



Office of the City Auditor

WORKSESSION
February 23, 2016

To: Honorable Mayor and Members of the City Council
From: Ann-Marie Hogan, City Auditor
Subject: Personnel Board and City Auditor Recommendations to Improve Transparency and Equity in Human Resources' Merit-Based Hiring and Promotions System

INTRODUCTION

Our independent and comprehensive audit of Human Resources' hiring and promotions system provides a clear and detailed road map for increasing transparency, accountability, and equity in hiring at the City of Berkeley. We investigated Human Resources' hiring activities in calendar years 2013 and 2014 and noted recent improvements in the department's hiring process. We shared our results with management so that they could expeditiously implement our recommendations, and with the Personnel Board to inform their report on tonight's agenda.

The City Charter requires the City Auditor to conduct all audits in accordance with Government Auditing Standards issued by the U.S. Comptroller General. These Standards help ensure that we, as government auditors, maintain competence, integrity, objectivity, and independence in our work. To meet independence requirements, we certify our independence at the start of every audit and regularly perform independence assessments. Audit management also continuously communicates with staff the need to maintain independence. As reported to Council on January 19, 2016, the Standards require a [peer review](#)¹ every three years. Once again, we successfully passed our peer review, ensuring that the community can rely on the quality of our work and our independence, in appearance and in fact.

CURRENT SITUATION AND ITS EFFECTS

On January 19, 2016, we published our audit of Human Resources' adherence to a merit-based hiring and promotions system, and to the Equal Employment Opportunity laws and policies that govern that system. We identified specific tools and best practices that Human Resources can use in attaining its goal of ensuring employees are hired and promoted based on merit.

¹ 2015 Peer Review Results: http://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/City%20Auditor_2015%20ALGA%20Peer%20Review.pdf

We investigated the procedures and practices in place at the time of our audit. Specifically, we interviewed Human Resources management and staff; observed the administration of written and oral exams; assessed the accuracy and completeness of hiring documentation; reviewed relevant laws, regulations, and labor agreements; and surveyed managers who make hiring decisions in their departments after Human Resources has completed recruitment and published a hiring list. We used corroborating evidence to support statements made by Human Resources employees, particularly management, and had a newly hired, senior auditor assist in writing our report to help obtain a fresh and objective review of our work. We observed that Human Resources staff consistently exhibited a commitment to ensuring equality in their recruitment practices.

We concluded that Human Resources has demonstrated its commitment to maintaining and strengthening its merit-based hiring and promotions system, and observed recent actions to increase transparency and guidance for employees. We determined, however, that the department still needs to do more to improve documentation and transparency, and conduct more comprehensive education and training of City staff. We did not recommend additional rules, but rather stronger guidance. The majority of hiring managers, ninety-five percent, who responded to our survey knew the definition of merit-based hiring, but almost half, forty percent, expressed uncertainty about their role and responsibilities in the hiring process indicating a need for better guidance not more rules. Therefore, we recommended that Human Resources strengthen its guidance for hiring managers and continue to provide the mandatory trainings that the department recently launched.

Council voted unanimously, on [Consent \(Item 19\)](#), to request that the City Manager report back by October 18, 2016, and every six months thereafter, regarding the status of our audit recommendations, until fully implemented.² We, and the Personnel Board, recognize that improvements have been made over the past few years. Fully and timely implementing our recommendations will take continued resources and commitment, and will result in improved procedures, practices, and perception of fairness in hiring.

BACKGROUND

Complaints by current and former employees about the City's hiring practices three years ago led to several requests that the independent City Auditor's Office audit the City's hiring practices. In 2013, Councilmember Anderson requested that we consider an audit of equity in the City's hiring and promotion process. Former Acting Human

² January 19, 2016 Council Consent Item #19:
http://www.ci.berkeley.ca.us/Clerk/City_Council/2016/01_Jan/City_Council_01-19-2016_-_Regular_Meeting_Annotated_Agenda.aspx

Resources Director, David Abel, later made a similar request. Councilmembers Anderson and Moore later highlighted the request for an audit of the Human Resources department based on recommendations of a firm under contract to the City Manager.

We took these requests under consideration during our audit planning process, and decided to include the audit in our audit plan. Given the time-sensitive nature of the audit, we shared our findings and recommendations with the Human Resources department throughout the audit process, which allowed management to begin implementation timely. Our report and the Personnel Board report include information on some of the improvements in transparency that Human Resources has accomplished recently. These include publishing results of Equal Employment Opportunity investigations of complaints and instituting mandatory training for everyone involved in the hiring process. Nevertheless, an equitable and diverse workforce cannot be sustained by compliance with rules alone. Recently instituted diversity training is aimed at going beyond what's required by law to engage employees in making more comprehensive change.

ENVIRONMENTAL SUSTAINABILITY

Our office manages and stores audit workpapers and other documents electronically to significantly reduce our use of paper and ink. Although many of the audits we issue do include information about specific environmental impacts, this particular report has no identifiable environmental effects or opportunities associated with it.

POSSIBLE FUTURE ACTION

Human Resources has agreed to our recommendations and is committed to implementing corrective action.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Should the City of Berkeley ever be unable to adequately defend itself against Equal Employment Opportunity lawsuits, the potential costs of litigation could be significant. More important than that, however, is the potentially profound impact on both morale and performance by employees who perceive themselves as victims in an unfair system. As we will be discussing in our upcoming ethics audit, just the appearance of impropriety, let alone actual improper actions, can be enough to damage the government's relationship with its employees and the community.

Implementing our recommendations will support Human Resources' commitment to maintaining and strengthening a merit-based hiring and promotions system. Our audit recommendations will allow for the department to build on its current efforts and clarify its practices through better documentation and training. This may require more

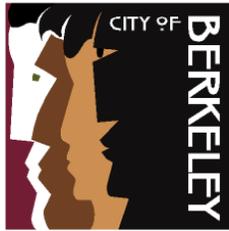
resources for Human Resources, but it would be an investment in greater transparency, accountability, and equity.

CONTACT PERSON

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Attachment:

1: Audit Report: Use of Additional Best Practices Will Help Guard Against Misconceptions about Human Resources' Merit-Based Hiring and Promotions System



Office of the City Auditor

CONSENT CALENDAR

January 19, 2016

To: Honorable Mayor and Members of the City Council

From: Ann-Marie Hogan, City Auditor

Subject: Audit Report: Use of Additional Best Practices Will Help Guard Against Misconceptions about Human Resources' Merit-Based Hiring and Promotions System

RECOMMENDATION

Request that the City Manager report back by October 18, 2016, and every six months thereafter, regarding the status of our audit recommendations until fully implemented.

CURRENT SITUATION AND ITS EFFECTS

The Department of Human Resources has demonstrated its commitment to maintaining and strengthening its merit-based hiring and promotions system. This included efforts to document its hiring practices in written policies and procedures, as well as development of in-house training courses for hiring managers. While some challenges remain, continued efforts to enhance the transparency of its practices will provide greater assurance that Human Resources adheres to a merit-based recruitment system and, therefore, to the Equal Employment Opportunity laws that govern that system.

Management can meet these challenges by:

- Continuing to document and update guidance for the various recruitment phases to fully and clearly define the standard procedures for Human Resources staff to follow for each step of the recruitment phase. Include exceptions to those stated procedures, where appropriate, and requirements for documenting key decision points in the process.
- Continuing to provide the new written reference guides to hiring managers. Update the guides with references to relevant laws and a clearer explanation of the job analysis process. Incorporate "Do's and Don'ts," best practices, checklists, and lawful and unlawful interviewing questions.
- Continuing to develop and implement mandatory training courses for hiring managers to ensure that department personnel understand and adhere to the City's merit-based hiring system.

FISCAL IMPACTS OF RECOMMENDATION

Should the City of Berkeley ever be unable to adequately defend itself against Equal Employment Opportunity lawsuits, the potential costs of litigation could be significant. Cases involving intentional discrimination on the basis of race, color, national origin, sex (including pregnancy), religion, disability, or genetic information may include awards of up to \$300,000 for compensatory and punitive damages. This does not include the possible recovery of attorney's fees and court costs a victim of discrimination may be awarded. Further, if a plaintiff can prove that he or she was not selected for a job or a promotion due to discrimination, he or she may be awarded back pay and benefits, as well as placement in the job, depending on the type of discrimination proven.

BACKGROUND

Berkeley's Human Resources Department oversees the City's merit-based recruitment system, which is a two-part process. Human Resources staff develop a pool of eligible candidates from the applicants for a vacant position, and the hiring department selects a candidate from that eligible pool to fill the vacancy. Human Resources receives over 6,500 applications annually, virtually all of which the department processes electronically.

We conducted this audit at the request of the former Acting Human Resources Director to provide an independent assessment of Human Resources' specific hiring practices. That is, we reviewed Human Resources' role in the two-part process. We assessed Human Resources' adherence to a merit-based hiring and promotions system, and to the Equal Employment Opportunity laws and policies that govern the process.

ENVIRONMENTAL SUSTAINABILITY

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RATIONALE FOR RECOMMENDATION

Implementing our recommendations will support Human Resources' commitment to maintaining and strengthening a merit-based hiring and promotions system. Our audit recommendations will allow for the department to build on its current efforts and clarify its practices through better documentation and training.

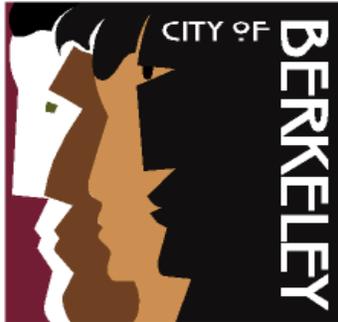
CONTACT PERSON

Ann-Marie Hogan, City Auditor, City Auditor's Office, 510-981-6750

Attachment:

1: Audit Report: Use of Additional Best Practices Will Help Guard Against Misconceptions about Human Resources' Merit-Based Hiring and Promotions System

City of Berkeley Office of the City Auditor



Use of Additional Best Practices Will Help Guard Against Misconceptions about Human Resources' Merit-Based Hiring and Promotions System

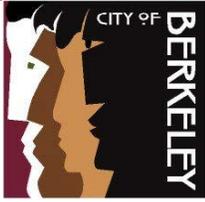
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Presented to Council January 19, 2016

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City Of Berkeley - Office of the City Auditor

Use of Additional Best Practices Will Help Guard Against Misconceptions about Human Resources' Merit-Based Hiring and Promotions System

January 19, 2016

Purpose of the Audit

We conducted this audit to provide an independent review of the Department of Human Resources' adherence to a merit-based hiring and promotions system, and to the Equal Employment Opportunity federal and state laws and local policies that govern the City's recruitment practices.

Executive Summary

Human Resources is committed to merit-based hiring and promotions

The Department of Human Resources demonstrated a commitment to maintaining and strengthening its merit-based hiring and promotions system. The department has made strides in recent years to document its existing practices in written policies and procedures and develop a more structured recruitment system. Continued efforts to enhance the transparency of its practices will provide even greater assurance that Human Resources adheres to a merit-based recruitment system and, therefore, to the Equal Employment Opportunity laws that govern that system. Better documentation of current practices will help Human Resources staff support the decisions that they make during the examination process. This will further enhance the department's ability to support that its recruitment efforts lead to candidate selections based on merit, which, in turn, helps the City sustain a diverse workforce that is comparable to Alameda County standards.

Better documentation will aid Human Resources in clarifying its merit-based hiring practices

While Human Resources has put significant effort into structuring a recruitment system that upholds the principle of promoting and selecting new employees based on merit, documenting the hiring process remains a work in progress. Our real-time observations of the recruiting process indicated that Human Resources adheres to its merit-based policies. However, we noted, in both our real-time observations and our review of recruiting package documentation, that not all practices are reflected in the department's written procedural guidance. For example, we noted that Human Resources might add "general skills" to a job analysis, a practice that varied from procedural guidance and the department's initial description of its job-analysis practices. In all cases in which we noted variances from stated procedures, Human Resources staff explained the reasons for the exceptions, and we concluded that their reasoning was sound. However, variances between stated procedures and actual practices taken as a whole pose a problem for Human Resources and the City. They create the appearance of a lack of transparency, which fosters misperceptions about the integrity of the system.

Hiring managers in need of more guidance

So that hiring managers support the City’s merit-based recruitment efforts, Human Resources needs to ensure that hiring managers are fully aware of their roles and responsibilities and kept up to date with regard to merit-based hiring practices and relevant Equal Employment Opportunity laws and regulations. Our survey of hiring managers indicated that, while most hiring managers are aware of the merit-based hiring principles, many are not clear on their role in the process, suggesting a strong need for training and clearer guidance. Recognizing this need, Human Resources developed or is developing hiring manager workshops:

New workshops designed to increase hiring managers’ understanding of merit-based system

- “The ABC’s of the Examination and Hiring Process” – provides an interactive forum to increase hiring managers’ understanding of the City’s merit-based hiring practices. Launched in April 2015.
- “Effective Interviewing and Selection” – conveys techniques for establishing selection criteria, developing questions, and conducting effective interviews. Launched in October 2015.
- “Diversity and Inclusion” – will help apply strategies for supporting workplace diversity. This workshop is currently in the pilot phase.

Recommendations

Our recommendations support Human Resources’ commitment to maintaining and strengthening a merit-based hiring and promotions system. They allow for the department to build on its current efforts and clarify its practices. We recommend that Human Resources:

- Continue to document and update guidance for the various recruitment phases to fully and clearly define the standard procedures for Human Resources staff to follow for each step of the recruitment phase. Include exceptions to those stated procedures, where appropriate, and requirements for documenting key decision points in the process.
- Continue to provide the new written reference guides to hiring managers. Update the guide with references to relevant laws and a clearer explanation of the job analysis process. Incorporate “Dos and Don’ts,” best practices, checklists, and lawful and unlawful interviewing questions.
- Continue to develop and implement mandatory training courses for hiring managers to ensure that department personnel understand and adhere to the City’s merit-based hiring system.

We provided our recommendations to Human Resources prior to publishing this report to allow the department to begin implementing changes as soon as possible.

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A full copy of the report can be obtained at:

https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/A%20RPT_Human%20Resources%20Hiring%20and%20Promotions%20System_Fiscal%20Year%202016.pdf

AUDIT OBJECTIVES

We conducted this audit at the request of the former Acting Human Resources Director to provide an independent assessment of Human Resources' hiring practices. The Acting Human Resources Director here and throughout the remainder of this report refers to the Acting Director at the time we started our audit in January 2015 and who retired in October 2015.

Our objectives were to (1) determine if Human Resources adheres to a merit-based hiring and promotions system, and to Equal Employment Opportunity laws and policies, in its hiring and promotions processes; and (2) identify tools and best practices that would assist the department in attaining its goals. It should be noted that while we audited adherence to Equal Employment Opportunity laws and policies, our audit did not examine the larger issue of additional strategies for going beyond compliance to achieve more diversity.

BACKGROUND

Current model of merit-based hiring practices and equal opportunity in the workplace evolved during 19th and 20th centuries

The basic premise underlying a merit-based, equal opportunity recruitment system is that the most effective and efficient workforce is one that is drawn from the best qualified candidates from all segments of society in fair and open competition. Current laws and regulations governing hiring practices in the United States are the culmination of landmark legislative reforms that occurred in the 19th and 20th centuries, including the Pendleton Act of 1883, civil service reforms of the Progressive Era in the early 20th century, the Civil Rights Act of 1964, and the Civil Service Reform Act of 1978. The Pendleton Act, signed into law in the wake of President Garfield's assassination, was a response to the excesses of the "spoils system" that began in earnest during the Andrew Jackson presidency. The term was derived from the saying "to the victor go the spoils" and referred to the practice of appointing applicants to federal offices based on party loyalty, rather than merit. The Progressive Era ushered in civil service reforms at the local level to address the corrupting influence of the political machines that dominated early 20th Century municipal government. Passage of the Civil Rights Act of 1964, in the wake of the JFK assassination, signaled the next wave of reform. Title VII of the Act prohibited discrimination in employment on the basis of

race, color, religion, sex, or national origin, and created the Equal Employment Opportunity Commission (EEOC), which is charged with enforcing federal EEO laws, including, but not limited to the Equal Pay Act, the Age Discrimination Act of 1967, and the Americans with Disabilities Act of 1990.¹ Passage of the Civil Service Reform Act in 1978 strengthened the Pendleton Act by establishing the Merit Systems Protections Board and codifying the set of nine principles upon which the merit system is based (See Appendix G). The first of the nine principles addresses the recruiting process, which was the focus of our audit.

Berkeley affords protection to classes mandated by the federal government

It was in the midst of the Progressive Era, in 1895, that the City of Berkeley established its original City Charter and later became one of the first council-manager cities in California, one of the key structural reforms of the era. In 1940, Berkeley established its personnel system in accordance with the City Charter and, in 1995, adopted revised Personnel Rules and Regulations “to establish an equitable and uniform system for dealing with personnel practices that embrace the merit system.” Additionally, the City’s Equal Employment Opportunity policy incorporates protections provided under federal and state legislation, including recently added protections for gender expression and gender identity.

Human Resources oversees the City’s merit-based hiring system

Berkeley’s Human Resources Department oversees the City’s merit-based recruitment system. The recruitment process is generally a two-part process. Human Resources staff develop a pool of eligible candidates from the applicants for a vacant position, and the hiring department selects a candidate from that eligible pool to fill the vacancy. Throughout this process, Human Resources staff work with department hiring managers to conduct job analyses, review job specifications, delineate minimum qualifications, and administer and evaluate exams. The end result of Human Resources’ process is a list of eligible candidates, grouped into one of three rankings based on exam scores: (1) best qualified, (2) well qualified, and (3) qualified. The list is forwarded to the hiring department.

¹ Laws enforced by the U.S. Equal Employment Opportunity Commission (EEOC): <http://www.eeoc.gov/laws/statutes/index.cfm>

HR efforts to improve recruiting process date back to 2008 with automation of application process

In October 2008, Human Resources implemented the NeoGov software program. The program allows the applicant, Human Resources staff, and the hiring departments to access the system electronically through their respective portals, and facilitates the movement of applications through the hiring process. According to the Acting Director, Human Resources receives over 6,500 applications annually, virtually all of which are now processed electronically through the NeoGov system. The system has improved the efficiency and effectiveness, as well as the transparency of the hiring process, and has assisted Human Resources staff in dealing with the increased volume in recruiting, which, according to the Acting Director, is currently double that of previous years. Also in 2008, Human Resources began developing written guidelines and procedures to document its actual practices. Currently, Human Resources' hiring process consists of nine phases:

Nine Phases of Recruitment	
Hiring Phase	Description
1. Requisition	Hiring department initiates the hiring process with a NeoGov requisition.
2. Job Analysis	Human Resources and the hiring department conduct a job analysis to determine the critical knowledge, skills and abilities necessary from the position classification. This phase will determine the level and types of testing required.
3. Recruitment Plan and Job Posting	Human Resources works with the hiring manager to establish a recruitment plan and determine the best venues for advertising the job vacancy.
4. Application Process	Applications are submitted, mostly in NeoGov, and reviewed by Human Resources to identify candidates meeting the minimum qualifications.
5. Examinations	Examinations are administered by Human Resources and successful candidates are placed on the eligible list.
6. Eligible List	Human Resources establishes the eligible list, which consists of all individuals who have successfully passed all phases of the exam. Human Resources provides the eligible list to the hiring department.
7. Departmental Interview	Hiring department reviews candidate application materials and selects which eligible candidates to interview. Hiring department is responsible for checking the candidates' references.
8. Candidate Selection	Hiring department notifies Human Resources of the candidate it selected.
9. Job Offer	Human Resources contacts the candidate selected by the hiring department and makes the job offer, subject to any background investigation required for the position.

Personnel Board provides oversight in support of the merit system

The City of Berkeley's Personnel Board was established in 1974 and currently consists of nine members appointed by City Council. Its mission is to advise the City Manager on personnel policy and administration, and to conduct hearings to assist in resolving complaints of unrepresented employees. With regard to supporting the merit system, the board is responsible for providing for (1) the classification of all employees in the administrative service of the City; (2) open, competitive, and free examinations; (3) an eligibility list from which vacancies shall be filled; and (4) promotion on the basis of merit, experience, and record.

Increasing workloads and declining staff pose challenge for Human Resources

One of the challenges facing Human Resources in recent years has been the sharp increase in hiring, coupled with declining resources. From fiscal year 2010 to fiscal year 2013, budgeted staffing for Human Resources dropped 13 percent from 23 to 20 full-time positions, where it remained through 2015. Two of the three positions lost during that period were in recruitment and classification units. At the same time, hiring activity has been increasing, with Human Resources reporting a near doubling of new hires in 2014, rising to 103 from 62 in 2013. According to the Acting Human Resources Director, the new hires were on pace to double again in 2015. Compounding the issue is the recent staff turnover in Human Resources; the department lost two of its most senior personnel.

FINDING AND RECOMMENDATIONS

Finding 1: More Extensive Use of Best Practices and Clearer Written Procedures Will Support Existing Merit-Based Recruitment System

Review of key documents in Human Resources' hiring process and observations of recruiting practices indicated a commitment to the merit-based system on the part of Human Resources. This was evident in the department's efforts to document its practices starting in 2008, and to develop a more structured recruitment system. Better documentation of practices will help further demonstrate that the department adheres to merit-based recruitment requirements and, therefore, the Equal Employment Opportunity laws that govern that system. This, in turn, will allow the City to continue to sustain a diverse workforce that is comparable to, or better than, Alameda County standards.

Despite the significant strides made by the Human Resources Department over the past seven years, some practices are not sufficiently documented, resulting in a process that sometimes lacks

HR hiring practices are sound but procedures are not yet fully documented

transparency. This includes differences between stated policy and actual practice with regard to documenting job analyses, as well as differences in the set of knowledge, skills and abilities contained in a job classification versus those in the job posting. Though reasonable when explained, these variations put Human Resources' practices and decisions into question. Additionally, not all hiring managers were clear on their roles and responsibilities under the merit-based system. While most hiring managers gave positive feedback on their interactions with Human Resources staff, over 40 percent did not feel that written guidance was complete, clear, and consistent. Generally, those with less experience in the hiring process were less clear on their roles. Ensuring well-documented procedures and well-prepared hiring managers will enhance both the transparency of the process and the integrity of the system. Conversely, failure to do so may leave the City vulnerable, if its hiring practices are challenged.

Job analysis is critical phase of recruitment; it helps determine how best to test for eligible candidates based on merit

We observed specific Human Resources hiring activities during March and April 2015, including the job analysis phase. Human Resources defines its job analysis phase as "a systematic process of collecting data and making certain judgments about all of the important information related to the nature of a (job) classification." It is one of the most critical phases with regard to the merit-based system because it is through this process that Human Resources determines the specific knowledge, skills, and abilities required for a particular job classification. Moreover, the results of this analysis dictate the nature and design of tests to be administered, the results of which determine the list of eligible candidates forwarded to the hiring department.

HR's job analysis process structured, methodical, and comprehensive but not consistently documented

Our observation of Human Resources' job analysis process indicated that Human Resources is conducting these analyses in a structured, methodical, and comprehensive manner that adheres to a merit-based hiring system. However, we found limited evidence in our review of completed case files to support the practices that we observed firsthand. The end result is a process that is properly executed, but lacks transparency in its documentation, and is, therefore, open to misinterpretation by outside individuals not familiar with the process. For instance, Human Resources officials informed us that Human Resources conducts job analyses for all of its recruitment actions. We did find evidence of job analyses being performed, but in only 3 of the 31 recruitment packages reviewed was formal documentation maintained.

Human Resources later explained that the level of analysis required varies from recruitment to recruitment depending on a number of factors, such as when the last analysis was conducted for the position. While the explanation provided by Human Resources was acceptable, we found nothing in Human Resources' procedural guidance addressing these commonly occurring variances, or instructing Human Resources staff in how to document those variances. The absence of such written procedural guidance creates the impression that certain practices were not consistently applied. While it may not be feasible to account for every possible scenario, at a minimum, Human Resources should incorporate into its procedural guidance any routine situations in which Human Resources staff would not be required to conduct and document a full-scope job analysis.

Any addition or subtraction of a job KSA from job analysis should be explained

Another example involved variations in job classification components. The end result of a job analysis is an agreed upon set of critical knowledge, skills, and abilities that defines a particular job classification. Over time, the impact of technology and other factors may require additional or different skills, which may require the reclassification of certain jobs. When this happens, the City's Personnel Board must approve the reclassification. We noted during our observation of a job analysis that Human Resources had added an item to the analysis that was not listed as knowledge, skills, and abilities for the position in the job classification. In this particular instance, Human Resources explained that the modification was the addition of a "general skill" that falls under the "general qualifications" of the "class specification" and, therefore, would not result in a new job classification. While we found this explanation reasonable, there were no procedures describing this practice.

We also noted discrepancies between the set of knowledge, skills, and abilities contained in job classification position descriptions, and those listed in actual job postings. We were told by Human Resources staff that job postings should match classification descriptions, yet we noted discrepancies in 17 of the 31 recruitment packages reviewed. Nearly half (8) of those discrepancies involved differences between minimum qualifications, per the job classification, versus those listed in the job postings. Some job postings contained fewer qualifications than those contained in their respective classification, and some contained additional qualifications. In all instances, the minimum qualifications

were listed in the job specification. Human Resources provided reasonable explanations for the variances in the knowledge, skills, and abilities. For example, when a job specification spans multiple departments, Human Resources might exclude from the job posting a general knowledge, skill, or ability that is not applicable to the specific department hiring for the position. Another example is hiring for a police officer. California Government Code requires applicants who did not graduate from a U.S. high school to have passed the General Educational Development (GED) test or possess a two-year college degree. This job qualification is not included in the police officer job specification; however, to meet state requirements, Human Resources includes it in the job posting. Although reasonable, we found no explanatory notes to document or explain the discrepancies in the recruitment packages, nor reference to variances in the procedural guidance. Having written guidance that explains these type of necessary judgments would help alleviate any misconceptions about a hiring choice and add transparency to the recruitment process.

Another example is the Personnel Rules and Regulations resolution, which states eligible lists expire after one year unless abolished earlier or extended by the City Manager. However, there are no written guidelines describing the circumstances under which it might be necessary to deviate from the one-year requirement. The eligibility list, in general, tends to be an area of confusion. Having documented procedures that help support judgments about the necessity to abolish or extend the eligibility list would help reduce these misunderstandings.

Better written procedures for testing and evaluation would improve transparency and facilitate staff training and development

We also observed Human Resources' process for developing multiple-choice tests using the [Western Regional Item Bank](#), which serves municipalities throughout the western United States. We observed that Human Resources staff had an ordered process for selecting test questions to minimize adverse impact on protected classes. Similarly, staff analyzed exam results for evidence of adverse impact on protected classes. We were able to verify that the tests created were the same tests provided to the candidates. Again, however, there were no written procedures to document the process for selecting the test questions and examining test results. The implementation of such written procedures would not only improve the transparency of the process, but also would facilitate training and staff development.

HR's process for coordinating and facilitating Qualified Appraisal Boards well-executed

Finally, we observed Human Resources' process for setting up Qualified Appraisal Boards (QAB). These are oral exam panels composed of subject-matter experts tasked to assess candidates on the critical knowledge, skills, and abilities required for a position. Human Resources provides panelists with documented procedural guidance and a set of questions to ask the candidates, and instructs panelists that they are not to deviate from those questions during the oral exam. Human Resources staff serve as proctors for the QAB to ensure consistency throughout the process, and then enter the candidate scores into NeoGov; scores are used in determining the list of eligible candidates. As with our observations of the above-mentioned recruitment activities, we found Human Resources' practices with regard to Qualified Appraisal Boards to be well executed and in accordance with merit-based recruitments.

40% of surveyed hiring managers have some uncertainty about their roles and responsibilities

The end product of Human Resources' examination process is the establishment of a list of eligible candidates. Once completed, the process shifts to hiring managers in their respective departments. While Human Resources does not involve itself directly in the department's final selection process, Human Resources does provide guidance and training to hiring managers to assist them in adhering to the City's merit-based recruitment system. Our survey of hiring managers indicated that, while most hiring managers are aware of merit-based hiring principles, many are not clear on their role in the process.² Over 40 percent of those who responded expressed some uncertainty about Human Resources' written guidance. In addition, over 60 percent of respondents acknowledged using and grading exams created by their own department during the selection process at least some of the time. While this is not a prohibited practice under the merit system, it is not permitted by the City's current Human Resources policies.

Further, there are discrepancies between Human Resources' and hiring managers' understanding of some elements of the process. For example, according to Human Resources, job analyses are always conducted in every recruitment effort. However, only 29 percent of respondents said that job analyses were always conducted. Given that Human Resources works with hiring managers during this process, this is a rather stark variance. This may be due to a misconception on the part of hiring

² We surveyed 95 hiring managers and received 62 responses (65 percent). We performed non-statistical trend analysis based on tenure as a hiring manager in Berkeley and the number of hires performed.

managers as to the definition of a job analysis. Human Resources defines the term broadly as anything pertaining to job analysis, from conducting full-scope reviews, to simply verifying that no changes have occurred since the last job analysis. Hiring managers, on the other hand, may define job analyses more narrowly, as only full-scope analysis of knowledge, skills, and abilities needed for a position.

The survey results indicate the need for more outreach on the part of Human Resources, and for better written procedural guidance. Until recently, guidance has been scattered amongst various sources, including the Personnel Rules and Regulations, multiple procedural documents, and memoranda of understanding. Human Resources put together a reference binder for hiring managers in conjunction with its newly developed training curriculum. The binder includes much of the information that hiring managers need to ensure that they adhere to the City's merit-based recruitment system and to understand their roles and responsibilities. This includes examination and hiring definitions, process steps, and step explanations; and the Personnel Rules and Regulations. The guide could be enhanced by providing references to federal and state laws that prohibit discrimination and information on why those laws are important in the selection process, and a clearer explanation of the various levels of a job analysis. While the new guide falls short of a comprehensive "one-stop" posting, it is a step in the right direction. See Appendices C through F for possible reference guide enhancements.

Human Resources' new training courses designed to improve understanding of the merit-based system

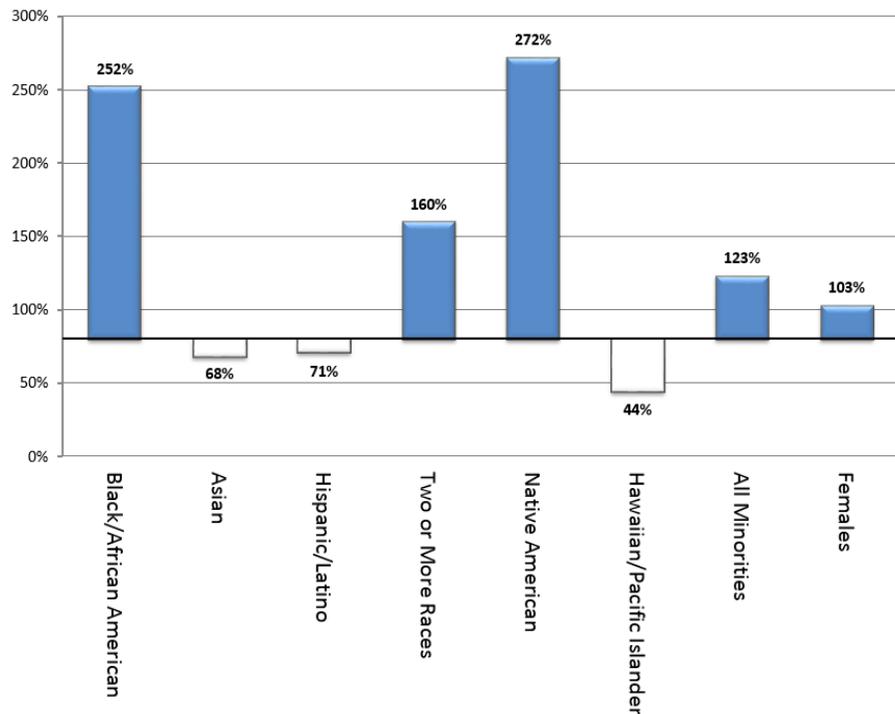
Human Resources implemented a workshop titled "The ABC's of the Examination and Hiring Process" to help educate hiring managers. The department designed the workshop to provide an interactive forum to increase employees' understanding of the City's merit-based hiring system. According to Human Resources, all hiring managers will be required to attend the workshop before they complete a recruitment. Human Resources has been regularly providing the workshop as standard training curriculum since April 2015. Human Resources also implemented a course titled "Interviewing and Selection Skills" for hiring managers. The primary goal of the course is to ensure Citywide consistency in the interview and selection process. Human Resources incorporated the course into its training curriculum for hiring managers in October 2015.

HR's EEO diversity officer works with Census Bureau statistics to gauge City's workforce diversity

The merit-based system and EEO laws are not an end unto themselves, but rather a means to an end, that is, a diversified, well-qualified workforce representative of the community it serves. Toward that end, the City's diversity officer maintains statistics for measuring the City's performance in this area. According to the Acting Human Resources Director, the City is unique among San Francisco Bay Area municipalities in conducting this analysis. Using data from the U.S. Census Bureau's American Community Survey (ACS), the diversity officer is able to determine the City's level of "parity" with the greater community, in this case Alameda County. We verified the accuracy of the diversity officer's data analysis and confirmed that the City of Berkeley exceeds parity for minorities as a whole, as well as females. In addition, the City was above parity in most protected classes, and near parity in others, as shown in the graph below.³

City is above or near parity for most protected classes and above parity for minorities on the whole

City of Berkeley's Level of Parity Compared to Alameda County



Source: Equal Employment Opportunity and Diversity Officer 2014 Fiscal Year End Workforce Report to the City Manager

³ Parity, in the context of EEO, refers to a condition achieved in an organization when the protected class composition of its workforce is equal to that in the relevant available labor force. Federal agencies use an 80 percent selection rate as the benchmark in assessing the level of diversity.

It bears reiteration that the objective of this audit was to assess Human Resources' adherence to merit-based hiring practices, including Equal Employment Opportunity laws and policies. We did not assess the City's workforce diversity. Nor did we assess the quality of workforce diversity with regard to the upward mobility of protected classes. We provide the figures in the table above only as corroborative evidence of the City's progress toward achieving its task of providing diverse and skilled applicant pools through the application of a merit-based hiring system and adherence to Equal Employment Opportunity laws and policies.

No procedures for data-validation process; could lead to inaccurate reporting

We interviewed the diversity officer to understand his data-validation process. His work helps avoid discrepancies that might be caused by the timing of new hires and departures in respect to information system updates, and account for promotions and reclassifications; and helps ensure that the data reported to the City Manager accurately reflects the City's workforce. However, Human Resources has not documented the data-validation practices in written procedural guidance, which means other staff cannot replicate the work and ensure accurate reporting.

New training aimed at understanding and valuing workplace diversity

To further enhance the City's efforts with regard to workforce diversity, Human Resources is planning to expand its core training curriculum to include a component titled, "Diversity and Inclusion." Roll out of the pilot project is scheduled for December 2015. The overall objectives of the training are to (1) learn how diversity issues impact daily interactions in the workplace; (2) enhance knowledge and appreciation for diversity; (3) achieve an understanding of the benefits of a diverse workforce; and (4) learn to apply strategies for interacting effectively in a diverse work environment.

Recommendations

Continue to improve written procedural guidance for the various recruitment phases

The Department of Human Resources should:

- 1.1 Continue to document and update procedural guidance for the various recruitment phases to fully and clearly define the standard procedures for Human Resources staff to follow for each step of the recruitment phase. Include exceptions to those stated procedures, where appropriate, and requirements for documenting key decision points in the process. The procedural guidance should include, but not be limited to, information:
 - Describing the common types of job analyses and what they entail.

- Allowing for the addition of a knowledge, skill, and/or ability to a job analysis that is not listed in the job classification, and describing the factors that allow for this modification without requiring the need for new classification. For example, adding a general skill that falls under one of the general classifications in the job specification.
- Explaining the general circumstances requiring the need to add or remove a job classification knowledge, skill, and/or ability to or from a job posting, and documenting the rationale for that judgment to allow for transparency in the recruitment process.
- Describing the process for selecting multiple-choice questions to minimize adverse impact and analyzing the exam results for evidence of adverse impact on protected classes.
- Outlining guidelines for abolishing the eligibility list before the required one-year period or extending the list beyond that limit.

Continue to provide and update written guidance for hiring managers

1.2 Continue to provide the *ABC's of the Examination and Hiring Process* reference guide to hiring managers to ensure their understanding of and adherence to a merit-based hiring system, and to Equal Employment Opportunity laws and local policies related to that system; and to enhance hiring managers' understanding of their roles and responsibilities in the process. Provide additional information in the guide such as (but not limited to):

- References to federal and state laws that prohibit discrimination and information on why those laws are important in the selection process.
- An explanation of the varying types of job analyses performed by Human Resources and details of what those entail.
- "Dos and Don'ts," best practices, checklists, and lawful and unlawful interviewing questions. See Appendices C through F for examples.

To ensure that hiring managers receive consistent information, make the new reference guide available electronically for quick and easy access on the City's intranet, Groupware.

Continue to improve hiring process through comprehensive training for hiring managers

1.3 Continue to develop and implement mandatory training courses for hiring managers to ensure that department personnel understand and adhere to the City's merit-based hiring and promotions system and to Equal Employment Opportunity laws and local policies related to that system, and to enhance hiring managers' understanding of their roles and responsibilities in the process.

Establish guidance for workforce diversity data-validation process

1.4 Establish written procedural guidance describing the process for obtaining and validating the employee and recruitment data used in the workforce diversity report to ensure consistent and accurate data are used to compare the City of Berkeley with Alameda County.

City Manager's Response

The City Manager agreed with the recommendations. The full response is at Appendix B.

FISCAL IMPACT

Adhering to a merit-based hiring system and EEO laws protects the City from financial loss

Should the City of Berkeley ever be unable to adequately defend itself against Equal Employment Opportunity lawsuits, the potential costs of litigation could be significant.⁴ Cases involving intentional discrimination on the basis of race, color, national origin, sex (including pregnancy), religion, disability, or genetic information may include awards of up to \$300,000 for compensatory and punitive damages. This does not include the possible recovery of attorney's fees and court costs a victim of discrimination may be awarded. Further, if a plaintiff can prove that he or she was not selected for a job or a promotion due to discrimination, he or she may be awarded back pay and benefits, as well as placement in the job, depending on the type of discrimination proven.

⁴ U.S. Equal Opportunity Commission, Remedies for Employment Discrimination: <http://www1.eeoc.gov/employers/remedies.cfm?renderforprint=1>

Misconceptions about recruitment practices have reputational costs

Even greater than any financial impact is the potentially profound impact on both employee morale and employee performance. As we will be discussing in our upcoming ethics audit,⁵ just the appearance of impropriety, let alone actual improper actions, can be enough to damage the government's relationship with its employees and the community.

CONCLUSION

HR demonstrated a commitment to the merit-based system, and to improving the hiring process

Human Resources demonstrated a commitment to conducting merit-based recruitments and adhering to Equal Employment Opportunity laws and local policies in the hiring process. Since 2008, the department has been working to document its existing practices, which include several industry best practices, in written procedures. The Acting Human Resources Director had been leading this effort during his tenure with the City. His accomplishments include implementing NeoGov to facilitate recruitments, which has improved the efficiency and effectiveness of Human Resources' recruitment process.

Documentation of procedures lags behind best practices implemented, creating a process that lacks transparency

Despite the progress, challenges remain. We noted some Human Resources practices were not sufficiently documented, particularly practices that varied from stated procedures. Though those practices were reasonable and practical, the variations created the appearance of an inconsistent process. Further, the lack of well-documented procedural guidance has contributed to uncertainty among some hiring managers as to their roles and responsibilities with regard to the hiring process. However, Human Resources has taken preliminary corrective action to address these issues, in part by developing in-house training courses for hiring managers on the hiring process. Human Resources' continued effort to document its procedures will not only improve the transparency and integrity of the hiring process, it will also ensure consistency and quality of operations during periods of staff transition.

⁵ Ethics audit will be available on our website once we issue: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=7236>

**We appreciate
Human Resources'
commitment to
improving its
recruitment process**

We would like to thank the Acting Human Resources Director and Human Resources staff for their cooperation and assistance in completing this audit, and for demonstrating their commitment to improving the recruitment process. We hope this audit serves as a useful guide to further assist the department in achieving its goals. We would also like to thank the City Attorney's Office for assisting us in navigating the laws that apply to the City of Berkeley, and the hiring managers who took the time to complete our information-gathering survey.

APPENDIX A:

Scope and Methodology

We audited the Department of Human Resources' adherence to the merit-based hiring system codified in the City of Berkeley Municipal Code (BMC Section 4.04.010), and compliance with Equal Employment Opportunity (EEO) laws and regulations. We focused on Human Resources' policies, practices, and procedures for hiring and promotions activities. We audited activity for calendar years 2013 and 2014. We did not audit the hiring practices in the hiring departments, since our focus is on Human Resources activities, but we did survey hiring managers about their level of understanding of EEO and merit-system requirements. While the focus of our audit was on activity occurring in 2013 and 2014, we also considered significant activities that occurred during 2015, particularly in the area of training. To the extent that we found these activities relevant to our audit findings and conclusions, we included them in this report.

We met with Human Resources management and staff to understand practices for hiring and promotions and how they ensure compliance with applicable laws and regulations, including the Berkeley Municipal Code and the City's Personnel Rules and Regulations. We also consulted the City Attorney's Office on the applicability of State laws and the federal Uniform Guidelines on Employee Selection Procedures to the City of Berkeley. Finally, we met with Payroll Audit and the Department of Information Technology staff to better understand the data in the systems used in recruitment processes. We reviewed:

- Human Resources' written policies and procedures for hiring and promotions activities, and the department's *ABC's of the Examination and Hiring Process* and *Interviewing and Selection Skills* training content.
- Federal, State, and City Equal Employment Opportunity laws, policies, and administrative regulations; and merit-based hiring and promotions system requirements. As a charter city, Berkeley is not required to adhere to the State's merit-based hiring and promotions requirements; however, we used those to understand municipal recruitment standards.
- Reports to City Council and the Personnel Board on topics related to recruitment activities, the City's workforce, and Equal Employment Opportunity complaints and resolutions.
- Recruitment and workforce reports from the City's financial system, FUND\$; and the City's recruiting system, NeoGov. We omitted personal identifying information and analyzed the reports using position, applicant, and employee identification numbers.
- Best recruitment practices at the Department of Veterans Affairs, the State of California, and other municipalities.
- Labor agreements between the City and various unions for personnel matters that differ or conflict with the City's personnel rules and regulations and, therefore, take precedence.

- Equal Employment Opportunity workforce diversity reports. During our review, we verified accuracy of the reports by comparing the various data tables to information system reports, and discussing the data-validation process with the diversity officer.

Data Reliability

We assessed the reliability of the FUND\$ Personnel/Payroll (PR) module and Human Resources' recruiting software (NeoGov Insight). We interviewed knowledgeable staff about the data and the data systems to better understand our data needs and any limitations we might encounter. We verified that all data fields are populated with the correct data types, and no blank fields exist where data should reside. We also traced a statistically reliable sample of data in the PR module to NeoGov. We used a sample size calculator and input a confidence level of 90 percent and a confidence interval of 10 percent to determine a sample size of 59. We only tested 31 of those 59 because we determined that continued testing would not change our findings, conclusions, and recommendations.

Auditor Independence

We identified a possible threat to our independence that we assessed prior to starting audit fieldwork. We put safeguards in place to eliminate or reduce to an acceptable level the threat, and appearance of the threat, to our independence. The City Auditor is responsible for oversight and management of the Payroll Audit Division. To ensure our independence, we obtained payroll system data from Information Technology and did not audit Payroll Audit operations. We also verified that the payroll system data we audited is input by Human Resources, and that Payroll auditors do not have access to add, change, or delete that data. However, we did recognize that Payroll Audit performs regular reviews of that data to ensure it is accurate and complete for processing payroll. We limited our discussions with Payroll personnel and our review of payroll procedures, systems, and processes to understanding Payroll Audit's role as the FUND\$ Payroll/Personnel (PR) Module Leader.

Standards Compliance Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX B

Audit Finding, Recommendations, and Management Response Summary

Audit Title: Use of Additional Best Practices Will Help Guard Against Misconceptions about Human Resources' Merit-Based Hiring and Promotions System					
Finding and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree and Corrective Action Plan	Expected or Actual Implementation Date	Status of Outstanding Audit Recommendations and Implementation Progress Summary
Finding 1: More Extensive Use of Best Practices and Clearer Written Procedures Will Support Existing Merit-Based Recruitment System					
1.1	<p>Continue to document and update procedural guidance for the various recruitment phases to fully and clearly define the standard procedures for Human Resources staff to follow for each step of the recruitment phase. Include exceptions to those stated procedures, where appropriate, and requirements for documenting key decision points in the process. The procedural guidance should include, but not be limited to, information:</p> <ul style="list-style-type: none"> ▪ Describing the common types of job analyses and what they entail. ▪ Allowing for the addition of a knowledge, skill, and/or ability to a job analysis that is not listed in the job classification, and describing the factors that allow for this modification without requiring the need for new classification. For example, adding a general skill that falls under one of the 	Human Resources	Agree. Human Resources will revise its written procedures to include the recommended information.	Expected completion by July 30, 2016	

	<p>general classifications in the job specification.</p> <ul style="list-style-type: none"> ▪ Explaining the general circumstances requiring the need to add or remove a job classification knowledge, skill, and/or ability to or from a job posting, and documenting the rationale for that judgment to allow for transparency in the recruitment process. ▪ Describing the process for selecting multiple-choice questions to minimize adverse impact and analyzing the exam results for evidence of adverse impact on protected classes. ▪ Outlining guidelines for abolishing the eligibility list before the required one-year period or extending the list beyond that limit 				
1.2	<p>Continue to provide the <i>ABC's of the Examination and Hiring Process</i> reference guide to hiring managers to ensure their understanding of and adherence to a merit-based hiring system, and to Equal Employment Opportunity laws and local policies related to that system; and to enhance hiring managers' understanding of their roles and responsibilities in the process. Provide additional information in the guide such as (but not limited to):</p> <ul style="list-style-type: none"> ▪ References to federal and state laws that prohibit discrimination and information on why those laws are important in the selection process. 	Human Resources	Agree. Human Resources will revise the guidance to include the recommended information.	Completion of revisions to training materials will be made by July 30, 2016.	

	<ul style="list-style-type: none"> ▪ An explanation of the varying types of job analyses performed by Human Resources and details of what those entail. ▪ “Dos and Don’ts,” best practices, checklists, and lawful and unlawful interviewing questions. See Appendices C through F for examples. <p>To ensure that hiring managers receive consistent information, make the new reference guide available electronically for quick and easy access on the City’s intranet, Groupware.</p>				
1.3	<p>Continue to develop and implement mandatory training courses for hiring managers to ensure that department personnel understand and adhere to the City’s merit-based hiring and promotions system and to Equal Employment Opportunity laws and local policies related to that system, and to enhance hiring managers’ understanding of their roles and responsibilities in the process.</p>	Human Resources	<p>Agree. Human Resources is currently offering the <i>ABC’s of the Examination and Hiring Process</i> and the <i>Effective Interviewing and Selection</i> training courses once a month and will continue to do so in 2016. On December 17, 2015, the pilot program for a new <i>Diversity and Inclusion</i> training program will be held. Beginning February 2016, Human Resources plans to offer this new training program at least once per month.</p>	<p>The training programs are offered on an ongoing basis, with the expectation that, by July 2017, all supervisors and managers involved in interviewing and hiring have completed the <i>ABC’s of the Examination and Hiring Process</i> training.</p>	
1.4	<p>Establish written procedural guidance describing the process for obtaining and validating the employee and recruitment data used in the workforce diversity report to ensure consistent and accurate data are used to compare the City of Berkeley with Alameda County.</p>	Human Resources	<p>Agree. Human Resources will establish the written procedures.</p>	<p>To be completed by July 30, 2016.</p>	

APPENDIX C

Lawful and Unlawful Interview Questions⁶

The *Department of Veterans Affairs Recruitment & Selection Best Practices Guide*, used to help hiring managers avoid Equal Employment Opportunity pitfalls and help create a diverse workforce, provides the following table of lawful and unlawful interview questions.

Subject of Question	Lawful	Unlawful
Name	<ul style="list-style-type: none"> Whether applicant has ever worked under a different name. 	<ul style="list-style-type: none"> Any questions about the origin of an applicant's current or previous name. The original name of an applicant whose name has been legally changed. The ethnic association of applicant's name. The applicant's maiden name.
Age	<ul style="list-style-type: none"> If the applicant is older than 18. 	<ul style="list-style-type: none"> What is your age? How old are you? What year did you graduate from high school? What is your date of birth? Requests for birth certificate. Questions that tend to identify the age of an applicant over the age of 40.
Residence	<ul style="list-style-type: none"> Applicant's place of residence. Alternate contact information. 	<ul style="list-style-type: none"> Previous address. Birthplace of applicant's parents. How long have you lived at this address?
Race or Color	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Applicant's race or color of skin. Applicant's complexion, height, weight, or life style.
National Origin and Ancestry	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Applicant's lineage, ancestry, national origin, parentage, or nationality. Nationality of applicant's parents or spouse. Applicant's maiden name.

⁶ Department of Veterans Affairs, Recruitment and Selection Best Practices Guide, pages 40-42:
<http://www.diversity.va.gov/products/files/RSG.pdf>

Subject of Question	Lawful	Unlawful
Creed	<ul style="list-style-type: none"> ▪ None 	<ul style="list-style-type: none"> ▪ Applicant's religious affiliation. ▪ What holidays the applicant observes. ▪ What school(s) applicant attends or attended.
Citizenship	<ul style="list-style-type: none"> ▪ Whether the applicant is a U.S. citizen or has a current permit/visa to work in the U.S. 	<ul style="list-style-type: none"> ▪ Where were you born? ▪ Questions regarding the birthplace of applicant's parents, spouse, or other relatives. ▪ Questions as to the nationality, ancestry, national origin, descent or parentage of applicant, applicant's spouse, parent, or relative. ▪ Whether applicant is a citizen of a country other than the U.S. ▪ Date of U.S. citizenship.
Language	<ul style="list-style-type: none"> ▪ What language applicant speaks and/or writes fluently, IF JOB-RELATED. 	<ul style="list-style-type: none"> ▪ Applicant's native language. ▪ Applicant's language commonly used at home.
Arrest Record and Convictions	<ul style="list-style-type: none"> ▪ If applicant has ever been convicted of a crime. 	<ul style="list-style-type: none"> ▪ Have you ever been arrested?
Reference Checking	<ul style="list-style-type: none"> ▪ Previous work contacts. 	<ul style="list-style-type: none"> ▪ Name of applicant's religious leader. ▪ Applicant's political affiliation and contacts.
Relatives	<ul style="list-style-type: none"> ▪ Names of relatives already employed by employer. 	<ul style="list-style-type: none"> ▪ Name and/or address of any relative of applicant. ▪ Whom to contact in case of emergency.
Organizations	<ul style="list-style-type: none"> ▪ Applicant's membership in any professional, service, or trade organization that is relevant to his/her ability to perform the job. 	<ul style="list-style-type: none"> ▪ List of all clubs and/or social organizations the applicant is affiliated with.

Subject of Question	Lawful	Unlawful
Physical Limitations or Disabilities	<ul style="list-style-type: none"> ▪ Whether applicant has the ability to perform the duties of the job for which she/he is applying. ▪ All post job offer questions or inquiries into the employee's condition must be job-related and consistent with the business necessity. 	<ul style="list-style-type: none"> ▪ Do you have a disability? ▪ Have you ever filed for worker's compensation? ▪ Have you ever been injured on the job? ▪ How much sick leave did you use at your previous job? ▪ The nature or severity of an illness or physical condition. ▪ Any recent or past operations or surgery and dates. ▪ Has applicant ever requested a reasonable accommodation?
Education	<ul style="list-style-type: none"> ▪ Training applicant has received if job-related. ▪ Highest level of education attained, if certain background is necessary to perform the job. 	<ul style="list-style-type: none"> ▪ Date of high school or college graduation. ▪ What school(s) applicant attends or attended.
Financial Status	<ul style="list-style-type: none"> ▪ None 	<ul style="list-style-type: none"> ▪ Do you own a car? ▪ Do you own a home? ▪ Have you ever filed for bankruptcy? ▪ Applicant's debt or assets. ▪ Garnishments.
Military	<ul style="list-style-type: none"> ▪ Type of training, education, and work experience the applicant received in the military. 	<ul style="list-style-type: none"> ▪ Applicant's type of discharge. ▪ Applicant's type – enlistment or commissioned.
Credit Report	<ul style="list-style-type: none"> ▪ None 	<ul style="list-style-type: none"> ▪ Applicant's credit rating. ▪ Any report which would indicate information which is otherwise inappropriate to ask, e.g., marital status, age, residency, etc.
Marital Status	<ul style="list-style-type: none"> ▪ None 	
Gender	<ul style="list-style-type: none"> ▪ None 	
Religion	<ul style="list-style-type: none"> ▪ None 	

Appendix D

Prohibited Personnel Practices⁷

The *Department of Veterans Affairs Recruitment & Selection Best Practices Guide*, used to help hiring managers avoid Equal Employment Opportunity pitfalls and help create a diverse workforce, provides the following list of prohibited personnel practices. Is unlawful to:

- Discriminate on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation.
- Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.
- Coerce an employee's political activity.
- Deceive a person or otherwise obstruct his or her right to compete for employment.
- Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.
- Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant.
- Engage in nepotism (i.e., hire, promote, or advocate the hiring or promotion of relatives).
- Retaliate against whistleblowers, whether an employee or an applicant.
- Retaliate against employees or applicants who exercise their appeal rights, testify or cooperate with an Inspector General or the Special Counsel, or refuse to break a law.
- Discriminate based on personal conduct that is not adverse to on-the-job performance of the employee, applicant, or others.
- Violate Veterans' preference requirements.
- Violate any law, rule, or regulation which implements or directly concerns the merit principles.

⁷ Department of Veterans Affairs, Recruitment and Selection Best Practices Guide, page 7:
<http://www.diversity.va.gov/products/files/RSG.pdf>

APPENDIX E

Recruitment and Selection 18 Key Steps Checklist⁸

The *Department of Veterans Affairs Recruitment & Selection Best Practices Guide*, used to help hiring managers avoid Equal Employment Opportunity pitfalls and help create a diverse workforce, provides the following recruitment and selection checklist:

Pre-recruitment

1. Work closely with Human Resources at all stages of the recruitment process.
2. Perform/document a job analysis that identifies the major job duties and essential functions of the position.
3. Review, create, modify, and/or update the position description to accurately reflect the duties and responsibilities of the position to be filled.
4. Develop the position crediting plan identifying the rating criteria for candidates.
5. Develop proactive, strategic outreach/recruitment plans to attract a diverse applicant pool.
6. Consider or use special hiring authorities such as re-employment lists and veterans' preferences.
7. Consider or fill positions using intern programs.
8. Research the plausibility of using incentives, such as travel assistance to interviews, to attract qualified candidates.

Prior to vacancy announcement closing date

9. Prepare standardized, job-related interview questions, avoiding questions that may elicit personal, family, or medical related responses.
10. Establish/document an objective, quantifiable scoring and ranking process to identify best qualified candidates.
11. Develop uniform note-taking formats related to the standardized questions.
12. Coordinate a diverse panel to conduct interviews. Advise them of their roles and expectations, and provide them with all required interview documents in advance of the interview.

After determining the candidates eligible for interviews

13. Conduct interviews. (If a decision was made not to interview all candidates, ensure a best qualified rating process was conducted.)
14. Based on predetermined rating criteria, panel members record applicants' scores on scoring matrices, rank them, and provide them to the hiring official.
15. Perform reference checks on top-rated candidates.

After making a final selection

16. Prepare a selection justification memorandum.
17. Ensure all interview related material is collected and stored in a secure, centralized location.
18. Provide name of potential selectee to Human Resources for further action.

⁸ Department of Veterans Affairs, Recruitment and Selection Best Practices Guide, pages 29-30:
<http://www.diversity.va.gov/products/files/RSG.pdf>

APPENDIX F

The Interview Process Do's and Don'ts⁹

The *Department of Veterans Affairs Recruitment & Selection Best Practices Guide*, used to help hiring managers avoid Equal Employment Opportunity pitfalls and help create a diverse workforce, provides the following list of Dos and Don'ts during the interview process:

- **DO** write down notes as you listen to the candidate to remind you of what you perceived as a good, excellent, or poor response, based upon the established criteria, skills, and qualities desired.
- **DON'T** write anything down that isn't pertinent to the discovery of how the candidate meets the desired criteria, skills, and qualities.
- **DON'T** write any comments on the documents other than those required by the selection process, and submit any and all notes you made to be included with the official records that will be maintained, pursuant to the Privacy Act (P.L. 93-579, 5 USC 552a). This information is used to determine qualifications for employment, and is authorized under Title 5, USC, Section 3302 and 3361.
- **DO** be outgoing and honest. Treat all candidates with consideration and enthusiasm. Remember that the candidate is interviewing us as well as we are him/her. Smile!
- **DO** be aware of BIAS...we know that interview teams tend to select people who "are like them." Research shows that we try to avoid candidates who may demonstrate that they may ask us to stretch and grow. We tend to avoid people who don't look like us (i.e., socio-economic status, race, color, wearing a suit we don't like, having brightly colored nails, etc.).
- **DON'T** express your personal preferences to others during the selection process.
- **DON'T** share data about the candidates with those outside the selection process. Remember that most of the information shared while (or learned through) the interviewing process is confidential.
- **DON'T** be tempted to learn about an applicant's protected status while making conversation during "down time," such as after the interview, during a tour, or as you are greeting the applicant or saying good-bye.
- **DON'T** make a general assumption that individuals with disabilities will always require an accommodation.

⁹ Department of Veterans Affairs, Recruitment and Selection Best Practices Guide, page 20:
<http://www.diversity.va.gov/products/files/RSG.pdf>

APPENDIX G

U.S. Merit System Principles (5 USC § 2301)¹⁰

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.
2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
5. The Federal work force should be used efficiently and effectively.
6. Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
8. Employees should be—
 - a. protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - b. prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences--
 - a. a violation of any law, rule, or regulation, or
 - b. mismanagement, a gross waste of funds, an absence of authority, or a substantial and specific danger to public health or safety.

¹⁰ U.S. Merit Systems Protection Board: <http://www.mspb.gov/meritsystemsprinciples.htm>