

**EQUAL EMPLOYMENT  
PRACTICES COMMISSION**

**ANNUAL REPORT**

**CALENDAR YEAR 2003**

**EQUAL EMPLOYMENT PRACTICES COMMISSION  
CITY OF NEW YORK**

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Vice-Chairman

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Commissioner

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# EXECUTIVE SUMMARY

## **Introduction**

Created in Chapter 36 of the New York City Charter, As Amended, the Equal Employment Practices Commission (EEPC) is an independent agency responsible for monitoring and auditing the equal employment practices, programs, policies and procedures of all city agencies. To address its mandate, the Commission is authorized to perform a number of tasks. Among them are the following:

1. Review the uniform standards, procedures and programs of the Department of Citywide Administrative Services/Office of Citywide Equal Employment Opportunity and every city agency's affirmative employment program, plan, policy or procedure to provide equal employment opportunity of minority group members and women employed by, or seeking employment with, city agencies;
2. Recommend to the Department of Citywide Administrative Services and all other city agencies procedures, approaches, measures, standards and programs to be utilized to ensure fair and effective equal employment opportunity for minority group members and women;
3. Audit and evaluate the employment practices and procedures of every city agency at least once every four years and whenever requested by the Civil Service Commission or the Human Rights Commission;
4. Hold public and private hearings, and compel the attendance of witnesses, if necessary, and administer oaths;
5. Establish appropriate advisory committees to assist the Commission in addressing its mandate; and
6. Publish an annual report to the Mayor and the City Council on the activities of the Commission.

## **The Commissioners**

The Charter authorizes the appointment of two Commissioners by the Mayor, two by the City Council and the joint appointment of the chair by the City Council Speaker and the Mayor. All

Commissioners serve part-time, four year terms. The members of the Equal Employment Practices Commission at the beginning of calendar year 2003 were City Council appointee Frank R. Nicolazzi, Vice-Chair, and mayoral appointees Angela Cabrera, and Manuel Mendez. In February the City Council appointed C. Catherine Rimokh, Esq. to fill the vacancy created by the resignation of Chereé A. Buggs, Esq. in 2002. In June the City Council appointed Veronica Villanueva, Esq. to replace Vice-Chair Frank R. Nicolazzi. Commissioner Nicolazzi was the last of the original EEPC Commissioners; he was initially appointed in October 1991. The Commission has been without a chair since May 1999.

### **Program Accomplishments**

#### Audits

With a City Charter mandate to audit a minimum of forty city agencies annually, the Equal Employment Practices Commission has never had sufficient staff to address its mandate. This requires a permanent headcount of fifteen—including eight auditors and two compliance coordinators. At the beginning of calendar year 2003 the Commission's permanent head count was only twelve. By the end of the year, budget cuts had reduced the head count to nine. The Commission began the year with three vacancies in the auditor positions. Despite these shortages, Commission staff completed audits of sixteen city agencies; seven were the following non-mayoral agencies: the Independent Budget Office, the Office of the Actuary, the Bronx Borough President Office, the Queens Borough President Office, the Staten Island Borough President Office, and the New York City Employees Retirement System. Audits of the following mayoral agencies were also completed: the Office of Administrative Trials and Hearings, Board of Standards and Appeals, the Department for the Aging, the Department of Investigation, the Conflicts of Interest Board, Department of Employment, Department of Finance, the Landmarks Preservations Commission, and the Department of Juvenile Justice.

#### Compliance

Commission staff initiated audit compliance with fourteen city agencies and completed compliance with six agencies. The Commission adopted resolutions of compliance satisfaction for the following agencies: the Department of Records and Information Services, and the City

Comptroller's Office. Resolutions were also adopted for Bronx, Hostos, LaGuardia and Queensborough community colleges.

The Commission had initiated audit compliance with the Manhattan Borough Presidents Office in the previous year but was unable to adopt a resolution of compliance satisfaction because the office refused to adopt one of the audit recommendations.

### Reports To The Mayor

If a city agency refuses to implement recommended corrective actions pursuant to an audit and the Commission's efforts to convince the agency to implement the recommended corrective actions are not successful, the Charter empowers this Commission to publish a Report To The Mayor and recommend the appropriate action. After reviewing the Commission's report and the agency's response, the mayor is required to publish his decision. In calendar year 2003 the Commission exercised this power for the first time. Reports To The Mayor were issued after lengthy compliance periods with two city agencies. The first report requested the mayor to direct the New York City Fire Department to implement two recommendations that the agency refused to implement. The second report requested the mayor to direct the Commissioner of the Administration for Children's Services to implement four recommendations that the agency refused to implement. In both cases the mayor rejected the Reports' recommendations.

### Public Hearings

On November 19th the Commission sponsored a public hearing on: a) The Investigation and Resolution of Discrimination Complaints Filed Against New York City Government Agencies in Fiscal Year 2003, and b) The Implementation of the City's Equal Employment Opportunity Policy.

Commissioner/Chair Patricia Gatling of the New York City Commission on Human Rights testified on the investigation and resolution of employment discrimination complaints filed by New York City employees. Commissioner Martha Hirst of the Department of Citywide Administrative Services included in her testimony the development of the Bloomberg administration's Equal Employment Opportunity Policy. Current and former city employees also provided testimony at the hearing.

## **Administrative Issues/Accomplishments**

Following are the major administrative issues addressed during the year:

### Advisory Committee To Recommend Improvements in the Reporting Structure of the City's Equal Employment Opportunity Program

In September 2002 the Commission established the Advisory Committee To Recommend Improvements in the Reporting Structure of the City's Equal Employment Opportunity Program (Committee). The Commission charged the Committee with developing recommendations to improve the reporting structure within the City's Equal Employment Opportunity Program. The Committee was chaired by Commissioner Manuel A. Méndez and included seven current and one former, EEO Officers. In the spring of 2003 the Advisory Committee forwarded its report to the Commission. After reviewing the Committee's Report, the Commission developed a set of recommendations for improving the reporting structure and forwarded them to Mayor Bloomberg. The Commission's recommendations included all of the recommendations of the Advisory Committee.

### Proposed Standards and Procedures For Equal Employment Opportunity

Last November, the Department of Citywide Administrative Services issued its draft "Proposed Standards and Procedures for Equal Employment Opportunity." Once approved by the Bloomberg administration, this document will replace the Equal Employment Opportunity Policy (EEOP) issued by the Giuliani administration. All city agencies are currently administering their EEO Programs pursuant to the Equal Employment Opportunity Policy established by the Giuliani administration in the summer of 1996.

Pursuant to City Charter requirements, the Commission reviewed the draft and developed a number of recommendations for changes in the draft Proposed Standards. The Commission's recommendations were forwarded to the Department of Citywide Administrative Services last December. Most of the recommendations were accepted.

### Sharing EEO Officers

To address the Commission's concern about understaffed EEO offices in many city agencies, especially the smaller ones, the Commission has initiated research on the sharing of EEO Officers in select situations. Under this concept, two or three small city agencies would share the

cost of a full-time EEO Officer who would administer their EEO Program. The participating agencies would each appoint an EEO Counselor/Investigator(s) who would assist the EEO Officer in the administration of the program in their agency. Consistent with the requirements of the City's Equal Employment Opportunity Policy, if the agency appointed only one Counselor/Investigator he (she) would have to be the opposite sex of the EEO Officer.

### **Legal Cost of Employment Discrimination**

According to the New York City Comptroller's office there were forty-nine cases of employment discrimination settled or adjudicated in calendar year 2003 with a total cost to the City of \$ 6,242,594.00. This amount is almost twice the cost in calendar year 2002 (\$ 3,226,246.00) which was almost seven times the cost in calendar year 2001 (\$ 467,155.00).

To reduce the legal costs to the City for the settlement or adjudication of employment discrimination cases, every city agency must have a properly structured and efficiently administered Equal Employment Opportunity Program that is in compliance with the City's Equal Employment Opportunity Policy. Improvements in the administration of the City's EEO Program will reduce the legal costs to the City for employment discrimination.

### **Recommendations:**

Pursuant to the authority granted to this Commission in section 831(d)6 of the New York City Charter to make recommendations to the Mayor and the City Council to improve the administration of the City's Equal Employment Opportunity Program, we offer the following recommendations:

#### **To The Mayor**

##### **Recommendation# 1**

The Office of the Mayor Should Appoint A Liaison to The Equal Employment Practices Commission.

### Rationale

Since its inception the Office of the Mayor and the Office of the City Council Speaker appointed liaisons to the Commission. These liaisons attended Commissions meetings, assisted the Commission in addressing issues with city agencies, and kept their respective offices informed of major issues before the Commission. The City Council Liaison to the Commission is Bikku Kuruvila, Counsel to the City Council Committee on Civil Service and Labor, and the Committee on Women's Issues. The Office of the Mayor has not appointed a liaison to the Commission.

### Recommendation # 2

The Office of the Mayor Should Approve the Creation of a Direct Computer Link to The EEO Workforce Data of all City Agencies Via The (NYCAPS) New York City Automated Personnel System Once it is Established.

### Rationale

NYCAPS is a state-of-the-art, computer-based personnel management system that the Department of Citywide Administrative Services began establishing in fiscal year 2000. NYCAPS combines a number of current city personnel management systems including: recruitment, hires, separations, labor relations, worker's compensation, disciplinary issues, and equal employment opportunity. Providing a direct computer linkage to the equal employment opportunity database for the EEPC will allow the regular review of an agency's EEO workforce database and should expedite the audit process.

## **To The Mayor and City Council Speaker**

### Recommendation # 3

The Mayor and City Council Speaker Should Appoint a Chairperson of the Equal Employment Practices Commission.

### Rationale

The City Charter requires the mayor and city council speaker to appoint the chairperson of the Equal Employment Practices Commission. This Commission has been without a chairperson

since June 1999. The absence of a chairperson has created obvious impediments to the efficient operation of this Commission. The joint appointment of a chairperson ensures support for the Commission from both sides of City Hall.

## **To The Mayor and City Council**

### Recommendation #4

The Mayor and City Council Should Approve a Budget Allocation and Permanent Head Count for the Equal Employment Practices Commission That Will Enable this Commission to Meet our City Charter Mandate to Audit Every City Agency at Least Once Every Four Years.

### Rationale

A minimum of one hundred and sixty agencies are under the jurisdiction/authority of the EEPC. To audit all of these agencies at least once every four years requires that the Commission audit forty agencies annually. To do that, the Commission needs a permanent headcount of fifteen (including eight auditors and two compliance coordinators). Our current permanent headcount is nine. Two audits of the Equal Employment Practices Commission by the City Comptroller cited this Commission's failure to meet our city charter mandate. According to the Comptroller's office, the settlement/judgment costs to the City for employment discrimination in calendar year 2003 was 6.2 million dollars. An adequate budget for the EEPC would cost far less.

## **To The Department of Citywide Administrative Services**

### Recommendation # 5

The Office of Citywide Equal Employment Opportunity (OCEEO) of the Department of Citywide Administrative Services (DCAS) Should Provide Technical Assistance to all City Agencies That Require Assistance in Establishing Their Equal Employment Opportunity Programs.

### Rationale

In conducting audits of the Public Advocate's office, the Board of Standards and Appeals, and the Office of the Actuary, this Commission learned that these agencies did not have an Equal Employment Opportunity Program in place. We also learned that DCAS gives

preference to mayoral agencies in providing this type of assistance. Since the City is equally liable for employment discrimination suits from employees of non-mayoral city agencies as it is from employees of mayoral agencies, all city agencies that need this assistance should receive it.

#### Recommendation # 6

The Department of Citywide Administrative Services (DCAS) Should Monitor The Implementation of The Career Counselor Component of The City's Equal Employment Opportunity Policy and Ensure That All City Employees Have Access to This Service.

#### Rationale

Section VI (A)(3) of the City's Equal Employment Opportunity Policy says: "To ensure that employees receive career guidance from a trained professional, each agency head must designate a person familiar with civil service and provisional jobs who can be available to provide career counseling to employees who request such guidance."

Despite this requirement, a number of audited agencies have not effectively addressed this requirement. One EEO Officer informed Commission staff that her agency head was willing to appoint a career counselor but did not want to inform his staff who the career counselor is. Providing career guidance and counseling to city employees is in the best interests of both the City and its employees. DCAS should ensure that all city agencies adequately address this requirement

#### Recommendation # 7

The Department of Citywide Administrative Services Should Ensure That All EEO Officers Receive Adverse Impact Study Training.

#### Rationale

Section VI (A) (2) of the City's Equal Employment Opportunity Policy requires that City agencies examine all devices used to select and promote candidates for employment to determine whether these devices adversely impact any racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, agency heads are directed to determine whether the device is job related. Criteria that adversely impact any protected group and are not job related should be discontinued. EEO Officers must be trained to do adverse impact studies, which are technical statistical studies. This Commission is concerned that to date, DCAS has not provided adverse impact training for the City's EEO Officers.

Adverse impact studies are especially critical for certain selection criteria for the Fire Department (30 college credits) and the Police Department (60 college credits). By identifying barriers to equal employment opportunity, adverse impact studies are essential tools for eliminating non job related selection criteria that reduce the number of women and minority candidates for firefighter and police. The application of adverse impact studies by city agencies, as required by the City's Equal Employment Opportunity Policy, can substantially eliminate non-job-related selection or promotion devices that adversely impact on the selection of women and minorities.

During the Commission's annual public hearing last year with the Department of Citywide Administrative Services and its (OCEEO) Office of Citywide Equal Employment Opportunity, this Commission was told by Commissioner Martha Hirst that DCAS wants to provide this training. We hope it happens this year.

#### Recommendation # 8

**The Office of Citywide Equal Employment Opportunity Should Review The Level of EEO Support Staff in All Mayoral Agencies and Insist That Agency Heads Provide Additional Support Staff for The EEO Officers Who Need It.**

#### Rationale

Audits of city agencies continue to reveal that a number of EEO Officers are part-time; many spend less than twenty-five per cent of their time addressing EEO issues. In many agencies, the EEO Officer is either the director of human resources or the director of administration. EEO Officers in other agencies have other line responsibilities that make it difficult for them to devote the necessary time to EEO.

Even more disturbing is the lack of support staff in many EEO offices. Some EEO Officers have multiple responsibilities and no full-time secretary or administrative assistant; they need additional support staff. While we understand that certain city agencies - especially the smaller ones - may not have sufficient funds for a full-time EEO Officer, there is no excuse for not providing adequate administrative support for an EEO Officer who has additional administrative responsibilities. This lack of support staff makes the efficient administration of the EEO program extremely difficult. Given the desire of agency heads to assign their staff to other priorities, they may not provide the necessary support staff to their EEO offices unless the Department of Citywide Administrative Services requires them to do it.

## Recommendation # 9

The Department of Citywide Administrative Services Should Increase the Staff in the Office of Citywide Equal Employment Opportunity

### Rationale

As previously stated, the Commission discovered that some city agencies did not have functioning Equal Employment Opportunity Programs during the calendar year. These agencies need technical assistance from OCEEO to establish their EEO programs. To address these needs, as well as address the other aforementioned recommendations, the OCEEO must have additional staff.

### Conclusion

Employment discrimination is prohibited by the New York City Charter and a broad range of laws, court decisions, amendments and executive orders, including the Fourteenth Amendment of the U.S. Constitution, the Civil Rights Act of 1964, Title VII; U.S. Executive Order #11246, the New York State Constitution, the New York State Human Rights Law, the New York State Civil Rights Law and the New York City Human Rights Law.

The Equal Employment Practices Commission's City Charter mandate is to ensure that all city agencies are implementing equal employment opportunity programs that protect women and minorities from unlawful employment discrimination. Implementation of the aforementioned recommendations will strengthen the City's Equal Employment Opportunity Program.

# CHAPTER I

## THE MANDATE

“(a) It shall be an unlawful employment practice for an employer:

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges, of employment, because of such individual’s race, color, religion, sex, or national origin;  
or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race color, religion, sex, or national origin.”

Excerpt from Title VII of the Civil Rights Act of 1964

## INTRODUCTION

The mandate of the Equal Employment Practices Commission is defined in Chapter 36 of the New York City Charter, As Amended, 1999. Section 830 (a) says:

“There shall be an equal employment practices commission which shall review, evaluate and monitor the employment procedures, practices and programs of any city agency and the department of citywide administrative services to maintain an effective affirmative employment program of equal employment opportunity for minority group members and women who are employed by or who seek employment with city agencies.”

Chapter 36 also delineates the following powers and duties of the Commission:

1. To review the uniform standards, procedures and programs of every city agency to ensure that it provides equal employment opportunity for minority group members and women employed by, or seeking employment with, city agencies;
2. To recommend to all city agencies procedures, approaches, measures, standards and programs to be utilized to ensure equal employment opportunity for minority group members and women;
3. To advise and, if requested, assist city agencies in their efforts to increase employment of minority group members and women;
4. To audit and evaluate the employment practices and procedures of each city agency at least once every four years and whenever requested by the Civil Service Commission or the Human Rights Commission;
5. To make policy, legislative and budgetary recommendations to the Mayor, the City Council, or any city agency to ensure equal employment opportunity for minority group members or women;
6. To publish annually a report to the Mayor and the City Council on the activities of the Commission, and the effectiveness of each city agency’s efforts to ensure equal employment opportunity;
7. To establish appropriate advisory committees;

8. To serve with such other agencies or officials the Mayor designates as the city liaison to federal, state and local agencies responsible for compliance with equal employment opportunity;
9. To take such other actions as appropriate to effectuate the provisions and purposes of its mandate;
10. To hold public or private hearings; and
11. To compel the attendance of witnesses to determine if agencies are in compliance with the equal employment opportunity requirements of the New York City Charter.

## **STRUCTURE**

The New York City Charter authorizes the appointment of five part-time Commissioners to staggered four-year terms. Two commissioners are appointed by the Mayor, and two are appointed by the City Council. The chairperson is appointed jointly by the Mayor and the City Council Speaker. The Commission has been without a chairperson since July 1999.

There were two new appointments to the Commission in calendar year 2003. In February, C. Catherine Rimokh, Esq. was appointed by the City Council to complete the term of former Commissioner Chereé A. Buggs, Esq. Ms. Rimokh was re-appointed in August to a full four-year term. Ms. Rimokh is a practicing attorney with the firm of Salan, Hertzfeld, Heilbronn, Christy, and Viener. She specializes in employment discrimination law and counsels clients in personnel matters and provides training in EEO and sexual harassment prevention.

In June, the City Council appointed Veronica Villanueva, Esq. to the Commission. She is an attorney with the firm of Levy, Ratner, P.C. where she specializes in union representation and litigates employment and civil rights cases. Ms. Villanueva is also a former Human Rights Specialist with the City Commission on Human Rights. She replaces Frank R. Nicolazzi, an original appointee. Mr. Nicolazzi was vice-chair of the Commission throughout his eleven and a half years of service to the Commission.

Former Mayor Rudolph Giuliani appointed Manuel A. Méndez in 1995. Mr. Méndez is the former executive director/CEO of the Phipps Community Development Corporation and the former Vice President of Phipps Houses. A former deputy commissioner with the Human Resources Administration, Mr. Mendez is a former Trustee of the Bronx Lebanon Hospital. He has also taught social/policy administration at Fordham University's Graduate School of Social Services.

His term expired June 30, 1999. He continues to serve as a holdover appointee. Mr. Mendez was elected vice-chairperson of the Commission in July.

Angela Cabrera was appointed by former Mayor Giuliani in 1997. Ms. Cabrera is the president of Cabrera & Associates, a consulting firm that specializes in public relations and business development. A former state deputy commissioner, she is also a board member of the Family Institute, a Trustee of the Museo del Barrio, and a member of the Prospect Park Alliance. Ms. Cabrera is also on the Board of Trustees' Diversification/Outreach Committee of the Metropolitan Museum of Art, and a founding member of 100 Hispanic Women. Her term expired June 30, 2000. She continues to serve as a holdover appointee.

As an independent city agency that reports to both the Mayor and the City Council, the Commission has established liaison relationships with both sides of City Hall. Historically, the City Council liaison has been the Counsel to the City Council Committee on Civil Service and Labor. Last year, Bikku Kuruvila, Esq. filled both positions. Although the Office of the Mayor has not appointed a liaison to the Commission, there is a liaison relationship with the Office of the Deputy Mayor for Legal Affairs.

## **METHODOLOGY**

In addressing its mandate, the Commission holds public hearings with mayoral agencies on the implementation of the City's Equal Employment Opportunity Policy, public hearings with non-mayoral agencies on the implementation of their Equal Employment Opportunity Programs, and special hearings on specific equal employment opportunity issues. Depending on the issue, the Commission may direct the staff to conduct an independent investigation.

The Commission is also empowered to audit city agencies. Audits are separate evaluations of the equal employment opportunity programs, policies, practices and procedures of an agency during a specific period of time. The purpose of the audit is to determine if the agency is in compliance with the requirements of the City's Equal Employment Opportunity Policy (EEOP) which is established by the Mayor's office. Audit staff makes recommendations for corrective actions in all areas where the agency is not in compliance with the City's EEOP.

An integral component of the audit process is the audit exit meeting with the agency head. The Commission requires the agency head to attend this meeting because the City Charter holds agency heads responsible for the implementation of their agencies' EEOP.

Prior to the audit exit meeting, a draft letter of preliminary determinations is forwarded to the agency head and the EEO Officer. EEPC senior staff and one member of the Commission attend the audit exit meeting. The purpose of the meeting is to resolve issues of fact prior to the issuance of the formal letter of preliminary determinations. After the audit exit meeting, audit findings and recommendations with any necessary revisions are submitted to the Commission for review and approval. The approval process includes the adoption of a “Resolution of Preliminary Findings” pursuant to the audit. The resolution authorizes the Chair or Vice-Chair of the Commission to formally inform the agency head, by letter, of the Commission’s preliminary determinations.

The letter of preliminary determinations identifies where the agency is in compliance, and out of compliance, with the City’s Equal Employment Opportunity Policy. The letter also requests the agency head to implement all recommendations for corrective actions. The City Charter requires the agency to respond within thirty days. The Charter also mandates a compliance procedure of no more than six months. The compliance procedure is discussed in detail in Chapter III.

## **DEFINING ETHNIC GROUPS**

According to the 2000 census, there are approximately two hundred different ethnic groups, speaking one hundred fifteen different languages, and representing every race, living and working in New York City. Many of these ethnic groups are part of New York City government’s diverse workforce.

A broad variety of terms are used by New Yorkers to describe these different races and ethnic groups. Unfortunately, some of these terms are inappropriate, others are derogatory. Since any discussion of race and ethnicity must be sensitive to the use of appropriate terminology, the Equal Employment Practices Commission consistently uses the following terms in discussing New York City’s ethnic groups:

**Caucasians:** defined as persons of European ancestry and generally referred to as white.

**Hispanics:** defined as persons of Hispanic descent including Puerto Ricans, Mexican Americans, Central Americans and Latin Americans.

**African-Americans:** defined as persons of African descent including Caribbeans and Africans; generally referred to as black.

**Asian-Pacific Islanders:** defined as persons of Asian descent including Koreans, Phillipinos, Chinese, Japanese and the Indian subcontinent.

**Native-Americans:** defined as indigenous persons from the United States, including American Indians, Alaskans and Aleuts.

## **ANNUAL REPORT**

The New York City Charter requires the Equal Employment Practices Commission to submit an annual report to the Mayor and City Council on the Commission's activities and the effectiveness of each city agency's affirmative employment efforts to ensure equal employment opportunity for its employees and applicants. The annual report is also distributed to the comptroller, public advocate, borough presidents, district attorneys, deputy mayors, city agency heads, community board chairpersons, and a variety of organizations and individuals on the Commission's mailing list.

## **CHAPTER II**

### **ADDRESSING THE MANDATE/AUDITS**

“The Commission shall have the following powers and duties:

to audit and evaluate the employment practices and procedures of each city agency and their efforts to ensure fair and effective equal employment opportunity for minority group members and women at least once every four years and whenever requested by the civil service commission or the human rights commission or whenever otherwise deemed necessary by the Commission.”

Chapter 36, Section 831(d)5, New York City Charter, As Amended 1999

## **INTRODUCTION**

At the beginning of the calendar year, the Commission's audit staff consisted of four full-time auditors or two full-time audit teams. Three auditor positions were vacant. To compensate for the shortage of full-time auditors, the Agency Counsel and Compliance Coordinator served as a part-time audit team in addition to performing their normal job functions. By the middle of the year, the Mayor and the City Council approved a budget that reduced EEPCC's permanent head count from twelve to ten. Subsequent budget cuts by the Office of Management and Budget reduced the permanent head count to nine. Despite these shortages, Commission staff completed 16 audits, including the first audits of the following non-mayoral agencies: Independent Budget Office, Civilian Complaint Review Board, the Office of the Actuary, Bronx Borough President's Office, Queens Borough President's Office, Staten Island Borough President's Office, and New York City Employees Retirement System.

### Audit Process

The audit process encompasses the following tasks: audit entrance meeting, request and review of relevant data, distribution and analysis of employee surveys, review of quarterly reports, interviews of EEO personnel and select supervisory personnel, data analysis, follow-up research, identification of areas of compliance and non-compliance, the preparation of a draft preliminary determination letter, an audit exit meeting to discuss the draft, approval of the preliminary findings by the Commission, the distribution of a formal letter of preliminary determination to the agency head, review of the agency's response, preparation of a letter of final determination to the agency head, and review of the agency's non-mandatory response (if any).

The Commission has established audit protocols for auditing compliance with the City's Equal Employment Opportunity Policy and its Discrimination Complaint and Investigation Procedure. The Commission has also established protocols for auditing the Sexual Harassment Prevention Programs of the Community Colleges of the City University of New York, the Recruitment Program of the Fire Department, as well as the EEO Programs of other non-mayoral agencies (e.g. borough presidents and citywide elected officials).

## AUDIT RESOLUTIONS

Following are the Resolutions of Preliminary Determinations adopted by the Commission in calendar year 2003.

### April 3, 2003 Commission Meeting

1. Resolution #03/01-11 Re: Bronx Borough President's Office (BBPO)

Pursuant to the audit of compliance by BBPO with its Equal Employment Opportunity Program for the thirty-month period commencing July 1, 1999 and ending December 31, 2001, the Resolution enumerated 11 preliminary findings. Among the major findings were:

- The EEO Policies were not posted on agency bulletin boards.
- The agency did not issue a Reasonable Accommodation Procedure to accompany its Disabilities Policy.
- BBPO neither distributed information about, nor participated in, the Section 55-A Program.
- There were not persons of both sexes available to receive and investigate discrimination complaints during the audit period.
- The agency did not conduct EEO training for employees during or subsequent to the audit period.

2. Resolution #03/02-13 Re: Queens Borough President's Office (QBPO)

Pursuant to the audit of compliance by QBPO with its Equal Employment Opportunity Program for the thirty-month period commencing July 1, 1999 and ending December 31, 2001, the resolution enumerated 12 preliminary findings. Among the major findings were:

- The EEO Policies were not posted on agency bulletin boards.
- During the audit period, the male Co-EEO Officer did not receive training for EEO professionals from the Department of Citywide Administrative Services.
- The agency's internal discrimination complaint file did not contain copies of investigative documents relating to the complaint or a report to the agency head.

- The CO-EEO Officers did not maintain documentation of their meetings with the agency head.
- The Deputy Counsel had the reality or appearance of conflict of interest by serving as the Co-EEO Officer (female).

3. Resolution #03/03-14 Re: Staten Island Borough President's Office (SIBPO)

Pursuant to the audit of compliance by SIBPO with its Equal Employment Opportunity Program for the thirty-month period commencing July 1, 1999 and ending December 31, 2001. The Resolution listed 15 preliminary findings. Among the major findings were:

- The EEO Policy Statements and Discrimination Complaint Procedures were not separately distributed to all employees.
- The agency EEO Policies were not available in formats accessible to applicants and persons with disabilities.
- The EEO Officer did not receive EEO training from DCAS or another organization.
- Two of the five job advertisements submitted by SIBP did not contain the EEO tag line.
- Persons of both sexes were not available to receive and investigate discrimination complaints.

4. Resolution #03/04-132 Re: Independent Budget Office (IBO)

Pursuant to the audit of compliance by IBO with its Equal Employment Opportunity Program for the thirty-month period commencing January 1, 2000 and ending June 30, 2002, the Resolution enumerated nine preliminary findings. Among the major findings were:

- The agency's EEO policies were not clearly posted on agency bulletin boards.
- The agency did not have a plan that includes a timeframe to train existing and new employees on EEO.
- The agency's current recruitment strategies are not successful in recruitment women and minorities.
- The agency did not participate in the citywide job posting process.

## May 8, 2003 Commission Meeting

5. Resolution #03/05-009 Re: New York City Employees Retirement System (NYCERS)  
Pursuant to the audit of compliance by NYCERS with its Equal Employment Opportunity Program for the thirty-month period commencing January 1, 2000 and ending June 30, 2002, the Resolution enumerated 12 preliminary findings. Among the major findings were:

- The agency's Discrimination Complaint Procedure does not contain the name, location, and telephone number of the EEO Officer.
- Only one of the three EEO Officers during the audit period received training for EEO professionals from the Department of Citywide Administrative Services.
- There is no indication in two internal discrimination complaint files that the agency head reviewed the EEO Officer's final reports.
- The EEO Officers have not been involved in developing recruitment strategies or selecting recruitment media.
- Sixty-six percent of survey respondents indicated they did not know who is the EEO Officer.

6. Resolution #03/06-054 Re: Civilian Complaint Review Board (CCRB)

Pursuant to the audit of compliance by CCRB with its Equal Employment Opportunity Policy for the thirty-month period commencing January 1, 2000 and ending June 30, 2002, the Resolution enumerated 12 preliminary findings. Among the major findings were:

- CCRB did not issue a general EEO Policy Statement.
- The agency's EEO Policies were not available in formats accessible to applicants and employees with disabilities.
- The agency did not participate in the Section 55-A Program.
- The EEO Officer did not receive training for EEO professionals from DCAS.
- The EEO Officer did not devote 100% of her time to EEO matters.

7. Resolution #03/07-868 Re: Office of Administrative Trials and Hearings (OATH)

Pursuant to the audit of compliance by OATH with the City's Equal Employment Opportunity Policy (EEOP) for the thirty-month period commencing January 1, 2000 and ending June 30, 2002, the Resolution enumerated 8 preliminary findings. Among the major findings were:

- The agency has not informed all employees in writing of the identity, location and telephone number of the career counselor.
- The agency does not conduct annual performance evaluations for managerial staff.
- Appropriate documentation of meetings between the EEO Officer and the agency head is not maintained.

**June 30, 2003 Commission Meeting**

8. Resolution #03/08-008 Re: Office of the Actuary (OA)

Pursuant to the audit of compliance by OA with its Equal Employment Opportunity Program for the thirty-month period commencing January 1, 2000 and ending June 30, 2002, the Resolution enumerated the following five preliminary findings:

- Only limited and informal EEO activities were undertaken during the audit period.
- The Office of the Actuary did not issue EEO policies.
- The Office of the Actuary did not conduct EEO training.
- The Office of the Actuary did not appoint an EEO Counselor.
- The Office of the Actuary did not participate in the Section 55-A Program.

9. Resolution #03/09-856 Re: Board of Standards and Appeals (BSA)

Pursuant to the audit of compliance by BSA with the City's EEOP for the thirty-month period commencing July 1, 2000 and ending December 30, 2002, the Resolution enumerated the following three preliminary findings:

- The agency has not established an EEO Program.
- The agency has not appointed a trained EEO Officer whose prime responsibility will be implementing the City's EEO Policy within the agency.
- The agency's files are not maintained in a clearly marked, secure area so that they can be located by reviewing agencies.

### **August 14, 2003 Commission Meeting**

#### 10. Resolution #03/10-125 Re: Department for the Aging (DFTA)

Pursuant to the audit of compliance by DFTA with the City's EEOP for the thirty-month period commencing July 1, 2000 and ending December 31, 2002, the Resolution enumerated 17 preliminary findings. Among the major findings were:

- The agency did not issue a Reasonable Accommodation Procedure to accompany its Disabilities Policy Statement.
- Only 16% of DFTA's employees received EEO training during the audit period.
- DFTA did not conduct adverse impact studies.
- The agency did not appoint a Career Counselor.
- The previous and current EEO Officers were not involved in developing recruitment strategies.

#### 11. Resolution #03/11-032 Re: Department of Investigation (DOI)

Pursuant to the audit of compliance by DOI with the City's EEOP for the thirty-month period commencing July 1, 2000 and ending December 31, 2002, the Resolution enumerated the following five preliminary findings:

- The name and location of the new Disability Rights/Section 55-A Coordinator does not appear in the agency's EEO Policy Booklet.
- The EEO Officer has not developed a plan, which includes a timetable, to train all existing and new employees.

- The agency has not conducted adverse impact studies.
- The agency has not informed all employees in writing of the new identity, location and telephone number of the career counselor.
- The agency's EEO Officer does not devote 100% of her time to EEO matters.

### **September 18, 2003 Commission Meeting**

#### 12. Resolution #03/12-312 Re: Conflicts of Interest Board (COIB)

Pursuant to the audit of compliance by COIB with its Equal Employment Opportunity Program for the thirty-month period commencing July 1, 2000 and ending December 31, 2002, the Resolution enumerated eight preliminary findings. Among the major findings were:

- The agency did not post its EEO Policies.
- The EEO Counselors have not received training for EEO professionals from DCAS or another organization.
- The EEO Officer did not maintain appropriate documentation of meetings with the agency head.
- The Director of Administration had the reality or appearance of a conflict of interest by serving as the EEO Officer.

#### 13. Resolution # 03/13-094 Re: Department of Employment (DOE)

Pursuant to the audit of compliance by DOE with the City's EEOP for the thirty-month period commencing July 1, 2000 and ending December 31, 2002, the Resolution enumerated 14 preliminary findings. Among the major findings were:

- The agency's recruitment literature did not indicate that DOE is an equal opportunity employer.
- The agency's complaint files were not kept in a secure and identifiable area so that they could be easily located for review.

- The agency did not distribute its EEO policy due to the pending revision of the Citywide EEO Policy.
- The EEO Officer did not have adequate support staff to meet her obligations under the City's EEOP.
- The agency did not conduct adverse impact studies.

### **November 13, 2003 Commission Meeting**

#### 14. Resolution #03/14-836 Re: Department of Finance (DOF)

Pursuant to the audit of compliance by DOF with the City's EEOP for the thirty-month period commencing July 1, 2000 and ending December 31, 2002, the Resolution enumerated 14 preliminary findings. Among the major findings were:

- One of the agency's five newspaper advertisements submitted to the EEPC did not contain the EEO tag line.
- Only 11 of the 32 complaints in which the EEO Officer conducted an investigation and prepared a report were completed within 90 days.
- The agency did not conduct adverse impact studies.
- The EEO Officer, who is not a human resources professional, served as the agency's career counselor.
- There were no documentation of meetings between supervisors/managers and their subordinates to discuss the agency's EEO policies.

### **December 11, 2003 Commission Meeting**

#### 15. Resolution #03/15-136 Re: Landmarks Preservation Commission (LPC)

Pursuant to the audit of compliance by LPC with the City's EEOP for the thirty-month period commencing July 1, 2000 and ending December 31, 2002, the Resolution enumerated nine preliminary findings. Among the major findings were:

- The agency's EEO Policies were last distributed to all current employees in June 2001.
- LPC did not provide EEO training to its employees during the audit period.
- The agency did not conduct adverse impact studies.
- Agency employees were not notified of the appointment of the career counselor.
- The agency did not conduct performance evaluations of its employees in recent years.

16. Resolution #03/16-130 Re: Department of Juvenile Justice (DJJ)

Pursuant to the audit of compliance by DJJ with the City's EEOP for the thirty-month period commencing July 1, 2000 and ending December 31, 2002, the Resolution enumerated 13 preliminary findings. Among the major findings were:

- The agency's EEO Officer did not prepare a confidential written report with the agency's findings and recommendations for each complaint file.
- Some complaints were not completed within 90 days of the receipt of the complaint.
- The agency did not inform all employees in writing of the identity, location and telephone number of the career counselor, or update this information on the bulletin board.
- The performance evaluations of supervisors/managers did not include an EEO component.
- The agency did not provide the EEO Officer with clerical or secretarial support.

Audits in Progress

At the end of the calendar year, audits of the following agencies were in progress:

1. Department of Sanitation
2. Department of Housing Preservation and Development
3. Department of Environmental Protection
4. New York Law Department
5. City Commission on Human Rights
6. Department of Probation
7. Office of Collective Bargaining

## 8. Department of Buildings

### **AUDIT ISSUES**

#### Delays in the Audit Process

Although the Commission's timetable for completing agency audits is twenty weeks (audit entrance meeting to audit exit meeting), the completion of an audit usually takes much longer. Delays in the audit process are usually due to the failure of the agencies to provide complete information on time, delays in the scheduling of meetings and staff interviews, and follow-up research. Another cause of delay is the overworked EEO Officer. Overworked EEO Officers are either EEO Officers with other, non EEO-related job responsibilities that hamper their ability to address EEO issues in a timely fashion, or full-time EEO Officers without sufficient support staff to adequately address all their duties and responsibilities. Many EEO Officers in city government are overworked or understaffed.

#### Agencies with No EEO Programs

During calendar year 2003, EEPC audits revealed that two City agencies, the Office of the Actuary (non-mayoral agency) and the Board of Standards and Appeals (mayoral agency), had no formal EEO Programs. The same situations existed with the Public Advocate's Office (non-mayoral agency), which was audited in calendar year 2002. According to the EEO personnel in those agencies, they had not received technical assistance from the Office of Citywide Equal Employment Opportunity (DCAS). The Commission therefore recommended that those agencies petition the Office of Citywide EEO Policy for technical assistance in preparing EEO Programs that conform to the Citywide EEO Policy.

#### Lack of CEEDS Data

In the latter part of the 1990s, DCAS suspended the use and distribution of the Citywide Equal Employment Database System (CEEDS). That data is critical to City agency EEO programs since it is the official statistical measure for determining underutilization of minorities and women in the various EEO job categories. Due to the unavailability of CEEDS, the EEPC has also been unable to monitor how City agencies have been addressing such underutilizations. For a number of

years, the City has been working on incorporating the CEEDS system into the New York City Automated Personnel System (NYCAPS). The Commission was informed by a NYCAPS official in December 2003 that the entire process would take approximately three years to complete. To date it has not happened

#### Audit of the New York City Board of Elections

In early 2003, the Commission initiated an audit of the New York City Board of Elections (BOE). In February 2003, however, EEPC's Counsel determined that the Commission did not have jurisdiction over that agency based on Corporation Counsel Opinion No. 11-90 issued on December 20, 1990. The Commission subsequently notified BOE that the audit would be discontinued pending the result of further research by the EEPC's Counsel or the issuance of an appropriate opinion by the Corporation Counsel's Office.

#### Audit of Select Four-Year CUNY Colleges

By the end of calendar year 2002, the EEPC had completed audits of the sexual harassment prevention programs of the following community colleges of the City University of New York (CUNY): Borough of Manhattan, Bronx, Hostos, Kingsborough, LaGuardia, and Queenborough. The Commission's authority to audit these institutions is based on the fact that CUNY's community colleges are funded by the City and the four year colleges are funded by the state. However a select number of CUNY's four year colleges, specifically Medgar Evers, John Jay, New York City Technical, and the College of Staten Island, also receive funding from the City. Since the City Charter authorizes the EEPC to audit all city agencies that are funded "in whole or in part from the city treasury", the Commission wanted to know if we have the authority to audit these institutions.

In July 2002, the Commission requested a legal opinion from the Corporation Counsel regarding the authority of the EEPC to audit the EEO Programs of these colleges. On October 22, 2003, the Corporation Counsel issued an opinion which said EEPC did not have jurisdiction over those colleges. Consequently, during the September 18, 2003 Public Meeting the Commission eliminated those colleges from the Audit Plan for Calendar Year 2003. The Commission also notified the CUNY's Central Office and legal office of Corporations Counsel's opinion.

### Audits of the County District Attorneys Offices in New York City

In August 2002, the Commission also requested an opinion from the Corporation Counsel regarding the authority of the EEPC to audit the EEO Programs of the five county district attorneys in New York City. Although the county district attorneys offices in New York City are created by the state, they are funded by the City. Consequently, this Commission believes we have the authority to audit the equal employment opportunity programs of district attorneys.

In its October 22, 2003 letter to the Commission the Law Department opined that the Equal Employment Practices Commission has the authority/jurisdiction to audit the offices of the county district attorneys in New York City. Audits of the equal employment opportunity programs of these offices will be included in the Commissions' future audit plans

The Audit Performance Report for Calendar Year 2003 is on the following pages.

**EQUAL EMPLOYMENT PRACTICES COMMISSION**  
**AUDIT PERFORMANCE REPORT/CALENDAR YEAR 2003**

**AUDITS COMMENCED IN 2003:20**

1. Independent Budget Office
2. Civilian Complaint Review Board
3. Office of Administrative Tribunals and Hearings
4. Office of the Actuary
5. Board of Standards and Appeals
6. Department of Employment
7. Department of Juvenile Justice
8. Department for the Aging
9. Department of Investigation
10. Landmarks Preservation Commission
11. Conflicts of Interest Board
12. Department of Housing Preservation and Development
13. Department of Sanitation
14. Department of Finance
15. Department of Environmental Protection
16. New York Law Department
17. City Commission on Human Rights
18. Office of Collective Bargaining
19. Department of Buildings
20. Department of Probation

## **AUDITS COMPLETED IN 2003:16**

### **Commenced and Completed in 2003:12**

1. Independent Budget Office
2. Civilian Complaint Review Board
3. Office of Administrative Tribunals and Hearings
4. Office of the Actuary
5. Board of Standards and Appeals
6. Department of Employment
7. Department of Juvenile Justice
8. Department for the Aging
9. Department of Investigation
10. Landmarks Preservation Commission
11. Conflicts of Interest Board
12. Department of Finance

### **Commenced Prior to 2003 and Completed in 2003: 4**

1. Bronx Borough President's Office
2. Queens Borough President's Office
3. Staten Island Borough President's Office
4. New York City Employees Retirement System

**AUDITS IN PROGRESS AT THE END OF 2003: 9**

1. Department of Sanitation
2. Department of Housing Preservation and Development
3. Department of Environmental Protection
4. New York Law Department
5. City Commission on Human Rights
6. Department of Probation
7. Office of Collective Bargaining
8. Department of Buildings
9. Queens Community Boards

## **CHAPTER III**

### **IMPLEMENTING CORRECTIVE ACTIONS/ COMPLIANCE**

“...If the commission, after a period not to exceed six months, determines that the agency has not taken appropriate and effective corrective actions, the commission shall notify the agency in writing of this determination and the commission may thereafter publish a report and recommend to the mayor whatever appropriate corrective action the commission deems necessary to ensure compliance with equal employment opportunity pursuant to the requirements of this chapter and chapter thirty-five. Within thirty days of such determination the agency shall submit a written response to the commission and the mayor. The mayor after reviewing the commission’s findings and the agency’s response, if any, shall order and publish such action as he or she deems appropriate.”

Excerpt from Chapter 36, Section 832 (c), New York City Charter, As Amended, 1999

## INTRODUCTION

During the year, audit compliance was initiated with 14 agencies and completed with six. Eight agencies were under compliance at the end of the year. Compliance was not completed for three agencies; for two of those agencies reports to the Mayor were issued.

### Compliance Procedure

Section 832 of the City Charter sets forth the compliance procedures including steps to be taken when the Commission, pursuant to an audit of any agency, makes a preliminary determination that the agency has adopted or utilized a plan, program, procedure, approach, measure, or standard that does not provide equal employment opportunity. Those steps are:

- The Commission will notify the agency in writing of its determination and provide an opportunity for response.
- If, after consideration of the agency's response and consultation with the agency, the Commission concludes corrective actions, if any, are not sufficient to correct non-compliance, it will make a final determination in writing, including recommended corrective actions.
- The agency shall respond within thirty days on corrective actions it intends to make and submit monthly reports on the progress of such corrective action.
- After a period not exceeding six months, if the Commission determines the agency has not taken appropriate or effective action, the Commission shall notify the agency in writing of its determination and may thereafter publish a report, and recommend to the Mayor the appropriate or effective action it deems necessary.
- Within thirty days of the determination by the Commission, the agency shall submit a written response to the Commission and the Mayor.

- The Mayor reviews the Commission’s findings and the agency’s response, if any, and shall order and publish such action that the Mayor deems appropriate.

## COMPLIANCE RESOLUTIONS

Following are the Resolutions of Compliance Completion adopted by the Commission during the year.

### April 3, 2003 Commission Meeting

1. Resolution #03/01-860C Re: Department of Records and Information Services (DORIS)

This unanimously adopted Resolution authorized the Vice-Chairman to forward a letter to Commissioner Brian Andersson informing him that his agency has implemented sixteen of the seventeen recommended corrective actions and requesting written confirmation of the implementation of the outstanding corrective action (i.e. when the employees involved in interviewing job applicants receive structured interview training

2. Resolution #03/02-042C Re: Hostos Community College of the City University of New York (HCC).

This unanimously adopted Resolution authorized the Vice-Chairman to forward a letter to President Delores M. Fernandez informing her that HCC has implemented all ten recommended corrective actions.

3. Resolution #03/03-042C Re: Queensborough Community College of the City University of New York (QCC).

This unanimously adopted Resolution authorized the Vice-Chairman to forward a letter to President Eduardo Marti informing him that QCC has implemented all seven recommended corrective actions.

4. Resolution #03/04-042C Re: Bronx Community College of the City University of New York (BCC).

This unanimously adopted Resolution authorized the Vice-Chairman to forward a letter to President Carolyn G. Williams informing her that BCC has implemented fourteen of fifteen recommended actions and requesting written confirmation of the implementation of the outstanding corrective action (i.e. when one member of the sexual harassment panel receives sexual harassment training.)

### **September 18, 2003 Commission Meeting**

5. Resolution #03/05-042C Re: LaGuardia Community College of the City University of New York (LCC).

This unanimously adopted Resolution authorized the Vice-Chairman to forward a letter to President Gail O. Mellow informing her that LCC has implemented eleven of twelve recommended actions and requesting written confirmation of the implementation of the outstanding corrective action (i.e. when the Deputy Panel Coordinator receives sexual harassment training.)

### **December 11, 2003 Commission Meeting**

6. Resolution #03/06-015C Re: The Comptroller of the City of New York (CO).

This unanimously adopted Resolution authorized the Vice-Chairman to forward a letter to the Comptroller of the City of New York, William C. Thompson, Jr., informing him that his agency has implemented fourteen of the fifteen recommended corrective actions. The letter also requested written confirmation of the implementation of the outstanding corrective action (i.e. when the remaining six EEO Counselors complete the required EEO training.)

## **COMPLIANCE ISSUES**

### Manhattan Borough President (MBPO)

The Commission did not adopt a resolution pursuant to implementation of EEPC's recommended corrective actions by the Manhattan Borough President's Office (MBPO). The agency submitted its final Monthly Compliance Report (MCR) on February 5. At that time, MBPO had implemented sixteen of seventeen recommended corrective actions. MBPO did not implement the following outstanding recommended corrective action:

The Manhattan Borough President should disseminate an agency-wide memorandum to staff to discuss the audit findings.

Although EEPC requires all audited agencies to implement this corrective action, the Manhattan Borough President, C. Virginia Fields, informed the Commission in her April 21 letter that she intends "to communicate the information contained in the audit findings through staff training as well as the process of implementing the recommendations."

On November 13, the Commission requested in a letter to the Manhattan Borough President that her office forward the appropriate documentation to reflect the implementation of her decision. This Commission did not receive a response and therefore, did not adopt a resolution pursuant to implementation of recommended corrective actions.

## **REPORT TO THE MAYOR**

Section 832 of the City Charter authorizes this Commission to issue a report to the mayor if it determines after a six month compliance period that an audited agency has not taken "appropriate and effective corrective action" to address equal employment opportunity requirements. Pursuant to that authority, the Commission issued two "Reports to the Mayor" in calendar 2003. This was the first time the Commission exercised this authority. The Charter requires the Commission to forward a copy of its Report to the subject agency. The agency has thirty days to respond to the Report. After reviewing the Report and the agency's response, the mayor is required to order and publish whatever action he deems necessary.

### **Resolution #03/01-Sect.832Re: New York City Fire Department (FDNY)**

After an extensive and exhaustive compliance period, the Commission did not adopt a resolution confirming satisfaction of audit compliance by the FDNY. Instead, the Commission voted to issue a report to the mayor. During the April 3<sup>rd</sup> meeting, the Commission unanimously adopted this Resolution in response to FDNY's failure to implement the following recommended corrective actions pursuant to the audit of FDNY's Recruitment Program for Examination No. 7029 (February 27, 1999):

#### Recommended Corrective Action #10

The Department should conduct an adverse impact study to determine if the new educational requirement (60 college credits for firefighter applicants) disproportionately screens out members of historically under-represented groups. If the study reveals such disparate impact, the Department should conduct a validation study in accordance with the federal government's "Uniform Guidelines on Employment Selection Procedures"; and

#### Recommended Corrective Action #13

The Fire Department should conduct an adverse impact study based on the results of the written examination. If the Department's study reveals that the test disproportionately screens out minority or female candidates, FDNY should conduct a validation study in accordance with the federal government's "Uniform Guidelines on Employment Selection Procedures."

The Resolution authorized the Vice-Chairman to notify the FDNY by letter that it had not implemented all of the recommended corrective actions, and within seven days thereafter, to issue a report to the Mayor and recommend the appropriate corrective actions the Commission deemed necessary to ensure compliance with the equal employment opportunity requirements of Chapters 35 and 36 of the New York City Charter.

On October 23 Mayor Michael R. Bloomberg forwarded his response to the Commission. His response rejected the Commission's recommendations.

**Resolution #03/02-Sect.832Re: Administration for Children's Services (ACS)**

After an extensive and exhaustive compliance period, the Commission did not adopt a resolution confirming satisfaction of audit compliance by ACS. Instead, the Commission voted to issue a report to the mayor. On June 30, the Commission unanimously adopted this Resolution in response to ACS's failure to implement the following recommended corrective actions pursuant to the audit of ACS's compliance with the City's Equal Employment Opportunity Program:

Recommended Corrective Action #3

To ensure that individuals of both sexes are available to receive and investigate discrimination complaints, ACS should aggressively seek approval to hire the male EEO Investigator/Trainer;

Recommended Corrective Action #6

ACS should ensure that all employees involved in interviewing receive structured interview training, either through internal training or training provided by DCAS;

Recommended Corrective Action #9

The EEO Officer should be involved in developing recruitment strategies and selecting recruitment media, including newspapers and other publications; and ;

Recommended Corrective Action #10

To meet its obligations under the EEOP, ACS should hire another EEO Investigator in addition to the male Investigator awaiting hiring approval.

The Resolution authorized the Vice-Chairman to notify ACS in writing that it had not implemented all of the recommended corrective actions, and within seven days thereafter, to issue a report to the Mayor and recommend the appropriate corrective actions the Commission deemed necessary to ensure compliance with equal employment opportunity pursuant to the requirements of Chapters 35 and 36 of the New York City Charter.

On October 23, Mayor Michael R. Bloomberg forwarded his response; he rejected the recommendations of the Commission.

The Compliance Performance Report for Calendar Year 2003 is on the following pages. The Reports to the Mayor and Mayor Bloomberg's responses are in the Appendix.

**EQUAL EMPLOYMENT PRACTICES COMMISSION**  
**COMPLIANCE PERFORMANCE REPORT/CALENDAR YEAR 2003**

**COMPLIANCE COMMENCED IN 2003: 14**

1. LaGuardia Community College
2. Comptroller's Office
3. Public Advocates Office
4. Independent Budget Office
5. Queens Borough President's Office
6. Staten Island Borough President's Office
7. Office of Administrative Trials and Hearings
8. Civilian Complaint Review Board
9. New York City Employee Retirement System
10. Board of Standards and Appeals
11. Bronx Borough President's Office
12. Department of Investigation
13. Office of the Actuary
14. Conflict of Interest Board

**COMPLIANCES COMPLETED IN 2003: 6**

**Commenced and Completed in 2003: 2**

1. LaGuardia Community College
2. Comptroller's Office

**Commenced Prior to 2003 and Completed in 2003: 4**

1. Department of Records and Information Services
2. Hostos Community College
3. Queens Community College
4. Bronx Community College

**COMPLIANCES IN PROGRESS AT THE END OF 2003**

1. Public Advocates Office
2. Independent Budget Office
3. Queens Borough President's office
4. Staten Island Borough President's Office
5. Office of Administrative Trials and Hearings
6. Civilian Complaint Review Board
7. New York City Employee Retirement System
8. Board of Standards and Appeals
9. Bronx Borough President's Office
10. Department of Investigation
11. Office of the Actuary
12. Conflict of Interest Board
13. Manhattan Borough President's Office

**REPORTS TO THE MAYOR IN 2003: 2**

1. New York City Fire Department
2. Administration for Children's Services

## **CHAPTER IV**

### **PUBLIC HEARING AND ADMINISTRATIVE ISSUES**

“a. The commission shall conduct such study or investigation and hold such hearings as may be necessary to determine whether agencies are in compliance with the equal employment opportunity requirements of this chapter and chapter thirty-five.”

Chapter 36, section 832a, New York City Charter, As Amended, 1999

## **PUBLIC HEARING**

On November 19th the Commission sponsored a public hearing on: a) The Investigation and Resolution of Discrimination Complaints Filed Against New York City Government Agencies in Fiscal Year 2003, and b) The Implementation of the City's Equal Employment Opportunity Policy. Commissioner/Chair Patricia Gatling of the New York City Commission on Human Rights and Martha Hirst, Commissioner of the Department of Citywide Administrative Services respectively, presented testimony on these topics. Current and former city employees also provided testimony at the hearing.

Following is a summary of the public hearing testimony and the administrative issues that the Commission addressed during the calendar year.

### **Patricia Gatling, Commissioner/Chair, City Commission on Human Rights**

Commissioner/Chair Gatling began her testimony by stating that two years after being named Commissioner, the backlog of 5,000 discrimination cases has been eliminated and there are approximately 500 active cases. She discussed the accomplishments of the agency including that all complainants obtain a determination within one year of filing a complaint, that the law enforcement and community relations functions complement each other and the implementation of a testing program in the areas of housing and public accommodation.

Ms. Gatling then focused on employment discrimination in city agencies during 2003. She stated that the way complaints are handled now is different from years past. Potential complainants are generally required to appear at the central office. An attorney or human rights specialist interviews them and based on the interview a determination is made on how to proceed. If they have failed to make a lawful claim they are referred to several agencies/organizations that may help. If a lawful claim is made, attempts are made to resolve the problem immediately. If the attempts fail, a formal complaint is drafted and served on the respondent, who has thirty days to answer. Both parties can request formal mediation during this time. Complainants can submit additional information to rebut the answer. A determination of either probable cause or no probable cause is reached. If there is probable cause of discrimination the case is referred to the Office of Administrative Trials and Hearings (OATH) for trial. A no probable cause determination can be appealed to Ms. Gatling as Commissioner/Chair. If the complainant is still dissatisfied an appeal can be made to the state Supreme Court.

Cases can also be administratively closed prior to referral of a case to OATH. Common reasons include inability to locate the complainant, the failure of the complainant to cooperate with the investigation, the complainant's refusal of a fair settlement offer, and/or pursuing the investigation would not be in the public interest.

Commissioner Gatling said that the commission has also created a training institute in an effort to prevent discrimination in both the public and private sectors. The institute teaches employers and employees about their rights and obligations under human rights law and sensitivity training.

### **Questions and Comments**

Commissioner Mendez asked Commissioner/Chair Gatling to explain how she was able to reduce the backlog of cases. Ms. Gatling said that it was a large team effort and they worked more than seven hours a day going through each and every case.

Commissioner Cabrera wanted to know if intervening on behalf of the complainant is considered an informal mediation. Ms. Gatling stated that it is similar to a plea conference. They make telephone calls attempting to keep the complainant employed if necessary and to discuss the issues to see if it can be resolved before a formal complaint is filed. Commissioner Cabrera asked for an explanation of the formal mediation program. Ms. Gatling asked her Deputy Commissioner, Avery Mehlman, to discuss the program. Mr. Mehlman said that after the complaint is filed both parties receive a copy along with an explanation of the mediation option. A short investigation is done to determine if the case is appropriate for mediation. If it is a good case for mediation and if both parties agree, the case is referred.

Commissioner Rimokh asked if documentation was kept on cases that "failed to state a lawful claim." Mr. Melman said a detailed memo is kept on file regarding the interview which is signed off by one of the deputy commissioners.

Commissioner Cabrera asked about identifying employers in need of training from the training institute. Commissioner Gatling said that employers are identified based on complaints received over the telephone or through the human rights specialists. Many employers also call CCHR directly to request training.

Commissioner Rimokh asked if CCHR plans on working with the City's Law Department on patterns and practices cases. Ms. Gatling said that issue is on her agenda for 2004.

**Martha Hirst, Commissioner, Department of Citywide Administrative Services**

Commissioner Hirst explained her department's responsibilities specifically related to equal employment opportunities. There is a duty to create and enforce uniform procedures and standards that are used to establish programs to ensure fair employment practices. She also reaffirmed the administration's commitment to promoting fair employment practices within all city agencies.

Next, she reported on DCAS's recent developments in regards to the management of the city's EEO function, including the new EEO policy handbook, which is a user-friendly summary of the EEO policy. Commissioner Hirst also discussed the types of technical assistance that the Office of Citywide Equal Employment Opportunity (OCEEO) provides to both mayoral and non-mayoral agencies, including EEO training for managers, line employees and new employees, advanced training on complaint handling for EEO professionals, interviewing workshops, a video tape library, and assistance with the development of agency-specific EEO plans. She also stated that OCEEO makes an effort to keep EEO professionals current regarding legal developments through professional seminars, disseminating EEO news clips bi-monthly and electronic notification of developments in enforcement regulations and guidance.

Commissioner Hirst talked about the draft revised policy which she shared with the EEPC. The policy is currently being developed by a review of past practices and patterns along with recommendations from the EEPC's last annual report. The revised policy will include explicit language indicating that retaliation is a violation of city policy along with specific examples of protected conduct and prohibited retaliatory actions. She also said that OCEEO would include additional information about retaliation law in its EEO training as suggested by the EEPC. Regarding adverse impact studies, she stated that she would make every effort to ensure that all EEO Officers are trained in that area.

It was also indicated that OCEEO has solicited the input of agency EEO Officers in its efforts to improve the EEO Program. Several areas of concern have been identified including the

need for more collaboration between personnel and EEO officers. They are also going to encourage and expand the use of mediation for resolving EEO complaints and the use of technology for more EEO training.

## **Questions and Comments**

Commissioner Mendez asked if the new policy would be changing the current reporting structure--where EEO Officers report directly to the agency head or a direct report to the agency head. Ms. Hirst stated that she understood the rationale for direct reporting to the agency head but also knows that in some cases it has the opposite effect. She determines on a case-by-case basis which reporting structure is best because the goal is to get the issues resolved. Currently only one EEO Officer does not report directly to the agency head.

Commissioner Mendez also asked what DCAS's plan was regarding a public hearing prior to the mayor adopting the new EEO Policy. Ms. Hirst said that she would not be opposed to the idea but the goal is to get the revisions out expeditiously. Currently the draft is disseminated to EEO Officers and experts, such as the EEPC, along with the law department.

Commissioner Rimokh wanted to know how the discrimination complaint procedure and the revised policy would interrelate. Commissioner Hirst said that they should interrelate smoothly. Her ultimate goal is awareness and clarity. If the guidelines need to be revised as a result of the new policy she is sure that OCEEO has already begun that process.

Commissioner Villanueva asked if DCAS provides technical assistance to non-mayoral agencies. Ms. Hirst said only if those agencies request it. She also said that several agencies have requested assistance and it has been provided.

Commissioner Rimokh asked about DCAS initiatives on accessibility issues. Commissioner Hirst said there are a number of capital projects including bathroom and elevator accessibility with respect to ADA compliance. Budget constraints have slowed the process.

## **Other Testimony**

### Araceli Melendez, Department of Juvenile Justice

Ms. Melendez said that since filing a sexual harassment complaint with her EEO Officer, she has been continuously retaliated against. Her case was closed by DJJ and she then filed with the EEOC. She was issued a charge letter on June 1, 2003 and is waiting for someone there to call her about her case.

### John Cheeks, Department of Juvenile Justice

Mr. Cheeks said that “false allegations” were made against him by his agency. He said that after listening to Commissioner Hirst’s testimony, he realizes that he was and still is being retaliated against because of the allegations. He is going to find out what else can be done to resolve his issue.

### Walther Boyd, Department of Parks and Recreation

Mr. Boyd testified that he has filed four EEO complaints with the EEO Officer at his agency. He followed through with only two of them and does not feel that the agency conducts thorough and fair investigations. He also stated that he is a plaintiff in the current class action suit against the agency and he is being retaliated against for that also.

### Phyllis Scott, former employee of the NYC Housing Authority

Ms. Scott believes that she was fired for suffering from depression after witnessing the attacks on September 11, 2001 and for taking time off to take her child to the hospital after an anthrax scare. She said that she filed a complaint with CCHR and it was administratively closed.

### Anthony Blount, former employee for the Department of Sanitation

Mr. Blount said that he was found guilty of stealing supplies from the Ground Zero rescue workers at an OATH hearing. According to Mr. Blount, the accusations are false. He has since filed an appeal to the appellate division.

### Arlene Akins, New York City Law Department

Ms. Akins testified on the hostile working environment in the Workers’ Compensation division. She wanted to make the Commission aware of the hiring practices that are taking place at the Law Department. She is aware of the situation because she is a supervisor as well as an EEO

Counselor. She said that she has informed the EEO Officer of this issues and is waiting for a response.

Rafael Hernando, Seasonal Department of Parks and Recreation

Mr. Hernando testified about the racism and retaliation in the agency. He feels he is being retaliated against because his brother, a former Parks employee, filed an EEO complaint and a lawsuit against the department. He also tried to get an appointment with his union president who cancelled four times.

Carol Brooks, Department of Environmental Protection

Ms. Brooks expressed her concern for the lack of career opportunities available to women and women of color after they have entered DEP's work environment. She stressed the need for an examination of the recruiting and selecting process.

**ADMINISTRATIVE ISSUES**

In addition to addressing the city charter mandate to audit the equal employment opportunity programs of all city agencies at least once every four years, the Commission also addressed a number of administrative issues. A brief description of the major issues follows.

Advisory Committee To Recommend Improvements in the Reporting Structure of the City's Equal Employment Opportunity Policy

On September 15, 2002 the Commission established the Advisory Committee to Recommend Changes in the Current Reporting Structure of the City's Equal Employment Opportunity Program (Committee). Seven current City EEO Officers and one former City EEO Officer were appointed to the Committee. The charge of the Committee was to develop recommendations for changes in the reporting structure of the City's Equal Employment Opportunity Program designed to strengthen the overall administration of the Program.

The Equal Employment Practices Commission's (EEPC) position is that the current reporting structure of the City's Equal Employment Opportunity Program weakens the overall administration of the Program and must be changed. In support of its position, the EEPC staff

cited audit findings which reflected poor administration of the City's Equal Employment Opportunity Policy by a number of city agencies, inadequate oversight by some agency heads, and the cost to the City for the settlement or adjudication of employment discrimination cases, the Committee members addressed the charge. They discussed three reporting structures proposed by the EEPC, reviewed responses to two surveys that were distributed to the EEO Officers at all mayoral agencies, and received legal interpretations of the options.

As a result of in depth analysis of the above mentioned information and the current reporting structure, the Committee decided on three recommendations that could provide sufficient supervisory authority over agency heads and that also may provide for the uniform implementation of the City's Equal Employment Opportunity Program. Listed below, in order of preference are the Committee's recommendations:

1. Director of OCEEO/Special Assistant to the Mayor for EEO reports directly to the Mayor
2. Director of OCEEO reports to the Deputy Mayor for Legal Affairs/Mayor's Counsel
3. Director of OCEEO reports to the Deputy Mayor for Policy

The Committee then prepared a report and forwarded it to the EEPC. The report was discussed at the April 3, Commission meeting. At the May 8, meeting, the Commission approved its "Recommendations to Change the Current Reporting Structure of The City's Equal Employment Opportunity Program". The Recommendations included the recommendations developed by the Advisory Committee To Recommend Improvements in the Reporting Structure of the City's Equal Employment Opportunity Program. On May 14, the Commission's Recommendations were forwarded to the Mayor Bloomberg.

#### Proposed Standards and Procedures for Equal Employment Opportunity

Last November, the Department of Citywide Administrative Services issued its draft "Proposed Standards and Procedures for Equal Employment Opportunity." Once approved by the

Bloomberg administration, this document will replace the Equal Employment Opportunity Policy (EEO) issued by the Giuliani administration. All city agencies are currently administering their EEO Programs pursuant to the Equal Employment Opportunity Policy established in the summer of 1996 by the Giuliani administration.

Pursuant to the authority granted to this Commission by the City Charter, the Commission forwarded its comments about the draft document to the Department of Citywide Administrative Services last December. The Commission was very pleased with the new language in the following sections of the draft: Retaliation, Mediation, Agency Head Review, Responsibilities of Managers and Supervisors, and, Personnel Officers.

The Commission issued recommendations for improvements in the Proposed Standards and Procedures for Equal Employment Opportunity in the following areas: Agency Head Accountability, EEO Professionals, Disabilities Rights Coordinator, Career Counselor, Adverse Impact Studies, EEO Training, Recruitment, Procedures, and Posting of EEO Policies.

#### Sharing An EEO Officer

After completing more than seventy-five audits of the city agencies, this Commission has concluded that the level of equal employment opportunity services available to city employees is dependent to some extent on the agency the employee works for. Too often this Commission has found that some city agencies do not have an Equal Employment Opportunity Program. Other agencies are so small that the EEO Officers are part-time and because of their other administrative responsibilities, they cannot effectively administer the agencies' EEO Program. In many of these agencies, the part-time EEO Officer has full-time administrative responsibilities that can conflict with her/his responsibilities as EEO Officer (e.g., director of administration, director of personnel, or agency counsel).

To address this issue, the Commission is currently exploring the concept of sharing an EEO Officer. Under this concept, two or three small city agencies would share the cost of a full-time EEO Officer who would administer their EEO Program. The participating agencies would each appoint an EEO Counselor/Investigator(s) who would assist the EEO Officer in the administration of the program in their agency. Consistent with the requirements of the City's Equal Employment Opportunity Policy, if the agency appointed only one Counselor/Investigator he (she) would have to be the opposite sex of the EEO Officer.

The sharing of an EEO Officer by two or three different agencies should improve the administration of the EEO Program in all the agencies since the EEO Officer would be full-time. The salary for the EEO Officer would be pro-rated according the cumulative population of the participating agencies.

# CHAPTER V

## RECOMMENDATIONS AND CONCLUSION

“ d. The commission shall have the following powers and duties:...

6. to make such policy, legislative and budgetary recommendations to the mayor, council, the department of citywide administrative services or any city agency as the commission deems necessary to ensure equal employment opportunity for minority group members and women;”

Section 831(d)6 of the New York City Charter

## **COST OF EMPLOYMENT DISCRIMINATION**

This Commission believes that to reduce the legal costs to the City for the settlement or adjudication of employment discrimination cases, every city agency must have a properly structured and efficiently administered Equal Employment Opportunity Program that is in compliance with the City's Equal Employment Opportunity Policy. At the beginning of each calendar year, the EEPC requests from the City Comptroller the number of employment discrimination cases settled or adjudicated in the preceding year, and the total cost to the city. In addition to the City Comptroller, the EEPC will also request similar information from the New York City Law Department and the Office of Administrative Trials and Hearings ("OATH").

### Efforts To Develop A Central Data Bank

The City Comptroller records figures relative to settlements and judgments, both of which are paid from New York City's general fund. The Comptroller, however, does not record back pay because it is not paid from the general fund; it is paid by the agency. The City Comptroller's office informed the EEPC that its information system, OAISIS, could be configured to capture back pay costs. The Law Department also records settlement and attorneys' fees as well as back pay by fiscal year. The Law Department informed the EEPC that there also exists a world of discrimination cases that do not come under its or the Comptroller's radar. These cases are handled internally by the agencies. The Law Department and the Comptroller's Office only receive notice if a complainant seeks outside counsel and the case goes to trial.

OATH's caseload includes public employee disciplinary and disability hearings, license and regulatory hearings, conflicts of interest proceedings, hearings on contract matters, Loft Law hearings and other adjudications as provided by state and local law. Because OATH only had one employment discrimination case with a monetary decision last year and the Law Department's data is not available until the August, employment discrimination data from these agencies are not included in this report.

The EEPC will continue to request information from the City Comptroller, as well as the Law Department and OATH, to raise awareness of the cost of employment discrimination to the City. This Commission will also lobby for the creation of a central database in the

Comptroller's office or Law Department that will contain the data from all sources on employment discrimination costs to the City.

### City Comptroller's Office

According to the New York City Comptroller's office there were fifty-one cases of employment discrimination settled or adjudicated in calendar year 2003 with a total cost to the City of \$ 7,190,844.00. This amount represents a 220% increase over the cost for employment discrimination in calendar year 2002 (\$ 3,226,246.00), which was almost seven times the cost in calendar year 2001 (\$ 467,155.00).

At the end of this chapter there is a chart that reflects the total settlement/adjudication costs for employment discrimination in calendar years 1994 – 2003. A second chart details each settlement or adjudication paid out in calendar year 2003 by agency, amount, and type of discrimination.

## **RECOMMENDATIONS**

Section 831(d) 6 of the New York City Charter, As Amended, empowers the Equal Employment Practices Commission to make policy, legislative, and budgetary recommendations to the Mayor, City Council, Department of Citywide Administrative Services, or any other city agency to ensure equal employment opportunity for minority group members and women. Our recommendations are intended to improve the administration of the city's Equal Employment Opportunity Program and thereby reduce the potential legal costs to the city for employment discrimination. We are pleased that our recommendation to expand the section on the Anti-Retaliation Policy has been addressed in the proposed Standards and Procedures for Equal Employment Opportunity. Implementation of these recommendations will strengthen the equal employment opportunity practices of all New York City government agencies. We respectfully request that they receive serious consideration.

## **To The Mayor**

### Recommendation# 1

The Office of the Mayor Should Appoint A Liaison to The Equal Employment Practices Commission.

### Rationale

Since its inception the Office of the Mayor and the Office of the City Council Speaker appointed liaisons to the Commission. These liaisons attended Commissions meetings, assisted the Commission in addressing issues with city agencies, and kept their respective offices informed of major issues before the Commission. The City Council Liaison to the Commission is Bikku Kuruvila, Counsel to the City Council Committee on Civil Service and Labor, and the Committee on Women's Issues. The Office of the Mayor has not appointed a liaison to the Commission.

### Recommendation # 2

The Office of the Mayor Should Approve the Creation of a Direct Computer Link to The EEO Workforce Data of all City Agencies Via The (NYCAPS) New York City Automated Personnel System Once it is Established.

### Rationale

NYCAPS is a state-of-the-art computer-based personnel management system that the Department of Citywide Administrative Services began establishing in fiscal year 2000. NYCAPS combines a number of current city personnel management systems including: recruitment, hires, separations, labor relations, worker's compensation, disciplinary issues, and equal employment opportunity. Providing a direct computer linkage to the equal employment opportunity database for the EEPC will allow the regular review of an agency's EEO workforce database and should expedite the audit process.

## **To The Mayor and City Council Speaker**

### Recommendation # 3

The Mayor and City Council Speaker Should Appoint a Chairperson of the Equal Employment Practices Commission.

### Rationale

The City Charter requires the mayor and city council speaker to appoint the chairperson of the Equal Employment Practices Commission. This Commission has been without a chairperson since June 1999. The absence of a chairperson has created obvious impediments to the efficient operation of this Commission. The joint appointment of a chairperson ensures support for the Commission from both sides of City Hall.

## **To The Mayor and City Council**

### Recommendation #4

The Mayor and City Council Should Approve a Budget Allocation and Permanent Head Count for the Equal Employment Practices Commission That Will Enable this Commission to Meet our City Charter Mandate to Audit Every City Agency at Least Once Every Four Years.

### Rationale

A minimum of one hundred and sixty agencies are under the jurisdiction/authority of the EEPC. To audit all of these agencies at least once every four years requires that the Commission audit forty agencies annually. To do that, the Commission needs a permanent headcount of fifteen (including eight auditors and two compliance coordinators). Our current permanent headcount is nine. Two audits of the Equal Employment Practices Commission by the City Comptroller cited this Commission's failure to meet our city charter mandate. According to the Comptroller's office, the settlement/judgment costs to the City for employment discrimination in calendar year 2003 was 7.2 million dollars. An adequate budget for the EEPC would cost far less.

## **To The Department of Citywide Administrative Services**

### Recommendation # 5

The Office of Citywide Equal Employment Opportunity (OCEEO) of the Department of Citywide Administrative Services (DCAS) should provide technical assistance to all city agencies that require assistance in establishing their Equal Employment Opportunity Programs.

### Rationale

In conducting audits of the Public Advocate's office, the Board of Standards and Appeals, and the Office of the Actuary, this Commission learned that these agencies did not have an Equal Employment Opportunity Program in place. We also learned that OCEEO gives preference to mayoral agencies in providing this type of assistance. Since the City is equally liable for employment discrimination suits from employees of non-mayoral city agencies as it is from employees of mayoral agencies, all city agencies that need this assistance should receive it.

### Recommendation # 6

The Department of Citywide Administrative Services (DCAS) Should Monitor The Implementation of The Career Counselor Component of The City's Equal Employment Opportunity Policy and Ensure That All City Employees Have Access to This Service.

### Rationale

Section VI (A)(3) of the City's Equal Employment Opportunity Policy says: "To ensure that employees receive career guidance from a trained professional, each agency head must designate a person familiar with civil service and provisional jobs who can be available to provide career counseling to employees who request such guidance."

Despite this requirement, a number of audited agencies have not effectively addressed this requirement. One EEO Officer informed Commission staff that her agency head was willing to appoint a career counselor but did not want to inform his staff who the career counselor is. Providing career guidance and counseling to city employees is in the best interests of both the City and its employees. DCAS should ensure that all city agencies adequately address this requirement

### Recommendation # 7

The Department of Citywide Administrative Services Should Ensure That All EEO Officers Receive Adverse Impact Study Training.

### Rationale

Section VI (A2) of the City's Equal Employment Opportunity Policy requires that City agencies examine all devices used to select and promote candidates for employment to determine whether these devices adversely impact any racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, agency heads are directed to determine whether the device is job related. Criteria that adversely impact any protected group and are not job related should be discontinued. EEO Officers must be trained to do adverse impact studies, which are technical statistical studies. This Commission is concerned that to date, DCAS has not provided adverse impact training for the City's EEO Officers.

Adverse impact studies are especially critical for certain selection criteria for the Fire Department (30 college credits) and the Police Department (60 college credits). By identifying barriers to equal employment opportunity, adverse impact studies are essential tools for eliminating non job related selection criteria that reduce the number of women and minority candidates for firefighter and police. The application of adverse impact studies by city agencies, as required by the City's Equal Employment Opportunity Policy, can substantially eliminate non-job-related selection or promotion devices that adversely impact on the selection of women and minorities.

During the Commission's annual public hearing last year with the Department of Citywide Administrative Services and its (OCEEO) Office of Citywide Equal Employment Opportunity, this Commission was told by Commissioner Martha Hirst that DCAS wants to provide this training. We hope it happens this year.

### Recommendation # 8

The Office of Citywide Equal Employment Opportunity Should Review The Level of EEO Support Staff in All Mayoral Agencies and Insist That Agency Heads Provide Additional Support Staff for The EEO Officers Who Need It.

### Rationale

Audits of city agencies continue to reveal that a number of EEO Officers are part-time; many spend less than twenty-five per cent of their time addressing EEO issues. In many agencies, the EEO Officer is either the director of human resources or the director of administration. EEO Officers in other agencies have other line responsibilities that make it difficult for them to devote the necessary time to EEO.

Even more disturbing is the lack of support staff in many EEO offices. Some EEO Officers have multiple responsibilities and no full-time secretary or administrative assistant; they need additional support staff. While we understand that certain city agencies--especially the smaller ones--may not have sufficient funds for a full-time EEO Officer, there is no excuse for not providing adequate administrative support for an EEO Officer who has additional administrative responsibilities. This lack of support staff makes the efficient administration of the EEO program extremely difficult. Given the desire of agency heads to assign their staff to other priorities, they may not provide the necessary support staff to their EEO offices unless the Department of Citywide Administrative Services requires them to do it.

### Recommendation #9

The Department of Citywide Administrative Services Should Increase the Staff in the Office of Citywide Equal Employment Opportunity

### Rationale

As previously stated the Commission discovered that some city agencies did not have functioning Equal Employment Opportunity Programs during the calendar year. These agencies need technical assistance from OCEEO in order to establish their EEO programs. In order to address these needs as well as address the other aforementioned recommendations, the OCEEO must have additional staff.

## **CONCLUSION**

Employment discrimination is prohibited by the New York City Charter and a broad range of laws, court decisions, amendments and executive orders, including the Fourteenth

Amendment of the U.S. Constitution, the Civil Rights Act of 1964, Title VII; U.S. Executive Order #11246, the New York State Constitution, the New York State Human Rights Law, the New York State Civil Rights Law and the New York City Human Rights Law.

The Equal Employment Practices Commission's City Charter mandate is to ensure that women and minorities, who work for or, seek employment with, city agencies, are protected by the aforementioned laws. Since its first meeting in April 1992, this Commission has pursued its mandate through public meetings, public hearings, special meetings, the creation of advisory committees (e.g. the Advisory Committee to Recommend Improvements in the Fire Department Recruitment Program, and the Advisory Committee to Recommend Improvements in the Reporting Structure of the City's Equal Employment Opportunity Program), audits of city agencies, and monitoring audit compliance. Historically, the Commission has been committed to addressing its mandate through dialogue and negotiation.

Pursuant to Section 1133a of the New York City Charter, the Equal Employment Practices Commission is required to forward to the Department of Records and Information Services (DORIS) copies of all "Letters of Preliminary Determinations" and all "Letters of Final Determinations" issued by the Commission pursuant to audits of city agencies. In fairness to those agencies, this Commission also provides DORIS with copies of the agencies' response to both letters when appropriate. Those audits and the agencies' responses are available for public review at the Municipal Reference Library.

Pursuant to the State Open Meetings Law, all meetings of the Commission are open to the public. A notice of every Commission meeting or public hearing is published in the City Record - the official newspaper of the New York City government. Persons who wish to be included on the Commission's mailing list or wish to receive a copy of the minutes of Commission meetings, transcripts of public hearings, or copies of any publications of this Commission, should call (212) 788-8646 or fax (212) 788-8652.

### Filing An Employment Discrimination Complaint

Individuals who wish to file an employment discrimination complaint with an outside government agency should contact one of the following government agencies:

U.S. Equal Employment Opportunity Commission  
33 Whitehall Street  
New York, NY 10004  
(212) 336-3620  
[www.eeoc.gov](http://www.eeoc.gov) <http://www.eeoc.gov>

State Division of Human Rights  
20 Exchange Place  
New York, NY 10005  
(212) 480-2522  
[www.nysdhr.com](http://www.nysdhr.com)

New York City Commission on Human Rights  
40 Rector Street  
New York, NY 10006  
(212) 306-7500  
[NYC.gov/html/cchr](http://NYC.gov/html/cchr)

**SETTLEMENT/ADJUDICATION COST OF EMPLOYMENT DISCRIMINATION IN  
NEW YORK CITY GOVERNMENT AGENCIES**

**CALENDAR YEARS 1994 - 2003**

| <b>YEAR</b>                                | <b>SETTLEMENT</b> | <b>ADJUDICATION</b> | <b>TOTAL</b>           | <b>% INCREASE</b> |
|--|-------------------|---------------------|------------------------|-------------------|
| 1994                                       | —                 | —                   | \$869,150.00           | —                 |
| 1995                                       | —                 | —                   | \$1,555,050.00         | 78.1%             |
| 1996                                       | —                 | —                   | \$1,794,186.00         | 15.0%             |
| 1997                                       | \$924,819.00      | \$1,687,900.00      | \$2,603,719.00         | 45.0%             |
| 1998                                       | \$1,334,685.00    | \$75,000.00         | \$1,409,685.00         | (45.8%)           |
| 1999                                       | \$1,350,354.00    | —                   | \$1,350,354.00         | (5.0%)            |
| 2000                                       | \$2,435,069.00    | —                   | \$2,435,069.00         | 80.3%             |
| 2001                                       | \$409,154.00      | \$58,001.00         | \$467,155.00           | (81.8%)           |
| 2002                                       | \$2,796,087.00    | \$470,159.00        | \$3,266,246.00         | 699.1%            |
| 2003                                       | \$5,657,591.00    | \$1,533,253.00      | \$7,190,844.00         | 220.2%            |
| <b>Grand Total</b>                         |                   |                     | <b>\$22,941,458.00</b> |                   |
| Average Annual Cost: <u>\$2,294,146.00</u> |                   |                     |                        |                   |

**LEGAL COST OF EMPLOYMENT DISCRIMINATION  
CALENDAR YEAR 2003**

| CLAIM #      | AGENCY                                 | SETTLEMENT/JUDGMENT |                      |
|--------------|--|---------------------|----------------------|
|              |  | AMOUNT              | DESCRIPTION          |
| 2000PI006868 | Police Department                      | \$9,500.00          | Age/Disability       |
| 2003PI000978 | Police Department                      | \$10,000.00         | Race/National Origin |
| 2003PI028200 | Police Department                      | \$10,000.00         | Disability           |
| 2000PI003433 | Police Department                      | \$20,000.00         | Discrimination       |
| 2001PI022927 | Police Department                      | \$25,000.00         | Discrimination       |
| 2002PI029115 | Police Department                      | \$35,000.00         | Gender/Race/Origin   |
| 1999PI016712 | Police Department                      | \$70,000.00         | Harassment           |
| 2002PI027945 | Police Department                      | \$70,000.00         | Race                 |
| 2003PI022462 | Police Department                      | \$95,000.00         | Race                 |
| 2003PI008271 | Police Department                      | \$115,000.00        | Race/Gender          |
| 1996PI028310 | Police Department                      | \$660,002.29        | Gender/Disability    |
| 1997PI028231 | Police Department                      | \$873,250.58        | Discrimination       |
| 1997PI028231 | Police Department                      | \$2,365,590.00      | Race                 |
|              |  |                     |                      |
| 2001PI003692 | Department of Education                | \$14,001.00         | Sex/Gender           |
| 2003PI016653 | Department of Education                | \$40,000.00         | Disability           |
| 2003PI022397 | Department of Education                | \$40,000.00         | Race/National Origin |
| 2001PI019213 | Department of Education                | \$65,000.00         | Disability           |
| 2000PI018265 | Department of Education                | \$65,000.00         | Race                 |
| 2003PI000712 | Department of Education                | \$80,000.00         | Disability           |
| 2000PI008770 | Department of Education                | \$95,000.00         | Gender/Age           |
| 1996PI015162 | Department of Education                | \$110,000.00        | Race/National Origin |
| 2002PI025999 | Department of Education                | \$135,000.00        | Race                 |
| 2003PI022003 | Department of Education                | \$150,000.00        | Sexual Orientation   |
|              |  |                     |                      |
| 2000PI021035 | Health & Hospitals Corporation         | \$35,000.00         | Discrimination       |
| 2003PI021988 | Health & Hospitals Corporation         | \$40,000.00         | National Origin      |
| 2003PI009252 | Health & Hospitals Corporation         | \$50,000.00         | Race                 |
| 2001PI013063 | Health & Hospitals Corporation         | \$53,000.00         | Race/National Origin |
| 2003PI013278 | Health & Hospitals Corporation         | \$60,000.00         | Discrimination       |
| 2003PI007697 | Health & Hospitals Corporation         | \$70,000.00         | Race/Religion        |
| 1999PI016084 | Health & Hospitals Corporation         | \$125,000.00        | Discrimination       |
|              |  |                     |                      |
| 2000PI022118 | Department of Environmental Protection | \$25,000.00         | National Origin      |
| 2002PI026104 | Department of Environmental Protection | \$50,000.00         | Gender               |
| 2003PI026343 | Department of Environmental Protection | \$75,000.00         | Whistleblower        |
| 2000PI022016 | Department of Environmental Protection | \$136,000.00        | National Origin      |

**LEGAL COST OF EMPLOYMENT DISCRIMINATION, CONT'D**

| CLAIM #                 | AGENCY                              | SETTLEMENT/JUDGMENT   |                    |
|-------------------------|-------------------------------------|-----------------------|--------------------|
|                         |                                     | AMOUNT                | DESCRIPTION        |
| 2000PI010235            | City University of New York         | \$44,000.00           | Discrimination     |
| 2001PI015388            | City University of New York         | \$47,500.00           | Religion           |
| 2002PI026265            | City University of New York         | \$53,000.00           | Race               |
| 2001PI001432            | Department of Health                | \$75,000.00           | Discrimination     |
| 2001PI001432            | Department of Health                | \$75,000.00           | Sexual Orientation |
| 2002PI025280            | Department of Investigations        | \$17,000.00           | Race               |
| 2003PI021987            | Department of Investigations        | \$115,000.00          | Whistleblower      |
| 2001PI027571            | Department of Parks & Recreation    | \$45,000.00           | Race               |
| 2003PI012705            | Department of Parks & Recreation    | \$65,000.00           | Whistleblower      |
| 2000PI022566            | Department of Sanitation            | \$100,000.00          | Discrimination     |
| 2003PI020053            | Department of Sanitation            | \$155,000.00          | Race/Age           |
| 2001PI000659            | Department of Employment            | \$25,000.00           | Discrimination     |
| 2002PI026099            | Department of Citywide Admin. Svcs. | \$26,000.00           | Age                |
| 1997PI001302            | Housing Preservation & Development  | \$50,000.00           | Discrimination     |
| 2002PI022596            | Department of Transportation        | \$65,000.00           | Age/Religion       |
| 2002PI026000            | Fire Department                     | \$112,000.00          | Religion           |
| 2001PI011660            | Department of Corrections           | \$250,000.00          | Race/Gender/Origin |
| Harassment Subtotal     |                                     | \$70,000.00           |                    |
| Whistleblower Subtotal  |                                     | \$255,000.00          |                    |
| Discrimination Subtotal |                                     | \$6,865,843.87        |                    |
| <b>Grand Total: 51</b>  |                                     | <b>\$7,190,843.87</b> |                    |

**Average Cost**

**\$141,000.00**

# **APPENDICES**

## APPENDICES

- A. Report to the Mayor Re: FDNY and Mayor's Response
  - A1. Agency Response
  - A2. Mayor's Decision
  
- B. Report to the Mayor Re: ACS and Mayor's Response
  - B1. Agency Response
  - B2. Mayor's Decision
  
- C. Public Hearing on: The Investigation and Resolution of Discrimination Complaints Filed Against New York City Government Agencies in Fiscal Year 2003 and, The Implementation of the City's Equal Employment Opportunity Policy.
  - C1. Testimony by Commissioner/Chair Patricia Gatling, City Commission on Human Rights
  - C2. Testimony by Commissioner Martha Hirst, Department of Citywide Administrative Services
  
- D. Recommendations To Change The Current Reporting Structure of the City's Equal Employment Opportunity Program
  
- E. Comptroller's Office Letter Re: Cost of Employment Discrimination in Calendar Year 2003
  
- F. Description of Job Group Categories
  
- G. Workforce Analysis of Mayoral Agencies/Calendar Year 2003
  
- H. Workforce Analysis of Select Job Groups in Mayoral Agencies/Calendar Year 2003
  - 1. Administrators (Job Group 01)
  - 2. Managers (Job Group 02)
  - 3. Management Specialists (Job Group 03)
  - 4. Science Professionals (Job Group 04)
  - 5. Health Professionals (Job Group 05)

6. Social Workers (Job Group 07)
7. Lawyers (Job Group 08)
8. Public Relations (Job Group 09)
9. Technicians (Job Group 10)
10. Clerical Supervisors (Job Group 12)
11. Clericals (Job Group 13)
12. Police Supervisors (Job Group 15)
13. Fire Supervisors (Job Group 16)
14. Firefighters (Job Group 17)
15. Police and Detectives (Job Group 18)
16. Building Services (Job Group 22)
17. Crafts (Job Group 25)
18. Laborers (Job Group 28)