

# **Summary and Analysis for the Revised Title 5 Equal Employment Opportunity Regulations**

**Response to the Department of Finance**

**February 23, 2011**

## I. Purpose

The purpose of this report is to provide a response to two issues raised by the Department of Finance (DOF) regarding proposed changes to the Equal Employment Opportunity (EEO) Regulations contained in Title 5:

*(1) The proposed regulations both add and remove requirements, the changes from which result in cost neutrality. Provide the data and methods used to calculate this;*

*(2) Clarify the conflict human resource officers are having with Proposition 209 under the current regulations;*

**Comment [MCC1]:** No longer needed since Jonathan has prepared a response to this issue

## II. Issue 1: Cost Analysis for the Proposed Title 5 EEO Regulations

The following section will overview the methods and data used in estimating costs under the current and proposed Title 5 EEO Regulations.

### A. *Methods.*

Two surveys were distributed via e-mail. The first survey used open-ended responses and was qualitatively focused, but had a low response rate (n=7 or 10% of the total number of districts). Follow-up phone interviews revealed reluctance to participate because of two main factors: (1) lack of knowledge and/or understanding of the various items being measured and (2) fear of identification as being non-compliance with current regulations. A subsequent quantitatively-focused survey, administered to 14 districts, sought to increase response rate and standardization by including term operationalization in the questions and using a predominantly

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multiple-choice format, while respondents were assured that their districts would not be identified in the data or analyses. Thirteen (13) of 14 districts in the second sample responded to the survey for a response rate of 93 percent. Combined, the two surveys provided responses from 20 districts, with two duplicated respondents, so the final sample included 18 respondents (25% of districts statewide).

**1. Sampling Frame and Respondents.** The initial e-mailed survey went out to the ACHRO/EEO Listserv, which consists of chief human resource officers (CHROs) and EEO officers from all of the 72 districts statewide. The second survey utilized purposive sampling to try to select districts that were from a range of different sizes as measured by FTES (small= less than 10,000 FTES, medium=10,001-20,000 FTES and large=greater than 20,000 FTES), location (rural versus urban-suburban), region (North, Bay-Central, and South) and type (single versus multi-campus). These factors (size, location, region, and type) were identified both in the literature and by human resource and EEO professionals during the April, 2010 regional meetings as impacting costs associated with equal employment opportunity practices and measures. Determination of districts across these categories was done via use of district lists obtained through the Chancellor's Office Data Mart. The goal of both samples was to try to ensure an adequate total number of responses from a sufficient range of districts for meaningful analysis.

The respondents consisted of the following (n=18):

- **Size:** Small (n=3 or 17%); Medium (n=6 or 33%); Large (n=9 or 50%);
- **Location:** Rural (n=6 or 33%); Urban-Suburban (n=13 or 66%);
- **Region:** North (n=5 or 28%); Bay Area and Central (n=5 or 28%); South (n=8 or 44%);

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- **Type:** Single-campus (n=8 or 44%); Multi-campus (n=10 or 56%).

We attempted to get as much variation within each demographic group. For instance, of the five rural districts, two were in the North, two were in the South and one was in the Bay-Central region. In some instances, it was difficult to obtain a range across all demographics because the factors are not discrete (e.g., location and size correlate).

### **B. Data and Analysis**

The survey instruments (Appendices A-1 and A-2) contained questions primarily aimed at comparing/estimating costs under the current versus proposed regulations. This breaks down into questions aimed at addressing two categories of issues: (1) cost estimations for activities required under the current regulations that would be eliminated under the new regulations (therefore generating cost savings); and (2) cost estimations for new activities in the proposed regulations (potential new costs). We have included a third category of newly proposed, *but not required practices* as it relates to issues of cost associated with the first two categories. Estimate is a pivotal term here—none of the districts are currently able to fully comply with the current regulations because availability data were never received. Table 1 indicates by survey the questions associated with each issue.

<b>Issue</b>	<b>Survey 1 Questions</b>	<b>Survey 2 Questions</b>
<b>Pool Certification and Availability Data</b>	Q1, Q2, Q3	Q8, Q9, Q12
<b>Separate Analysis of Applicants with Disabilities</b>	Q4	Q10
<b>Interim Appointments</b>	Q5	Q14, Q15

<b>Submission of EEO Plans</b>	Q6	Q16
<b>Selection/Screening Committee Training</b>	Q6A	Q5
<b>EEO Advisory Committee Training</b>	Q6B	Q6
<b>Longitudinal Analysis of Applicants</b>	Q6C	Q7
<b>Proposed EEO Practices</b>	-	Q13

Table 1. Survey question matrix by issue.

Limitations of the data and estimates include cost savings from risk avoidance; phrased another way, it is difficult to discern how much districts save in terms of avoiding claims by practicing proactive equal employment opportunity practices. Similarly, it is difficult to estimate cost savings utilizing data already collected and analysed in conjunction with other district requirements, like accreditation and long-range planning. For example, many districts either currently or will be required to assemble longitudinal employee data for purposes of accreditation and, more specifically, staffing plans. Much of these data could serve both EEO and accreditation purposes, although it's difficult to precisely delineate the costs for either.

**1. Activities Required Under Current Regulations, but No Longer Required Under the Proposed Regulations (Cost Savings)**

***Pool certification (53023.b)***

In both surveys, respondents were asked to estimate costs associated with pool certification and availability data. Survey one respondents indicated that the requirement to compare applicant data to availability data takes an average of 1-2

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hours per recruitment and additional time for pool certification on top of that, but there was considerable variation in responses. This means that a function that districts should be performing somewhat uniformly is not being done in that manner. Most districts noted the lack of availability data as limiting their analysis. Some districts do not conduct any type of analysis and have minimal costs. Others indicated costs per year in terms of hours, one estimating approximately 1500-1800 hours per year for comparing availability data and performing pool certification. In survey 2, however, fifty percent of respondents indicated at least moderate costs of \$1,000-\$5,000 per position associated with these activities (Figure 2). Returning to the qualitative data, some districts also noted that a designated position was utilized to conduct the analyses required for pool certification. For instance, in response to survey 2, question 16, one district indicated the following:

*“The past District org. structure was time intensive, more people in an AA activity, more analysis, & more reporting etc. The past District org. structure involved an entire department composed of a District Director of AA Programs at an annual compensation of \$91,000, an HR Specialist at an annual cost of \$42,000 and (2) Staff Diversity Officers at each college with an annual release time cost of \$3,000 - \$5,000 for each. More analysis, reports and more rework.”*

Other districts also noted the lack of a need for an employee to perform such often complex analyses. With thousands of recruitments occurring each fiscal year across the system, the elimination of this step represents a significant cost savings.

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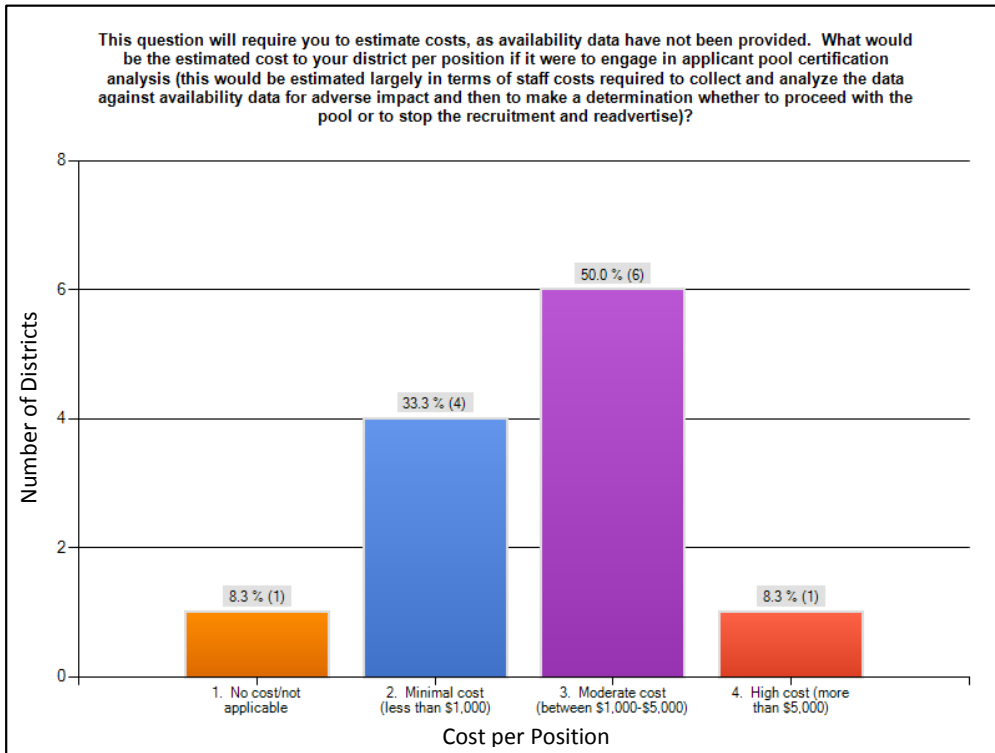


Figure 2. Estimated costs per position for applicant pool certification.

Twenty-eight percent of respondents across both surveys indicated that under the current regulations they have had to halt recruitment due to a lack of diversity in the applicant pool and have therefore incurred additional staff and advertising costs to reopen the recruitment. For some districts, however, this represents a major cost where multiple recruitments are halted. One district indicated 15 halted recruitments in the past five years; another district estimated about \$25,000 in costs associated with halted recruitments over the past 5-10 years. In survey 2, 60% of the respondents indicated that halting a recruitment and reopening the position would result in moderate to high estimated costs (Figure 3). These costs would no longer be incurred under the proposed regulations.

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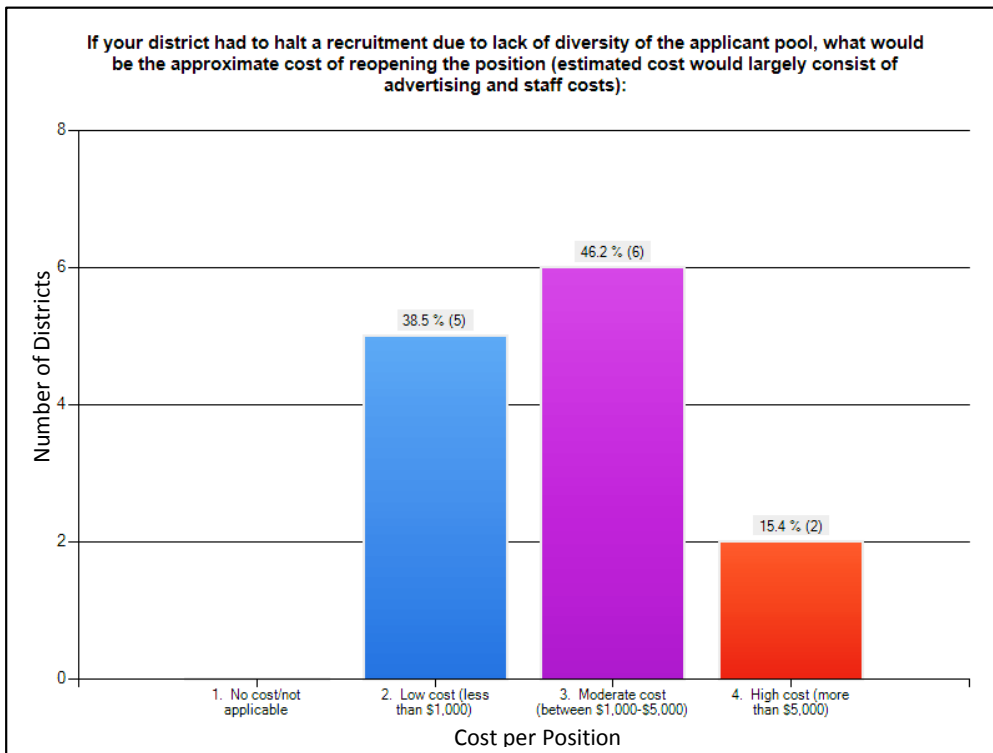


Figure 3. Estimated costs for reopening positions for lack of applicant pool diversity.

**Separate treatment of disabled applicants (53025)**

Cost savings from not having a separate analysis for applicants with disabilities would result in minimum to moderate cost savings for about half of the districts in survey 2 (Figure 4). Typical cost ranges from districts conducting such analyses were from \$250-\$500 per pool.

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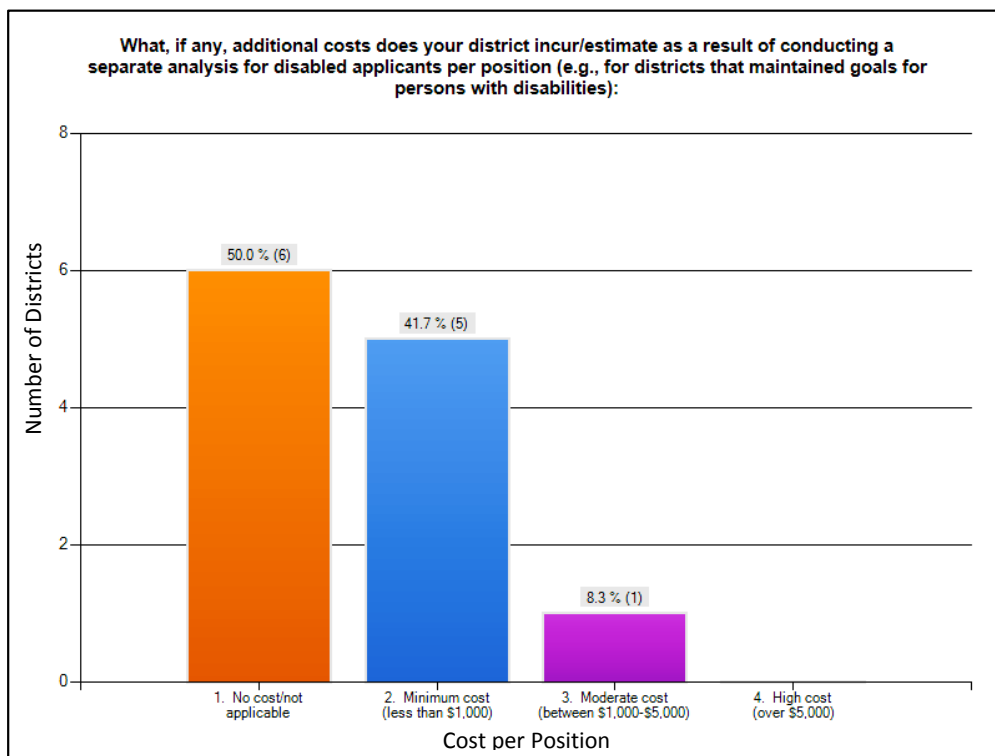


Figure 4. Additional costs for separate analysis of applicants with disabilities.

**Requests for extension of one year interim appointments (53021.b)**

Sixty-one percent of respondents across both surveys indicated that they have filed a request for an extension of a one year interim appointment and have therefore incurred some costs in terms of staff time to prepare the request. Notably, twenty-five percent from survey 2 indicated three or more such extensions in the past two years (Figure 5). Survey one indicated considerable variations in costs associated with this activity, from \$50 per request to \$500.00. One respondent indicated it takes approximately five hours of analysis and document preparation per request.

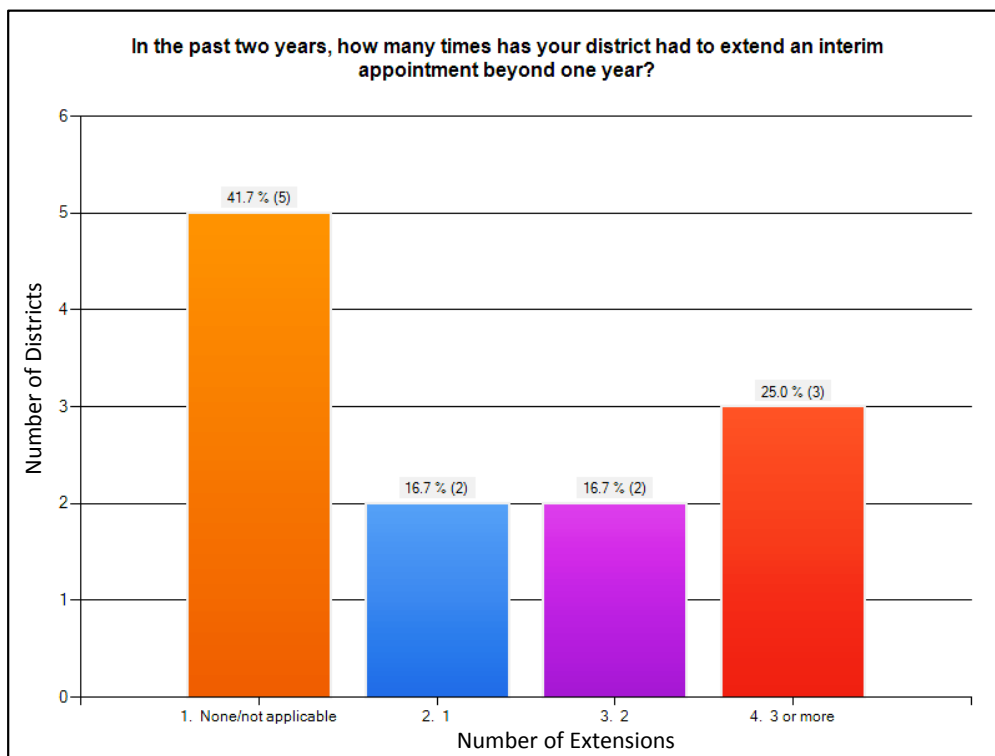


Figure 5. Number of interim appointments extended beyond one year.

**Submission of EEO plans to Chancellor’s office for approval (53003.b)**

Across the two surveys, over 56% of respondents indicated that their costs to prepare EEO plans for approval by the Chancellor’s office cost was over \$5,000 (the range was typically between \$5,000 and \$60,000 per district depending on its size and structure). From survey two, approximately 85% indicated moderate to high costs associated with this activity (Figure 6). There is a possibility that survey respondents mixed together the time necessary to develop a EEO plan within their district (which will still be required under the new regulations) with the additional step of submitting the plan for approval to the Chancellor’s office (which will no longer be required). So the survey results may overstate the possible cost savings.

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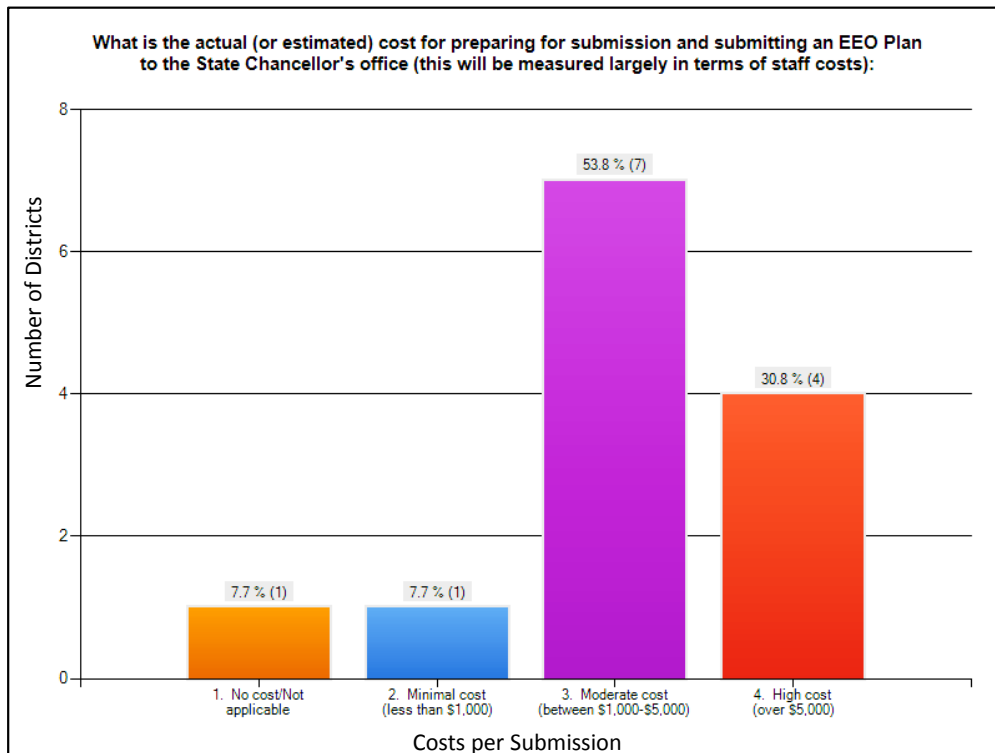


Figure 6. Costs for preparing for submission and submitting an EEO Plan.

**2. New Activities Required Under the Proposed Regulations**

***Specific topics in committee training (53003.c.4)***

Most of the respondents in both surveys indicated that there would be no new costs incurred due to the proposed language, since they already train members of selection committees in the topics outlined in this section. In survey one, only one district of seven indicated additional costs (14%). In survey 2, 84.6% of respondents indicated they already trained their screening/selection committees across all of the proposed areas in Section 53003.c.4. Thus, the regulations simply reflect what most districts are already doing in training screening/selection committees.

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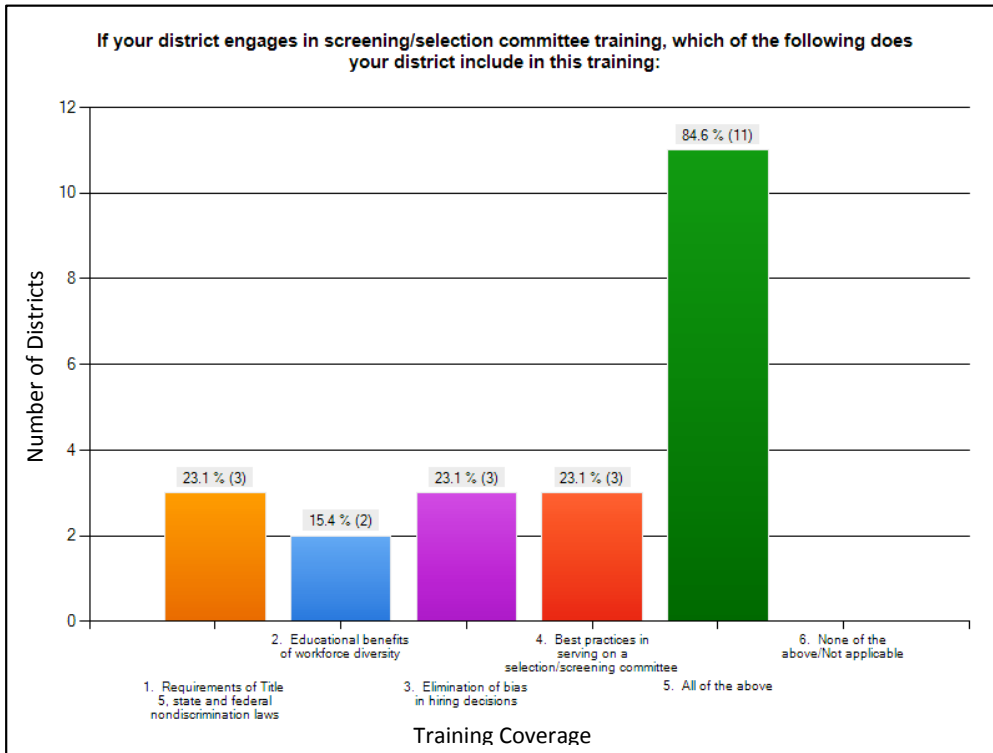


Figure 7. Coverage of screening/selection committee training.

**Training for EEO Advisory Committee (53005)**

Half of survey respondents across both surveys indicated that they already train members of their EEO Advisory Committees in the topics outlined in the proposed regulations or that there would be no additional costs to do so (Figure 8 depicts survey 2 results which were consistent with survey 1). Since all districts are already required to have these committees and to meet regularly, it is apparent that requiring specific topics to be covered in training these committees will not result in significant costs above what is currently being incurred to hold such meetings. At the same time, a fair number of districts (42%) are not currently conducting training

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on critical areas of EEO; thus, this regulation brings a higher level of minimum training standards across districts at a minimal (if any additional) cost.

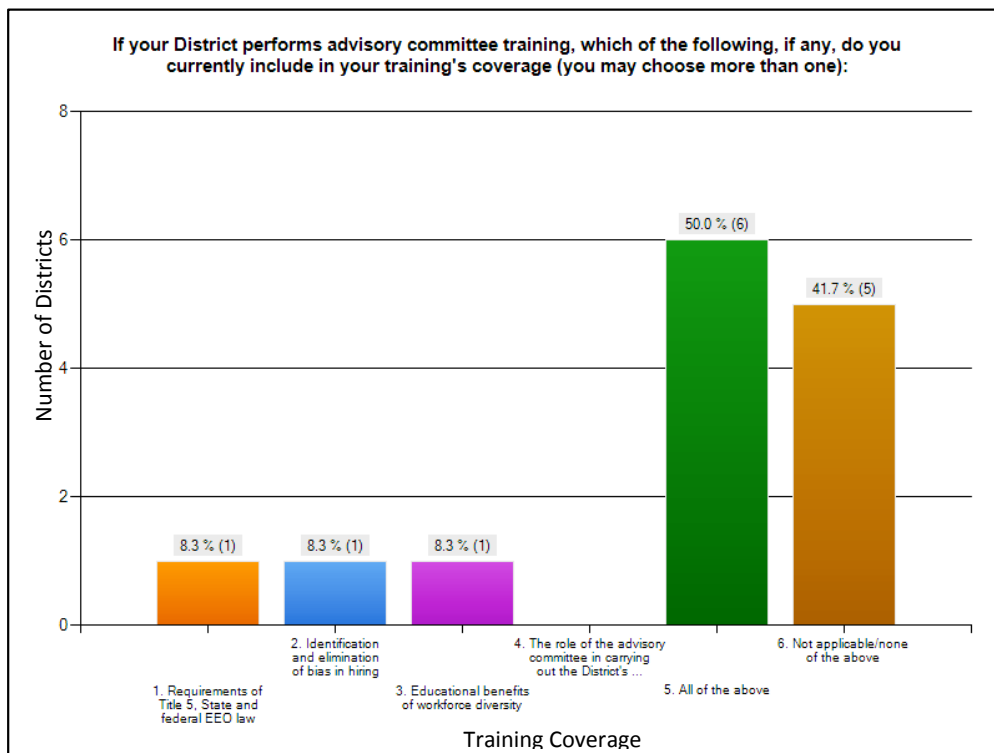


Figure 8. Coverage of advisory committee training.

### **Longitudinal analysis of applicants (53006.a.1)**

Seventy-two percent of survey respondents across both surveys said that they either currently perform some type of longitudinal analysis of applicant data or that the added costs of doing so would be at most minimal. There were some discrepancies in cost ranges in survey one, with one district estimating up to \$50,000 to conduct the longitudinal analysis. We suspected that this reflected a misunderstanding of what longitudinal analysis requires. When a definition was inserted into survey 2, the costs were largely contained in the minimum to no cost

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range (Figure 9). Also, the few districts that did indicate a potential cost of over \$5,000 per year are those large or multi-college districts which conduct the largest number of recruitments each year. These are the same districts which will realize the greatest cost savings in the discontinuation of the pool certification process and so overall the cost impact will be neutral.

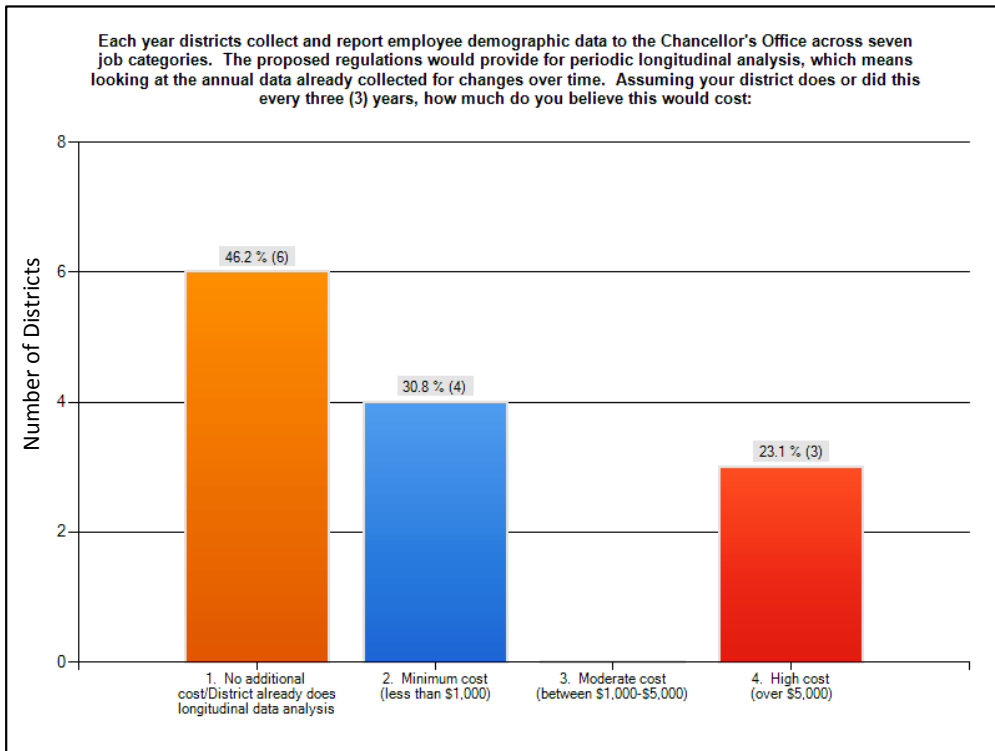


Figure 9. Estimated costs of longitudinal analysis.

**3. New EEO Practices Proposed under the Revised Regulations**

This section focuses on the inclusion of one new section, Section 53024.1, which lists various EEO practices that districts can use to demonstrate a commitment to diversity. While this section is not a mandated cost, we thought it

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would be useful to examine to what extent the regulations are simply asking districts to systematically evaluate many of the practices in which they already engage (Figure 10). Also, several of these practices are related to requirements of law or for accreditation (for instance, item 9 on AB 1825 training and item 14 on texts and curricula). Thus, there is a great deal of cost-effectiveness in regulations that simply ask districts to examine many of the EEO practices in which they already engage, as opposed to developing and measuring new practices.

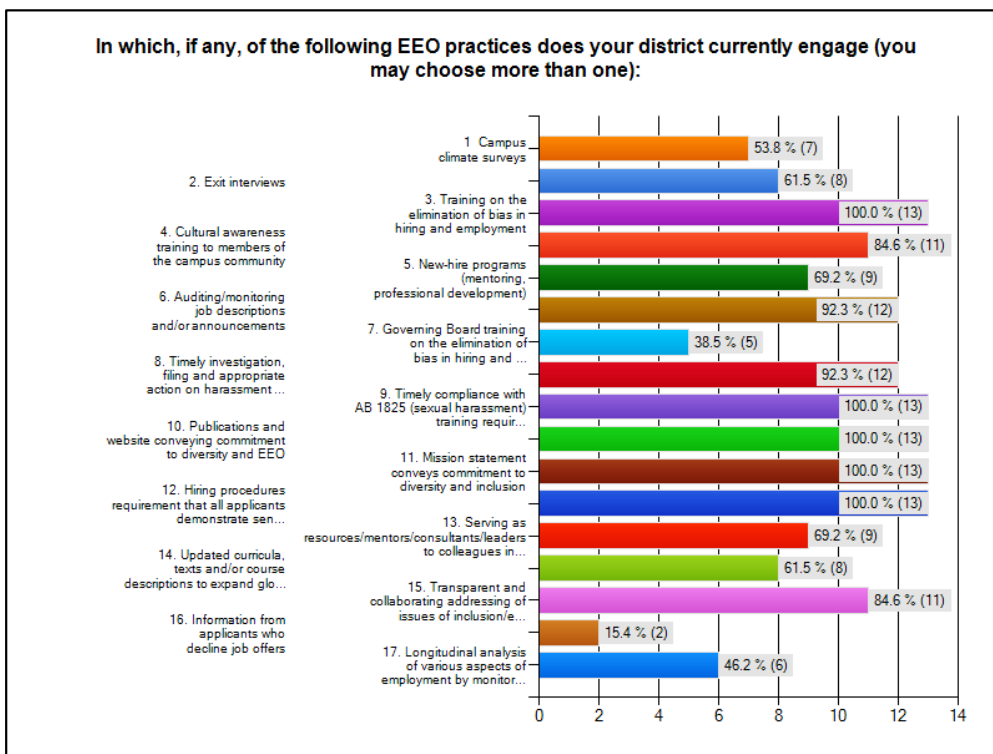


Figure 10. EEO practices currently used by districts that are contained in proposed regulations (Section 53024.1).

**C. Summary**

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Cost analysis of the current and proposed regulations presents a number of complexities, not the least of which is that districts find it difficult to estimate a practice (use of availability data) that has not been put in practice for over 10 years. Still, the data above provides evidence of some clear trends: (1) most districts would incur at least moderate cost savings associated with the elimination of pool certification; and (2) the comparable costs proposed by the regulations cover activities in which a majority of the districts already engage and/or have indicated minimal-to-no costs. The new regulations recognize the diversity within the system; each community college district enjoys its own resources and faces its own unique challenges. Flexibility in permitting districts to figure out the most informative practices and measures given their own resource strengths and limitations, while ensuring a commitment to equal treatment, remains the goal of the proposed regulations.

### III. Issue 2: The Confusion Surrounding Proposition 209

Throughout the regulation revision process, district CHRO and EEO officers repeatedly stressed the confusion over Proposition 209 (now Article 1, Section 31 of the California State Constitution) and halting recruitments for lack of a diverse pool. The tension is one of proactive activities to ensure equal employment to all monitored groups versus reactive activities aimed to address the lack of one or more monitored groups and the impact on groups with sufficient representation in the applicant pool. The few on-point court decisions attempting to clarify this tension only reinforce the concerns expressed by the CHROs and EEO officers. Specifically, Hi-Voltage Wire Works, Inc., et al. v. City of San Jose, et al., 24 Cal. 4<sup>th</sup>

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537 (2000) resulted in a finding for the plaintiff where defendant-City required general contractors to include an outreach or participatory component for minority and women subcontractors. Plaintiff was a general contractor with the lowest bid on a City project, but was denied the project based on the minority and women subcontractor outreach requirement. The Court rejected the City's argument that focused outreach in an effort to expand the pool is not a preference on that it automatically eliminates contractor bids that fail to demonstrate outreach on prohibited statuses. Thus, the application for districts could be that halting a pool for lack of diversity, re-recruiting and hiring someone from the second recruitment over a qualified person in the initial recruitment is analogous to rejecting a bid for lack of demonstrating outreach on prohibited status. The individual who was not hired would stand in a similar position to the Hi-Voltage plaintiff.

## Appendix A-1. Survey 1 Distributed via Listserv on (Date).

ACHRO/EEO colleagues,

As you know, the proposed changes to Title 5 related to EEO regulations are currently under consideration by the Board of Governors. At the same time they also need to be reviewed by staff at the Department of Finance for potential financial implications of the regulation changes. Jonathan Lee from the Chancellor's office is trying to schedule a meeting with staff at Finance. But he has been asked to provide some cost information prior to any such meeting. And as we explained in October at the conference in Lake Tahoe, this is where we need your help!

In the letter providing background information that went along with the regulation draft, we stated that the changes will be either cost neutral (some new things may be done by districts but any costs will be offset by the elimination of things like the pool certification) or will actually save districts money. But Finance will need some documented evidence to back up this claim.

We know that there are great differences in the processes utilized by large and small districts, single college and multi-college districts etc, so we have asked you to identify the type of district you are responding from. Thank you in advance for your assistance!

My district is: \_\_\_\_\_

single college OR  multi-college

\_\_\_\_\_ approximate number of regular employees (administrators, full time faculty and full and regular part time classified)

\_\_\_\_\_ approximate number of students

Please provide responses to the following questions which deal with things that are being eliminated in the current proposal:

1. What data analysis do you regularly do for the sole purpose of comparing availability data to the diversity of your applicant pools?
  - a. How long does this take you to perform and what costs will be saved by the elimination of this step in the process?
2. How many hours/days/weeks does the pool certification analysis add to your hiring process?
3. How often in the last 5-10 years have you stopped a recruitment for lack of diversity at the pool certification stage?
  - a. Please provide a cost estimate of the additional costs incurred by your districts when this has happened. (This would include the cost of additional advertisements, staff time etc.)
4. Are there additional costs and/or time required to conduct the separate analysis of disabled applicants in your hiring process? If so, what? (This question is being asked because Prop 209 did not affect the ability of community colleges to have affirmative action plans related to the disabled. But we do not know whether any districts maintained affirmative action plans for this population which were in place prior to 1996.)
5. Have you made requests to the Chancellor's office for extension of the one year interim appointment of personnel? If so, how many times? How much time/cost was involved in preparing these requests? (NOTE: We also know that many districts have utilized interims for more than one year and may not have known that they were required to seek permission to do so. We would love to get an idea of how many other requests could have been made. )

**Comment [MCC2]:** We might be able to delete this. But I don't have any problem leaving it in if you think it helps to set the stage for DOF to understand how the survey questions were framed.

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6. The current regulations require submission of district EEO Plans to the Chancellor's office for approval. What would be the approximately cost to your district in preparing your plan for submission? (We know that this has not been *required* in recent years, so please estimate based on the last time a plan was submitted or the amount of time you estimate it would take if you had to submit a plan.)

The proposed regulations do include some new things which district may not currently been doing and so we anticipate that Finance may argue that these would impose new costs. In order to address this, we would also like to collect data about a couple of these items. If you are already doing these items at your district, please state so in your response.

- A. Section 53003.4 states that the training of screening/selection committee members prior to participation shall include specific things. Do you believe this will add any new costs for your district? If so, how much?
- B. Section 53003 states that members of the EEO advisory committee will receive training in specific items. Do you believe this will add any new costs for your district? If so, how much?
- C. Section 53006 (a) (1) states that districts will perform longitudinal analysis of data regarding job applicants to assess impacts on monitored groups. Do you currently perform this analysis? If not, what additional time and cost do you anticipate this would add to your process?

**Appendix A-2. Survey 2 Distributed via SurveyMonkey on February 10, 2011.**

**Demographics**

Please provide some information about your district. These data will be used to ensure we have a range of responses-- your district will not be identified by name in the analysis.

**1. District type:**

1. Single campus

2. Multi-campus

**2. District Region:**

1. Northern

2. Central

3. Bay Area

4. Southern

**3. District size (based on FTES):**

1. Small (less than 10,000 FTES)

2. Medium (between 10,000-20,000 FTES)

3. Large (over 20,000 FTES)

**4. Location:**

1. Metropolitan/Urban/Suburban

2. Rural

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**Title 5 EEO Regulations Cost Analysis**

This is a brief survey intended to compare District costs for complying with current Title 5 Equal Employment Opportunity Regulations to those estimated for the Title 5 revisions currently before the Board of Governors.

For questions 7-9, please identify only costs that would be in addition to your current costs dedicated to equal employment opportunity compliance.

**5. If your district engages in screening/selection committee training, which of the following does your district include in this training:**

- 1. Requirements of Title 5, state and federal nondiscrimination laws
- 2. Educational benefits of workforce diversity
- 3. Elimination of bias in hiring decisions
- 4. Best practices in serving on a selection/screening committee
- 5. All of the above
- 6. None of the above/Not applicable

Comments:

**6. If your District performs advisory committee training, which of the following, if any, do you currently include in your training's coverage (you may choose more than one):**

- 1. Requirements of Title 5, State and federal EEO law
- 2. Identification and elimination of bias in hiring
- 3. Educational benefits of workforce diversity
- 4. The role of the advisory committee in carrying out the District's EEO plan
- 5. All of the above
- 6. Not applicable/none of the above

Comments:

**7. Each year districts collect and report employee demographic data to the Chancellor's Office across seven job categories. The proposed regulations would provide for periodic longitudinal analysis, which means looking at the annual data already collected for changes over time. Assuming your district does or did this every three (3) years, how much do you believe this would cost:**

- 1. No additional cost/District already does longitudinal data analysis
- 2. Minimum cost (less than \$1,000)
- 3. Moderate cost (between \$1,000-\$5,000)
- 4. High cost (over \$5,000)

Comments:

**8. This question will require you to estimate costs, as availability data have not been provided. What would be the estimated cost to your district per position if it were to engage in applicant pool certification analysis (this would be estimated largely in terms of staff costs required to collect and analyze the data against availability data for adverse impact and then to make a determination whether to proceed with the pool or to stop the recruitment and readvertise)?**

- 1. No cost/not applicable
- 2. Minimal cost (less than \$1,000)
- 3. Moderate cost (between \$1,000-\$5,000)
- 4. High cost (more than \$5,000)

**9. If your district had to halt a recruitment due to lack of diversity of the applicant pool, what would be the approximate cost of reopening the position (estimated cost would largely consist of advertising and staff costs):**

- 1. No cost/not applicable
- 2. Low cost (less than \$1,000)
- 3. Moderate cost (between \$1,000-\$5,000)
- 4. High cost (more than \$5,000)

**10. What, if any, additional costs does your district incur/estimate as a result of conducting a separate analysis for disabled applicants per position (e.g., for districts that maintained goals for persons with disabilities):**

- 1. No cost/not applicable
- 2. Minimum cost (less than \$1,000)
- 3. Moderate cost (between \$1,000-\$5,000)
- 4. High cost (over \$5,000)

Comments:

**11. Looking over the past 5 years, approximately how many recruitments per year did your district conduct (using numbers from typical years in which there was not a hiring freeze or other unusual employment conditions impacting recruitments)?**

**12. Approximately how many times in the past five years has your district halted a recruitment for lack of applicant pool diversity?**

**16. What is the actual (or estimated) cost for preparing for submission and submitting an EEO Plan to the State Chancellor's office (this will be measured largely in terms of staff costs):**

- 1. No cost/Not applicable
- 2. Minimal cost (less than \$1,000)
- 3. Moderate cost (between \$1,000-\$5,000)
- 4. High cost (over \$5,000)

**17. After reviewing the proposed Title 5 Regulations as compared to the current Regulations, do you see additional required (mandatory or non-optional) costs under the new Regulations? If so, please identify the requirements below.**

**18. Please add any additional comments, questions or suggestions here:**

**13. In which, if any, of the following EEO practices does your district currently engage (you may choose more than one):**

- 1. Campus climate surveys
- 2. Exit interviews
- 3. Training on the elimination of bias in hiring and employment
- 4. Cultural awareness training to members of the campus community
- 5. New-hire programs (mentoring, professional development)
- 6. Auditing/monitoring job descriptions and/or announcements
- 7. Governing Board training on the elimination of bias in hiring and employment
- 8. Timely investigation, filing and appropriate action on harassment and discrimination complaints
- 9. Timely compliance with AB 1825 (sexual harassment) training requirements
- 10. Publications and website conveying commitment to diversity and EEO
- 11. Mission statement conveys commitment to diversity and inclusion
- 12. Hiring procedures requirement that all applicants demonstrate sensitivity to and understanding of diverse population served
- 13. Serving as resources/mentors/consultants/leaders to colleagues in other districts on EEO and diversity
- 14. Updated curricula, texts and/or course descriptions to expand global perspective of materials
- 15. Transparent and collaborating addressing of issues of inclusion/exclusion
- 16. Information from applicants who decline job offers
- 17. Longitudinal analysis of various aspects of employment by monitored group (e.g., hiring, promotion, retention, resignation, termination, discipline).

Comments:

**14. In the past two years, how many times has your district had to extend an interim appointment beyond one year?**

- 1. None/not applicable
- 2. 1
- 3. 2
- 4. 3 or more

Comments:

**15. If your district has filed a request for an extension of an interim appointment with the State Chancellor's office, what was the estimated cost of preparing and submitting the request?**