



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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December 20, 2007

Diane D'Alessandro
Executive Director
NYC Employees Retirement System
335 Adams Street
Brooklyn, NY 11201

Re: Resolution #07/27-009/Preliminary Determination Pursuant to the Audit of the NYC Employees Retirement System (NYCERS) Equal Employment Opportunity Program from July 1, 2005 to June 30, 2007

Dear Ms. D'Alessandro:

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

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

This Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment programs for minority group members and women; and other protected classes per the City's EEO Policy.

This audit measures the NYCERS's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the 2005 Citywide EEO Policy. All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the 2005 Citywide EEO Policy. The relevant sections of these guidelines are cited in parenthesis, where applicable, at the end of each recommendation.

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

Scope and Methodology

Audit methodology included an analysis of the NYCERS's EEO Policy, and a review of responses to an EEPD Document and Information Request Form. The EEPD auditors also conducted in-depth, on-site interviews with the current and former EEO officers, as well as the EEO counselor.

A survey of 358 people employed by the NYCERS during the audit period was distributed. (This number excludes 25 surveys that were returned as undeliverable.) Thirty people responded (8.4%) The results of these surveys are discussed in the proceeding pages and also attached. (Appendix 1)

Description of the Agency

The prime function of the NYCERS is to administer the statutory pension benefits of its members, retirees, and beneficiaries. To accomplish its mission, the agency performs the following: administers pension checks, drafts loans, provides disability protection, refunds unvested contributions, keeps current on legislation impacting retirement plans, conducts member presentations, and maintains a call center and a customer service center. The NYCERS is administered by a Board of Trustees chaired by a representative appointed by the Mayor. The other members include the Public Advocate, Comptroller, and the Borough Presidents. The Board of Trustees appoints an Executive Director of the Retirement System.

Personnel Activity During the Audit Period

During the audit period, 90 people were hired: 14 Caucasians, 52 African-Americans, 7 Hispanics, and 14 Asians. Fifty-six of the hires were women. Ninety people were promoted during the period in review: 26 Caucasians, 47 African-Americans, 3 Hispanics, and 14 Asians. Sixty of those promoted were women. (Appendix 2)

The NYCERS reports that during the audit period, 38 individuals were involuntarily separated for the following reasons: "end of college aide program," "temporary assignment," "lateness," "policy violation," or "poor work performance." Of those individuals, 12 were males, 26 were females, 32 were African-Americans, 4 were Hispanics, and 2 were Asians.

Between July 1, 2005 and June 30, 2007, the total number of NYCERS employees decreased by 3.0%, going from 395 to 383. There were small percentage increases for Asians (16.7% to 17.2%) and Native Americans (2.0% to 2.1%), while the percentage of African-Americans and Hispanics dropped slightly (38.7% to 37.0%, and 6.8% to 6.5%, respectively). (Appendices 3 and 4)

Discrimination Complaint Activity During the Audit Period

Five internal discrimination complaints were filed during the audit period. (This number excludes four requests for reasonable accommodation that were erroneously listed as discrimination complaints by the NYCERS.) Of those five complaints, two were based on sexual harassment, one was based on disability/religion, and one was non-specific. One complaint received a “probable cause” determination and four complaints received “no probable cause” determinations. No discrimination complaints were pending at the end of the audit period.

One external discrimination complaint, based on multiple factors, was filed during the audit period. The complaint was “dismissed” by the U.S. Equal Employment Opportunity Commission.

PRELIMINARY DETERMINATION

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

Plan Dissemination – Internally

The NYCERS is in compliance with the following requirements:

1. The NYCERS has adopted and tailored the Citywide EEO Policy that was in effect between 1996 and 2005. Similar to the previous Citywide EEO Policy, the NYCERS EEO Policy contains a general anti-discrimination policy statement, a sexual harassment policy statement, a disabilities policy statement, an anti-retaliation policy statement, a reasonable accommodation procedure, and a discrimination complaint procedure.
2. The NYCERS EEO Policy is included in the employee handbook, which is given to all employees; distributed during the new employee orientation sessions; and posted on the agency intranet. (NYCERS does not have physical bulletin boards.) When the Policy is revised, employees are notified of the changes via the intranet. In addition, 66.7% of survey respondents indicated they were given the EEO Policy, and 73.3% indicated the EEO Policy is posted.

The NYCERS is not in compliance with the following requirements:

1. The NYCERS EEO Policy does not contain an up-to-date list of the “protected classes” under the New York State and City Human Rights Laws. Specifically, although the agency Policy lists “status as a victim of domestic violence,” the full current protected

class is “status as a victim of domestic violence, sex offenses or stalking.” Similarly, the agency Policy lists “genetic predisposition,” although the current term is “predisposing genetic characteristics.” Finally, the agency Policy lists “alienage” instead of “alienage or citizenship status”—the full current protected class. Corrective action is required.

Recommendation: The agency’s EEO Policy should be revised to include all of the protected classes under the New York City and New York State Human Rights Laws.

Recommendation: The revised EEO Policy should be distributed to all current and new employees, and posted on the agency’s intranet.

2. The EEO officer informed the EEPC auditors that her agency has no recollection of distributing the Citywide EEO Policy Handbook (*About EEO: What You Need to Know*). In addition, 36.7% of survey respondents indicated that had not received that publication. Corrective action is required.

Recommendation: The Citywide EEO Policy Handbook (with addendums) should be distributed to all current and new employees.

Plan Dissemination – Externally

The NYCERS is in compliance with the following requirements:

1. All ten job vacancy notices submitted by the NYCERS (for the assistant retirement benefits examiner, associate retirement benefits examiner, and clerical associate titles) indicate that the agency is an equal opportunity employers.
2. The two job advertisements submitted by the NYCERS (director of security in *New York Post* and director of security in *The Chief*) contain the EEO tag line.

EEO and Reasonable Accommodation for Persons with Disabilities

The NYCERS is in compliance with the following requirements:

1. The agency has made several recent accommodations to persons with disabilities: an employee with a visual impairment was given a computer screen magnifier, and an employee with a body temperature problem was given a mechanical heater.
2. The NYCERS is located in a modern private building, which is completely accessible and usable by persons with disabilities. According to the EEO officer and the completed *Accessibility for Persons with Disabilities Checklist* (issued by the EEPC), there is a level ground floor entrance, the building has wheelchair accessible elevators, there is Braille and bells in elevators, and the restrooms have wide stalls and low sink or bathroom fixtures.

The NYCERS is not in compliance with the following requirements:

1. Although the NYCERS has permanent titles, it does not participate in the Section 55-A Program and has not distributed the Department of Citywide Administrative Services's Program (DCAS) brochures. The Citywide 55-A Program coordinator (DCAS) told the EEPC that all city agencies—including non-mayoral agencies—that have competitive city titles are eligible to and should participate in this program. The coordinator also indicated that a number of non-mayoral agencies are participating in that program. Corrective action is required.

Recommendation: The NYCERS should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the DCAS to all current and new employees. (Sect. IIB, Citywide EEO Policy)

2. Although the EEO officer functions as the disabilities rights coordinator, she has not been formally given that title. Corrective action is required.

Recommendation: The EEO officer should formally be appointed the disabilities rights coordinator and employees should be notified in writing of that appointment. (Sect. VB, Citywide EEO Policy)

3. The EEO officer told the EEPC auditors that the agency's EEO Policy is not available in alternative formats for persons with disabilities. Corrective action is required.

Recommendation: The agency should follow Section VB of the Citywide EEO Policy and ensure that its EEO Policy is available in "appropriate alternate formats to employees with disabilities" (e.g., audio cassette or Braille)

EEO Complaint and Investigation System

The NYCERS is in partial compliance with the following requirements:

1. At various times during the audit period, there were four EEO officers (2 co-EEO officers and 2 sole EEO officers) and one EEO counselor. The two former co-EEO officers completed the DCAS training for EEO professionals, while a former EEO officer, the current EEO counselor and current EEO officer have not. The latter official—who was appointed in June 2007--told the EEPC auditors that she is on the waiting list for the next DCAS training session. Corrective action is required.

Recommendation: Since knowledgeable EEO professionals are essential to the success of the EEO program, and to ensure that EEO professionals have a uniform body of knowledge, the current EEO officer should attend the next available DCAS training session for EEO professionals or enroll in training conducted by another appropriate agency or school, such as the EEO Studies Program of Cornell University's School of Industrial and Labor Relations. The EEO officer should obtain the certificate or otherwise

complete the program at the institution selected by the NYCERS. (Sect. VB, Citywide EEO Policy)

2. Although the agency appointed an EEO counselor (a female) in April 2007, the EEO officer (also a female) told the EEPC auditors that the NYCERS is seeking to appoint a male EEO counselor, so that there will be individuals of different genders available to receive and investigate discrimination complaints. Corrective action is required.

Recommendation: The NYCERS should follow-up on its pledge and appoint a male EEO counselor, who will be authorized to receive and investigate discrimination complaints. (Sect. VB, Citywide EEO Policy)

Recommendation: The new male EEO counselor should attend the next available DCAS training session for EEO professionals or enroll in training conducted by another appropriate agency or school. (Sect. VB, EEO Policy)

The NYCERS is not in compliance with the following requirement:

In response to item number 9(k) of the Commission's Document and Information Request Form, the NYCERS indicated that it has no notes of the latest meeting between the EEO officer and EEO counselor. The agency wrote that "it's a 1-Pony show." Corrective action is required.

Recommendation: The EEO officer should meet with the new male EEO counselor at least at quarterly intervals to ensure that he is carrying out his EEO functions satisfactorily and is kept abreast of internal and external EEO developments. (Sect. VC, Citywide EEO Policy)

The following section refers to the five internal discrimination complaint files submitted by the NYCERS. (Excluded are the four files regarding requests for reasonable accommodations.) Since the agency did not assign complaint numbers to the files, the files are identified by the complaint filing dates.

The NYCERS is not in compliance with the following requirements:

1. Complaint files 9/27/05, 10/20/05, 1/13/06, 12/5/06, and 12/19/06 do not contain a NYCERS *Complaint of Discrimination* form. Corrective action is required.

Recommendation: All internal discrimination complaint files should contain a NYCERS *Complaint of Discrimination* form. (Sect. IIA, NYCERS EEO Policy)

2. Complaint files 9/27/05, 10/20/05, 1/13/06, 12/5/06, and 12/19/06 have no indication that the respondent received a copy of the discrimination complaint. Corrective action is required.

Recommendation: A person who has been named as a respondent in the *Complaint of Discrimination* form should receive a copy of the complaint and have the opportunity to respond in writing. Sensitive information, such as the complainant's home address and telephone number, can be redacted or kept on a separate complaint sheet. (Sect. IIA, NYCERS EEO Policy)

3. Complaint files 9/27/05, 10/20/05, 1/13/06, 12/5/06, and 12/19/06 contain no indication that the parties to the complaint received written notification of the outcome of the investigation. Corrective action is required.

Recommendation: The parties to the complaint should be notified in writing of the outcome of the investigation. (Section 12b, *Discrimination Complaint Procedures Implementation Guidelines*, DCAS, 1993. Available on the DCAS website, www.nyc.gov/html.dcas)

4. Although the EEO investigator's confidential written reports in the five files cited above were directed to the agency head, there is no indication in the files that the reports were actually reviewed, or the recommendations approved, by the agency head. Corrective action is required.

Recommendation: The agency head should sign each EEO investigator's report containing findings and recommendations. (Sect. 12b, *Discrimination Complaint Procedures Implementation Guidelines*, DCAS, 1993)

5. Complaint file 10/20/05 (which received a "probable cause" determination) contains no evidence that the EEO professional's recommended corrective actions were implemented. Corrective action is required.

Recommendation: It is the Commission's position that all appropriate internal discrimination complaint files should contain notice that the recommended corrective actions were implemented.

EEO Training

The NYCERS is in compliance with the following requirement:

The current EEO officer informed the EEPC auditors that all employees have received EEO training from the NYCERS. New employees receive training developed by a former EEO officer during a two-day orientation session. At that session, the current and immediate past EEO officer make a presentation on EEO principles and the NYCERS EEO Policy using four slides. In addition, the agency has identified long-term employees and ensures that they attend one of those training sessions.

Recruitment and Selection

The NYCERS is not in compliance with the following requirement:

Although the agency submitted a list of its standard job interview questions and interview evaluation worksheet, the EEO officer told the EEPC auditors that she does not know if the NYCERS provided structured interview training to personnel involved in the recruitment and hiring process. Corrective action is required.

Recommendation: The NYCERS should ensure that all employees involved in job interviewing receive structured interview training, either through internal training or training provided by the DCAS or another appropriate organization. (Sect. IC, Citywide EEO Policy)

EEO Officer Reporting Arrangement

The NYCERS is in compliance with the following requirement:

The past and current EEO officers reported to the executive director on EEO matters.

The NYCERS is not in compliance with the following requirement:

The current EEO officer informed the EEPC auditors that none of the EEO officers during the audit period (including her) kept agendas or notes of their meetings with the executive director regarding EEO matters. Corrective action is required.

Recommendation: It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and agency head regarding EEO program operational decisions should be maintained.

EEO Officer Responsibilities

The NYCERS is in compliance with the following requirement:

The past and current EEO officers have devoted approximately 5% to 10% of their time to EEO matters. The current EEO officer, an assistant general counsel, told the EEPC auditors that she has sufficient support staff to discharge her EEO duties.

The NYCERS is not in compliance with the following requirement:

The EEO officer informed the EEPC auditors that she is not involved in developing recruitment strategies or selecting recruitment media: those are the sole responsibilities of the human resources department. Corrective action is required.

Recommendation: To ensure fair employment practices, the agency head should direct the human resources department to include the EEO officer in the development of

recruitment strategies and selection of recruitment media. (Sect. IV, Citywide EEO Policy)

Special Problem/Contingency

The NYCERS is not in compliance with the following requirement:

Fifty-seven percent of survey respondents indicated they had not received EEO training. Corrective action is required.

Recommendation: The NYCERS should develop a plan, which includes a timetable, to provide EEO training to all employees who have not received it. (Sect. IV, Citywide EEO Policy)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. The agency's EEO Policy should be revised to include all of the protected classes under the New York City and New York State Human Rights Laws.
2. The revised EEO Policy should be distributed to all current and new employees, and posted on the agency's intranet.
3. The Citywide EEO Policy Handbook (with addendums) should be distributed to all current and new employees. (Sect. VB, Citywide EEO Policy)
4. The NYCERS should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the DCAS to all current and new employees. (Sect. IIB, Citywide EEO Policy)
5. The EEO officer should formally be appointed the disabilities rights coordinator and employees should be notified in writing of that appointment. (Sect. VB, Citywide EEO Policy)
6. The agency should follow Section VB of the Citywide EEO Policy and ensure that its EEO Policy is available in "appropriate alternate formats to employees with disabilities" (e.g., audio cassette or Braille)
7. The EEO officer should attend the next available DCAS training session for EEO professionals or enroll in training conducted by another appropriate agency or school, such as the EEO Studies Program of Cornell University's School of Industrial and Labor Relations. The EEO officer should obtain the certificate or otherwise complete the program at the institution selected by the NYCERS. (Sect. VB, Citywide EEO Policy)

8. The NYCERS should follow-up on its pledge and appoint a male EEO counselor, who will be authorized to receive and investigate discrimination complaints. (Sect. VB, Citywide EEO Policy)
9. The new male EEO counselor should attend the next available DCAS training session for EEO professionals or enroll in training conducted by another appropriate agency or school. (Sect. VB, Citywide EEO Policy)
10. The EEO officer should meet with the new male EEO counselor at least at quarterly intervals to ensure that he is carrying out his EEO functions satisfactorily and is kept abreast of internal and external EEO developments. (Sect. VC, Citywide EEO Policy)
11. All internal discrimination complaint files should contain a NYCERS *Complaint of Discrimination* form. (Sect. IIA, NYCERS EEO Policy)
12. A person who has been named as a respondent in the *Complaint of Discrimination* form should receive a copy of the complaint and have the opportunity to respond in writing. Sensitive information, such as the complainant's home address and telephone number, can be redacted or kept on a separate complaint sheet. (Sect. IIA, NYCERS EEO Policy)
13. The parties to the complaint should be notified in writing of the outcome of the investigation. (Sect. 12b, *Discrimination Complaint Procedures Implementation Guidelines*, DCAS, 1993.)
14. The agency head should sign each EEO investigator's report containing findings and recommendations. (Sect. 12b, *Discrimination Complaint Procedures Implementation Guidelines*, DCAS, 1993)
15. It is the Commission's position that all appropriate internal discrimination complaint files should contain notice that the recommended corrective actions were implemented.
16. The NYCERS should ensure that all employees involved in job interviewing receive structured interview training, either through internal training or training provided by the DCAS or another appropriate organization. (Sect. IC, Citywide EEO Policy)
17. It is the Commission's position that appropriate documentation of meetings and other communications regarding EEO program operations decisions should be maintained.
18. The agency head should direct the human resources department to include the EEO officer in the development of recruitment strategies and selection of recruitment media. (Sect. IV, Citywide EEO Policy)
19. The NYCERS should develop a plan, which includes a timetable, to provide EEO training to all employees who have not received it. (Sect. IV, Citywide EEO Policy)

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

Conclusion


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

Your response should indicate what corrective actions your office will take to bring the agency in compliance with the aforementioned policies and which recommendations it intends to follow. As you informed us during the exit meeting of December 19, 2007, you have already implemented some of our recommended corrective actions. Please specify those corrective actions in your response. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend to the Mayor the appropriate corrective actions that you should implement in your agency's EEO Plan.

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

Sincerely,

for 
Ernest F. Hart, Esq.
Chair

APPENDIX - 1

New York City Employee Retirement System
EMPLOYEE SURVEY RESULTS

A. GENERAL OVERVIEW

- 1. Do you know who your agency's EEO Officer is?
Yes (21) No (9)
- 2. Is your agency's EEO Policy Statement or the Citywide EEO Policy Statement posted on your agency's bulletin boards?
Yes (22) No (8)
- 3. Were you given the EEO Policy Statement or the Citywide EEO Policy Statement?
Yes (20) No (2) Do not remember (8)
- 4. Were you given a copy of the EEO Policy Handbook – *About EEO: What You Need to Know*?
Yes (19) No (11)
- 5. Do you agree with the principles of equal employment opportunity?
Yes (30) No (0)
- 6. Do you believe your agency practices equal employment opportunity?
Yes (14) No (16)

B. EEO COMPLAINTS

- 7. Do you know how to file an EEO complaint?
Yes (21) No (9)
- 8. If you had an EEO complaint, would you bring it to your agency's EEO Office?
Yes (11) No (12) Undecided (7)
- 9. Would you prefer to file an EEO complaint with an office outside your agency?
Yes (20) No (3) Undecided (7)
- 10. Did you ever file an EEO complaint with your agency's EEO Office? If No, please skip to question #14.
Yes (4) No (26)

11. What was the basis of the complaint?

- | | |
|------------------------------------|--|
| Age (1) | Partnership Status (0) |
| Alienage or Citizen Status (0) | Predisposing genetic characteristic (0) |
| Arrest or Conviction Record (0) | Race (1) |
| Color (0) | Sexual Harassment (0) |
| Creed (0) | Sexual Orientation (0) |
| Disability (1) | Veteran's Status (0) |
| Gender (incl. gender identity) (2) | Victim of Domestic Violence,
Stalking, and Sex Offenses (0) |
| Marital Status (0) | Other (0) |
| Military Status (0) | |
| National Origin (0) | |

NYCERS SURVEY RESULTS CONTINUED

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

Yes (1) No (3)

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

Yes (1) No (2) Not Applicable (1)

C. EEO TRAINING

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

Yes (13) No (17)

15. Did you find this training helpful?

Very (2) Somewhat (8)
Not really (2) Waste of time (1)

D. JOB PERFORMANCE/ADVANCEMENT

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

Yes (17) No (7) Do not remember (6)

E. AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

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

Yes (19) No (3) Don't Know (8)

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

If No, skip to question #28.

Yes (1) No (29)

19. Did the agency accommodate you?

Yes (0) No (1)

OPTIONAL

20. What is your race/ethnicity?

Asian (7) Native American (0)
Black (2) White (8)
Hispanic (2) Other (1)

21. What is your gender?

Male (6) Female (18)

APPENDIX – 2

The following tables indicate personnel activity during the audit period, July 1, 2005 through June 30, 2007.

NYCERS Hires by Sex and Race

Total: 90

MALE	FEMALE	TOTAL	CAUCASIAN	AFRICAN-AMERICAN	HISPANIC	ASIAN	TOTAL
34	56	90	17	52	7	14	90

NYCERS Promotions by Sex and Race

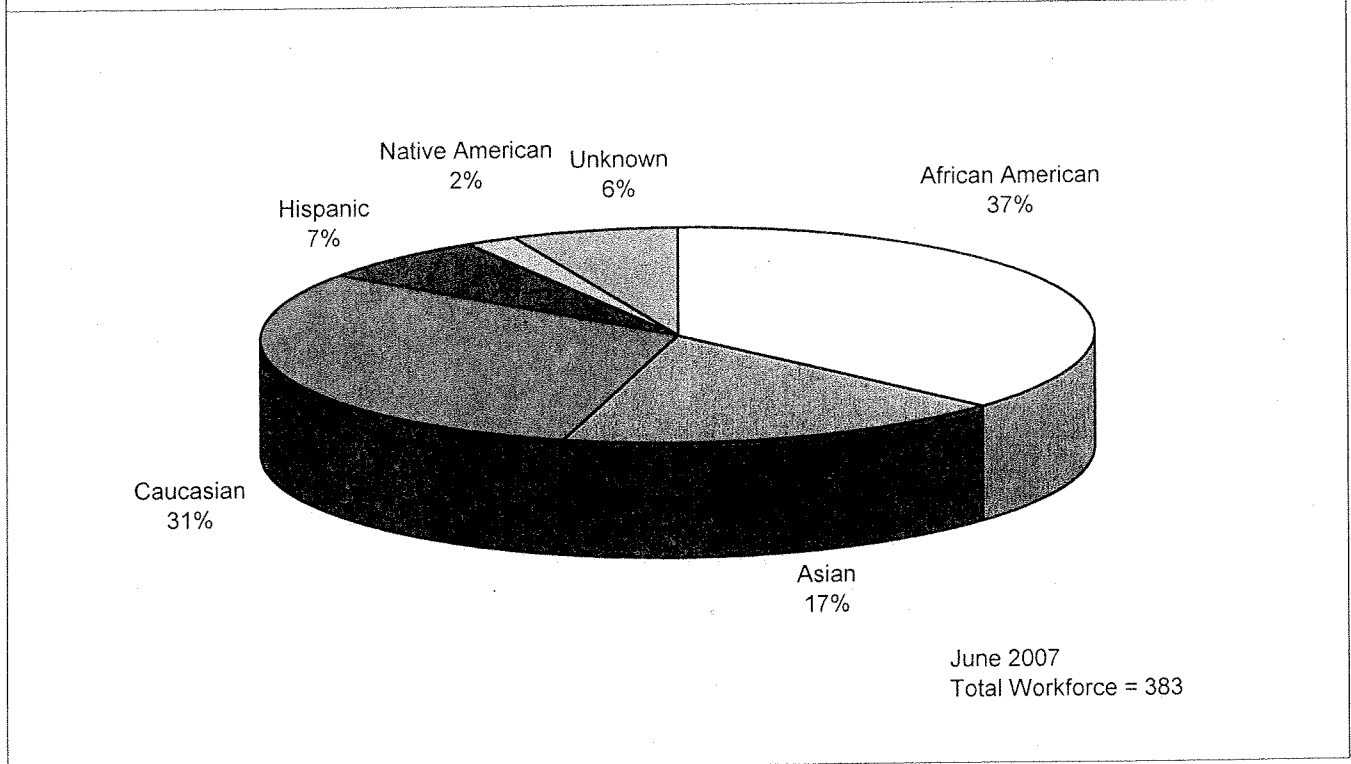
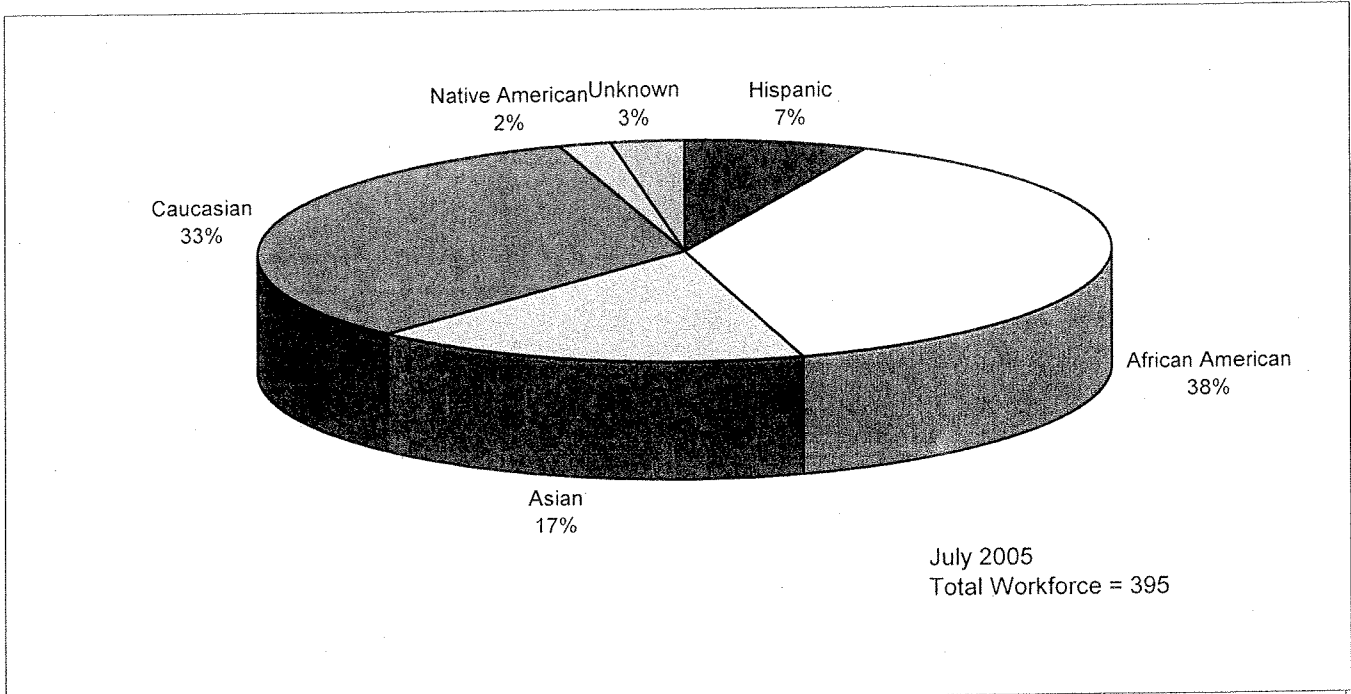
Total: 90

MALE	FEMALE	TOTAL	CAUCASIAN	AFRICAN-AMERICAN	HISPANIC	ASIAN	TOTAL
30	60	90	26	47	3	14	90

Source: Audit data supplied by NYCERS

Appendix - 3

New York City Employee Retirement System Workforce by Ethnicity



Appendix - 4
New York City Employee Retirement System
Workforce by Gender

