





## EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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January 14, 2010 (corrected)

Jonathan Mintz

Commissioner

Department of Consumer Affairs

42 Broadway, 8th Floor

New York, NY 10004

Re: Preliminary Determination Pursuant to the Audit of the Department of Consumer Affairs (DCA) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

Dear Commissioner Mintz:

Pursuant to Chapter 35, Section 814(a)(12) of the New York City Charter, the City established the Citywide Equal Employment Opportunity Policy (EEOP), a set of uniform standards and procedures designed to ensure the equality of opportunity for women and minority municipal government employees and job applicants, and, consistent with federal, state and local laws, identified other groups for protection from discrimination in employment by city agencies.

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..."

This letter contains the preliminary determinations of EEPC pursuant to its audit of compliance by the Department of Consumer Affairs (DCA) during the thirty-six month period

commencing January 1, 2006 and ending December 31, 2008. Requests for corrective actions and/or recommendations are included where the EEPC has determined that DCA has failed to comply in whole or in part with the City's EEO Policy.

All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the EEO Policy, which, in accordance with section 815 of the City Charter, holds agency heads responsible for the effective implementation of Equal Employment Opportunity. Therefore, the Department of Consumer Affairs should incorporate these recommendations in its agency-specific EEO Plan. The relevant sections of the City's EEO Policy are cited in parenthesis at the end of each recommendation. In addition, 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 plans for minority group members and women.

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

### **Scope and Methodology**

Audit methodology included an analysis of DCA's responses to an EEPC Document and Information Request Form. EEPC staff also analyzed City-wide Equal Employment Database System (CEEDS) data prepared by the Department of Citywide Administrative Services which determines underutilizations and concentrations of targeted groups within the agency's workforce. These designations represent imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market.

CEEDS data is critical in identifying underutilization in the city's workforce. Where underutilization is revealed within an agency's workforce, auditors determine whether an agency has undertaken reasonable measures for addressing underutilization. At present, the CEEDS data requires updating in order for the underutilization analysis to provide an accurate measure of the employment practices of city agencies; the DCAS is currently updating this data. Upon completion, the EEPC will review the data and make supplemental recommendations pursuant to this audit.

EEPC auditors also conducted in-depth, on-site interviews with DCA's EEO Officer, two EEO Counselors, Agency Counsel, Human Resources Director/Career Counselor and Disability Rights Coordinator.

Thirty-one percent of DCA's employees responded to the EEPC's online Employee Survey via City share and 10% of supervisors/managers (that oversee 5 or more employees) filled out an EEPC questionnaire. Survey and questionnaire findings are included as appendices and are discussed throughout this report.

## **Description of the Agency**

The Department of Consumer Affairs (DCA) was created in 1968 by merging the departments of Weights and Measures and Licensing. The DCA gained additional authority with passage of New York City's landmark Consumer Protection Law in 1969, making it the first municipal agency of its kind in the country. The Department's mission is to ensure that consumers and businesses benefit from a fair and vibrant marketplace. DCA achieves its mission by mediating and resolving consumer complaints; licensing 57 industries and maintaining high standards of fairness and public accountability; enforcing the city's landmark consumer protection law, and other related city and state laws; educating New Yorkers about their rights as consumers and responsibilities as businesses; and litigating against rule-breaking businesses. These combined efforts efficiently and effectively protect New York consumers.

## **Personnel Activity During the Audit Period**

According to data provided by the DCA, during the audit period, 151 people were hired: 51 African-Americans, 11 Asians, 56 Caucasians, 26 Hispanics, 1 Native American, and 6 "Other". Of the individuals hired, 92 were female. Ninety-two individuals were promoted during the audit period: 22 African Americans, 13 Asians, 38 Caucasians, 18 Hispanic and 1 "Other". Of the employees promoted, 47 were female. (Appendix 4)

The DCA reports that 25 full-time employees were involuntarily separated during the audit period: 14 African Americans, 4 Caucasians, 4 Hispanics, 1 Native American and 2 "Other". Of the employees separated, 12 were female. Between January 2006 and December 2008, the total number of employees increased from 528 to 580. The number of African-American employees increased from 93 to 101, Caucasian employees increased from 95 to 99, Hispanic employees increased from 53 to 61 and Asian employees increased from 21 to 26. The number of Native American employees remained flat at 1. Female employees increased from 138 to 162. (Appendices 2 and 3)

## **Discrimination Complaint Activity During the Audit Period**

During the audit period, 3 internal discrimination complaints were filed. One complaint was successfully mediated; the other 2 complaints (1 based on Age/Disability and 1 based on National Origin) received no probable cause determinations.

Five external complaints were filed during the audit period: 3 were filed with the New York State Division on Human Rights, 1 with the New York City Commission on Human Rights and 1 with the Equal Employment Opportunity Commission. All were based on multiple categories. Three of these (1 based on Race/Color/Sex/National Origin and 2 based on Age/Disability/Retaliation) received no probable cause determinations. The other two (based on Race/Color and Race/Color/Sex) were still pending during the period in review.

## **PRELIMINARY DETERMINATION**

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

## **Plan Dissemination – Internally**

The DCA is in compliance with the following requirements:

1. The EEO Policy, EEO Policy Handbook-*About EEO: What You Need to Know*, along with the EEO Policy statement and addendums is distributed to employees annually – usually at DCA’s summer meeting. They were last distributed in September 2008 and June 2009. The policies are also given to employees on their initial day of employment. In addition, 92% of respondents to the EEPC’s Employee Survey indicated they had received the EEO policy handbook and 79% indicated they had received the agency’s EEO Policy Statement. Also, 88% (7 of 8) of respondents to the EEPC’s Manager/Supervisor Interview Questionnaire indicated they were given the agency’s EEO Policy Statement.
2. A copy of the City’s EEO Policy, EEO Policy Handbook and complaint procedures are available to all employees via the DCA’s Intranet, in the EEO folder on the shared network drive, and on bulletin boards at each site where the agency conducts business. In addition, 89% of respondents to the EEPC’s Employee Survey indicated the policies were located in areas that were accessible. An EEO Counselor checks and maintains the boards to ensure that EEO information is clearly posted and current. Eighty-eight percent (7 of 8) of respondents to the EEPC’s Manager/Supervisor Interview Questionnaire indicated that the policy was most accessible via the agency’s Intranet and HR/Personnel Office.

## **Plan Dissemination – Externally**

The DCA is in partial compliance with the following requirement:

Five city-wide job vacancy notices [Communications Associate, Director of Legal Compliance and Fitness, Receptionist/Commissioner’s Office, Deputy Director for Programs and Partnerships, Paralegal Aide] submitted by the DCA indicate that the City of New York is an equal opportunity employer.

In addition, a bulk advertisement listed in both the Amsterdam News and the Chief (for Deputy Director, Administrative Law Judge, Special Assistant, Community Assistant, Inspector, Training and Recruitment Coordinator, Director of Licensing, Policy Analyst, Assistant Commissioner of Operations, Settlement Officer, Inspector, and Budget Assistant) and two 2008 newspaper advertisements (listed in The Chief and in AM New York for Administration, Audit, Research and Investigations Division candidates) all indicated the City of New York is an equal opportunity employer.

These advertisements did not indicate that the DCA is an equal opportunity employer. Corrective action is required.

Recommendation: All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer. (Sect. IV, EEOP)

## **EEO for Persons with Disabilities and Reasonable Accommodations**

The DCA is in compliance with the following requirements:

1. The DCA participates in the Section 55-A program. The director of Human Resources serves as the Section 55-A Coordinator. Currently, there is one program participant.
2. The DCA has provided the EEO policy statement in alternate formats (i.e. Braille) for persons with disabilities. The EEO Officer is aware that the policies are available in other alternate formats through the Department of Citywide Administrative Services (DCAS).
3. The DCA facilities, located at 42 Broadway, 120-55 Queens Boulevard, 59 Maiden Lane/66 John Street, 4101 White Plains Road, 245 Meserole Avenue, 35 Claver Place, are accessible to, and useable by, persons with disabilities. In addition, 79% of respondents to the EEPC's Employee Survey indicated the agency's facilities were accessible to persons with disabilities.
4. The DCA has appointed a Disabilities Rights Coordinator, whose responsibility is to handle reasonable accommodation requests and ensure compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities. The DRC maintains files on all requests for accommodation. During the period in review, 9 of 10 requests for accommodation (for office equipment, special equipment, and scheduling adjustments) were granted.

## **Discrimination Complaint and Investigation Procedures**

The DCA is in compliance with the following requirements:

1. The EEO Officer uses a monthly log for maintaining and updating the status of discrimination complaints filed against the agency.
2. The DCA has appointed at least 2 EEO representatives who are not of the same gender (1 male EEO Officer and 2 female EEO Counselors) to receive discrimination complaints and conduct investigations.
3. All of the DCA's EEO Staff completed the basic training course for EEO professionals administered by the Department of Citywide Administrative Services (2 EEO Counselors-2004, the EEO Officer-2007, the Career Counselor/Section 55-A Coordinator-2008, and the Disability Rights Coordinator-2006).

## **EEO Training**

The DCA is in compliance with the following requirement:

During the period in review, DCA employees received EEO training annually. The training curriculum was reviewed and approved by DCA's Commissioner, as well as DCAS. It covers the rights and responsibilities of employees and WEP workers under the City's EEO

Policy, the discrimination complaint and investigation procedures, the reasonable accommodation procedures and Sexual Harassment. New hire training was conducted on the last Friday of every other month. In addition, 94% of the respondents to the EEPC's Employee Survey indicated that they had received EEO training within the past 2 years and 88% found the training informative.

## **Selection and Recruitment**

The DCA is in compliance with the following requirements:

1. In 2006 and 2009, the DCA provided structured interview training to employees who are involved in employment interviewing. In addition, all (6) respondents to the EEPC's Manager/Supervisor Interview Questionnaire who indicated they interviewed candidates for positions also indicated they had received training and/or a guide that outlines illegal or discriminatory questions and includes instructions for conducting a structured interview.
2. DCA's EEO Officer is involved in developing recruitment strategies and selecting recruitment media. As a result of discussions between the EEO Officer and HR Director, the agency has begun to expand its recruitment and advertising resources.

The DCA is not in compliance with the following requirements:

1. The DCA did not conduct an adverse impact study (to assess the manner in which candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group). Corrective action is required.

Recommendation: Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DCA should conduct an adverse impact study. The DCA can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)

2. During the audit exit meeting, agency representatives told EEPC's representatives that discretionary applicant forms are not consistently used when hiring. Corrective action is required.

Recommendation: Because the EEOP holds each agency responsible for its commitment to assess its criteria for selecting persons for mid-level to high-level discretionary positions and its commitment to retain information about personnel actions, the agency should use and maintain discretionary job applicant forms that include the name, gender and ethnicity of applicants, the reason for selection/rejection, and the source of recruitment. (Sect. IV, EEOP)

## Promotional Opportunities

The DCA is in compliance with the following requirement:

The DCA has formally appointed a Career Counselor. In addition, 53% of respondents to the EEPC's Employee Survey indicated they knew the name this individual.

The DCA is in partial compliance with the following requirements:

Eighty-seven percent of respondents to the EEPC's Employee Survey indicated they had received an annual performance evaluation within the past 12 months and 66% said that it had included recommendations for improving job performance. In addition, 7 of 8 respondents to the EEPC's Manager/Supervisor Interview Questionnaire indicated they evaluate their employees annually.

In response to the EEPC's Manager/Supervisor Interview Questionnaire, only 1 respondent had received his/her last performance evaluation in the past year. In addition, the agency's HR office submitted documentation that 28% of managers/supervisors (22 of the 78 individuals identified as managers/supervisors by the agency) had been evaluated during the period in review. Corrective action is required.

Recommendation: Since the *Guidelines for Evaluating Managerial Performance in NYC Agencies* require that managerial employees receive annual performance evaluations, the agency should develop a plan, which includes a timetable, to evaluate its managerial employees annually. (DCAS Division of Citywide Personnel Services, *Managerial Performance Evaluation: Guidelines for Evaluating Managerial Performance in NYC Agencies*, p. 1)

The DCA is not in compliance with the following requirement:

The DCA's managerial performance evaluation form does not contain a rating for EEO. Corrective action is required.

Recommendation: Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (Sect VE, EEOP)

## Supervisory Responsibility in EEO Plan Implementation

The DCA is in compliance with the following requirement:

During the agency's Director's Meeting, managers and supervisors were instructed to discuss the department's EEO policies with their subordinates. Documentation of these meetings is maintained. In response to the EEPC's Employee Survey, 64% of respondents indicated their manager/supervisor discussed the agency's commitment to EEO, and 63% indicated

their manager/supervisor discussed their right to file a discrimination complaint with the EEO Officer during staff meetings within the past year. In addition, 6 of 8 respondents to the EEPC's Manager/Supervisor Interview Questionnaire also confirmed that they have had this discussion.

### **EEO Officer Reporting Arrangement**

The DCA is in compliance with the following requirements:

1. The EEO Officer reports to the agency head and meets with him once per month on EEO matters. Documentation of these meetings is maintained.
2. The EEO Officer meets with the EEO professionals quarterly to review their work and keep them abreast of EEO developments. Ad hoc meetings are held if the need arises. Documentation of these meetings is maintained.

The DCA is not in compliance with the following requirement:

The DCA did not submit to the EEPC its Agency Specific Plans for FY 2006 and 2007 and quarterly reports for 2006/Q4, 2007/Q1, 2008/Q3, 2008/Q4, 2009/Q1, and 2009/Q2. The EEO Officer submitted these reports during the EEPC's audit. Since that time, the DCA has submitted timely reports.

**NOTE:** The agency head must submit an agency-specific plan, three quarterly reports and an annual fourth quarter final report to the EEPC each fiscal year. These reports should be submitted no later than thirty days following each reporting period. (Sect. 815(i), New York City Charter and Sect. VB, EEOP)

### **EEO Officer Responsibilities**

The DCA is in compliance with the following requirement:

The EEO Officer spends 25% of his time on EEO matters and has adequate support staff and resources to meet his EEO obligations.

### **SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS**

1. All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer. (Sect. IV, EEOP)
2. Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DCA should conduct an adverse impact study. The DCA can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact

is discovered, the agency should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)

3. Because the EEOP holds each agency responsible for its commitment to assess its criteria for selecting persons for mid-level to high-level discretionary positions and its commitment to retain information about personnel actions, the agency should use and maintain discretionary job applicant forms that include the name, gender and ethnicity of applicants, the reason for selection/rejection, and the source of recruitment. (Sect. IV, EEOP)
4. Since the *Guidelines for Evaluating Managerial Performance in NYC Agencies* require that managerial employees receive annual performance evaluations, the agency should develop a plan, which includes a timetable, to evaluate its managerial employees annually. (DCAS Division of Citywide Personnel Services, *Managerial Performance Evaluation: Guidelines for Evaluating Managerial Performance in NYC Agencies*, p. 1)
5. Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO - which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (Sect VE, EEOP)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency head 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**

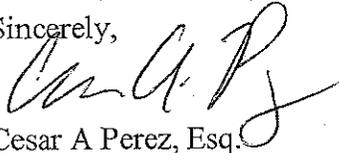
Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of the DCA's compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned 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. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, 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 to the Mayor 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 black ink, appearing to read 'Cesar A. Perez', written in a cursive style.

Cesar A Perez, Esq.

Chair

APPENDIX - 1

Department of Consumer Affairs  
EMPLOYEE SURVEY RESULTS

Employees = 290 Survey Respondents = 89 31%

**A. GENERAL OVERVIEW**

1. Equal Employment Opportunity (EEO) guarantees the right of all persons to be accorded full and equal consideration on the basis of merit, regardless of protected group status. Do you agree with this principle?  
Yes (85) No (3)
2. Do you know who your agency's EEO Officer is?  
Yes (84) No (4)
3. Is the City's EEO Policy posted on your agency's bulletin boards or kept in an area otherwise accessible to employees?  
Yes (79) No (7)
4. Each agency head is required to distribute a statement in support of Equal Employment Opportunity to all employees. Were you given your agency's EEO Policy statement?  
Yes (70) No (2) Do not remember (16)
5. Were you given a copy of the EEO Policy Handbook - About EEO: What You Need to Know?  
Yes (82) No (5)
6. Do you believe your agency practices equal opportunity (i.e. ensures fairness in all aspects of employment including hiring, selection, promotions, etc.)?  
Yes (49) No (38)
7. Has your manager or supervisor discussed the agency's commitment to the principle of Equal Employment Opportunity during staff meetings within the past year?  
Yes (57) No (16) Do not remember (14)
8. Has your manager or supervisor discussed employees' right to file a discrimination complaint with the agency's EEO Officer during staff meetings within the past year?  
Yes (56) No (22) Do not remember (10)
9. When hired, were you advised of the City's EEO policies, and of your rights and responsibilities under such policies?  
If No, please skip to question #11.  
Yes (62) No (8) Do not remember (18)

**B. EEO COMPLAINTS**

10. Do you know how to file an EEO complaint?  
Yes (75) No (12)
11. If you had an EEO complaint, would you bring it to your agency's EEO Office?  
Yes (59) No (15) Undecided (14)
12. Would you prefer to file an EEO complaint with an office outside your agency rather than your agency's EEO Office?  
Yes (36) No (30) Undecided (22)
13. During the past 3 years, did you file a complaint with your agency's EEO Office?  
Yes (6) No (82)

**SURVEY RESULTS CONTINUED**

14. If yes, what was the basis of your complaint? (Check all that apply)

- |                                    |  |
|------------------------------------|--|
| Age (0)                            | Partnership Status (0)   |
| Alienage or Citizen Status (1)     | Predisposing genetic characteristic (0)                        |
| Arrest or Conviction Record (0)    | Race (5)   |
| Color (3)                          | Sexual Harassment (1)  |
| Creed (2)                          | Sexual Orientation (1)   |
| Disability (1)                     | Veteran's Status (1)   |
| Gender (incl. gender identity) (0) | Victim of Domestic Violence,<br>Stalking, and Sex Offenses (0) |
| Marital Status (0)                 | Other (4)  |
| Military Status (0)                | Not Applicable (4)   |
| National Origin (1)                |  |

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

- |         |        |                     |
|---------|--------|---------------------|
| Yes (4) | No (3) | Not Applicable (76) |
|---------|--------|---------------------|

**C. EEO TRAINING**

16. During the past 2 years, did you receive EEO training?

- |          |        |
|----------|--------|
| Yes (84) | No (3) |
|----------|--------|

17. How informative was this training?

- |                            |                           |
|----------------------------|---------------------------|
| Very informative (36)      | Somewhat informative (42) |
| Not really informative (6) | Not Applicable (4)        |

**D. JOB PERFORMANCE/ADVANCEMENT**

18. Were vacant positions advertised on bulletin boards or other areas accessible to employees in a timely manner?

- |          |        |                     |
|----------|--------|---------------------|
| Yes (78) | No (5) | Do not remember (5) |
|----------|--------|---------------------|

19. Did you receive an annual performance evaluation within the past 12 months?

- |          |        |                                   |
|----------|--------|-----------------------------------|
| Yes (77) | No (7) | Employed for less than 12 mos (4) |
|----------|--------|-----------------------------------|

20. Did your evaluation contain recommendations for improving your job performance?

- |          |         |                    |
|----------|---------|--------------------|
| Yes (59) | No (13) | Not Applicable (0) |
|----------|---------|--------------------|

21. Did your evaluation contain recommendations for career advancement with your agency?

- |          |         |                    |
|----------|---------|--------------------|
| Yes (25) | No (46) | Not Applicable (0) |
|----------|---------|--------------------|

22. Do you know the name of the person in your agency that is responsible for providing career counseling?

- |          |         |
|----------|---------|
| Yes (47) | No (41) |
|----------|---------|

**E. SPECIFIC PROTECTIONS**

23. Do you know who your agency's Disability Rights Coordinator is?

- |          |         |
|----------|---------|
| Yes (60) | No (27) |
|----------|---------|

24. The Americans with Disabilities Act requires that public buildings and facilities be accessible to persons with disabilities. Are your agency's facilities accessible to persons with disabilities?

- |          |        |                 |
|----------|--------|-----------------|
| Yes (70) | No (3) | Don't Know (15) |
|----------|--------|-----------------|

25. The City's EEO Policy requires that agencies take appropriate action to reasonably accommodate qualified employees and applicants with disabilities, and those who are victims of domestic violence, sex offenses, or stalking, to enable to them to perform their jobs or enjoy equal benefits and privileges of employment. It also requires agencies to provide reasonable accommodations for the religious observances, beliefs and practices of an employee or applicant. During the past 3 years, did you ask for a reasonable accommodation due to any of the above?

- |          |         |
|----------|---------|
| Yes (12) | No (75) |
|----------|---------|

**SURVEY RESULTS CONTINUED**

**OPTIONAL INFORMATION**

26. Race/Ethnicity

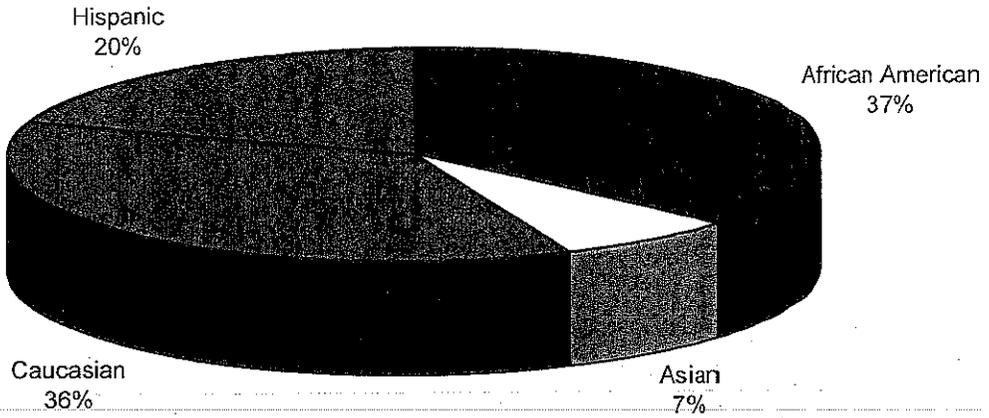
Asian (7)	Native Hawaiian or Other Pacific Islander (1)
American Indian or Alaska Native (1)	White (31)
Black or African American (23)	Two or More Races (0)
Hispanic or Latino (10)	Other (0)

27. Gender

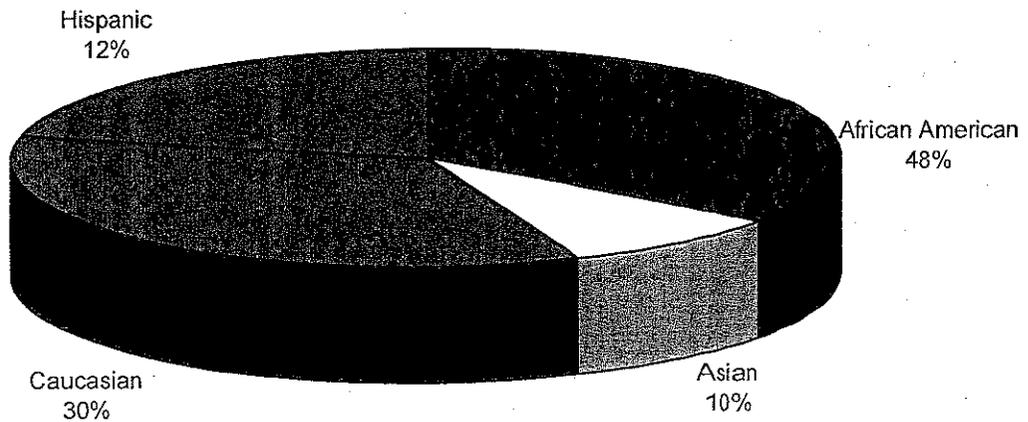
Male (36)	Female (47)
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# APPENDIX - 2

## Department of Consumer Affairs Workforce by Ethnicity



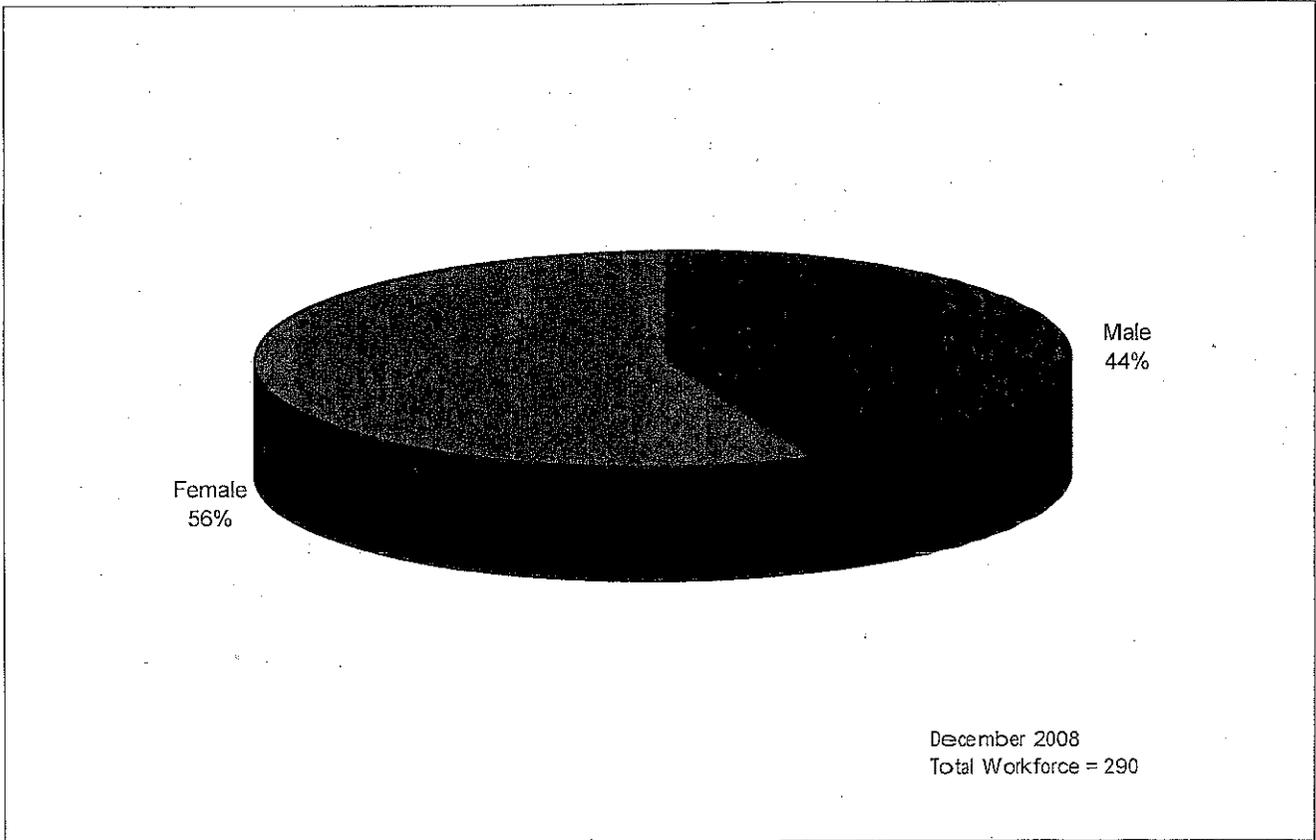
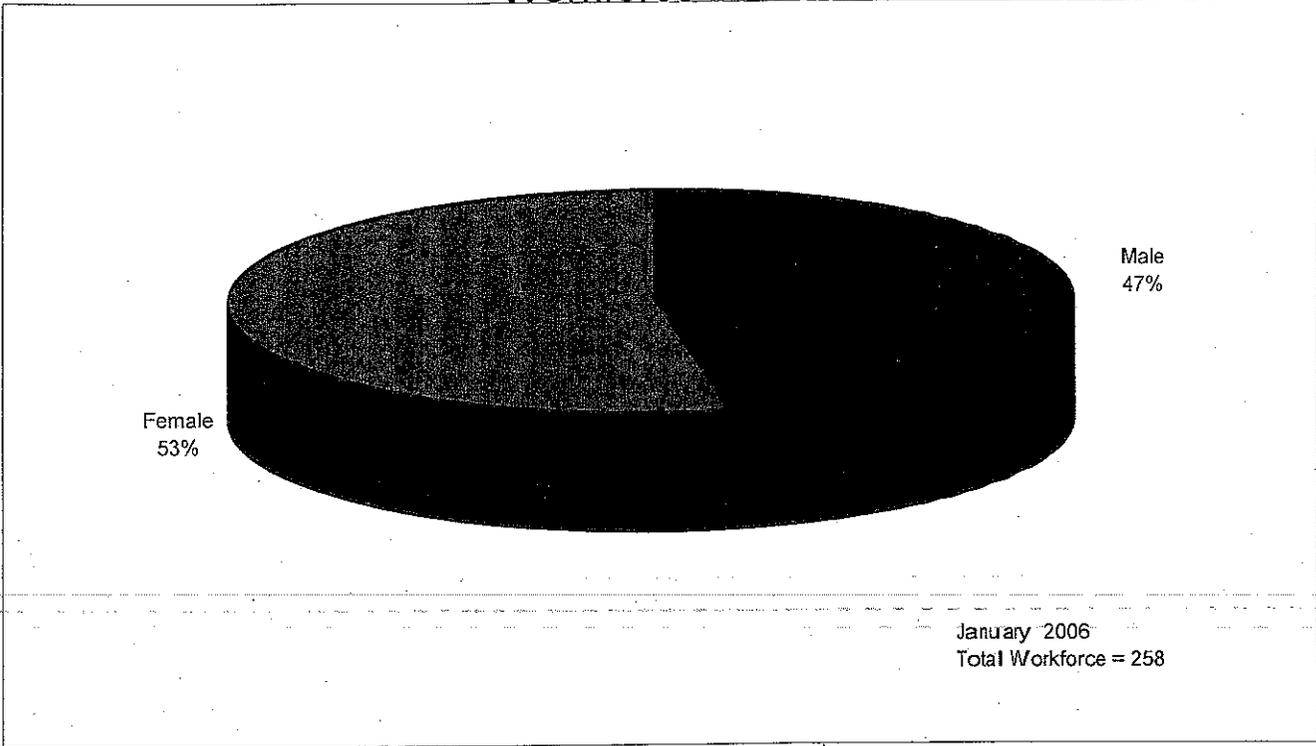
January 2006  
Total Workforce = 258



December 2008  
Total Workforce = 290

# APPENDIX - 3

## Department of Consumer Affairs Workforce by Sex



## APPENDIX – 4

The following table indicates personnel activity during the audit period, January 1, 2006 through December 31, 2008.

### Department of Consumer Affairs

#### Hires by Gender and Ethnicity

Total Hires: 151

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native Americans	Unknown	Total
59	92	151	56	51	26	11	1	6	151

#### Promotions by Gender and Ethnicity

Total Promotions: 92

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American	Unknown	Total
45	47	92	38	22	18	13	0	1	92

## SUPERVISOR/MANAGER QUESTIONNAIRE RESULTS

Total Supervisors = 78 Completed Questionnaire = 8 (10%)

1. Are you familiar with the City of New York's Equal Employment Opportunity (EEO) Policy?
  - Yes (8) No (0)
  - Provided description (7)
2. Are you aware of your rights as an employee under the City's EEO Policy?
  - Yes (8) No (0)
  - Provided description (7)
3. Are you aware of your responsibilities as a supervisor/manager under the City's EEO Policy?
  - Yes (8) No (0)
  - Provided description (8)
4. What is the name of your agency's EEO Officer?
  - Know (7) Do not know (0)
5. Did the EEO Officer meet with you to discuss the following: (Check all that apply)
  - Your EEO rights as an employee (6)
  - Your EEO responsibilities as a supervisor/manager (3)
  - Neither (1)
6. In your agency, where can the City's EEO Policy be found? (Check all that apply.)
 

EEO Office (3)	My work unit (5)
HR/Personnel Office (7)	I do not know (0)
Intranet (7)	Other (2)
7. Of the choices indicated above, which is most easily accessible to you?
 

EEO Office (0)	My work unit (2)
HR/Personnel Office (1)	Other (2)
Intranet (5)	
8. Each agency head is required to distribute a statement in support of Equal Employment Opportunity to all employees. Have you received a copy of your agency's EEO Policy Statement?
 

Yes (7)	No (0)	Do not remember (0)
---------	--------	---------------------
9. Do you have access to a copy of the Discrimination Complaint Procedure?
 

Yes (6)	No (0)	Do not know (0)
---------	--------	-----------------
10. In your role as a supervisor/manager, have you discussed the agency's commitment to the principal of Equal Employment Opportunity during staff meetings within the past year?
 

Yes (6)	No (1)	Other (0)
---------	--------	-----------
11. In your role as a supervisor/manager, have you discussed with employees their right to file a discrimination complaint with the agency's EEO Officer during staff meetings within the past year?
 

Yes (6)	No (1)
---------	--------
12. Did you receive sexual harassment prevention training from your agency?
 

Yes (6)	No (1)	Do not remember (0)
---------	--------	---------------------
13. Did all of the employees that you supervise receive sexual harassment prevention training?
 

Yes (6)	No (0)	Do not know (1)
---------	--------	-----------------

QUESTIONNAIRE CONTINUED

14. When you were hired, did you receive an orientation session that included a review of the City's EEO policy?

Yes (4) No (1) Do not remember (2)

15. Do you participate in orientation sessions for new employees?

Yes (0) No (7)

16. Do new employee orientation sessions include information on the City's EEO policy?

Yes (5) No (0) Do not know (1)

17. Do you interview candidates for positions in your agency?

Yes (6) No (1)

18. If you are involved in interviewing job applicants, did your agency provide you with training and/or a guide that outlines illegal or discriminatory questions and includes instructions for conducting a structured interview?

Yes (6) No (0) I do not interview applicants (1)

19. When was your last performance evaluation?

Within a year (1) Over a year ago (0)

20. Were you informed that EEO performance will be part of your overall performance evaluation and will be considered in determining your eligibility for promotions and merit increases?

Yes (3) No (3) Not Applicable (1)

21. Does your performance evaluation include an EEO component? (A section that rates your ability to make employment decisions based on merit and

Yes (3) No (3) I do not receive performance evaluations (0)

22. Do you evaluate your employees annually?

Yes (7) No (0) Other (0)

23. Do you believe the agency has provided sufficient training to supervisors/managers on their responsibilities in assisting employees that may complain

Yes (6) No (1)

24.

Please share your additional comments or concerns regarding EEO in your agency.

Comments (0)



**Department of  
Consumer Affairs**

Jonathan Mintz  
Commissioner

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8th Floor  
New York, NY 10004

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(212-NEW-YORK)

[nyc.gov/consumers](http://nyc.gov/consumers)

May 6, 2010

Chairman Cesar A. Perez, Esq.  
Equal Employment Practices Commission  
40 Rector Street  
14<sup>th</sup> Floor  
New York, NY 10006

Re: Preliminary Determination Pursuant to the Audit of the Department of Consumer Affairs (DCA) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

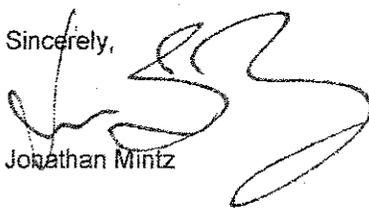
Dear Chairman Perez:

Thank you for sharing the preliminary determination of the Equal Employment Practices Commission (EEPC) pursuant to its audit of the Department of Consumer Affairs' (DCA) compliance with the City's EEO Policy from January 1, 2006 through December 31, 2008.

I would like to assure you that DCA is committed to ensuring that the City's EEO Policy is fully implemented in our agency. I have reviewed the EEPC's Preliminary Determination and its recommendations for corrective action.

Please note that my staff and I have already implemented most of the recommended corrective actions. Documentation for the implementation of these corrective measures is attached, or has already been given to the EEPC. I would ask that your staff work with our interim EEO Officer, Betty Aruaz, on the remaining corrective actions.

Sincerely,



Jonathan Mintz

cc: Betty Aruaz  
Everett Barrett  
Abraham May, Jr. (EEPC)



**Department of  
Consumer Affairs**

*Department of Consumer Affairs' Response to the EEPC's Preliminary Determination Pursuant to the Audit of the Department of Consumer Affairs (DCA) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008.*

**EEPC Recommendations**

**Recommendation #1:**

*All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer.*

**Response:**

DCA recruitment literature had previously indicated, "the City of New York is an equal opportunity employer." This has now been updated to indicate, "DCA and the City of New York is an equal opportunity employer."

**Recommendation #2:**

*Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DCA should conduct an adverse impact study. The DCA can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using these criteria.*

**Response:**

Within the six month compliance period, the Department will compile relevant employment selection data and determine whether it is possible to conduct a statistically meaningful adverse impact study for any of its hiring decisions in light of the small number of hiring decisions in an agency of approximately 300 employees, the numerous employment categories into which employees are hired, and the limited demographic information



**Department of  
Consumer Affairs**

available to the Department. If it is possible to conduct an adverse impact study that will yield statistically significant results and those results demonstrate a statistically significant adverse impact upon any particular racial, ethnic, disability, or gender group in a hiring decision, the agency will determine whether the criterion creating the adverse impact is job-related. If any criterion is not job-related, the agency will discontinue using it.

The Department has already taken steps to ensure that discrimination cannot enter the interview portion of the hiring process by developing pre-screened interview scripts to ask questions about race-, gender- and ethnic-neutral job-related criteria. The use of pre-screened scripts also protects against the possibility that discrimination can enter the hiring process through subjective and selective questioning of applicants by requiring that interviewers ask the same questions of all applicants.

---

**Recommendation #3:**

*Because the EEOP holds each agency responsible for its commitment to assess its criteria for selecting persons for mid-level to high-level discretionary positions and its commitment to retain information about personnel actions, the agency should use and maintain discretionary job applicant forms that include the name, gender and ethnicity of applicants, the reason for selection/rejection, and the source of recruitment.*

**Response:**

In accordance with its EEOP, the Department fully complies with the requirement to retain information about personnel actions, discretionary hiring, applicants, promotions, demotions, transfers, rates of pay, terms of compensation and selection for training that are required by federal, state and local law and /or the City's official records retention schedule. The EEOP does not specify that the Department will collect information concerning the race, gender and ethnicity of applicants. Moreover, none of the record maintenance laws with which the Department complies requires the collection on applicant forms of information concerning the race, gender and ethnicity of applicants. For example, the biennial EEO-4 Report required by 29 C.F.R. § 1602.32 requires racial, gender and ethnicity information only for existing employees and new hires, not for all applicants.

**Recommendation #4:**

*Since the Guidelines for Evaluating Managerial Performance in NYC Agencies require that managerial employees receive annual performance evaluations, the agency should develop a plan, which includes a timetable, to evaluate its managerial employees annually.*



**Department of  
Consumer Affairs**

**Response:**

The Department is already in compliance with this requirement as the evaluation of managerial employees has been in place for years. On an annual basis the Department develops and distributes an evaluation plan and timeline. Given staff turnover, adherence is not always perfectly timely; however, the recent implementation of an electronic-based evaluation system (e-Performance) has increased the quality and timeliness of those evaluations.

**Recommendation #5:**

*Since the City's Equal Employment Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner.*

**Response:**

Since 2007, an "EEO Addendum" has been added to managerial tasks and standards. The addendum, shared with EEPC during the course of the audit, outlines the manager's responsibility to effectively implement EEO-related policies and ensure non-discrimination within the Department. DCA will apply a rating to this already established responsibility moving forward.



# EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14<sup>th</sup> Floor, New York, New York 10006

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

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Abraham May, Jr.  
*Executive Director*  
Charise Hendricks  
*Deputy Director*  
Judith Garcia Quiñonez  
*Counsel*

May 21, 2010

Commissioner Jonathan Mintz  
Department of Consumer Affairs  
42 Broadway, 8th Floor  
New York, NY 10004

Re: ~~Final Determination Pursuant to the Audit of the Department of Consumer Affairs (DCA) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008~~

Dear Commissioner Mintz:

Thank you for your May 6, 2010 response to our January 14, 2010 Letter of Preliminary Determination pursuant to the Referenced audit.

As we indicated in our Preliminary Determination Letter, our findings and recommendations are based on the collection of relevant documents in response to an EEPC *Document and Information Request Form*, in-depth, on-site interviews with the DCA's EEO Officer, two EEO Counselors, the Agency Counsel, Human Resources Director/Career Counselor and Disability Rights Coordinator; and responses to the employee survey, and the Supervisor/Manager Interview Questionnaires.

After reviewing your response, our Final Determination is as follows:

## **Agree**

We agree with your responses to the following EEPC recommendations, pending documentation that can be attached to your reply or provided during the compliance period:

### Recommendation #1

All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer. (Sect. IV, EEOP)

#### Recommendation #5

Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (Sect VE, EEOP)

#### **Disagree**

For the following reasons, hereafter identified as *EEPC Rationale*, we disagree with your response to the following recommendations:

#### Recommendation #2

Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DCA should conduct an adverse impact study. The DCA can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)

#### Your Response

Within the six month compliance period, the Department will compile relevant employment selection data and determine whether it is possible to conduct a statistically meaningful adverse impact study for any of its hiring decisions in light of the small number of hiring decisions in any agency of approximately 300 employees, the numerous employment categories into which employees are hired, and the limited demographic information available to the Department. If it is possible to conduct an adverse impact study that will yield statistically significant results and those results demonstrate a statistically significant adverse impact upon any particular racial, ethnic, disability, or gender group in a hiring decision, the agency will determine whether the criterion creating the adverse impact is job-related. If any criterion is not job-related, the agency will discontinue using it.

The Department has already taken steps to ensure that discrimination cannot enter the interview portion of the hiring process by developing pre-screened interview scripts to ask questions about race-, gender- and ethnic-neutral job-related criteria. The use of pre-screened scripts also protects against the possibility that discrimination can enter the hiring process through subjective and selective questioning of applicant by requiring that interviewers ask the same questions of all applicants.

#### EEPC Rationale

The EEOP requires that each agency assess the manner in which candidates are selected for employment to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group. It also requires that each agency assess criteria for selecting persons for mid-level to high-level discretionary positions.

Since the DCA indicated during the EEPC's audit that 151 individuals were hired and 92 individuals were promoted during the three-year period in review, the study should be based on applicant/hire (or promotion) data that DCA should have collected during that period. The Recommendation is affirmed.

### Recommendation #3

Because the EEOP holds each agency responsible for its commitment to assess its criteria for selecting persons for mid-level to high-level discretionary positions and its commitment to retain information about personnel actions, the agency should use and maintain discretionary job applicant forms that include the name, gender and ethnicity of applicants, the reason for selection/rejection, and the source of recruitment. (Sect. IV, EEOP)

### Your Response

In accordance with its EEOP, the Department fully complies with the requirements to retain information about personnel actions, discretionary hiring, applicants, promotions, demotions, transfers, rates of pay, terms of compensation and selection for training that are required by federal, state and local and/or the City's official records retention schedule. The EEOP does not specify that the Department will collect information concerning the race, gender and ethnicity of applicants. Moreover, none of the record maintenance laws with which the Department complies requires the collection on applicant forms of information concerning the race, gender and ethnicity of applicants. For example, the biennial EEO-4 Report required by 29 C.F.R. § 1602.32 requires racial, gender and ethnicity information only for existing employees and new hires, not for all applicants.

### EEPC Rationale

In keeping with the record keeping and reporting regulations of the EEOC, the DCAS historically has advised agencies to collect data based on visual identification, to the extent possible, which characterizes the ethnicity or gender of applicants who are interviewed for discretionary positions. This directive ensures that agencies may demonstrate if necessary, that the agency promotes equal employment opportunity with regard to the selection of employees for discretionary positions. This policy was affirmed in previous administrations.

The Department of Citywide Administrative Services (DCAS) has generated an Applicant Log that captures the information it considers necessary for reporting purposes (*Division/Unit, JVN#, Civil Service Title, Office Title, Interviewers' Names, Applicants Names, Security Number, Ethnicity, Gender, Disability, Veteran, Interview Date, Result, Reason Selected/Not Selected, and Recruitment Source*).

During an August 7, 2009 training session for HR directors and EEO officers entitled, *DCAS EEO/HR Interviewing & Hiring Training Collaboration*, representatives from the Division of Citywide Equal Employment Opportunity and the Division of Citywide Personnel Services advised city agencies to use this Applicant Log during the interviewing/hiring process. The DCA was represented at that session (applicant log and PowerPoint attached).

Maintaining information on discretionary hiring is not only advantageous in ensuring a commitment to equal employment opportunity, it would also provide the applicant/hire information required to perform an assessment on whether your agency's employment practices have adverse impact on protected group members. The collection of this data would enable your agency to

identify any barriers to equal employment opportunity and to support its EEO policies. Therefore, the Recommendation is affirmed.

#### Recommendation #4

Since the *Guidelines for Evaluating Managerial Performance in NYC Agencies* require that managerial employees receive annual performance evaluations, the agency should develop a plan, which includes a timetable, to evaluate its managerial employees annually. (DCAS Division of Citywide Personnel Services, *Managerial Performance Evaluation: Guidelines for Evaluating Managerial Performance in NYC Agencies*, p. 1)

#### Your Response

The Department is already in compliance with this requirement as the evaluation of managerial employees has been in place for years. On an annual basis the Department develops distributes an evaluation plan and timeline. Given staff turnover, adherence is not always perfectly timely; however, the recent implementation of an electronic-based evaluation system (e-Performance) has increased the quality and timeliness of those evaluations.

#### EEPC Rationale

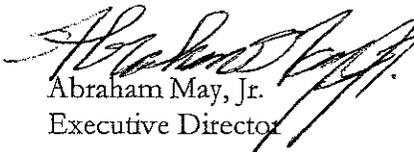
During the December 23, 2009 audit exit meeting, the electronic-based evaluation system (e-Performance) referred to in your response was mentioned. As a follow-up to that meeting, email requests were made to the DCA's EEO Officer for documentation confirming that all managerial staff received performance evaluations during the audit period (e. g., a letter or memo from the HR director which states how many supervisors/managers were evaluated during each year of the audit period). The DCA could not confirm that even the majority of managers were evaluated annually for the three-year period under audit. Therefore, the Recommendation is affirmed.

#### **Conclusion**

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance procedure not to exceed six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance. If you choose to issue a written response, please do so within thirty days. If you choose not to issue a written response, we will initiate audit compliance shortly thereafter. EEPC Counsel/Compliance Director Judith Quiñonez or her designee will contact your EEO Officer in seven days to ascertain your intentions.

In closing, we want to thank you and your staff for your cooperation during the audit process. Pursuant to your commitment to ensuring that the City's EEO Policy is fully implemented in the DCA, we look forward to a mutually satisfactory compliance process.

Sincerely,

  
Abraham May, Jr.  
Executive Director

Atch:

C: Judith Quiñonez, Counsel/Compliance Director  
Betty Aruaz, Acting EEO Officer

## Welcome! Interviewing & Hiring at DCAS

May 2009

New York City  
Department of Citywide Administrative Services

Michael R. Bloomberg  
Mayor

Martha K. Hirst  
Commissioner

## Why are we here...

- FY'08 turnover rate was 14.3%
- FY'07 turnover rate was 15.2%
- FY'06 & FY'05 turnover rate was 14%
- Hiring cycle is @ 150 days in length
- 11% indicated "Selecting/Hiring Candidates" should be a mandatory class for managers and supervisors.

2

## Workshop Objectives

- Understand the Hiring Process from beginning to end
- Establish a uniform standard for conducting agency interviews
- Learn Legal & Illegal Questions
- Understand Employee On-boarding

3

## Pre-Employment Information

- New Hire Request Form
  - Title Specifications
  - Civil Service Lists
- Job Vacancy Notice (JVN) Posted
  - Resumes to Division Mailbox
- Resume Pre-Screening

4

## Structured interviewing is ...

"... an interview plan based on an analysis of job requirements and the development of specific questions designed to help the candidate provide behavioral evidence of job skills."



5

## Advantages of Structured Interviewing...

- Ease of comparison
- Use of job-related information
- Minimize subjectivity
- Help select the best candidate
- Organizational costs of hiring the wrong person
- Avoiding potential legal costs

6

## Interviewing: Legal Aspects **Getting into trouble**

- Asking unrelated questions
- Being afraid to ask for help
- Lack of preparation
- Ignoring potential EEO issues



13

## Potential Pitfalls

- Stereotyping
- Inconsistent questioning
- First impression error
- Negative emphasis
- Halo effect
- Cultural noise
- Nonverbal bias
- Contrast effect
- Similar-to-me error



14

## Interviewing: Legal Aspects **Documenting the process**

- Note taking
- Interview Applicant Log
  - Observed Ethnicity – 5 Federal Categories
    - White (W)
    - Black (B)
    - Hispanic (H)
    - Asian/Pacific Islander (A)
    - American Indian/Alaskan Native (N)



15

## Evaluating the Candidate

- Wait until after the interview is completed
- Review notes immediately
- Only utilize job-related information
- Use pre-set criteria from job description
- Complete the *Candidate Evaluation Sheet*



16

## Selecting A Candidate

- Complete Second Interviews
- Complete the *Official Candidate Selection* form; email it and the candidate's resume to HR
- Then submit to HR:
  - Completed Interview Applicant Log
  - Update Organizational Charts
  - Updated MPD (if necessary)



17

## Offering Candidate the Position

1. Ask if he/she would be interested in the position at the division's approved salary,
2. Inform candidate job appointment is pending until DCAS receives OMB approval,
3. Explain the OMB Approval is a budget approval process that could take several weeks, and
4. Inform candidate they will receive a phone call from DCAS HR when OMB Approval is received.

18





10373

Jonathan Mintz  
Commissioner

July 12, 2010

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Abraham May, Jr.  
Executive Director  
Equal Employment Practices Commission  
40 Rector Street  
14<sup>th</sup> Floor  
New York, NY 10006

Re: Final Determination Pursuant to the Audit of the Department of Consumer Affairs (DCA) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

Dear Mr. Abraham May, Jr.:

Thank you for the opportunity to respond to your letter dated May 21, 2010. The Department of Consumer Affairs continues to support the response provided in its letter dated May 6, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Mintz", written over a horizontal line.

Jonathan Mintz

cc: Betty Arauz  
Everett Barrett