

# AUDIT ALERT:

## Flawed Career Service Authority Governance Structure Needs Reassessment

May 19, 2011

### **Comprehensive Audit Work Has Exposed Serious Flaws with the CSA Governance Model, and a Reassessment of How the CSA Personnel System is Governed is Needed**

#### **Summary**

Four recent performance audits conducted by Auditor's Office, including two that will be released during the summer of 2011, have identified numerous and substantive problems with governance of the Career Service Authority (CSA). CSA is administered by the CSA Board. The range of audit findings includes concerns about the CSA Board's lack of transparency and accountability to policymakers, taxpayers, and CSA employees. The types and severity of audit findings also indicate that the Board is poorly governing one of the City's largest cost centers and most important resources, a large percentage of its workforce. There are approximately 8,500 CSA positions, and the salary and benefit costs for CSA employees are well over half a billion dollars annually -- \$573 million in 2011.

The inherent structural governance issues and diverse number of audit findings combined with the high cost of CSA personnel at a time when the City is facing a significant budget deficit clearly demonstrates that the current model requires re-assessment. The Auditor's Office is issuing this Audit Alert in order to provide timely and critical information to the new Mayor and his administration. We strongly urge the new administration to re-evaluate the CSA governance model to determine whether it is optimal and cost-effective for managing CSA employees in an era that demands doing more with less and at a time when taxpayers are demanding full transparency and accountability related to the use of their tax dollars.

**Purpose of Audit Alerts:** To quickly communicate significant audit issues or concerns about fraud, waste, or abuse which have come to the attention of the Division through an audit or otherwise which require immediate action or review by management.

Office of the Auditor  
Audit Services Division  
City and County of Denver



Dennis J. Gallagher  
Auditor

## CSA Governance Structure Inherently Lacks Accountability and Transparency

Our review has revealed significant accountability and transparency issues with Board actions and activities related to administering the City's largest cost center. Regardless of who is serving on the Board, structural flaws greatly hinder the City from administering the Agency as efficiently and effectively as possible. The following are synopses of structural issues concerning the lack of accountability and transparency inherent to the current CSA governance structure.

### **Unelected CSA Board Does Not Report to Any Entity and Members Cannot Be Removed**

The Board oversees the CSA, which was first established fifty-seven years ago, in 1954. CSA has significant administrative responsibility for non-uniform personnel, including providing training and setting employment rules. Due to the importance and cost of its human resources function, taxpayers, CSA employees and policymakers have a significant interest in how effectively CSA is being managed. However, the Board is not accountable for its actions, performance, or non-performance; its members are not elected officials, and do not report to the Mayor, the City Council or any other entity. Further, there is no provision in the City Charter, Denver Revised Municipal Code, or Career Service Rules for removing Board members prior to their five-year terms expiring. In effect, there is no entity, including taxpayers, elected officials, or the CSA workforce, which can hold the Board directly accountable for their actions and decisions. In the public sector, all functions making decisions involving tax dollars need to be fully and directly accountable for their actions.

*"A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."*

*- James Madison,  
Federalist No. 51*

*The Mayor, City Council, and Clerk and Recorder must comply with audits conducted by the City Auditor's Office, but City code allows the Board members to evade participation in the audit process.*

### **Board Is Not Legally Obligated to Cooperate with Audits and Has Recently Refused to Cooperate**

In addition to lacking a method for maintaining the Board's accountability and transparency through formal reporting requirements to the Mayor or another oversight body or through possible removal of Board members for poor performance, there is no mechanism to compel Board members to cooperate with an audit performed by the City Auditor's Office or examinations made by any other accountability function. The City Attorney's Office has advised the Auditor's Office that because Board members are considered *officials* rather than *officers*, they cannot be compelled to participate in the audit process. By contrast, the Mayor, members of the City Council, and the Clerk and Recorder, are all *City officers* and can be compelled to participate in an

audit process.

It should also be noted that the Board has acted inconsistently in this area. Specifically, for an audit issued by the Auditor's Office in 2009 examining CSA's recruiting function, Board members agreed to participate in the audit process and were interviewed individually. However, in subsequent audits Board members used legal semantics to forego cooperation. This reversal of position is particularly perplexing. Consequently,

another key mechanism for ensuring the accountability and transparency of City leadership does not apply to the CSA Board.

**No Professional Legal or Human Resource Experience or Expertise Required for Board Appointment -**

Exacerbating concerns regarding the Board structure is the fact that no professional credentials or experience are required to be appointed as a Board member. Board members, who make rulings on matters of law when they decide the outcome of appealed CSA personnel cases, do not have to possess any relevant experience or expertise in personnel management or employment law. This structural deficiency is not a mere legal abstraction; as of May 2011, there are only two lawyers among the four Board members. Having Board members without the legal background to review matters of law in the Board's appeal hearings creates questions about how effectively the Board can perform its quasi-judicial function. Further, this circumstance can change when the Board members' terms expire, and new members with no legal and human resources experience or

*Board members are not required to have a background in personnel management or employment law, and only two current Board members are lawyers.*

*Audits raise questions about whether part-time officials can adequately govern a personnel system covering about 8,500 employees.*

expertise could be appointed to the Board. A public sector governance structure that fails to prescribe professional standards and minimum qualifications for governing members and that places the governing members beyond the reach of direct accountability to the tax payers, hardly inspires confidence that Board personnel actions and decisions are insulated from the political sphere, which is the primary reason the Board was created.

**Part-Time Board Responsible for Managing One of City's Largest and Most Critical Cost Centers -** Board members, who are not employed by the City and who serve on a limited, part-time basis, are responsible for managing one of the City's largest cost centers and most important resources. The inherent high costs and risks associated with the administration

of CSA combined with numerous audit findings cast serious doubt on whether part-time Board members can adequately govern a system consisting of approximately 8,500 employees.

**Numerous Audit Findings Raise Serious Questions about the CSA Board's Ability to Effectively Govern**

Review conducted by the Auditor's Office over the last three years has identified a range of serious performance issues related to CSA oversight and operations. Selected audit findings and recommendations illustrate why current CSA governance is not functional.

- Interviews revealed CSA did not have a specific definition for the City's merit system, nor did it have a consistent view of what the components of the merit system should include. Moreover, differing interpretations of a merit-based system existed among CSA and City Human Resources personnel. This is concerning because upholding the principles of the merit-based system is the basis of the CSA mission. As part of audit work, auditors asked sixteen key human resources

administrators to define the merit system, including three CSA managers, all five Board members, and eight Human Resources (HR) representatives from various City agencies. Only fifty percent of the respondents gave the same general definition while two respondents did not even recognize the term merit system. Without a clear understanding and definition of what a merit-based system means, it is very questionable as to how effective the CSA Board has been and can be in ensuring they are consistently upholding the tenets of the City's merit system.

- The Board has not established a clearly documented compensation philosophy. Defining a merit-based personnel system within a formal policy would help guide CSA staff in determining if compensation programs they implement are consistent with the City's philosophy. As a result of the lack of clear compensation policy, the CSA Board recently approved a merit increase tool that is not aligned with a merit-based compensation philosophy.
- The CSA Board 2010 performance audit, conducted by the Auditor's Office, identified serious concerns related to the Board's inability to effectively oversee and assess the performance of the CSA Director and CSA agency employees. CSA rules require employees city-wide to be given annual performance reviews in a timely manner. However, thirty-seven percent of CSA agency employees were not receiving timely annual performance evaluations consistent with CSA rules. This was approximately twice as high as the City average. As troubling as the agency's failure to follow its own rules is the fact that the Board was unaware of this critical deficiency.<sup>1</sup> This failure was particularly egregious since CSA is the agency that develops performance evaluation rules. Further, based on CSA rules, all the employees who did not receive timely performance evaluations were automatically given a rating of *satisfactory* regardless of their actual performance.
- CSA has little ability to monitor and report on its performance. The Agency is generally not collecting the kinds of measures needed to accomplish this task effectively. For example, the current performance measurement system employed by CSA restricts the ability to assess the efficiency and effectiveness of the CSA recruiting function in two ways. First, monitoring and collection of performance information is inconsistent. Second, the performance indicators monitored yield little information about efficiency and effectiveness, and the indicators do not align with best practices. In several instances when CSA and its Director did report information about performance to the Board the information was inaccurate. The Board has not established meaningful performance measures and is not adequately monitoring and improving the process.

*Four different audits from 2009 through 2011 have found the Board consistently failed to govern effectively, including failing to hold the CSA Director and management staff accountable for various ineffective actions.*

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<sup>1</sup> Office of the Auditor, Career Service Authority Board – 2010 Performance Audit  
<http://www.denvergov.org/auditor>.

- The Board's monitoring of the performance of CSA Director is informal and minimally documented.
- Current Board meeting minutes lack detail and do not reflect deliberations and analysis conducted by Board members prior to and during Board meetings to reach decisions required to uphold the integrity and effectiveness of the CSA merit-based system. Sparse minutes and the refusal of the Board to allow auditors to observe executive sessions results in a process that lacks transparency and appears to be secretive resembling the type of closed-door decision-making that taxpayers abhor.
- CSA Board members serve on a part-time basis; make legal rulings, and develop policies that have serious financial consequences on the City budget. Because the Board will not allow the Auditor's Office to observe actions during executive sessions, it is unclear as to the level of involvement the Board's City Attorney representative serves in these closed meetings. Our objective in observing executive sessions was to understand how the Board's attorney may interact or influence the Board during deliberations. This question was particularly relevant because, in addition to advising the Board, the City Attorney's Office also represents City agencies in Board appeals. This condition raises the appearance of a conflict of interest that would work to the detriment of CSA employees. If the Board is overly reliant or unduly influenced by their City Attorney representative, the concept of isolating Board decisions from the political sphere is severely undermined.
- We identified opportunities to improve four aspects of the recruiting function including: strategic planning, timeliness of the recruiting function, consistency in recruiting practices, and Board oversight. The weaknesses identified in CSA's recruiting process inhibit the efficiency and effectiveness of the process and limit accountability. In some aspects of the recruiting process the lack of sufficient policies and procedures creates situations that could jeopardize the fairness and openness of competition for positions and could result in the City missing opportunities to hire the most qualified and competent employees.
- The CSA Board failed to ensure the development of a strategic plan that establishes goals and helps CSA adjust to future developments. The Board does not effectively communicate with CSA employees. Most communications issued by the Board are technical and difficult for the layperson to understand. We determined that the Board does not conduct any analysis to identify or communicate city-wide human resources trends affecting CSA employees across City agencies. If properly communicated, this trend data could assist City leadership and employees to improve processes, avert repeated errors, save valuable resources, and improve morale.
- The CSA Board has failed to effectively monitor, assess and improve the Career Service hearing process. The City has a significantly higher number of hearings and appeals than most comparable cities in the audit benchmarking study and takes significantly longer to adjudicate them. For example, in 2009, only two of the ten benchmark cities took as long as eighty-one days (the other eight took less time) to schedule, hear, and adjudicate appeals. Denver's Career Service

Hearing Office, by contrast, took an average of 152 days, or about five months, in 2009 per appeal, which is almost twice as long as peer cities. There are significant tangible and intangible costs to the City as a result of the lengthy CSA hearing process.

## **Optimal Time for New Administration to Assess and Enhance CSA Governance Structure**

The cost of employee related expenses and personnel salary for CSA employees is over \$570 million dollars annually. With an ongoing budget deficit of approximately \$100 million, City policymakers must find ways to permanently reduce the budget without unduly impacting the quality of services. Addressing the impact of personnel costs is not just an issue for Denver; other cities and states are examining methods to better manage personnel-related costs and to ensure that their workforces are highly competent and fairly compensated. One method for addressing personnel costs is to reassess and reform personnel governance systems to make them more efficient and responsive to 21<sup>st</sup> century public sector workforce demands. The CSA Board and the CSA agency were created in 1954, during a very different era of public employee management philosophy and employee relations. During this season of change, when old personnel management and merit system assumptions and concepts are being reassessed, it is an optimal time for City leaders to consider whether the entity that is responsible for a significant City cost to taxpayers is operating in the most cost-effective manner; with appropriate transparency and accountability; and with the nimbleness, flexibility, and innovation to oversee the best possible human resource system in these austere times.

In early 2011, Mayor Bill Vidal appointed a Structural Finance Task Force to assess the City's ongoing misalignment between revenues and expenditures, and to recommend methods of altering the structure and operations of the City to perform its roles with less revenue. The Auditor's Office commends this effort and is issuing this Audit Alert in the spirit of providing the current and new Mayoral administrations and City Council members, as well as members of the Structural Finance Task Force, with timely and critical information regarding one of the City's largest and most important cost centers as they make difficult budget decisions moving forward.

### **Recommended Action**

To address the structural flaws of the Career Service model and ongoing failure of the CSA Board to effectively govern, the incoming Mayor and City Council should convene a taskforce of leaders from the community and human resources professionals to assess the efficacy of the Career Service model including the CSA Board, the CSA agency, and the Career Service Hearing Office. The taskforce should determine how the CSA model be updated to meet the needs of Denver taxpayers, City employees, and the City. The new era of public accountability demands increasing flexibility, innovation, and austerity.

*The time has come for a fresh look at the needs of the City personnel system to ensure it meets the needs of taxpayers and the City.*

### **Next Steps**

The Auditor's Office is set to release performance audits of the CSA hearings and appeals process and the CSA Compensation and Benefits Division. Because of the high

risk CSA presents and concerns we observed with the CSA *tone at the top*, the Auditor's Office will continue frequent CSA audits including follow-up work for audits already issued. The Auditor's Office stands ready to assist the Mayor and City Council with efforts to assess and improve the CSA governance structure.

## Contact

If you have any questions, please contact me at 720-913-5029.

A handwritten signature in black ink, appearing to read "K. Memmott". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Kip Memmott, MA, CGAP, CICA  
Director of Audit Services

## Distribution

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