

PUBLIC ADVOCATE

- Letter of Preliminary Determination June 19, 2008
- Agency Response September 23, 2008
- Letter of Final Determination September 30, 2008



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14th Floor, New York, New York 10006

Telephone: (212) 788-8646 Fax: (212) 788-8652

Ernest F. Hart, Esq.

Chair

Manuel A. Méndez

Vice-Chair

Angela Cabrera

Veronica Villanueva, Esq.

Commissioners

Abraham May, Jr.

Executive Director

Eric Matusewitch, PHR, CAAP

Deputy Director

June 19, 2008

Honorable Betsy Gotbaum
Public Advocate
City of New York
1 Centre Street, 15th Floor
New York, New York 10007

Re: Resolution #08/19-101/ Preliminary Determination Pursuant to the Audit of the Public Advocate's (PA) Equal Employment Opportunity Program from January 1, 2005 to December 31, 2006.

Dear Ms. Gotbaum:

Pursuant to Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women. (New York City Charter, Chapter 36, sections 831(d)(2) and (5).)

The Charter defines city agency as any "city, county, borough, or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..." The Office of the Public Advocate (PA) is funded by the City of New York and is therefore considered a city agency pursuant to Chapter 36, section 831(a) of the New York City Charter.

This Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment programs for minority group members, women and other protected classes. This audit measures the PA's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Federal, State and City Human Rights Laws. All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the 2005 Citywide EEO Policy and Discrimination Complaint Procedures and Investigation Guidelines (DCPIG) issued by the Department of Citywide Administrative Services (DCAS) in 1993, and amended in 2001, and the PA's EEO Policy. The relevant sections of these guidelines and documents are cited in parenthesis, where applicable, at the end of each recommendation.

The purpose of this audit is to evaluate the agency's compliance with the standards cited above, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope and Methodology

Audit methodology included an analysis of the PA's EEO Policy, and a review of responses to an EEPC Document and Information Request Form. EEPC auditors also conducted in-depth, on-site interviews with the EEO officer and EEO counselor to determine awareness of their rights and responsibilities under the agency's EEO Policy.

A survey of 45 people employed by the PA during the audit period was distributed. Nine people (20%) responded. Significant survey findings are attached and discussed in the proceeding pages. (Appendix 1) The survey methodology was established by the EEPC with the assistance of an academic expert from the City University of New York.

Description of the Agency

An independently elected public official, the Public Advocate represents the consumers of City services. The Public Advocate's Office reviews and investigates complaints about City services, assesses whether agencies are responsive to the public, and recommends improvements in agency programs and complaint handling procedures; the Office also serves as ombudsman, or go-between, for individuals who are having trouble getting the service, help or answer they need from City agencies; and the Office monitors the effectiveness of the City's public information and education efforts.

Personnel Activity During the Audit Period

During the audit period, 26 people were hired: 13 Caucasians, 4 African-Americans, 4 Hispanics, 3 Asians, and 2 "Other". Sixteen of the hires were female. Nine people were promoted during the audit period: 6 Caucasians and 3 African-Americans. Six of those promoted were female. (Appendix 4)

The PA also reports that 3 employees were involuntarily separated during the audit period: 2 Caucasians and 1 African-American. None of the individuals were female.

Between January 1, 2005 and December 31, 2006, the total number of PA employees decreased by 7%, going from 44 to 41. There were percentage increases for African-Americans (25% to 33%) and Asians (2% to 5%). There was a small percentage decrease for Hispanics (16% to 13%). The percentage for females increased slightly (64% to 68%). (Appendices 2 and 3)

Discrimination Complaint Activity during the Audit Period

The agency reports that no internal or external discrimination complaints were filed during the audit period.

PRELIMINARY DETERMINATION

Following are our preliminary determinations with required corrective actions and recommendations pursuant to the audit.

Plan Dissemination – Internally

The PA is in compliance with the following requirements:

1. The PA has adopted and modified the Citywide EEO Policy (2005). The PA distributed its EEO Policy (the general EEO Policy Statement, Sexual Harassment Policy Statement, Reasonable Accommodation Procedure, and Discrimination Complaint Procedure, which has similarities to the Citywide EEOP) to all employees on December 5, 2007. In addition, 89% of the survey respondents said that they have a copy of the EEO Policy.

2. The PA's EEO Policy is posted on the bulletin boards. In addition, the EEO officer periodically checks the boards to insure posting of the Policy.

The PA is in partial compliance with the following requirement:

The EEO Policy (dated 2006), and complaint form included in the "new hire" package is not updated. The most recent EEO Policy (dated December 5, 2007) complaint form does not list all of the "protected classes" (genetic predisposition or carrier status, partnership status and military status). Corrective action is required.

Recommendation: The PA's EEO Policy complaint form should be updated to include all of the "protected classes" under the New York City and New York State Human Rights Laws. An updated EEO Policy should be placed in the "new hire" package. (Sect. I, Citywide EEOP)

The PA is not in compliance with the following requirement:

The PA did not distribute the EEO Policy Handbook, *About EEO: What You May Not Know*. Although 100% of the survey respondents said that they have a copy of the EEO Policy Handbook, the EEO officer informed EEPC auditors that she is sure that the survey respondents are referring to the EEO Policy. Corrective action is required.

Recommendation: The PA should distribute the EEO Policy Handbook, *About EEO: What You May Not Know*, to all current and new employees. (Sect. IB, Citywide EEOP)

Plan Dissemination – Externally

The PA is in partial compliance with the following requirements:

1. The ten job vacancy notices submitted by the PA (Policy Analyst, Policy Research Associate, Assistant Advocate, Assistant Press Secretary to the PA (2), Director of Intergovernmental and Community Affairs, Community Liaison, Deputy Director of Policy and Research, Intergovernmental Liaison) include the EEO tag line.

2. The six job advertisements submitted by the PA (Policy Research Associate & Senior Policy Analyst (2), Intergovernmental Liaison (2), Community Liaison, Deputy Director of Policy and Research,) were advertised in *City Limits*, *Gotham Gazette*, and *Craigslist.com*. However, only one of the advertisements included the EEO tag line. Corrective action is required.

Recommendation: All agency recruitment literature should indicate that the agency is an equal opportunity employer. (Sect. IV, Citywide EEOP)

EEO and Reasonable Accommodation for Persons with Disabilities

The PA is in compliance with the following requirements:

1. The PA's EEO Policy includes a "Reasonable Accommodation Procedure."
2. The EEO officer told the EEPC auditors that the PA has recently received a reasonable accommodation request for a flexible work schedule; however, the request has not been granted yet because the employee has not submitted medical documentation.
3. The PA's EEO Policy is available in large print for use by people with disabilities and the agency is in the process of creating an audio version of the Policy.

4. The PA is in the Municipal building (1 Centre Street); it is maintained by the Department of Citywide Administrative Services (DCAS). The PA submitted a completed EEPC accessibility checklist that indicates the PA's Office is accessible to, and usable by, persons with disabilities. The Municipal building has street accessible entrances, ramp access, wheelchair accessible elevators, bell and Braille in elevators, wide restroom stalls, grab bars in the restroom, and low sink or bathroom fixtures. In addition, 100% of the survey respondents said that the agency's facilities are accessible for persons with disabilities.

5. The EEO officer told the EEPC auditors that the Section 55-A Program brochures are included in the new hire packet. However, no employees are enrolled in that Program.

The PA is in partial compliance with the following requirement:

The EEO officer unofficially serves as the disability rights coordinator.

Recommendation: The PA should officially appoint the EEO officer as the disability rights coordinator and notify staff about the appointment. (Sect. VB, Citywide EEOP)

EEO Complaint and Investigation Procedures

The PA is in compliance with the following requirements:

1. The PA has individuals not of the same gender (female EEO officer and male EEO counselor) available for complaint intake and investigation.

2. The EEO officer and the EEO counselor completed the basic training course for EEO professionals at the Department of Citywide Administrative Services (DCAS).

3. The PA identifies its EEO personnel in its EEO Policy.

4. The EEO officer told EEPC auditors that there were no discrimination complaints filed during the audit period. The EEO officer told EEPC auditors that if she were to receive a complaint she would follow the DCAS' Discrimination Complaint Procedures Implementation Guidelines.

5. One hundred percent of the survey respondents said that they know how to file an EEO complaint, and 88% of them said that if they had an EEO complaint they would bring it the agency's EEO officer. Only 11% said that they would file an EEO complaint with an office outside the agency.

The PA is not in compliance with the following requirement:

The EEO officer told EEPC auditors that she is in the process of developing a monthly discrimination complaint log format. Corrective action is required.

Recommendation: The EEO officer should develop and maintain a monthly EEO complaint log to indicate the monthly status of internal and external complaints. (DCAS, DCPIG, 1993, Sect. 12(a))

EEO Training

The PA is in compliance with the following requirement:

The PA provided EEO training (including a component on preventing sexual harassment) to all employees in December 2007 and January 2008. Its training program is based on the DCAS standards. The EEO training is conducted by the EEO officer. Approximately 43 employees received the training and a list of all employees who participated was submitted to the EEPC. In addition, 100% of the survey respondents said that they did receive EEO training. The EEO officer told EEPC auditors that she plans to conduct follow-up EEO training every six months.

EEO Officer Reporting Arrangement

The PA is in partial compliance with the following requirement:

The PA submitted a copy of its organization chart which shows that the EEO officer reports to the chief of staff, who in turn reports directly to the agency head. However, the chart does not include the title "EEO officer." The EEO officer said she meets with the chief of staff daily and memos regarding those meetings are on file. Corrective action is required.

Recommendation: The organizational chart should include the title "EEO officer." (Sect. VB, Citywide EEOP)

EEO Officer Responsibilities

The PA is in compliance with the following requirements:

1. The EEO officer told EEPC auditors that she is involved in developing job recruitment strategies and selecting recruitment media.

2. The EEO officer told EEPC auditors that she devotes 25% of her time to EEO matters; the other 75% is devoted to her duties as director of administration. The EEO officer said she has adequate support staff and resources to meet her EEO obligations.

3. The EEO officer told EEPC auditors that she supervises the EEO-related activities of the EEO counselor and meets with him periodically to keep them abreast of EEO developments.

Selection and Recruitment

The PA is compliance with the following requirements:

The EEO officer told EEPC auditors that she has analyzed the agency's workforce data to determine if women and/or minorities are underrepresented in particular job categories. She found no underrepresentation of women or minorities.

The PA is not in compliance with the following requirement:

Structured interview training was not provided to personnel involved in the recruitment and hiring process during the audit period. The PA's personnel data indicated that 26 people were hired during the audit period. Corrective action is required.

Recommendation: The PA should develop a plan to provide structured interview training to personnel involved in the recruitment and hiring process. (Sect. IV, Citywide EEO Policy)

Job Performance/Advancement

The PA is in compliance with the following requirement:

Sixty-seven percent of the survey respondents said that they saw the agency's job vacancy postings on agency bulletin boards prior to the application deadline.

At the June 11, 2008 exit meeting, the PA stated that it emails job vacancy notices to employees.

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. The PA's EEO Policy complaint form should be updated to include all of the "protected classes" under the New York City and New York State Human Rights Laws. An updated EEO Policy should be placed in the "new hire" package. (Sect. I, Citywide EEO Policy)
2. The PA should distribute the EEO Policy Handbook, *About EEO: What You May Not Know*, to all current and new employees. (Sect. IB, Citywide EEO Policy)
3. All agency recruitment literature should indicate that the agency is an equal opportunity employer. (Sect. IV, Citywide EEO Policy)
4. The PA should officially appoint the EEO officer as the disability rights coordinator and notify staff about the appointment. (Sect. VB, Citywide EEO Policy)
5. The EEO officer should develop and maintain a monthly EEO complaint log to indicate the monthly status of internal and external complaints. (DCAS, DCPIG, 1993, Sect. 12(a))
6. The organizational chart should include the title "EEO officer." (Sect. VB, Citywide EEO Policy)
7. The PA should develop a plan to provide structured interview training to personnel involved in the recruitment and hiring process. (Sect. IV, Citywide EEO Policy)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit. This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

Conclusion

Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEOC's audit of the PA's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your office will take to bring the agency in compliance with the aforementioned policies and which recommendations it intends to follow. As indicated by your staff during the audit exit meeting of June 11, 2008, some of our recommended corrective actions have already been implemented. Please specify these corrective actions in your response. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six

months, this Commission may publish a report and recommend the appropriate corrective actions that you should implement in your agency's EEO Plan.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,

A handwritten signature in dark ink, appearing to read 'E. Hart', written over the word 'Sincerely,'.

Ernest F. Hart, Esq.
Chair

APPENDIX - 1

Public Advocate EMPLOYEE SURVEY RESULTS

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
Yes (9) No (0)
2. Is your agency's EEO Policy Statement or the Citywide EEO Policy Statement posted on your agency's bulletin boards?
Yes (9) No (0)
3. Were you given the EEO Policy Statement or the Citywide EEO Policy Statement?
Yes (8) No (0) Do not remember (1)
4. Were you given a copy of the EEO Policy Handbook – *About EEO: What You Need to Know*?
Yes (9) No (0)
5. Do you agree with the principles of equal employment opportunity?
Yes (9) No (0)
6. Do you believe your agency practices equal employment opportunity?
Yes (9) No (0)

B. EEO COMPLAINTS

7. Do you know how to file an EEO complaint?
Yes (9) No (0)
8. If you had an EEO complaint, would you bring it to your agency's EEO Office?
Yes (8) No (1) Undecided (0)
9. Would you prefer to file an EEO complaint with an office outside your agency?
Yes (1) No (8) Undecided (0)
10. Did you ever file an EEO complaint with your agency's EEO Office? If No, please skip to question #14.
Yes (1) No (8)
11. What was the basis of the complaint?

Age (0)	Partnership Status (0)
Alienage or Citizen Status (0)	Predisposing genetic characteristic (0)
Arrest or Conviction Record (0)	Race (0)
Color (0)	Sexual Harassment (0)
Creed (0)	Sexual Orientation (0)
Disability (0)	Veteran's Status (0)
Gender (incl. gender identity) (0)	Victim of Domestic Violence, Stalking, and Sex Offenses (0)
Marital Status (0)	Other (1)
Military Status (0)	
National Origin (0)	

PA SURVEY RESULTS CONTINUED

12. Were you satisfied with the manner in which your complaint was managed?

Yes (0) No (1)

13. Was your manager or supervisor supportive of your right to file a complaint?

Yes (0) No (1) Not Applicable (0)

C. EEO TRAINING

14. Did you receive EEO training? If No, please skip to question #16.

Yes (9) No (0)

15. Did you find this training helpful?

Very (5) Somewhat (3)
Not really (0) Waste of time (1)

D. JOB PERFORMANCE/ADVANCEMENT

16. Did you see your agency's job postings for vacant positions on agency bulletin boards prior to the application deadline?

Yes (6) No (2) Do not remember (1)

E. AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

17. Are your agency's facilities accessible for persons with disabilities?

Yes (9) No (0) Don't Know (0)

18. Did you ever ask for an accommodation for a physical or mental disability?

If No, skip to question #28.

Yes (0) No (9)

19. Did the agency accommodate you?

Yes (0) No (0)

OPTIONAL

20. What is your race/ethnicity?

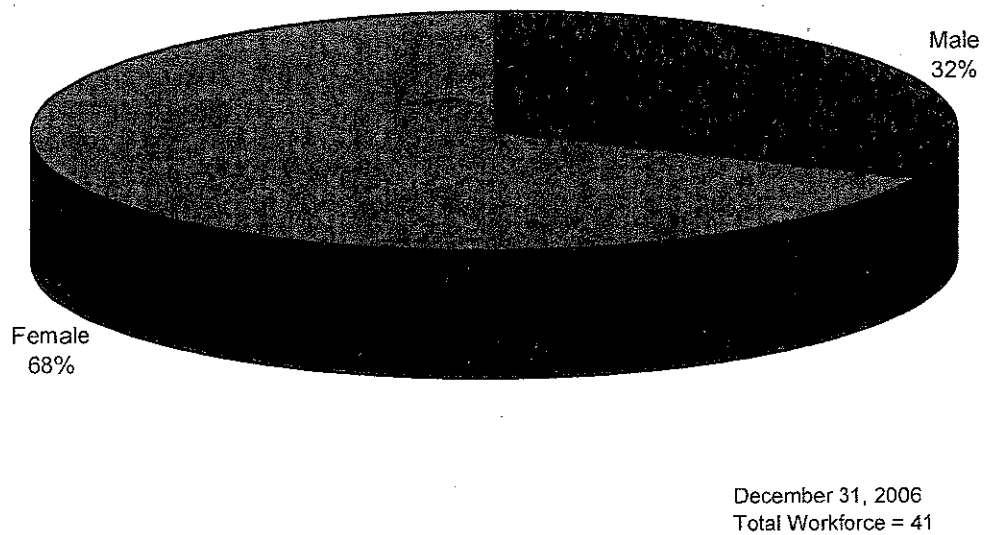
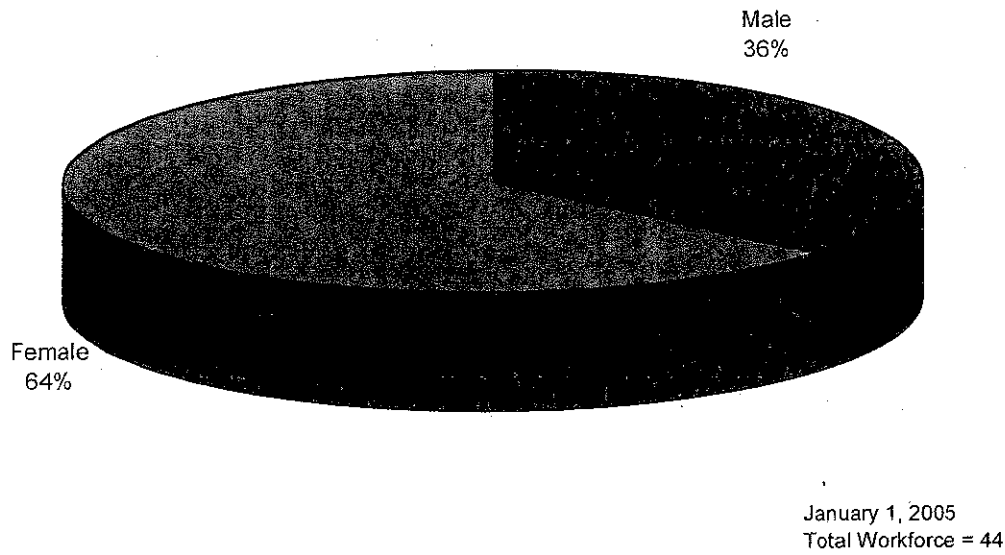
Asian (0) Native American (0)
Black (1) White (3)
Hispanic (1) Other (0)

21. What is your gender?

Male (3) Female (5)

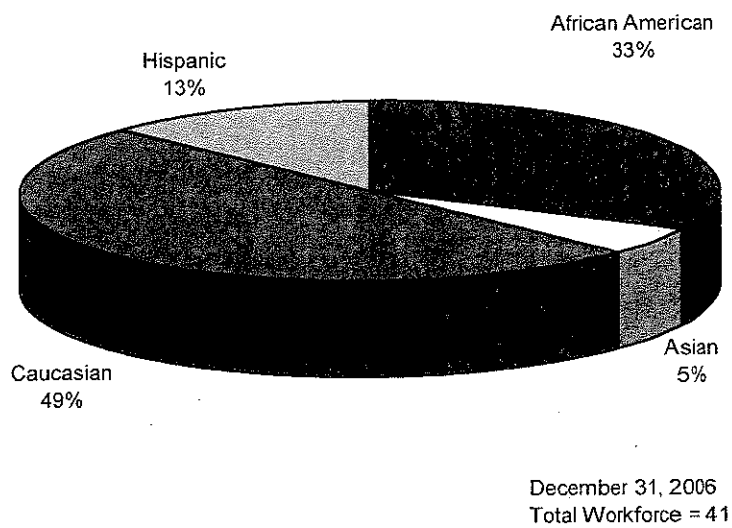
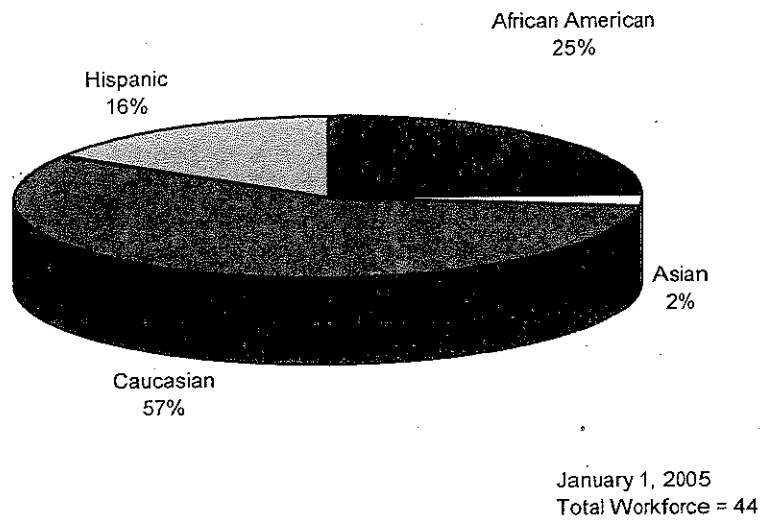
Appendix - 2

Office of the Public Advocate Workforce by Sex



Appendix - 3

Office of the Public Advocate Workforce by Ethnicity



APPENDIX – 4

The following table indicates personnel activity during the audit period, January 1, 2005 to December 31, 2006

Office of the Public Advocate

Hires by Sex and Ethnicity

Total Hires: 26

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Unknown	Total
10	16	26	13	4	4	3	2	26

Promotions by Sex and Ethnicity

Total Promotions: 9

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Unknown	Total
3	6	9	6	3	0	0	0	9

Source: Audit data supplied by the Office of the Public Advocate



The Public Advocate for the City of New York

Improving Access to City Services

Betsy Gotbaum
Public Advocate

9920

September 23, 2008

Ernest F. Hart, Esq.
Chair
NYC Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, NY 10006

Re: Response to Resolution #08/19-101/Preliminary Determination Pursuant to the
Audit of the Public Advocate's Equal Employment Opportunity Program from
January 1, 2005 to December 31, 2006

Dear Mr. Hart:

I appreciate the opportunity to respond to the Equal Employment Practices Commission ("EEPC") audit ("Audit") of the Office of the Public Advocate's ("PA") compliance with the City's Equal Employment Opportunity ("EEO") program.

The PA is, and always has been, strongly committed to ensuring fair employment practices for its employees and job applicants. As such, the PA welcomed the Audit, viewing it as a management tool to facilitate the continued improvement of the administration of the Citywide EEO Policy.

The PA accepts and will follow the Audit recommendations. As noted below, the PA has already implemented certain recommended corrective actions.

With respect to the individual Audit recommendations, following are the PA's responses:

1. EEPC Audit Recommendation

The agency's EEO Policy complaint form should be updated to include all of the "protected classes" under the New York City and New York State Human Rights Laws. An updated EEO Policy should be placed in the "new hire" package. (Sect. I, Citywide EEOP)

PA Response

The PA has updated its EEO Policy complaint form to include all of the protected classes under the New York City and New York State Human Rights Laws. The



updated Policy was distributed on December 5, 2007 to all staff members and has been placed in the "new hire" package.

2. EEPC Audit Recommendation

The PA should distribute the EEO Policy Handbook, *About EEO: What You May Not Know*, to all current and new employees.

PA Response

The EEO Policy Handbook has been distributed to all current staff members and has been placed in the "new hire" package.

3. EEPC Audit Recommendation

All agency recruitment literature should indicate that the agency is an equal opportunity employer. (Sect. IV, Citywide EEOP)

PA Response

The PA will comply with this recommendation.

4. EEPC Audit Recommendation

The PA should officially appoint the EEO officer as the disability rights coordinator and notify staff about the appointment. (Sect. VB, Citywide EEOP)

PA Response

The PA has officially appointed the EEO officer as the disability rights coordinator and notified in writing all staff on June 5, 2008. A notification of appointment will be placed in the "new hire" package.

5. EEPC Audit Recommendation

The EEO officer should develop and maintain a monthly EEO complaint log to indicate the monthly status of internal and external complaints. (DCAS, DCPIG, 1993, Sect. 12(a))

PA Response

The EEO officer will maintain a monthly EEO complaint log of internal and external complaints. I would like to reiterate that since I first took office in 2002, there have been zero EEO complaints filed.

6. EEPC Audit Recommendation

The organizational chart should include the title "EEO officer." (Sect. VB, Citywide EEOP)

PA Response

The chart has been revised to include the title "EEO officer."

7. EEPC Audit Recommendation

The PA should develop a plan to provide structured interview training to personnel involved in the recruitment and hiring process. (Sect. IV, Citywide EEO Policy)

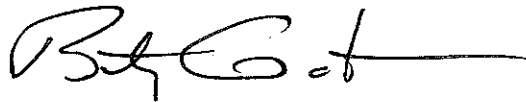
PA Response

The PA will review opportunities for scheduling appropriate staff for a course on structured interviewing and will schedule such course within the six-month compliance period.

I would like to thank your staff for their professionalism during the Audit and their production of a fair report.

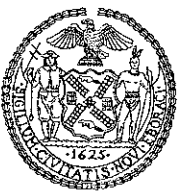
You may contact Ms. Anat Gerstein, Chief of Staff, at 212-669-4743, if you have any questions.

Yours truly,

A handwritten signature in black ink, appearing to read "Betsy Gotbaum", with a long horizontal line extending to the right.

Betsy Gotbaum

cc: Mr. Mendez
Mr. Matusewitch
Mr. May



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14th Floor New York, NY 10006

Telephone: (212) 788-8646 Fax: (212) 788-8652

Ernest F. Hart, Esq.

Chair

Manuel A. Méndez

Vice-Chair

Angela Cabrera

Veronica Villanueva, Esq.

Commissioners

Abraham May, Jr.

Executive Director

Judith Garcia Quiñonez, Esq.

Counsel

September 30, 2008

Honorable Betsy Gotbaum
Public Advocate
City of New York
1 Centre Street, 15th Floor
New York, New York 10007

Re: Initiation of Audit Compliance

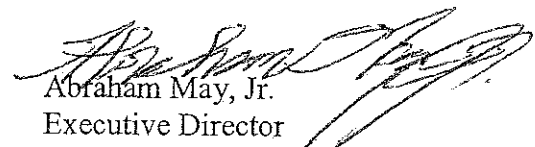
Dear Ms. Gotbaum:

Thank you for your September 23rd Response to our June 19th Letter of Preliminary Determination pursuant to our audit of your agency's Equal Employment Opportunity Program from January 1, 2005 to December 31, 2006.

We have reviewed your response and we are pleased to see that you concur with, and intend to implement, all the recommended corrective actions. Consequently, we are prepared to initiate the City Charter-mandated audit compliance process. Judith Garcia Quiñonez, Esq. is the Counsel/Compliance Director for this Commission. She, or her designee, will contact your EEO Officer, Ms. Elba Feliciano to initiate audit compliance.

We look forward to working with you, Ms. Feliciano, and your staff to ensure an effective Equal Employment Opportunity Program in the office of the Public Advocate.

Sincerely,


Abraham May, Jr.
Executive Director

c: Elba Feliciano, EEO Officer

Judith Garcia Quiñonez, Esq., Counsel/Compliance Director