

BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND FINDINGS BY THE SPB COMPLIANCE REVIEW UNIT OF THE SCHOLARSHARE INVESTMENT BOARD

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 Scholarshare Investment Board submitted by SPB's Compliance Review Unit.

WHEREAS, the Report was prepared following a baseline review of the Scholarshare Investment Board'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 SCHOLARSHARE INVESTMENT BOARD FINDINGS AND RECOMMENDATIONS MARCH 3, 2014

Examinations

During the compliance review period, May 1, 2011 through October 31, 2012, the State Treasurer's Office (STO), under an interagency agreement, conducted one continuous examination on behalf of the ScholarShare Investment Board (ScholarShare). The SPB reviewed the examination, which is listed below:

Classification	Exam Type	Exam Components	No. of Eligibles
Staff Services Manager I (SSM I)	Departmental Promotional	Qualifications Appraisal Panel ¹	5

FINDING NO. 1 – STO on Behalf of ScholarShare Properly Administered the SSM I Examination in Compliance with Civil Service Laws and Board Rules

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

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.

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.)

The STO, on behalf of ScholarShare, administered the SSM I examination to create an eligible list from which to make appointments. As part of the examination process, the STO published and distributed a bulletin for the examination. The examination consisted of a QAP interview.

The STO only accepted State applications (STD. 678) that were properly signed by the applicant. The STO determined whether applicants met the minimum qualifications (MQs) for admittance to the examination and notified applicants as to whether they had qualified to take the examination. Those applicants who met the MQs were also notified about the next phase of the examination process. The STO thereafter administered a competitive examination for the SSM I classification on a promotional basis.

After all phases of the examination process 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 the successful competitors arranged in order of the score received by rank. The STO notified the competitors in writing of their final scores.

The SPB found no deficiencies in the SSM I examination process. Accordingly, ScholarShare, via the STO, fulfilled its responsibilities to administer the examination in compliance with civil service laws and Board rules.

Appointments

During the compliance review period, ScholarShare made five appointments. The SPB reviewed four of those appointments, which are listed below:

Classification	Appointment Type	No. of Employees
Staff Services Analyst	Certification List	2
Associate Governmental Program Analyst	Transfer	1
Staff Services Analyst	Transfer	1

FINDING NO. 2 – ScholarShare 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 ScholarShare, advertised all the positions that were reviewed by the SPB. For all four of the appointments, ScholarShare measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best suited candidates. As to the list appointments, the STO, on behalf of ScholarShare, ordered a certification list of candidates ranked competitively. After properly clearing the SROA² list, the selected candidates were appointed based on

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.

eligibility attained by being reachable within the first three ranks of the certification lists. Regarding the two transfer appointments, the STO verified the transfer eligibility of the candidates, each of whom transferred from other agencies to the same classification at ScholarShare.

The SPB thus found that all the appointments made by ScholarShare during the compliance review period satisfied civil service laws and Board rules.

Equal Employment Opportunity (EEO)

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

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

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

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

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

Within 30 days of the Board's Resolution adopting these findings and recommendations, ScholarShare must ensure that the DAC advises the head of ScholarShare 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

ScholarShare had one personal services contract (PSC) that was in effect during the compliance review period. The contract was with Pension Consulting Alliance, Inc. to provide investment consulting services. The contract was in place from April 17, 2011, through April 16, 2013, in the total amount of \$262,500. It was beyond the scope of the review to make conclusions as to whether ScholarShare's justifications for the contract were legally sufficient. The review was limited to whether ScholarShare's practices, policies, and procedures relative to the personal services contract complied with applicable statutory law and board regulations.

FINDING NO. 5 – ScholarShare’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 (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 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

ScholarShare’s contract with Pension Consulting Alliance, Inc. was for investment consulting services related to the Trust and ScholarShare program. ScholarShare entered into the contract because the services provided by the vendor were highly specialized and technical in nature, and were not available within civil service and could not be performed satisfactorily by civil service employees. (Gov. Code, § 19130, subd. (b)(3).) ScholarShare explained that the Trust and ScholarShare program is complex and unique in State government. Consequently, the investment consulting services that ScholarShare required demanded a combined knowledge of the 529 industry³ and marketplace, and specialized knowledge of portfolio management and analysis, and the metrics of saving for college.

³ A 529 plan is a tax-advantaged savings plan designed to encourage saving for future college costs. 529 plans, legally known as “qualified tuition plans,” are sponsored by states, state agencies, or educational institutions and are authorized by Section 529 of the Internal Revenue Code.

ScholarShare sought DGS's approval for the contract. The written justification for the contract presented sufficient facts and details to demonstrate why ScholarShare 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 Pension Consulting Alliance ScholarShare followed the procedural requirements of civil service laws and Board rules.

DEPARTMENTAL RESPONSE

The State Treasurer's Office, on behalf of the ScholarShare Investment Board, was provided a copy of the initial report to review. A copy of ScholarShare's response is attached as Attachment 1.

SPB REPLY

Based upon ScholarShare's response, 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 ScholarShare 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 ScholarShare and the State Treasurer's Office.



SCHOLARSHARE INVESTMENT BOARD

Attachment 1

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scholarshare@treasurer.ca.gov
www.treasurer.ca.gov/scholarshare

MEMBERS

BILL LOCKYER, CHAIRMAN
State Treasurer

MICHAEL COHEN
Director of Finance

KAREN STAFF WALTERS
Executive Director
State Board of Education

HAL GEIOGUE

CHRISTOPHER JENNINGS

RHONDA JOHNSON

EXECUTIVE DIRECTOR
Zery M. Aguilera

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 Scholarshare Investment Board (SIB) 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 Scholarshare Investment Board as well as our other Boards, Commission, and Authorities (BCA's). Included is a copy of the revised EEO Officer duty statement.

We take our Disability Advisory Committees (DAC) very seriously. Since our agency is small, we do try to have a DAC member representative from each BCA to advise their director of issues of concerns. At this time, we do have a DAC member representing Scholarshare that meet together with our STO DAC Chair, DAC 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.