

**DRAFT Regulations Implementing Revised
Federal Grant-in-Aid Merit System Requirements for Comment
(Government Code Sections 19800 through 19811)**

TITLE 2. ADMINISTRATION
DIVISION 5. LOCAL AGENCY PERSONNEL STANDARDS
CHAPTER 1. GENERAL

§ 17010. Purposes

Every Local Agency administering a state or federally funded aid program that requires as a condition of program participation that the Local Agency operate a merit-based personnel management system is subject to the personnel standards established in this Division.

NOTE: Authority cited: Sections 19800, 19801, 19811, Government Code.
Reference: Sections 19801, 19810, Government Code.

§ 17011. Definitions.

As used in this Division,

- (a) Classification means a category of positions that are sufficiently similar in the type of work performed by incumbents, level of difficulty, responsibility, and qualifications required that the positions warrant similar treatment in personnel and pay administration.
- (b) Department means the California Department of Human Resources.
- (c) Disciplinary Action means an action by a Local Agency that results in the dismissal, demotion, suspension, transfer, or loss of pay or work hours of a permanent employee based on the employee's performance of the duties of the position. Disciplinary Action does not include letters of reprimand, written instructions to the employee regarding correcting workplace behavior, or any other action which does not change a permanent employee's job classification or decrease his or her pay.
- (d) Federal Requirements means the federal principles and standards for a merit-based Personnel Plan set forth in federal regulations administered by the Office of Personnel Management, "Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration" in the Consolidated Federal Register (CFR), under Title 5, Part 900, Subpart F, as amended from time to time.
- (e) Hearing Officer means an individual designated by the Director to hear and prepare proposed decisions in those matters that may be appealed to the Department,

including but not limited to appeals from audit findings and appeals from actions affecting Program employees.

- (e) Program or Programs means those state and federally funded operations that require any Local Agency administering any portion of the Program operate a merit-based personnel system for employees engaged in program operations.
- (f) Local Agency means any county or city and county that is required to utilize a merit-based personnel management system for Program employees.
- (g) Personnel Plan means the policies, standards and procedures used by a Local Agency to hire, promote, train, discipline, evaluate and otherwise manage its employees and includes any documents describing those rules and procedures, including but not limited to: charters or ordinances establishing the Local Agency; rules and regulations for personnel operations; Classification descriptions, position descriptions and duty statements; examination announcements and selection processes; employee-management memoranda of understanding; anti-discrimination policies and procedures; descriptions of evaluation and disciplinary processes; and rules regarding conflicts of interest and improper influence.

NOTE: Authority cited: Sections 19800, 19801, 19811, Government Code.
Reference: Sections 19800, 19801, 19802, 19802.5, 19803, 19810, Government Code.

§ 17021. Local Agency Administered Approved Merit-Based Personnel Plan for Employees; Total or Partial Approval.

- (a) Every Local Agency may operate its Personnel Plan for Program employees in the same manner as it does for other employees of the Local Agency after the Department reviews and approves the Personnel Plan in order to confirm that it is merit-based and satisfies the Federal Requirements. Upon request by a Local Agency, the Department shall review the Local Agency's Personnel Plan, may request additional information as it deems necessary, and shall make a determination and advise the Local Agency.
- (b) In determining whether a Local Agency's Personnel Plan is merit-based and consistent with the Federal Requirements, the Department may review elements of the Personnel Plan that relate to the Federal Requirements including:
 - (1) Procedures and rules for employee recruitment, selection, and advancement.
 - (2) Compensation policies and procedures.
 - (3) Training policies and practices.
 - (4) Performance evaluation standards and procedures, including procedures for correcting and disciplining employees for poor performance.

- (5) Overall fairness of the Personnel Plan, including policies regarding equal employment opportunity and nondiscrimination.
- (6) Rules regarding conflicts of interest including rules protecting employees from coercion for partisan political purposes and prohibiting employees from using their authority to interfere with actions of others relating to elections.
- (c) Once approved to operate its Personnel Plan for Program employees as for other employees, a Local Agency shall certify to the Department in the form and manner that the Department requires that it is operating the merit-based Personnel Plan reviewed and approved by the Department and that it will continue to do so. The certification shall be renewed by the Local Agency on Department request.
- (d) Any Local Agency approved to operate its own Personnel Plan prior to January 1, 2014 shall be deemed approved by the Department. The Department may request that the Local Agency acknowledge its acceptance of any new standards adopted by the Department.
- (e) A Local Agency that wants to utilize a particular policy, standard, or procedure established in its Personnel Plan for Program employees may ask the Department for approval to do so. If the Department approves the request, the Department will administer the remainder of the personnel management system set out in Chapter 2 for the Local Agency.
- (f) If the Department denies the request of a Local Agency to operate all or part of its Personnel Plan for Program Employees, it shall advise the Local Agency of the reasons for the denial in writing. The Local Agency may renew its request at any time.
- (g) Any Local Agency approved to operate all or any part of its Personnel Plan for Program employees shall retain records pertaining to personnel management of Program employees. A copy of the policy on retention of personnel and related human resources records or a written advisement on the agency's plan to preserve the records shall be provided to the Department upon request. If the Local Agency has no such policy, the Local Agency shall agree to retain records for seven (7) years from the date of the action or the date of the employee's separation, whichever is longer.
- (h) Any Local Agency approved to operate all or part of its Personnel Plan for Program employees is subject to audit by the Department to determine compliance with the Federal Requirements. The audit schedule, scope, and frequency of audits are within the discretion of the Department. The audit process may include an entrance conference with the Local Agency, a review of documentation, field work as necessary to clarify or expand on the documentation, an exit interview, and an opportunity for comment by the Local Agency to the draft report prepared by the

Department. If a Local Agency submits written comments in response to a draft report, the response shall be included in the final audit report.

NOTE: Authority cited: Sections 19800, 19801, 19811, Government Code.
Reference: Sections 19801, 19802.5, 19803, 19805, 19808, Government Code.

§ 17022. Department Procedures for Resolving Disputed Audit Findings.

- (a) For purposes of this section, the following definitions shall apply. “Department Representative” means the manager of the division within the Department responsible for administration of merit system standards for Local Agencies under these regulations, or his or her designee. “Hearing” means a review of written submissions by the Parties and may include oral testimony or presentations if the Hearing Officer deems it appropriate. “Parties” means the Department Representative and the Local Agency collectively.
- (b) After a final audit report has been issued, the Department Representative or the Local Agency may request that the Director convene a hearing within 30 days of the issuance of the final audit report in order to resolve any disputed findings contained in the audit report. Any such request shall be made in writing to the Director and shall include a description of the particular elements of the audit report that are disputed and the reasons for the dispute.
- (c) Within 15 days of receiving a request for a hearing, the Director shall assign a staff manager who has not previously been involved in any aspect of the audit to serve as Hearing Officer and to prepare a draft final decision for the director’s review and adoption at the conclusion of the hearing process. The Director may delegate to the Hearing Officer those duties and powers relating to the conduct of hearings established by Section 19815.4(e) of the Government Code for purposes of making a determination. The Hearing Officer shall promptly notify the parties of his or her appointment.
- (d) Within 30 days of notice of the appointment of the Hearing Officer, both the Department Representative and the Local Agency shall prepare and provide to the Hearing Officer and to the other party a written statement in support of its position.
- (e) Within 30 days of the Hearing Officer receiving the statements, the Hearing Officer may, schedule a date for oral presentations by the Department Representative and the Local Agency if the Hearing Officer deems such presentations necessary to fully identify and understand the issues in dispute. The scope and manner of the oral presentations shall be within the discretion of the Hearing Officer. Any presentations shall be recorded and available for transcription at the request of either party and at the expense of the party so requesting.
- (f) Within 30 days of the date that all material requested by the Hearing Officer is submitted, the Hearing Officer shall prepare a draft determination of the dispute and

provide it to the Director. The Department Representative shall have the burden of proof to establish by a preponderance of the evidence that the Local Agency's Personnel Plan is out of compliance with the Federal Requirements.

- (g) The Director may adopt the draft determination or direct that additional information be provided by the Local Agency or the Department Representative to the Hearing Officer and the determination be resubmitted for the Director's review subsequent to consideration of that information. The Director shall have 30 days from receipt of the draft determination to take action. If the 30 days expire without the Director taking action, the draft decision shall be deemed the final determination of the Director.
- (h) The Director's decision shall include a determination of whether any authority previously granted to the Local Agency to operate its own Personnel System shall be rescinded or modified. In the event the Local Agency is directed to take action under the terms of the Director's final determination and fails to do so within 60 days or such longer period as the Director may determine, the Director shall notify the appropriate state officer of his or her decision that the Local Agency is not in conformity with Federal Requirements.

Note: Authority: Sections 19800, 19801, 19811, Government Code.

Reference: Sections 19800, 19802.5, 19803, 19805, 19806, Government Code.

CHAPTER 2. DEPARTMENT ADMINISTERED MERIT-BASED PERSONNEL SYSTEM FOR PROGRAM EMPLOYEES.

§ 17030. Department Administered Personnel System for Program employees.

- (a) For any Local Agency not approved to operate its own Personnel Plan in total, the Department shall administer a merit-based personnel system for Program employees on the Local Agency's behalf pursuant to this Chapter. In the case of a Local Agency which is approved by the department to operate specific elements of its Personnel Plan for Program employees, the Department shall administer all other aspects of a merit-based system on the Local Agency's behalf for Program employees pursuant to this Chapter.
- (b) This Chapter shall apply only to the Department's operation of all or part of a personnel system on behalf of a Local Agency. This Chapter does not apply to any Local Agency approved to operate all or any specific element of its own Personnel Plan under Section 17021.
- (c) The Department may review the relevant standard or procedure utilized by the Local Agency for its employees. The Department may elect to follow the Local Agency's standard or procedure for Program employees in lieu of these regulations if the Department finds that the standard or procedure meets the Federal Requirements.

NOTE: Authority cited: Sections 19800, 19801, 19811, Government Code.
Reference: Sections 19801, 19803, 19808, Government Code.

§ 17031. Qualifications and Classification of Program Employees.

- (a) Except for those positions designated as unclassified under (b), the Local Agency shall allocate every Program position to a Classification established by the Department that is appropriate to the duties of the position. The Local Agency's position allocation shall be subject to audit by the Department.
- (b) Every Local Agency may designate a limited number of positions within the Program as unclassified or otherwise not subject to merit system requirements and the requirements of these regulations so long as such designation is consistent with the Local Agency's Personnel Plan regarding the type, number, level and process for establishing such unclassified positions. Designations of positions as unclassified are subject to audit by the Department.

Note: Authority cited: Section 19803, Government Code.
Reference: Section 19800, Government Code.

§ 17032. Recruitment and Selection of Program Employees.

- (a) The Department shall ensure that the availability of Program employee positions is advertised for a sufficient period of time and in a manner that provides for a qualified candidate pool based on the level of the position, the required qualifications, and the availability of qualified applicants in the appropriate labor market.
- (b) The advertisement shall include a description of the duties of the position, the position compensation, required minimum qualifications, a description of the selection process, and instructions on how to submit an application.
- (c) Notwithstanding the length of time of the advertising, applications may be accepted for a period of time sufficient in the judgment of the Local Agency to generate an adequate pool of qualified applicants.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17033. Selection Processes.

- (a) The selection process shall fairly test and determine the relative qualifications, fitness and ability of applicants to perform the duties of the position to which they seek appointment. Applicants shall be selected based on job-related criteria developed prior to reviewing or examining any individual application. The selection process may be conducted through interviews, written examinations, performance based examinations, assessments of education and experience of the candidates, or

any combination of processes that are reasonably designed to ascertain the applicant's ability to perform the duties of the position.

- (b) The selection process may be limited to a promotional candidate group consisting of current employees of the Local Agency or of the Program if the Personnel Plan allows for such limitations on the candidate group in positions at a similar level to the vacant position.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17034. Certification of Qualified Candidates and Appointment.

- (a) At the conclusion of the selection process, the Department shall provide to the Local Agency a list of applicants and the scores each applicant achieved in the selection process. The Local Agency shall follow its Personnel Plan to certify the appropriate number of names for consideration for appointment and to finalize the appointment.
- (b) Appointment procedures for Program employees shall be conducted by the Local Agency in the same manner as for other Local Agency employees. If Local Agency employees are required to serve probationary periods, the Local Agency shall require and administer probationary periods for Program employees in the same manner.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17035. Disqualification of Applicants from Consideration.

A Local Agency may disqualify any applicant from competing in the examination or from further consideration for appointment for any of the following reasons:

- (a) Failure to meet any of the required qualifications for the position.
- (b) Failure to follow application or examination procedures for the position.
- (c) False statements in the application or selection process.
- (d) Any other reason established in the Local Agency's Personnel Plan.

Any applicant so disqualified shall be notified in writing of the basis for the disqualification and shall be entitled to appeal the decision in accordance with section 17036.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17036. Selection Appeal Rights.

(a) Applicants may appeal selection process decisions on the following grounds:

- (1) For alleged irregularity, discrimination, bias, or fraud in one or more steps in an examination; or
- (2) For alleged improper acts or circumstances resulting in erroneous interpretation and application, by the examiners, of the skills, knowledge and abilities considered to be essential for satisfactory performance in the class for which the candidate is being examined.

(b) Appeals of decisions from selection procedures must be filed with the Department within 30 calendar days of the date on which the appellant receives notice of the decision that he or she is appealing. Sufficient examination material shall be made available to an appellant to explain the basis for the examination decision, and to confirm the computation of the appellant's score unless in the Department's discretion such access would result in unfair advantage to the appellant in a future examination.

(c) The Director shall appoint a Hearing Officer to hear the appeal and to prepare a proposed decision. The Hearing Officer shall review documents submitted by the appellant and such other evidence as the Hearing Officer may request. The appellant shall have the burden of demonstrating that the selection process was conducted improperly and that as a result the applicant was ineligible for consideration by the Local Agency in filling the position. The Hearing Officer may in his or her discretion schedule an evidentiary hearing. The Hearing Officer shall prepare a proposed decision for the Director. The Director shall render a decision within 60 days of submission of all of the evidence.

(d) An appeal under this section shall not require a delay of an appointment unless the Local Agency in its discretion determines a delay is appropriate. Any correction in ratings shall not affect appointments which may have already been made from the eligible list.

Note: Authority: Sections 19800, 19801, 19811, Government Code.

Reference: Section 19803, Government Code.

§ 17037. Compensation.

The Department may review the Local Agency's compensation policy and practices as necessary to ensure compliance with the Federal Requirements. The compensation plan may include provisions explaining the circumstances under which an employee's salary may remain above the maximum for the employee's Classification if the salary would be reduced through no fault of the employee and if the Personnel Plan provides for such compensation for all Local Agency employees.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17038. Training.

Local Agencies shall provide training to Program employees under the same policies and procedures utilized for other Local Agency employees. The Department may review the Local Agency's training policy and practices as necessary to ensure compliance with the Federal Requirements.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17039. Performance Evaluation.

Local Agencies shall evaluate the performance of Program employees in the same manner as for other Local Agency employees. Performance rating criteria must be job related, objective, and applied consistently to all employees subject to performance evaluation. Employee complaints about the performance evaluation reports or process shall be processed in accordance with Local Agency procedures.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17040. Overall Fairness of the Personnel Plan.

The Local Agency shall follow the same policies regarding equal employment opportunity, nondiscrimination, and other policies promoting fairness in overall personnel operations, for Program employees as other Local Agency employees.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17041. Conflict of Interest and Improper Use of Authority.

The Local Agency shall follow the same rules and procedures for Program employees as other Local Agency employees regarding conflicts of interest, including rules relating to improper use of authority by an employee.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17042. Reduction in Force.

(a) In the event that the Local Agency determines a reduction in the number of Program employees is necessary, the Local Agency shall follow the procedures established in

its Personnel Plan for reductions in force. Such procedures may include but are not limited to requirements for how and when notice is given to the affected employees, limits on appointments to vacant positions pending completion of the reduction in force, and provisions for creating reemployment lists of those employees laid off or demoted through the reduction in force process.

- (b) Seniority shall be calculated for Program employees as for any other employee of the Local Agency with the exception that a Program Employee of a Local Agency whose Personnel Plan was administered by the state prior to the effective date of this regulation and who was eligible under the terms of prior regulations to transfer eligibility accrued in another county to the Local Agency shall retain his or her previously accrued seniority for purposes of calculating seniority scores in the Local Agency reduction in force process. Program Employees who acquire permanent status after the effective date of this regulation shall accrue seniority in accordance with the Personnel Plan of the Local Agency.
- (c) A Program Employee may appeal to the Department from a reduction in force decision affecting his or her employment. Prior to filing with the Department, the employee shall seek a remedy directly with the Local Agency. In the event the Local Agency and the employee are unable to resolve the dispute, the employee must notify the Department in writing of his or her appeal and the basis for the appeal. The employee must attach evidence that a remedy was sought from the Local Agency and denied. The appeal must be received by the Department within 30 days of the date on which the employee was notified that the Local Agency would not provide the relief the employee requested.
- (d) The scope of appeal is limited to:
 - (1) The Local Agency's failure to comply with an element of the Personnel Plan which adversely impacted the appellant in particular.
 - (2) Miscalculation of the appellant's seniority score where seniority is a factor in the order of lay-off.
- (e) The Department shall resolve the appeal by reviewing documents submitted by the parties and such other evidence as the Department may request. The Department may in its discretion schedule an evidentiary hearing. The Department shall render a decision within 60 days of submission of all of the evidence.
- (f) The reduction in force process shall not be delayed by the filing of any appeal unless the Local Agency determines a delay is appropriate.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17043. Involuntary Changes to a Permanent Employee's Employment for Non-disciplinary Reasons.

- (a) The Local Agency may terminate, demote, transfer, reduce the salary, or otherwise alter the employment of an employee without the employee's consent and for reasons unrelated to the employee's job performance in accordance with the terms of the Personnel Plan. Such actions shall not be considered disciplinary for purposes of the employee's record and may include but are not limited to demotion or transfer for failing to meet a continuing requirement for the position; termination based on an unapproved absence by the employee; demotion or transfer unrelated to a reduction in force; actions based on the employee's medical condition; and paid and unpaid leaves. An appeal does not delay the effective date of the action.
- (b) An employee may appeal such actions to the Department after seeking a remedy directly from the Local Agency. In the event the Local Agency and the employee are unable to resolve the dispute, the employee shall notify the Department in writing of his or her appeal and the basis for the appeal. The employee shall attach evidence of having requested a remedy directly from the Local Agency and the outcome of that request. Such appeals must be filed with the Department within 30 days of the date on which the employee was notified that the Local Agency would not provide the relief the employee requested.
- (c) The scope of appeal is limited to:
 - (1) Whether the Local Agency's failed to comply with an element of the Personnel Plan.
 - (2) Whether the Local Agency is taking the action for an unlawful reason.
- (d) On receipt of the appeal, the Director shall appoint a Hearing Officer to hear and prepare a proposed decision. The Hearing Officer may in his or her discretion schedule an evidentiary hearing. If an evidentiary hearing is convened, the Hearing Officer shall preside over the hearing, rule on the admission of evidence, determine the scope of the proceeding, and prepare a proposed decision for the Director. The employee has the burden of proving that the non-disciplinary action was improper. A decision shall rendered and issued by the Director within 60 days of all evidence being submitted.
- (e) The employee's rights to reinstatement to his or her former position after the cause of the non-disciplinary action has been resolved shall be determined by the Local Agency in accordance with the Personnel Plan.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17044. Disciplinary Actions based on Employee Performance or Conduct.

When a Program Employee's performance or conduct is unacceptable to the Local Agency, the Local Agency may take Disciplinary Action against the employee for any

cause established in the Personnel Plan. The Local Agency shall prepare and serve the Disciplinary Action in accordance with the Personnel Plan, including provisions describing the length and type of notice to be given to the employee, the contents of the notice, any right to meet or appeal to the Local Agency prior to the action becoming effective, and the inclusion of documentary evidence with the notice of the action.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17045. Appeals from Disciplinary Action.

- (a) A Program employee may appeal a Disciplinary Action to the Department within 30 calendar days of the date on which the Disciplinary Action became effective. The appeal must be in writing and need not be in any particular form but shall include a description for the basis of the appeal and the relief being requested by the appellant. The Department shall ensure that the Local Agency receives a copy of the appeal and all materials provided by the appellant. The appeal does not delay the effective date of the Disciplinary Action.
- (b) The Director shall designate a Hearing Officer to hear the appeal and prepare a proposed decision for the Director's consideration. The Hearing Officer shall preside over all aspects of the hearing, may grant or refuse extensions of time, set the hearing dates, conduct the hearing and administer oaths to witnesses, rule on the submission of evidence, request additional evidence or the submission of documents by the parties, including legal briefs, and perform any and all other acts in connection with the hearing that may be necessary. Hearings are public, although witnesses may be excluded, unless the Hearing Officer determines that it is appropriate to close the hearing.
- (c) Each party shall have these rights: to call and examine witnesses; to be represented by counsel or another representative of their choosing; to request the issuance of subpoenas and subpoenas duces tecum; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issue, even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence.
- (d) If an appellant does not testify on his or her own behalf, the appellant may be called and examined as on cross-examination by the Local Agency. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence shall be admitted and may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it is the type of hearsay admissible over objection in a civil action. The rules of privilege shall be

effective to the same extent to which they are now or may hereafter be recognized in civil actions. Irrelevant and unduly repetitious evidence may be excluded.

- (e) The Local Agency shall have the burden of proving by substantial evidence that the action is supported by the evidence or that proper procedures were followed.
- (f) The Department shall issue a decision within 60 days of submission of all of the evidence or other information requested by the Hearing Officer and shall provide the decision to both parties. The decision may uphold the Disciplinary Action in all respects, or modify the penalty assessed to a lower level of discipline if a lesser penalty is available under the Personnel Plan.
- (g) After 15 days, the decision shall be binding on the Local Agency and is the final administrative decision in the matter. Notwithstanding the above, during the 15 day period, either party may request correction of the decision, or that the matter be reopened for presentation of newly discovered evidence. If such a request is made, the Department shall render a decision on the request within 15 days.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17046. Processing Grievances.

Grievances shall be defined and processed as provided in the Personnel Plan for Program Employees as for other Local Agency employees.

Note: Authority: Sections 19800, 19801, 19811, Government Code.
Reference: Section 19803, Government Code.