



**To: Doug Platt, Communications Manager
Department of Personnel & Administration (DPA)**

**From: Rachael Alkayali, Director of Human Resources
Department of Regulatory Agencies (DORA)**

**Marisol Larez, Chief Administrative Officer
Department of Regulatory Agencies (DORA)**

**Chris Myklebust, Deputy Executive Director
Department of Regulatory Agencies (DORA)**

**Marguerite Salazar, Executive Director
Department of Regulatory Agencies (DORA)**

**Cc: June Taylor, Executive Director/State Personnel Director
Department of Personnel & Administration (DPA)**

Date: October 24, 2018

Re: Comments on Rulemaking Draft – Rule 4-3

Please accept this memorandum in response to the proposed revisions to Rule 4-3 of the State Personnel Rules, including concerns that the elimination of the proposed language would:

1. Limit the appointing authority's discretion, including the ability to determine the appropriate licensure or certification necessary;
2. Limit the ability for department HR personnel to efficiently and effectively facilitate the state's hiring process as expeditiously as possible; and
3. Create burdensome regulations, in direct contradiction to
 - o the efforts of the Modernization of The State Personnel System Act (Amendment S -- implemented in 2013) and as proposed per the Talent Agenda;
 - o the statewide "Cut the Burden" initiative; and
 - o established Lean and "3E" principles (Efficient, Effective, Elegant).

Current and Proposed Rules

The current rule 4-3 reads as follows: "Required experience, education, licensure and/or certification may not be changed unless either validated by a competent job analysis or approved in writing by the State Personnel Director." (3/30/13)

The proposed change would change this rule to read: "Minimum qualifications established by the State Personnel Director may not be changed unless approved in writing by the State Personnel Director." (1/1/19)

Minimum Qualifications

Minimum qualifications are defined in technical guidance and in current rule 4-3 as experience, education, licensure and/or certification. Although the Department of Personnel & Administration (DPA)/State Personnel Director establish the minimum qualifications for each job, per DPA Technical Guidance and rule 4-8, departments are expected to **further define** the nature of the required experience and/or education for the vacancy; the nature of experience that substitutes for education; any additional special qualifications for the vacancy; and any preferred qualifications for the vacancy.

Currently, as long as the department's personnel specialist conducts a valid job analysis process (consistent with established professional HR practices, the Federal Uniform Guidelines on Employee Selection Procedures, DPA technical guidance, and DPA's SPCP certification program) the department can work with the appointing authority/subject matter expert to update the minimum qualifications during the selection process, such as including any appropriate licensure and/or certification.

Job Analyses

A job analysis is a detailed statement of work behaviors and other information relevant to the job, the foundation for all assessment and selection decisions, and provide a source of legal defensibility of assessment and selection procedures. As stated in the Department of Personnel & Administration's SPCP Manual - Module II:

“The role of job analysis in selection is very important. It is not only good practice in developing selection strategies, job analysis is also mandated by federal guidelines. Not only is job analysis necessary to make any selection procedure valid, but it is also required by EEO legislation and case law. A good job analysis results in a better selection procedure.”

The Uniform Guidelines, referenced in the above passage, note that a job analysis is critical for the development of selection procedures, defined as “any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and **work experience requirements** through informal or casual interviews and unscored application forms.” (emphasis added)

Impact and Concerns

1. Limitations to the appointing authority's discretion, including the ability to determine the appropriate licensure or certification necessary

2. Limitations on department HR personnel to efficiently and effectively facilitate the state's hiring process as expeditiously as possible

- **DPA does not have the bandwidth or expertise:** In order to support this change in rule and process, DPA will have to review requests statewide, from each agency, for multiple recruitments. These requests would quickly become voluminous in nature,

creating a bottleneck for the agencies and significantly impacting the recruitment process. It is also important to note that the level of expertise required in order to understand the specific needs of each position is broad and vast, and currently DPA does not have subject matter experts who can demonstrate this expertise to appropriately approve these types of requests. Currently, agency HR teams recruiting for a specific type of licensure or certification rely heavily on internal subject matter experts and hiring managers to determine what type of license or certification is required to do the job. For example, certain positions housed in the Division of Insurance require highly specialized and technical certifications and/or accreditations. The subject matter expert in this recruitment process is the hiring manager/supervisor, serving as the technical expert in the field who is deeply familiar with the needs of the work unit and industry. DPA would not be able to provide this depth and level of expertise for specific requests that agencies otherwise currently have the ability to rely on internally.

- **Impact to appointing authorities and recruitment:** This rule change would have a significant impact on the ability of the appointing authority to recruit for highly specialized and technical experts, as required by many of the roles in the agencies. Specifically at DORA, we consistently recruit for specialized positions, including but not limited to the following areas, all of which require licensure/certification/accreditation:
 - **Actuaries (Division of Insurance)**
 - **Bank Examiners (Division of Banking)**
 - **Financial/Credit Examiners (Division of Insurance)**
 - **Electrical/Plumbing Inspectors (Division of Professions and Occupations)**
 - **Professional Engineers (Public Utilities Commission)**

DORA HR is able to work directly with the hiring manager/appointing authority to determine when there is a demonstrated business need to recruit for talent, including when there is a need for candidates that have a current license, certification or accreditation. Positions that require licensure or certification may also include passing a certain number and level of exams in order to obtain the licensure/certification, which demonstrates meeting the level of expertise that is required to carry out the work. These positions are often difficult to recruit for, and can be challenging to retain staff when having to compete with the market when it comes to pay. Losing the ability to recruit for these positions swiftly and efficiently will impact the department's ability to function successfully, with a further demonstrated impact to the industries we regulate and the consumers of Colorado.

- 3. Create burdensome regulations, in direct contradiction to**
 - **the efforts of the Modernization of The State Personnel System Act (Amendment S -- implemented in 2013) and as proposed per the Talent Agenda;**

- **the statewide “Cut the Burden” initiative, therefore, essentially adding to the “red tape”; and**
- **established Lean and “3E” principles (Efficient, Effective, Elegant).**

Modernization of The State Personnel System Act - Amendment S: Amendment S was designed to modernize the State Personnel System, as before the passage of Amendment S, the State Personnel System required applicants to submit to a competitive test. With the passage of Amendment S, agencies are allowed to conduct an objective comparative analysis of desired qualifications defined by the hiring manager, which could include criteria such as judgment, demeanor and other factors that are difficult to assess through a written test. With this flexibility, agencies can recruit at a more efficient rate, which is beneficial to the hiring manager as well as the job seeker. The proposed rule change would prevent agencies from having this flexibility, which is in contrast to the original intent and application of Amendment S. It would further impact the recruitment process by limiting the hiring manager’s ability to quickly retain talent in what has become a highly competitive job market.

Adding to the Red Tape: This proposed rule change completely counteracts the states initiative to “Cut the Burden”, as each agency specializes in the qualifications needed for applicants. By removing the authority to determine and further define qualifications at the agency level, you limit the HR function and under utilize each agency’s HR teams. This creates wasted talent, which is not efficient, effective or elegant. Additionally, if the hiring process is too long, applicants may receive and accept another offer prior to the State’s offer, resulting in lost talent. This issue can then result in the need to re-post the position causing additional delays and further inefficiencies. The unknown impacts of the rule change, change to the hiring process, and the need for training on a new hiring process can be costly and time consuming.

Cut the Burden and Talent Agenda Initiative: The proposed rule change directly contradicts the “Cutting the Red Tape” initiative and efforts proposed in 2011, as well as the Talent Agenda initiative promoted by DPA in 2012, as it will decrease the effectiveness of human resources functions, and “red tape” in the hiring process for each agency will increase. Not allowing each agency the autonomy of comparative analysis will slow down the hiring process, and these delays will result in lost talent, increased workloads for teams with vacant positions, increased workload or burden on supervisors and managers with vacant positions, delays in production and therefore decrease customer satisfaction. The rule change further effectively eliminates the Voice Of the Customer on many levels, and the goal for “*Change in Government Culture to Focus on Customer Service*” will be reversed.

Three E’s - Governor’s initiative to ensure that all agencies are Efficient, Effective and Elegant as it relates to selection and recruitment: Recruitment at the agency level that currently includes the ability to conduct a competent job analysis offers agencies the ability to recruit in an efficient and effective method. By aligning with this practice of conducting the job analysis to determine the best job fit by understanding the necessary and essential competencies required to do the work, agencies are therefore able to streamline internal

processes and recruit with quicker turnaround times. This is beneficial to the hiring manager, the job seeker, and our customers, as any delay in hiring allows for a decrease in productivity, and truly supports the original intent of the Talent Agenda that was part of the Amendment S initiative, as well as the Governor's Three E's.

Additional Concerns

Concerns about the timing: It is concerning that these changes are being proposed in the middle of statewide and multi-level transition, as we are in an election year for the Governor - the outcome of which could impact the Statewide Personnel Director role, and the Chief Human Resources Officer position will be vacant at the end of October 2018. In the midst of all of this change, having DPA assume this role - with limited information provided about the reasoning behind the rule change - does not seem to make practical sense at this time.

Communication to HR community: The HR community, specifically the HR Directors, were not provided with **additional** communication, discussion, or information about the reason for this rule change, other than the formal rulemaking process -- this is concerning as the impact to the HR community will be felt at various levels and across multiple agencies. Without such communication that would otherwise provide a better understanding of the intent behind the rule change, the HR community is not afforded the opportunity to engage and respond appropriately.

Proposals from the Department of Regulatory Agencies

Recommendation to provide training: Without additional information provided regarding why this rule change is being proposed, it seems that the proposed change may be as a result of agencies not complying with the rule or otherwise misusing the process when it comes to conducting job analyses. DPA no longer offers training to the HR community as it relates to selection/recruitment, including the proper way to conduct a job analyses -- as such, departments are conducting these internally, including DORA. Offering this training to agencies who are out of compliance could be a potential solution that would address issues and trends that may be currently occurring at the agency level, without having to adopt this change to the rule.

Proposed alternative: Our recommendation is that a distinction should be made between education and experience and licensure/certification. Agencies are currently allowed and are expected to further define the minimum qualifications, including education and experience. It is understandable that there is a need to establish a consistent minimum threshold of experience and education for a specific class level; however, agencies should be able to retain the ability to work with the Appointing Authority/designated subject matter expert to determine if a license or certification is needed after conducting a competent job analysis -- especially given that the department's business needs must be appropriately prioritized.

Proposed Draft Language for Rule 4-3: Minimum education or experience requirements established by the State Personnel Director may not be changed unless approved in writing by

the State Personnel Director. Required licensure and/or certification may not be changed unless either validated by a competent job analysis or approved in writing by the State Personnel Director.

Implementation of the proposed rule change: If the rule is changed, and DPA is now responsible for the approval of these requests, we implore DPA to work collaboratively with departments to establish a process that will move quickly, including clear directives about how to submit the request and what the turnaround time frame is going to be for each request.