



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

Compliance Review Unit  
State Personnel Board  
March 22, 2021

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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 authorities' 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.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

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.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Department of Housing and Community Development (HCD) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Examinations	In Compliance	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Those That Were Provided Were Untimely <sup>1</sup>
Appointments	In Compliance	Unlawful Appointment Investigation Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

<sup>1</sup> Repeat finding. June 10, 2015, the HCD's compliance review report identified 8 missing probation reports of the 43 appointment files reviewed.

Area	Severity	Finding
Compensation and Pay	In Compliance	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

### **BACKGROUND**

The HCD is headquartered in Sacramento and includes six smaller district offices throughout the state. The mission of the department is to provide leadership, policies, and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. The department has a staff of approximately 927 employees who serve in seven divisions:

- Codes and Standards
- Financial Assistance
- Housing Policy Development
- Legal Affairs
- Legislation and Governmental Affairs
- Administration and Management
- Audit and Evaluation

Codes and Standards administers, adopts, and enforces uniform statewide housing standards to ensure the health and safety of Californians; to protect buyers from fraud and abuse; and, safeguard the affordability of housing.

Financial Assistance administers more than 20 programs which award loans and grants for the construction, acquisition, rehabilitation, and preservation of affordable rental and ownership housing; homeless shelters and transitional housing; public facilities and infrastructure; and, the development of jobs for lower income workers.

Housing Policy Development (HPD) administers state housing element law, including the review of local general plan housing elements; prepares numerous state plans and reports and conducts research to facilitate housing development and improvement; and, provides a wide range of technical assistance to local governments, public and private housing providers, business and industry groups, housing advocates, and interested citizens. In addition, the HPD prepares and implements the federal consolidated planning and performance reporting requirements for the United States Department of Housing and Urban Development. This work includes the analysis of impediments to fair housing, ensuring California's receipt of millions of federal housing and community development dollars.

The Legal Affairs Division (LAD) performs an administrative support function in providing accurate, timely, prudent legal advice and assistance, and support to all divisions in the department. The LAD performs research and drafts legal opinions, represents the department in litigation, processes Public Records Act requests, drafts loan documents for recording, drafts legislative bills, promulgates rulemaking/regulation packages, resolves legal issues pertaining to the registration and titling of manufactured housing, and provides general legal support.

Legislation and Governmental Affairs is the department's principal liaison to the Legislature. The division advises the Director and the Administration on housing-related legislative issues. It also promotes the Administration's housing policies and programs by

testifying before legislative committees and negotiating with members of the Legislature and interest groups.

Administration and Management provides administrative support and mandates most of the general administrative functions described in the State Administrative Manual.

Audit and Evaluation provides independent assurance and consulting services for all of the HCD's divisions. For all external audits of the HCD, they provide a single-point-of-contact for external audit staff.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the HCD's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if the HCD's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the HCD's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the HCD provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the HCD's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD. 678), class specifications, and withhold letters.

A cross-section of the HCD's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the HCD provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CRU also reviewed the HCD's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws and Board regulations. The HCD did not make any additional appointments during the compliance review period.

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<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The HCD's appointments were also selected for review to ensure the HCD applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the HCD provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hiring above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

During the compliance review period, the HCD did not issue or authorize red circle rate requests or arduous pay.

The review of the HCD's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

The HCD's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the HCD's justifications for the contracts were legally sufficient. The review was limited to whether the HCD's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The HCD's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors, managers, and CEAs were provided sexual harassment prevention training within statutory timelines.

The CRU also identified the HCD's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the HCD to provide a copy of their leave reduction policy.

The CRU reviewed the HCD's Leave Activity and Correction Certification forms to verify that the HCD created a monthly internal audit process to verify all leave input into any

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<sup>3</sup>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 PSC's were challenged.

leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the HCD's units in order to ensure they maintained accurate and timely leave accounting records. During the compliance review period, the HCD did not have any employees with non-qualifying pay period transactions. Additionally, the CRU reviewed a selection of the HCD employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of HCD positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Moreover, the CRU reviewed the HCD's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the HCD's policies and processes adhered to procedural requirements.

On February 18, 2021, an exit conference was held with the HCD to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the HCD's written response on March 1, 2021, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

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, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) 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, December 1, 2018, through August 30, 2019, the HCD conducted six examinations. The CRU reviewed all of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Assistant Deputy Director, Division of Financial Assistance	CEA	Statement of Qualifications (SOQ) <sup>4</sup>	10/26/2018	29
CEA A, Chief Information Officer, Administration and Management Division	CEA	SOQ	4/12/2019	18
CEA B, Deputy Director, Administration and Management Division	CEA	SOQ	11/01/2018	18
Codes and Standards Administrator I	OPEN	Training and Experience (T&E) <sup>5</sup>	Continuous	5
Codes and Standards Administrator II	OPEN	T&E	Continuous	4
Codes and Standards Administrator III	OPEN	T&E	Continuous	2

<b>IN COMPLIANCE</b>	<b>FINDING No. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed three CEA examinations and three open examinations which the HCD administered in order to create eligible lists from which to make appointments. The HCD published and distributed examination bulletins containing the required information for all examinations. Applications received by the HCD were accepted prior to the final filing

<sup>4</sup> In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

<sup>5</sup> The Training and Experience 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.

date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the HCD conducted during the compliance review period.

### Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications (MQs) or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, December 1, 2018, through August 30, 2019, the HCD conducted 23 permanent withhold actions. The CRU reviewed all of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Accountant I (Specialist)	OPB31	12/11/2018	12/19/2019	Failed to meet MQs
Administrative Assistant I	3PB31	2/27/2019	2/27/2019	Failed to meet MQs
Attorney III	9PB08	10/2/2018	10/2/2019	Failed to meet MQs

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
District Representative I, Division of Codes and Standards (Non-Peace Officer)	7CAA01	6/4/2019	6/4/2020	Failed to meet MQs
District Representative I, Division of Codes and Standards (Non-Peace Officer)	7CAA01	2/7/2019	2/7/2020	Failed to meet MQs
District Representative I, Division of Codes and Standards (Non-Peace Officer)	7CAA01	6/4/2019	6/4/2020	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	1/17/2019	1/17/2020	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	11/2/2018	11/2/2019	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	3/5/2019	3/5/2020	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	4/18/2018	4/18/2019	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	1/25/2019	1/25/2020	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	11/5/2018	11/5/2019	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	8/17/2018	8/17/2019	Failed to meet MQs
Housing and Community Development Representative I	0PB1701	5/21/2018	5/21/2019	Failed to meet MQs
Housing and Community Development Representative II	0PB1701	1/29/2019	1/29/2020	Failed to meet MQs
Housing and Community Development Representative II	0PB1701	5/21/2018	5/21/2019	Failed to meet MQs

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Housing and Community Development Representative II	0PB1701	3/5/2019	3/5/2020	Failed to meet MQs
Housing and Community Development Representative II	0PB1701	1/24/2019	1/24/2020	Failed to meet MQs
Housing and Community Development Representative II	0PB1701	1/30/2019	1/30/2020	Failed to meet MQs
Housing and Community Development Specialist I	6CDAA01	12/27/2019	12/27/2020	Failed to meet MQs
Housing and Community Development Specialist II	6CDAA02	4/24/2019	4/24/2020	Failed to meet MQs
Program Technician II	2PB30	6/27/2019	6/27/2021	Failed to meet MQs
Staff Services Analyst (General)	7PB34	5/21/2019	5/21/2021	Failed to meet MQs

<b>IN COMPLIANCE</b>	<b>FINDING NO. 2 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

### **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.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section

does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, December 1, 2018, through August 30, 2019, the HCD made 143 appointments. The CRU reviewed 37 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Career Executive Assignment (CEA) A, Assistant Deputy Director, Division of Financial Assistance	Certification List	Permanent	Full Time	1
CEA A, Chief Information Officer, Administration and Management Division	Certification List	Permanent	Full Time	1
CEA B, Deputy Director, Administration and Management Division	Certification List	Permanent	Full Time	1
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	2
District Representative I, Division of Codes and Standards (Non-Peace Officer)	Certification List	Permanent	Full Time	1
District Representative II, Division of Codes and Standards (Non-Peace Officer)	Certification List	Permanent	Full Time	1
Housing and Community Development Representative I	Certification List	Permanent	Full Time	1
Housing and Community Development Representative II	Certification List	Permanent	Full Time	7

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Limited Examination and Appointment Program Candidate	Certification List	Temporary	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	1
Program Technician III	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Managerial)	Certification List	Permanent	Full Time	1
Staff Services Manager III	Certification List	Permanent	Full Time	1
Accounting Administrator I (Supervisor)	Transfer	Permanent	Full Time	1
Attorney III	Transfer	Permanent	Full Time	1
District Representative I, Division of Codes and Standards (Non-Peace Officer)	Transfer	Permanent	Full Time	1
Housing and Community Development Representative I	Transfer	Permanent	Full Time	1
Housing and Community Development Representative II	Transfer	Permanent	Full Time	1
Housing and Community Development Specialist II	Transfer	Temporary	Intermittent	1
Housing and Community Development Specialist II	Transfer	Temporary	Intermittent	1
Information Technology Specialist II	Transfer	Temporary	Intermittent	1
Program Technician II	Transfer	Permanent	Full Time	1
Senior Personnel Specialist	Transfer	Temporary	Intermittent	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 3 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND THOSE THAT WERE PROVIDED WERE UNTIMELY</b>
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**Summary:** The HCD did not provide 3 probationary reports of performance for 2 of the 37 appointments reviewed by the CRU. In addition, the HCD

did not provide in a timely manner 4 probationary reports of performance for the 37 appointments reviewed by the CRU, as reflected in the tables below. This is the second consecutive time this has been a finding for the HCD.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Attorney	Certification	1	1
Housing and Community Development Representative	Certification	1	2

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Housing and Community Development Representative II	Certification	1	2
Program Technician III	Certification	1	2

**Criteria:**

The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board’s record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

**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 HCD acknowledges its probationary evaluations were not provided to all employees, and those that were provided were untimely. The HCD states that it had a significant increase in positions during the audit period. Subsequently, many of the vacant manager positions were filled with either first time managers or new state employees who were not aware of the requirement to complete probationary evaluations in a timely manner.

**Corrective Action:** The HCD provides it has taken steps since the review to develop and train managers and supervisors on the completion of probation reports, and informs supervisors and managers of past due, current and future report dates. Within 90 days of the date of this report, the HCD must submit to the SPB relevant documentation demonstrating that it has implemented the corrective actions to achieve compliance in this area. .

### Unlawful Appointment Investigations

Departments that entered into an Unlawful Appointment Investigation Delegation Agreement between their executive management and the CalHR have the authority to manage their own unlawful appointment investigations. The Delegation Agreement defines the reporting requirements, responsibilities, obligations, and expectations of the department in this process. The delegation agreement mandates that departments maintain up-to-date records on each unlawful appointment investigation including, at a minimum: the specific facts surrounding the appointment in question, a description of the circumstances which may have resulted in the unlawful appointment, copies of relevant appointment documents, and any documentation which may demonstrate that the agency and employee acted in good faith when the appointment was offered and accepted. Departments must also maintain a tracking system to monitor its unlawful appointments.

During the period under review, December 1, 2018, through August 30, 2019, the HCD conducted one unlawful appointment investigation. The CRU reviewed the unlawful appointment investigation, which is listed below:

Classification	Date Investigation Initiated	Date Investigation Concluded
Staff Services Analyst (General)	1/30/2019	2/19/2019

<b>IN COMPLIANCE</b>	<b>FINDING No. 4 UNLAWFUL APPOINTMENT INVESTIGATION COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The HCD’s unlawful appointment investigation was found to comply with the rules set forth in the signed Delegation Agreement with the CalHR.

**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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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, subd. (a).)

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).)

IN COMPLIANCE	<b>FINDING No. 5 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM          COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD          RULES</b>
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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 HCD’s 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 Executive Director of the HCD. The HCD also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

**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 Regs., 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, but are not limited to, 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 PSC’s, a state agency is required to notify 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 period under review, December 1, 2018, through August 30, 2019, the HCD had 29 PSC’s that were in effect. The CRU reviewed 15 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
CPS HR Consulting	Communication Consultant	12/10/18 - 04/30/19	\$49,000	Yes	Yes
BCSH	Administration Services	12/13/18 - 6/30/19	\$349,548	Yes	Yes
CPS HR Consulting	Developmental Consultant	08/1/18 - 06/30/21	\$1,446,000	Yes	Yes
CPS HR Consulting	CDBG Program Redesign	01/24/19 - 05/31/19	\$19,250	Yes	Yes
Lang & Associates	"Can We Chat" Sessions	06/4/19 - 01/1/20	\$9,995	Yes	Yes
GCR, Inc.	AFFH Analysis Consultant	07/16/19 - 06/30/21	\$410,660	Yes	Yes
CPS HR Consulting	Communication Consultant	12/11/18 - 12/31/19	\$99,000	Yes	Yes
CalHFA	Administrative Services	10/2/18 - 06/30/20	\$330,000	Yes	Yes
BCSH	Administrative Services	12/11/18 - 06/30/19	\$747,096	Yes	Yes
GCR, Inc.	Data Collection	01/5/18 - 06/30/20	\$820,243	Yes	Yes
AML Global	CDBG -DR Action Plan	11/13/18 - 06/30/19	\$9,700	Yes	Yes
CPS HR Consulting	Leadership Coaching	07/1/18 - 06/30/20	\$154,560	Yes	Yes
CHPC	Affordable Housing Preservation	08/7/19 - 06/30/22	\$492,300	Yes	Yes
PlaceWorks	Technical Assistance Consultant	02/1/19 - 06/30/21	\$2,352,250	Yes	Yes
LeSar Development Consultants	Change Management Consultant	07/1/18 - 06/30/20	\$573,420	Yes	Yes

<b>IN COMPLIANCE</b>	<b>FINDING No. 6</b>	<b>PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS</b>
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The total dollar amount of all the PSC's reviewed was \$7,863,022. It was beyond the scope of the review to make conclusions as to whether HCD justifications for the contract were legally sufficient. For all PSC's reviewed, the HCD provided specific and detailed

factual information in the written justification as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, the HCD complied with proper notification to all organizations that represent employees who perform the type of work contracted. Accordingly, the HCD PSC's complied with civil service laws and board rules.

**Mandated Training**

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 and 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Additionally, new supervisors must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code § 19995.4.)

The Board may conduct reviews of any appointing power’s personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the HCD’s mandated training program that was in effect during the compliance review period, September 1, 2017, through August 30, 2019.

<b>IN COMPLIANCE</b>	<b>FINDING No. 7</b>	<b>MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS</b>
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The HCD provided ethics training to its 72 new filers within 6 months of appointment and, for 299 existing filers, “at least once during each consecutive period of 2 calendar years,

commencing on the first odd-numbered year thereafter.” The HCD also provided supervisory training to its 14 new supervisors within 12 months of appointment. In addition, the HCD provided sexual harassment prevention training to its 14 new supervisors within 6 months of appointment, and sexual harassment prevention training to its 87 existing supervisors every two years. Thus, the HCD complied with mandated training requirements within statutory timelines.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee’s salary rate<sup>6</sup> upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, December 1, 2018, through August 30, 2019, the HCD made 143 appointments. The CRU reviewed 5 of those appointments to determine if the HCD applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Administrator I (Supervisor)	Transfer	Permanent	Full Time	\$7,608
Attorney III	Transfer	Permanent	Full Time	\$12,140
CEA	Transfer	Permanent	Full Time	\$9,343
Housing and Community Development Representative I	Transfer	Permanent	Full Time	\$4,496

<sup>6</sup> “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4,281

<b>IN COMPLIANCE</b>	<b>FINDING No. 8 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The HCD appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, December 1, 2018, through August 30, 2019, the HCD employees made five alternate range movements within a classification. The CRU reviewed all of those alternate range movements to determine if the HCD applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Information Technology Associate	Range C	Range D	Full Time	\$6,557
Staff Services Analyst (General)	Range A	Range B	Full Time	\$3,688

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	Range B	Range C	Full Time	\$4,281
Staff Services Analyst (General)	Range B	Range C	Full Time	\$4,534
Staff Services Analyst (General)	Range B	Range C	Full Time	\$4,401

<b>IN COMPLIANCE</b>	<b>FINDING No. 9</b>	<b>ALTERNATE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movements the HCD made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

#### Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>7</sup> (Gov. Code, § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee’s salary in the exempt appointment. (*Ibid.*) For example, an employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, December 1, 2018, through August 30, 2019, the HCD authorized five HAM requests. The CRU reviewed all of those authorized HAM requests to determine if the HCD correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Staff Services Manager II (Supervisor)	New	Permanent	\$6495-\$8070	\$7,666
Staff Services Manager III	Current	Permanent	\$8173-\$9280	\$9,280

<sup>7</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Research Data Specialist II	New	Permanent	\$6213-\$7777	\$6,949
Codes and Standards Administrator I, (Non-Peace Officer)	New	Permanent	\$6377-\$7925	\$6,696
Housing and Community Development Specialist II	New	Permanent	\$6213-\$7777	\$7,138

<b>IN COMPLIANCE</b>	<b>FINDING No.10 HIRING ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the HCD made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, December 1, 2018, through August 30, 2019, the HCD issued bilingual pay to 25 employees. The CRU reviewed 6 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

District Representative I, Division of Codes and Standards (Non-Peace Officer)	R07	FT	1
District Representative II, Division of Codes and Standards (Non-Peace Officer)	R07	FT	1
Program Technician	R04	FT	1
Program Technician II	R04	FT	1
Program Technician III	R04	FT	1
Staff Services Analyst (General)	R01	FT	1
District Representative I, Division of Codes and Standards (Non-Peace Officer)	R07	FT	1

<b>IN COMPLIANCE</b>	<b>FINDING No.11 BILINGUAL PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the bilingual pay authorized to employees during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

### Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, December 1, 2018, through August 30, 2019, the HCD issued pay differentials<sup>8</sup> to three employees. The CRU reviewed all of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
District Representative III, Division of Codes and Standards	244 Education	\$125
District Representative III, Division of Codes and Standards	244 Education	\$125
District Representative III, Division of Codes and Standards	245 Longevity	2% above base salary

<b>IN COMPLIANCE</b>	<b>FINDING No.12 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the pay differentials that the HCD authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

### Out-of-Class Assignments and Pay

For excluded<sup>9</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU

<sup>8</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

<sup>9</sup> "Excluded employee" means an employee as defined in section 3527, subd. (b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, December 1, 2018, through August 30, 2019, the HCD issued OOC pay to two employees. The CRU reviewed all of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Accounting Administrator III	Excluded	Deputy Director of Division of Financial Assistance/Exempt	8/31/18-5/31/19
CEA (A)	Excluded	CEA (B), Administrative Deputy	2/1/19-9/20/19

<b>IN COMPLIANCE</b>	<b>FINDING No.13 OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the OOC pay assignments that the HCD authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

## Leave

### Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the

completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>10</sup> worked and paid absences,<sup>11</sup> is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the HCD had 11 positive paid employees whose hours were tracked. The CRU reviewed 9 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

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<sup>10</sup> For example, two hours or ten hours counts as one day.

<sup>11</sup> For example, vacation, sick leave, compensating time off, etc.

Classification	Tenure	Time Frame	Time Worked (Hours)
District Representative I, Division of Codes and Standards (Non-Peace Officer)	Intermittent	Full Time	960
Housing and Community Development Representative II	Intermittent	Full Time	214.5
Housing and Community Development Specialist II	Intermittent	Full Time	439.5
Housing and Community Development Specialist I	Intermittent	Full Time	960
District Representative I, Division of Codes and Standards (Non-Peace Officer)	Intermittent	Full Time	777.5
Attorney III	Intermittent	Full Time	535
Associate Governmental Program Analyst	Intermittent	Full Time	953
Associate Governmental Program Analyst	Intermittent	Full Time	689
Housing and Community Development Specialist I	Intermittent	Full Time	960

<b>IN COMPLIANCE</b>	<b>FINDING No.14 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The HCD provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, December 1, 2018, through September 30, 2019, the HCD placed six employees on ATO. The CRU reviewed all of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	February 2019	5 days
Associate Governmental Program Analyst	September 2019	5 days

Classification	Time Frame	Amount of Time on ATO
District Representative I, Division of Codes and Standards (Non-Peace Officer)	March 2019	5 days
Housing and Community Development Representative II	April 2019	5 days
Housing and Community Development Representative II	May 2019	5 days
Staff Services Manager I	March 2019	5 days

<b>IN COMPLIANCE</b>	<b>FINDING No.15 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The HCD provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

#### Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records

shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. *(Ibid.)* If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. *(Ibid.)* Attendance records shall be corrected by the pay period following the pay period in which the error occurred. *(Ibid.)* Accurate and timely attendance reporting is required of all departments and is subject to audit. *(Ibid.)*

During the period under review, March 1, 2018, through May 31, 2019, the HCD reported 33 units comprised of 605 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
March 2019	271	51	51	0
April 2019	104	33	33	0

<b>IN COMPLIANCE</b>	<b>FINDING No.16 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU reviewed employee leave records from two different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The HCD kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

Leave Reduction Efforts

Departments must create a leave reduction policy for their organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place. (Human Resources Manual Section 2124.)

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. “If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a

calendar year, the employee may accumulate the unused portion.”<sup>12</sup> (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount<sup>13</sup> as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation, ensuring employees maintain the capacity to optimally perform their jobs. (Cal. Code Regs., tit. 2, § 599.742.1.) For excluded employees, the employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (*Ibid.*) To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate healthy work- life balance by granting reasonable employee vacation and annual leave requests when operationally feasible. (Human Resources Manual Section 2124.)

As of December 2018, 40 HCD employees exceeded the established limits of vacation or annual leave. The CRU reviewed 20 of those employees’ leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Associate Accounting Analyst	R01	63.25	Yes
Associate Accounting Analyst	R01	71.25	Yes
Associate Governmental Program Analyst	R01	130.5	Yes
Attorney IV	R02	10.9	Yes
Attorney IV	R02	47.5	Yes

<sup>12</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for Bargaining Unit 06 there is no established limit and for Bargaining Unit 05 the established limit is 816 hours.

<sup>13</sup> Excluded employees shall not accumulate more than 80 days.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Attorney IV	R02	262	Yes
CEA	M01	1394	Yes
Codes and Standards Administrator I	S07	83.75	Yes
District Representative I	R07	50	Yes
District Representative II	R07	127.25	Yes
Housing and Community Development Representative II	R01	1.25	Yes
Housing and Community Development Representative II	R01	82	Yes
Housing and Community Development Representative II	R01	43.5	Yes
Housing and Community Development Specialist II	R01	377	Yes
Housing and Community Development Specialist II	R01	1138.5	Yes
Information Technician Specialist II	R01	849.5	Yes
Senior Accounting Officer (Specialist)	R01	178	Yes
Staff Services Manager II (Supervisory)	S01	353	Yes
Staff Services Manager III (Managerial)	M01	64	Yes
Supervising Program Technician III	S04	432	Yes
<b>Total</b>		<b>5759.15</b>	

<b>IN COMPLIANCE</b>	<b>FINDING No.17 LEAVE REDUCTION PLANS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU reviewed employee vacation and annual leave to ensure that those employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours. In addition, the CRU reviewed the department’s leave reduction policy to verify its compliance with applicable rule and law, and to ensure its accessibility to employees. Based on our review, the CRU found no deficiencies in this area.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

<b>IN COMPLIANCE</b>	<b>FINDING No.18 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the HCD’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the HCD’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

### **Workers’ Compensation**

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers’ compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee’s “personal physician,” as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) and (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work-related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

In this case, the HCD did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING No.19 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the HCD provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the HCD received worker's compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

### Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 37 permanent HCD employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Accountant I (Specialist)	1/4/2018
Accountant I (Specialist)	7/31/2018
Accounting Officer (Specialist)	4/30/2019
Administrative Assistant I	8/22/2018
Assistant Chief Counsel	10/25/2018

Classification	Date Performance Appraisals Due
Associate Budget Analyst	4/11/2019
Associate Budget Analyst	6/30/2019
Associate Governmental Program Analyst	10/30/2018
Associate Governmental Program Analyst	7/31/2019
Associate Governmental Program Analyst	5/13/2018
Attorney	2/28/2018
Attorney III	2/26/2019
Attorney IV	11/30/2018
Codes and Standards Administrator I	4/30/2018
Codes and Standards Administrator II	6/30/2019
District Representative I	4/30/2020
District Representative I	5/17/2019
District Representative I	6/30/2019
District Representative I	7/14/2019
District Representative II	2/28/2018
District Representative II, Division Codes & Standards	10/8/2018
Executive Assistant	1/15/2019
Housing and Community Development Manager I	12/15/2018
Housing and Community Development Representative II	10/1/2018
Housing and Community Development Representative II	3/5/2018
Housing and Community Development Representative II	10/31/2018
Housing and Community Development Specialist II	4/19/2019
Information Technology Associate	11/15/2018
Information Technology Supervisor II	7/13/2019
Program Technician II	1/2/2019
Program Technician II	4/24/2019
Program Technician II	11/1/2018
Program Technician II	10/30/2018
Program Technician II	4/30/2019

Classification	Date Performance Appraisals Due
Staff Services Analyst (General)	6/30/2019
Staff Services Manager I	8/1/2018
Staff Services Manager I	5/31/2018

<b>SEVERITY: SERIOUS</b>	<b>FINDING No.20 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The HCD did not provide annual performance appraisals to 7 of 37 employees reviewed after the completion of the employee’s probationary period.

**Criteria:** “Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule.” (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

**Severity:** Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

**Cause:** The HCD acknowledges its annual performance appraisals were not provided to all employees. The HCD states that it had a significant increase in positions during the audit period. Subsequently, many of the vacant manager positions were filled with either first time managers or new state employees who were not aware of the requirement to complete performance appraisals in a timely manner.

**Corrective Action:** The HCD provides it has taken steps since the review to develop and train managers and supervisors on the completion of annual performance appraisals, and informs supervisors and managers of past due, current and future report dates. Within 90 days of the date of this report, the HCD must submit to the SPB relevant documentation demonstrating that the corrective action has been implemented.

## **DEPARTMENTAL RESPONSE**

The HCD's response is attached as Attachment 1.

## **SPB REPLY**

Based upon the HCD's written response, the HCD will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****Human Resources Branch**

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March 1, 2021

**MEMORANDUM FOR:** State Personnel Board

**FROM:** Michele Barney, Personnel Operations Manager  
Human Resources Branch

**SUBJECT:** SPB Compliance (Audit) Review Response

The Department of Housing and Community Development (HCD), Human Resources Branch is respectfully submitting the below response to the State Personnel Board (SPB) Compliance Review Unit.

On February 12, 2021, the Human Resources Branch (HRB) received the attached Compliance Review Report from the State Personnel Board (SPB) which outlines the departments audit findings related to the departments personnel practices in the areas of examinations, appointments, EEO, personnel service contracts, mandated training, compensation and pay, leave and policy and processes. SPB determined the department was in compliance in all areas except probation evaluations and performance appraisals.

On February 18, 2021, HRB met with SPB to discuss the findings and discussed the departments expectation to provide SPB with a response to the audit findings by March 1, 2021. Below is HCD's formal response to the SPB Compliance Review.

#### 1. Probation Reports

##### Cause

The department had a significant increase in positions during the audit period of December 1, 2018 through August 30, 2019. Many of the manager positions that were vacant were either filled with first time managers or new state employees that were not aware of the SPB compliance requirement to submit probation reports in a timely manner.

##### Response

The Department of Housing and Community Development (HCD) agrees with SPB's findings. HCD has developed and provided training for managers and supervisors to educate and make them aware of the requirement and provide

resources to complete the probation report. Additionally, the department has implemented a monthly report to all managers and supervisors to provide them with past due, current, and future report dates so management can stay aware of reporting requirements. Furthermore, the department began reporting department wide monthly statistics of probation reports received to provide transparency across the department to all staff of the expectations to complete reports in a timely manner. HCD is committed to providing all probationary staff with probation reports during each period of evaluation. The department will continue to monitor if the measures put in place increase the completion rate and will pursue additional strategies if necessary, to be compliant.

## 2. Performance Appraisals

### Cause

The department had a significant increase in positions during the audit period of December 1, 2018 through August 30, 2019. Many of the manager positions that were vacant were either filled with first time managers or new state employees that were not aware of the SPB compliance requirement to submit annual reports in a timely manner.

### Response

The HCD agrees with SPB's findings. HCD has developed and provided training for managers and supervisors to educate and make them aware of the requirement and provide resources to complete the annual performance appraisals. Additionally, the department implemented a monthly report to all managers and supervisors to provide them with past due, current, and future report dates so management can stay aware of reporting requirements. Furthermore, the department began reporting department wide monthly statistics of annual performance appraisals received to provide transparency across the department to all staff of the expectations to complete reports in a timely manner. HCD is committed to providing all staff with performance appraisal reports each twelve calendar months. The department will continue to monitor if the measures put in place increase the completion rate and will pursue additional strategies if necessary, to be compliant.

If you have any questions, please feel free to contact me at (916) 263-6866.

Sincerely,

Michele Barney, Personnel Operations Manager  
Human Resources Branch  
Administration and Management Division

Attachment