MEMORANDUM

DATE: January 21, 2022

TO: Personnel Officers

FROM: */s/* **LORI GILLIHAN**
Lori Gillihan
Chief, Policy Division

SUBJECT: WITHHOLD NOTICES AND APPEALS TIMEFRAMES

It has come to the Board's attention that some departments have been issuing withholds to candidates or employees but fail to specify the reasons why they do not satisfy the minimum qualifications (MQ's) in the withhold notices that are sent out. Additionally, some departments are issuing only one (1) withhold notice to candidates, rather than the required two (2), separate notices. Additionally, there has been confusion among appointing powers about the timeframe in which a candidate may respond to these notices.

Appointing powers must provide two separate written notices to candidates when MQ's are not met, pursuant to California Code of Regulations, title 2, section 249.4, subdivisions (b)(1) – (b)(2). Additionally, Human Resources (HR) Manual Section 1105 also specifies that two notices must be sent to the candidate or employee. This manual section also states that the departments must specify which MQ's are not met and the reasons why.

Letter 1:

The first letter must inform the candidate that they have not satisfied the MQ's. The appointing power shall provide written notice to the candidate specifying which MQ's are not satisfied and the reason(s) why and provide an opportunity for the candidate to establish that they satisfy the MQ's of the classification. The candidate shall have 10-working days to answer. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) This will give the candidate a chance to possibly prevent the pending permanent withhold action.

Some departments have not been referencing the MQ's or patterns at all when issuing the letters, or they will use generic language like "candidate does not meet the requirements of Pattern II." There must be sufficient specificity so that the candidate

knows why they are deficient in meeting the patterns. In other words, departments need to be sure to add "because" to their statements to provide sufficient specificity. For example, "candidate does not meet the requirements of Pattern II because their work experience as X, Y, and Z did not involve professional analytical experience."

Letter 2:

The second letter will deal with what happens if the candidate fails to answer within the specified timeframe, or if they answer in a timely manner but fail to establish that they satisfy the MQ's. If the candidate fails to answer within the specified timeframe, they have abandoned the selection process. If such a determination is made and the candidate's eligibility was based upon list eligibility, their name shall be removed from the employment list and a permanent withhold will be applied. The appointing power shall promptly inform the candidate in writing that their name has been removed. The notification shall also inform the candidate of their appeal rights. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1).)

If the candidate answers in a timely manner, but fails to establish that they satisfy the MQ's, the candidate shall not be appointed to the position, and, if the candidate's eligibility was based upon list eligibility, their name shall be removed from the employment list. A permanent withhold will then be applied. The appointing power shall promptly inform the candidate in writing of the specific reason(s) (providing sufficient specificity as explained above) why the additional information provided did not establish that they meet the MQ's, and any actions taken by the appointing power related to the finding, including, for instance, removing the candidate's name from the employment list. The notification of the permanent withhold shall also inform the candidate of their appeal rights. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(2).)

Appeals from Withhold from Certification shall be filed within 30 days of the date that the notice of Withhold from Certification is mailed to the candidate. (Cal. Code Regs., tit. 2, § 52.4, subd. (e)(1)(P).)