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**BY EMAIL**

June 3, 2020

Ronnie Lowenstein  
Director  
Independent Budget Office  
110 William Street, #1401  
New York, NY 10038

Audit Status:  
Evaluation of Sexual Harassment Prevention and Response Practices for Audit Period  
January 1, 2018 to December 31, 2019.

Determination: **PRELIMINARY**

Dear Director Lowenstein:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you and your agency for the cooperation extended to our staff thus far. This letter contains the EEPC's evaluation and preliminary determinations pursuant to the Independent Budget Office's Sexual Harassment Prevention and Response Practices for the period covering January 1, 2018 to December 31, 2019.

**Purpose**

Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective equal employment opportunity (EEO) for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any plan, program, procedure, approach, measure, or standard does not provide equal employment opportunity, require appropriate corrective action, and monitor the implementation of the corrective action prescribed.

The Independent Budget Office, hereinafter simply termed "agency" or "entity," falls within the EEPC's purview under Chapter 36, Sections 830(a) and 831(a) of the Charter, to review, evaluate, and monitor the coordination and implementation of affirmative employment programs of equal employment opportunity for 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 subject matter referenced, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

### **Scope**

The EEPC has adopted uniform standards for auditing municipal entities<sup>1</sup> and minimum standards for auditing Community Boards (collectively “Standards”) to review, evaluate, and monitor entities’ employment and EEO-related practices, procedures, approaches, measures, standards, and programs. These standards are founded upon, and consistent with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination. Corrective actions prescribed are consistent with the aforementioned parameters including, but not limited to, the City of New York’s Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies 2014, as amended (Citywide EEO Policy); the New York City Human Rights Law (New York City Administrative Code Title 8); New York State Human Rights Law (New York Executive Law, Article 15); the New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

### *Policy and Plan Requirements*

The aforementioned Standards require, at minimum, that mayoral entities distribute the Citywide EEO Policy; non-mayoral entities establish or adopt a comprehensive EEO policy; and Community Boards, which are comprised of members appointed by the respective Borough Presidents, adopt and distribute the corresponding Borough President’s EEO Policy.

Because the EEPC is authorized to review and recommend actions that each entity should consider including in its annual plan of measures and programs to provide equal employment opportunity, or Annual EEO Plan, entities are also required to incorporate the EEPC’s corrective actions in prospective Annual EEO Plans and programs.

### **Methodology**

The EEPC communicates with 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, and 55-a Program Coordinators) and other employees identified as having involvement in EEO program administration such as the Principal Human Resources Professional and relevant Counsel.

The EEPC’s audit methodology includes review of the agency’s Annual EEO Plans and Quarterly EEO Reports; analysis of workforce and utilization data; and the collection and analysis of documents, records, and data an entity and its representatives provide in response to the Sexual Harassment Prevention and Response Preliminary Interview Questionnaires (PIQs). All PIQs contain requests to attach supporting documentation for the answer options selected.

EEO Professionals designated for online interviews are assigned a three-week deadline to complete and return the PIQs. The EEPC’s PIQ(s)/requests were sent to the Independent Budget Office on January 3, 2020; the completed PIQ(s) were returned on January 8, 2020. Supporting documentation was attached. Additional requests for information were made on January 21, 2020; January 28, 2020; February 10, 2020; and February 14, 2020.

The following determination indicates where the Independent Budget Office has or has not complied, in whole or in part, with the established Standards.

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

### Description of the Agency

The Independent Budget Office (IBO) is a publicly funded agency dedicated to enhancing understanding of New York City's budget by providing non-partisan budgetary, economic and policy analysis for elected officials and the residents of the city. IBO publishes reports and responds to requests for information and analysis related to the city budget. The IBO director is appointed for a four-year term, upon the recommendation of the Independent Budget Office Advisory Board, by a special committee comprised of a representative of the Borough Presidents, the Public Advocate, the City Comptroller and the City Council. (Source: The Green Book, 3/2019). At the end of the period in review, IBO had 37 employees (CEEDS report: *Work Force Composition Summary*, 2nd quarter of fiscal year 2020 is 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 partial-compliance with the standards for this subject area.**

1. Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.
  - ✓ On May 14, 2018, IBO's Agency Head (Director) issued a *Sexual Harassment Policy Statement*, which was distributed to all employees on July 23, 2018 via email from the principal EEO Professional. The email sent to all employees included the statement, "[a]ttached for your knowledge is our (IBO's) agency's *Sexual Harassment Policy Statement*. Please review it for your information and retain it for your files." The *Sexual Harassment Policy Statement* reiterated the Director's commitment to the prevention of sexual harassment by stating that, "[s]exual harassment is a form of employment discrimination prohibited by the EEO Policy and law. All IBO employees should be familiar with the EEO Policy's protections against sexual harassment...Employees who violate this policy are subject to discipline, including termination. Persons who violate this policy may also be subject to civil damages or criminal penalties...It is important to report all concerns about sexual harassment or inappropriate sexual conduct to the [principal EEO Professional] or Counselor, or a supervisor or manager as soon as possible." The *Sexual Harassment Policy Statement* included the name and EEO title of the principal EEO Professional and EEO Counselor, along with the directive that, "[c]omplaints of sexual harassment will be handled under the New York City Equal Employment Opportunity Policy and Procedures."
  - IBO did not demonstrate that, during the period in review, it issued a *Sexual Harassment Policy Statement* annually. **Corrective Action Required.**

**NOTE:** Subsequent to the period in review, on January 22, 2020, IBO's principal EEO Professional emailed all employees the entity's May 14, 2018 *Sexual Harassment Policy Statement* and stated the following, "[a]ttached for your knowledge is IBO's *Sexual Harassment Policy Statement*. Please review it at some point and retain a copy for your files if you have never done so. If you have any questions please feel free to contact me."

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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

- ✓ During the period in review, IBO established an *Equal Employment Opportunity Policy* (IBO EEO Policy). The IBO EEO Policy directed employees to utilize the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies, 2014* (NYC EEO Policy) via the statement “[a] copy of New York City’s EEO Policy can be obtained from IBO’s [principal EEO Professional] or EEO Counselor. In addition, the policy is also available online at <http://www.nyc.gov/html/dcas/html/about/eeopol.shtml>. A summary of the policy is outlined below, but as the staff manual may not be updated immediately to reflect changes in citywide EEO policy, you are encouraged to refer to the information provided at the online address above.” The IBO EEO Policy also included an *Investigation of Written Complaints* section that directed employees to utilize the *EEO Complaint Procedural Guidelines, City of New York, 2018* (Guidelines for Discrimination Complaint Procedures) via the statement, “IBO’s EEO representatives may consult the *Guidelines for Discrimination Complaint Procedures* issued by the Department of Citywide Administrative Services (DCAS) to determine how to proceed in a complaint investigation.” The NYC EEO Policy and Guidelines for Discrimination Complaint Procedures both conformed to city, state, and federal laws against sexual harassment. The Guidelines for Discrimination Complaint Procedures contained uniform and responsive procedures for investigating discrimination/sexual harassment complaints. Additionally, IBO’s On-Boarding Packet included copies of the IBO EEO Policy and the NYC EEO Policy, and was reported to have been given to all new employees during the period in review by the principal EEO Professional. A screenshot in the On-Boarding Packet directed new hires to the intranet to obtain the IBO EEO Policy. IBO reported that since 2015 the aforementioned screenshot was included in the On-Boarding Packet and that the IBO Intranet, which was available to all employees, contained links to its EEO policies. Additionally, on July 23, 2018, all employees were emailed the IBO Director’s May 2018 *Sexual Harassment Policy Statement* which contained links to the NYC EEO Policy and Guidelines for Discrimination Complaint Procedures. (The IBO EEO Policy is attached as Appendix – 2; the NYC EEO Policy is attached as Appendix – 3; and the Guidelines for Discrimination Complaint Procedures are attached as Appendix – 4.)

**NOTE:** IBO should update the live electronic links to the NYC EEO Policy and Guidelines for Discrimination Complaint Procedures in its *Sexual Harassment Policy Statement* and IBO EEO Policy. In addition, the IBO EEO Policy is labeled as *EEO Employment Opportunity Policy* and *Equal Employment Opportunity Policy* on the entity’s intranet and in its On-Boarding Packet, respectively. The EEPC recommends having one uniform name for the IBO EEO Policy to maintain consistency.

- The IBO EEO Policy did not include updated contact information for the agency’s EEO professionals, the web site for the New York State Division of Human Rights, and the mailing address for the New York City Commission on Human Rights. **Corrective Action Required.**

**Corrective Action #1:** 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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal,

human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

## **I. Training for the Agency**

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

1. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
- ✓ IBO's *Agency Quarterly Diversity and EEO Report* for the fourth quarter of fiscal year 2019 indicated that an *Annual Target* was established for 39 employees (approximately 100% of the workforce at the end of the period in review) to receive sexual harassment prevention training. Certificates of completion and training logs from DCAS' Citywide Training Center (CTC) indicated that as of October 23, 2019, 33 employees (approximately 89% of the workforce at the end of the period in review) completed DCAS' *Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace* computer-based training. The course objective on DCAS' Human Capital website stated that the training, "...will facilitate awareness of the City's prohibition on sexual harassment in its workplaces under applicable laws and the City's Equal Employment Opportunity (EEO) Policy. Participants will learn the definitions of sexual harassment, relevant legislation, prevention techniques and a procedure for filing a complaint. This course will help participants to create an environment that is free from sexual harassment." In addition, *Interim Quarterly Reporting* reports for the second and fourth quarter of fiscal year 2018 indicated that newly hired employees received EEO training within the first three months of employment.

## **II. Complaint and Investigation Procedures**

**Summary of Complaint Activity:** The agency reported 1 internal and 0 external complaints were filed during the period in review.

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

2. Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.
- ✓ IBO complaint file 1.14.2019 contained a completed *Complaint of Discrimination* form that captured the name of the complainant, along with space to answer the following questions: *What is the alleged basis of discrimination* (a checklist of classes protected against employment discrimination was listed); *Please give name of the person(s) you believe discriminated against you*; *When did the alleged discrimination occur*; *Where did it happen*; *Were there witnesses to the alleged discrimination* (space was provided to list the name, title, and division of witnesses); *Did you report this incident to anyone? If so, please state the name, title and division of the person to whom you reported*; *Have you filed a complaint about the alleged discrimination with any of the following agencies? If so, please state the date and number of the complaint* (a checklist including



the New York City Commission on Human Rights, New York State Division of Human Rights, United States Equal Employment Opportunity Commission, and United States Department of Law was provided); *Describe what happened to you, which you believe is unlawful discrimination, and how other persons were treated differently [sic]. This statement may be amended to correct mistakes or omissions. Please use extra pages if necessary; and What corrective action do you want taken?* The complainant signed and dated the *Complaint of Discrimination* form to verify the allegations and certify that they received information regarding their rights to file a complaint with federal, state, and local external agencies.

NOTE: Complaint file 1.14.2019 also contained a typed complaint that IBO reported as being part of its *Complaint of Discrimination* form. The section of the *Complaint of Discrimination* form that captured the essence of the circumstances that gave rise to the complaint was blank, and did not indicate that extra pages were submitted along with the form. The typed complaint did not contain the date, name of the complainant, complaint number, or other identifying information that would indicate that the document pertained to complaint 1.14.2019. The EEPC recommends including information on submitted documents to identify the relevant complaint file to which they belong.

NOTE: The *Complaint of Discrimination* form in complaint file 1.14.2019 did not include all of the protected classes. Subsequent to the filing of complaint 1.14.2019, IBO submitted a revised, blank representative *Complaint of Discrimination* form dated September 6, 2019. The September *Complaint of Discrimination* form contained space to capture names of the complainant and respondent, the complaint number, and the following information from the complainant: *Name, ERN (Employee Registration Number), Division/Office/Agency, Civil Service Title, Office Title, and Supervisor.* The September *Complaint of Discrimination* form also asked the complainant to answer many of the previously listed questions to capture facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint. In addition, the September *Complaint of Discrimination* form included the following in its protected classes list: *Age, Alienage/Citizenship, Arrest/Conviction record, Caregiver Status, Color, Consumer Credit History, Disability, Gender/including Gender identity/Pregnancy, Genetic Predisposition, Marital Status, Military Status, National Origin, Partnership Status, Pay Status, Race, Religion/Creed, Sexual Harassment, Sexual Orientation, Sexual and Reproductive Health Decisions, Unemployment Status, and Victim of Domestic Violence, Sex Offense, or Stalking.*

3. Provide the option to file a complaint anonymously.

- ✓ IBO reported that it did not receive any anonymous complaints during the period in review therefore, the following finding is based on analysis of IBO's policies and procedures to determine compliance with this standard. IBO employees were provided the option to file an anonymous complaint via the IBO EEO Policy which stated, "[p]ersons who wish to discuss a problem concerning discrimination without revealing their identity may do so by telephoning, writing or using other alternative means, to communicate with the EEO Officer [principal EEO Professional] or Counselor [sic]. In such cases, the EEO Officer will provide counseling and take such follow-up action as may be appropriate and possible, given the constraints of anonymity." In addition, the NYC EEO Policy, which the IBO EEO Policy directed all employees to reference stated, "[p]ersons who wish to discuss a possible violation of this Policy without revealing their identity may do so by telephoning or writing the EEO Office. In

such cases, the EEO [O]ffice will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity." Furthermore, section A.8 of the Guidelines for Discrimination Complaint Procedures, which the IBO EEO Policy directed all employees to consult, stated that "[t]he EEO complaint or inquiry process begins when a person (the "Complainant") contacts the EEO Office regarding an alleged discriminatory incident. The person making the complaint may do so anonymously, if he or she so chooses. Anonymous complaints must be treated the same as identified complaints, to the extent possible." Additionally, DCAS' Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace computer-based training discussed procedures for filing a complaint, including filing an anonymous complaint (see § II.3).

4. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
- Complaint file 1.14.2019 did not contain documentation that a notice of the complaint, which included the respondent's right to respond to the allegations and right to be accompanied by a representative of their choice, was served on the respondent. **Corrective Action Required.**

**Corrective Action #2:** Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

5. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

- ✓ Complaint file 1.14.2019 contained typed notes that stated, "[t]hese notes are EEO officer's notes pertaining to a meeting on February 4, 2019...the purpose of the meeting, which was held in an enclosed office, was to discuss an incident of discrimination that occurred at the end of calendar year 2018." The typed notes further stated that "[the principal EEO Professional] moderated the meeting" between the complainant and respondent, and explained what occurred during the meeting before concluding that, "[a]ll parties in the room were able to agree to the terms and the meeting concluded." In addition, IBO's EEO Policy contained a Services Available from the [principal EEO Professional]/Counselor section that stated, "[m]ediation is a voluntary process and may be declined by either party involved...If and when the parties agree to a mediated resolution and all needed action has been approved, the EEO Officer will prepare a written report confirming the resolution which will be signed by all parties and copied to them. A request for mediation may be withdrawn at any time by the person who made it. If this occurs, the EEO Officer will inform all parties in writing of the withdrawal. The EEO Officer may also terminate the mediation process if the Officer deems that efforts at mediation have been unproductive. In such event the EEO Officer will supply the parties with a written statement confirming the termination and inform the person who sought the mediation of the right to file a complaint of discrimination."

- IBO did not demonstrate that it issued, as required by the EEO policy, a written report confirming the resolution of complaint 1.14.2019 via mediation of the parties that was signed and copied to the complainant and respondent. **Corrective Action Required.**

**Corrective Action #3:** Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

6. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.

- ✓ Complaint file 1.14.2019 contained one page of handwritten *Investigative Notes re:* [complainant and respondent] (Investigative Notes). The Investigative Notes indicated the date and time the principal EEO Professional spoke with a witness regarding the complaint.

- Complaint file 1.14.2019 did not contain thorough notes of words spoken and facts provided during the referenced witness interview. In addition, the date on the Investigative Notes (January 9, 2019) in complaint file 1.14.2019 indicated that the interview preceded the completion of the *Complaint of Discrimination* intake form. **Corrective Action Required.**

**Corrective Action #4:** Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.

7. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

- ✓ Because the sole EEO complaint (complaint 1.14.2019) reported was resolved via mediation, IBO's EEO policies and discrimination complaint procedures were used to measure compliance with this standard. The *Investigation of Written Complaints* section of the IBO EEO Policy stated, "[t]he EEO Officer conducting the investigation will make a confidential written report of the investigation and recommendations for corrective action to the IBO Director (agency head) within 90 days of receipt of the complaint, unless additional time is needed and this decision is documented in the file." In addition, the Guidelines for Discrimination Complaint Procedures contained a *Preparing the Final Report* section that further stated, "[t]he final investigative report must be completed and the parties must be notified of the outcome within 90 calendar days from the date the complaint was filed with the EEO Office...."

8. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.



- ✓ IBO reported that its sole complaint during the period in review was resolved via mediation. Intake and mediation documents from Complaint file 1.14.2019 demonstrated that the sole complaint was promptly investigated by the principal EEO Professional therefore, the following finding is based on analysis of IBO's policies and procedures to determine compliance with this standard. The *Investigation of Written Complaints* section of the IBO EEO Policy stated, "[t]he EEO Officer conducting the investigation will make a confidential written report of the investigation and recommendations for corrective action to the IBO Director (agency head) within 90 days of receipt of the complaint, unless additional time is needed and this decision is documented in the file. If additional time is needed, the EEO Officer will inform the parties of the delay in writing." The Guidelines for Discrimination Complaint Procedures contained a *Preparing the Final Report* section that stated, "[t]he final investigative report must be completed and the parties must be notified of the outcome within 90 calendar days from the date the complaint was filed with the EEO Office, unless the time period is extended by the EEO Office for good cause, with written notice to the parties and noted in the investigative file and/or the complaint tracking system. The EEO Office must document the reason for the delay, and project a time frame for the completion of the report."

9. Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

- ✓ IBO reported that its sole complaint during the period in review was resolved via mediation therefore, the following finding is based on analysis of IBO's policies and procedures to determine compliance with this standard. The *Investigation of Written Complaints* section of the IBO EEO Policy stated, "[t]he EEO Officer conducting the investigation will make a confidential written report of the investigation and recommendations for corrective action to the IBO Director...". The NYC EEO Policy further indicated under its *Concluding the Complaint Investigation* section that, "[t]he EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation. If the EEO Officer concludes that a violation of this Policy has occurred, the EEO Officer will recommend appropriate corrective action. The agency head will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically." In addition, the *Preparing the Final Report* section of the Guidelines for Discrimination Complaint Procedures elaborated, "[t]he written report should include a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered during the investigation, a conclusion/determination and recommendation. Conclusions must be supported by facts uncovered during the investigation. The Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected, or modified."

10. Maintain complaint files in a secure area and ensure that they can be located and reviewed by the agency head, agency general counsel, and other appropriate staff identified by the agency head.

- ✓ IBO reported that its complaint files were physically maintained and secured in a locked file cabinet in the principal EEO Professional's office and were available upon request to the General Counsel and Director. In addition, the *Confidentiality and Record Keeping* section of the Guidelines for Discrimination Complaint Procedures stated, "[a]ll complaints and related documents, including any investigative notes, records, or copies, are strictly confidential and must be maintained by the EEO Office. The EEO Office may consult the agency's Office of the General Counsel concerning a request to view or have copied, in whole or in part, the EEO Office's files."

**11.** Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

- ✓ IBO reported that its sole complaint during the period in review was resolved via mediation therefore, the following finding is based on analysis of IBO's policies and procedures to determine compliance with this standard. Compliance was demonstrated via the *Discipline and Other Corrective Action* section of the IBO EEO Policy, which established that, "[t]he IBO Director will review the EEO Officer's report and take any corrective action that the Director deems appropriate. The IBO Director will sign the written report to indicate that it has been reviewed and whether the recommendation, if any is approved and adopted." The *Preparing The Final Report* section of the Guidelines for Discrimination Complaint Procedures further stated, "[t]he Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified." In addition, the *Concluding the Complaint Investigation* section of the NYC EEO Policy stated that, "[t]he EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation...The agency head will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically."

**12.** Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.

- ✓ IBO reported that its sole complaint during the period in review was resolved via mediation therefore, the following finding is based on analysis of IBO's policies and procedures to determine compliance with this standard. IBO established within the *Discipline and Other Corrective Action* section of the IBO EEO Policy that, "[t]he EEO Officer will advise all parties of the outcome of the investigation of the complaint in writing." The *Informing Parties of Outcome* section of the Guidelines for Discrimination Complaint Procedures detailed, "[t]he decision after investigation should be communicated to the parties, in writing, in a discreet and confidential manner, indicating the conclusion reached, whether the misconduct alleged has been substantiated, and the agency's opposition to that kind of activity." In addition, the *Concluding the Complaint Investigation* section of the NYC EEO Policy stated, "[t]he EEO Officer will advise all parties in writing of the outcome of a complaint."

- IBO did not demonstrate that the complainant and respondent were informed in writing of the conclusion and outcome of their complaint that was resolved pursuant to a mediation agreement. **Corrective Action Required.**

**Corrective Action #5:** Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.

**13.** Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.

- ✓ Complaint file 1.14.2019 contained typed notes regarding mediation between the complainant and respondent that stated, "[a]ll parties in the room were able to agree to the terms and the meeting concluded." In addition, the *Confidentiality and Record Keeping* section of the Guidelines for Discrimination Complaint Procedures stated, "[a]ll complaints and related documents, including any investigative notes, records, or copies, are strictly confidential and must be maintained by the EEO Office." Furthermore, the *Documentation* section of the NYC EEO Policy stated, "[a]ll inquiries, complaints, requests, mediation efforts, investigations, requests for accommodation, and their outcomes will be documented by the EEO Office."
- The file for complaint 1.14.2019 indicated it was resolved via mediation however, it did not contain a written report confirming the resolution of the complaint, which included the outcome and corrective taken as a result. **Corrective Action Required.**

**Corrective Action #6:** Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.

**14.** Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

- ✓ Complaint 1.14.2019 was not transferred due to the filing of an external complaint therefore, the following finding is based on analysis of IBO's policies and procedures to determine compliance with this standard. The Guidelines for Discrimination Complaint Procedures contained *The Intake Phase* section that stated, "[i]f an external complaint or lawsuit is filed subsequent to the filing of the internal complaint, the matter must also be transferred to the agency's Office of General Counsel. The EEO Office must notify Complainant (and Respondent, if any) in writing of the transfer." In addition, the *Other Places Where Complaints May Be Filed* section of the NYC EEO Policy detailed, "[w]hen a person exercises his or her right to file a complaint with a federal, state, or local administrative agency (known as an "external complaint") based on or related to the same facts and circumstances of an internal complaint, the agency EEO Officer will transfer the matter to the agency General Counsel, who will be responsible for any further handling of the matter. The EEO Officer will notify the complainant and the parties who are the subject of the complaint, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint."

15. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

- ✓ IBO's *Diversity and Equal Employment Opportunity Plan* for fiscal year 2018 contained a *Recognition and Accomplishments* section that stated, "[i]n order to improve and simplify our record keeping for EEO complaints, IBO volunteered as a non-mayoral agency to utilize the Citywide Diversity and Equal Employment Opportunity complaint database system maintained by DCAS. This process improvement is expected to enhance both quarterly and annual reporting going forward."
- IBO did not demonstrate that, during the period in review, it utilized a complaint tracking and monitoring system, such as the *Citywide Diversity and Equal Employment Opportunity* complaint database system maintained by DCAS, which permitted the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and basis of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends. **Corrective Action Required.**

**Corrective Action #7:** Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

16. Ensure that the General Counsel assists the agency head in identifying and determining appropriate responses to sexual harassment; works with the principal EEO Professional in the implementation of the City's policies and procedures pertaining to sexual harassment; informs the principal EEO Professional when external complaints or litigation involving sexual harassment is brought against the agency; is available to consult on internal sexual harassment complaint investigations; and is responsible for the investigation of, and response to, external sexual harassment complaints.

- ✓ The General Counsel assisted the agency head in identifying and determining appropriate responses to sexual harassment, via the completion of the *IBO Risk Assessment, 2018* (Risk Assessment) to determine workplace risk factors that may be associated with sexual harassment. The General Counsel signed the *Risk Assessment Certification Page* as a preparer and the Agency Head signed as having reviewed and approved the Risk Assessment. The principal EEO Professional being a signatory on the Risk Assessment demonstrated that the General Counsel also worked with the principal EEO Professional in the implementation of the City's policies and procedures pertaining to sexual harassment. In addition, a May 14, 2018 email from the General Counsel to the principal EEO Professional entitled *Sexual Harassment Policy Statement* demonstrated that the General Counsel worked with the principal EEO Professional to review IBO's policies and procedures pertaining to sexual harassment. Subsequent to the email, on July 23, 2018, the principal EEO Professional distributed the *Sexual*

*Harassment Policy Statement* via email to all employees. Furthermore, the *Investigation of Written Complaints* section of the IBO EEO Policy indicated that its General Counsel was available to consult on internal sexual harassment complaint investigations by stating, "...when a complaint alleges that a member of IBO's Senior Staff has engaged, or is engaging, in unlawful conduct in violation of EEO Policy, the EEO Officer may consult with the General Counsel regarding the investigation process, the EEO Officer and the General Counsel may determine that the law department and/or another non-Mayoral agency EEO Officer should conduct the investigation and make any recommendations to the IBO Director regarding appropriate corrective action in the event that a violation of anti-discrimination laws is found." In addition, the *Agency General Counsels* section of the NYC EEO Policy stated that, "[a]gency General Counsels should:...inform the [principal EEO Professional] when external complaints or litigation involving EEO matters is brought against the agency...and be responsible for the investigation of, and response to, external EEO complaints."

### **III. Annual Review of Practices, Policies and Programs**

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

17. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

- ✓ *Quarterly EEO Meeting Agendas* provided to the EEOC indicated that IBO's principal EEO Professional, Chief of Staff (HR Professional), and General Counsel met to discuss EEO matters for all quarters of calendar year 2018 and the first and second quarters of calendar year 2019. The *Quarterly EEO Meeting Agenda* listed IBO's principal EEO Professional, HR Professional, General Counsel, and agency head as *Attendees* and included the following subject list: *Discussion of Interim Quarterly Report Items* (which included subsections to review the number of EEO complaints, reasonable accommodation requests, and other EEO related activities such as training and best practices); *Discussion of Procedural Changes* (which listed EEO related action items that needed to be addressed); and *Miscellaneous Items*. In addition, signatures on the *IBO Risk Assessment Certification Page* of the Risk Assessment demonstrated that in October 2018, the principal EEO Professional, HR Professional, and General Counsel assessed the following risk factors that may be associated with sexual harassment: *Homogenous Workplace, Cultural and Language Differences in the Workplace, Workplaces with Significant Power Disparities, Isolated Workplaces, and Decentralized Workplaces*. IBO's review concluded that, "[t]he power disparities at IBO do not increase the risk of sexual harassment in the office. Although the agency has a majority of employees who are not managers, IBO's managers are mixed in terms of gender, with three male and two female unit leaders. In addition, there are two female and two male members of the agency's senior staff, and the IBO Director is female."



#### **IV. Responsibility for Implementation - EEO Professionals**

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

**18.** Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

- ✓ A July 23, 2018 email from the principal EEO Professional to all employees identified the principal EEO Professional by name and EEO title and gave the following directive, "*IBO urges anyone covered by the NYC EEO Policy who believes he or she has been subjected to sexual harassment or any unwelcome sexual attention to report the conduct to...the agency [principal EEO Professional].*" IBO reported in its PIQ response that the principal EEO Professional was appointed to the position in 2014. Certificates of completion from DCAS' CTC demonstrated that the principal EEO Professional was trained regarding city, state, and federal EEO laws and the requirements of IBO's policies, standards and procedures via a 5-day *Diversity and Equal Employment Opportunity Basic Training* in 2013 and *Sexual Harassment Prevention Training* in 2019.

**19.** Ensure that the responsibilities of the principal EEO Professional are competently discharged by providing adequate resources such as opportunities for continuing education and professional development, and/or support staff to meet EEO obligations.

- ✓ A *Sexual Harassment Prevention Training* certificate of completion from DCAS' CTC demonstrated that the principal EEO Professional was provided the opportunity for continuing education and professional development in 2019. In addition, IBO's *Sexual Harassment Policy Statement* and IBO EEO Policy indicated that the principal EEO Professional was supported by an EEO Counselor who was appointed for the duration of the period in review.

**20.** Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

- ✓ At the end of the period in review, IBO consisted of 37 employees located in one office. IBO's *Sexual Harassment Policy Statement* and IBO EEO Policy indicated that its EEO Office consisted of the principal EEO Professional and an EEO Counselor who served as the entity's Senior Education Budget Analyst and Social Services Analyst (which are different levels within the agency's organizational structure), respectively. Certificates of completion demonstrated that the EEO Counselor was trained in EEO laws and procedures via DCAS' CTC's *Basic Training for Equal Employment Opportunity Representatives* in 2009 and *Sexual Harassment Prevention Training* in 2019.

- IBO did not indicate the EEO Counselor's job responsibilities therefore, the EEPC was unable to determine whether they were trained in their responsibilities. **Corrective Action Required.**

**Corrective Action #8:** Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

**21.** Ensure that the principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.

- ✓ Cooperation between the General Counsel and principal EEO Professional in the implementation of policies and procedures concerning EEO and sexual harassment was demonstrated via a May 2018 email from the General Counsel to the principal EEO Professional regarding updates and edits to IBO's *Sexual Harassment Policy Statement*, and via the General Counsel and principal EEO Professional's preparation of the Risk Assessment (see § III.18 for cooperative implementation of policies and procedures concerning EEO and sexual harassment between the principal EEO Professional and General Counsel and § IV.19 for Risk Assessment specifics).

**22.** Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

- ✓ Emails from the principal EEO Professional to all employees during and subsequent to the period in review demonstrated that the principal EEO Professional was responsible for distributing EEO-related policies to all employees. Intake and mediation documents from Complaint file 1.14.2019 demonstrated that IBO's sole complaint during the period in review was promptly investigated by the principal EEO Professional. In addition, the *EEO Officers* section of the NYC EEO Policy stated, "[t]he [principal EEO Professional] should...provide guidance and assistance to agency managers, supervisors, and human resource professionals in addressing issues relating to equal employment opportunity. The [principal EEO Professional] will also: 1) set training objectives that ensure that all agency employees receive diversity and inclusion and EEO training; 2) supervise the EEO related activities of EEO counselors and/or investigators; 3) ensure that the Policy, standards, and procedures are posted at each site where the agency conducts business; and 4) ensure that the Policy, standards, and procedures are available in alternative formats (i.e., large print, audio tape, and/or Braille)."

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

- IBO did not demonstrate that, during the period in review, the principal EEO Professional reported directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities. **Corrective Action Required.**

NOTE: Subsequent to the period in review, IBO submitted an organizational chart dated March 4, 2020. The organizational chart listed the principal EEO Professional and EEO Counselor by name under “EEO Staff” and illustrated a direct reporting relationship between “EEO Staff” and the agency head.

24. Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

- ✓ IBO’s *Quarterly EEO Meeting Agenda*, dated July 10, 2018, listed the principal EEO Professional and agency head as *Invited Participants*; and listed *Sexual Harassment Policy Statement* as the first item to discuss under the *Discussion of Procedural Changes* section of the agenda. On July 23, 2018, the principal EEO Professional distributed IBO’s *Sexual Harassment Policy Statement* to all employees via email, indicating that the entity maintained documentation regarding directives and decisions between the agency head and the principal EEO Professional that impacted the administration and operation of policies concerning sexual harassment.

#### V. Responsibility for Implementation – Supervisors/Managers

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

25. Ensure that managers and supervisors are held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

- ✓ IBO policies and procedures established the expectation that managers and supervisors enforce the entity’s sexual harassment prevention policies and complaint procedures. The *Sexual Harassment Policy Statement* iterated that, “[m]anagers and supervisors must promptly notify the agency EEO Officer in writing, either via email or a memorandum, if they receive a complaint alleging sexual harassment or if they observe, learn about, or suspect that any violation of the Policy has occurred. Managers and supervisors should encourage subordinates to consult with the EEO Officer.” In addition, the NYC EEO Policy informed all managers and supervisors of the expectation that, “[m]anagers and supervisors will make every effort to maintain a work environment that fosters sensitivity and respect for the diversity of all individuals. Specifically, each agency manager or supervisor shall: 1) be held accountable to the agency head for effectively implementing EEO-related policies...4) cooperate with the EEO Officer in the implementation of the Policy, standards, and procedures (including training, complaint resolutions, processing, recording, and reporting reasonable accommodation requests, EEO-related recruitment, and selection standards; and modifying agency procedures to ensure equal employment opportunity for applicants and employees).” In addition, the Guidelines for Discrimination Complaint Procedures’ *The Intake Phase* section stated, “[s]upervisors and managers are required under the

*Policy to timely notify their EEO Office of any alleged discriminatory conduct they observe or become aware of."*

- IBO did not demonstrate implementation of the expectation that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. **Corrective Action Required.**

**Corrective Action #9:** Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

26. Ensure 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).

- IBO did not demonstrate that, during the period in review, it utilized a managerial performance evaluation form that contained a rating for EEO (which covered 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). **Corrective Action Required.**

**Corrective Action #10:** Ensure 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).

## **VI. Reporting Standard for Agency Head**

**Determination: The agency is required to comply with the standards for this subject area.**

27. Submit to the EEOC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.
- ✓ IBO provided its *Diversity and Equal Employment Opportunity Plan* for fiscal year 2018 and 2020 and its *Agency Quarterly Diversity and EEO Reports* for the first, second, and fourth quarters of fiscal year 2018, and the fourth quarter of 2019. IBO also provided its breakout of sexual harassment complaint activity for each quarter of fiscal year 2019.
  - IBO did not provide its *Diversity and Equal Employment Opportunity Plan* for fiscal year 2019 or its *Agency Quarterly Diversity and EEO Reports* for the third quarter of fiscal year 2018, the first, second, and third quarters of fiscal year 2019, and the first and second quarters of fiscal year 2020. In addition, the 2018 quarterly reports did not include a breakout of sexual harassment complaint activity. **Corrective Action Required.**

NOTE: As a non-mayoral agency, IBO's submission of quarterly reports to the EEPC is not required. However, as IBO has consented to submit quarterly reports, the EEPC requires IBO's consistent submission for all quarters of each fiscal year.

**Corrective Action #11:** Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

**28.** Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

**FINAL ACTION:** Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process

**Summary of Corrective Actions:**

The Independent Budget Office has 12 required corrective action(s) at this time. This includes the aforementioned final action.

**Conclusion**

Pursuant to Charter Chapter 36, the Independent Budget Office has the *option* to respond to this Preliminary Determination, but must respond to our Final Determination if corrective action is required. **Any response must be signed by the agency head and submitted to the EEPC's Executive Director.**

*Optional Response to Preliminary Determination:* If submitted, the Independent Budget Office's optional response to the EEPC's Executive Director should indicate, with attached documentation, what steps have been or will be taken to correct outstanding areas of non-compliance, 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)* If requested, at the Optional Conference the EEPC will discuss the immediate steps that should be taken to correct outstanding areas of non-compliance and address questions regarding the Independent Budget Office's implementation of the prescribed corrective action(s).

*(No Response Option)* If the Independent Budget Office does not respond to this Preliminary Determination within 14 days, it will become the EEPC's Final Determination.

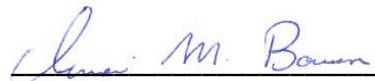
*Mandatory Response to Final Determination:* Following this Preliminary Determination, the EEPC will issue a Final Determination where we may modify or eliminate the corrective action(s) based on verified information submitted as part of the response to the Preliminary Determination; identify remaining



corrective action(s) that require further monitoring to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Charter Chapter 36, upon receipt, the Independent Budget Office must submit a response, signed by the agency head, to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance-monitoring period.

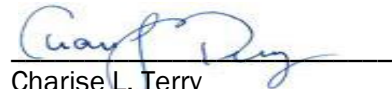
In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,



Imani Bowen, EEO Program Analyst

Approved by,



Charise L. Terry  
Executive Director

- c: Yolanda Smith, principal EEO Professional, Senior Education Budget Analyst, IBO  
William B. Peterson, Manager, Labor Relations Analysis and Audit, EEPC

## **Appendix – 1**

Independent Budget Office

*Citywide Equal Employment Database System (CEEDS): Work Force  
Composition Summary*

2<sup>nd</sup> quarter of fiscal year 2020

RUN DATE: 01/03/20  
 RUN TIME: 13:44:06.6

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
 CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)  
 WORK FORCE COMPOSITION SUMMARY  
 AGENCY 132 INDEPENDENT BUDGET OFFICE

PAGE: 136  
 REPORT: EBEPR210

QUARTER 2 YEAR 2020

AGENCY CODE : 132 INDEPENDENT BUDGET OFFICE  
 EEO JOB GROUP : 002 MANAGERS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN-KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN-KNOWN		
0671A	BUDGET ANALYST (IBO) (MANA	5	0	0	0	0	0	2	0	0	1	0	0	0	8
82950	AGENCY CHIEF CONTRACTING O	0	0	0	0	0	0	0	0	0	1	0	0	0	1
95005	EXECUTIVE AGENCY COUNSEL	0	0	0	0	0	0	1	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		5	0	0	0	0	0	3	0	0	2	0	0	0	10
		50.00	0.00	0.00	0.00	0.00	0.00	30.00	0.00	0.00	20.00	0.00	0.00	0.00	100.00

AGENCY CODE : 132 INDEPENDENT BUDGET OFFICE  
 EEO JOB GROUP : 003 MANAGEMENT SPECIALISTS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN-KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN-KNOWN		
06712	ASSISTANT BUDGET ANALYST (	0	0	0	0	0	0	1	0	0	0	0	1	0	2
06713	BUDGET ANALYST (IBO)	8	3	1	1	0	1	5	1	1	2	0	0	0	23
94519	DIRECTOR OF INDEPENDENT BU	0	0	0	0	0	0	1	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		8	3	1	1	0	1	7	1	1	2	0	1	0	26
		30.75	11.54	3.85	3.85	0.00	3.85	26.92	3.85	3.85	7.69	0.00	3.85	0.00	100.00

AGENCY CODE : 132 INDEPENDENT BUDGET OFFICE  
 EEO JOB GROUP : 012 CLERICAL SUPERVISORS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN-KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN-KNOWN		
10124	PRINCIPAL ADMINISTRATIVE A	0	0	0	0	0	0	0	0	1	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		0	0	0	0	0	0	0	0	1	0	0	0	0	1
		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	100.00

AGENCY TOTAL.....:

13	3	1	1	0	1	10	1	2	4	0	1	0	37
35.14	8.11	2.70	2.70	0.00	2.70	27.03	2.70	5.41	10.81	0.00	2.70	0.00	100.00

**Appendix – 2**

Independent Budget Office

*Equal Employment Opportunity Policy (IBO EEO Policy)*

October 29, 2019

# EQUAL EMPLOYMENT OPPORTUNITY POLICY

The City of New York, including the IBO, is an equal employment opportunity employer committed to compliance with federal, state, and local laws prohibiting employment discrimination. IBO has an EEO Officer, who also serves as the agency’s Disabilities Right Coordinator (DRC), and an EEO Counselor. The EEO Officer or Counselor may be consulted at any time, during or after office hours, on matters related to IBO’s EEO policy.

A copy of New York City’s EEO Policy can be obtained from IBO’s EEO Officer or EEO Counselor. In addition, the policy is also available online at <http://www.nyc.gov/html/dcas/html/about/eeopol.shtml> A summary of the policy is outlined below, but as the staff manual may not be updated immediately to reflect changes in citywide EEO policy, you are encouraged to refer to the information provided at the online address above.

## *General Anti-Discrimination Protections*

Employment decisions in city government will be made on the basis of merit, fitness, equality of opportunity, and without unlawful discrimination on the basis of a person’s actual or perceived:

• Age (18 and over)	• Partnership Status
• Alienage or Citizenship Status	• Predisposing Genetic Characteristic or Carrier Status
• Color	• Prior Record of Arrest or Conviction
• Disability	• Race
• Gender (including gender identity)	• Religion or Creed
• Marital Status	• Sexual Orientation
• Military Status	• Status as a victim or Witness of Domestic Violence, Sex Offenses or Stalking
• National Origin (including ancestry)	• Sexual and Reproductive Health Decisions

Harassment based on a person’s actual or perceived protected status is also prohibited.

Consistent with the law, reasonable accommodations will be made for persons with disabilities, for religious observance, and for victims of domestic violence, sex offenses and stalking.

Anti-discrimination protections apply to all of the terms and conditions of employment, including, but not limited to:



• Recruitment	• Promotions	• Testing
• Training Opportunities	• Hiring	• Transfers
• Work Assignments	• Discipline	• Salary and Benefits
• Discharge	• Performance Evaluations	• Working Conditions

IBO is committed to preventing discrimination by ensuring that all of its employees are aware of their rights and obligations under this policy and by encouraging a work environment that appreciates and tolerates differences. Training for all staff in EEO policies will be conducted regularly, at least every other year. In addition, all new hires will be given training within three months of their start date.

## ***EQUAL EMPLOYMENT OPPORTUNITY PROCEDURES***

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### ***A. EEO Complaint and Investigation Procedure***

The procedures outlined below provide for the prompt and fair handling of complaints of discrimination. The IBO urges employees to follow this procedure immediately whenever they believe they have a complaint or are aware of a problem possibly involving discrimination.

#### **1. Prior to Filing a Formal Complaint**

Prior to filing a formal written complaint, employees may wish to consult with an EEO Officer/Counselor to determine which of the various options, including mediation, counseling and/or filing written complaints with either the IBO EEO Officers or other agencies, is the most appropriate for a given situation. Employees are encouraged to initiate any discussion or action promptly, since there are statutory deadlines for filing formal complaints.

#### **2. Consultation with an EEO Officer**

An employee or employee applicant should consult with the an EEO Officer if s/he believes that s/he is being discriminated against by a manager, supervisor, another employee or an independent contractor of IBO in violation of any of the general discrimination protections listed above.

The EEO Officer will assist the person to determine whether the issue being raised is appropriate for resolution through the complaint process. IBO will not tolerate retaliation against employees who consult with an EEO Officer about a suspicion of discrimination or for filing a complaint or cooperating in an investigation.

An employee or employee applicant should follow this same procedure if s/he believes that s/he has been sexually or otherwise harassed on any of the above listed bases by a manager, supervisor, another employee or an independent contractor of the IBO. If an employee or employee applicant believes that s/he is being harassed or retaliated against because s/he consulted with the EEO Officer, filed a discrimination complaint or cooperated in the investigation

of a complaint, s/he is encouraged to report this behavior to the EEO Officer for investigation and other action.

Federal, state and city laws prohibit the following types of discrimination based on your actual or perceived membership in a protected group:

- discriminatory treatment of employees or employee applicants in hiring, testing, work assignments, working conditions, salary and benefits, evaluation, promotions, training, transfers, discipline, termination and any other term and condition of employment;
- policies that have a disproportionate impact on a group protected by law, unless they are justified by business necessity;
- failure to make a reasonable accommodation for an employee with a disability or for an employee's religious observance; or
- discriminatory harassment, intimidation, ridicule or insults.

### **3. Where to File an Internal Complaint or Seek Assistance with an EEO Matter**

As noted above, IBO has an EEO Officer, who also serves as the agency's Disabilities Right Coordinator (DRC) and an EEO Counselor, who may be consulted at any time, during or after office hours, on matters related to EEO policy, and will arrange to meet with any staff member or candidate regarding any EEO concerns inside or outside of the office upon request.

### **4. Meeting with EEO Officer/Counselor**

Any person who wishes to talk about a question or problem related to IBO's EEO policy or to file a complaint of discrimination may contact one of the EEO Officers.

An employee has a right to meet privately with the EEO Officer during office hours. The EEO Officer will arrange to meet with the employee outside the office when necessary to ensure confidentiality. At the employee's request, the employee and EEO Officer may also make arrangements to hold the meeting before or after office hours or during the employee's lunch period.

An employee may bring a representative of his or her choice to the meeting. In addition, at the request of an employee, the EEO Officer will make a sign language interpreter available at the meeting.

### **5. Anonymous Complaints**

Persons who wish to discuss a problem concerning discrimination without revealing their identity may do so by telephoning, writing or using other alternative means, to communicate with the EEO Officer or Counselor. In such cases, the EEO Officer will provide counseling and take such follow-up action as may be appropriate and possible, given the constraints of anonymity. Anonymous complainants should be aware that it may be necessary for the EEO Officer to

investigate the alleged discriminatory behavior and to take or recommend action to remedy unlawful behavior on behalf of the agency and the city, even if the anonymous complainant wishes to withdraw his or her complaint.

## **6. Confidentiality**

EEO matters will be handled under the direction of the EEO Officer and/or Counselor, in consultation with the General Counsel's office when appropriate. The EEO Officer and/or Counselor will treat all complaints confidentially. This means that information obtained from the complainant will not be discussed with other personnel except as necessary to investigate and resolve the complaint or other matter. Please note, however, that regardless of how carefully the EEO Officer and EEO Counselor handle complaints, IBO cannot guarantee the privacy of e-mail communications an employee transmits or receives through his or her work account. Additional confidentiality issues are discussed below in the Reasonable Accommodations Procedure section.

## **7. Services Available from the EEO Officer/Counselor**

An EEO Officer will interview the person seeking assistance to determine whether the person should receive assistance in the form of counseling, whether the person wants to request mediation or whether the person wishes to file a formal complaint of discrimination which the EEO Officer will investigate or which an external administrative agency will investigate.

EEO Officers are also responsible for arranging sign language interpreters and alternate forms of effective communication with persons with disabilities to facilitate access to EEO services.

EEO Officers are also available to provide the following services:

### *Counseling.*

EEO Officers are available to discuss, with the person seeking assistance, various options for handling the matter raised. These options may include further actions the employee could take on his or her own behalf, referrals to other agencies which may be of assistance or other informal assistance from the EEO Officers.

### *Mediation.*

Mediation is a voluntary process and may be declined by either party involved. The person seeking assistance may file a written request for mediation. A copy of the mediation request form is available from IBO's EEO Officer. When a person makes a request for mediation, the EEO Officer will attempt to help the involved parties resolve the disputed matter. In this process, the EEO Officer will consult with the person who filed the request, the person named in the request and other persons as appropriate.

If and when the parties agree to a mediated resolution and all needed action has been approved, the EEO Officer will prepare a written report confirming the resolution which will be signed by all parties and copied to them.

A request for mediation may be withdrawn at any time by the person who made it. If this occurs, the EEO Officer will inform all parties in writing of the withdrawal. The EEO Officer may also terminate the mediation process if the Officer deems that efforts at mediation have been unproductive. In such event the EEO Officer will supply the parties with a written statement confirming the termination and inform the person who sought the mediation of the right to file a complaint of discrimination.

#### *Formal Written Complaints*

A person may file a written complaint of discrimination with an EEO Officer at any time within one year of the date that the events which are the subject of the complaint occurred. The EEO Officer or Counselor can provide you with a copy of the Complaint of Discrimination form. Requests for reasonable accommodations are not subject to any time limitations.

An EEO Officer may also determine that another form of communication, such as a telephone call or a letter, should be handled as a complaint. In such event, or when a person who has a disability which precludes completion of the complaint form seeks to file a complaint, an EEO Officer may complete a Complaint of Discrimination form or provide other written documentation of the complaint.

A Complaint of Discrimination form shall also be completed by an EEO Officer when an investigation is commenced on the officer's own initiative.

When a written complaint is received, or if otherwise deemed necessary by the EEO Officer, an investigation will be initiated.

#### **8. Investigation of Written Complaints**

The goal of the investigation process is to allow for a thorough and impartial examination of all complaints alleging violation(s) of EEO policy by any manager, supervisor, another employee or an independent contractor of IBO. IBO's EEO representatives may consult the Guidelines for Discrimination Complaint Procedures issued by the Department of Citywide Administrative Services (DCAS) to determine how to proceed in a complaint investigation. However, as IBO is a non-Mayoral agency, with a Director appointed by several elected officials, these procedures may not be adequate or appropriate for all complaint investigations. In addition, because IBO has fewer employees than the majority of Mayoral agencies following the DCAS Guidelines, issues of conflict, or the appearance of conflict, are more likely to arise. Therefore, when a complaint alleges that a member of IBO's Senior Staff has engaged, or is engaging, in unlawful conduct in violation of EEO policy, the EEO Officer may consult with the General Counsel regarding the investigation process, the EEO Officer and the General Counsel may determine that the law department and/or another non-Mayoral agency EEO Officer should conduct the investigation and make any recommendations to the IBO Director regarding appropriate corrective action in the event that a violation of anti-discrimination laws is found.

If an EEO Officer receives a complaint which alleges that the IBO Director has engaged in unlawful discrimination, and the EEO Officer believes that the allegation is not frivolous, then the EEO Officer shall notify the IBO General Counsel. The EEO Officer and the General Counsel shall notify and consult with the law department and/or another non-Mayoral agency EEO Officer as is

deemed appropriate. The EEO Officer and General Counsel may determine that the law department and/or another non-Mayoral agency EEO Officer should conduct the investigation and make any recommendations regarding appropriate corrective action in the event that a violation of anti-discrimination laws is found. The EEO Officer and General Counsel will ensure that the recommendations are implemented.

When an IBO EEO representative is named as a respondent, IBO's General Counsel will consult with the law department and/or another non-Mayoral EEO Officer regarding investigation of the complaint and recommendation for corrective action. The recommendations shall be submitted to the IBO Director.

Any person who interviewed in the course of an investigation will have the right to be accompanied by a representative of his or her choice.

Any person who has been named in the complaint shall receive a copy of the complaint, which does not include the complainant's home address and telephone number, and the name(s), title(s), and division(s) of witnesses to the alleged discriminatory act(s), after the EEO Officer interviews the person who complained, witnesses and other appropriate persons who might provide information in support of the allegations, but prior to the conclusion of the investigation. All persons named in the complaint, or someone authorized to sign for him or her, should sign to acknowledge receipt of the complaint. All persons named in the complaint shall have the opportunity to respond in writing at any time after service of the complaint until the conclusion of the investigation.

The EEO Officer conducting the investigation will make a confidential written report of the investigation and recommendations for corrective action to the IBO Director within 90 days of receipt of the complaint, unless additional time is needed and this decision is documented in the file. If additional time is needed, the EEO Officer will inform the parties of the delay in writing. If the EEO Officer concludes on the basis of the investigation that a violation of anti-discrimination laws or the agency's EEO policy has occurred, the EEO Officer will consult with IBO's General Counsel and then recommend appropriate corrective action.

### **9. Discipline and Other Corrective Action**

The IBO Director will review the EEO Officer's report and take any corrective action that the Director deems appropriate. The IBO Director will sign the written report to indicate that it has been reviewed and whether the recommendation, if any is approved and adopted.

As described above, the IBO Director may take such corrective action that s/he deems appropriate. Corrective action may include disciplinary measures such as formal reprimand, suspension, probation, transfer, demotion, fine or termination. Disciplinary measures shall be taken in accordance with applicable provisions of law, rules, regulations and collective bargaining agreements. Corrective action may also include measures necessary to address the impact that any conduct in violation of law or City or agency policy has had on the complainant.

The EEO Officer will advise all parties of the outcome of the investigation of the complaint in writing.



## 10. Withdrawing Complaints

A person who files a complaint may withdraw the complaint at any time. All requests for withdrawals must be in writing. The EEO Officer may find it appropriate to end the investigation when the complainant has withdrawn the complaint. However, before making the determination to end the investigation, the EEO Officer must assess whether evidence has been found which requires the agency to take corrective action to prevent or eliminate an illegal or inappropriate situation. If there is such evidence, the EEO Officer will continue the investigation until the Officer is prepared to recommend whether the agency should take corrective action. In either event, the EEO Officer will notify the respondent in writing that the complainant has withdrawn the complaint and will also notify the parties whether the investigation has been terminated or is continuing.

## 11. Other Places Where a Complaint of Discrimination May Be Made

Any person who believes that he or she has experienced discrimination has a right to file a formal complaint with the several federal, state or local agencies, some of which are listed below. A person does not give up this right when he or she files a complaint with the EEO Officer. The following federal, state and local agencies enforce laws against discrimination. You should refer to the most recent Green Book for telephone numbers and addresses of the city and state entities.

NEW YORK CITY COMMISSION ON HUMAN RIGHTS  
40 Rector Street  
New York, New York 10006  
(212) 306- 7450  
(212) 306-7686 (TTY)  
Web site: [www.nyc.gov/html/cchr/home.html](http://www.nyc.gov/html/cchr/home.html)

NEW YORK STATE DIVISION OF HUMAN RIGHTS  
One Fordham Plaza, 4th Floor  
Bronx, NY 10458  
(718) 741-8400  
Web site: [www.nysdhr.com](http://www.nysdhr.com)

or

163 West 125th Street, 4th Floor  
New York, NY 10027  
(212) 961-8650  
(212) 961-8999 (TTY)

or

270 Broadway, 9th Floor  
New York, NY 10007  
(212) 417-5041

or

55 Hanson Place, 3rd Floor  
Brooklyn, NY 11217  
(718) 722-2856

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
New York District Office  
33 Whitehall Street, 5th Floor  
New York, NY 10004  
(212) 336-3620 (voice); (212) 336-3622 (TTY)  
Web site: [www.eeoc.gov](http://www.eeoc.gov)

In addition to filing with the agencies listed above, a person with a complaint alleging discrimination based on disability may file with:

UNITED STATES DEPARTMENT OF JUSTICE  
Civil Rights Division  
Disability Rights Section  
New York Avenue Building  
950 Pennsylvania Avenue N.W.  
Washington, D.C. 20530  
(202) 307-0663 (voice and TDD)  
Web site: [www.usdoj.gov/crt/drs/drshome.htm](http://www.usdoj.gov/crt/drs/drshome.htm)

Please note: There are statutory deadlines for filing complaints with each of these agencies. The deadline in some instances is as short as 180 days. Therefore, if you believe you have been discriminated against and wish to file a complaint with an external agency, you should promptly contact the external agencies listed above or a private attorney to preserve your rights and for further guidance.

## ***B. Reasonable Accommodation Procedure***

### **1. Introduction**

IBO will make reasonable accommodations to qualified applicants and employees, when requests are made in connection with disabilities, religion, and /or to accommodate individuals who are victims of domestic violence, sex offenses or stalking, unless providing such accommodation would impose an undue hardship. Reasonable accommodations will be made to enable qualified applicants and employees to perform the essential functions of their jobs, or to enjoy the equal benefits and privileges of employment.

The requirement to provide reasonable accommodation applies to disabilities that are known, or should have been known, to the employer. The reasonable accommodation process,

including a description of key terms, is set forth below and should be followed by applicants and employees requesting reasonable accommodations.

## **2. Key Terms**

A *qualified applicant or employee* is an individual who satisfies the requisite skill, experience, education and other job-related requirements of a position and who, with reasonable accommodation (if needed), or without accommodation (if none is needed), can perform the essential functions of that position.

A *disability* is (1) a physical, medical, mental or psychological impairment, or (2) a history or record of such an impairment, or (3) being regarded as having such an impairment.

*Essential functions* are duties that are fundamental to a position including, among others, those for which the position exists, those that only a limited number of employees are available to perform, or those that cannot be delegated. Evidence of what constitutes an essential function may include, but is not limited to: the employer's judgment; written job descriptions, if any; the amount and/or proportion of time spent performing the function; the consequences of not requiring a function; the terms of a collective bargaining agreement; and the work experience of incumbents.

*Undue hardship* is action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business of IBO.

*Reasonable accommodations* are modifications or adjustments to the application process, work environment, or to the manner or circumstances under which a position is customarily performed that promote equal employment opportunity. Reasonable accommodation enables a qualified applicant or employee to be considered for a position or to perform its essential functions, or to enjoy benefits and privileges of employment that are equal to those enjoyed by similarly situated employees without disabilities.

## **3. Effective Communication and Other Assistance**

IBO's EEO Officers are responsible for ensuring effective communication between applicants or employees and agency staff at every stage of the application and reasonable accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. The EEO Officers are also responsible for providing such other reasonable assistance as is requested by applicants, employees and supervisors throughout the reasonable accommodation and appeals processes.

## **4. The Reasonable Accommodation Process Step-by-Step**

### ***a. Overview***

The reasonable accommodation process is intended to be flexible and interactive, involving both the IBO and the applicant or employee requesting reasonable accommodation. The process generally involves four steps. The IBO must ensure that the application, interviewing and testing procedures are accessible by reasonably accommodating applicants with disabilities. Although the

IBO must not inquire whether an individual has a disability, it may inquire whether an accommodation is needed, particularly where a disability is apparent or suspected.

Although the process is described in terms of “steps” it is intended to be interactive and flexible. It is characterized by close coordination and cooperation between an applicant or employee and the IBO, primarily the immediate supervisor of the application process or the position. In some instances, an appropriate and reasonable accommodation might be provided or implemented without the applicant or employee and the IBO proceeding in a step-by-step fashion. In more complex situations, however, the step-by-step approach will guide both the employee and the IBO in determining the parties’ respective rights and responsibilities with a common goal of moving the process forward within clearly defined time periods.

### *b. Procedure*

#### Step 1: Applicant or Employee Requests Reasonable Accommodation; Initial Consultation

The employee or job candidate should complete a Reasonable Accommodation Request form (available from the EEO Officer), and submit it to his or her immediate supervisor or, if the employee prefers, to that supervisor’s supervisor. (The form should be made available to applicants at the first possible opportunity in the application process.) If a request for reasonable accommodation is made by an applicant to facilitate the application process, the IBO staff supervising the application procedure should assist applicants in completing the form where requested and, in conjunction with the EEO Officers, process the request for accommodation. Supervisors shall assist employees in completing the form where requested. The IBO staff member receiving the request (in the case of applicants) or supervisors (in the case of employees), shall acknowledge each request by signing and dating the form in the space provided. One copy is to be returned to the applicant or employee and a second copy is to be filed with an EEO Officer, who is responsible for monitoring the process and for noting its outcome on the form. The submission by an applicant or employee of a request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual to inform the IBO of the need for an accommodation. The IBO will consider requests for accommodation based on circumstances that are known to it, or that should have been known to it. Where the need for a requested accommodation is not apparent, an EEO Officer or the involved supervisor may ask an applicant or employee to provide documentation in support of the request. Once the IBO is aware of an individual’s disability, it may have the responsibility to initiate the discussion about a reasonable accommodation and set the procedure in motion.

Disabilities: In limited circumstances, medical examinations or more detailed medical documentation may be required to determine whether an employee can perform the essential functions of the job and what accommodations may be appropriate. However, because the circumstances under which such examinations or documentation may be required in the context of a reasonable accommodation request are narrow and fact specific, IBO staff will consult with an EEO Officer before requesting them. The EEO Officer may consult with the Mayor’s Office for People with Disabilities (MOPD) prior to authorizing such requests.

By law, all documentation and information concerning the medical condition or history of an individual requesting a reasonable accommodation for a disability must be collected and maintained on separate forms, and in separate medical files, apart from other personnel data. Such information must be treated as confidential medical records, except that managers and supervisors may be informed of necessary restrictions on work and accommodations required. Furthermore, medical information may be provided: 1) to first-aid and safety personnel, if the disability might require emergency treatment; 2) to government officials investigating the agency's compliance with applicable laws; 3) to workers' compensation offices in accordance with Workers' Compensation Law

Victims of Domestic Violence, Sex Offenses or Stalking: Agencies may require a person requesting a reasonable accommodation to provide certification that the person is a victim of domestic violence, sex offenses, or stalking. The person requesting the reasonable accommodation shall provide a copy of such certification to the agency within a reasonable period after the request is made. A person may satisfy the certification requirement by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the individual seeking a reasonable accommodation, or that individual's family or household member, has sought assistance in addressing domestic violence, sex offenses, or stalking and the effects of the violence or stalking; a police or court record; or other information consistent with the disclosure and the request for accommodation.

All information, including a statement of the person requesting a reasonable accommodation or any other documentation, record, and the fact that the individual has requested or obtained a reasonable accommodation, shall be retained in the strictest confidence by IBO, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation, or is otherwise required by applicable federal, state or local law.

After acknowledging a request for accommodation and providing copies to both the employee and the EEO Officer, the supervisor should either: (1) provide or implement the request and document the accommodation; or (2) proceed to Step 2 of this procedure.

#### Step 2: Supervisor Analyzes Job to Determine its Purpose and Essential Functions

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the job's essential functions and the employee's job-related limitations. Other situations are more complex, however, and require structured analysis.

In these instances, upon receipt of a request for reasonable accommodation, the supervisor, in consultation with the EEO Officer, should examine the position to determine its purpose and its essential functions. Identifying which job functions are essential is necessary to determine whether an employee with a disability is "qualified" for a position. With respect to applicants for employment, the IBO will make the application, interview and testing process accessible, unless doing so would create an undue hardship.

Essential functions are the fundamental job duties of a position, excluding marginal functions. A job function can be deemed an essential function for a variety of reasons including, but not limited to, whether (1) the position exists to perform the function; (2) a limited number of

employees are available to whom the function can be assigned; and/or (3) whether the function is so highly specialized that the position must be held by an employee selected for the ability to perform that function. Evidence of what constitutes the essential functions of a position includes the following:

- the employer's judgment;
- written job descriptions, if any;
- the amount and proportion of time spent performing a function;
- the consequences of not requiring the employee to perform a function;
- the terms of a collective bargaining agreement;
- work experience of prior employees in the same position;
- work experience of current employees in the same position;
- other relevant evidence.

The essential function inquiry, however, is not intended to second guess the office's business judgment, or to lower performance standards.

### Step 3: Consult with the Employee

After evaluating the position to determine its essential functions, the supervisor should consult with the applicant or employee requesting the accommodation to assess the limitations that the disability imposes on the performance of each essential function. If reasonable accommodation is requested for the application process itself, the staff supervising the process should consult with the applicant to determine how the process may reasonably be made accessible to the individual with a disability.

Using a collaborative, open and flexible approach, the supervisor and employee or prospective employee (where a conditional offer of employment has been extended) should consider how any job-related limitations can be overcome, discuss possible reasonable accommodations and assess the effectiveness of each. The employer must consider an applicant's or employee's preferences, along with what is reasonable under the circumstances of the work environment, in selecting accommodations. The IBO is not required to provide an accommodation that imposes undue hardship. The same type of open and collaborative approach also should be undertaken in identifying reasonable accommodations for the application process.

### *Examples of Reasonable Accommodations*

Reasonable accommodations may include, but are not limited to, those listed below.

- making facilities physically accessible to and usable by people with disabilities (e.g., providing ramps, restroom grab bars, signage);



- job restructuring (e.g., reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks);
- modifying work schedules;
- providing or modifying equipment, devices or materials (e.g., raising a desk on boards for an employee who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTY's], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print);
- providing qualified readers, interpreters, or other support services during application, interview, testing processes, and during training and other employment and employment-related activities, including employment-related social functions (e.g., office parties, picnics).

Where more than one possible reasonable accommodation exists, the IBO should give primary consideration to the employee's preference in determining what accommodation it will provide. However, the IBO has the discretion to choose among various appropriate reasonable accommodations that would enable the individual to perform the essential functions of the job.

Requests for accommodation that shift tasks among clerical employees may impose an undue hardship in a very small office with few employees.

Reasonable accommodation may also include permitting an employee with a disability to use aids or services that the employer is not otherwise required to provide. For example although an employer would not be required to provide a motorized scooter to an employee with a mobility impairment, reasonable accommodation would include providing an area to stow such a mobility aid, if necessary.

IBO is not required to provide personal items to employees that are needed both on and off the job. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet job-related rather than personal needs. For example, eyeglasses designed to enable an employee to view a computer monitor, but which are not otherwise needed by the employee outside the office, may constitute a reasonable accommodation.

As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the employee identifies job-related limitations and any requested accommodation with specificity. For example, an employee who is deaf and who routinely uses a text telephone (TTY) can readily identify for the agency that job-related limitation concerning use of the telephone, as well as the accommodation needed, a TTY. Where it is obvious that providing the TTY will enable the employee to meet the job's essential functions, the TTY can be ordered, provided and documented without the more comprehensive analysis provided for in Steps 2 and 3. In these cases, the reasonable accommodation process is merely compressed; it is not eliminated.



### ***What if Neither the IBO nor the Applicant or Employee Can Identify an Appropriate Reasonable Accommodation?***

Sometimes, neither the supervisor nor the applicant or employee can identify possible reasonable accommodations. In those instances, the supervisor should consult with an EEO Officer. The EEO Officer will seek to facilitate effective communication between the parties with the goal of identifying and implementing appropriate reasonable accommodation and, where a reasonable accommodation has been selected, shall monitor its implementation. Throughout the Step 3 consultation process, the employee, the supervisor or the EEO Officer may seek technical assistance or clarification of each component of the reasonable accommodation process from MOPD.

#### **Step 4: Select and Implement an Appropriate Reasonable Accommodation**

Within 10 business days of an employee's submitting a request for reasonable accommodation, the supervisor to whom it was submitted shall either grant or deny the request in writing in the space designated for that purpose on the Request for Reasonable Accommodation form and, where an accommodation will be provided, shall have provided or begun to implement the accommodation. Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the employee. In all instances, however, supervisors shall act as expeditiously as possible to provide reasonable accommodations. Employees may request the assistance of an EEO Officer in expediting the process. Where further supporting documentation is sought from the employee, the grant or denial of a request for reasonable accommodation shall be rendered within 10 business days of the provision of the documentation requested, or within 10 business days of the applicant's or employee's objection to providing such documentation.

Where a supervisor decides to deny a request for accommodation or to provide an accommodation other than that for which the applicant or employee has expressed a preference, the supervisor shall first consult with an EEO Officer. After such consultation, the supervisor shall inform the applicant or employee in writing on the Request for Reasonable Accommodation form of the accommodation, if any, that will be provided, or that the request has been denied. The need for a consultation between a supervisor and an EEO Officer shall not delay a determination on a request for reasonable accommodation beyond 10 business days of receipt of the request.

#### **5. Appeals to the Agency Head**

An applicant or employee may appeal to the IBO Director any supervisory action or failure to act pursuant to this procedure by which the applicant or employee believes he or she is aggrieved. Within 10 business days of receipt of the appeal, the IBO Director or his or her designee shall:

1. Obtain from the EEO Officer and review all documentation relating to the request for reasonable accommodation;
2. Meet with the supervisor and the applicant or employee;

3. Consult with the EEO Officer;
4. Review the essential job functions, job-related limitations involving the applicant's or employee's disability, and potential accommodations;
5. Evaluate the applicant or employee and supervisor preferences in accommodations, giving primary consideration to the employee's preferences

The Mayor's Office for People with Disabilities may also be consulted.

Within 15 business days of receipt of the appeal, the IBO Director shall issue a written determination on the request for reasonable accommodation, specifying what accommodation shall be provided, if any, and directing the supervisor to implement such accommodation promptly. The EEO Officer shall monitor implementation of the reasonable accommodation.

### **6. Discrimination Complaints**

This reasonable accommodation procedure is intended to ensure equal employment opportunities for employees with disabilities, but shall not impede the right of any employee to file a complaint with IBO's EEO Officer, an appropriate federal oversight agency under the Americans with Disabilities Act or the Rehabilitation Act of 1973, the State Division of Human Rights, the New York City Commission on Human Rights, or any other federal, state or local agency having jurisdiction over such matters, or in any court of competent jurisdiction.

### **7. For Further Guidance**

Throughout the reasonable accommodation process, employees or agency officials may seek guidance by consulting with the IBO's EEO Officer, or by calling the Mayor's Office for People with Disabilities at (212) 788-2830 (voice) or (212) 788-2838 (TTY).

### ***C. Training***

IBO recognizes that in order to achieve the goals of the EEO policy, IBO must provide periodic training to its employees which will include at a minimum a discussion of the policy, employee rights and responsibilities and the complaint and investigation procedures. Staff wide training will be conducted every two years. All existing and new staff members who have not yet received training will receive such training.

## **AFFIRMATIVE EMPLOYMENT POLICY**

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### ***Preface***

The IBO is committed to ensuring equal opportunities in employment without regard to race, color, sex, religion, national origin, ancestry, marital status, sexual orientation, pregnancy, age or disability or other protected status. This policy applies to all aspects of the employment relationship including recruitment, hiring, transfers, training, promotion, compensation (including merit increases), and termination. This policy is consistent with the New York City Charter

requirement that all agencies establish an affirmative action plan to provide equal opportunity in recruitment and promotion (Sections 814, 1150).

### *General Principles and Affirmative Action Goals*

The Affirmative Action Policy of the IBO affirms those guidelines set forth in the existing Equal Employment Opportunity policy, with the goal of ensuring equal opportunity for all applicants and employees in a manner designed to promote gender, racial and ethnic diversity throughout the agency. This goal should be accomplished by actively recruiting applicants from among underrepresented groups and by applying equal employment opportunity principles to promotion and professional growth opportunities. Affirmative action is an important component of our overall personnel policy, which is to choose among candidates for hiring or promotion the person who demonstrates the maximum potential for meeting the job's requirements. This policy will be implemented in compliance with applicable law and union contracts.

## **Appendix – 3**

Independent Budget Office

*Equal Employment Opportunity Policy, Standards and Procedures To  
be Utilized by City Agencies (NYC EEO Policy)*

2014





# EQUAL EMPLOYMENT OPPORTUNITY POLICY

STANDARDS AND PROCEDURES  
TO BE UTILIZED BY CITY AGENCIES

CITY OF NEW YORK

2014

# EQUAL EMPLOYMENT OPPORTUNITY POLICY

STANDARDS AND PROCEDURES  
TO BE UTILIZED BY CITY AGENCIES

**CITY OF NEW YORK**

**BILL DE BLASIO**  
Mayor

**LISETTE CAMILO**  
Commissioner  
Department of Citywide Administrative Services

2014



**NEW YORK CITY  
EQUAL EMPLOYMENT OPPORTUNITY POLICY**

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# NEW YORK CITY EQUAL EMPLOYMENT OPPORTUNITY POLICY (2014)

## Introduction

The New York City Charter provides that each agency head must ensure that his or her agency does not discriminate against employees or applicants for employment in any manner prohibited by federal, state, and local law.<sup>1</sup> In addition, the Charter requires agency heads to establish measures, programs, and annual EEO Plans that communicate each agency's efforts to provide equal employment opportunity ("EEO") to City employees and applicants for employment within City government.<sup>2</sup> The Department of Citywide Administrative Services ("DCAS") is required to establish uniform procedures and standards to assist City agencies in establishing annual EEO Plans, and other measures and programs to ensure equal employment opportunity.<sup>3</sup> DCAS developed this Policy,<sup>4</sup> and the standards and procedures contained herein, to implement DCAS' and the City's obligations under the City Charter; federal, state, and local laws; and the City's diversity and inclusion strategy.

The *Equal Employment Opportunity Policy (2014)*, hereafter known as "Policy," supersedes the previous *Equal Employment Opportunity Policy (2005)* of the City of New York. Detailed uniform complaint and reasonable accommodation procedures are published separately. This Policy, any addenda to this Policy, and the EEO Policy Handbook are to be distributed to each agency head, EEO Officer,<sup>5</sup> General Counsel, Agency Personnel Officer (APO), manager, and supervisor.

In addition to the Policy, DCAS updated the EEO Policy Handbook, "*About EEO: What You May Not Know*."<sup>6</sup> The EEO Policy Handbook was created to provide City government employees with a user-friendly summary of the relevant laws and the Policy.

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<sup>1</sup> See Charter Section 815(h).

<sup>2</sup> See Charter Section 815(a)(19).

<sup>3</sup> See Charter Section 814(a)(12).

<sup>4</sup> This Policy was drafted in consultation with the Equal Employment Practices Commission, the New York City Law Department and EEO Officers from various City agencies.

<sup>5</sup> Each agency head appoints an EEO Officer to assist with the implementation of the Policy, standards, and procedures. The agency EEO Officer and other personnel, including EEO counselors, investigators, liaisons, etc., are referred to in this Policy as 'EEO office or EEO representatives.'

<sup>6</sup> The Policy may be downloaded at <http://www.nyc.gov/html/dcas/html/about/ecopol>. The EEO Policy Handbook, "*About EEO: What You May Not Know*," may be downloaded at [http://www.nyc.gov/html/dcas/html/about/eo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eo_booklet.shtml).

## **I. Equal Employment Opportunity Policy**

The City of New York is an equal opportunity employer and prohibits discriminatory employment actions against, and treatment of, City employees and applicants for employment based on actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including “gender identity” -- which refers to a person’s actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth), disability, age (18 and over), military status, prior record of arrest or conviction,<sup>7</sup> marital status, partnership status,<sup>8</sup> genetic information or predisposing genetic characteristic,<sup>9</sup> sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking,<sup>10</sup> and unemployment status.<sup>11</sup>

### **A. Types of Prohibited Conduct**<sup>12</sup>

Decisions and practices based on an individual’s protected status (e.g., race, religion, age, and the other categories listed above) that unlawfully affect employment or the compensation, terms, conditions, or privileges of an individual’s employment or potential employment with the City of New York are prohibited by this Policy. This includes unlawful decisions, actions, and practices that occur in the course of recruitment, testing, hiring, work assignments, salary and benefits, working conditions, performance evaluations, promotions, training opportunities, career development and advancement, transfers, discipline, discharge, or any other application or selection process relating to employment.

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<sup>7</sup> Some employment actions motivated by the reasons listed are permitted by law, such as where an employer may deny employment on the basis of an applicant’s prior record of conviction, if there is a direct relationship between one or more of the applicant’s criminal offenses and the specific employment sought, or where employing the applicant poses an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. (*See* Correction Law, Art. 23-A, Section 752.)

<sup>8</sup> “Partnership status” was added as a protected class under New York City’s Human Rights Law on October 3, 2005.

<sup>9</sup> The term “predisposing genetic characteristic” was adopted on August 30, 2005 to streamline the terms “genetic predisposition” and “carrier status” in the previous version of the New York State Human Rights Law.

<sup>10</sup> “Status as victim of sex offenses or stalking” was added as a protected class under the City Human Rights Law on December 22, 2003.

<sup>11</sup> “Unemployment status” was added as a protected class under New York City’s Human Rights Law on June 11, 2013.

<sup>12</sup> See also, EEO Policy Handbook: *“About EEO: What you May Not Know,”* for more examples of prohibited conduct.

The Policy also prohibits sexual harassment (i.e., conduct or language of a sexual nature) and harassment based on gender or any other protected characteristic (such as race, religion, disability, or sexual orientation). Forms of harassment may include, but are not limited to, the use of vulgar language, abusive acts or language, hostility, physical aggression, intimidation, or unequal treatment.

The Policy prohibits conduct which unreasonably interferes with an employee's job performance or creates an intimidating, hostile, or offensive working environment, or creates an abusive working environment based on any protected characteristic.

Harassment and/or retaliation against a person who opposes or complains about prohibited conduct or participates in any way in the complaint, investigation, or reasonable accommodation processes are strictly prohibited.

The Policy also prohibits the denial of reasonable accommodations for disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking that do not create an undue hardship.

Some offensive acts or remarks may violate this Policy even if they are not so severe that they violate federal, state, or local discrimination laws. The City and its agencies may discipline conduct that violates this Policy even if the conduct does not violate a law prohibiting discrimination.

The Policy also prohibits any City employee from aiding, abetting, inciting, compelling, or coercing any person present in a City facility, whether or not that person is an employee of the City, from engaging in any conduct prohibited by this Policy, including, but not limited to, conduct that creates a hostile work environment based on any protected characteristic.

## B. Applicability

Everyone who works within New York City government or its workplaces, or who seeks employment within City government, is covered by federal, state, and local employment laws, and this Policy. This includes all current employees, managers (including executives and senior level staff members), supervisors, co-workers, paid and unpaid interns,<sup>13</sup> and job applicants.

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<sup>13</sup> The prohibition of discrimination against interns was added in the New York City's Human Rights Law on April 15, 2014.

This Policy not only protects individuals from prohibited conduct because of their own protected status (such as their own actual or perceived race, religion, national origin, or disability), but also protects individuals from conduct motivated by the actual or perceived race, religion, national origin, or disability, etc., of other persons with whom they are associated. For example, this Policy applies to individuals who are subjected to adverse actions because of their marriage to, or domestic partnership or association with, persons of a particular racial, religious, or national origin group, or persons who have a disability. Moreover, discrimination based on an individual's name(s) or spouse's or domestic partner's name(s) that is associated with a particular racial, religious, or national origin group is prohibited.

These protections apply to actions, whether or not intentionally offensive or directed at a particular person or group, which violate this Policy.

This Policy extends to conduct which occurs at any location that could be reasonably regarded as an extension of the workplace, such as any field location, off-site business-related social function, City vehicle, or facility where City government business is being conducted and discussed.

In addition, Work Experience Program ("WEP") participants have a right to a workplace that is free of discrimination, including harassment based on race, color, national origin, religion, gender, disability, or age, and any basis that could otherwise be determined to be prohibited behavior pursuant to the Policy as applied to employees or applicants for employment.

All City employees, interns, and WEP participants are expected to be respectful of everyone in the City's workplaces and members of the public, and to be sensitive to the effects of their behavior on those around them. All employees, interns, and WEP participants must be trained in the requirements of this Policy and must receive a copy of the EEO Policy Handbook, *"About EEO: What You May Not Know."*

## **II. Specific Protections**

The following sections are provided to enable individuals to understand the unique definitions, issues, rights, and responsibilities under this Policy pertaining to sexual harassment and discrimination based on disability, religion, retaliation, and status as a victim of domestic violence, sex offenses, or stalking.



## A. Sexual Harassment

Sexual harassment is a form of employment discrimination which is prohibited by law. The federal government created guidelines which define sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when: 1) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.”<sup>14</sup>

Sexual harassment may involve individuals of the same or different gender(s). A broad range of behavior may be considered sexual harassment, including sexually suggestive remarks, pictures or gestures, verbal abuse or harassment of a sexual nature, subtle or direct propositions for sexual favors, and any unnecessary touching, patting, or pinching.

## B. Disabilities

Discrimination against a person based on that person's actual or perceived disability, record of disability, or relationship with a person with a disability will not be tolerated by the City of New York. For the purpose of this Policy, a disability is: 1) a physical, medical, mental, or psychological impairment; 2) a history or record of such impairment; or 3) being regarded as having such impairment.

The City of New York and its agencies will take appropriate action to provide reasonable accommodations to qualified employees and job applicants with disabilities, unless providing such accommodations creates an undue hardship. Reasonable accommodations include the provision of equipment, changes in workplace policies and practices, and other forms of assistance that allow people with disabilities to apply for a position, perform their jobs, or enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Whether an accommodation is reasonable will depend upon the circumstances of the particular request. Some examples of accommodations that may be reasonable include: making facilities physically accessible to, and usable by, persons with disabilities; job restructuring; modifying work schedules; providing or modifying equipment or devices; providing qualified readers, interpreters, auxiliary aids, and/or other support services; and providing leave and/or arranging for transfer or reassignment to a vacant position, if such transfer or reassignment does not violate

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<sup>14</sup> Code of Federal Regulations, Title 29, Section 1604.11.

the Civil Service Law, Personnel Rules and Regulations, other applicable laws, or regulations and/or collective bargaining agreements.

Undue hardship may exist when an accommodation is significantly difficult, unduly costly, extensive, substantial, disruptive, or would change the nature or operation of an agency's business.

The City of New York encourages employment of and promotional opportunities for qualified persons with disabilities. For example, pursuant to Section 55-a of the New York State Civil Service Law, where agency needs and availability permit, the City encourages agencies to utilize the 55-a Program, which will allow City agencies to employ qualified persons who have been certified as disabled in competitive positions on a non-competitive basis. Individuals who wish to apply for the 55-a Program are encouraged to seek assistance from the Agency Personnel Officer or 55-a Coordinator.

#### C. Religion

The Policy prohibits adverse employment actions based on a person's religion. This includes discriminatory practices and decisions, harassment, hostility, or other adverse actions because of a person's actual or perceived creed, religious affiliation, religious beliefs, observances, or practices.

In addition, depending on the circumstances, agencies must try to reasonably accommodate the religious observances, beliefs, or practices of an employee or job applicant, unless the accommodation creates an undue hardship. A reasonable accommodation for religion may be a change in a workplace rule or practice that allows an individual to respect his or her religious observances, beliefs, or practices. City agencies may be required to provide accommodations for religion such as flexible arrival and departure times, and/or leave; voluntary exchanges of shifts or assignments; time and/or place to pray; accommodations relating to appearance and dress; and modifying workplace practices, policies, and/or procedures.

City agencies are not required to provide accommodations that are too costly or difficult to provide, that would be disruptive, or would interfere with job performance.

#### D. Retaliation

It is a violation of the Policy to retaliate against or harass any person who asserts his or her rights regarding employment discrimination by: 1) opposing discriminatory practices in the workplace; 2) complaining about prohibited conduct;

or 3) participating in any way in the complaint, investigation, or reasonable accommodation processes. It is also a violation of this Policy to retaliate against or harass someone because of his or her association with such an individual.

Behaviors which may be considered retaliatory include, but are not limited to: threats, reprimands, negative evaluations, harassment, refusal to hire, denial of promotion or job benefits, demotion, suspension, discharge, negative references to prospective employers, or other actions affecting the terms, conditions, or privileges of employment.

Examples of behavior that are protected against retaliation under this Policy include, but are not limited to: expressing an intent to file a charge or complaint alleging prohibited conduct; participating as a witness in an EEO investigation, administrative proceeding, hearing, or trial; and/or seeking a reasonable accommodation.

#### E. Domestic Violence, Sex Offenses, or Stalking

The New York City Human Rights Law prohibits employment discrimination against persons who are victims of domestic violence, or victims of sex offenses or stalking, as defined by that law and the New York State Penal Law. Agencies shall provide reasonable accommodations that do not create undue hardship and that enable such persons to satisfy the essential requisites of a job, provided that the status as a victim of domestic violence or victim of sex offenses or stalking is known, or should have been known, by the agency.

### **III. Procedures**

#### A. Reporting Violations

Anyone who believes that he or she has been subjected to any action, decision, or harassment in violation of this Policy, or who witnesses others being subjected to improper conduct, is urged to promptly report the incident(s) to his or her supervisor or manager; to agency personnel supervising the application, testing, and interviewing process; or directly to the EEO office at the agency where the violation actually occurred, or which is the employer of the individual who purportedly committed the complained of act(s). Supervisors, managers, or human resources personnel who receive EEO complaints, or otherwise become aware of any improper discrimination, must notify the agency EEO Officer. Supervisors and managers should also encourage individuals who believe that the Policy has been violated to consult with the EEO office.

An individual who believes that this Policy has been violated may report the incident orally or in writing. Where the report is taken orally, the manager, supervisor, or EEO representative shall document the report. The EEO office will assist any individual in determining whether the conduct or decision reported is appropriate for the complaint process. Where an individual chooses to file an internal complaint with the agency EEO office, that complaint must be filed within one year of the event which is the subject of the complaint.

Persons who wish to discuss a possible violation of this Policy without revealing their identity may do so by telephoning or writing the EEO office. In such cases, the EEO office will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity.

If any employee knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

#### B. Contact with the EEO Office

An employee has a right to meet privately with an EEO representative. Such a meeting may take place either during or outside of office hours. If an employee makes a request to meet with an EEO representative during office hours, the employee should obtain approval from a manager or supervisor in order to leave his or her work assignment. An employee need not disclose the purpose for or details of the meeting with an EEO representative. Reasonable leave requests to meet with an EEO representative during work hours cannot be denied by managers or supervisors. Managers and supervisors shall allow employees to meet with EEO representatives at the earliest practicable time consistent with the operational needs of their units. Where an agency has more than one EEO representative, an employee is not required to meet with an EEO representative who works in the employee's division.

At the employee's request, arrangements may also be made to hold the meeting before or after office hours, or during the employee's lunch period. Should such a meeting take place entirely on the employee's own time, he or she need not advise a manager or supervisor of the meeting, or obtain the consent or approval of a manager or supervisor. The EEO representative will arrange to meet with an employee at outside premises where appropriate and/or necessary in order to ensure confidentiality. If necessary, EEO representatives will make arrangements for sign language interpreters and other forms of effective communication with persons with disabilities.

The EEO representative will discuss and research appropriate options, including actions an individual could take on his or her own behalf, referrals to other offices and/or agencies, mediation, investigation, and/or interim relief. The EEO representative may also facilitate any further discussions with other agency personnel.

In appropriate cases, an EEO investigation may be conducted in conjunction with or by an agency's General Counsel's office, Inspector General, or disciplinary officer. In addition, there may be exceptional circumstances under which an investigation may be conducted by another individual or entity, as deemed appropriate by the Law Department or DCAS.

Any person who is interviewed during the course of an EEO investigation has a right to be accompanied by a representative of his or her choice. This includes individuals who make complaints, persons against whom complaints were made, or witnesses. It is preferable that the EEO office receive advance notice that the person who is being interviewed will be bringing a representative.

Any person who is the subject of the complaint will have an opportunity to respond in writing.

All employees are expected to cooperate with EEO investigations. Failure to cooperate in an investigation may result in disciplinary action.

#### C. Withdrawing Complaints

A complaint of discrimination may be withdrawn at any time by the person who filed the complaint. Withdrawal of a complaint must be made or confirmed in writing. In some instances, the agency EEO Officer will find it appropriate to end the investigation when the complaint is withdrawn. Prior to ending the investigation, the EEO Officer must determine whether the agency should take corrective action to address inappropriate conduct. If the EEO Officer determines that corrective action is required, it may be necessary for the EEO Officer to continue the investigation or recommend action to remedy inappropriate behavior.

#### D. Mediation

Mediation is a voluntary, informal, and confidential process that provides an opportunity for everyone involved in a complaint to come to a mutual agreement about how the complaint should be resolved. It is an alternative that may quickly resolve complaints without a full investigation.

All requests for mediation should be made to the EEO Officer. Mediation may be requested by any party involved and may be declined by any party.

The EEO Officer will determine whether the complaint is appropriate for mediation. The EEO Officer may choose to conduct the mediation internally within the agency, or externally through entities that provide mediation services.

Mediation may be terminated by any party to the mediation. If this occurs, the EEO Officer will inform the other party or parties in writing that the mediation has been terminated. In the event that mediation does not result in a resolution, the EEO Officer will provide the parties with a written statement informing the parties of the complainant's right to an investigation of the allegation. Where efforts to mediate complaints are unsuccessful, complaints will be investigated by the EEO office.

#### E. Concluding the Complaint Investigation

The EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation. If the EEO Officer concludes that a violation of this Policy has occurred, the EEO Officer will recommend appropriate corrective action. The agency head will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically. The EEO Officer will advise all parties in writing of the outcome of a complaint.

Any person found to have engaged in conduct or practices in violation of this Policy may be subject to discipline which may include a reprimand, suspension, probation, demotion, transfer, termination, or any other measures permitted by law and/or collective bargaining agreements. In addition to implementing such disciplinary action, agencies may take such steps as may be necessary to address the impact that any violation of this Policy has had on the complainant or within the agency.

#### F. Other Places Where Complaints May Be Filed

The following federal, state, and local agencies enforce laws against discrimination:

- New York City Commission on Human Rights:  
<http://www.nyc.gov/html/cchr/html/home/home.shtml>
- New York State Division of Human Rights: <http://www.dhr.ny.gov/>



- United States Equal Employment Opportunity Commission (the “EEOC”): <http://www.eeoc.gov>
- United States Department of Justice: <http://www.justice.gov/>

Information about how to contact these agencies can be found in the EEO Policy Handbook, “*About EEO: What You May Not Know*,” at [http://www.nyc.gov/html/dcas/html/about/eeo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eeo_booklet.shtml), the DCAS website at <http://www.nyc.gov/html/dcas/html/about/eeo.shtml>, or the Office of Citywide Diversity and EEO at 1 Centre Street, 17<sup>th</sup> Floor North, New York, NY 10007, (212) 386-0257. Please note that there are statutory deadlines for filing complaints with each of these agencies.<sup>15</sup>

When a person exercises his or her right to file a complaint with a federal, state, or local administrative agency (known as an “external complaint”) based on or related to the same facts and circumstances of an internal complaint, the agency EEO Officer will transfer the matter to the agency General Counsel, who will be responsible for any further handling of the matter. The EEO Officer will notify the complainant and the parties who are the subject of the complaint, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint. The agency General Counsel will be responsible for handling external complaints regardless of the timing of such complaints (whether filed before the internal complaint is filed, at the same time that the internal claim was filed, or after the internal complaint was filed). After transfer of the complaint to the agency General Counsel, the EEO Officer will cooperate with the General Counsel with respect to the ultimate resolution of the complaint.

#### G. Requests for Reasonable Accommodations

City agencies may be required to provide reasonable accommodations when requests are made in connection with disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking. The reasonable accommodation process should be flexible and interactive, involving agency representatives who are necessary to the reasonable accommodation process and the individual who is requesting a reasonable accommodation. In all instances, the agency EEO office should be notified of the request in order to facilitate discussions, research appropriate accommodations, and assist in the resolution of the matter.

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<sup>15</sup> The deadline in some instances is as short as 180 days. Therefore, to preserve their rights, individuals who believe that they have been discriminated against and wish to file a complaint with an external agency should promptly contact the City Commission on Human Rights, the State Division of Human Rights, the EEOC, the Department of Justice, or a private attorney for further guidance.

EEO representatives, agency personnel supervising any phase of the application process, and/or managers and supervisors involved in the process shall notify individuals who request reasonable accommodations whether the request has been granted. Where the specific accommodation requested is impracticable, agency representatives will seek to implement an appropriate alternative reasonable accommodation. The following procedures detail the specific aspects of each type of request.

1) Disabilities: An employee or job applicant with a disability who requests reasonable accommodations to enable him or her to satisfy the essential functions of the job or enjoy the rights in question may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO Officer or Disabilities Rights Coordinator.<sup>16</sup> A request for a reasonable accommodation may be made orally or in writing. Where the request is made orally, it shall be documented by that person who receives the request.

EEO Officers and/or Disabilities Rights Coordinators, agency personnel supervising the application process, and managers and supervisors involved in the process shall provide reasonable assistance (such as help in completing forms) to an individual requesting an accommodation. Additionally, if a reasonable accommodation is requested to facilitate an individual's ability to apply for employment, the agency staff supervising the application procedures may be required to assist the applicant in completing the application process.

By law, all documentation and information concerning the medical condition or history of an individual requesting a reasonable accommodation for a disability must be collected and maintained on separate forms, and in separate medical files, apart from other personnel data. Such information must be treated as confidential medical records, except that managers and supervisors may be informed of necessary restrictions on work and accommodations required. Furthermore, medical information may be provided: 1) to first-aid and safety personnel, if the disability might require emergency treatment; 2) to government officials investigating the agency's compliance with applicable laws; 3) to workers' compensation offices in accordance with Workers' Compensation Law; and 4) for insurance purposes.

2) Religious Accommodations: An employee or applicant requesting reasonable accommodations for religion may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO Officer. Requests for religious accommodation should be documented by the individual receiving the request.

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<sup>16</sup> A Disability Rights Coordinator is responsible for ensuring compliance with federal, state, and local laws and the Policy regarding people with disabilities.

3) Victim of Domestic Violence, Sex Offenses, or Stalking: An employee or applicant requesting reasonable accommodations for domestic violence, sex offenses or stalking may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO Officer.

Agencies may require a person requesting a reasonable accommodation to provide certification that the person is a victim of domestic violence, sex offenses, or stalking. The person requesting the reasonable accommodation shall provide a copy of such certification to the agency within a reasonable period after the request is made. A person may satisfy the certification requirement by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the individual seeking a reasonable accommodation, or that individual's family or household member, has sought assistance in addressing domestic violence, sex offenses, or stalking and the effects of the violence or stalking; a police or court record; or other information consistent with the disclosure and the request for accommodation.

4) Pregnancy:<sup>17</sup> An employee or job applicant requesting reasonable accommodations due to pregnancy and those who suffer medical conditions related to pregnancy, childbirth, or a related medical condition may make such requests to her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO Officer or Disability Rights Coordinator. Such a reasonable accommodation may include bathroom breaks; leave for a period of disability arising from pregnancy, childbirth, or related medical conditions; breaks to facilitate increased water intake; periodic rest for those who stand for long periods of time; and assistance with manual labor, among other things.

All information, including a statement of the person requesting a reasonable accommodation or any other documentation, record, and the fact that the individual has requested or obtained a reasonable accommodation, shall be retained in the strictest confidence by City agencies, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation, or is otherwise required by applicable federal, state, or local law.

Where an employee or job applicant has requested a reasonable accommodation consistent with these procedures and the agency representative has not provided the reasonable accommodation, an appeal may be made to the agency head. Within 10 business days of receipt of an appeal, the agency head, or his or her designee, shall:

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<sup>17</sup> The City's Human Rights Law was amended to include reasonable accommodations related to pregnancy, childbirth or related medical conditions effective January 30, 2014.

1. obtain the request for reasonable accommodation made by the employee or applicant and review all related documentation, standards, procedures, and potential accommodations;
2. meet and/or consult with the employee or applicant, the EEO Officer, and any agency representative that the agency head deems necessary to the reasonable accommodation request;
3. evaluate the reasonableness of employee's or applicant's and agency representative's preferences regarding the accommodation request, giving primary consideration to the employee's or applicant's preferences; and
4. consult with the DCAS Office of Citywide Diversity and EEO or the Law Department.

Within 15 business days of receipt of the appeal, the agency head or his\her designee, shall issue a written determination on the request for reasonable accommodation, specifying what accommodation shall be provided, if any, and, where necessary, directing the appropriate agency representative to implement such accommodation promptly. The EEO Officer or Disability Rights Coordinator shall monitor implementation of the reasonable accommodation.

#### G. Confidentiality

All complaints, investigations, requests for accommodations, and records will be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. EEO matters may be discussed with other persons who may have information about a complaint or who are necessary to implement reasonable accommodations for disability, religion, status as victims of domestic violence, sex offenses or stalking, and pregnancy, childbirth, or a related medical condition. Therefore, it may be necessary to disclose information to persons with a legitimate need to know about the matter.

#### H. Documentation

All inquiries, complaints, requests, mediation efforts, investigations, requests for accommodation, and their outcomes will be documented by the EEO office.

## J. Additional Sources of Procedural Information

The Guidelines for the Implementation of the City's Discrimination Complaint Procedures may be found online:

[http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo\\_discriminationcomplaint\\_procedures.pdf](http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo_discriminationcomplaint_procedures.pdf)

The City's Reasonable Accommodation Policy and Procedure may be found online:

[http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo\\_reasonableaccommodation.pdf](http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo_reasonableaccommodation.pdf)

## IV. Agency-Specific Diversity and EEO Plans

Agency heads are required by the New York City Charter to annually prepare, adopt, and implement a plan to provide equal employment opportunity. The plan must be prepared based on uniform procedures and standards provided by DCAS. DCAS will work with agency heads to help them develop realistic and achievable objectives.

Each agency head or, at his or her direction, the agency EEO Officer and/or APO, should review agency statistical information (including total employment and new hires and promotions, by race/ethnicity, and gender), EEO complaints made during the previous fiscal year and the agency's employment practices, policies, and programs. The agency head should then work with the EEO Officer, General Counsel and APO to identify: 1) whether there are any barriers to equal opportunity within the agency; 2) the agency's obligations as a result of government grants and/or contracts; and 3) what, if any, corrective actions are required under court decrees and/or governmental audits. Agencies may wish to seek the advice of the Law Department or consult with the DCAS Office of Citywide Diversity and EEO regarding the development of agency Diversity and EEO Plans.

The Diversity and EEO Plan should communicate the agency's intention to promote equal employment opportunity and diversity and inclusion by continuing effective measures or implementing new strategies and programs (i.e., preventive, corrective and risk management strategies in areas such as recruitment, training, selection, promotion, and policy dissemination standards) that prevent, diminish, or eliminate barriers to equal opportunity employment. DCAS will provide agencies with formats and recommendations for Diversity and EEO Plan development that are consistent with employment practices recommended by human resources management organizations and enforcement entities.

Although each agency's Diversity and EEO Plan will be tailored to the specific issues of that agency, there are some general measures that all agencies are required to implement. Each agency's Diversity and EEO Plan must, at a minimum, include the following:

- A commitment to ensure fair employment practices, and promote a workplace that values its employees in support of the City's diversity and inclusion strategy. The commitment will hold EEO Officers and representatives, human resources professionals, managers and supervisors accountable for ensuring that the agency does not discriminate against employees or applicants for employment and support the diversity and inclusion initiatives at the agency. This commitment should be reflected in the agency strategic plan, mission, vision, and performance metrics. It should also include the agency's strategy to ensure equal employment opportunity and to implement the best diversity and inclusion practices at the agency. The commitment should also be communicated to all employees through a Commitment Statement to affirm the principles of equal employment opportunity and diversity and inclusion.
- A commitment to assess recruitment efforts to determine whether such efforts adversely impact any particular group and what recruitment sources yield a diverse pool of qualified candidates. It should also include the agency's strategy to implement the best diversity and inclusion recruitment practices to ensure equal employment opportunity. Minimally, agencies should identify relevant professional and community organizations serving women and minorities throughout the City, review and update listings of recruitment outreach sources, and contact such organizations when positions not filled through civil service lists become available or where agencies may otherwise use discretion in hiring.
- A commitment to assess agency job postings to ensure appropriate diversity, inclusion, and equal opportunity employer messaging.
- A commitment to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, the agency head will determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency will discontinue using that method. Methods which diminish adverse impact will be preferred over those with greater impact, provided that the agency's job-related aims are not compromised by using the method with a diminished impact. Examples of selection methods which may diminish adverse impact include race/ethnicity-neutral and gender-neutral questions in interview materials and assembling interview panels that reflect gender, race and ethnic diversity. The agency will also ensure that, to the extent practicable, agency

personnel involved in both the discretionary and the civil service hiring pool process receive structured interviewing training and use structured interviewing in the selection process.

- A commitment to assess criteria for selecting persons for mid-level to high-level discretionary positions.
- A commitment to make career counseling about civil service jobs available for employees. Employees should be reminded of the identity of the agency's Career Counselor and the type of guidance which is available from the Career Counselor, at least once each fiscal year. Each agency should promptly notify agency employees and DCAS of any change in the identity of the agency Career Counselor.
- A commitment to ensure that all new employees are advised of this Policy, their rights and responsibilities under it, the discrimination complaint and investigation procedures, and the reasonable accommodation procedures.
- A commitment to establish a diversity, inclusion, and EEO training plan to ensure that all individuals who work within the agency, including managers and supervisors, are trained concerning diversity, inclusion, and EEO-related rights and responsibilities in a manner consistent with the minimum standards for diversity, inclusion and EEO training established by DCAS.
- A commitment to review on a regular basis and retain information about personnel actions, discretionary hiring, applicants, promotions, demotions, transfers, rates of pay, terms of compensation, and selection for training or apprenticeship as required by federal, state, and local law, and/or the City's official records retention schedule.
- A plan to meet obligations or remedies required or recommended as a result of government grants or contracts, court orders, consent decrees, or any audit/review conducted by a governmental agency.

Other measures which may be used to ensure fair employment practices include, for example:

- Advertising job vacancy notices in periodicals and websites with a diverse and inclusive readership.
- Sending job vacancy notices to professional and community organizations serving diverse and inclusive populations.



- Participating in career and job fairs.
- Whenever possible, promoting public service as a career choice at schools, colleges and universities.
- Using internships, work/study, co-op, and scholarship programs to attract interested persons and to develop and hire interested and qualified candidates.
- Sponsoring open houses (i.e., networking events, facilities tours).
- Working with appropriate DCAS personnel to 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.
- Reviewing application forms and agency materials and products in order to ensure that they do not contain discriminatory language or images.
- Ensuring that human resources personnel, managers, supervisors, and other personnel involved in the recruitment and hiring process are trained in interviewing, selection, hiring skills, and EEO, to enable such individuals to correctly identify the most capable candidates.
- Implementing and encouraging inclusive skills and behavior standards for managers to ensure that they are able to maximize their professionalism, performance and communication skills.
- Conducting or encouraging the use of training and development programs to improve skills, performance, and career opportunities of all employees.
- Creating talent pools through employee surveys and databases, to promote cross-training, mentoring, coaching, stretch assignments, cross divisional assignments, job transfers, and rotation programs for career enhancement and development experiences.
- Planning and administering employee incentives, quality of work life and recognition programs, engagement surveys, performance evaluations, employee resource groups, and diversity councils.
- Promoting employees' awareness of opportunities for promotion and transfer within the agency, publicizing promotions and changes in the managerial ranks, and ensuring that the agency engage in succession planning for top managerial

positions. The agency considers its own employees for such opportunities by having programs that identify ready now and high potential talents.

The City of New York, through DCAS, will also:

- Provide the uniform procedures, formats, and reports required by the New York City Charter to facilitate the planning and review of the City's efforts to provide equal employment opportunity for employees and applicants for City government employment.
- Assess qualifications required for most civil service positions and ensure that civil service examinations are job-related and consistent with business necessity.
- Provide assistance to agencies to ensure that recruitment efforts fit particular human resource needs.
- Encourage agency job postings internally through City Jobs and externally through the City's website: <http://www1.nyc.gov/jobs/>
- Continue to conduct on-site EEO monitoring visits to agencies.
- Continue efforts to better ensure the accuracy of ethnicity and gender data.

## **V. Enforcement and Accountability Standards**

### **A. Department of Citywide Administrative Services**

DCAS is required to: 1) establish and enforce uniform procedures and standards for use by City agencies in establishing measures, programs, and plans to ensure equal employment opportunity, including a time schedule for the development, review and adoption of EEO plans; 2) establish a uniform format for use by City agencies for the presentation of statistical information on the workforce of City agencies; and 3) develop resources regarding information on employment and educational programs.<sup>18</sup> DCAS is also required to publish and submit annual reports on the activities of DCAS and the other City agencies with respect to equal employment opportunity.<sup>19</sup>

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<sup>18</sup> See Charter Sections 814(a)(12)-(15).

<sup>19</sup> See Charter Section 814(b)(8).

Within DCAS, the Office of Citywide Diversity and EEO assists the Commissioner to develop and enforce the Policy, standards, and procedures. The Office of Citywide Diversity and EEO will assist City agencies by developing or collaborating on solutions, strategies and initiatives to effectively implement the provisions of the City Charter and other federal, state, and local laws, and monitoring the EEO-related activities of City agencies. In addition, DCAS maintains the data that is necessary in order to fulfill the City's EEO obligations under the City Charter and other federal, state and local laws.

## B. Agency Heads

Each agency head will ensure that his or her agency does not discriminate against employees or applicants for employment as prohibited by federal, state and local laws.<sup>20</sup> Agency heads are accountable to their respective Deputy Mayors for their agencies' EEO practices. Agency heads will also ensure that legal, human resources, and EEO personnel, managers, and supervisors: 1) receive a copy of this Policy (including any addenda); 2) are trained in EEO laws and procedures; and 3) know how to carry out their responsibilities under this Policy. Agency heads must distribute a copy of the EEO Policy Handbook, "*About EEO: What You May Not Know*" to all employees and ensure that a copy is available on the agency's website.

As discussed in Section IV, each agency head must annually adopt and implement a Diversity and EEO Plan that communicates measures and programs that the agency will undertake to ensure fair and effective efforts to provide equal employment opportunity. Draft Diversity and EEO Plans are to be developed and submitted each fiscal year according to the timetable and format established by DCAS, and must be reviewed and approved by DCAS. Agencies are required to file copies of finalized agency Diversity and EEO Plans with the Mayor, the City Council, the Equal Employment Practices Commission ("EEPC"), and the City Civil Service Commission, and to also make Diversity and EEO Plans available for reasonable public inspection.<sup>21</sup>

Each agency head will then submit quarterly reports to DCAS, as well as to the Mayor, City Council, and EEPC, on the agency's efforts during the previous quarter to implement the agency Diversity and EEO Plan. Such quarterly reports will also include a review and documentation of EEO complaints and requests for reasonable accommodations for said quarter. Quarterly Diversity and EEO reports must, pursuant to the City Charter, be timely submitted to DCAS and the other entities mentioned above, no later than thirty (30) days following the reporting period using the reporting format provided by DCAS.

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<sup>20</sup> See Charter Section 815(h).

<sup>21</sup> See Charter Section 815(a)(19).

In order to meet the City's obligations under the City Charter and other federal, state and local laws, and to achieve the goals of the agency Diversity and EEO Plan, each agency head must appoint a trained EEO Officer whose responsibility it will be to implement the Policy within that agency. Because EEO Officers will need independence of judgment as well as the authority of the agency head in order to carry out their responsibilities, the EEO Officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head. In order to avoid potential conflicts of interest, under no circumstances should the EEO Officer report to the General Counsel. Where the agency's organizational structure necessitates multiple EEO representatives, such individuals should be selected from different office locations and, where possible, from a variety of levels within the organizational structure. The agency head must ensure that the responsibilities of the EEO Officer are competently discharged.

Agency heads should appoint at least two EEO representatives, who may not be of the same gender, to receive discrimination complaints and conduct investigations. Each agency head must designate a Career Counselor with appropriate training and knowledge, who is familiar with civil service jobs, to provide career counseling to employees who request such guidance. The agency head should also designate a Disabilities Rights Coordinator, whose responsibility it will be to ensure compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities. Usually the EEO Officer of each agency should serve as the Disabilities Rights Coordinator; however, when circumstances warrant, an agency head may designate another person to serve as the Disabilities Rights Coordinator.

Agency heads are required to sign off on all agency Diversity and EEO Plans and final determinations concerning EEO complaint resolutions and should conduct a quarterly review of EEO complaints and requests for accommodations. Such sign off may be in written or electronic form. Each agency head will ensure that all employees are provided with information that complies with the standards provided by DCAS regarding employee rights and obligations contained within this Policy, and with information about the complaint, investigation and reasonable accommodation procedures. The agency head will also ensure that the Policy, standards, and procedures are posted at each site where the agency conducts business. Such posting may include postings on electronic bulletin boards and intranet sites. Each agency head will ensure that each of the agency's employees is accountable for his or her compliance with EEO-related policies, and receives training in EEO laws.

Agency heads should ensure that information regarding employee rights and obligations, and the complaint, investigation, and reasonable accommodation procedures are available in appropriate alternative formats to employees and job applicants with disabilities.

### C. EEO Officers

The agency's EEO Officer has primary responsibility for assisting the agency head in implementing the Policy, standards, and procedures. Specifically, the agency's EEO Officer must be knowledgeable regarding EEO laws, the requirements of the Policy, standards, and procedures, and how to prevent, investigate, and resolve discrimination complaints. The EEO Officer and/or Disability Rights Coordinator will also receive requests for accommodations, and recommend appropriate action to the agency head regarding EEO-related issues. The EEO Officer will also provide guidance to the agency head in submitting the agency's annual Diversity and EEO Plan and in preparing and reviewing quarterly reports. The EEO Officer should work closely and cooperatively with the agency's General Counsel and the DCAS Office of Citywide Diversity and EEO, and provide guidance and assistance to agency managers, supervisors, and human resource professionals in addressing issues relating to equal employment opportunity.

The EEO Officer will also: 1) set training objectives that ensure that all agency employees receive diversity and inclusion and EEO training; 2) supervise the EEO-related activities of EEO counselors and/or investigators; 3) ensure that the Policy, standards, and procedures are posted at each site where the agency conducts business; and 4) ensure that the Policy, standards, and procedures are available in alternative formats (i.e., large print, audio tape, and/or Braille). Each agency's EEO Officer shall make a copy of these standards and procedures, and any subsequent revisions and supplemental materials, available upon request by an employee or applicant.

### D. Agency General Counsels

Agency General Counsels should: 1) assist the agency head in identifying and determining appropriate responses to EEO issues; 2) work cooperatively and closely with the EEO Officer in the implementation of the Policy, standards, and procedures; 3) inform the EEO Officer when external complaints or litigation involving EEO matters are brought against the agency; 4) be available to consult on internal EEO investigations; and 5) be responsible for the investigation of, and response to, external EEO complaints.

### E. Managers and Supervisors

Managers and supervisors will make every effort to maintain a work environment that fosters sensitivity and respect for the diversity of all individuals. Specifically, each agency manager or supervisor shall: 1) be accountable to the agency head for effectively implementing EEO-related policies; 2) perform managerial or

supervisory responsibilities in a non-discriminatory manner; 3) receive training in EEO laws; 4) cooperate with the EEO Officer in the implementation of the Policy, standards, and procedures (including training, complaint resolutions, processing, recording, and reporting reasonable accommodation requests, EEO-related recruitment, and selection standards; and modifying agency procedures to ensure equal employment opportunity for applicants and employees); 5) promptly consult with the agency's EEO Officer if he or she observes, learns about, or suspects that a violation of this Policy has occurred; 6) where appropriate, encourage subordinates to consult with an EEO office; 7) allow employees to meet with EEO representatives at the earliest practical time consistent with the operational needs of his or her unit; and 8) maintain confidentiality with respect to EEO-related matters.

#### F. Personnel Officers

Personnel Officers have primary responsibility for assisting the agency head in implementing the City's personnel policies and shall be knowledgeable regarding the interplay of EEO-related laws and other work-related legal regulations including Family Medical Leave Act, New York State Civil Service Law, and Workers' Compensation Law. Personnel Officers should cooperate with EEO Officers in the implementation of the Policy, standards, and procedures including training objectives, complaint resolutions, and modifying agency procedures to ensure equal employment opportunity for applicants and employees.

Personnel Officers will also: 1) ensure that employees know the identity of the agency Career Counselor and ensure that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities and job postings; 2) ensure that all new employees are advised of the Policy, standards, and procedures, the employees' rights and responsibilities under such policies, and the discrimination complaint procedures; 3) inform the EEO Officer on a quarterly basis of the number of 55-a Program participants and efforts that the agency has made to employ, promote, or accommodate qualified individuals with disabilities; 4) involve the agency EEO Officer in the review of EEO-related decisions, actions, and practices; and 5) promptly consult with the agency's EEO Officer if he or she knows, has been informed of, or suspects that a violation of this Policy has occurred.

**Appendix – 4**

Independent Budget Office

*EEO Complaint Procedural Guidelines, City of New York* (Guidelines  
for Discrimination Complaint Procedures)

2018



# **EEO Complaint Procedural Guidelines**

**City of New York  
2018**



**Department of Citywide Administrative Services**

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# THE CITY OF NEW YORK

## EQUAL EMPLOYMENT OPPORTUNITY

### COMPLAINT PROCEDURAL GUIDELINES

## Overview

These Equal Employment Opportunity Complaint Procedural Guidelines (the “Guidelines”) are designed to assist Equal Employment Opportunity (“EEO”) Officers, Investigators and Counselors in handling EEO complaints and inquiries in a fair, consistent, and timely manner. A person who wishes to make an EEO complaint, or who inquires about a possible EEO complaint, should be referred to the City’s EEO Policy (the “Policy”) and the “About EEO: What You May Not Know” Handbook (the “Handbook”).<sup>1</sup>

As provided in the Policy, the City prohibits discriminatory employment actions against, and treatment of, City employees and applicants for employment based on actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including “gender identity” --which refers to a person’s actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth), disability, age (18 and over), military status, prior record of arrest or conviction, marital status, partnership status, caregiver status, genetic information or predisposing genetic characteristic, sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking, unemployment status consumer credit history, and familial status. Harassment and/or retaliation against a person who opposes or complains about prohibited conduct or participates in any way in the complaint, investigation, or reasonable accommodation processes are also prohibited. The Policy also prohibits the denial of reasonable accommodations for disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking, so long as they do not cause an undue hardship. Persons who claim discrimination in violation of the Policy may file a complaint within one year of the alleged discriminatory incident with the EEO Office at the City agency where the incident occurred (“internal complaint”) or with a Civil Rights enforcement agency, subject to its filing requirements (“external complaint”).

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<sup>1</sup>The EEO Policy is available at <http://www.nyc.gov/html/dcas/html/about/eeopol.shtml>. The EEO handbook is available at [http://www.nyc.gov/html/dcas/html/about/eeo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eeo_booklet.shtml).

# Protected Categories Under the City's EEO Policy

New York City employees are protected from discrimination based on any of the following categories, whether perceived or actual, and including retaliation for filing a complaint or assisting in the investigation of an EEO complaint.

**Age:** persons age 18 or older.

**Alienage or Citizenship Status:** the citizenship of any person or immigration status of any person who is not a citizen or national of the United States. Employers are required by law, however, to verify the identity and work eligibility of employees. Moreover, citizenship is a lawful requirement for certain jobs (such as Police Officer).

**Caregiver Status:** you cannot be treated differently at your job because you have children, or because you care for a relative who is sick or has disabilities.

**Color:** frequently viewed synonymously with race, discrimination based on color may occur because of a preference for, or aversion to, a particular skin color and may occur within the same racial group based on body pigmentation.

**Credit History:** includes credit worthiness, credit capacity, and payment history. Credit history cannot be used to decide whether to hire, fire, or promote an individual.

**Disability:** any physical, medical, mental, or psychological impairment, or a history or record of such impairment, whether perceived or actual. Pregnancy may also be considered a temporary disability if there are medical conditions arising from the pregnancy or childbirth.

**Familial Status:** any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, **or** one or more individuals (who have not attained the age of eighteen years) being domiciled with:

- (1) a parent or another person having legal custody of such individual or individuals, or
- (2) the designee of such parent.

**Gender (or Sex):** gender includes actual or perceived sex and includes a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth. Pregnancy or childbirth is a gender-related condition; therefore, discrimination due to pregnancy or childbirth is considered to be gender discrimination.

**Marital Status:** whether a person is married, divorced, single, separated, or widowed. "Marital Status" should be distinguished from discrimination based on whom an individual is married to.

**Military Status:** military service includes past, present, and applicants for membership in the uniformed service, whether voluntary or involuntary.

**National Origin:** place of origin, as well as ancestry, and physical, cultural, linguistic or ethnic characteristics of, or names associated with, a particular country or region. Discrimination based on alienage (immigration status) or citizenship status can be found, in some cases, to be discrimination based on national origin.

**Partnership Status:** all individuals in a domestic partnership.

**Predisposing Genetic Characteristics/Genetic Information:** any inherited gene or chromosome, or alteration thereof, determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.

**Prior Record of Arrest or Conviction:** generally, agencies may not deny or deprive someone of a job because of a criminal conviction, unless there is a direct relationship between the conviction and the duties of the job or an unreasonable risk to property or safety, based on a variety of factors. Agencies also may not ask about arrests that did not lead to conviction unless it is a pending arrest. These restrictions do not apply to law enforcement agencies.

**Race\Ethnicity:** includes such categories as American Indian or Alaskan native, Asian or Pacific Islander, Black, Hispanic, White, and two or more races, as well as personal characteristics associated with race\ethnicity (such as hair texture, skin color, or certain facial features).

**Religion or Creed:** includes all aspects of religious observance, practice and belief, including moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.

**Sexual Harassment:** *“unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature”* when:

- a) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

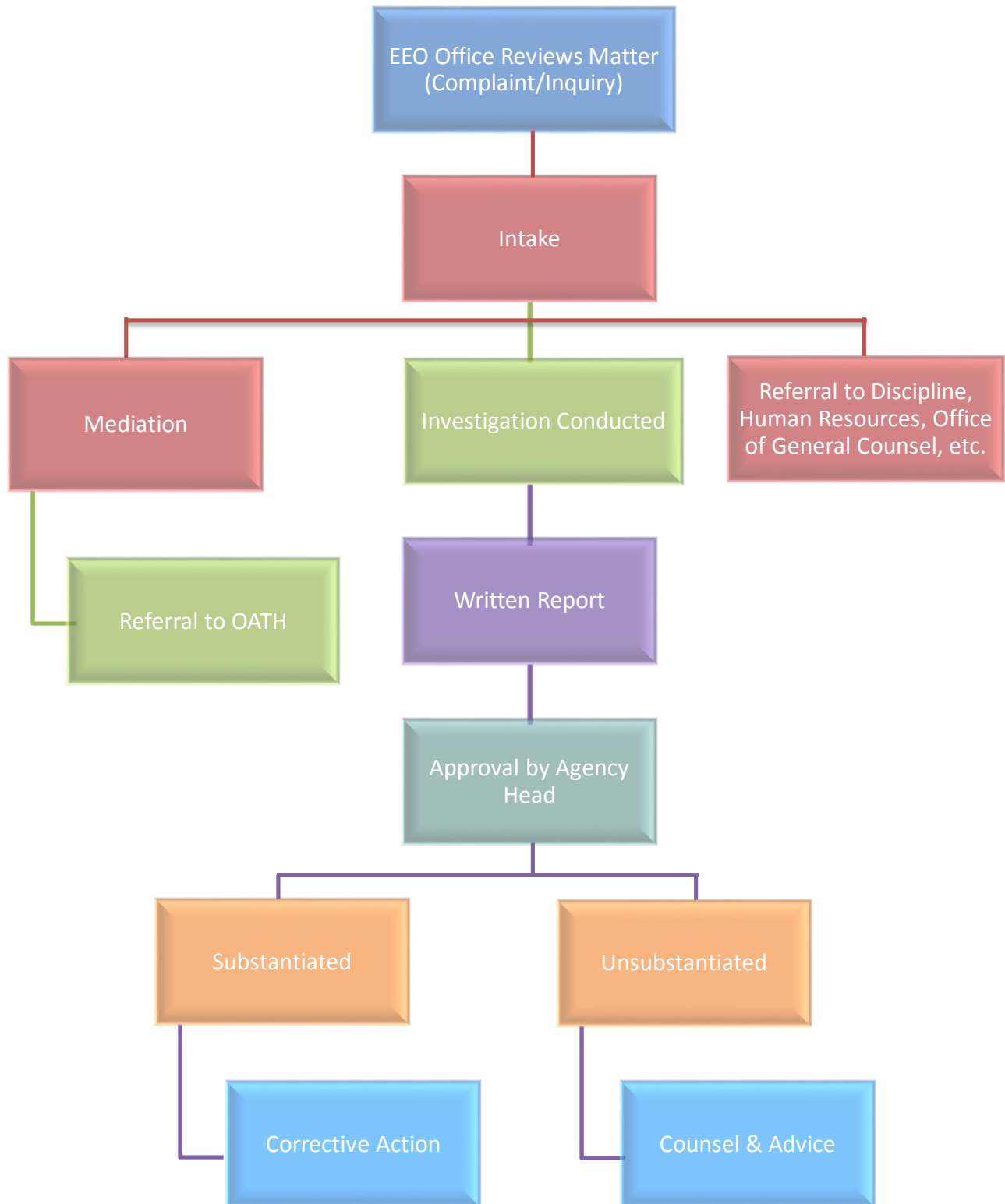
**Sexual Orientation:** heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.

**Unemployment Status:** refers to those who do not have a job, are available for work, and are seeking employment.

**Victim of Domestic Violence:** a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim.

**Victim of Sex Offenses or Stalking:** a victim of acts which are defined as crimes that are considered to be “sex offenses” or “stalking.”

# The EEO Complaint Process at a Glance



# THE INTAKE PHASE

The EEO complaint or inquiry process begins when a person (the “Complainant”) contacts the EEO Office regarding an alleged discriminatory incident.

The person making the complaint may do so anonymously, if he or she so chooses. Anonymous complaints must be treated the same as identified complaints, to the extent possible.

A complaint may be filed by an employee, a former employee, independent contractor, a consultant, a volunteer, an intern, a job training program participant, or an applicant for City employment.

A complaint may be filed on the Complainant’s own behalf or on behalf of someone else.

**Supervisors and managers are required under the Policy to timely notify their EEO Office of any alleged discriminatory conduct they observe or become aware of.**

Upon receiving an EEO complaint or inquiry, the EEO Office must memorialize the complaint or inquiry and enter it into the complaint tracking system,<sup>2</sup> as well as schedule, by email or letter, an intake session with Complainant, if known, for purposes of assessing or confirming the following:

- Is the complaint timely?
  - Determine when the alleged discriminatory conduct occurred. A complaint must be filed within one year of the date the alleged discriminatory conduct occurred.
  - While a Complainant may not be able to file a complaint, and obtain specific relief sought if the complaint is untimely, the EEO Office may conduct an investigation and may make recommendations to address inappropriate conduct.
- Has Complainant previously filed a lawsuit or complaint with an enforcement agency regarding the same claims of discrimination? If so, the matter must be transferred to the agency’s Office of General Counsel.
  - If an external complaint or lawsuit is filed subsequent to the filing of the internal complaint, the matter must also be transferred to the agency’s Office of General Counsel. The EEO Office must notify Complainant (and Respondent<sup>3</sup>, if any) in writing of the transfer.
  - If the Complainant alleges retaliation after filing the external complaint, the retaliation complaint must also be transferred to the Office of General Counsel.

<sup>2</sup> The complaint tracking system is available at <https://mspwwa-dcslnx01.csc.nycnet/Login.aspx>.

<sup>3</sup> The Respondent is the person or entity alleged to have engaged in the discriminatory conduct.



- If a subsequent complaint involves allegations unrelated to the initial external complaint, the EEO Office may retain and investigate the subsequent complaint as a separate complaint. The EEO Office must consult with the Office of General Counsel in determining whether the subsequent complaint involves separate allegations.
- ☑ Has Complainant previously raised the same issues with others at the agency?
  - Did Complainant discuss the alleged discriminatory conduct with a supervisor/manager, Human Resources, or co-workers?
  - Has Complainant filed a grievance with his or her union regarding the same conduct, practice or policy?
- ☑ Does the complaint or inquiry involve one or more of the protected categories under the City's Policy, including when discrimination is based on perception or association?
  - If the complaint or inquiry does not involve an EEO basis, the EEO Office should make a referral, as appropriate.
- ☑ If the complaint or inquiry cites an EEO basis, what specific conduct, practice or policy is the alleged violation of the Policy? The issues raised could involve one or more of the following issues:
  - Harassment, including, but not limited to "the use of vulgar language, abusive acts or language, hostility, physical aggression, intimidation or unequal treatment" based on any of the protected categories (see the City's EEO Policy, page 3).
  - Adverse employment actions, such as negative performance evaluation or denial of promotion or benefits, allegedly based on one or more protected categories as demonstrated by, e.g., discriminatory comments or different treatment of other employees who are similarly situated.
  - Failure to reasonably accommodate disability, pregnancy, childbirth and/or related medical condition, religion/religious observance, or victims of domestic violence, sex offenses or stalking.
  - Retaliation due to opposition to, or complaining about discrimination, or participating in the complaint, investigation or reasonable accommodation process. Retaliatory conduct includes conduct reasonably likely to dissuade a person from engaging in protected activity.
  - Policy alleged to have a discriminatory impact on a protected category that is not job-related or justified by business necessity.
- ☑ What is Complainant's status with the agency?
  - Does Complainant work at the agency?
  - What is Complainant's civil service status?

- Is Complainant an employee of the agency or a different agency or an independent contractor?
  - The EEO Office must contact the EEO Office of the employing agency and coordinate the investigation.
- ☑ Which person(s), if any, is alleged to have engaged in the discriminatory conduct (the “Respondent”)?
  - Complaints against the EEO Officer and agency heads should be referred to the City’s Law Department or Department of Citywide Administrative Services (“DCAS”).
  - Complaints by employees or others against a member of the public visiting the agency should be referred to the agency’s EEO Officer.
  - Complaints by the public against persons working at the agency should be handled by the agency’s EEO Officer.
  - In the case of complaints against employees of other agencies, the EEO Office of each agency should conduct a joint inquiry or investigation of the complaint.
- ☑ Is there a specific document or rule that applies to the conduct or practice complained about? For example:
  - Personnel Services Bulletins (<http://www.nyc.gov/html/dcas/html/employees/psbtoc.shtml>)
  - Personnel Rules and Regulations of the City of New York ([http://www.nyc.gov/html/dcas/html/employees/personnelrules\\_regis.shtml](http://www.nyc.gov/html/dcas/html/employees/personnelrules_regis.shtml))
  - Collective bargaining agreements (<http://www1.nyc.gov/site/olr/labor/labor-recent-agreements.page>)
  - Title Specifications and Notices of Examinations (<http://mstpwwa-dcstso01.dcas.nycnet/TitleSpecs/home.aspx>)
  - Agency Code of Conduct
- ☑ Is it necessary that action be taken prior to the investigation of the complaint?
  - After consultation and approval from appropriate agency personnel, it may be necessary to provide interim relief to alleged victims of harassment.
  - Interim relief may include, among other actions, temporary transfers and assignment or shift changes.
- ☑ Inform Complainant regarding confidentiality and anonymity, and the Policy regarding retaliation.
- ☑ Prior to meeting Complainant, inform Complainant of the right to be accompanied by a representative.

- ☑ Begin investigation immediately after determining that the allegations raised, if true, are sufficient to establish a case of discrimination under the Policy, that the complaint is timely, and that the EEO Office is responsible for investigating the complaint. Complete an investigation within 90 calendar days of the filing of the complaint.
  - Ensure a Complaint Form is completed, preferably by Complainant although it can be done by the EEO Office, but should be signed by Complainant.

## REFERRALS

- ☑ Do the allegations involve conduct which must be reported to or investigated by a different office or agency? For instance:
  - Discipline (Advocate): violations of code of conduct.
    - The EEO Office may rely on fact-findings of Discipline or may conduct separate or additional investigation.
  - Inspector General: fraud, corruption and unethical conduct.
  - Police/Law Enforcement: criminal conduct.
    - The EEO Office may have to place an investigation or inquiry on hold if the matter is referred to law enforcement.

## MEDIATION

Mediation is a voluntary approach to dispute resolution in which the parties try to resolve the dispute themselves on mutually agreeable terms, with the help of a trained third-party mediator. The EEO Officer may recommend mediation, or either party to the complaint may request mediation.

The EEO Office may recommend mediation at the inquiry/intake stage and/or the parties may subsequently request mediation during the investigation, subject to the approval of the EEO Officer. Requests for mediation must be made in writing.

Mediation may be conducted by a trained third-party mediator. The Center for Creative Conflict Resolution, which is part of the Office of Administrative Trials and Hearings (“OATH”), conducts

mediation free of cost to City agencies and employees. More information about OATH is available at <http://www.nyc.gov/html/oath/html/about/the-center.shtml>.

Mediation is most appropriate for complaints involving interpersonal conflict, and should not be considered in certain cases, such as when the complaint includes allegations of sexual harassment or criminal conduct.

Mediation efforts must not exceed 45 days from the start of mediation. The EEO Office may extend the mediation for good cause.

While mediation continues, the 90-day period for completion of the investigation is suspended.

If the parties agree to a resolution during mediation, a resolution agreement will be drafted and provided to the parties and the referring EEO Officer. The resolution agreement will resolve the pending EEO complaint. Any resolution agreement requiring agency action or approval will only become effective subject to agency approval. If a resolution is not reached, the matter is returned to the EEO Officer and the 90-day investigative period resumes. The EEO Officer may also determine if an agreement has been violated and if so, whether to refer it for further mediation or declare the agreement void.

A party may withdraw from mediation at any time. The EEO Office may also terminate the mediation process if it deems that the effort has been unproductive. The EEO Office must inform all parties to the complaint, in writing, of the termination of mediation. The notice must also inform the parties that the EEO Office will resume its investigation of the complaint.

## INVESTIGATION

- The purpose of the investigation is to determine whether there are facts supporting the allegations of discrimination.
- The complaint investigation should begin immediately after a determination that the allegations raised, if true, are sufficient to establish discrimination under the Policy, that the complaint is timely, and that the EEO Office is responsible for investigating the complaint.
- The complaint investigation should be completed and the Complainant should be notified of the outcome within 90 calendar days of the filing of a complaint.
  - The EEO Office should ensure that a Complaint Form is completed, preferably by Complainant, although this can be done by the EEO Office. The form should be signed by Complainant, and logged into the complaint tracking system.

- Complainants should be provided the following upon filing a complaint:
  - a copy of the written complaint
  - acknowledgement of receipt of the complaint
  - a copy of or links to the City' EEO Policy and Handbook
- Meet with Complainant to supplement or clarify information provided during the intake phase.
  - Confirm if there any persons who witnessed the alleged discriminatory conduct.
  - Does the Complainant have or know of any documents, such as emails or photos, containing information about the alleged conduct?
- Conduct a thorough investigation that provides answers as to:
  - who was involved in the alleged discriminatory conduct;
  - what occurred during the alleged conduct;
  - when and where the alleged conduct took place;
  - the identity of all witnesses to the alleged conduct, anyone with whom the alleged conduct has been discussed, or anyone who may have identified as having been subject to similar conduct as that alleged or who has information concerning any aspect of the alleged conduct;
  - whether this was an isolated incident or part of a pattern of conduct;
  - what impact, if any, the alleged conduct has had on the Complainant and/or the work environment;
- Determine whether the action alleged to be discriminatory was based on a legitimate, nondiscriminatory reason.
- Obtain and review any available and relevant notes, recordings, photographs, physical evidence, or other documentation.

### **Conducting Interviews**

- Explain objective of the interview.
- Explain the City's EEO Policy on retaliation.
- Ask open-ended interview questions in a non-judgmental manner.
- Determine what witnesses know based on personal knowledge versus what they have heard.
- During each interview, take thorough notes, as close to verbatim as possible. Notes should reflect the content of the interview, both the questions and answers, as completely as possible.

## Notice to Respondent of the Complaint

- The EEO Office must serve Respondent with a notice of complaint along with a redacted copy of the complaint, or a summary of the complaint and allegations, after interviewing the Complainant. The following information must be redacted: the Complainant's home address and telephone number, and the name(s), title(s), and division(s) of witnesses.
- Schedule a meeting with Respondent, ensuring that Respondent is informed of the right to be accompanied by a representative.
- Remind Respondent of the City's EEO Policy against unlawful discrimination and retaliation.
- Inform Respondent of the right to respond in writing to the complaint, and that the response should be submitted as soon as possible.
- Give Respondent an opportunity to offer his/her version of events and any other relevant information, including any witnesses who are likely to have relevant information. The EEO Office should interview witnesses identified by Respondent.

## Amending the Complaint

The complaint may be amended in writing, for any reason, prior to conclusion of the investigation and notice of outcome to the parties. For purposes of the one-year filing period, amendments to the original complaint will be deemed timely if the original complaint was itself timely. However:

- If a Complainant, after filing an initial complaint, seeks to file a subsequent complaint based on different facts than those alleged in the initial complaint, the subsequent complaint should be treated as a separate complaint.
- If a Complainant, after filing an initial complaint, seeks to file a subsequent complaint alleging retaliation for making the initial complaint, the later complaint should be treated as a separate complaint.
- All initial, amended, and new complaints should be cross-referenced in the EEO Office's complaint file and the complaint tracking system.

## Right to be Accompanied by a Representative

Any person who is interviewed during the course of an EEO investigation has the right to be accompanied by a representative of his or her choice. This includes individuals who make complaints, persons against whom complaints were made, or witnesses. It is preferable that the EEO Office receive advance notice

that the person who is being interviewed will be bringing a representative. The representative may not respond on behalf of the party being interviewed or interfere with the interview.

### **Confidentiality and Record Keeping**

Complaints and complaint investigations should be accorded the strictest confidentiality possible. The EEO Office should make every effort to protect from disclosure the complaint allegations, the identity of parties to the complaint and any witnesses. Exceptions include disclosing to persons with a legitimate need to know certain information in order to respond to the complaint allegations or implement interim or corrective action. All persons with whom the EEO Office interacts concerning the complaint and its investigation should be asked to refrain from discussing the complaint beyond their interaction with the EEO Office.

All complaints and related documents, including any investigative notes, records, or copies, are strictly confidential and must be maintained by the EEO Office. The EEO Office may consult the agency's Office of General Counsel concerning a request to view or have copied, in whole or part, the EEO Office's files.

### **Meeting with EEO Office and Obligation to Cooperate**

Anyone has the right to meet privately with the EEO Office during its office hours. An employee seeking to meet with the EEO Office at a reasonable time during that office's hours must secure prior permission for same from his/her appropriate supervisor. Such requests must be granted as a matter of right, but the supervisor may determine a reasonable time for the employee to visit the EEO Office. The employee is not required to disclose to the supervisor or anyone the reason for the employee's visit to the EEO Office. If appropriate or preferred by the employee, the meeting between the employee and the EEO Office may be scheduled before or after that office's hours, or during the employee's lunch break or personal time.

All employees are expected to cooperate with EEO investigations. Failure to cooperate in an investigation may result in disciplinary action.

### **False Allegations**

If an employee knowingly makes a false complaint or knowingly provides false information to the EEO Office in the course of a complaint or complaint investigation, such conduct may be grounds for disciplinary action. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.



## Agency as Respondent

Whenever an agency and/or subdivision of an agency are named as a Respondent in a complaint, the Agency Head should designate an appropriate person to respond to the allegations in the complaint on behalf of the agency or subdivision.

## PREPARING THE FINAL REPORT

The final investigative report **must be completed and the parties must be notified of the outcome within 90 calendar days** from the date the complaint was filed with the EEO Office, unless the time period is extended by the EEO Office for good cause, with written notice to the parties and noted in the investigative file and/or the complaint tracking system. The EEO Office must document the reason for the delay, and project a time frame for the completion of the report.

The EEO Officer should routinely consult the agency's Office of General Counsel on questions that arise while preparing the written report or at any phase of the investigation.

- After all the relevant facts have been gathered, the EEO Officer must prepare a confidential written report on the complaint investigation and must submit the report to the Agency Head for review.
- In preparing the written report, the EEO Officer should determine the credibility of the parties and witnesses, including their motives and biases. The EEO Officer should routinely consult the agency's Office of General Counsel on questions that arise while preparing the written report or at any phase of the investigation.
- If, based on the facts, the EEO Officer determines that it is more likely than not that the Respondent engaged in unlawful discriminatory conduct in violation of the City's EEO Policy, the EEO Officer must determine the most appropriate action to be taken in light of the facts and circumstances and make a written recommendation to the Agency Head.
- Corrective action may include measures necessary to address the impact that the violation of the City's EEO Policy had on the Complainant or within the agency. Disciplinary action must be taken in accordance with provisions of law, rules and regulations and any relevant collective bargaining agreement. Determining the appropriate disciplinary action is often a difficult and sensitive matter with potential legal consequences. Therefore, the agency's Office of General Counsel, Agency Advocate and/or Labor Relations Office must concur in any recommendation to pursue discipline before it can be adopted as part of a written report.

- The written report should include a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered during the investigation, a conclusion/determination and recommendation. Conclusions must be supported by facts uncovered during the investigation.
- The Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified. After review of the report by the Agency Head, the EEO Office should inform all parties in writing of the outcome of the investigation.

### **Informing Parties of Outcome**

The decision after investigation should be communicated to the parties, in writing, in a discreet and confidential manner, indicating the conclusion reached, whether the misconduct alleged has been substantiated, and the agency's opposition to that kind of activity.

### **Final Complaint Decisions**

#### **1. Internal Complaints**

- a) Substantiated: upon analysis of the evidence (interview statements and documents), it is more likely than not that there has been a violation of the EEO Policy.
- b) Unsubstantiated: upon analysis, there is no or insufficient evidence to establish that it is more likely than not that a violation of the EEO Policy occurred.
- c) Withdrawn: the complainant affirmatively states that he or she no longer wishes to pursue the action that was initiated with the EEO Office. It requires a written acknowledgement that the decision (to withdraw) was done freely, without coercion, intimidation, promises or inducements.
- d) Mediated: this is a voluntary approach to dispute resolution in which the parties try to resolve the dispute themselves on mutually agreeable terms, with the help of a trained third-party mediator.
- e) Administrative Closing: The case is closed due to the following:
  - Lack of Subject Matter Jurisdiction - Complainant interviewed, documents and records reviewed. No case of employment discrimination/retaliation articulated. Full investigation not required. The matter may be referred to immediate manager/supervisor or another agency (e.g., DOI) for investigation or corrective action concerning other misconduct that is not a violation of EEO Policy.
  - Uncooperative Complainant

- Filed Externally: Complainant files with EEOC, SDHR or CCHR on same fact pattern. Internal investigation is closed. Files transferred to Agency Counsel.
- f) Third Party Referral: Due to a conflict of interest, matter referred to Law Department or DCAS for investigation\ action.

**2. External Complaints** (the decisions of cases are determined by the fair employment agencies; the definitions below are for OCEI database purposes only)

a) The fair employment agency investigating the complaint must be selected from the below options:

CCHR: City Commission on Human Rights

CORT: State/Federal Court

EEOC: Equal Employment Opportunity Commission

JOCR: Department of Justice Office of Civil Rights

OFFC: U.S. Department of Labor Office of Federal Contract Compliance Program

SDHR: NY State Division of Human Rights

b) The decision of the case must be selected based on the information provided from the fair employment agency:

1. Probable Cause<sup>4</sup>: Evidence shows that it is more likely than not that there has been a violation of the federal, state or local fair employment law.
2. No Probable Cause<sup>5</sup>: There is no evidence and\or testimony to establish that a violation of the federal, state or local fair employment law occurred.
3. Withdrawn by Complainant.
4. Mediated: a voluntary approach to dispute resolution in which the parties attempt to resolve the dispute on mutually agreeable terms with the assistance of a trained, neutral mediator.
5. Administrative Closing: The case is closed due to the following:
  - At the request of the complainant, the investigation is terminated to allow the complainant to pursue remedies in court.
  - The complainant does not cooperate with the investigation.
  - The agency does not investigate the complaint because of limited resources.
6. Please note, if the complainant deems that the investigation is taking too long, he\she can request a right to sue letter from the EEOC after it has had 180 days to investigate. The EEOC is obligated to provide the letter even if the investigation is not complete, at which time

---

<sup>4</sup> EEOC reasonable cause is equivalent to probable cause.

<sup>5</sup> EEOC no reasonable cause is equivalent to no probable cause

EEOC will close the investigation. A complainant has 90 days from the time of receipt to file the lawsuit. (A complainant may file a lawsuit under the Age Discrimination in Employment Act 60 days after filing the complaint with the EEOC without receiving a right to sue letter.)

## EEO Complaint Tracking and Reporting

**All** EEO complaints are to be entered in the complaint tracking system.

- It is **recommended** that this be done immediately following the initial intake interview with the Complainant(s).
- It is **required** that this be done before the end of the quarter.

All entries and updates made in the EEO Complaint Database must be entered as complaints are filed and the investigation progresses. All quarterly updates should be inputted no later than March 31, June 30, September 30 and December 31.

Agencies are required to submit an electronic affirmation (prompted by a DCAS email), regarding their review and entry of all required information into the EEO Complaint Database.

DCAS will send quarterly complaint summaries to agencies within five business days after the close of the quarter.

Each Agency will have five business days to review its summary and make any necessary edits in the system. DCAS will have five business days to issue new summaries to agencies that have made edits.

DCAS will publish citywide EEO complaint data on a quarterly basis on the DCAS website.

## APPENDICES: Forms and Templates

The following pages contain templates in the form of sample documents and letters that were developed to promote consistency in the complaint and investigative processes. Although agencies are not mandated to use these specific templates, the information captured in these templates should be considered the **minimum** requirement.

Regarding the sample final investigative report included here, this format is strongly encouraged in the interest of consistency and clarity of reporting.

**SAMPLE A – Intake Form**

**[Insert agency name and logo]**

**Complaint #:** \_\_\_\_\_

**Date received:** \_\_\_\_\_

Origin (circle one): Letter Telephone Office Visit Email

Received by (circle one): EEO STAFF NAME EEO STAFF NAME EEO STAFF NAME

---

**1. Contact Information**

Name \_\_\_\_\_

Title \_\_\_\_\_ Employee ID# \_\_\_\_\_

Work Unit \_\_\_\_\_ Location \_\_\_\_\_

Work Telephone # \_\_\_\_\_ Shift \_\_\_\_\_

Home Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Home Phone # \_\_\_\_\_

Cell Phone # \_\_\_\_\_ Email Address \_\_\_\_\_

---

**2. Subject/Respondent Information**

Name \_\_\_\_\_

Title \_\_\_\_\_ Employee ID# \_\_\_\_\_

Work Unit \_\_\_\_\_ Location \_\_\_\_\_

Work Telephone # \_\_\_\_\_ Shift \_\_\_\_\_

Home Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Home Phone # \_\_\_\_\_

Cell Phone # \_\_\_\_\_ Email Address \_\_\_\_\_



### SAMPLE B – Complaint Form

[Insert agency name and logo]

## Complaint of Discrimination

(Please print the following information)

---

Name *ERN* Division/Office/Agency

---

Civil Service Title Office Title Supervisor

What is the alleged basis of discrimination?

(Please check all that apply)

- Age
- Alienage/Citizenship
- Arrest/ Conviction record
- Caregiver Status
- Color
- Credit History
- Disability/Familial Status
- Gender/including gender identity/Pregnancy
- Predisposing Genetic Characteristic
- Marital Status
- Military Status
- National Origin
- Partnership Status
- Race
- Religion/Creed
- Sexual Harassment
- Sexual Orientation
- Unemployment Status
- Victim of Domestic Violence, Sex Offense or Stalking
- Retaliation for filing a complaint or assisting in the investigation of an EEO complaint

Please give the name, title and division of the person(s) you believe discriminated against you.

When did the alleged discrimination occur? Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Where did the alleged incident occur?

Were there witnesses to the discrimination? Yes \_\_\_\_ No \_\_\_\_

Did you report this incident to anyone? Yes \_\_\_\_ No \_\_\_\_

(Please provide the name(s) of witnesses on the Witness Information Form)

Have you filed a complaint about the alleged discrimination with any of the following agencies?

- New York City Commission on Human Rights
- New York State Division of Human Rights
- United States Equal Employment Opportunity Commission
- United States Department of Labor
- United States Department of Justice

(If so, please state the date and the complaint number)

Complaint# \_\_\_\_\_

Date Filed: \_\_\_\_/\_\_\_\_/\_\_\_\_

---

Please describe what happened to you on the following pages, what you believe is unlawful discrimination, and/or how other persons were treated differently. This statement may be amended to correct omissions. Please use extra pages if necessary.

What corrective action do you want taken?



**Description of Alleged Unlawful Discrimination**

**Please describe what happened to you that you believe is unlawful discrimination, and how other persons were treated differently. This statement may be amended to correct mistakes or omissions. (Please use extra pages if necessary)**

***I certify that I have read the above charge, including any attachments, and that it is true to the best of my knowledge, information and belief. I have read the attached notices concerning my rights to file a complaint with federal, state and local civil rights enforcement agencies.***

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Complainant's Signature** \_\_\_\_\_

## NOTICE

### YOUR RIGHTS TO FILE A COMPLAINT WITH CIVIL RIGHTS ENFORCEMENT AGENCIES

Any employee or applicant for employment who believes that they have experienced unlawful discrimination has a right to file a formal complaint with the federal, state or local agencies listed below. A person does not give up this right when they file a complaint with the DCAS EEO Officer, or any of the DCAS EEO Representatives. The following federal, state and local agencies enforce laws against discrimination:

#### NEW YORK CITY COMMISSION ON HUMAN RIGHTS

[22 Reade Street - First Floor](#)

New York, NY 10007

(212) 306-7450

Web site: <http://www1.nyc.gov/site/cchr/index.page>

#### Brooklyn

25 Chapel Street, Suite 1001

Brooklyn, NY 11201

(718) 722-3130

#### Bronx

1932 Arthur Avenue, Room 203A

Bronx, NY 10457

(718) 579-6900

#### Queens

153-01 Jamaica Avenue, Room 203

Jamaica, NY 11432

(718) 657-2465

#### Staten Island

60 Bay Street, 7th Floor

Staten Island, NY 10301

(718) 390-8506

#### NEW YORK STATE DIVISION OF HUMAN RIGHTS

Central Headquarters

One Fordham Plaza, 4th Floor

Bronx, NY 10458

Toll-free number: 1-888-392-3644

For general inquiries: [info@dhr.ny.gov](mailto:info@dhr.ny.gov).

TDD/TTY: 718-741-8300.

Email a complaint: [complaints@dhr.ny.gov](mailto:complaints@dhr.ny.gov)

Fax a complaint: 718-741-8322.

**Brooklyn**

55 Hanson Place, Room 1084  
Brooklyn, New York 11217  
Telephone No. (718) 722-2385  
eFax: (718) 722-2078  
InfoBrooklyn@dhr.ny.gov

**Manhattan**

Adam Clayton Powell State Office Building  
163 West 125th Street, 4th Floor  
New York, New York 10027  
Telephone No. (212) 961-8650  
eFax: (212) 961-4312  
InfoUpperManhattan@dhr.ny.gov

**Bronx**

One Fordham Plaza, 4th Floor  
Bronx, New York 10458  
Telephone No. (718) 741-8400  
eFax: (718) 741-8318  
InfoBronx@dhr.ny.gov

**Office of Sexual Harassment \Queens**

55 Hanson Place, Room 900  
Brooklyn, New York 11217  
Telephone No. (718) 722-2060  
eFax: (718) 722-2039  
InfoOSHIQns@dhr.ny.gov

**UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****New York District Office****33 Whitehall Street, 5th Floor****New York, NY 10004****(800) 669-4000; (800) 669-6820 (TTY)****Fax: (212) 336-3790**

To submit inquiry and schedule appointment: <https://publicportal.eeoc.gov/portal/>

Web site: [www.eeoc.gov](http://www.eeoc.gov)

In addition to filing with the aforementioned agencies, a person with a complaint alleging discrimination based on disability may file with:

**UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION****Disability Rights Section 1425 NYAV****950 Pennsylvania Avenue, NW****Washington, D.C. 20530****Telephone Number: 202-307-0663 (voice and TTY)****Fax: (202) 307-1197**

You may also file a complaint online at [www.ada.gov/complaint/](http://www.ada.gov/complaint/).

If you have questions about filing an ADA complaint, please call: ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY).

A person with a complaint alleging discrimination based on citizenship or immigration status may file with:

**UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION**

**Immigrant and Employee Rights Section**

**950 Pennsylvania Avenue, N.W. (NYA)**

**Washington, D.C. 20530**

**Direct Office Line: 1-202-616-5594 [Voice] or 1-202-616-5525 [TTY]**

**Worker Hotline: 1-800-255-7688 [Voice] or 1-800-237-2515 [TTY]**

**Employer Hotline: 1-800-255-8155 [Voice] or 1-800-237-2515 [TTY]**

**Fax: (202) 616-5509**

**Email: [ier@usdoj.gov](mailto:ier@usdoj.gov)**

**A person who has been discriminated against by a recipient of financial assistance from the U.S. Department of Labor may file a complaint, either with the recipient or with the Civil Rights Center (CRC). Those who wish to file complaints with CRC should mail their complaints to:**

**UNITED STATES DEPARTMENT OF LABOR**

**Director, Civil Rights Center**

**Frances Perkins Building, Room N-4123**

**200 Constitution Avenue N.W.**

**Washington, D.C. 20210**

**(202) 693-6500 (voice) Federal Relay Service: TTY/TDD: (800) 877-8339**

**Video Relay: (877) 709-5797**

**Fax: (202) 693-6505**

**Main Email - [CivilRightsCenter@dol.gov](mailto:CivilRightsCenter@dol.gov)External - [crcexternalcomplaints@dol.gov](mailto:crcexternalcomplaints@dol.gov)**

**Web site: <https://www.dol.gov/oasam/programs/crc/index.htm>**

**Please Note: There are statutory deadlines for filing complaints with each of these agencies. The deadline in some instances is as short as 180 days. If you wish to file a complaint with an external administrative agency, you should promptly contact any of these agencies directly or a private attorney for information about how to file a complaint, time limits, and how to preserve your rights.**

**Discrimination complaints filed with the DCAS EEO Office must be made within One Year of the incident that you are complaining about.**

**SAMPLE C – Witness Information Form**

[Insert agency name and logo]

**WITNESS INFORMATION FORM  
CONFIDENTIAL**

**Complaint #** \_\_\_\_\_

**Complainant's Name:** \_\_\_\_\_

**Please provide the name, address/location and telephone number of any witness to the alleged unlawful discrimination. If DCAS employs the person please provide their division and title, if known. If the person (s) is employed by another city agency please provide the name of the agency, if known.**

***Please complete a separate form for each witness***

***(Please Print)***

**Name:** \_\_\_\_\_

**Agency:** \_\_\_\_\_

**Division:** \_\_\_\_\_

**Civil Service or Office Title:** \_\_\_\_\_

**Address/Location:** \_\_\_\_\_

**Telephone: (    )** \_\_\_\_\_



## SAMPLE E – CHECKLIST: TYPICAL QUESTIONS TO ASK A COMPLAINANT

- What is the basis of your complaint?  
\_\_\_\_\_
- What is the specific behavior that you experienced?  
\_\_\_\_\_
- Who was engaged in the behavior?  
\_\_\_\_\_
- When did the incident(s) take place?  
\_\_\_\_\_
- Was the behavior repeated or has it happened before?  
\_\_\_\_\_
- How long has this been going on?  
\_\_\_\_\_
- Where did the incident take place?  
\_\_\_\_\_
- How, if at all, did you react?  
\_\_\_\_\_
- Was your ability to work affected in any way?  
\_\_\_\_\_
- How were you affected otherwise?  
\_\_\_\_\_
- Do you know of anyone who witnessed this or similar incidents?  
\_\_\_\_\_
- Do you know of other employees who have been subjected to the same treatment or have the same concern?  
\_\_\_\_\_
- Do you have any evidence regarding this matter? (Photos, notes, letters, personal emails, texts, social media messages, voice mail messages, any objects of any kind, etc.)  
\_\_\_\_\_
  - If Complainant (or witnesses) reference evidence that resides on Department computers, the Department's office of Information Technology should be contacted for collection of this evidence.
- What resolution are you seeking? In other words, what is the outcome that you expect to result from filing this complaint?  
\_\_\_\_\_





**SAMPLE G – Inquiry Letter to Complainant**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #

---

Dear Ms. \_\_\_\_\_:

Thank you for contacting the EEO Office with your concerns. We will be conducting an inquiry into your complaint. The matter has been assigned to NAME and TITLE of EEO Investigator, who will be contacting you shortly.

In the interim, please feel free to contact Ms. \_\_\_\_\_ (EEO Investigator) directly at (###) ###-#### if there is any additional information you think may assist her. Thank you for your cooperation in advance.

Sincerely,

EEO OFFICER

**SAMPLE H – Notice of Discrimination Complaint**

\_\_\_\_\_ v. \_\_\_\_\_  
Complainant Respondent

On \_\_\_\_\_,  
Date Complainant's Name(s)

filed a complaint of discrimination against you on the basis of \_\_\_\_\_.

You may respond in writing to the allegations contained in this complaint after receiving this notice and a summary of the complaint allegations. Any response you wish to make must be received by the (agency's) \_\_\_\_\_ EEO Office on or before \_\_\_\_\_ (14 calendar days from date of notice).

We have scheduled a meeting on \_\_\_\_\_ at the EEO Office [Insert address]. Please call (phone number) immediately if you need to reschedule the meeting. You have the right to be accompanied by a representative of your choice. Please notify the EEO Office in advance of the meeting if you plan to be accompanied by a representative.

Responsibility for investigating this complaint rests with the agency's EEO Office. The complaint process is usually completed within 90 calendar days of the date on which the complaint was filed.

At the conclusion of the investigation, a confidential written report of the investigation will be submitted to the agency head. If, based upon the investigation, it is determined that the City's EEO Policy has been violated, a recommendation will be made to the agency head that appropriate corrective action be taken, which may include disciplinary action. All parties will be notified in writing of the outcome of the investigation.

A copy of The City's EEO Policy is attached for your reference. Please review this policy.

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with an investigation of a complaint. Such retaliation or harassment will be cause for disciplinary action regardless of the findings of the initial investigation.

\_\_\_\_\_  
EEO Officer or designee Date

**SAMPLE I – Request for Withdrawal of Complaint**

**[Insert agency name and logo]**

**RE: COMPLAINT # \_\_\_\_\_**

I, \_\_\_\_\_, Employee ID number \_\_\_\_\_ hereby request withdrawal of my complaint of employment discrimination filed with the EEO Office on \_\_\_\_\_. My decision to request withdrawal of this complaint is not the result of either coercion or intimidation by any other individual. I understand that this withdrawal may NOT conclude the investigation of my complaint by the EEO Office of \_\_\_\_\_ Agency.

I wish to withdraw this complaint because

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date

---

**FOR OFFICE USE ONLY**

ACCEPTED:     YES     NO

COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
EEO Office Representative Signature

\_\_\_\_\_  
Date

**SAMPLE J – Administrative Closure Letter**

**[Insert agency name and logo]**

Date

Ms. / Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #

---

Dear Ms. \_\_\_\_\_:

Thank you for contacting the EEO Office with your concerns. Recently we requested that you provide us with information and list of witnesses to assist us in our inquiry/investigation. However, to date, you have failed to provide us with that statement.

Please forward the statement to us immediately. If we do not receive the information within the next 10 days, we will administratively close your case. If and/or when you submit the statement, your case will be re-opened. Thank you for your cooperation.

Please feel free to contact me with any questions or concerns that you may have at ### ##-####.

Sincerely,

EEO Officer

**SAMPLE K – Investigation Completed; Substantiated  
Letter to Complainant**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which you filed alleging discrimination on the basis of \_\_\_\_\_.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were substantiated.

This case has been referred to our [State agency department/office] which will implement disciplinary action as the Commissioner deems appropriate.

If you should have any questions, I can be reached at ###-###-####.

\*[Disciplinary Officer, Dept., Advocate, Labor Relations Department or Inspector General]

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE L – Investigation Completed: Substantiated  
Letter to Respondent**

[Insert agency name and logo]

Date

Ms. / Mr. FIRST NAME LAST NAME  
STREET ADDRESS  
BOROUGH, New York #####

Re: EEO Complaint #  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which [Name of Complainant] filed alleging discrimination on the basis of \_\_\_\_\_, in which you were named respondent.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were substantiated.

The following corrective measures will be taken: [Please enter steps that will be taken here, either in a sentence or as a bulleted list.]

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with the investigation of a complaint.

If you should have any questions, I can be reached at ### ###-####.

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE M – Investigation Completed; Unsubstantiated  
Letter to Complainant**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####Re: EEO Complaint # \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

I am writing to inform you that the EEO Office has concluded its review of the complaint you filed on \_\_\_\_\_. We conducted a comprehensive investigation of the charges made in your complaint, including \_\_\_\_\_. We have kept the investigation impartial and objective.

Based on our investigation, your charges of a violation of New York City's EEO Policy could not be substantiated. [State reason, if appropriate].

Thank you for bringing your concerns to our attention and for being patient while we addressed them. Please continue to report any conduct that you deem inconsistent with The City's policies. I want to assure you that [Agency Name] is committed to protecting you from any retaliation as a result of your complaint and our investigation. Please call me if you feel you are being subjected to retaliation in any form.

To protect the privacy of everyone involved in this investigation we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE N – Investigation Completed – Unsubstantiated  
Letter to Respondent**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint # \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which [Name of complainant] filed alleging discrimination on the basis of \_\_\_\_\_, in which you were named respondent.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were unsubstantiated.

To protect the privacy of everyone involved in this investigation we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with the investigation of a complaint.

If you should have any questions, I can be reached at ###-###-####.

Sincerely,

EEO OFFICER

c: Commissioner



**SAMPLE O – EEO Complaint Final Investigative Report  
CONFIDENTIAL**

[Insert agency name and logo]

Date: \_\_\_\_\_

To: \_\_\_\_\_ [Agency Head]

From: \_\_\_\_\_ [EEO Officer or Investigator]

Re: \_\_\_\_\_ [EEO Complaint Number]

Complainant: \_\_\_\_\_

Respondent: \_\_\_\_\_

The undersigned was designated to conduct an investigation of alleged misconduct involving the above referenced matter.

**Statement of Basis of Complaint:**

This complaint alleges discrimination in the form of \_\_\_\_\_

The initial information that served as a basis for this investigation was provided by \_\_\_\_\_ [Identify person or persons who supplied information of possible misconduct] and consisted of [an oral statement *and/or* a written statement attached hereto as Appendix A].

The investigation was initiated on \_\_\_\_\_, and concluded on \_\_\_\_\_.

**Summary of History of Complaint:**

- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All potential witnesses have been interviewed and are listed as follows:

- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_
- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_
- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_
- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_

- Employee: \_\_\_\_\_ was contacted on \_\_\_\_\_, but declined to be interviewed.

The documents that were reviewed are listed as follows:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

The following evidence has also been secured (any objects, images, printout of text messages, social media content, etc.):

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### Findings of Fact

[This section should contain statements made by the complainant and witnesses. Please cite attachments, if any.]

- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[This section should contain statements made by the complainant and witnesses that are disputed or unsubstantiated by the investigator(s).]

- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Statement of Response:

The Respondent responded to the allegations by stating

\_\_\_\_\_

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**Opinions:**

[This section should contain the opinions and observations of the EEO Investigator.]

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**Determination:**

[This section should contain the EEO Investigator's determination as to whether or not the allegations were substantiated.]

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**Conclusion and Recommendations:**

Based upon the conclusion of this investigation it is recommended that:

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Date: \_\_\_\_\_

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[Signature] EEO Officer

I have reviewed this report and the recommendation(s) made above.

The recommendations meet with my approval and will be adopted \_\_\_\_\_

The recommendations made above do NOT meet with my approval \_\_\_\_\_

Comments:

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Date: \_\_\_\_\_

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[Signature] Agency Head



Sasha Neha Ahuja  
Chair

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

Charise L. Terry  
Executive Director

Jennifer Shaw, Esq.  
Executive Agency Counsel/  
Director of Compliance

253 Broadway  
Suite 602  
New York, NY 10007

212. 615. 8939 tel.  
212. 676.2724 fax

**BY EMAIL**

June 18, 2020

Ronnie Lowenstein  
Director  
Independent Budget Office  
110 Williams Street, #1401  
New York, NY 10038

**Audit Status:**

Evaluation of Sexual Harassment Prevention and Response Practices for Audit  
Period January 1, 2018 to December 31, 2019.

**Determination: FINAL**

**Resolution #: 2020AP/240-132-(2020)**

Dear Director Lowenstein:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you for the continued cooperation extended to our staff. This document serves as a follow-up evaluation and Final Determination to the following:

Preliminary Determination Issued on: June 3, 2020  
No Response Received.

**Purpose**

Chapter 35, Sections 815(a)(15) and (19) of the New York City Charter (Charter) calls for agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women.

Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective EEO for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any plan, program, procedure, approach, measure, or standard does not provide equal employment opportunity, require appropriate corrective action, and

monitor the implementation of the corrective action prescribed. The attachment contains the EEPC's final determination regarding the audit, review, and evaluation of the Independent Budget Office's Sexual Harassment Prevention and Response Practices.

As the Independent Budget Office falls within the EEPC's purview under Charter Chapter 36, Section 831(a), the EEPC is authorized to review, evaluate, and monitor the coordination and implementation of its affirmative employment programs of EEO and related practices. As indicated in our Preliminary Determination, the EEPC has adopted uniform standards<sup>1</sup> to this end. The purpose of this Final Determination, as authorized by Charter Chapter 36, Section 832(c), is to determine the sufficiency of the Independent Budget Office's actions taken or planned thus far to correct areas of non-compliance identified in the EEPC's Preliminary Determination. Further, Chapter 36, Section 832(c) requires that: (1) the EEPC assign a compliance-monitoring period of up to six (6) months to monitor efforts taken to eliminate areas of non-compliance, if any; and (2) the agency respond in thirty (30) days and submit a report each month during this period on the progress of efforts taken to correct outstanding areas of non-compliance.

### **Next Steps**

**The assigned compliance-monitoring period is: July 1, 2020 to December 31, 2020. Correcting all outstanding areas of non-compliance without delay is highly encouraged and will serve to shorten this period.**

***If corrective actions remain:*** Corrective actions will be listed under the *Monitoring Required* section of the attached Final Determination. The EEPC requires that the agency head submit a signed response to this Final Determination. The signed response should indicate what steps the Independent Budget Office has taken, or will take, to correct outstanding areas of non-compliance during the designated compliance-monitoring period. The Independent Budget Office will be monitored monthly until all outstanding areas of non-compliance have been sufficiently corrected. The Independent Budget Office is required to submit documentation that supports the implementation of each corrective action via TeamCentral, the EEPC's Automated Compliance-Monitoring System. Instruction on how to access and navigate TeamCentral is attached.

***Final Memorandum:*** Upon the Independent Budget Office's implementation of the final corrective action, if any, the EEPC requires that the submit a final memorandum, signed by the agency head, that recognizes the EEPC's audit and reiterates commitment to equal employment practices. **Upon receipt of this final memorandum, the EEPC will issue a *Determination of Compliance*.**

***If no corrective actions remain:*** In lieu of a response to this Final Determination, the Independent Budget Office must submit a final memorandum (See Next Steps, Final Memorandum). Upon the EEPC's receipt of the final memorandum, the Independent Budget Office will be exempt from the abovementioned compliance-monitoring period.

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<sup>1</sup> The EEPC's uniform standards for auditing municipal entities and minimum standards for auditing community boards (collectively "Standards") are founded upon, and consistent with, federal, state, and local laws and regulations, and policies and procedures, including, but not limited to, the City of New York's *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies 2014*; New York City Human Rights Law (NYC Administrative Code 8); New York State Human Rights Law (New York Executive Law, Article 15); New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

**Conclusion**

This is the EEPCC's Final Determination. Questions regarding next steps may be addressed to Jennifer Shaw, Esq., Executive Agency Counsel/Director of Compliance at [jshaw@eepc.nyc.gov](mailto:jshaw@eepc.nyc.gov) or 212-615-8942.

Thank you and your staff for your continued cooperation.

Sincerely,



Charise L. Terry  
Executive Director

c: Yolanda Smith, principal EEO Professional, Senior Education Budget Analyst, IBO

Enclosed: TeamCentral Agency Manual

**FINAL DETERMINATION**

A response indicating progress of the Independent Budget Office's efforts to correct outstanding areas of non-compliance, with supporting documentation, is due within 30 days.

The Equal Employment Practices Commission's findings and corrective actions required to remedy areas of non-compliance are based on the audit methodology, which included collection and analysis of the documents, records, and data provided; the EEPC's *Preliminary Interview Questionnaires* (PIQs) for EEO professionals and others involved in EEO program administration; and, if applicable, the *EEPC Employee Survey*, the *EEPC Supervisor/Manager Survey*, the *Annual EEO Plans* and *Quarterly EEO Reports* of the audited entity; and workforce data from the *Citywide Equal Employment Database System*. Additional research and follow-up discussions or interviews were conducted as appropriate.

After reviewing the optional response<sup>2</sup> (if applicable) to the EEPC's Preliminary Determination, our Final Determination is as follows:

**Monitoring Required**

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

**Corrective Action #1:**

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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #2:**

Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

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<sup>2</sup> Excerpts are italicized.



**Corrective Action #3:**

Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #4:**

Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #5:**

Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #6:**

Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #7:**

Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

Agency Response:

No agency response received.





EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #8:**

Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #9:**

Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #10:**

Ensure 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).

Agency Response:

No agency response received.

EEPC Response:

The EEPC will monitor this corrective action during the compliance monitoring period.

**Corrective Action #11:**

Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

**FINAL ACTION:**

Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

The EEPC thanks you and your staff for your continued cooperation.



**RESOLUTION NO.  
2020AP/240-132-(2020)  
Independent Budget Office  
Director Ronnie Lowenstein  
Sexual Harassment Prevention and Response Practices  
DETERMINATION: FINAL**

**S Y N O P S I S**

<b>Corrective Action(s):</b>	<b>Total: 11</b>
<b>Period Audit Covered:</b>	January 1, 2018 to December 31, 2020
<b>Preliminary Determination Issued:</b>	June 3, 2020                      No Response Received
<b>Final Determination Issued:</b>	June 18, 2020                      Response Due                      July 18, 2020
<b>Compliance-Monitoring:</b>	Required                              July 1, 2020 to December 31, 2020

**Whereas**, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter “entities”) and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

**Whereas**, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities’ practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC’s determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, the EEPC conducted an audit, review, and evaluation of the Independent Budget Office’s Sexual Harassment Prevention and Response Practices; and

**Whereas**, pursuant to the audit, review, and evaluation of the Independent Budget Office’s Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated June 3, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. 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 Policy that conforms

to city, state and federal laws against sexual harassment-- for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
3. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.
4. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.
5. Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.
6. Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.
7. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.
8. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.
9. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
10. Ensure 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).
11. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

**Whereas**, within a two-week deadline following the EEPC's Preliminary Determination, the entity did not submit a preliminary response; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on June 18, 2020, which indicated that the following areas required

corrective action: no(s). 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from July 1, 2020 to December 31, 2020, to determine whether the entity eliminated areas of non-compliance, if any; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), on June 18, 2020, the entity was required to issue a response to the EEPC's Final Determination; Now Therefore,

**Be It Resolved**, that pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the EEPC approves the issuance of this Final Determination to Director Ronnie Lowenstein to assign compliance-monitoring.

Approved unanimously on July 2, 2020.

Absent _____ Angela Cabrera Commissioner	/s/Malini Cadambi Daniel _____ Malini Cadambi Daniel Commissioner
/s/Arva R. Rice _____ Arva R. Rice Commissioner	/s/Elaine S. Reiss _____ Elaine S. Reiss, Esq. Commissioner
_____ /s/Sasha Neha Ahuja Sasha Neha Ahuja Chair	

On behalf all Commissioners in attendance,

  
\_\_\_\_\_  
Charise L Terry  
Executive Director



Ronnie Lowenstein  
DIRECTOR

THE CITY OF NEW YORK  
INDEPENDENT BUDGET OFFICE  
110 WILLIAM STREET, 14th Floor  
NEW YORK, NEW YORK 10038  
(212) 442-0225 Fax (212) 442-0350  
Email: ronniel@ibo.nyc.ny.us

July 17, 2020

Charise L. Terry, Executive Director  
NYC Equal Employment Practices Commission  
253 Broadway, Suite 602  
New York, New York 10007

**VIA EMAIL**

Dear Executive Director Terry:

This letter responds to EEPC's Final Determination issued for the evaluation of IBO's Sexual Harassment Prevention and Response practices for the period of January 1, 2018 to December 31, 2019. EEPC issued a Preliminary Determination for this evaluation on June 3, 2020. As indicated in an email sent on July 7, 2020, by IBO's General Counsel, Lisa Neary, to you and other EEPC staff members involved in the audit, IBO did not receive the Preliminary Determination. This was apparently due to a technical issue that the IT Director at EEPC and IBO's own IT Director are investigating. Had IBO received the Preliminary Determination in a timely manner, we would have responded to its findings.

At the outset, I would like to point out that the audit's title, "Evaluation of Sexual Harassment Prevention and Response Practices," suggests an audit scope that is far narrower than the audit that was undertaken. Of the 12 corrective actions required by the Final Determination, six corrective actions had no direct relationship to our Sexual Harassment Prevention and Response practices, and two additional corrective actions had only a tangential relationship to these practices. Given that ALL of IBO's EEO related practices were examined, I recommend that future evaluations make this clear by not suggesting otherwise with a title that just references one area of EEO practices.

Recommended corrective actions #2-7 relate to IBO's response to an EEO complaint that was not based on sexual harassment. When complaints arise in the future, IBO will respond in the manner outlined in these corrective actions.

Corrective action #1 requires IBO to post an electronic copy of the EEO Policy and attach addenda that contain uniform and responsive procedures for investigating discrimination/sexual harassment complaints and current contact information for the agency's EEO professionals. This action has been taken. Please note that IBO's Staff Manual uses functional titles, but that the contact information for IBO's EEO professionals is widely known, mentioned on IBO's intranet, and is made known to every new hire as IBO routinely trains new employees.

Corrective action #8 is something IBO already does: we have two IBO employees who voluntarily serve as IBO's EEO professionals who are trained in EEO policy and process, and come from different levels in the IBO organization. Likewise, corrective action #9 requires a process IBO already uses. IBO's managers and supervisors are reviewed annually and are expected to adhere to and consider improvements to IBO's support of EEO principles, which include sexual harassment prevention. This expectation is indicated in the review form used for supervisors that IBO has submitted in response to this audit, and previously submitted in response to an audit in 2017. Moreover, IBO included this expectation in the questionnaire used for supervisors' reviews in response to a corrective action requested in a 2017 EEPC audit. Corrective action #10 is a repeat of the corrective action that led to this change in IBO's review form in 2017. As stated in response to that audit, while holding our employees and supervisors accountable for adhering to EEO principles, we will not impose a rating system on our method of evaluating managerial performance.

In response to corrective action #11, IBO will continue to submit annual plans and quarterly reports, although it is our understanding from conversations with EEPC that non-mayoral agencies are not required to submit quarterly reports. We will include a breakout of sexual harassment complaint activity in each quarterly report.


IBO remains dedicated to fostering equal opportunities for our current and prospective employees and we are committed to working with EEPC towards the goal of improving our program to do so.

Sincerely,

*Ronnie Lowenstein*




Ronnie Lowenstein

## MEMORANDUM

**From:** Ronnie Lowenstein, Director   
**To:** Staff  
**Date:** January 6, 2021  
**Re:** Review, Evaluation, and Monitoring of IBO's Sexual Harassment Prevention and Response Practices Independent Budget Office

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The Equal Employment Practices Commission (EEOC) recently concluded an audit of IBO's sexual harassment prevention and response practices. At the conclusion of the audit, EEOC requires the agency head to distribute a memorandum to all staff informing them of the changes IBO implemented in the agency's EEO program because of the audit findings. The EEOC found that IBO was generally in compliance with the law, and had several recommendations for additional steps and improvements that IBO should take. Many of these additional steps involve documenting what is already IBO's practice. EEOC's recommendations are summarized in the attached memo. IBO has implemented, or will implement when needed, all of these recommendations.

I want to reaffirm IBO's commitment to maintaining fair employment practices for all employees and job applicants. We are committed to EEO policy and principles, will continue to seek opportunities to diversify the agency's workforce, and will ensure that current and future staff members are aware of their rights and obligations under this policy. We will work to make certain that all IBO employees, regardless of race, ethnicity, gender, sexual orientation, age, physical challenge, or other protected class status, find IBO a welcoming and productive work environment. If you have any suggestions for improving IBO's efforts in this area, please reach out to , , , or me.





**Sasha Neha Ahuja**  
Chair

**Angela Cabrera**  
**Elaine S. Reiss, Esq.**  
**Arva R. Rice**  
Commissioners

**Charise L. Terry**  
Executive Director

**Jennifer Shaw, Esq.**  
Executive Agency Counsel/  
Director of Compliance

**253 Broadway**  
**Suite 602**  
**New York, NY 10007**

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212. 676. 2724 fax

**BY EMAIL**

January 28, 2021

Ronnie Lowenstein  
Director  
Independent Budget Office  
110 Williams Street, #1401  
New York, NY 10038

Re: Resolution #2020AP/246-132-(2021)C1  
DETERMINATION: Compliance

Dear Director Lowenstein:

On behalf of the members of the Equal Employment Practices Commission (EEPC), I write to inform you that pursuant to New York City Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women, the EEPC's Board of Commissioners has approved the attached Determination.

Thank you and principal EEO Professional Yolanda Smith for the cooperation extended to the EEPC during the course of our review, evaluation, and monitoring of your agency's employment and EEO-related practices.

Sincerely,

*Sasha Ahuja*  
Sasha Neha Ahuja  
Chair

c: Yolanda Smith, principal EEO Professional, Senior  
Education Budget Analyst, Independent Budget Office





Monitoring of Sexual Harassment Prevention and Response Practices

RESOLUTION NO.

2020AP/246-132-(2021)C1

Independent Budget Office

Director Ronnie Lowenstein

DETERMINATION: COMPLIANCE

SYNOPSIS

<b>Corrective Action(s)</b>	Total: 11		
<b>Period Audit Covered</b>	January 1, 2018 to December 31, 2019		
<b>Preliminary Determination Issued</b>	June 3, 2020	No Response Received	
<b>Final Determination Issued</b>	June 18, 2020	Response Received	July 18, 2020
<b>Compliance-Monitoring</b>	Required	July 1, 2020 to December 31, 2020	
		without extension	

Whereas, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEOC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter "entities") and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

Whereas, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEOC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities' practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), the EEOC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEOC's determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, the EEOC conducted an audit, review, and evaluation of the Independent Budget Office's Sexual Harassment Prevention and Response Practices; and

Whereas, pursuant to the audit, review, and evaluation of the Independent Budget Office's Sexual Harassment Prevention and Response Practices, the EEOC issued a Preliminary Determination, dated June 3, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. 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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
2. Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
3. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.
4. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.
5. Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.
6. Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.
7. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.
8. Where the agency’s organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.
9. Ensure that managers and supervisors are held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
10. Ensure 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).
11. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

**Whereas**, within a two-week deadline following the EEPC’s Preliminary Determination, the entity did not submit a preliminary response; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on June 18, 2020, which indicated that the following areas required corrective action: no(s). 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from July 1, 2020 to December 31, 2020, to determine whether the entity eliminated areas of non-compliance, if any; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), on July 18, 2020, the entity issued a response to the EEPC's Final Determination; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the Independent Budget Office was monitored until December 23, 2020; and

**Whereas**, pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the Director submitted a copy of a memorandum to staff dated January 6, 2021, which recognized the EEPC's audit and reiterated commitment to the Independent Budget Office's equal employment practices; Now Therefore,

**Be It Resolved**, that the Independent Budget Office has satisfied the equal employment standards set by the EEPC pursuant to its authority under New York City Charter Chapters 35 and 36; and

**Be It Resolved**, that the EEPC's Board of Commissioners approves the issuance of this Determination of Compliance to Director Ronnie Lowenstein of the Independent Budget Office.

Approved unanimously on January 28, 2021.

\_\_\_\_\_  
/s/Sasha Neha Ahuja  
**Sasha Neha Ahuja**  
**Chair**

\_\_\_\_\_  
/s/Angela Cabrera  
**Angela Cabrera**  
**Commissioner**

\_\_\_\_\_  
/s/Arva R. Rice  
**Arva R. Rice**  
**Commissioner**

\_\_\_\_\_  
/s/Elaine S. Reiss  
**Elaine S. Reiss, Esq.**  
**Commissioner**

On behalf all Commissioners in attendance,

  
\_\_\_\_\_  
**Charise L Terry**  
**Executive Director**

This

*Determination of Compliance*

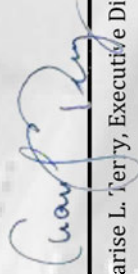
is hereby issued to

*Independent Budget Office*

*For successful implementation of II of II required corrective action(s),  
thereby achieving compliance with the Equal Employment Practices Commission's  
Sexual Harassment Prevention and Response Practices  
from January 1, 2018 to this date.*

*In care of Director Ronnie Lowenstein  
and principal EEO Professional Yolanda Smith*

On this 28<sup>th</sup> day of January in the year 2021,

A handwritten signature in blue ink, appearing to read "Charise L. Terry", is written over a horizontal line.

Charise L. Terry, Executive Director