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## BY MAIL AND EMAIL

October 14, 2015

Nancy G. Chaffetz  
Chair  
NYC Civil Service Commission  
1 Centre Street, Room 2300  
New York, NY 10007

RE: Audit Resolution #: **2015/134**: Final Determination Pursuant to the Review, Evaluation and Monitoring of the Civil Service Commission's Employment Practices and Procedures from July 1, 2012 to June 30, 2015.

Dear Chair Chaffetz:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you and your staff for the cooperation extended to our staff during the course of this audit.

As the EEPC did not receive the Civil Service Commission's response to our September 28, 2015 Preliminary Determination within 14 days from the date of its issuance, and consistent with the audit protocol referenced therein, the attached Determination is now Final.

As indicated in our Preliminary Determination, this Commission has adopted uniform standards<sup>1</sup> 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 review, evaluation and monitoring 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**

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<sup>1</sup> 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.



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.

The assigned compliance-monitoring period is: November 2015 to April 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 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 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,

Charise L. Terry, PHR  
Executive Director

c: Jean Richards, Principal EEO Professional



FINAL DETERMINATION  
10/14/2015

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

VIA MAIL AND EMAIL

September 28, 2015

Charise L. Terry, PHR  
Executive Director

Nancy G. Chaffetz  
Chair  
NYC Civil Service Commission  
1 Centre Street, Room 2300  
New York, NY 10007

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Re: Audit: Preliminary Determination: Review, Evaluation and Monitoring of the NYC Civil Service Commission's Employment Practices and Procedures from July 1, 2012 to June 30, 2015.

Dear Chair Chaffetz:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you and your agency for the cooperation extended to our staff during the course of this audit. This letter contains the Commission's findings and preliminary determinations pursuant to our audit and analysis of your agency's employment practices and procedures for the period covering July 1, 2012 to June 30, 2015.

The New York City Charter, Chapter 36, Section 831(d)(5), empowers this Commission to audit and evaluate city agencies' employment practices, programs, policies and procedures, and their efforts to ensure fair and effective equal employment opportunity for employees and applicants seeking employment with city agencies. Section 831(d)(2) provides that this Commission may, pursuant to an audit, make a preliminary determination that any plan, program or procedure utilized by any city agency does not provide equal employment opportunity and recommend all necessary and appropriate procedures, approaches, measures, standards and programs to be utilized by agencies in these efforts.

The Civil Service Commission, which may herein be referred to as "the agency," falls within the Commission's purview under Chapter 36, Section 831(a) of the New York City Charter, which delineates 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 purpose of this audit and analysis is to evaluate the agency's employment practices and procedures. This Commission has adopted *Uniform Standards for EEPC Audits*<sup>1</sup> and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies 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. These standards are 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; the New York City Human Rights Law (NYC Administrative Code §§8-107(1)(a) and (d), 8-107.13, and 8-107.1); the New York State Civil Service Law §55-a; the Uniform Guidelines on Employee Selection Procedures (29 CFR §§1607.3 - 1607.7); the Americans with Disabilities Act and its Accessibility Guidelines; and the equal employment opportunity requirements of the New York City Charter. Prescribed corrective actions are consistent with the aforementioned parameters. This Commission does not issue findings of discrimination pursuant to the New York City Human Rights Law.

Since this Commission is empowered to review and recommend actions which each agency should consider including in its annual plan of measures and programs to provide equal employment opportunity (Annual EEO Plan), the audited agency should incorporate required corrective actions in its current EEO Program and prospective Annual EEO Plans.

### **Scope and Methodology**

This Commission's audit methodology includes collection and analysis of the documents, records and data the agency provides in response to the *EEPC Document and Information Request Form*; responses to the *EEPC Interview Questionnaires* for EEO professionals and others involved in EEO program administration; and, if applicable, review of the agency's *Annual EEO Plans* and *Quarterly EEO Reports* and analysis of workforce and utilization data from the *Citywide Equal Employment Database System* (CEEDS).

This Commission reviews data from CEEDS to understand the concentrations of race and gender groups within an agency's workforce. EEO Program Analysts examine imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. Personnel transactions are reviewed in order to ascertain the agency's employment practices. Where underutilization is revealed within an agency's workforce, EEO Program Analysts assess whether the agency has undertaken reasonable measures to address it.

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<sup>1</sup> Corresponding audit/analysis standards are numbered throughout the document.

EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators, Career Counselors, 55-a Program Coordinators) and others involved in EEO program administration such as the Principal Human Resources Professional are given a two-week deadline to complete their individual questionnaires and return any items requested. The Commission's EEO Program Analysts also conduct additional research and follow-up discussions or interviews with EEO professionals, when appropriate.

### **Description of the Agency**

The Civil Service Commission ("CSC") is an independent agency that functions as a quasi-judicial body for individual appeals from disciplinary actions and appeals from decisions of the Commissioner of the Department of Citywide Administrative Services; and acts as guardian of the City's merit system.

The CSC currently has 11 employees. (See workforce composition attached as Appendix -1)

### **PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS**

Following are the corresponding audit standards for each subject area along with the EEPC's findings and required corrective actions, where appropriate:

#### **I. ISSUANCE, DISTRIBUTION AND POSTING OF EEO POLICIES:**

**Determination:** The agency is in compliance with the standards for this subject area.

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.
- ✓ During the period in review, the agency did not issue a general EEO Policy statement or memo. Subsequent to the period in review, on September 23, 2015, the agency's principal EEO Professional distributed a general EEO Policy statement/memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the name and contact information of EEO professional, attached to the electronically distributed memo was the EEO Policy/Handbook.

NOTE: The EEO Policy statement should be issued by the agency head and contain the agency head's signature.

2. Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency EEO Policy that

conforms to city, state and federal laws for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: a policy against sexual harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for the agency's EEO professionals, as well as federal, state and local agencies that enforce laws against discrimination.

- ✓ On December 2, 2013, the agency distributed to its employees a paper copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies*. The policy included sections on sexual harassment and reasonable accommodations as well as an up-to-date list of protected classes under NYC and NYS Human Rights Laws; federal, state and local agencies that enforce laws against discrimination. Additionally, the agency distributed information on workplace bullying. The agency required each employee to confirm receipt of the aforementioned documents by signature.
- During the period in review, the agency did not distribute the latest *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* (2014). Additionally, agency did not distribute uniform and responsive procedures for investigating discrimination complaints or contact information for the agency's EEO professional(s).

NOTE: Subsequent to the period in review, on September 23, 2015, the agency distributed via electronic mail the latest *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* (2014) and the booklet entitled *About EEO: What You May Not Know*, which included uniform and responsive procedures for investigating discrimination complaints. Additionally, the agency distributed current contact information for the agency's EEO professional.

## **II. EEO TRAINING FOR AGENCY:**

**Determination: The agency is not in compliance with the standards for this subject area.**

3. Establish and implement an 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 responsibilities; discrimination complaint and investigation procedures; prevention of sexual harassment; and reasonable accommodation procedures.
- The agency did not demonstrate that it implemented an EEO training plan for new and existing employees. **Corrective action is required.**

NOTE: Subsequent to the audit period the agency submitted a request to the *Department of Citywide Administration's Diversity and EEO Unit* for EEO training for all CSC employees.

**Corrective Action 1:** Establish and implement an 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 responsibilities; discrimination complaint and investigation procedures; prevention of sexual harassment; and reasonable accommodation procedures.

**III. EMPLOYMENT PRACTICES (Recruitment, Hiring & Promotion):**

**Determination:** The agency is in partial compliance with the standards for this subject area.

4. 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 to correct deficiencies.
- ✓ The Director of Administration functions as both the principal EEO Professional as well as the principal HR Professional. The principal EEO Professional/HR Professional conducted an informal assessment of the statistical information. Additionally, the agency reported no employment discrimination complaints were filed during the period in review; therefore, it did not conduct a formal review of the agency's annual number of EEO complaints.
  - The principal EEO Professional/HR Professional and General Counsel did not conduct a formal review of the agency's statistical information 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 to correct deficiencies. **Corrective action is required.**

**Corrective Action 2:** 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 other resource for guidance.

5. Ensure that human resources professionals, managers, supervisors, and other personnel involved in the recruitment and hiring process are trained in EEO and interviewing, selection, and hiring skills to enable such individuals to correctly identify the most capable candidates (i.e. structured interview training or guide).
- ✓ The agency conducted structured interviews: interview questions used were predetermined for each of the most recently filled positions (IT and Clerical/Community Associate).

NOTE: The agency's structured interview technique can be enhanced by training managers, supervisors, and other personnel involved in the recruitment and hiring process in EEO and interviewing, selection and hiring skills.

6. Promote employees' awareness of opportunities for promotion and transfer within the agency, and ensure that employees are considered for such opportunities.
  - The agency did not promote employees' awareness of opportunities for promotion and transfer within the agency. **Corrective action required.**

**Corrective Action 3:** Promote employees' awareness of opportunities for promotion and transfer within the agency, and ensure that employees are considered for such opportunities.

7. At minimum, indicate the agency is an equal opportunity employer in recruitment literature.
  - ✓ During the period in review the agency advertised four vacant positions: *Community Associate, Agency Attorney Intern, Agency Attorney Level III and Agency Attorney IV*; each posting included the EEO tagline: *The City of New York is an Equal Opportunity Employer.*
8. Use and maintain an applicant/candidate log or tracking system which, at minimum, includes the *position, applicants'/candidates' names, identification number, ethnicity, gender, disability or veteran status, interview date, interviewers' names, result, reason selected/not selected (or disposition)* of each applicant, and *recruitment source*. 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.



- ✓ The agency used the *New York City Automated Personal System (NYCAPS) eHire Program*, which collects applicant/candidate information, including names, identification number, ethnicity, gender, disability and veteran status.

NOTE: Generate a log or tracking system using the *eHire Program's* tracking feature in order to permit data analysis and evaluation of the agency's recruitment efforts and selection criteria.

#### **IV. CAREER COUNSELING:**

**Determination:** The agency is not in compliance with the standards for this subject area.

9. Designate a professional (may be referred to as the Career Counselor) with appropriate training, knowledge and familiarity with career opportunities in City government to provide career counseling to employees upon request. Remind employees of the identity/type of guidance available from the Career Counselor at least once each year.
- ✓ Due to the size of the agency, direct supervisors were responsible for providing career counseling upon request of the employees who report to them.
    - The agency did not demonstrate that the supervisors who provided career counseling had appropriate training, knowledge or familiarity with career opportunities in City government. The agency confirmed that the supervisors were not formally informed of their responsibilities concerning career counseling. Additionally, the agency did not inform employees of the identity/type of guidance available from their respective direct supervisors regarding career opportunities at any point during the period in review. **Corrective action is required.**

**Corrective Action 4:** Inform employees of the identity/type of guidance available from the Career Counselor at least once each year. Ensure Career Counselor(s) have appropriate training, knowledge and familiarity with career opportunities in City government to provide career counseling to employees.

10. The Human Resources Professional distributes the identity of the agency Career Counselor and ensures that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities and job postings; informs the principal EEO Professional of the number of 55-a program participants and efforts the agency has made to employ, promote or accommodate qualified individuals with disabilities; involves the principal EEO Professional in EEO-related matters.
- ✓ As mentioned previously (§III.4), during the period in review the principal Human Resources Professional also served as the principal EEO Professional and was aware of the number of 55-a program participants, efforts the agency made to employ, promote and accommodate qualified individuals with disabilities and was directly involved in EEO

related matters. Agency reported that, upon being hired, new employees were issued booklets outlining their rights and employment responsibilities.

- The Human Resources Professional did not ensure that all employees had access to information regarding performance evaluation standards, examinations, training opportunities or job postings. **Corrective action required.**

**Corrective Action 5:** Ensure that all employees have access to information regarding performance evaluation standards, examinations, training opportunities and job postings.

**V. EEO AND REASONABLE ACCOMMODATIONS FOR EMPLOYEES/  
APPLICANTS FOR EMPLOYMENT WITH DISABILITIES:**

**Determination:** The agency is in compliance with the standards for this subject area.

11. Ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures is made available in appropriate alternative formats (i.e., large print, audio tape and/or Braille) upon request to employees and applicants for employment with disabilities.
  - ✓ The agency reported that EEO policies (including information regarding employee rights and obligations, the complaint investigation and reasonable accommodation procedures) were available in large print as well as audio format.
12. Document reasonable accommodation requests and their outcomes.
  - ✓ During the period in review the agency documented reasonable accommodation requests and their outcomes via the written reasonable accommodation request form.

**VI. RESPONSIBILITY FOR EEO PLAN IMPLEMENTATION EEO PROFESSIONALS:**  
**Determination:** The agency is in partial compliance with the standards for this subject area.

13. Appoint a Principal EEO Professional to implement EEO policies and standards within the agency. The Principal EEO Professional is trained and knowledgeable regarding city, federal and state EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.
  - ✓ The agency appointed the Director of Administration as the Principal EEO Professional to implement EEO policies within the agency. The Principal EEO Professional received a

certificate for completion of *Diversity and Equal Employment Opportunity Basic Training* on June 13, 2013, as well as a Certificate of Completion for *Training on Effective Complaint Investigations* and *How to Handle Challenging Situations*, on May 17, 2012.

14. Ensure that EEO professionals are trained in EEO laws and procedures and know how to carry out their responsibilities under the EEO Policy.
- ✓ The agency's principal EEO Professional was trained in EEO laws and procedures and knew how to carry out the responsibilities under the EEO Policy. The previous finding lists the extent and completion of training.

15. The principal EEO Professional reports directly to the agency head (or an approved direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

- The agency's organizational chart indicated that the principal EEO Professional reported to the Director/General Counsel. **Corrective action required.**

**Corrective Action 6:** Ensure that the principal EEO Professional reports directly to the agency head (or an approved direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

16. To ensure the integrity and continuity of the EEO Program, 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.

- The agency did not document meetings or other communications between the agency head and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program. **Corrective action required.**

**Corrective Action 7:** 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.

## **VII.**

### **RESPONSIBILITY FOR EEO PLAN IMPLEMENTATION – SUPERVISORS/MANAGERS:**

**Determination:** The agency is not in compliance with the standards for this subject area.

17. Establish and administer an annual managerial/non-managerial performance evaluation program to be used for probationary periods, promotions, assignments, incentives and training.

- ✓ The agency administered performance evaluations for non-managerial employees which covered the period ranging from June 1, 2014 through July 30, 2015.
  - The agency did not administer performance evaluations annually for non-managerial employees. Additionally, the agency did not establish an annual performance evaluation program for managerial employees. **Corrective action required.**

**Corrective Action 8:** Establish and implement an annual managerial/non-managerial performance evaluation program (with timetable) to be used for probationary periods, promotions, assignments, incentives and training.

18. The managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

- The agency did not establish a managerial performance evaluation program, and did not rate managers on implementing EEO related responsibilities. **Corrective action is required.**

**Corrective Action 9:** Ensure that the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

#### **VIII. REPORTING STANDARD FOR AGENCY HEAD:**

**Determination:** The agency is **not in compliance** with the standards for this subject area.

19. 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 did not submit Annual Plans of measures and programs to provide equal employment opportunity or quarterly reports to the EEPC during the in the period in review. **Corrective action is required.**

**Corrective Action 10:** Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity as well as quarterly reports (up to 30 days following each quarter) on efforts to implement the plan.

**After implementation of the EEPC's corrective actions, if any:**

20. The agency head distributes a memorandum informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Final Action: Distribute a memorandum signed by the agency head informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

**Conclusion**

**The agency has 10 required corrective action(s) at this time.**

Pursuant to Chapter 36 of the New York City Charter, your agency has the *option* to respond to this *preliminary determination*, but must respond to our Final Determination if corrective action is required.

*Optional Response to preliminary determination:* If submitted, your optional response should indicate, with attached documentation, what steps your agency has taken or will take to implement the prescribed corrective actions, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the *preliminary determination*.

*(Optional Conference)* During the Optional Conference, we will discuss the immediate steps your agency should take and address questions regarding your agency's implementation of the prescribed corrective action(s).

*(No Response Option)* If your agency does not respond to this preliminary determination within 14 days, it will become the EEPC's Final Determination.

*Mandatory Response to Final Determination:* Following this preliminary determination, the EEPC will issue a Final Determination where we may modify or eliminate the corrective actions based on verified information; identify remaining action which requires further monitoring in order to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Chapter 36 of the New York City Charter your agency must respond to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance monitoring period.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,



Nathan P. Conway, EEO Program Analyst

Approved by,



Charise L. Terry, PHR  
Executive Director

c: Jean Richards, Principal EEO Professional

FINAL DETERMINATION  
10/14/2015

## **Appendix - 1**

**Civil Service Commission**

**Statistical Profile of Agency Workforce**  
(End of audit period)



Statistical Profile of Agency Workforce

**FINAL DETERMINATION**  
**10/14/2015**

Number of Employees End of Audit Period	
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Male	<u>3</u>
Female	<u>8</u>

White	<u>4</u>
Black	<u>3</u>
Hispanic	<u>2</u>
Asian	<u>1</u>
Native American	<u>0</u>
Unknown	<u>1</u>

Total # of Employees	<u>11</u>
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\*Statistical profile as reported by the agency.