with procedural requirements.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 1146.1) New filers must be trained within six months of appointment. (Gov. Code, § 11146.3)

Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subds. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4 subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

The CRU reviewed the DOJ's mandated training program that was in effect during the compliance review period. The DOJ's supervisory training, ethics training, and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 9 – Supervisory Training Was Not Provided for All Supervisors

Summary: The DOJ did not provide basic supervisory training to 11 of 63 new supervisors within twelve months of appointment.

Criteria: Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4 subd. (b).)

Severity: Very Serious. The department does not ensure its new managers are properly trained. Without proper training, new supervisory

employees may not properly carry out their supervisory roles, including managing employees.

Cause: The DOJ states that despite notifying all employees and their supervisors of the mandated supervisory training, supervisors do not always ensure their employees take the training, possibly due to workload or inability to enroll in a timely manner.

Action: The DOJ must take appropriate steps to ensure that new supervisors are provided supervisory training within the twelve months.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DOJ must establish a plan to ensure compliance with supervisory training mandates and submit to the SPB a written report of compliance.

FINDING NO. 10 – Ethics Training Was Not Provided for All Filers

Summary: The DOJ did not provide ethics training to 14 of 1083 existing filers. In addition, the DOJ did not provide ethics training to 32 of 169 new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The DOJ states that all filers were provided a notice with information and instructions for the ethics training. The cause for this finding is either failure on the part of the employee to take the course or forward a completion certificate to the ethics training filing officer.

Action: The DOJ must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DOJ must establish a plan to ensure compliance with ethics training mandates and submit to the SPB a written report of compliance.

FINDING NO. 11 – Sexual Harassment Training Was Not Provided for All Supervisors

Summary: The DOJ did not provide sexual harassment prevention training to seven of 124 new supervisors within six months of their appointment. In Addition, the DOJ did not provide sexual harassment prevention training to 11 of 524 existing supervisors every two years.

Criteria: Each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

Severity: Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The DOJ states that sexual harassment training is mandatory and the DOJ notifies all required staff to attend. Despite notification of the requirement, new supervisors are not always able to attend within the six-month timeframe. Follow-up for existing employees is a manual process and although the DOJ strives to ensure compliance every two years, not all employees complete the training for a variety of reasons.

Action: The DOJ must take appropriate steps to ensure that its supervisors are provided sexual harassment training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DOJ must establish a plan to ensure compliance with sexual harassment training mandates and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

The DOJ's response is attached as Attachment 1.

SPB REPLY

Based upon the DOJ's written response, the DOJ will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the DOJ comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CALIFORNIA 94244-2550

Public: (916) 445-9555
Telephone: (916) 323-5580
Facsimile: (916) 322-0112
Arwen.Flint@doj.ca.gov

June 2, 2016

Suzanne Ambrose
Executive Officer
State Personnel Board
801 Capital Mall
Sacramento, CA 95818

RE: SPB Compliance Audit DOJ Responses

Dear Ms. Ambrose:

The Department of Justice (DOJ) would like to thank the State Personnel Board's Compliance Review Unit (CRU) for undertaking the 2015 DOJ Compliance Review. The DOJ has reviewed the report and provides the following information regarding the findings.

Specific Findings and Responses:

Finding No. 1 – Equal Employment Opportunity (EEO) Questionnaires Were Not Separated from Applications. The report noted that 64 out of 831 exam applications had the EEO questionnaires attached to the STD. 678 employment application.

Cause:

It is the regular process of the DOJ Exam Unit to remove the EEO form from all applications. We believe one exam analyst may not have understood that process and therefore did not remove the forms from all of his/her examination applications.

Response:

It is the regular practice of the DOJ Exam Unit to not share applications with anyone outside of the unit, and therefore no one with decision-making power had access to the confidential EEO information on the applications. Prior to this audit, exam analysts were instructed verbally to remove the EEO questionnaires from all applications. As a result of this audit, the DOJ Exam Unit has formally documented the step to remove the EEO forms from the application to their step-by-step exam administration process checklist. All exam analysts use this document to administer exams. The exam manager also spoke with the staff to clarify that the EEO form should always be removed and destroyed after it has been entered into the exam system.

Finding No. 2 - Equal Employment Opportunity Questionnaires Were Not Separated From Applications. The report noted that 595 out of 2,926 applications reviewed included EEO questionnaires that were not separated from the STD. 678 employment application.

Cause:

DOJ's current process is to remove the EEO Questionnaire from applications; however, training inconsistencies with staff persist.

Response:

DOJ's current process is to remove the EEO Questionnaire from applications. With the implementation of the Examination and Certification Online System (ECOS), DOJ will no longer receive the EEO Questionnaire page when applications are submitted online. However, the DOJ is still offering the option to submit hard copy applications for job postings in addition to online submittal. When applications are received through the mail, DOJ will ensure the EEO Questionnaire page is not included in the application package. The DOJ Hiring Policy will be updated to include instructions regarding the removal of the EEO Questionnaire. In addition, the DOJ has provided instruction to its Personnel Liaisons, who are generally the primary contact for job announcements, to remove the EEO Questionnaire from any applications submitted directly to them or to their program. New business processes were put in place due to the roll out of ECOS.

Finding No. 3 – Inappropriate Appointment via Departmental Reemployment. The report found that DOJ did not provide any documentation to show that the individual hired was reachable on the departmental reemployment list for the Special Agent, DOJ classification.

Cause:

Documentation for the reemployment list was not sufficient to ensure compliance with Government Code (GC) section 19056.

Response:

The appointment in question was properly conducted and the individual standing in the highest rank was re-hired. Certification lists are cleared based on responses from individuals contacted on the list. Upon investigation, it was found that the individual in rank 13 did not return the contact letter indicating their interest in the position, which was considered a waiver. As a result of this audit, the DOJ will keep more detailed documentation regarding reemployment list appointments.

Finding No. 4 – Probationary Evaluations Were Not Provided for All Appointments Reviewed. The report notes that 30 probationary reports of performance were not prepared, completed and/or retained.

Cause:

It is incumbent upon the supervisor to not only provide the reports on a timely basis to the employees but also to ensure the original signed report is forwarded to the Office of Human Resources (OHR) for placement into the employee's Official Personnel File (OPF). This is a

highly manual process and the cause for missing evaluations is due to constraints on being able to follow up on a timely and more frequent basis with supervisors.

Response:

Because the current process to identify due dates for probation reports has resulted in missing evaluations, OHR is implementing a more automated solution (i.e., SharePoint) to follow up timely on upcoming and/or overdue probation reports. It is anticipated this electronic tracking and reporting system will be implemented in June 2016. The DOJ will continue to emphasize the importance of completing these reports in the mandated Basic Supervision training provided to new supervisors.

Finding No. 5 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time. The report notes that the DOJ failed to retain personnel records for the appropriate amount of time and there were 21 NOPAs and 19 VPOS Bulletins missing from 144 appointments.

Cause:

The DOJ was unable to locate a portion of the required supporting appointment documentation, which was likely caused by various factors. Some documents were not filed due to errors/backlog caused by a shortage of administrative staff (for the time period of the audit.) In addition, some documents were not signed by the employee or returned to the OHR.

Response:

The DOJ has 32 offices statewide and the hiring process is highly reliant on paper forms and manual processes. As a result of the findings, the DOJ Hiring Manual will be updated to reflect a checklist of the appointment documentation that must be kept for each appointment. Additional instruction will be provided to those staff responsible for appointment document retention.

Finding No. 6 – Applications Were Not Date Stamped and/or Accepted After the Final File Date. The report noted that 1,278 out of 2,926 applications were not date stamped and 132 applications were date stamped after the final filing date.

Cause:

DOJ did not have a centralized process for receiving applications from candidates to ensure all applications received were date stamped and received by the final filing date.

Response:

With the implementation of the ECOS system, applications for vacant positions will be submitted electronically. In the event an application is submitted via the postal service, training will be provided for the Personnel Liaisons to ensure applications have been date stamped properly. This is covered in our Basic Supervision Training as well.

Finding Nos. 7 and 8 – No response is needed since DOJ was found to be in compliance.

Finding No. 9 – Supervisory Training Was Not Provided for All Supervisors. The report noted that 11 of 63 new supervisors did not attend supervisory training within 12 months of appointment.

Cause:

Despite notifying all employees and their supervisors of the mandated supervisory training, supervisors do not always ensure their employees take the training, possibly due to workload or inability to enroll in a timely manner.

Response:

Mandated training requirements are communicated in a variety of ways to employees and supervisors, including e-mail correspondence, materials provided in the new hire packet and tools and resources provided on the DOJ Intranet. Mandatory training is listed on the DOJ Training Website with the course dates and enrollment procedures. Of the 11 supervisors who were identified as not being provided with supervisor training, only two did not attend the 48-hour classroom training. The other nine attended the 48-hour classroom training but did not document the “on the job” (OJT) portion of the training which requires the supervisor to complete real life applications of what they learned during the classroom training. Since the audit, seven employees have provided documentation that they completed the OJT.

Tracking mandated training is a time-consuming process that is done using spreadsheets and relies on submittal of forms via e-mail or paper. The DOJ has been working for the last few years to automate that process with a Learning Management System (LMS). The project to implement a new LMS was approved on April 3, 2016, and the project completion date is estimated to be February 2018. In the meantime, the DOJ will provide more follow-up to those employees who haven't submitted their OJT or enrolled in Basic Supervision Training.

Finding No. 10 – Ethics Training Was Not Provided for All Filers. The report indicates that 14 of 1,083 existing filers were not provided training. Furthermore, 32 of 169 new filers were not provided training within the first six months of their appointment.

Cause:

All filers were provided a notice with information and instructions for the ethics training. The cause for this finding is either failure on the part of the employee to take the course or forward a completion certificate to the ethics training Filing Officer.

Response:

As of May 10, 2016, DOJ has confirmed compliance of 1,079 of the 1,083 existing filers, and 157 of the 169 new filers. This represents a 99 percent compliance rate. DOJ concurs with the need to ensure that designated filers are aware of prohibitions related to their official position and influence. All non-compliant employees have been notified to complete the online ethics course and/or forward a copy of the completion certificate to the ethics training Filing Officer immediately. To further increase compliance with GC section 1114.3(b), the DOJ will increase monitoring of designated filers for completion of ethics training, and shorten the period prior to

escalation to the filer's management. Monthly notices will be sent to each Division Chief and Administrative Manager to inform them of any filer who is due to complete the training.

In addition, the new LMS will help to ensure compliance with the various mandatory trainings, scheduled for implementation in early 2018.

Finding No. 11 – Sexual Harassment Training Was Not Provided for All Supervisors. The report indicates that 7 of 124 new supervisors were not provided training within six months of their appointment. Furthermore, 11 of 524 existing supervisors were not provided Sexual Harassment Training every two years.

Cause:

Sexual Harassment Training is mandatory and DOJ notifies all required staff to attend. Despite notification of the requirement, new supervisors are not always able to attend within the six-month timeframe. Follow-up for existing employees is a manual process and although DOJ strives to ensure compliance every two years, not all employees complete the training for a variety of reasons.

Response:

DOJ achieved a 94 percent compliance rate for new supervisors and a 98 percent compliance for existing supervisors during the audit period. DOJ does require ALL employees to attend Sexual Harassment Training, it is not limited to just supervisors/managers. The 7 new supervisors that didn't attend within six months did receive training prior to becoming a supervisor. Sexual Harassment Training is also covered in Basic Supervision Training. The 7 new supervisors may have delayed attending the standalone Sexual Harassment Training in anticipation of attending Basic Supervision Training.

Tracking the mandated training is a manual process and is done by calendar year and reminders are sent on a quarterly basis. DOJ will be updating our reporting and reminders to monthly instead of quarterly. In addition, DOJ has recently added a webinar training to make it more convenient for employees to take the Sexual Harassment Training. Compliance with ALL mandated training is expected to improve when the LMS is implemented.

Observation No. 1 – Position Tenure Change. The report stated that DOJ did not indicate four limited term positions may be become permanent on the job announcement.

Response:

The DOJ will ensure that all job announcements for limited term positions are advertised with the note that positions may become permanent in the future.

DOJ OHR would like to once again thank the CRU Team for providing us the opportunity to respond to this report. DOJ will continue to educate and train our divisions on the best hiring practices and requirements to ensure compliance with civil service merit laws and board regulations.

Suzanne Ambrose, Executive Officer
June 2, 2016
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If you have any questions or need additional information regarding this audit response, you may contact me at (916) 324-3825.

Sincerely,

A handwritten signature in blue ink, appearing to read "Arwen Flint".

ARWEN FLINT, Chief
Office Of Human Resources
Division of Administrative Support

For KAMALA D. HARRIS
Attorney General

cc: Tammy Lopes, Director, Division of Administrative Support