



Angela Cabrera
Malini Cadambi Daniel
Elaine S. Reiss, Esq.
Arva R. Rice
Commissioners

Charise L. Terry, PHR
Executive Director

Judith Garcia Quiñonez, Esq.
Executive Agency Counsel/
Deputy Director

253 Broadway
Suite 602
New York, NY 10007

212. 615. 8939 tel.
212. 615. 8931 fax

BY MAIL AND EMAIL

September 18, 2015

Dean Fuleihan
Director
Office of Management & Budget
255 Greenwich Street, 6th Floor
New York, NY 10007

RE: Resolution #: **2015/019**: Final Determination Pursuant to the Audit and Analysis of the Office of Management & Budget's Employment Practices and Procedures from January 1, 2012 to December 31, 2014.

Dear Director Fuleihan:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you for your September 14, 2015 response to our August 31, 2015 Preliminary Determination and for the cooperation extended to our staff during the course of this audit.

As indicated in our Preliminary Determination, this Commission has adopted uniform standards¹ to assess agencies' employment practices and programs for compliance with federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for municipal government employees and job applicants. The attached Determination contains the Commission's findings and required corrective actions pertaining to the referenced audit and analysis of your agency's employment practices and procedures.

Chapter 36, Section 832.c of the New York City Charter requires that: 1) the EEPC assign a 6-month compliance period to monitor your agency's efforts to eliminate remaining required corrective actions; and 2) the agency provide a written response within 30 days from the date of this letter indicating corrective action taken.

¹ Founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; New York City Human Rights Law (NYC Administrative Code, §§8-107.1(a) and 8-107.13(d)); New York State Civil Service Law §55-a; Uniform Guidelines on Employee Selection Procedures (29 CFR §§1607.3 - 1607.7) and the equal employment opportunity requirements of the New York City Charter.



The assigned compliance-monitoring period is: October 2015 to March 2016.

If corrective actions remain: Your agency's response should indicate (with attached documentation) what steps your agency has taken, or will take, to implement the corrective actions during the designated period. Thereafter, your agency will be monitored monthly until all corrective actions have been implemented. Compliance-monitoring instructions will be provided. Upon your agency's completion of the final corrective action, this Commission requires a final memorandum signed by the agency head which informs employees of the changes implemented pursuant to our audit/analysis and re-emphasizes commitment to the EEO program. Once received, a *Determination of Compliance* will be issued.

If no corrective actions remain: Your agency is exempt from the aforementioned monitoring period. However, this Commission requires a final memorandum signed by the agency head which informs employees of the changes implemented pursuant to our audit/analysis and re-emphasizes commitment to the EEO program. This will be considered your agency's final action. Upon receipt of the memo, a *Determination of Compliance* will be issued.

If there are further questions regarding this Final Determination or the compliance-monitoring process, please have the Principal EEO Professional call Marie Giraud, Esq., Agency Attorney/Director of Compliance Monitoring at 212-615-8942.

Thank you and your staff for your continued cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charise L. Terry".

Charise L. Terry, PHR
Executive Director

c: Patricia Herrick, Principal EEO Professional

FINAL DETERMINATION

The Equal Employment Practices Commission's findings and required corrective actions are based on the audit methodology which includes collection and analysis of the documents, records and data the agency provided in response to the *EEPC Document and Information Request Form*; the *EEPC Interview Questionnaires* for EEO professionals and others involved in EEO program administration; and, if applicable, the *EEPC Employee Survey*, the *EEPC Supervisor/Manager Survey*, the agency's *Annual EEO Plans* and *Quarterly EEO Reports*; and workforce and utilization data from the *Citywide Equal Employment Database System*. Additional research and follow-up discussions or interviews were conducted as appropriate.

After reviewing the agency's optional response (if applicable), our Final Determination is as follows:

Agree

Regarding your responses² to the following EEPC required corrective actions, we Agree based on documentation that is attached to your response.

Corrective Action #1

Issue a general EEO Policy statement or memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO professionals, and attaching, or providing employees pertinent electronic links to, an EEO Policy/Handbook.

Agency Response: *"An email was sent by [the Budget Director] to all employees on September 11, 2015 ... informing them of the agency's ongoing commitment to the City's EEO Policy. This statement also included the contact information for EEO personnel. Copies of this email were posted in a conspicuous location in all dining areas and on OMB's internal website..."* (Response, pg. 1)

EEPC Response: The EEPC accepts the agency head's email to all employees attached to the agency's response as documentation that corrective action **#1** has been implemented. The email states the agency's commitment to having a *"work place that is free of bias, harassment, discrimination or prejudice of any kind."* It also includes the requisite information.

Monitoring Required

The agency's implementation of the following required corrective actions will be monitored during the assigned compliance monitoring period.

Corrective Action #2

Implement the EEO training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on unlawful discriminatory practices under local, state and federal EEO laws; EEO rights and/or

² Excerpts are italicized.

responsibilities; discrimination complaint and investigation procedures; prevention of sexual harassment; and reasonable accommodation procedures.

Agency Response: “OMB began implementation of DCAS’s Diversity and Inclusion (D&I) Computer Based Training on August 12, 2015. To date, approximately 60% of the agency has completed this training module. It is expected that all employees will complete this training by September 30th. As new employees are hired, they will be required to complete the D&I Computer Based Training. In addition, OMB is working with DCAS to schedule in-house training sessions for all OMB employees in October and November 2015. These will cover EEO laws, rights and responsibilities and prevention of sexual harassment. All employees will be required to receive this training. In 2016, the agency will require all employees to take DCAS’s EEO Computer Based Training.” (Response, pg. 2)

EEPC Response: The EEPC will accept the agency’s response to corrective action #2, pending documentation of implementation of the agency’s EEO training plan.

Corrective Action #3

Assess recruitment efforts to determine whether such efforts adversely impact any particular group. To the extent that adverse impact is discovered, at a minimum, identify relevant professional and community organizations serving women, minorities, and other protected groups throughout the City, review and update listings of recruitment outreach sources, and contact these organizations when provisional positions become available or where the agency may otherwise use discretion in hiring.

Agency Response: “... The relevant EEO professionals, General Counsel, and the Chief of Staff will meet quarterly to review our CEEDs data and interview-pool data collected from the job application, along with reviewing OMB’s recruitment and outreach process to ensure compliance with EEO obligations and to determine if alternative outreach efforts are needed. In addition, OMB’s HR professionals will work with DCAS to update listings of recruitment outreach sources to include relevant professional and community organizations/publications targeting women, minorities and other protected groups.” (Response, pg. 2)

EEPC Response: The EEPC recognizes the agency’s commitment to implement corrective action #3. An agency assessment of the recruitment efforts will be required during the compliance-monitoring period.

Corrective Action #4

Ensure that the principal EEO Professional, HR Professional and General Counsel, review the agency’s statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency’s employment practices, policies and programs on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required in order to correct deficiencies (e.g. underutilization or adverse impact). If necessary, consult with the Division of Citywide Diversity and EEO, or another resource for guidance.

Agency Response: “OMB’s Principal EEO Professional, HR Professional and General Counsel will review statistical information on an annual basis and determine if corrective action is necessary.” (Response, pg. 3)

EEPC Response: The EEPC recognizes the agency’s commitment to implement corrective action #4. Implementation of this corrective action will be monitored. The EEPC will provide further guidance at the initiation of the compliance-monitoring period.

Corrective Action #5

Assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, determine whether the selection criteria being utilized are job-related. Discontinue using criteria that are not job-related, and adopt methods which diminish adverse impact.

Agency Response: “To the extent there is adverse impact, OMB’s Principal EEO Professional, HR Professional and General Counsel will review the selection criteria being utilized to ensure that they are job-related.” (Response, pg. 3)

EEPC Response: The EEPC recognizes the agency’s commitment to implement corrective action #5. An agency assessment of the selection process will be required during the compliance-monitoring period. The EEPC will provide further guidance at the initiation of the compliance-monitoring period.

Corrective Action #6

If women, minorities, or other protected groups are underrepresented in titles where there is discretion in hiring, advertise in minority- or female-oriented publications; contact organizations serving women, minorities, and other protected groups; participate in career fairs/open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

Agency Response: “...OMB’s HR professionals will work with DCAS to update listings of recruitment outreach sources to include relevant professional and community organizations/publications targeting women, minorities and other protected groups.” (Response, pg. 2-3)

EEPC Response: The EEPC recognizes the agency’s commitment to implement corrective action #6. The agency’s efforts to address the underrepresentation of protected groups in titles where there is discretion in hiring will be reviewed during the compliance-monitoring period.

Corrective Action #7

If women, minorities, or other protected groups are underrepresented in civil service (list) titles, review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity. (This includes working with DCAS or the Civil Service

Commission if applicable). Then advertise in minority- or female-oriented publications, contact organizations serving women, minorities, and other protected groups; participate in career fairs or open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

Agency Response: *“The agency will review the CEEDs data to determine if there is underrepresentation in civil service titles. If underrepresentation is found, the agency will take appropriate steps to address it. However, please note that the agency made no civil service hires during the audit period or to date subsequent to the audit period. Therefore, there was no underrepresentation in civil service hires made during the audit period.”* (Response, pg. 3)

EEPC Response: The EEPC recognizes the agency’s commitment to implement corrective action #7. If the agency has the opportunity to hire in civil service (list) titles during the monitoring period, the agency’s efforts to address underrepresentation will be monitored. The EEPC will provide further guidance at the initiation of the compliance-monitoring period.

Corrective Action #8

Ensure that the process avoids the appearance of bias by delegating the responsibility for recording and maintaining this information to an individual other than the hiring manager.

Agency Response: *“Within the second quarter of FY2016, OMB will begin using a standard job application provided by DCAS for all applicants being interviewed for positions at OMB. This application will be collected by an HR professional at the time of the interview.”* (Response pg. 2)

EEPC Response: The EEPC recognizes the agency’s efforts to implement corrective action #8 by assigning responsibilities for collection of the application to the HR professional. Documentation of implementation will be reviewed during the compliance-monitoring period.

Corrective Action #9

Maintain appropriate documentation of meetings and other communications between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program.

Agency Response: *“The EEO Officer/Professional and the Agency Head (or its designee, the Chief of Staff) will maintain appropriate documentation of their meetings and other communications going forward.”* (Response, pg. 3)

EEPC Response: The EEPC recognizes the agency’s commitment to implement corrective action #9. Documentation of meetings with regard to decisions impacting the administration/ operation of the EEO program, if any, will be required during the compliance-monitoring period.

Corrective Action #10

Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports (up to 30 days following each quarter) on efforts to implement the plan.

Agency Response: “A copy of the 4th Quarter report for FY2015 has been submitted to DCAS and is attached for [EEPC] review... The Agency is currently implementing our FY15 Annual Plan, and we will submit our draft Annual Plan for FY16 to DCAS prior to the September 30th deadline. OMB’s FY16 first quarter report will be submitted to DCAS by October 30th and all future quarterly reporting will submitted in a timely fashion.” (Response, pg. 4)

EEPC Response: The EEPC recognizes the agency’s efforts to implement corrective action **#10**. The agency’s future submittal of its Annual Plan and quarterly reports to the EEPC will be monitored during the compliance-monitoring period.

Thank you and your staff for your continued cooperation.