

DEPARTMENT OF ADMINISTRATIVE SERVICES
AUDIT REPORT



HR Audit Program
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SUMMARY

The HR Audit Program of the Human Resource Services Division issues its audit report on state agencies' use of direct appointments. The audit was performed using a sample of 334 of the 812 direct appointments made by state agencies between July 1, 2000, and October 31, 2001. Affected agencies were asked to send all documentation on file for each of the sample appointments selected. Documentation provided by the agencies was reviewed to determine if the appointment met the criteria specified in the OAR 105-040-0050 "Direct Appointment," HRSD State Policy 40.055.01 "Appointment to the Executive Service," or collective bargaining agreements. The documentation was also reviewed to determine if it contained all of the components required under OAR 105-040-0050 (1)(b). If documentation was not available, agencies explained how the appointment was made or why the direct appointment method was used.

One hundred forty-six of the audited appointments were made for reasons allowed under the OAR or as provided for in state policy. The documentation for these appointments also included all of the required components. One hundred fifty-one of the 334 appointments included in the audit were made following a standard recruitment method or within provisions of policies governing the type of appointment, but were miscoded as a direct appointment. Thirty of the 334 appointments reviewed were made in compliance with the OAR, but the documentation did not include one or more of the required components. Six of the 334 appointments were made outside of OAR provisions. One of the 334 appointments was not reviewed as the employee records had been transferred to another state agency.

The original scope of the audit included a review to determine whether state agencies' use of direct appointments was within the performance standards set by the Human Resource Services Division (HRSD). During the course of this audit, it was discovered that the number of appointments that were coded as direct appointments, but were made following standard recruitment methods or within the provisions of policies governing the type of appointment, did not allow the use of the data for that purpose. On June 5, 2002, each agency that had made a direct appointment between July 1, 2000, and May 31, 2002, was sent a list of those appointments. The list can be used by the agency to review each appointment coded as a direct appointment to determine if it is coded accurately and, if not, to correct any coding errors. It can also be used by the agency to perform an internal review to determine if all required documentation is on file to support the type of appointment.

Beginning in September 2002, the HR Audit Program staff will be monitoring state agencies' use of direct appointments on a quarterly basis. These quarterly reviews will include randomly selecting a sample of direct appointments to: 1) determine whether the direct appointment was made in compliance with the OAR, policy, or collective bargaining agreements, if applicable; and 2) ensure complete documentation is on file. The quarterly reviews will also include an analysis of the data to determine how state agencies are performing in relation to the standard.

BACKGROUND

State agency directors have the authority to make direct appointments to Classified, Management Service, and Executive Service positions consistent with criteria specified in OAR 105-040-0050 "Direct Appointment."

The administrative rule governing direct appointments has been available for state agencies' use since 1981. Changes to this rule over the last 20 years include: the addition of affirmative action language based on a U S Supreme Court decision, Johnson v. Santa Clara County Transportation Agency (February 1989); the temporary suspension of the rule to ensure the State Personnel System met the requirements of both state and federal statutes and created greater consistency between State hiring practices and the federal Civil Rights Act of 1991 (January 1994); the implementation of language from Senate Bill 24 (1997) which amended ORS 240.306(5) to allow agencies to fill vacancies using methods other than an open competitive

recruitment when a position required special or unique skills, or when filling a position was time-critical (November 1997).

Under provisions of HRSD State Policy 40.055.01(1)(b) "Appointment to the Executive Service," when filling certain unclassified positions, an agency director can request an exception to the standard recruitment methods and the requirement that the appointment meet the criteria outlined in the direct appointment administrative rule.

The Civil Service Act of 1945 created two groups of state employees, classified and unclassified. In 1977, ORS 240.205, "Unclassified service" was broadened to include 'deputies and principal assistants to agency heads' as unclassified employees. This group is administratively defined as "executive service" and HRSD State Policy 40.055.01 was created. Revisions to the policy include the reference to OAR 105-040-0050, "Direct Appointment" in February 2001.

AUDIT SCOPE

This audit reviewed the use of direct appointments and the supporting documentation maintained by state agencies. Randomly selected appointments coded as a direct appointment were reviewed to determine whether: 1) the direct appointment was made consistent with the criteria contained within OAR 105-040-0050 "Direct Appointment," HRSD State Policy 40.055.01 "Appointment to the Executive Service," or applicable collective bargaining agreements (CBA's); and 2) the required documentation was maintained.

The original scope of the audit had intended to include a review of the percentage of direct appointments made for critical timing reasons and to professional level positions in relation to all appointments to determine whether state agencies' are within the performance standards set for OAR 105-040-0050 "Direct Appointment." However, during the course of this audit, we found enough discrepancies in the data available to invalidate its use for this purpose. Therefore, this audit did not include a comparison of state agencies' use of direct appointments to the standards.

AUDIT METHODOLOGY

The HR Audit Team scheduled the audit of agencies' use and documentation of direct appointments based on: 1) the level of risk associated with using alternative methods to fill vacant positions; and 2) a recommendation in a previously released audit report by the Secretary of State's Audit Division. The risk analysis identified use of direct appointments to fill vacant positions as a "Priority 1," indicating that this practice has the potential for a medium to high monetary, legal and/or public perception impact.

Data used in this audit was obtained using a download from the statewide Position and Personnel Data Base (PPDB) administered and maintained by the Personnel Systems Section of HRSD. The download identified all appointments made by state agencies between July 1, 2000, and October 31, 2001.

- A random sample of 334 of the 812 direct appointments was selected for review.
- Initial letters were sent to agencies included in the review requesting documentation for the selected appointments.
- Documentation provided by each agency was reviewed to determine if the appointment met the criteria specified in OAR 105-040-0050 "Direct Appointment," HRSD State Policy 40.055.01 "Appointment to the Executive Service," or collective bargaining agreements, if applicable. The documentation was also reviewed to determine if it contained the required information. If documentation was not available, agencies provided the reason for the direct appointment, or an explanation of how the appointment was made.

- The following preliminary findings were sent to agencies:
 - Eleven agencies were informed that all of the reviewed direct appointments in the agency were made in accordance with OAR, state policy, or CBA provisions and the documentation included the required components.
 - Forty-one agencies were informed that, based on the information provided, one or more of the appointments reviewed did not appear to meet the criteria and/or the documentation was not sufficient.
- After receipt and evaluation of the additional information provided by agencies in response to the preliminary findings, final determinations were made. Individual reports of findings were sent to the appropriate agencies. These findings included: 1) instructions on how to correct coding errors to accurately reflect the appointment type in the PPDB; and 2) recommendations on how to bring the documentation into compliance with the OAR or state policy provisions.

There were two instances where it could not be determined whether the appointee met the minimum qualifications (based on prior state service data available in the PPDB). In one of the cases, the appointee is no longer a state employee. The agency was reminded of the appropriate methods for filling future position vacancies. In the other case, the agency was advised to request a resumé or state employment application (PD 100) from the appointee. After review of the PD 100, it was determined that appointee did meet the minimum qualifications of the position at the time of the appointment.

SUMMARY OF FINDINGS

Following are the final findings on the 334 direct appointments reviewed in 52 agencies:

- 146 of the audited appointments (43.7%) were made in compliance with OAR 105-040-0050 "Direct Appointment," HRSD State Policy 40.055.01 "Appointment to the Executive Service," or an applicable collective bargaining agreement (CBA) and the documentation included all of the required components.
- 30 of the audited appointments (9.0%) were made in compliance with OAR 105-040-0050 "Direct Appointment," HRSD State Policy 40.055.01 "Appointment to the Executive Service," or applicable collective bargaining agreements (CBA's), but the documentation did not include one or more of the required components.
- 151 of the audited appointments (45.2%) were made within provisions of an applicable rule or policy, but were coded incorrectly as a direct appointment in the Personnel and Position Data Base (PPDB).

- 6 of the audited appointments (1.8%) were made using reasons other than those allowed under OAR 105-040-0050 "Direct Appointment."
- 1 of the 334 appointments (< 1%) was not included in the review as the employee records had been transferred to another state agency.

Individual reports of the final findings and any specific recommendations have been sent to the appropriate agencies.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion: State agencies are generally making appointments to positions in compliance with governing rules and policies, but may be misrepresenting the appointment type in the statewide Position and Personnel Data Base (PPDB) as direct appointments.

Recommendation: Agencies should incorporate into their practices, if not already in place, a mechanism to ensure that the appointment method code used when appointments are made correctly reflects the type of appointment.

A list of all appointments coded as direct appointments between July 1, 2000, and May 31, 2002, was sent to each state agency on June 5, 2002. The list can be used by the agency to review each appointment coded as a direct appointment to determine if it is coded accurately and, if not, to correct any coding errors. It can also be used by the agency to perform an internal review to determine if all required documentation is on file to support the type of appointment.

Conclusion: Agencies are not including all of the required components when documenting direct appointments or appointments to executive service positions.

Recommendation: Agencies should establish internal procedures, if not currently existing, to ensure that each direct appointment includes all of the following components: 1) a statement of how the appointment meets the rule and/or policy criteria; 2) a determination of whether the appointee meets the minimum qualifications for the position; and 3) the appointing authority's signature. Executive service appointments should include documentation of the open competitive process performed or the signed approval for an

exception to the open recruitment process from the Director of DAS, pursuant to HRSD State Policy 40.055.01. A model form for documenting appointments made to executive service is included in HRSD State Policy 40.055.01. Documentation must be maintained for three years.

Conclusion: Agencies generally use open recruitments to fill executive service positions, but sometimes miscode the appointment type in the statewide Personnel and Position Data Base (PPDB). The model form included in HRSD State Policy 40.055.01 "Appointments to the Executive Service" for documenting appointments to executive service positions does not clearly identify an appointment type for appointments made following an open recruitment.

Recommendation: HRSD Management and Consultation should revise the model form to better assist agencies with identifying and documenting the appropriate appointment method for each executive service appointment.

Agency Response: HRSD agrees with the audit recommendation and will work with the HR Audit staff to prepare a revised model form for inclusion in the state policy.

Conclusion: Agencies using direct appointments for reasons other than those allowed under OAR 105-040-0050 "Direct Appointment," are generally using this method to facilitate employment of economically disadvantaged persons or to maintain a diverse workforce under circumstances not specifically provided for under standard or other alternative recruitment methods.

Recommendation: Agencies should incorporate into their practices, if not already in place, a process for determining if the appointment method meets all of the criteria for the type of appointment being considered. Agencies should contact HRSD Management and Consultation for assistance in applying the recruitment rules and policies to facilitate employment of economically disadvantaged persons and support agency diversity efforts.