



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA GAMBLING CONTROL COMMISSION**

Compliance Review Unit  
State Personnel Board  
May 27, 2015

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## INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

## EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Gambling Control Commission (CGCC) personnel practices in the areas of examinations, appointments, and EEO from April 1, 2013, through March 31, 2014. The CGCC had no PSC's in effect during the compliance review period. The following table summarizes the compliance review findings:

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from All Applications	Very Serious
Equal Employment Opportunity	No Disability Advisory Committee Was Established	Very Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

## **BACKGROUND**

The focus of the CGCC is to act as the regulatory body over all Gambling establishments. The CGCC is responsible for setting policy, establishing regulations, making determinations of suitability for gaming employees and other individuals and entities, issuing licenses, acting as the administrator of gaming revenues deposited into the Indian Gaming Special Distribution Fund, and the trustee over the revenues deposited into the Indian Gaming Revenue Sharing Trust Fund, and administering the provisions of the Gambling Control Act and the Tribal-State Gaming Compacts.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing CGCC examinations, appointments, EEO program, and PSC's from April 1, 2013, through March 31, 2014. The primary objective of the review was to determine if CGCC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

All CGCC examinations and appointments were reviewed. The CRU examined the documentation that the CGCC provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, vacancy posting advertisements, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CGCC'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 upward mobility program, the reasonable accommodation program, the discrimination complaint process, and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CGCC staff.

On May 11, 2015, an exit conference was held with the CGCC to explain and discuss the CRU's initial findings and recommendations, and to provide the CGCC with a copy of the CRU's draft report. The CGCC was given until May 22, 2015, to submit a written

response to the CRU’s draft report. On May 21, 2015, the CRU received and carefully reviewed the response, which is included in 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 (MQs) for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date 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 in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CGCC conducted two examinations. The CRU reviewed both examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Career Executive Assignment, Chief Counsel	Promotional	Statement of Qualifications <sup>1</sup>	9/9/2013	13

<sup>1</sup> In a statement of qualifications (SOQ’s) 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.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Career Executive Assignment, Deputy Director Licensing	Promotional	Statement of Qualifications	10/18/2013	7

**FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules**

The CGCC administered two promotional examinations to create eligible lists from which to make appointments. For both examinations the CGCC published and distributed examination bulletins containing the required information. Applications received by the CGCC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the MQ’s for admittance to the examination. The CGCC notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ’s were also 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. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the CGCC conducted during the compliance review period. Accordingly, the CGCC fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CGCC made 10 appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Career Executive Assignment, Chief Counsel	Certification List	Permanent	Full Time	1
Career Executive Assignment, Deputy Director Licensing	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	External Transfer	Permanent	Half Time	1
Accounting Administrator I (Specialist)	Promotion In Place	Permanent	Part Time	1
Attorney III	Promotion In Place	Permanent	Full Time	1
Systems Software Specialist II (Technical)	Promotion In Place	Permanent	Full Time	1
Associate Management Auditor	Transfer	Permanent	Full Time	1
Staff Services Manager III	Transfer	Permanent	Full Time	1
Associate Accounting Analyst	Transfer/ Reinstatement	Permanent	Full Time	1

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

**Summary:** Out of 10 appointment files reviewed, one Associate Governmental Program Analyst appointment included one application in which the EEO questionnaire was not separated from the STD 678 employment application.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic

and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

**Severity:** Very Serious. The applicant’s protected class was visible, subjecting the agency to potential liability.

**Cause:** The CGCC states it was an inadvertent oversight to not remove the EEO Questionnaires before storing in a locked file room.

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

### 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; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the 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.)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of

members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed CGCC EEO policies, procedures, and program in effect during the compliance review period. In addition, the CRU interviewed appropriate CGCC staff.

### **FINDING NO. 3 – No Disability Advisory Committee Was Established**

**Summary:** The CGCC does not have an active DAC.

**Criteria:** 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).)

**Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

**Cause:** The CGCC states that they had a DAC in the past, but the participants left the CGCC when the reorganization under Governor's Reorganization Plan 2 (GRP2) was implemented on July 1, 2013.

**Action:** The CGCC must take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CGCC must establish a DAC and submit to the SPB a written report of compliance.

## **DEPARTMENTAL RESPONSE**

The CGCC has taken into account the findings identified in the compliance review report, and has taken action to ensure that the issues have been addressed and corrected. Subsequent action beyond the responses to each finding below will be addressed and documented in a corrective action plan.

### **FINDING NO 2**

The CGCC understands that all EEO questionnaires should be separated from the application at the time the application is submitted. This has always been our policy and is now formalized in our attached written policy. We believe the EEO questionnaire found that was not separated was an unusual exception to our normal procedures. Our personnel liaison is aware of this policy and will continue to enforce the proper procedure of separating the EEO questionnaire from the application prior to the examination.

### **FINDING NO 3**

The CGCC understands that this is an important mandated committee. The Commission has had a DAC in the past, but the participants left the Commission when the reorganization under GRP2 was implemented on July 1, 2013. A new DAC was not formed. We have recently taken steps to re-initiate a DAC. Specifically, the Executive Director sent out an email to all Commission staff to recruit volunteers to participate on this committee. The EEO Officer will head the newly formed committee and will ensure that the DAC addresses the various issues outlined by CalHR and mandated by the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

## **SPB REPLY**

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

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