



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Special Inquiry Report

Review of Allegations Regarding
Prohibited Personnel Practices at
the Bonneville Power Administration




Department of Energy

Washington, DC 20585

October 3, 2013

MEMORANDUM FOR THE SECRETARY

FROM:


Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Special Inquiry: "Review of Allegations Regarding Prohibited Personnel Practices at the Bonneville Power Administration"

BACKGROUND

The Department of Energy's Bonneville Power Administration (Bonneville) is a self-funding entity that covers its costs by marketing wholesale electrical power from 31 Federal hydro projects. It is responsible for operating and maintaining about three-fourths of the high-voltage transmission in the Pacific Northwest. Bonneville's 3,100 employees represent 20 percent of the Department's total Federal workforce.

On May 11, 2010, the President issued a memorandum, *Improving the Federal Recruitment and Hiring Process*, requiring all executive Federal agencies to utilize a category rating hiring approach. This approach was established to broaden the candidate selection pool while still complying with merit system principles and other requirements of Title 5, United States Code, including veterans' preference. The U.S. Office of Personnel Management (OPM) delegated competitive hiring authority to the Department, and the Department in turn delegated this authority to Bonneville. The Department is authorized by statute and delegated to Bonneville the ability to issue announcements and hire current or former Federal employees through merit promotion. Bonneville's Human Capital Management (HCM) staff members, responsible for delegated examining actions, are required to be certified by OPM.

The Office of Inspector General received a complaint alleging prohibited personnel practices at Bonneville. The allegations included violations of OPM regulations and the inappropriate dismissal of veterans during their probationary period. The complaint also alleged violations of Department policies regarding the application of veterans' preference and the use of the category rating process in the exercise of Bonneville's delegated examining authority for competitive hiring. Given the seriousness of the complaint, we initiated a special inquiry to determine the facts and circumstances surrounding the allegations of prohibited personnel practices.

RESULTS OF SPECIAL INQUIRY

We found that Bonneville's hiring practices disadvantaged veterans and other applicants. Bonneville's actions were inconsistent with concerted efforts by the Federal government to ensure that veterans received appropriate preferential treatment in the hiring process. Specifically, we found that:

- Bonneville consistently manipulated the applicant rating process. This practice involved modifying the "best qualified" category after all applications were received; actions that

resulted in the inappropriate exclusion of veterans and other applicants from consideration for job selection. While a final determination has yet to be made, information provided by Bonneville revealed that these prohibited practices occurred in at least 117 of 240 cases (49 percent)¹ of recruitments conducted from November 2010 to June 2012.

- Despite specific requirements to do so, Bonneville did not fully disclose to the Department that the inappropriate personnel practices had occurred, nor did it disclose the adverse impact on veterans and other applicants.
- Bonneville neither notified the affected applicants nor did it initiate corrective actions required to remedy the inappropriate practices.

In addition to the serious problems in its category rating process, we discovered that Bonneville disadvantaged at least one veteran by closing a delegated examining announcement and re-announcing the position in such a way as to exclude the veteran from consideration. In this particular case, Bonneville recruited for and subsequently referred a group of "best qualified" candidates for a senior position to the selecting official. After conducting interviews, the selecting official identified a candidate who he wished to select. At about that same time, the category rating practices at Bonneville were exposed. HCM officials told us that they then identified a veteran that would have been ranked as best qualified had the category rating process been correctly applied. That veteran was then referred to the selecting official for consideration. The selecting official decided, however, that the veteran was not qualified and indicated that he did not wish to hire him. After being advised by an HCM staff member that the stated reason for bypassing the applicant was insufficient to justify granting a waiver of the veteran's preference, the selecting official elected to close the vacancy announcement and reopen it with additional selection criteria that the veteran could not meet.

One of Bonneville's staff attorneys provided guidance that likely facilitated this action. Specifically, the attorney's advice to an HCM official described how to modify the announcement so that the veteran would be unlikely to qualify. The attorney also provided advice on the risks associated with proceeding in that manner. The attorney noted that the veteran might not reapply once the position was re-announced. Rather than providing general advice regarding the propriety of closing announcements and reopening them with more restrictive selection criteria, the guidance appeared to target the particular veteran that the selecting official considered bypassing. Notably, the attorney opined that if the veteran did reapply, it would have been difficult for the veteran to prevail under the new criteria. Bonneville subsequently executed the plan and, as predicted, the veteran did not qualify. The selecting official rationalized his decision to proceed in this manner by noting that it would have been unfair to hire the veteran and then terminate him during his first year if he had been unable to do the job. Recent reviews by both the Department and OPM found that Bonneville misused overly restrictive qualifications to improperly eliminate qualified applicants from job consideration. Thus, the case highlighted here may reflect a more extensive problem.

¹Calculations of numbers of cases and impacted individuals listed throughout our report are based on best estimates. We were unable to determine with absolute certainty exact statistics because of data integrity and record keeping problems at Bonneville.

Contributing Factors

The management culture at Bonneville contributed to an environment that enabled the prohibited practices to occur. Notably, we observed that Bonneville officials spent considerable effort trying to distance the organization from Departmental procedures, processes and oversight. For example, although Bonneville was required to comply with Department directives related to its delegated human capital authorities, we found that Bonneville management officials considered such policies to be unnecessary administrative burdens. Our review of emails and interviews with Bonneville management confirmed that deflecting Departmental oversight was ingrained in many aspects of Bonneville's human resources operation, and, that this practice had been the case for many years.

Bonneville officials indicated they had not advised the Department of the extent of the prohibited practices and, as a matter of general policy, would not report issues to the Department if Bonneville officials felt they could handle the issues internally. This stance was taken despite OPM regulations requiring reporting and immediate remedial actions in these and related matters. Even when Bonneville did formally communicate the category rating problems to the Department, nearly a year after the problems were first discovered, Bonneville failed to notify impacted individuals, did not advise the Department that a large number of individuals had been disadvantaged, and failed to indicate that significant remedial actions would be necessary.

Compounding problems associated with the general environment and culture, our inquiry revealed that Bonneville exercised inadequate oversight and accountability of its own personnel recruitment functions. Specifically, we found that Bonneville:

- Failed to ensure that there was sufficient Federal human resources experience within the ranks of HCM management;
- Did not adequately maintain or track training information for personnel specialists and was, as a result, unable to identify skill gaps;
- Relied on informal, undocumented practices to govern its category rating process; and
- Did not ensure that a safeguard designed to detect or prevent prohibited practices, the quarterly audit process, was properly implemented.

In short, there was a massive breakdown in procedures, processes and management attentiveness at several levels of Bonneville's operation.

Bonneville's questionable human resources management practices were at the heart of the failure to: (1) correctly execute the category rating process; (2) make appropriate and required notifications to the Department and affected job applicants; and (3) take actions to address the large volume of hiring errors that occurred in the 18 months preceding discovery. In fact, Bonneville officials engaged in an active, months-long campaign to avoid reporting the impact of the category rating problems, thereby delaying needed remedial actions.

In addition, there were obvious early warning signals and other indications that Bonneville may have required enhanced monitoring of its hiring activities. Yet, we found that the Department's Office of the Chief Human Capital Officer (Human Capital) had not adequately responded. Department Order 328.1, *Human Capital Management Accountability Program*, establishes requirements, roles and responsibilities for human resources programs and personnel to ensure that human capital activities are compliant with Federal laws, regulations, and Department policies. This directive required Human Capital to review hiring activities at Bonneville and to ensure that identified deficiencies were resolved. However, we noted that Human Capital did not ensure Bonneville implemented required corrective actions resulting from its 2010 Human Capital Management Accountability Program audit, a review that identified systemic control weaknesses with Bonneville's hiring actions, and its relevant policies and procedures. We also observed that the Department did not intervene and compel compliance when Bonneville failed to submit quarterly self-audits intended to ensure that personnel processing practices were consistent with merit system principles and Department policies. Examination of these audits would have revealed high error rates in various areas, specifically including failure to adhere to veterans' preference requirements. Clearly, more aggressive actions on the Department's part could have aided in preventing, or at least detecting, and remediating these problems at Bonneville.

We also found that Bonneville refused to use the Department's common hiring information system and that the Department acquiesced to this decision. Instead, Bonneville elected to develop its own system that will cost up to \$16 million for the contract period rather than using the system that all of the Department's 17 other human resources offices were using at a significantly lower cost. In addition to the financial impact to Bonneville's ratepayers, Bonneville's decision not to use the Department's system impeded the Department's oversight and monitoring.

Direct access to electronic case files would likely have allowed the Department to detect prohibited practices and/or permit a more timely and thorough review of Bonneville's practices once problems were discovered. Instead, the Department had to rely on the manual process of copying and mailing hard copy case files to Headquarters. This practice amounted to an antiquated, ineffective and inefficient approach to oversight that was vulnerable to manipulation and abuse. In this regard, we found that Bonneville officials intentionally removed a number of documents from the files prior to sending them to the Department. An HCM official told us that he had been directed to send only documents that fell within the minimum file content requirements when complying with Departmental requests for information. That manager stated that he had expressed concern that all items were not being provided but was overruled by a more senior HCM official.

Bonneville Management Assertions

Bonneville officials told us they were acting in good faith when they knowingly adjusted the category rating threshold for the candidate "best qualified" lists. They asserted that this was done only for expediency to reduce the candidate pool to manageable levels. In our view, this explanation defied logic, most explicitly for cases where veterans were involved. In those cases, veterans should have been at the top of the best qualified category in each instance. The pool of applicants from which selections could have been made would therefore have been relatively small, including only those with veterans' preference – clearly manageable levels.

Bonneville officials also told us that their actions were influenced by their opinion that OPM and Department guidance on category rating was subject to interpretation. In contrast, we found that OPM and Department guidance on category rating clearly did not permit category rating manipulations after the issuance of a job announcement. As such, the assertions by HCM management regarding interpretations of the guidance were not credible in our judgment. Nevertheless, HCM management officials relied on this position when deciding not to promptly report and remediate category rating issues. It should also be noted that a Bonneville staff attorney opined that the category rating manipulations were not permitted and this position was in fact based on a "flagrant misstatement of law."

Finally, in both public statements and in our personal interviews, various Bonneville officials stated that they would never take any action that would disadvantage those entitled to veterans' preference. These statements notwithstanding, the practical impact of the widespread and pervasive practice of manipulating the candidate rating process did precisely that. Further, as they worked on the numerous recruitment actions completed during the 18-month period in question, it strains credulity to believe that HCM staff and Bonneville's management chain failed to recognize that veterans were being treated unfairly. We found Bonneville's insensitivity in these matters to be disturbing.

Culture of Intimidation and Mistrust

Furthermore, Bonneville tolerated and/or failed to address what appeared to be a culture of intimidation and mistrust in HCM. There is little doubt that the work environment undermined efforts to make Bonneville fully compliant with relevant personnel policies and procedures. During our inquiry, numerous current and former HCM employees told us that they had worked in an environment of mistrust and that they feared retaliation if they had spoken out regarding questionable personnel matters.

Potential Retaliation

During our review we became aware that a number of HCM staff members who had previously raised personnel-related concerns with Bonneville's management and Department officials and/or had cooperated in our inquiry had been subjected to or had adverse personnel actions pending. These actions included suspension, removal from Federal service, or placement on a Performance Improvement Plan that could lead to an adverse personnel action. The most egregious examples of questionable activity we observed were Bonneville's efforts to remove both HCM staff members who initially questioned the category rating practice from Federal service. In one case, action was purportedly taken because the individual implemented the undocumented practice of manipulating the category rating process, potentially denying preference to a veteran. Bonneville attempted to portray this as an isolated incident when, in fact, a review commissioned by Bonneville itself revealed that there were a number of individuals who had acted in a similar manner. This contradiction was inexplicable. When asked why management had not considered this information, which was available more than a month before the disciplinary proposal was completed, Bonneville officials stated they had not read the details of the report.

In the second case, action was proposed to remove the other HCM staff member who had questioned the category rating process as well as other hiring practices. We learned that senior Bonneville managers were advised by the deciding official on the proposed removal action that he was concerned that the alleged misconduct may not warrant removal and could be seen in a negative light. Senior Bonneville managers ignored these concerns and permitted the removal action to proceed, reportedly based on the advice of legal counsel. The action was taken despite specific direction from the Department's Deputy Secretary to not take any retaliatory action against Bonneville HCM whistleblowers.²

Because of the urgency of these matters and the apparent likelihood of additional actions in the near term, in July 2013, we issued a Management Alert, *Allegations Regarding Prohibited Personnel Practices at the Bonneville Power Administration*, (DOE/IG-0891, July 2013). In response to our report, the Department concurred with the facts and informed us that they had already taken action to suspend Bonneville's authority to take adverse action against any employee, to have Bonneville provide the Department with all information on any adverse action in process or under consideration, and to instruct Bonneville to have any HCM employee who was currently on administrative or any other leave type due to a proposed removal or suspension return to work immediately.

Impact and Path Forward

The impact of Bonneville's improper hiring practices is widespread, has subjected affected individuals to economic consequences, has disrupted Department and Bonneville operations, and has exposed the Department to a variety of legal challenges. Most importantly, adversely impacted veterans, individuals who have made significant sacrifices and to whom the Nation has committed to giving preference in Federal hiring, have not received promised benefits. Further, based on the significant influx of complaints we have received regarding Bonneville's hiring practices, there appears to be a significant loss of public trust in the organization.

The full impact of these matters will not be realized until Bonneville reconstructs each recruitment case as required by the Department and OPM. To put the magnitude of this task in context, it has been estimated that Bonneville will need to reconstruct at least 1,200 delegated examining and merit promotion hiring case files representing approximately 22,000 applicants. It should be noted that Bonneville's failure to promptly notify Human Capital about the results of its internal review substantially delayed the identification of the full scope of the inappropriate hiring practices and prevented timely corrective actions for the affected applicants.

Critically important human resources activities at Bonneville and the Department have been significantly disrupted. In May 2013, after we began our inquiry, the certifications of HCM staff that performed delegated examining hiring were revoked by OPM due to the volume of varied and widespread errors identified during its review. Subsequent to OPM's revocation, Human Capital temporarily suspended Bonneville's overall delegated examining and merit promotion authorities. Human Capital noted that these actions were taken because its reviews identified consistently improper hiring practices resulting in inappropriate hires and violations of veterans' preference. The Department also found that there were major errors in the vast majority of files

² An individual who makes a disclosure of a violation of law, rule, or regulation to management, the Office of Inspector General, or members of Congress could be considered a whistleblower.

reviewed. In August 2013, OPM issued its final report, noting that it had identified serious systemic problems that resulted in many cases of erroneous disqualification of applicants and lost considerations for selection, affecting both veterans and non-veterans. In August 2013, the Department suspended all of Bonneville's remaining human resources authorities. Finally, the Department completed a management review of Bonneville on August 22, 2013, and identified concerns consistent with the findings outlined in our report.

The Department has initiated corrective actions to ensure disadvantaged applicants, including veterans, receive appropriate consideration as required and also to facilitate the restoration of Bonneville's staff certifications and hiring authorities. Corrective actions will be exceedingly costly. As of September 2013, the Department estimated it will cost about \$1.7 million through Fiscal Year 2014 for Department and contractor staff to reconstruct and/or review approximately 1,200 delegated examining and merit promotion cases. Additionally, in August 2013, Bonneville entered into an agreement with OPM to reconstruct 400 of those delegated examining and merit promotion case files at a cost of approximately \$925,000. Subsequent to the completion of its review, Bonneville will be required to complete a variety of remedial actions to provide relief to individuals impacted by its inappropriate practices. Bonneville will also incur costs of about \$180,000 to train its HCM staff for OPM recertification. In total, the immediate costs to quantify the extent of the problem and design corrective action, not including the actual costs needed to remedy the erroneous appointments and discriminatory practices, will likely exceed \$3 million – a cost that will have to be absorbed in large part by Bonneville's ratepayers.

While the Department's corrective actions taken as of the date of our report are noteworthy, more needs to be done to ensure that the actions are sustained. To address the issues identified in this report, we have made a number of recommendations intended to ensure affected veterans receive the preference to which they are entitled and that all applicants are fairly treated. Our recommendations should also assist the Department with ensuring that Bonneville administers and manages its Human Capital function in accordance with Federal regulations and Department policy, and that Bonneville employees feel free to raise issues of concern without fear of retaliation.

MANAGEMENT COMMENTS

In a September 20, 2013, memorandum, the Department expressed its concurrence with the facts presented, the conclusions reached and the recommendations provided in this report. The Department's corrective actions, taken and planned, were fully responsive to our findings and recommendations. In addition, we also received informal comments from Bonneville that were submitted through the Department. While Bonneville agreed with the recommendations, it did not concur with some of the findings presented in the report. Bonneville's concerns and our responses are addressed in the body of our report. The Department's comments are included as Appendix 3.

Attachment

cc: Deputy Secretary
General Counsel
Chief Human Capital Officer
Chief of Staff

SPECIAL INQUIRY: REVIEW OF ALLEGATIONS REGARDING PROHIBITED PERSONNEL PRACTICES AT THE BONNEVILLE POWER ADMINISTRATION

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REVIEW OF ALLEGATIONS REGARDING PROHIBITED PERSONNEL PRACTICES AT THE BONNEVILLE POWER ADMINISTRATION

BONNEVILLE'S HIRING PRACTICES

We concluded that Bonneville Power Administration's (Bonneville) hiring practices effectively disadvantaged veterans and other applicants. Bonneville's actions were inconsistent with concerted efforts by the Federal government to ensure that veterans received appropriate preferential treatment in the hiring process.

Federal Recruitment and Hiring Process

In response to the President's Memorandum, *Improving the Federal Recruitment and Hiring Process*, and as outlined in the Office of Personnel Management's (OPM) *Delegated Examining Operations Handbook* (Handbook), the Department of Energy (Department), including Bonneville, was required to implement category rating when evaluating job applicant skills and abilities. Both Bonneville and the Department began the category rating method of ranking applicants in November 2010.

Under category rating, applicants who meet basic minimum qualification requirements for the position and whose job-related competencies have been assessed are ranked and placed in one of two or more predefined quality categories, such as "best qualified" and "well qualified." Veterans' preference, however, is absolute within each quality category. Rating categories are extremely important in that all veterans who qualify for a particular category are priority listed and immediately rise to the top of that category. Names of all eligible candidates in the highest quality category are then referred to selecting officials on a "Certificate of Eligibles" for consideration. Absent some significant disqualifying factor, selecting officials may only choose from the veterans when they are included in the "best qualified" category. Failure to follow these requirements can result in an erroneous certification.

As noted in the Handbook, cases of knowing or intentional manipulation of the examining system are referred to the Office of Special Counsel for remedy, consistent with Merit Systems Protection Board (MSPB) case law and precedent. In the event that a preference eligible veteran was denied the right to compete for a particular position, the MSPB has interpreted applicable Federal law to require the agency to reconstruct the selection process in order to afford the preference eligible his or her lawful right to compete for that position. The preference eligible veteran must be restored to the same position that he or she would have been in, had the agency's violation of the statute not occurred. In reconstructing the vacancy announcement, the agency must comply with the requirements of competitive service certification. Once the agency has completely reconstructed the selection process, it must determine whether the selectee is entitled to continue in his or her appointment to the position. The selectee must be removed from the position if his or her appointment is in contravention of the requirements of Federal law. Therefore, for each violation, an agency must reconstruct the selection process and determine whether the preference eligible is entitled to priority placement because he or she would have been the successful candidate but for the prohibited violation of Federal law.

Manipulation of the Category Rating Process

Bonneville consistently manipulated the applicant rating process, actions that resulted in "best qualified" veterans and other applicants not being considered for selection. To illustrate, prior to announcing a vacant position and soliciting applications, Bonneville determined that all applicants who scored between 91 and 100 would be rated as "best qualified" and referred to selecting officials for consideration. To preserve the integrity of the process and as specified in OPM and Department category rating guidance, ranking categories may not be changed after the announcement is issued (emphasis added). We found, however, that after ranking applicants, Bonneville often revised the score ranges for the "best qualified" category. For example, once the score range was adjusted, from 91-100 to 95-100, all veterans and other candidates who scored between 91 and 94 were excluded from the "best qualified" category and were not referred to the hiring official for consideration.

We noted that separate, preliminary reviews by Bonneville and the Department identified over 30 veterans who lost employment consideration because of Bonneville's inappropriate manipulation of the category rating process. Changes to the scoring schemes also resulted in at least 20 erroneous appointments.¹ A final determination, which will require a reconstruction of all relevant case files, has yet to be made. Nonetheless, information provided by Bonneville revealed that these prohibited practices occurred in at least 117 of 240 cases (49 percent) of recruitments conducted from November 2010 to May 2012.

Bonneville used the inappropriate method of adjusting the "best qualified" category for 18 months after the category rating process became mandatory in November 2010. In May 2012, a newly hired Human Capital Management (HCM) staff member with prior Federal experience questioned the category rating practice used by another employee and both of those individuals approached the HCM policy group for guidance. The policy group subsequently determined the category rating practice may have been incorrect and said that it promptly stopped all in-progress hiring cases.

Results of Internal Reviews

In June 2012, Bonneville conducted an internal review of its competitive hiring cases between November 2010 and May 2012 and identified 13 erroneous appointments, 34 instances of lost employment consideration, and 165 instances of lost certification.² Bonneville HCM initially identified 146 delegated examining unit cases that it determined were most likely impacted by the practice of changing the best qualified category. Bonneville then determined that it would only examine those cases in which a selection was made and the category was modified, which resulted in its review of 46 cases. Bonneville told us it did not examine the remaining 100 cases because it discovered that: (1) no hiring action took place; (2) the category was not adjusted; or

¹ An erroneous appointment is an appointment without a proper authority or legal bases. For example, a non-veteran is erroneously appointed because a veteran was incorrectly left off the selection certificate.

² The 165 instances of lost certification included 11 veterans who lost certification and could be entitled to priority consideration and 154 non-veterans that involved ensuring proper documentation of the case file.

(3) changing the category had not impacted any candidates. Further, in July 2012, Bonneville commissioned a review using a third-party contractor. The contractor reexamined Bonneville's results and confirmed the 13 erroneous appointments.

In addition, in a separate review of 20 cases conducted by the Department's Office of Chief Human Capital Officer (Human Capital) which began in August 2012, officials arrived at a different number of violations. Specifically, Human Capital staff reviews resulted in the identification of 11 erroneous appointments and 35 veteran job applicants that lost employment consideration. Human Capital expressed concern over Bonneville's consistent misuse of category rating, especially pertaining to the application of veterans' preference. In an April 2013 memorandum to Bonneville, the Department outlined required corrective actions that included reconstructing 17 of the 20 case files reviewed in which Human Capital identified a violation.

Data Integrity and Completeness Issues

Our ability to determine the full scope of the issue with disenfranchising veterans was complicated by data integrity issues. Specifically, we identified inconsistencies between the various data sets provided to support Bonneville's internal review. This led us to question the reliability of the data and the results. In addition, we identified about 32 cases from the delegated examining hiring log maintained by Bonneville that were never considered in the internal review. We also found instances in which Bonneville noted its human resources system contained inaccurate data versus what was represented in the hard copy vacancy announcement case files. A Bonneville official who provided the information confirmed that the data contained inaccuracies. Thus, there is little assurance that Bonneville performed a sufficient review because not all delegated examining cases were identified for the time period reviewed. These data deficiencies also impacted our ability to determine, with absolute certainty, the number of affected cases and the magnitude of the inappropriate use of category rating.

In addition, Human Capital noted incomplete case files as part of its internal review of the 20 case files. In fact, we determined through an examination of e-mail traffic that Bonneville, with the advice of its third-party contractor, deliberately excluded certain case file documents even though Human Capital requested complete case files. An HCM manager stated that this was done at the direction of a more senior HCM manager. Human Capital officials noted that Bonneville's provision of missing key documents, such as applications, would have allowed them to better assess case files.

Failure to Report Erroneous Hires and Take Corrective Action

Bonneville failed to fully disclose to the Department the magnitude of the discriminatory practices resulting from the manipulation of the category rating process. Also, Bonneville failed to notify the affected applicants or initiate corrective actions required to remedy the prohibited practices. We found that Bonneville engaged in an active, months-long campaign to effectively avoid reporting the impact of the category rating problems, thereby delaying needed remedial actions.

Bonneville is subject to laws and regulations governing Federal employees, including Title 5, United States Code and regulations promulgated by OPM. The Department has historically delegated broad authority for Human Capital functions to Bonneville, including approval of personnel actions at all GS levels (or equivalent positions). The August 2009 delegation from the Department to the Bonneville Administrator states that the delegate shall be governed by the rules and regulations of the Department. Of particular relevance to the issues we discovered, the Handbook states, "The examining office must consult with their headquarters in the resolution of the erroneous action." This Handbook also states that, "If an erroneous certification is discovered and an eligible [veteran] is affected, you should notify the eligible [veteran] immediately, particularly if the error was due to a legal violation."

On August 20, 2012, a letter that was intended to disclose the results of the Bonneville internal review was coordinated through the Bonneville Office of General Counsel. This draft was addressed to the Department's Human Capital Policy Division and provided a complete picture of the results of Bonneville's internal review and indicated that Bonneville was seeking Department agreement on the proposed remedies for the impacted applicants. According to an e-mail to the Bonneville Office of General Counsel, this letter was to be sent along with case files requested by Human Capital on August 8, 2012. However, the August 21, 2012 letter from Bonneville to the Department's Human Capital Policy Division transmitting the requested case files failed to disclose the results of Bonneville's internal review. In the August 21, 2012 letter, an HCM senior manager wrote:

BPA identified through its own audits and reviews a practice associated with category rating that may have been inconsistent with stated policy and its appropriate application. We made immediate changes to the practice and began a review of all potentially affected case files. We subjected these files to a third-party review as well. I am completing a report of our findings and will be following up with the Department as appropriate next week.

Contrary to the statement that a report of the findings from Bonneville's review of all potentially affected cases would be submitted to the Department, we found no evidence that the referenced report was ever provided. We were informed that the intended report was an August 2012 report generated by the third-party reviewer that confirmed the erroneous appointments and lost considerations, among other issues. It was troubling to discover that a second report was generated by the same third-party reviewer in September 2012, which completely changed the reviewer's original position that erroneous appointments had taken place. In the new report, the third-party reviewer concluded that the practice associated with category rating was not explicitly prohibited and that there was no pattern of adverse impact to veterans. After reviewing the second report, a Bonneville attorney sent an e-mail to an HCM manager expressing concern about the dramatic change with regard to impacted veterans, noting that the new report was based on a "flagrant misstatement of law."

Subsequently, the draft letter was revised and ultimately excluded all references to the number of erroneous hires identified by Bonneville during its internal review. In October 2012, an HCM official edited the draft letter, stating, "After reviewing 160 case files, we have identified no situation where we believe a corrective action is required." In this same draft, Bonneville

concluded that "While we believe that the policy and practice in place during the first 20 months of category rating did not violate any OPM regulations, we did conclude that our policy documentation and application must be improved."

In January 2013, the letter was finalized and sent to the Chief Human Capital Officer, stating that Bonneville "became aware in May 2012 of potential issues with the way we were implementing category rating" and that "we revised our practices and undertook our own review." However, the letter was silent on the results of that review. The memo stated that Bonneville operated from the perspective that the practice was compliant and appropriate, as long as the method was documented. Despite specific legal advice to the contrary, Bonneville indicated that "We are aware of no regulation or guidance specifically prohibiting the practice." We were told by an HCM official that the results of the internal review were not disclosed to the Department until May 2013, nearly a year after the erroneous appointments, lost employment consideration, and lost certification were discovered. The same official told us that, as of May 2013, Bonneville had not notified the affected applicants.

The evolution of the communication to the Department concerning the magnitude and seriousness of the recruitment problems at Bonneville was extraordinary. In our judgement, it reflected an intentional, willful effort to avoid taking responsibility for what had occurred at Bonneville.

A Bonneville executive contended that an attempt to provide the results of Bonneville's internal review occurred in November 2012. The executive stated that she had initiated contact with Human Capital to advise it of the results of Bonneville's internal review. She asserted in an interview with us that she was told by a Human Capital official to keep the results because the Department would be completing its own review soon. The Human Capital official told us that she recalled the conversation, but believed she may have misinterpreted what the Bonneville executive was attempting to provide. Regardless of whether or not there was any misunderstanding, there is reason to believe that the Bonneville executive was not prepared to fully disclose the magnitude of the problems, the number of erroneous appointments, lost employment consideration, and lost certification. Specifically, the memo provided to the executive for her discussion with Human Capital indicated that the third-party reviewer had concluded that the "best qualified" category under the Bonneville category rating policy appropriately defined candidates and conformed with OPM regulations and merit system principles. Most telling was that the memo also incorrectly asserted that the flawed category rating practice did not have an "adverse impact pattern" regarding veterans. This was totally inconsistent with the stated facts in these cases.

Restrictive Selection Criteria

In addition to the serious problems in its category rating process, we discovered that Bonneville disadvantaged at least one veteran by closing a delegated examining announcement and re-announcing the position in such a way as to exclude the veteran from consideration. Specifically, rather than hire a veteran for a senior position, Bonneville closed the vacancy announcement and then re-announced the position with additional, restrictive qualification

criteria which it knew or had reason to know the veteran could not meet. The selecting official told us a candidate had been identified for hire, but in May 2012, was advised that a veteran had to be added to the best qualified list because an error had been made in the case.

After interviewing the veteran, the selecting official determined that he "lacked strategic vision." The selecting official was informed by an HCM staff member, however, that bypassing the veteran was not an option because the reasons the official articulated for not hiring the veteran were not sufficient to justify granting a waiver of the applicant's veterans' preference. The selecting official told us that because the desired candidate could not be reached, the vacancy was closed. The selecting official rationalized his decision to proceed in this manner by noting that the situation turned out for the best because it would have been unfair to hire the veteran, assess his performance, and then potentially remove him during his probationary period.

To ensure the vacancy could be re-announced, Bonneville declared the candidate pool inadequate despite having previously identified someone to hire. The selecting official permitted the vacancy announcement to be closed and reopened despite an HCM staff member's concerns regarding closing the announcement without legitimate reasons for not hiring the veteran. We were told that this action was also based on advice provided by a Bonneville staff attorney to an HCM official that described how to modify the announcement so that the veteran would be unlikely to qualify. The attorney provided advice on the risks associated with proceeding in that manner. Rather than providing general advice regarding the propriety of closing announcements and reopening them with more restrictive selection criteria, the guidance appeared to target the particular veteran that the selecting official considered bypassing. The attorney also noted that the veteran may not reapply once the position was re-announced, but even if the veteran did reapply, it would have been difficult for the veteran to prevail under the new criteria. Bonneville subsequently executed the plan, and, as predicted, the veteran did not qualify.

It should be noted that the use of restrictive qualification criteria at Bonneville may be a problem that is more extensive than this one case. Both Department and OPM reviews found that Bonneville's misuse of overly restrictive qualifications improperly eliminated qualified applicants from job consideration. The Department's review identified numerous cases in which the specialized experience statements used to determine applicants' basic qualifications were overly restrictive, were not distinguishable between grade levels, and were not supportable based on the duties/knowledge required by the position. OPM found that some factors used by Bonneville required specific knowledge or skill that could only be gained by having work experience at Bonneville, which is inappropriate when advertising vacancies outside of the organization. OPM's report also indicated that this practice gave the perception that Bonneville inappropriately targeted recruitment to certain individuals.

Termination of Veterans During Probationary Period

It was also alleged that veteran employees were terminated at a greater rate than non-veterans during their 12-month probationary employment period. Due to data integrity issues, we were unable to conduct a sufficient analysis to draw reasonable conclusions on this issue. Human Capital officials told us that they will look into this matter using data they will attempt to retrieve from Bonneville's systems.

CONTRIBUTING FACTORS

We determined that the management culture at Bonneville contributed to an environment in which the inappropriate personnel practices could occur. Notably, we observed that Bonneville officials spent considerable effort distancing the organization from Department oversight. For example, although Bonneville was required to comply with Department directives related to delegated human resources authorities, we found that Bonneville management officials considered such policies to be unnecessary administrative burdens. Consistent with that stance, at the time of our review, Bonneville was strongly resisting compliance with Department Orders relating to workforce discipline and human capital management accountability. Our review of e-mails and interviews with Bonneville management officials suggests that deflecting and/or resisting Departmental oversight was ingrained in many aspects of Bonneville's human resources operation, and had been for many years. Compounding problems associated with the general environment and cultural issues, our inquiry revealed that Bonneville exercised inadequate oversight and accountability of HCM activities.

In addition, there were fairly obvious warning signals and other indications that Bonneville may have required enhanced monitoring of its hiring activities. Yet, we found that the Department had not adequately responded prior to receipt of the allegation in June 2012.

General Environment

Bonneville officials spent considerable effort to distance the organization from Departmental oversight. Bonneville asserted a need to maintain flexibility to operate its business free of unnecessary administrative burdens to remain competitive, including exemption from Department human resources policies. Our review of e-mails disclosed a considerable number of whitepapers, analyses, and discussions surrounding Bonneville's position that historical legislation and authorities allowed it to function independently, "unshackled" from the Department, especially when it came to its human resources function. Bonneville believed the onus was on the Department to provide a sound business case for Bonneville's inclusion in Department human resources policy. In response to draft Department Order 333.1, *Administering Workplace Discipline*, Bonneville objected to being included under the Order and stated that its mission requirements and statutory obligations to operate in a business-like manner justified Bonneville establishing its own policies and procedures. In fact, Bonneville noted that it had effectively developed, implemented, and enforced its own workforce management and disciplinary program consistent with the spirit of the draft Order. Based on a discussion with a Bonneville executive, it was clear Bonneville wanted flexibility in administering disciplinary actions.

Similarly, in response to its inclusion in draft Department Order 328.1A, *Human Capital Management Accountability Program*, a Bonneville talking points paper notes that the draft, as written, is insensitive to Bonneville's delegated and statutory authorities and its requirement to operate with independence and flexibility. While Bonneville acknowledged that it participates in the required Department audits, Bonneville also indicated that it continues to need the authority and flexibility to define and implement a human resources function that will drive the outcomes necessary to achieve its mission. In providing advice to an HCM official regarding various

versions of general draft language to be used in response to proposed human resources directives, a Bonneville attorney stated that any of the options presented would be successful because Human Capital "does not have much clout."

In preparation for a meeting between Bonneville and the Department, a Bonneville HCM management official advised an executive in an e-mail dated February 2011, to avoid any discussions involving new human resources policies or Bonneville's own policies, specifically stating that "you know that we try to keep our distance from [the Department] on many fronts." It was also stated that:

We do not take existing [Department] HR policy as guiding. We do not ask for any [Department] review of our implementing policies. And we consciously ignore some of their policy guidance when they try to sweep us under their purview.

Bonneville's persistent position that other authorities allow it to be exempt from Human Capital oversight prompted a senior Human Capital official to request an analysis of legal authorities related to Bonneville from the Department's Office of the General Counsel in May 2013. The Office of the General Counsel concluded that Bonneville is an entity within the Department and as such, the Bonneville Administrator's authority with regard to personnel actions is derived from the Secretary of Energy's authority. A Department Delegation Order delegated from the Secretary of Energy to the Chief Human Capital Officer the authority over all personnel and employment related matters for the Department. The Chief Human Capital Officer is authorized to redelegate this authority. The Chief Human Capital Officer's delegate, the Director of Human Capital Management, further delegated to the Bonneville Administrator the authority to approve and administer certain personnel actions.

Opposition to Reporting

We concluded that problems with management culture were at the heart of the failure to make appropriate and required notifications and to take actions to address the large volume of hiring errors that occurred in the 18 months preceding their discovery. Specifically, Bonneville believed that it was separate and distinct from the Department. In an April 4, 2013, e-mail relating to the "BPA Hiring Memo" addressed to a senior executive at Bonneville, another Bonneville executive stated that:

We did not notify DOE upon determining there may have been some question in how we were applying the Best Qualified determination. There is not a practice for Bonneville, and more specifically Bonneville's HCM to notify DOE HC [Human Capital] or in general any other DOE department of issues unless something appears to be beyond our capacity to address the issue or we are actually seeking guidance. We were able to address the issue through and (sic) investigation, ceasing what we were doing and then retraining. This is and has been the normal practice and has been based upon Bonneville operating in a businesslike manner and generally being separate and distinct from the Department.

The executive noted that at the time this e-mail was crafted, she did not believe the issue or the results had been communicated to the Department. Subsequently, the executive determined that she, in fact, had initiated a dialogue with the Chief Human Capital Officer in July 2012. The communication was primarily to acknowledge that an issue had been identified and that Bonneville was working on it. We noted, however, this communication failed to disclose the basic elements and scope of the problem as self-identified by Bonneville during its internal review in the summer of 2012. Thus, the conversation completely understated the seriousness and implications of the problems at Bonneville.

Our review disclosed that there was an internal disagreement at Bonneville between August of 2012 and April of 2013. Bonneville officials told us that, even though they had suspended the practice of adjusting the score range for the "best qualified" category, there was internal disagreement about whether they had actually done anything wrong. We were told by an HCM official that the concept of not disclosing the results of Bonneville's internal review took precedence, and that a decision was made to wait and see what direction would be forthcoming from the Department's review of category rating that began in August 2012.

Bonneville's Oversight and Accountability

We found that Bonneville failed to exercise adequate management of its personnel recruitment functions. Specifically, Bonneville:

- Failed to ensure that there was sufficient Federal human resources experience within the ranks of HCM management;
- Did not adequately maintain or track HCM personnel training information and, as a result, was unable to identify skill gaps;
- Relied on informal, undocumented practices to govern its category rating process; and
- Did not ensure that the quarterly audit process, a control designed to detect or prevent prohibited practices, was properly implemented.

Lack of Federal Human Resources Experience

Bonneville filled its ranks of HCM management with individuals who lacked Federal human resources experience. Several key events that span over almost a decade contributed to the current state of Bonneville's HCM. Specifically, an overhaul of Bonneville's HCM started in 2004, when Bonneville began an initiative with the key objective of effective cost management through systems and processes. As part of this initiative, Bonneville developed a new Human Resources service delivery model that would align human resources policies with Bonneville's business strategy and objectives. This began a transition where human resources was seen as a customer service-oriented function rather than a compliance-oriented organization.

Bonneville devised a "hiring pilot program" that it used to fill most of the key HCM management positions with individuals who had extensive private industry experience, but little or no Federal

experience. The hiring pilot came under internal and external scrutiny, including Bonneville's own internal review function, which concluded that certain aspects of the hiring pilot were not in conformance with laws and regulations. The Department also noted in its 2010 Human Capital Management Accountability Program (Accountability Program) audit that the hiring pilot was not in conformance with Hiring Reform policies because it did not properly consider veterans' preference and should be immediately ceased. However, we determined that even after this notification, Bonneville continued to use the hiring pilot to fill its leadership positions.

Recruiting individuals with no Federal human resources experience to fill these key positions appears to have been by design. In a 2009 *Change Management and Communication Plan* for the reorganization of Bonneville's HCM, one strategy was to develop effective HCM managers and employees and it was noted that the "new HCM leadership team will have a significant number of new managers, new to [Bonneville] and new to the Federal government." Although Bonneville executives acknowledged they were aware HCM management had minimal Federal human resources experience due to the removal or departure of most legacy personnel, at the time, there was no intervention by those executives. Because most key HCM managers had little or no Federal human resource experience, they were unable to provide adequate technical oversight and guidance to their staff related to Federal human resources and more specifically, the implementation of category rating that had not previously been used by Bonneville. A Bonneville official said that, in hindsight, Bonneville could have done a better job managing the change to its human resources business model and that the pendulum had swung too far in trying to change human resources to a service-oriented organization. We concluded that achieving a better balance between service and compliance might have prevented the problems that Bonneville must now address.

Training and Proficiency

Bonneville could not demonstrate that HCM staff were adequately trained to ensure full compliance with Federal hiring practices, including category rating. Specifically, HCM was unable to provide training records documenting that HCM staff were adequately trained on category rating practices. Per the Handbook, all employees involved in delegated examining activities are to receive initial training from OPM. Individuals who successfully complete this initial training are certified to perform delegated examining work and must re-certify every 3 years. The Handbook also recommends that staff identified for delegated examining work should have one or more of the following to be proficient:

- Prior work experience in either Federal competitive staffing or internal merit promotion operations;
- Classroom training providing a knowledge of basic Federal staffing policies, procedures, methods, and techniques; and/or
- Knowledge of Federal personnel management procedures, including applying and following merit system principles.

While HCM management asserted its staff had conducted and attended in-house and external category rating related training, it was unable to provide rosters or training certificates for the training sessions. Further, during our inquiry we reviewed training records for HCM staff that processed category rating cases and determined HCM management either had not or could not determine skill levels of its staff because training information was not maintained or tracked. The problem we encountered was not purely theoretical or simply a matter of lost documentation. In fact, Human Capital, OPM and Bonneville itself identified a lack of training in numerous areas of Federal hiring as a root cause in the misapplication of category rating and other infractions.

Informal and Undocumented Practices

Bonneville relied on informal, undocumented practices to govern the category rating process implemented by the staff with the knowledge and concurrence of HCM management. The Bonneville category rating Standard Operating Procedure was modified by a practice that established the best qualified score range as 91 to 100, even though its Standard Operating Procedure indicated a range of 90 to 100. In addition, to provide a reasonable number of candidates to the selecting official, HCM staff were permitted to change category score ranges after candidates had already received an initial rating and ranking. However, none of these practices were memorialized in Bonneville human resources policy.

We were told that Bonneville's practice of changing the score range for the best qualified category began with the desire to "avoid sending an excessive number of candidates to the selecting official." HCM staff told us that based on prior experience with hiring officials using other types of hiring authorities, they informally identified the range of 5 to 10 applicants as the ideal candidate pool. HCM staff told us, however, they did not receive pressure from hiring officials to reduce the number of candidates, but made those decisions individually on a case-by-case basis.

In preparing the training and Standard Operating Procedure for Bonneville's category rating process, Bonneville HCM management officials relied primarily on a staff member who they believed had extensive knowledge of Federal hiring practices. While the individual had been previously employed with OPM for less than 3 years, he told us he never represented himself as a subject matter expert in category rating. He did acknowledge, however, that he had provided advice to HCM staff that actions to redefine rating categories and set up natural break points for referring candidates were permissible. The individual told us that he had been regularly discouraged by HCM management from seeking external guidance from the Department on policy issues. Thus, there was no attempt to validate the accuracy of the Standard Operating Procedure on category rating or the employee's inappropriate and incorrect advice to staff members. Bonneville's reluctance to seek external expert assistance when implementing a new hiring process reflected a level of hubris that appears to be the underlying cause of the current crisis.

While we considered the actions by the HCM staff to be intentional, we did not detect that these actions were malicious. Bonneville officials told us they believed they were acting in good faith when they adjusted the category rating and did so only for expediency to reduce the candidate

pool to manageable levels. In our view, such an explanation defied logic for cases in which veterans were involved. In those cases, veterans should have been at the top of the best qualified category in each instance. As such, the pool of applicants would have been effectively limited to those with preference. In effect, this would have achieved precisely the goal that Bonneville officials claimed they desired. The only difference is that it would have been entirely consistent with relevant Federal hiring policies.

Insufficient Implementation of Quarterly Audit Process

Bonneville did not ensure category rating was adequately assessed in its quarterly audit process, actions which resulted in the inappropriate practice going undetected. Per Department Order 328.1, *Human Capital Management Accountability Program*, Department Human Resources offices are required to conduct quarterly reviews of personnel actions to ensure that processing practices are consistent with merit system principles, statutory and regulatory requirements, and Department policies. We were told that the contract auditor who performed the quarterly reviews had not been notified by HCM that category rating was mandated by hiring reform until the third quarter of Fiscal Year (FY) 2012, 18 months after the effective date of the requirement to use category rating. Category rating was then factored into the quarterly audit process in the same quarter and the contract auditor was asked to go back and audit previous quarters while Bonneville was conducting its own internal review of the impact of the misapplication of category rating. The contract auditor's conclusions regarding erroneous hires and lost considerations were consistent with Bonneville's internal review.

While the quarterly audit process did not identify the inappropriate use of category rating, the audits conducted in FY 2011 and FY 2012 identified numerous infractions in other areas that should have raised concern about the overall effectiveness of Bonneville's human resources processes. Some infractions were categorized as minor, such as case file documents not completed or signed. Other infractions were clearly major, to include veterans' preference violations or lost considerations. In addition, the error rate for cases reviewed was exceptionally high, reaching 100 percent for all delegated examining case files in one quarter of FY 2012. Of particular concern, HCM management did not always ensure identified infractions were corrected. For example, in January 2013, in preparation for the Accountability Program audit, HCM was still in the process of correcting infractions that had been identified since the last audit in 2010. Especially concerning, HCM identified two quarters, one from FY 2011 and another from FY 2012, where all of the infractions identified had yet to be corrected. Several HCM staff noted there was resistance from HCM management to correct infractions as they were identified and to communicate the results of the audits to the staff so they could correct the errors and learn not to make similar mistakes in the future.

The lax attitude toward the internal audits and correcting problems identified as part of this process was telling, raising serious questions regarding Bonneville's efforts to manage and execute a personnel operation that met Federal and Department requirements.

Departmental Oversight of Bonneville's Hiring Activities

We observed what we considered to be obvious early warning signals and other indications that enhanced monitoring of Bonneville's hiring activities was warranted. However, we found that

the Department had not adequately responded to these indicators. Department Order 328.1 establishes requirements, roles and responsibilities for human resources programs and personnel to ensure that human capital activities are compliant with Federal laws, regulations, and Department policies. This directive required Human Capital to review hiring activities at Bonneville and, if necessary, ensure that action was taken to resolve deficiencies.

Human Capital Management Accountability Program Audits

We noted that Human Capital failed to ensure that Bonneville implemented required corrective actions identified during its 2010 Accountability Program audit. The Department is required to conduct an audit of human resources programs and services for each Human Resources office within the Department every 3 years. Human Capital's 2010 Accountability Program audit resulted in 28 required actions. Required actions are designed to remedy regulatory or Departmental violations and any pattern in organizational behavior that could pose a regulatory or programmatic hiring issue in the future.

However, the Department had not adequately followed up on required actions identified during the 2010 Accountability Program audit at Bonneville. The 2010 audit identified systemic control weaknesses with Bonneville's hiring actions and policies and procedures. After the issuance of the audit report, Bonneville provided the required corrective action plan within 90 days to the Department. In October 2011, the Department responded with concerns related to eight of the proposed actions and stated that Bonneville must comply with all required actions, and that failure to comply would result in loss of its hiring authorities. Department officials acknowledged that they failed to follow up to ensure that the corrective actions were implemented. According to its March 2012 Accountability Program Guide, the Department must track and monitor the status of corrective actions resulting from Accountability Program audits.

An HCM staff member told us that a report was sent to the Department in October 2012, stating that all corrective actions had been taken. However, in January 2013, Bonneville's internal audit function conducted a review of the 28 required actions and concluded that 8 had not been adequately implemented. The internal audit report also stated that it "appears" the remaining required actions had been implemented. In related documentation, the auditor noted difficulty in obtaining reliable information from HCM, asserting that this was a limitation in making concrete conclusions. In spite of the assertions by Bonneville's internal audit, it turns out that the findings identified in the 2010 Accountability Program audit were systemic in nature, evidenced by the fact that the 2013 audit found that many of the issues still existed.

Further, we found it noteworthy that the Department had not compelled Bonneville to conduct and submit reports of its required quarterly self-audits. As previously noted, these audits were intended to ensure that processing practices were consistent with merit system principles and Department policies. Had these audits been submitted as required, the high rate of errors in the quarterly audits we reviewed may have prompted the Department to monitor Bonneville's hiring activities more closely.

Human Capital officials stated that due to limited resources it was difficult to perform proper follow up of audit findings. These officials told us that they conduct about five audits per year,

making it very challenging to keep up with just the audits and resultant reports. In discussions with Department officials, even though the 2010 Accountability Program audit identified some significant issues, at the time, there was no consideration of suspending Bonneville's hiring authorities. By not following up on the corrective actions and not ensuring quarterly audits were submitted as required, the Department missed an opportunity to detect or prevent the significant issues that have surfaced at Bonneville.

Hiring Information System

For reasons that were not clear, Bonneville was not required to use the Department's hiring information system. Instead, Bonneville created its own hiring system even though the Department's system was available at a substantially reduced cost. In fact, Bonneville executed a contract to create a new system rather than using the system that all of the Department's other 17 human resources offices were using. In addition to the significant financial impact on Bonneville's ratepayers, Bonneville's refusal to use the commonly available system impeded the Department's oversight and monitoring. As such, the Department had to rely on manual methods involving Bonneville shipping hardcopy case files to Human Capital for review. Direct access to electronic case files may have allowed the Department to detect or prevent the category rating problems at Bonneville.

As part of the hiring reform, OPM required agencies to implement an electronic hiring system. In 2011, the Department presented its system's capabilities to Bonneville and outlined a business case for its use. The business case noted minimal transition costs compared to the higher cost of purchasing a new and separate system because the Department already absorbs the cost of the system for all of its other human resources offices. Without Department intervention, Bonneville procured its own system in 2012, at a cost of \$5.2 million for a 3-year period with five 1-year options for a total of \$16 million. In addition, Bonneville hired a consultant for \$230,000 to identify the vendors that would best meet Bonneville's needs. Bonneville even solicited the Department's contractor for bid, not as part of the Department's system, but as a stand-alone system. While the cost to include Bonneville in the Department's system was not formally documented, Human Capital officials told us that the Department's total annual cost for its hiring system is approximately \$460,000, which covers all the other 17 human resources offices in the Department. Hiring actions processed by these offices combined are double that of Bonneville.

The Department and Bonneville identified technical and compliance issues with Bonneville's hiring system. Bonneville's own internal audit group concluded that the system fell short of ensuring Federal rules for veterans' preference were followed. Specifically, the system did not apply proper treatment to a disabled veteran to ensure appropriate consideration; a manual workaround was required. Human Capital noted in its 2013 Accountability Program audit that a review of the system processes identified several significant erroneous procedures that must be corrected to prevent continued systemic violations of merit system principles and other regulatory requirements. For example, the system and Bonneville's policy allowed hiring managers to access applications prior to candidates being rated by HCM staff, a practice that we were told by Human Capital officials violated OPM regulations.

Bonneville consistently asserted that it should be exempt from aspects of Human Capital's policies because it would be cost prohibitive or administratively burdensome. Bonneville's decision to procure its own hiring system appeared entirely inconsistent with that assertion. Finally, by allowing Bonneville to procure its own system, the Department may have missed an opportunity to provide necessary oversight of Bonneville's hiring activities and ensure transparency. From a safeguards perspective, Bonneville's delay in implementing its system and the reliance on a manual hiring process raises concerns regarding the data quality and completeness of hiring case files due to the risk of human error. In the 2013 Accountability Program audit, the Department confirmed that errors were found in many of the case files reviewed as a result of the manual process.

Culture of Intimidation and Mistrust

Bonneville allowed what could only be described as a culture of intimidation and mistrust in its human resources operation. During our inquiry, we identified numerous indications from current and former Bonneville employees that mistrust and fear of retaliation prevailed in the HCM operation. HCM employees indicated that they were compelled to take certain actions that they did not agree with out of fear of retribution or retaliation. An HCM manager told us that, in assembling Bonneville hiring files requested by Human Capital, he was told to only include selective documentation. When he voiced his concern, he was overruled by a senior HCM manager. When we asked why he did not press his case, he said that such action would have resulted in a poor performance review. He noted that HCM management used performance reviews as a tool to force conformance from staff.

The responsible senior HCM manager's immediate supervisor stated that she was aware that the manager was abrasive and that concerns regarding management style had been expressed to her. However, she stated that because of the manager's many years of Bonneville experience, she did not want to put the manager on a performance improvement plan, but instead sent the manager to leadership training. Consistent with our finding, Human Capital also noted in its 2013 Accountability Program report that observations and feedback from focus groups indicated an environment of mistrust.

Potential Retaliation

During our review, we became aware that a number of HCM staff members who either cooperated in our inquiry and/or who had previously raised personnel-related concerns with Bonneville's management and Department officials had been subjected to or had adverse personnel actions pending. These HCM staff members had been subject to, or proposed for adverse personnel actions including suspension, removal from Federal service, or placement on a Performance Improvement Plan (PIP), which could lead to an adverse personnel action. The most egregious examples of questionable activity we observed was Bonneville's efforts to remove both HCM staff members who initially questioned the category rating process from Federal service. We also noted Bonneville's disparate disciplinary actions against the HCM staff who manipulated the applicant rating process.

Because of the urgency of the matter, in July 2013, we issued a Management Alert, *Allegations Regarding Prohibited Personnel Practices at the Bonneville Power Administration* (DOE/IG-0891, July 2013). In that alert, we noted that we were deeply concerned about the chilling effect these adverse actions could have on our review. We recommended to the Department that: (1) all ongoing disciplinary actions of HCM staff should be suspended until our inquiry has been completed and the final results have been provided to the Department for full consideration; and (2) in the case of individuals removed or on administrative leave pending removal, those employees should be temporarily restored to their positions. In response to our report, the Department concurred with our conclusions and informed us that it had already taken action to suspend Bonneville's authority to take adverse action against any employee, to have Bonneville provide the Department with all information on any adverse action in process or under consideration, and to instruct Bonneville to have any HCM employee who was currently on administrative or any other leave type due to a proposed removal or suspension return to work immediately.

Adverse Actions Against HCM Employees

During our review, we discovered instances of disparate treatment that were particularly troubling. We learned that both HCM employees primarily responsible for bringing Bonneville's category rating issues to management's attention subsequently received notices of proposed removal from Federal service.

In October 2012, one of the disclosing individuals received a proposal for removal because the individual implemented the informal, undocumented procedure of manipulating the applicant rating process, potentially denying preference to a veteran. However, as a result of the employee's self-disclosure the HCM employee was able to take corrective action before a job offer was made, preventing an erroneous hire. We learned that in May 2012, the HCM employee developed concerns about one of the in-process case files and the application of the category rating process in that particular hiring action. On May 16, 2012, the HCM employee sent an e-mail request for guidance to HCM's policy group, which stated:

It has come to my attention that I may not be applying category rating correctly. Since it is very important to me to do this correctly, I am requesting your help...Is the process we use to identify the Best Qualified candidates properly applying Veterans' (sic) preference and assuring that non-Veterans are not losing consideration?

Based on this request, HCM's policy group conducted a review of this in-process case file, which included a written justification for raising the cut-off score for best qualified candidates above Bonneville's pre-designated score of 91. The policy group concluded that raising the cut-off score – which excluded a veteran candidate from the best qualified referral certificate – appeared to violate veterans' preference. The case was returned to the HCM employee, who was instructed to correct the case file, using the pre-designated cut-off score of 91. The staff member made the correction and a job offer and legal hire were subsequently made. Bonneville told us that it revised its category rating procedures on May 23, 2012, to prohibit changing the best qualified category during or after the candidate assessment process.

Approximately 4 months later, on September 28, 2012, HCM management verbally advised the employee that they would be removed from Federal service, based on poor judgment the employee demonstrated in the preliminary application of category rating in the subject hiring action. HCM management asserted that this was an isolated case because the employee adjusted the best qualified category which would have violated veterans' preference. On October 1, 2012, Bonneville presented the employee with a notice of proposed disciplinary action stating that the employee be removed from Federal service in order to promote the efficiency of the service. After the employee retained an attorney and filed an administrative grievance, the proposed adverse action was eventually reduced from removal to a 6-day suspension, and finally to a 2-day suspension. When we asked what consideration HCM management gave to the employee's status as a whistleblower, several HCM officials stated during interviews that they did not consider this employee to be a whistleblower. However, our review and analysis of e-mail traffic between Bonneville officials found evidence that the HCM employee's status as a whistleblower was discussed during at least one e-mail exchange.

In discussions with Bonneville officials, we determined that no other HCM employees were subjected to disciplinary or adverse personnel actions as a result of misapplying the category rating process, even though HCM's internal review identified five other HCM employees that applied category rating in a similar fashion, resulting in actual erroneous hires. This disparity in Bonneville's treatment of its HCM employees created the appearance of retaliation against the sanctioned employee.

Bonneville officials and legal counsel told us they were previously unaware of certain relevant information that the Office of Inspector General brought to their attention. This information consisted of an external review and report produced in August 2012 by an HCM contractor. This report identified a nearly identical instance in which category rating was misapplied by another experienced HCM employee, resulting in an actual erroneous certification, refuting the concept of an isolated incident. When asked why management had not considered this information, which was available more than a month before the disciplinary proposal was completed, Bonneville officials stated they had not read the details of the report. Additionally, our review revealed that the proposed letter of removal contained a number of factual inaccuracies. Of particular note, the letter stated that HCM management had identified the category rating issues in the employee's case file when, in fact, these issues were first self-identified by the HCM employee.

We also noted that the original removal letter stated that there were only three candidates on the initial best qualified list and that the veteran was the only candidate who would have been eliminated by moving the cutoff score upwards; this was presented as evidence of the employee's intent to disadvantage the veteran candidate. In fact, there were 10 candidates in total, 8 of whom would have been disadvantaged by raising the cut-off score. Bonneville's legal counsel subsequently issued an errata letter to correct this information. Regardless of whether these inaccuracies were accidental or not, Bonneville's management continued to rely on them as basis for removal of the HCM employee.

We also learned that another HCM employee who was instrumental in bringing the category rating issue to management's attention was notified in December 2012 that the employee's

performance review included a rating of unacceptable for the critical element "Behavioral Performance Expectations – Teamwork and Collaboration." Subsequently, the employee was placed on a PIP beginning in March 2013, and given 90 days to successfully complete the PIP. Anticipating the imminent receipt of a proposal for removal, the employee requested a meeting with a senior Bonneville executive to discuss these concerns.

We found that the senior Bonneville executive requested an executive on his staff to meet with the employee, even though the employee had expressed concern that this same executive had not adequately addressed outstanding issues on previous occasions. A meeting was held on July 2, 2013, between the employee and the executive, which the employee stated it was "a last ditch effort to stop the retaliation from escalating." The meeting was the employee's attempt to communicate to senior Bonneville executives that HCM management was not protecting the organization and that issues extended beyond category rating. The employee noted retaliation was discussed but not to the extent desired. The employee provided the executive with a talking points paper that provided more detail regarding the subjects discussed. After the meeting, the executive sent an e-mail on the same day to the employee stating that Bonneville does not tolerate retaliation and actions would be taken related to the employee's concerns, including having both an HCM official and a staff member in the Equal Employment Opportunity office obtain more specifics and review the facts.

On the same day, a different Bonneville manager, appointed to be the deciding official on the proposed removal, approached the executive that had interviewed the employee whose removal was proposed. The deciding official expressed concern about the justification for removal. This manager suggested that they consider going slower on this action because there were external factors to contemplate, including sensitivity to ongoing Office of Inspector General and Department reviews and the optics of removing a whistleblower. The executive acknowledged the concerns of the deciding official and referred him to Bonneville's Office of General Counsel. However, the next day, on July 3, 2013, Bonneville issued a letter to the employee proposing the individual's removal from Federal service because the employee had not satisfactorily completed her PIP. The request for authority to remove and place the employee on administrative leave was signed by an HCM manager, the same day he retired from Bonneville.

Both of the Bonneville senior executives told us that, despite their knowledge that the individual sought protection as a whistleblower, they believed the purported performance issues merited removal and therefore they took no action to intervene in the case. In contrast, we found that the removal action was based largely on behavioral issues, not performance, and that a number of the items cited as the basis for removal were clearly trivial, such the employee's refusal to nod in agreement during a staff meeting and then in another instance, being happy, smiling, and nodding during the OPM review outbriefing.

We determined that both of the HCM employees against whom action was taken were instrumental in facilitating Bonneville's recognition of its flawed category rating procedures. Without the employees' initiative in seeking clarification regarding these disputed procedures, HCM's inappropriate use of category rating may have continued for a much longer period of time, resulting in many more erroneous hires and lost employment considerations. We concluded that disciplinary action against the employees appeared to amount to retaliation.

Performance Management

We noted during our review that half of an HCM employee's performance assessment relates to behavioral elements. As noted previously, an HCM employee's proposal for removal was based solely on behavior and not technical competency. This highly subjective factor is used extensively by Bonneville in its performance management. An executive at Bonneville touted its performance management program and noted that the performance management process at Bonneville worked the way it was intended, as it relates to the actions described in this report. Human Capital's 2013 Accountability Program audit noted the manner in which Bonneville management has used "Behavioral Performance Expectations" as a basis for adverse actions against employees tends to stifle honest and open communication and feedback. In addition, the report stated the use of behavior as a critical element was not in accordance with 5 United States Code, Section 4302(b)(1). To its credit, the Department is requiring Bonneville to revise its employee performance management program to conform to the Department's program in which behavioral factors are used as contributing factors, rather than a critical element.

OPM and Department Actions

While the category rating process was an essential component of current problems, numerous other infractions related to personnel practices at Bonneville were identified by OPM and Human Capital. These discoveries culminated in OPM decertifying HCM staff and Human Capital suspending all human resources authorities.

OPM Actions

We noted that OPM conducted a review of Bonneville's hiring practices in April 2013. Furthermore, in an e-mail to Bonneville, dated May 23, 2013, OPM observed that:

The volume of varied and widespread errors leads us to conclude Bonneville Human Resources Specialists lack competencies in most fundamentals of Federal staffing. Based on the issues identified, we believe [Bonneville] is vulnerable to legal challenges, violations of merit system principles, and prohibited personnel practices. Without extensive training, and a plan for increased accountability and oversight of all Human Resources staff, continued operations will certainly lead to additional illegal appointments and violations of civil service laws and regulations.

OPM prescribed the training that staff would be required to take and stated that Bonneville must not permit the decertified individuals to perform delegated examining-related work without 100 percent review by a certified individual and until the extensive training is completed. Finally, on August 28, 2013, OPM issued the final report from its April 2013 review. OPM noted that it had identified serious systemic problems. Those problems included inconsistent and faulty qualification determinations and an inappropriate practice of routinely raising the cut-off score for the best qualified category after assessing and placing candidates into categories. This practice resulted in many cases of erroneous disqualification of applicants and lost considerations for selection, affecting both veterans and non-veterans. Competency gaps among HCM staff were the major contributing factor. OPM concluded that "[Bonneville's] staffing program does

not operate consistently with merit system principles, Federal laws and regulations, the Veterans' Preference Act of 1944, as amended, or with the President's Hiring Reform Initiative." As a result of the review, OPM required Bonneville to reconstruct all staffing actions in which selections occurred, since June 30, 2011, and issued required and recommended actions intended to correct deficiencies and improve staffing operations at Bonneville.

Department Actions

We further noted that, subsequent to OPM's decision to decertify staff, the Department temporarily suspended Bonneville's overall delegated examining authority. In a memorandum dated May 24, 2013, the Department found that "all the reviews revealed consistent improper hiring practices occurred, specifically in the application and adjudication of veterans' preference and misapplications of qualifications procedures. These practices have resulted in numerous inappropriate hires, violations of merit system principles, and violations of veterans' preference." Further, on June 21, 2013, the Department also temporarily suspended Bonneville's merit promotion authority.

On August 14, 2013, as a result of its Accountability Program audit findings, the Department temporarily suspended all human resources authorities, to include employee and labor relations, all personnel transactions, and performance management. The report identified a number of infractions and misuse of delegated human resources authority that resulted in numerous violations of merit system principles and veterans' preference as well as a blatant disregard of Department and OPM policy guidance. The transmittal memorandum further states that the extent of the issues reflects a broad lack of knowledge and understanding of the laws, regulations, and Department policies applicable to the proper management of a Federal workforce, not only by Bonneville HCM staff, but by Bonneville management as well.

As a result of the actions taken by OPM and the Department, Bonneville will be required to take a significant number of corrective steps to regain its authorities and re-certify its staff. Most notably, Bonneville will be required to reconstruct all delegated examining and merit promotion hiring cases between November 2010 and April 2013. The reconstruction of the delegated examining cases is to be performed by a third-party contractor. Also, Bonneville is required to create a corrective action plan for the 50 required actions and 19 recommendations identified by Human Capital's 2013 Accountability Program audit. The Department noted that, "The level of effort needed to complete all required corrective actions is monumental and the road to full recovery will be extremely challenging." Finally, in light of the concerns raised in our Management Alert, the Department completed a management review of Bonneville in August 2013. This review observed that there were, among other things, concerns with:

- Lack of a reporting relationship between the Bonneville Human Resources Director and the Department's Chief Human Capital Officer.
- Knowledge of Department-wide guidance designed to ensure compliance with and consistent interpretation of Federal law as it relates to the human resources process. The review confirmed our finding that HCM staff had been prohibited from communicating with Department Headquarters on any matter.

-
- Use of a different human resources information system impedes the Department's ability to communicate with Bonneville and to conduct reviews and audits to ensure compliance with Federal laws.
 - A lack of Federal human resource experience by senior HCM managers.

The management review recommended a series of corrective actions designed to address these and other management-related issues at Bonneville.

IMPACT AND PATH FORWARD

Bonneville's hiring practices have disadvantaged veterans and other job applicants, disrupted operations at Bonneville and the Department, and have necessitated a get-well effort that will be extremely costly and time consuming. Moreover, the trust and confidence in Bonneville, an entity serving the public since the 1930s, has been tarnished.

The full impact of Bonneville's hiring practices, which have disadvantaged veterans and other job applicants, will not be realized until Bonneville reconstructs each case as required by the Department. It has been estimated that Bonneville will need to reconstruct at least 1,200 delegated examining and merit promotion hiring case files representing approximately 22,000 applicants.

In total, the immediate costs to quantify the extent of the problem and design corrective action, not including the actual costs needed to remedy the erroneous appointments and discriminatory practices, will likely exceed \$3 million – a cost that will have to be absorbed in large part by Bonneville's ratepayers. As of September 2013, the Department estimated it will cost about \$1.7 million through FY 2014 for Department and contractor staff to reconstruct and/or review approximately 1,200 delegated examining and merit promotion cases. Additionally, in August 2013, Bonneville entered into an agreement with OPM to reconstruct 400 of those delegated examining and merit promotion case files at a cost of approximately \$925,000. Bonneville will also incur costs of about \$180,000 to train its HCM staff for OPM recertification. Subsequent to the completion of its review, Bonneville will be required to complete a variety of remedial actions to provide relief to individuals impacted by its inappropriate practices.

While the Department has taken a number of corrective actions to date, more needs to be done. To address the issues identified in this report, we made a number of recommendations intended to ensure affected veterans receive the preference to which they are entitled and that all applicants are fairly treated. Our recommendations should also assist the Department with ensuring that Bonneville administers and manages its human capital function in accordance with Federal regulations and Department policy. Sustaining these corrective actions over time will require the active interest of senior officials at Bonneville and at the Department.

RECOMMENDATIONS

We recommend that the Department:

1. Evaluate the actions of management and other officials at Bonneville and determine whether disciplinary or other administrative actions are appropriate.
2. Ensure that the full scope of the manipulation of the category rating process is identified, the total number of affected veterans and other applicants is determined, that affected applicants are notified and that appropriate remedial actions are taken.
3. Require Bonneville to develop a comprehensive corrective action plan in response to the 2013 Accountability Program Report and ensure that the Department's "Get Well Plan" for Bonneville is completed and implemented.
4. Ensure that Bonneville HCM is cognizant of its responsibility to immediately report erroneous hires and any inappropriate exclusion of veterans and other applicants from consideration for selection.
5. Direct Bonneville to ensure that all HCM staff identified for delegated examining work have one or more of the prerequisites discussed in the *Delegated Examining Operations Handbook* related to training and experience, that training is adequately documented, and that staff have needed Federal human resources experience.
6. Ensure that Bonneville develops a plan to exercise an appropriate level of oversight and accountability over all HCM activities, and that the quarterly audits are capable of ensuring that processing practices are consistent with merit system principles, statutory and regulatory requirements, and Department policies.
7. Establish a process to follow up on required actions identified during the Accountability Program audits at Bonneville.
8. Ensure that Bonneville maintains an environment where its personnel can raise issues with regard to Bonneville's practices free from any fear of retaliation.
9. Conduct periodic meetings with Bonneville executives to develop a collaborative relationship in which compliance with the laws and regulations governing the civil service is recognized as paramount to the mission of Bonneville and the Department's human capital functions.
10. Prior to allowing Bonneville to take personnel actions directed at HCM staff members who either cooperated in our inquiry and/or who had previously raised personnel-related concerns with Bonneville's management and Department officials, review any and all such actions to include suspensions, removals and proposed removals from Federal service, or placement on PIPs to ensure conformance with Department policies.

MANAGEMENT REACTION AND OIG RESPONSE

In a September 20, 2013, memorandum, the Department expressed its concurrence with the facts presented, the conclusions reached and the recommendations provided in this report. The Department's corrective actions, taken and planned, were fully responsive to our findings and recommendations. The Department's comments are provided in Appendix 3.

We also received informal comments from Bonneville that were submitted through the Department. Bonneville indicated support for the recommendations and stated that it deeply regretted the errors that had occurred, and was committed to fully and promptly rectifying those errors. However, Bonneville disagreed with certain findings and conclusions of the report. For instance, in reference to the finding related to restrictive selection criteria, Bonneville stated that the report erroneously implied that a veteran must be hired notwithstanding the hiring official's good-faith determination that the veteran was not qualified for the position. However, the fact pattern in this case indicates bypass of the veteran was considered, dismissed, and followed by targeted revision of the vacancy announcement so the veteran would no longer qualify. Further, Bonneville stated that its delegated authority from the Secretary allows it to evaluate Department directives, including those related to human resources, for applicability and, when deemed appropriate, exclusion. However, Bonneville's comments did not appear to take into account the fact that its personnel authority is delegated from the Director, Human Capital Management, and not from the Secretary. In accepting the delegation, Bonneville specifically acknowledges, and the Department's Office of the General Counsel has opined, it is bound by all the requirements of the delegation, without exception. We would also note that given the situation Bonneville currently finds itself in, its insular approach to human resources management has not served it well and its ability to self-regulate is questionable.

In addition, Bonneville stated that it is inappropriate to suggest that Bonneville could have obtained a hiring system for considerably less cost and that Bonneville had not performed its due diligence in evaluating the options before it selected its vendor. While we acknowledge that Bonneville has documentation to support its decision to procure with a particular vendor, it still did not consider in its price analysis the option of using the Department's hiring system, which we concluded would have been less costly.

Also, Bonneville officials who provided the informal comments stated that, while they did not have access to all the correspondence and discussion between the Deputy Secretary and Bonneville senior executives, it appeared that the proposed action to remove an HCM staff member occurred before the direction not to take adverse action. Bonneville did not believe the action taken against the HCM staff member was retaliatory or adverse, and noted that the report falsely implied insubordination in regard to this issue. However, we would note a proposal to take adverse action is an initial stage and is still adverse. Per interviews, we have determined key Bonneville officials, who were aware of the action against this particular employee, had knowledge of the Deputy Secretary's direction relating to "no retaliation" no later than early June 2013, which is clearly before the proposal to remove the employee was made in July 2013. Although Bonneville attempted to support the proposal for removal based on performance issues, we concluded that this disciplinary action against the employee amounted to retaliation.

With regard to the other case where there was a proposed action to remove an HCM staff member, Bonneville asserted that the report misstated that the action was taken because the individual manipulated the category rating process. Contrary to Bonneville's comment, the proposal for removal stated that the individual "used poor judgment by improperly excluding a veteran from consideration for hiring." This occurred when the employee adjusted the best qualified category as permitted by Bonneville's informal category rating practice. Bonneville also asserted that, unlike others, the individual improperly shredded records to conceal the employee's actions and disregarded management directions. However, Bonneville's comments do not take into account the fact that Bonneville had no policy in place regarding destruction of non-applicable hiring records by HCM staff members. Further, HCM officials told us that after the problems with category rating came to their attention they directed the employee to correct the case file. They also noted that they did not give the employee a preservation order to retain original case file documents that were no longer applicable.

We made changes to the report to address these as well as other Bonneville comments where appropriate.

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The Office of Inspector General received a complaint alleging prohibited personnel practices at Bonneville Power Administration (Bonneville). The allegations included violations of U.S. Office of Personnel Management regulations, inappropriate dismissal of veterans, as well as alleged violations of Department of Energy (Department) policies regarding the application of veterans' preference and the use of the category rating process in the exercise of Bonneville's delegated examining authority for competitive hiring. Given the seriousness of the complaint, we initiated a special inquiry to determine the facts and circumstances surrounding the allegations of prohibited personnel practices.

SCOPE

We conducted our inspection fieldwork from April 2013 to September 2013, at Bonneville in Portland, Oregon and at Department Headquarters in Washington, DC.

METHODOLOGY

To accomplish the inquiry objective, we:

- Reviewed relevant laws and regulations;
- Reviewed relevant Department and Bonneville policies and procedures relating to human capital activities;
- Interviewed key personnel at Bonneville and the Department's Office of the Chief Human Capital Officer; and
- Reviewed relevant Bonneville management and Human Capital Management staff e-mails and related documentation.

This inquiry was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Inspection and Evaluation*, January 2012. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our inspection objective.

We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objective. The inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Finally, we relied on computer-processed data, to some extent, to satisfy our objective. However, as noted in our report, we determined there were

Appendix 1 (continued)

integrity issues with the data provided by Bonneville. These integrity issues limited our use of the data and prevented us from developing ,with certainty, comprehensive statistics on the extent of the inappropriate and prohibited practices.

The Department waived the exit conference.

APPENDIX 2

PRIOR REPORT

- Audit Report on [*Allegations Regarding Prohibited Personnel Practices at the Bonneville Power Administration*](#) (DOE/IG-0891, July 2013). In June 2012, the Office of Inspector General received an anonymous complaint alleging prohibited personnel practices at Bonneville Power Administration (Bonneville). Based on our work to date, we have reached a preliminary conclusion that Bonneville engaged in a number of prohibited personnel practices. Notably, Bonneville's hiring practices appeared to have effectively disadvantaged veterans and other applicants. Such action was inconsistent with concerted efforts by the Federal government to ensure that veterans received appropriate preferential treatment in the hiring process. Equally concerning and the primary reason for the urgency of the management alert, Bonneville has apparently proposed or recently executed a number of personnel actions against certain employees who have cooperated with our review. These actions have a potentially chilling effect on various aspects of our work and, as such, jeopardize our ability to effectively complete our review of the circumstances surrounding inappropriate Bonneville hiring practices. The Department of Energy's (Department) comments were responsive to our recommendations. Notably, the Department initiated immediate corrective actions.

MANAGEMENT COMMENTS



Department of Energy

Washington, DC 20585

September 20, 2013

MEMORANDUM FOR RICKEY R. HASS
DEPUTY INSPECTOR GENERAL
FOR AUDITS AND INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM: *Kenneth T. Venuto for*
ROBERT C. GIBBS
CHIEF HUMAN CAPITAL OFFICER

SUBJECT: Response to Draft Special Inquiry on "Review of Allegations
Regarding Prohibited Personnel Practices at the Bonneville Power
Administration"

Thank you for the opportunity to review and comment on the subject draft report. The Department of Energy (Department or DOE) agrees with the Inspector General's recommendations.

The Department takes the Inspector General's report and recommendations very seriously and is fully committed to accounting for any and all individuals, including veterans, who may have been disadvantaged through improper actions, and ensuring that all employees feel free to raise issues of concern free from fear of retaliation. As you are aware, the Department has been deeply engaged in this matter, has taken steps to rectify the issues, and will continue to work forcefully to remedy the situation.

The Department has taken a series of actions to address the issues raised in the Inspector General's report. Those actions include the following steps:

- On April 2, 2013, the Department's Office of the Chief Human Capital Officer (HC) directed Bonneville Power Administration (BPA) that all outstanding and future BPA hiring actions stemming from delegated examining activities be submitted to HC for review and approval before proceeding.
- On May 24, 2013, HC temporarily suspended BPA's delegated examining authority based on reviews by HC and the Office of Personnel Management (OPM).
- On June 21, 2013, HC temporarily suspended BPA's classification and merit promotion hiring authorities based on the preliminary findings identified in the HC Human Capital Management Accountability Program (HCMAP) audit report.
- On July 9, 2013, HC temporarily suspended BPA's authority to take any further adverse actions against BPA employees as a result of concerns raised regarding allegations of retaliation against whistleblowers.
- On August 13, 2013, HC temporarily suspended all remaining human resources (HR) authorities delegated to BPA as a result of the HCMAP audit. HC notified BPA that the suspension will remain in place until BPA's Human Capital Management (HCM) staff is



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Appendix 3 (continued)

properly trained, HR procedures consistent with Federal regulations and DOE policies are established, and BPA can clearly demonstrate the ability to properly execute compliant HR activities.

The corrective actions taken or planned by the Department with respect to each recommendation follow:

Recommendation 1: Evaluate the actions of management and other officials at Bonneville and determine whether disciplinary or other administrative actions are appropriate.

Management Response: Concur

The Department will evaluate the totality of the investigative information received, as well as its own information, and make appropriate determinations.

Recommendation 2: Ensure that the full scope of the manipulation of the category rating process is identified, the total number of affected veterans and other applicants is determined, that affected applicants are notified and that appropriate remedial actions are taken.

Management Response: Concur

As a result of the HCMAP audit conducted in June 2013 at BPA, all delegated examining and merit promotion hiring cases conducted by BPA from October 2010 through June 2013 will be reconstructed. BPA is in the process of executing an MOU with OPM to do a considerable amount of the case reconstructions. The Department's Human Capital Management staff with contractor support is reconstructing a significant number of cases as well. BPA HCM staff will assist in the reconstruction of merit promotion cases once they are properly trained. The Department is overseeing all aspects of maintaining an accurate priority placement list and priority consideration list as a result of the case reconstructions and ensuring appropriate applicant notification and remedial action. The Department will complete all case reconstructions as expeditiously as possible.

BPA, with guidance from HC, has already begun to reach out to individuals to provide priority placement for positions at BPA for which they qualify. While reconstruction of each case is complex and time intensive, the Department is committed to expeditiously rectifying each case and extending offers of employment.

Recommendation 3: Require Bonneville to develop a comprehensive corrective action plan in response to the 2013 Accountability Program Report and ensure that the Department's "Get Well Plan" for Bonneville is completed and implemented.

Management Response: Concur

BPA is required to submit a corrective action plan to HC no later than November 12, 2013, which is 90 days after the issuance of the HCMAP audit. HC is working with BPA to execute a comprehensive "Get Well Plan" for BPA human resources activities. The target date for accomplishing the BPA "Get Well Plan" is September 30, 2014.

Appendix 3 (continued)

Recommendation 4: Ensure that Bonneville HCM is cognizant of its responsibility to immediately report erroneous hires and any inappropriate exclusion of veterans and other applicants from consideration for selection.

Management Response: Concur

HC has provided ongoing guidance to BPA HCM staff regarding the requirement to submit identified erroneous hires or veterans' preference violations to HC. Additionally, HC is finalizing formal policy guidance to be issued to BPA and all servicing human resources offices in the Department regarding the specific processes and procedures for regularizing erroneous appointments, including the requirement for formal notification to HC.

Recommendation 5: Direct Bonneville to ensure that all HCM staff identified for delegated examining work have one or more of the prerequisites discussed in the *Delegated Examining Operations Handbook* related to training and experience; appropriately, documented training, and have needed Federal human resources experience.

Management Response: Concur

BPA's HCM Federal staff who previously conducted delegated examining activity have been de-certified by OPM. To regain certification, OPM has required these employees to complete an extensive training program, which is already in progress. OPM will reassess the competency of BPA's HCM Federal staff after all training has been completed to determine if they can be re-certified to conduct delegated examining activity. The target completion date for BPA HCM Federal staff re-certification is January 31, 2014. Additionally, HC is working with BPA to ensure that new hires within their HCM staff have an appropriate level of Federal human resource experience.

Recommendation 6: Ensure that Bonneville develops a plan to exercise an appropriate level of oversight and accountability over all HCM activities, and that the quarterly audits are capable of ensuring that processing practices are consistent with merit system principles, statutory and regulatory requirements, and Department policies.

Management Response: Concur

HC is assisting BPA with reorganizing its HCM staff to provide more effective processing procedures, oversight, and accountability. HC will assign a member of its HCMAP audit team to ensure BPA's quarterly audits are completed and the results meet statutory and regulatory requirements.

Recommendation 7: Establish a process to follow up on required actions identified during the Accountability Program audits at Bonneville.

Management Response: Concur

A comprehensive project management plan is being developed to target all aspects of BPA's "Get Well Plan." The target date for completing the development of the plan is September 30, 2013.

Recommendation 8: Ensure that Bonneville maintains an environment where its personnel can raise issues with regard to Bonneville's practices free from any fear of retribution or retaliation.

Appendix 3 (continued)

Management Response: Concur

In July 2013, the Deputy Secretary directed the Administrator of BPA to immediately convey to all BPA employees that they can raise issues and freely cooperate with investigations without fear of retaliation. The Administrator promptly conveyed this message by memorandum to all BPA employees. On July 19, the BPA Acting Administrator again communicated this message to employees, and has repeated this message in subsequent communications. Since the Department has suspended BPA's adverse action and performance management authorities, all adverse actions (other than those involving matters of imminent human health and safety) and performance improvement plans must be reviewed and concurred with by HC prior to issuance. BPA will not regain these authorities until such time as it has proven it can execute these activities in full compliance with all applicable laws and regulations.

Recommendation 9: Conduct periodic meetings with Bonneville executives to develop a collaborative relationship where compliance with the laws and regulations governing the civil service is recognized as paramount to the mission of Bonneville and the Department's Human Capital functions.

Management Response: Concur

Department senior leadership and BPA senior leadership are conducting frequent teleconferences and telephone conversations to ensure BPA implements compliant human resources activities. HC leadership conducts weekly teleconferences with BPA HCM leadership and the Acting Chief Operating Officer to discuss the details of conducting corrective actions and ongoing human resources activities. HC leadership also conducts weekly teleconferences with a Position Management Review Team established by BPA to assist with expediting an effective priority placement and priority consideration process. HC also coordinated the detail of the Human Resources Director at the Western Area Power Administration to temporarily fill the vacant Human Resources Director position at BPA for two months. HC has sent numerous senior level and expert human resources staff to BPA to assist with establishing proper HCM organizational relationships, accountability, and procedures and will continue to do so in the foreseeable future. In addition, BPA will detail HCM staff to HC on an ongoing basis for on-the-job training in proper case reconstruction and other aspects of compliant human resources operations.

Recommendation 10: Prior to allowing Bonneville to take personnel actions directed at HCM staff members who either cooperated in our inquiry and/or who had previously raised personnel-related concerns with Bonneville's management and Department officials, review any and all such actions to include suspensions, removals and proposed removals from Federal service, or placement on PIPs to ensure that they are in conformance with Department policies.

Management Response: Concur

BPA's authority to conduct adverse actions and performance management activity has been suspended. As a result, all of BPA's adverse actions including those associated with the HCM staff are being reviewed by HC and the Office of the General Counsel for proper disposition. In addition, no BPA employee can be placed on a performance improvement plan (PIP) without prior proper review and concurrence by HC.

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