COMMISSION ON INCREASING DIVERSITY
IN THE
STATE GOVERNMENT WORKFORCE

Report on the Roles and Responsibilities of Affirmative Action Officers in New York State

[FINAL VERSION – RELEASED JUNE 28, 2010]

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EXECUTIVE SUMMARY

The Commission on Increasing Diversity in the State Government Workforce (the "Commission") was established within the Department of Civil Service to examine, evaluate, and make recommendations concerning ways to increase the number of minority workers in State service. As its first endeavor, the Commission has undertaken an initial review of the roles and responsibilities of the Affirmative Action Officers ("AAOs") in the various State agencies. With the assistance of the Department of Civil Service, a survey of both agency heads and their AAOs was conducted in late 2007. The survey results revealed realities that differed significantly from the State's promulgated affirmative action policy. The Commission then issued a draft version of this report and both solicited written comments and held a public hearing through which various witnesses and interested constituents offered valuable perspectives.

In providing recommendations for improvement, the Commission has strived to offer both short-term, cost-effective solutions that can be implemented quickly, as well as long-term approaches for further consideration and discussion. Based upon the Commission's investigation to date regarding the roles and responsibilities of the AAOs, the Commission proposes the following short-term solutions:

(1) Designate a person within the Governor's Office who will take responsibility for implementing the State's affirmative action policy.

(2) Direct State agency heads to ensure that their staffs understand that compliance with Executive Order No. 6 (1983) is a priority, and that full cooperation with the agency AAO is expected.

(3) Confirm that each agency AAO is a high-level person on staff who reports directly to the agency head.

(4) Clearly define the responsibilities of the agency AAO in writing.

(5) Ensure that the agency AAO has expertise in the field and is devoted to achieving the objectives of the position.

(6) Provide ongoing training and continuing education to agency AAOs.

Acknowledging the increasing trend of adopting an expanded understanding of the concepts of diversity and diversity management, the Commission also proposes the following long-term approaches:

(7) Adopt a diversity management model to increase diversity in the State's workforce and consider centralizing this function within the Governor's Office.

(8) Review best practices, as well as models for diversity management implementation, as New York determines what policies and practices it will use to carry out its commitment to workforce diversity.

(9) Conduct a review of competencies needed for today's diversity professionals, incorporate them into the classification standards for AAOs, and develop training courses for current AAOs that encompass competencies needed for 21st century diversity professionals.

I. INTRODUCTION

Never before has there been a workforce as diverse as today's New York State workforce. The mix of race, gender, ethnicity, age, and life experiences among State employees is stunning. However, these differences can produce tensions and potential flash points. Misunderstanding and resentment based on these differences is problematic and can result in complaints of discrimination, real and perceived. As a result, forward-thinking organizations are working to develop diversity initiatives that can alleviate conflicts among people of different backgrounds and life experiences.

The population of New York State is experiencing dramatic demographic fluctuations and changes as more ethnic and racial minorities reside here. In addition, the State is facing a labor shortage as the Baby Boomer generation continues to age and retire. As a result, in order to be flexible enough to meet the needs of their constituents, State agencies must strive to

employ a workforce that reflects these demographic changes. Increasingly, the faces of New York State suppliers, customers, and stakeholders are people of color, women, individuals with disabilities, gay, lesbian, bisexual, and transgender individuals, and veterans and older workers. These suppliers, customers, stakeholders, and constituents deserve and demand that their government reflect the population of the State, as well as be nimble enough to meet their diverse needs. However, a successful diversity initiative requires aware and enlightened leaders determined to make this a reality.

Because the role of the AAO is critical to implementing programs to increase diversity in the State's workforce, the Commission focused its efforts on examining this position and how its duties and responsibilities can be improved to meet the needs of an increasingly diverse workforce and work environment within State government.[1]

A. Overview and History of the Commission

The Commission is an independent, non-policymaking entity created by Chapter 705 of the Laws of 2006 and established within the Department of Civil Service to examine, evaluate, and recommend ways to increase the number of minority workers in State service.[2]

1. Composition of the Commission

The Commission is composed of 15 members who are appointed as follows:

- Nine members appointed by the Governor
- Three members appointed by the Temporary President of the Senate
- Three members appointed by the Speaker of the Assembly[3]

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[1] The Commission is continuing its investigations and inquiries into other areas pertaining to the State Government workforce consistent with its statutory mission, as described later in this report.

[2] *See* N.Y. Civ. Serv. Law § 7-A[1] (annexed as **Exhibit A**).

[3] *See id.* § 7-A[2].

Of the nine members appointed by the Governor, at least one member must represent each of the following:

- the Department of Civil Service
- the Governor's Office of Employee Relations
- the Governor's Appointments Office
- a prominent civil rights organization representing blacks
- a prominent civil rights organization representing Hispanics
- a prominent civil rights organization representing Asians[4]

Moreover, all the members appointed by the Temporary President of the Senate and the Speaker of the Assembly must represent a protected class as established by federal statutory or case law.[5] Every member of the Commission serves at the pleasure of the member's appointing official, and the Commission's membership must broadly represent the geographic areas of the State and its diverse minority communities.[6] Additionally, the Governor is entitled to appoint a Vice-Chair from among his or her appointees.[7]

At present, the membership of the Commission remains incomplete at 13, with two vacancies to be filled by the Governor and the Speaker of the Assembly; the Governor's appointment of a Vice-Chair also remains pending. Former Governor Eliot Spitzer appointed Elizabeth D. Moore, Esq., as the Chair of the Commission in Spring 2007. She served in that position until April 2009, when Governor David A. Paterson appointed Commission Member Theodore K. Cheng, Esq., as the new Chair.

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[4] *See id.*

[5] *See id.* The Commission notes that the statute does not explicitly identify other classes that are typically protected under anti-discrimination and equal employment opportunity laws and regulations, such as Native Americans, the disabled, lesbian/gay/bisexual/transgender individuals, and veterans. *See* Transcript of Public Hearing (Apr. 21, 2010) ("Hrg. Tr.") at 14 [Mr. Adeen-Hasan], 39 [Ms. Bradwell].

[6] *See* N.Y. Civ. Serv. Law § 7-A[2].

[7] *See id.*

2. Purposes and Powers of the Commission

Among other things, the Commission is charged with (a) recommending ways to increase the number of minority workers in State service; (b) studying how to diversify the workforce in State service as the existing workforce ages out and retires; (c) reviewing the diversity hiring practices of other states and the Federal Government, including reviewing the Presidential Management Interim Program model for recruiting and advancing Hispanic and African American college graduates, and recommending the best outcome practices; (d) reviewing and recommending changes to the existing hiring and promotion practices that will help diversify the workers in State service at all levels of service; (e) reviewing and recommending the means to best provide information to students and faculty at colleges and universities in the State on the employment and promotion opportunities in State service; (f) reviewing and recommending recruiting and employment practices that will bring Hispanics into jobs classified as shortage-category occupations, as well as other occupations; (g) reviewing and recommending any flexibilities that exist in the State civil service system to bring minorities into jobs classified as shortage-category occupations, as well as other occupations; and (h) reviewing and recommending procedures that the Department of Civil Service should take to develop and promote the participation of minority State employees in career development programs.[8]

In carrying out these charges, the Commission may meet within and without the State and hold public hearings, as well as exercise all the powers of a legislative committee under the New York Legislative Law.[9] To the maximum extent feasible, the Commission is also entitled to request, receive, and be provided with the facilities, resources, and data of any court, department,

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[8] *See id.* § 7-A[3](a)-(h).

[9] *See id.* § 7-A[3](i).

division, board, bureau, commission, or agency of the State as it may reasonably request to properly carry out its powers and duties.[10]

3. Funding for the Commission

The statute that established the Commission did not provide for any funding to support the Commission's work.

In the first year of the Commission's existence – the 2007-2008 fiscal year – no funds were allocated, appropriated, or otherwise made available to the Commission by the Legislature. The following fiscal year (2008-2009), the Legislature initially allocated funds for, among other uses, the hiring of an Executive Director and other staff to assist in the Commission's work. Due to, among other things, the State's hiring freeze, those plans were indefinitely suspended, and the Legislature did not reappropriate the funds initially allocated.[11] Additionally, no funds were allocated or appropriated for the 2009-2010 fiscal year, and the Commission is unaware of any source of funds to support the Commission's work in the 2010-2011 fiscal year.

This lack of funding has impeded the Commission's ability to effectively carry out its statutory mission.[12] Indeed, this report has been prepared solely through the dedicated volunteer

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[10] *See id.* § 7-A[3](j).

[11] The Commission is grateful that, over the course of its first two years of existence, the Department of Civil Service voluntarily reimbursed the travel and meal expenditures incurred by the Members in attending the periodic meetings of the Commission. However, the Department of Civil Service has informed the Commission that it will be unable to continue these reimbursements.

[12] In particular, the statute mandates that the Commission shall report to the Governor and the Legislature on an annual basis every April from 2007 through 2009 with its findings, conclusions, and recommendations, as well as the status of, and any actions taken on, the foregoing recommendations and which actions have and have not been taken to provide for diversity in the State Government workforce. *See id.* § 7-A[3](k). Due to the financial and other constraints placed upon the Commission, the Commission has not undertaken to comply with these statutory reporting requirements, although it voluntarily sent a report to

efforts of the Commission Members, without any substantial financial or other support.[13] The Commission urges both the Governor and the Legislature to address the issue of the Commission's funding so that it can more effectively pursue its statutory mission.

4. Activities of the Commission

The Commission met for the first time in July 2007 in New York City. It has since held more than a dozen in-person and telephonic meetings in both New York City and Albany, but has principally conducted its work over e-mail.[14] The Commission has examined, studied, and evaluated a number of different topics relevant to its statutory charges. Initially, the Commission Members familiarized or reacquainted themselves with the State's civil service system and then began focusing on the AAOs in the various State agencies, who play a critical role in the State's efforts to diversify the workforce.

To better ascertain the essential duties and responsibilities of those who serve as AAOs, the Commission worked with the Department of Civil Service to survey both the agency heads

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the Governor and the Legislature in April 2010 detailing its activities during the preceding year.

[13] The Commission gratefully acknowledges the assistance of Teneka E. Frost-Amusa, Esq., and Allison E. Meyer, Esq., both of whom provided additional volunteer support towards the completion of this report. Commission Member Lorraine Cortés-Vázquez requested Ms. Frost-Amusa's participation on the Commission. Subsequently, the Chair appointed her as a Special Consultant to the Commission. The Chair also appointed Ms. Meyer to serve as the Commission Secretary. The Commission also acknowledges the contributions to this report by its past Members, Joseph A. Gomez, Francine James, Elizabeth D. Moore, Esq., Mark G. Pearce, Esq., and Karen Y. Spotford.

[14] In fact, in the past year, the Commission has met only twice in person due to the inability to reimburse the Commission Members for any travel, hotel, or meal expenses. However, the law firm of Proskauer Rose LLP ("Proskauer") has generously donated teleconferencing capabilities so that the Commission could at least meet telephonically. Proskauer has also donated, on a *pro bono* basis, the time of the Chair and the Commission Secretary, along with the costs for both to travel to Albany on two separate occasions. The prior Chair's law firm, Nixon Peabody LLP, provided similar financial support during the time that she led the Commission.

and their AAOs to learn about their respective responsibilities and roles. At the same time, the Commission examined a number of policies and practices relating to affirmative action and increasing the diversity of the workforce, such as Executive Order No. 6 (1983); the 1995 Comptroller's Report (95-S-28) on the Oversight of New York State's Affirmative Action Program; a possible Chief Diversity Officer position within the Executive Branch; testing validation and band scoring for examinations administered by the Department of Civil Service; methods used by the Department of Civil Service to improve recruitment and outreach; the impact of the New York Civil Service Law and Rules on efforts to diversify the workforce; pipeline issues; identification of entry points into the State workforce system; and the Department of Civil Service's Public Management Institute program.

The Commission also held two public hearings during its existence. On December 9, 2008, the Commission held a hearing in Albany, eliciting testimony from various constituencies, including AAOs, affirmative action working groups, and union representatives, regarding the lack of diversity in the State workforce. The participants had the opportunity to voice their concerns to help the Commission Members better understand some of the pertinent issues. Then, on January 11, 2010, the Commission issued a draft of this report, which was posted on the website of the Department of Civil Service and separately distributed to various interested stakeholders, including affirmative action officers, human resource professionals, and unions representing State employees. In an accompanying notice, the Commission also provided an opportunity for members of the public to submit written comments, and it thereafter received a number of helpful comments from various groups and interested constituents. On April 21, 2010, the Commission held a public hearing on the draft report in Albany, at which witnesses

provided additional, helpful information and perspectives. All of the written submissions were made a part of the record of the hearing and annexed to the hearing transcript.[15]

B. History of Affirmative Action Policy in New York State

It is the policy of New York State that employers provide equal employment opportunity to all people without regard to race, color, gender, religion, age, or national origin. This policy comports with the statutory requirements of the New York State Human Rights Law (Executive Law, Article 15) and the mandates of Title VII of the Civil Rights Act of 1964. In addition, executive orders issued by past governors have required the State agencies to develop avenues of entry and mobility for protected class individuals to improve their representation in the State workforce.

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[15] The witnesses who testified at the April 21 hearing were: (a) Karim Adeen-Hasan and Carol Bradwell of the New York State Affirmative Action Advisory Council; (b) Merton D. Simpson, Jr. of the Upstate New York Albany Chapter of Blacks in Government; (c) Alelie Serrano of the New York State Department of Environmental Conservation; (d) Ivonne Hanks of the New York State Office of Temporary and Disability Assistance; and (e) Doris Powell of the New York State Department of Transportation. The exhibits annexed to the hearing transcript are as follows:

Ex. A – Karim Adeen-Hasan, Chairperson of The New York State Affirmative Action Advisory Council
Ex. B – Kenneth Brynien, President of The New York State Public Employees Federation
Ex. C – Jose Burgos, Director of Human Resource Management of The New York State Division of Parole
Ex. D – The Honorable Galen D. Kirkland, Commissioner of The New York State Division of Human Rights
Ex. E – Barbara Zaron, President of The Organization of New York State Management Confidential Employees
Ex. F – Donna Perry, a former State employee
Ex. G – Slides presented by The New York State Affirmative Action Advisory Council

The written submissions, hearing transcript, and exhibits are all on file with the Commission Secretary. The Commission gratefully acknowledges that Proskauer provided the funding to secure a stenographer to transcribe the testimony elicited at this hearing so that a permanent record could be maintained. Copies of the transcript may be obtained by contacting David Feldman Worldwide, Inc., 450 Seventh Avenue, Suite 2803, New York, New York 10123, (212) 705-8585.

On September 15, 1976, Governor Hugh Carey signed Executive Order No. 40 (annexed as **Exhibit B**), which required the New York State Division of Human Rights to enforce the State's policy of ensuring full and equal opportunity for minorities, women, and the disabled at all occupational levels of State agencies. This executive order also required that each State agency develop a written affirmative action plan, including specific goals and timetables for the prompt achievement of full and equal employment opportunities for these protected classes. The Division of Human Rights was required to evaluate the plans, monitor agency affirmative action efforts, and provide quarterly reports of those efforts to the Governor.

Executive Order 40 also established the Governor's Executive Committee for Affirmative Action to advise the Governor and to assist the Commissioner of Human Rights in formulating and coordinating State agency affirmative action plans, policies, and programs, as well as ensuring their implementation. The President of the Civil Service Commission was designated as Chairperson for the committee, which includes several senior State policymakers.

On April 8, 1980, Governor Carey signed Executive Order No. 40.1 (annexed as **Exhibit C**), which transferred the responsibility for overseeing statewide affirmative action efforts from the Division of Human Rights to the President of the Civil Service Commission, continued the role of the Executive Committee for Affirmative Action, and added Vietnam era veterans as a protected class. Most agencies were also required to designate a full-time AAO who would report directly to the head of the agency and oversee the day-to-day activities of the agency's affirmative action program. Executive Order 40.1 also established the Affirmative Action Advisory Council, which comprises the AAOs from each State agency. The Council was given the role of advising the Executive Committee for Affirmative Action on the concerns of AAOs

and advising the President of the Civil Service Commission on all existing and proposed policies.

On February 18, 1983, Governor Mario M. Cuomo signed Executive Order No. 6 (annexed as **Exhibit D**), which continued to require the President of the Civil Service Commission to enforce the State's policy of ensuring full and equal opportunity for all protected classes of individuals, as well as continued the Executive Committee for Affirmative Action and established an Affirmative Action Advisory Council. The executive order emphasized the need to provide new employment opportunities to protected class individuals.

The President of the Civil Service Commission delegated to the Department of Civil Service's Division of Diversity Planning and Management ("DPM") the responsibility for monitoring, implementing, and ensuring compliance with, agency affirmative action plans. In the 1988-1989 fiscal year, the Department of Civil Service had a staffing level of 887, and the DPM had a staff of as many as 57. Over the course of the 1980s and 1990s, and continuing into this decade, the Department of Civil Service has experienced, and continues to experience, a decline in staff due to fiscal concerns. By the 2008-2009 fiscal year, the Department of Civil Service's total staffing had decreased to 522, with the DPM having a staff of only 9. In early 2009, the responsibilities of the DPM were included within the Department of Civil Service's Staffing Services Division, which is responsible for workforce management planning; expanding, changing or downsizing activities; establishing minimum qualifications and subjects for examination; and developing appointment and placement strategies. Since then, a separate division under the name DPM has not existed in the Department of Civil Service.

Executive Order No. 6 does not apply to the judicial or legislative branches of New York State government or to public authorities. However, some public authorities voluntarily comply.

It is generally accepted that the order does not apply to the Comptroller or Attorney General because they are independently elected officials, but they have both issued their own executive orders establishing affirmative action plans for their agencies. Both Governor Spitzer and Governor Paterson reissued Executive Order No. 6 during their administrations.[16]

II. THE ROLE OF THE AFFIRMATIVE ACTION OFFICER

In New York State, the responsibility for implementing an agency's affirmative action program is, in most cases, the responsibility of the agency's AAO. The person holding this position has many responsibilities that have increased over time as new laws were enacted and the work environment changed. In fact, as described in more detail below, a recent survey conducted by the Department of Civil Service revealed that AAOs are now responsible for a number of duties in addition to the role as outlined for them in the classification standards and the 1984 Model Affirmative Action Plan ("Model Plan") (annexed as **Exhibit E**). Many of the survey results were also corroborated by the written submissions and testimony in response to the Commission's draft version of this report.

Empirical and Anecdotal Evidence on the Roles and Responsibilities of the Affirmative Action Officers

1. The 2007 Survey

In November 2007, to gather more specific information on the status of affirmative action programs at the agency level in the form of empirical and anecdotal evidence, the Department of Civil Service, with input from the Commission, surveyed the heads of the State agencies that are mandated to comply with Executive Order No. 6 and their respective AAOs. (A copy of the survey form is annexed as **Exhibit F**.) The completed surveys provided updated information

[16] The Commission is informed that the New York State Affirmative Action Advisory Council ("AAAC") is currently formulating proposed revisions to Executive Order No. 6.

about the current roles, duties, and responsibilities of the agency AAOs and about how the agencies are administering the State's affirmative action policy.

The surveys were based on the requirements outlined in Executive Order No. 6 and the Model Plan. These two documents form the basic framework for compliance with the State's affirmative action policy. Executive Order No. 6 is the foundation of the State's affirmative action policy, in that it vests the responsibility to ensure full and equal opportunity for people of color, women, people with disabilities, and Vietnam era veterans in the President of the Civil Service Commission and Department of Civil Service, with the assistance of the Governor's Executive Committee for Affirmative Action and advice from the Affirmative Action Advisory Council.

Executive Order No. 6 outlines the various components of the State's affirmative action policy, which include:

- submitting annual affirmative action plans by state agencies;
- developing statewide affirmative action policies, goals, objectives, and implementation strategies;
- monitoring and evaluating the implementation of agency affirmative action plans;
- determining "substantial non-compliance" and creating remedial action plans by the Department of Civil Service for agencies in violation of Executive Order No. 6;
- annual reporting on the composition of the workforce of each agency by gender and ethnicity;
- conducting studies to identify and resolve problems in eliminating underrepresentation and underutilization;
- amending, repealing, or adopting laws, rules, and regulations within the scope of the Department of Civil Service's authority and making recommendations on other laws, rules, and regulations that may adversely affect employment opportunities of protected class members;

- employing a full-time AAO in each agency who reports directly to the agency head with supportive staff as may be appropriate; and
- submitting an annual report on affirmative action from each agency by March 1st of each year.

To support the directives of Executive Order No. 6, in 1983-1984, the Department of Civil Service developed the Model Plan to assist agencies with developing and implementing agency affirmative action plans and with fulfilling their responsibility to review and evaluate those plans. The Model Plan includes policies, procedures, and strategies for successfully and effectively implementing affirmative action programs within the agencies. When the Model Plan was initially developed, it was based upon a model promulgated by the Federal government, as provided by the U.S. Department of Labor's Office of Federal Contract Compliance Programs.

Major components of the Model Plan include:

- a policy statement signed by the agency head and disseminated both internally and externally
- duties of the AAO
- creation of an agency Affirmative Action Committee
- establishment of affirmative action goals and timetables for completion
- procedures for the following:
  - individuals with disabilities
  - Vietnam era veterans
  - discrimination complaints
  - recruitment
  - applicant flow
  - physical-medical standards review
  - appointment review
  - counseling, notices of discipline, and other adverse personnel actions
  - reductions-in-force
  - exit audit and interview
  - employee training data collection

2. Principal Findings and Conclusions

Surveys were sent via e-mail on November 15, 2007. Specifically, the survey was sent to 59 agency heads, with 47 responding (an 80% response rate). Fifty-four surveys were sent to the AAOs, with 45 responding (an 83% response rate). Below is a discussion of the principal findings and conclusions of the survey.

a. *The majority of agency AAOs do not report directly to their agency heads and are not performing their duties on a full-time basis.*

Almost all agency heads responded that they have designated someone in their agency to be the AAO, carrying out the day-to-day programmatic responsibility for the agency's affirmative action program. However, the survey found that only one-third of AAOs report directly to their agency heads. Instead, most AAOs reported to either a deputy commissioner or someone in the human resources area.[17] Moreover, only 34% of agency heads stated that their AAO performed duties pertaining to affirmative action on a full-time basis. Indeed, 64% of agency heads have delegated the duties and responsibilities of the AAO to someone other than a full-time AAO, contrary to the directive of Executive Order No. 6.

b. *The duties and responsibilities of the agency AAO have deviated from those outlined in the Model Plan and include added responsibilities beyond those in the Plan.*

A portion of the survey examined compliance with the technical aspects of the Model Plan and the duties of AAOs as outlined in that document. There is a low level of compliance among AAOs regarding some of the major recruitment activities, such as recruitment targeted at underutilized groups, exam planning, and development of employment goals based on utilization analyses. In addition, less than 50% of AAOs perform duties consistent with effective program

[17] There currently also appears to be no real correlation between the size of the agency and the level of the person functioning as the AAO in that organization. *See* Hrg. Tr. at 20-21 [Mr. Adeen-Hasan].

monitoring and evaluation, such as reviewing minimum qualifications for agency positions and conducting analyses of their agency's titles or occupational categories to identify which protected class groups are underutilized. However, the survey also revealed that there is a high level of compliance among AAOs when it comes to (a) ensuring that reasonable accommodations are being provided to known qualified applicants and employees with disabilities; (b) keeping abreast of laws, rules, regulations, and court decisions affecting the agency's affirmative action program; and (c) investigating and resolving complaints of discrimination made by employees and applicants who are members of protected classes.[18]

The survey further revealed that AAOs currently have more responsibilities than those contemplated by the Model Plan. Specifically, the survey found that a majority of AAOs also have the following roles and responsibilities:

- Americans with Disabilities Act ("ADA") coordinator
- sexual harassment prevention training
- medical parking administration
- diversity training
- diversity calendar/events coordinator
- Minority and Women-owned Business Enterprise ("MWBE") officer
- new employee orientation
- provision of religious accommodations[19]

Overall, the survey revealed that there are many aspects of the Model Plan that are not currently being followed by all AAOs. This situation may be due to the fact that the Model Plan has not been evaluated or updated since 1984.[20]

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[18] *See, e.g.*, *id.* at 100-07 [Ms. Serrano] (recounting her personal experiences with workplace discrimination, harassment, and retaliation, and her interactions with AAOs).

[19] *See also id.* at 59 [Ms. Bradwell] (noting that "[d]omestic violence does, to some degree, fall into our program").

[20] The Commission is informed that the AAAC is currently preparing a draft update of the Model Plan to submit to the Department of Civil Service. *See id.*, Ex. A at 4.

c. *The role of the AAO has changed significantly over the last 25 years, with many AAOs performing duties that are more expansive than the duties associated with traditional affirmative action programs.*

The role and duties of AAOs have changed since the classification standards were developed by the Department of Civil Service and differ from the role of the AAO as outlined in the Model Plan. This change and difference are mainly due to new laws, regulations, or policies developed by the Federal and State governments. For example, as noted above, many AAOs function in other diversity-related capacities, such as serving as the agency's ADA coordinator, providing diversity and sexual harassment prevention training, making decisions regarding medical parking, coordinating diversity events, serving as the MWBE officer, or providing religious accommodations.

Indeed, some AAOs indicated that they spend 50% or more of their time performing non-affirmative action functions and activities. Some indicated that they spend time supervising other units and programs, performing human resource activities, and working on special projects for the agency head.[21]

To address this issue, the Department of Civil Service's Division of Classification and Compensation conducted an occupational study of the duties of the AAO and has proposed updated roles and responsibilities for this position (including changed and added responsibilities) in light of the foregoing results.

d. *AAOs need additional training and development regarding the technical aspects of affirmative action, equal employment opportunity, and diversity in order to become more effective practitioners.*

The majority of AAOs indicated that training is needed on all the training topics identified in the survey. Most AAOs indicated that they needed more training on the technical

[21] *See generally id.* at 57-61 (discussing whether AAOs are engaged in unrelated or unfocused job responsibilities, thereby revealing a change or loss in focus).

aspects of their jobs, including adverse impact analysis, Federal/State equal employment opportunity laws, recruitment methods targeted at protected class members, and proper calculation of underutilization statistics. In addition, AAOs indicated that training was also needed on (1) investigating retaliation cases; (2) preparing an affirmative action plan; and (3) providing religious accommodations.

To better ensure compliance with Federal and State affirmative action and equal employment opportunity laws, as well as to implement effective strategies to increase diversity in the State's workforce, training for AAOs that focuses on professional development, diversity best practices, and how to effectively handle related issues in today's workplace needs to be provided on a regular and consistent basis.

III. DISCUSSION AND RECOMMENDATIONS

The Commission recommends simple, short-term solutions to remedy some of the obvious deficiencies that have come to light regarding the roles and responsibilities of the AAOs, as well as the adoption of more holistic, long-term approaches to address the role of the AAO in increasing diversity in the State government workforce. Each will be addressed in turn.[22]

[22] The Commission acknowledges that it has received additional suggestions for recommendations, including creating a diversity strategic plan; instituting mandatory training on affirmative action, equal employment, and diversity issues for all New York State employees; installing mechanisms for accountability for agency executive staff; identifying and using metrics and outcomes as measurement tools; redefining AAOs into competitive class titles to permit mobility and transfer within the civil service system; conducting a study on the aging of AAOs; and conducting a study on the retention of State employees. *See, e.g.*, Hrg. Tr., Ex. A at 5, 6; *id.* at 22-26, 35 [Mr. Adeen-Hasan]; *id.* at 26-28, 30, 67-70 [Ms. Bradwell]; *id.* at 85-86 [Mr. Simpson]. The Commission has considered (and will continue to consider) these suggestions, but is not prepared to endorse any of them at this time.

A. Short-Term Solutions

Based upon the Commission's investigation to date, the AAOs need leadership and guidance from the Executive Branch, as well as ongoing training and continuing education, and their roles and responsibilities need further clarification and prioritization by the agencies. Toward that end, using Executive Order No. 6 (1983) and the Model Plan as a foundation, below are action steps that may be taken in the near future that are feasible, cost-effective, and relatively easily implemented. In sum, the Commission's short-term recommendations are:

RECOMMENDATION NO. 1:	*Designate a person within the Governor's Office who will take responsibility for implementing the State's affirmative action policy.*
RECOMMENDATION NO. 2:	*Direct State agency heads to ensure that their staffs understand that compliance with Executive Order No. 6 (1983) is a priority, and that full cooperation with the agency AAO is expected.*
RECOMMENDATION NO. 3:	*Confirm that each agency AAO is a high-level person on staff who reports directly to the agency head.*
RECOMMENDATION NO. 4:	*Clearly define the responsibilities of the agency AAO in writing.*
RECOMMENDATION NO. 5:	*Ensure that the agency AAO has expertise in the field and is devoted to achieving the objectives of the position.*
RECOMMENDATION NO. 6:	*Provide ongoing training and continuing education to agency AAOs.*

1. Centralized Responsibility in the Governor's Office

RECOMMENDATION NO. 1:	*Designate a person within the Governor's Office who will take responsibility for implementing the State's affirmative action policy.*

The State's adoption of an affirmative action policy and its commitment to equal employment opportunity are not of recent vintage. Yet, the empirical and anecdotal evidence indicates that there has not been full accountability or full compliance with the State's

affirmative action policy for many years.[23] The Commission acknowledges and applauds various efforts made by the current Administration, including the creation of a Diversity Task Force in April 2009[24] and the recruitment and outreach efforts by the Department of Civil Service in several minority communities. However, insufficient leadership from the Executive Branch is nonetheless contributing to a weakening of the State's overall implementation of Executive Order No. 6 and the Model Plan through the AAOs. Accordingly, someone of sufficient authority and responsibility in the Executive Chamber must take responsibility for implementing the State's affirmative action policy to provide leadership and guidance to both the agency heads and the AAOs.[25] Although the Department of Civil Service can be tasked with performing the technical work involved in complying with the policy, the driving force for ensuring equal opportunity must come from within the Executive Chamber.

The person designated to undertake this role should not only be of relatively high stature in the Executive Chamber (*e.g.*, at the level of a Deputy Secretary), but should also be someone

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[23] *See, e.g.*, *id.* at 15 [Mr. Adeen-Hasan].

[24] *See* "Governor Paterson Announces Creation of Task Force to Improve Diversity in State Workforce" (Press Release, Apr. 2, 2009), available at http://www.ny.gov/governor/press/press_0402092.html (last visited June 28, 2010).

[25] *See, e.g.*, Hrg. Tr. at 28 [Ms. Bradwell] ("[L]eadership is essential and that commitment has to be expressed."); *id.* at 46 [Mr. Adeen-Hasan] ("[I]f it's an executive priority, then somebody has to first hold the commissioners accountable, and the agencies accountable . . . ."); *id.* at 94 [Mr. Simpson] ("[I]f there's not a commitment at the level of the governor, then there's not likely to be a commitment at the level of the agency's head . . . ."); *see also id.*, Ex. A at 4 ("The [AAAC] supports the Commission's call for an increase in support and leadership from the Executive Chamber for the State's diversity efforts and EEO compliance, the latter being essential to a fair and equitable work place that supports diversity."); *id.*, Ex. D at 4 ("It is important to have an individual in the Governor's office on the second floor who is responsible for addressing diversity and affirmative action. . . . Making diversity and affirmative action a reality within agencies begins with the commitment of the governor, the administration, agency heads and all managers responsible for agency hiring, promotion and training.").

who can maintain a firm commitment to enforcing the State's affirmative action policy, without significant impediments or distractions from other responsibilities that compete for the designee's attention.[26] Although the Commission does not necessarily believe that a new position must be created in order to carry out this recommendation, especially given the current fiscal constraints on the State, there is a great need for an identified individual who can focus time and effort and take the lead on implementing the State's policies. When the State's fiscal climate improves, the issue of creating a separate position can be revisited, perhaps along with consideration of a Chief Diversity Officer ("CDO") position.[27]

2. AAOs and Compliance with Executive Order No. 6 (1983)

RECOMMENDATION NO. 2:	*Direct State agency heads to ensure that their staffs understand that compliance with Executive Order No. 6 (1983) is a priority, and that full cooperation with the agency AAO is expected.*

Agency heads should tell their staffs that compliance with Executive Order No. 6 (1983) is a priority. Moreover, agency heads should ensure that their staffs understand that the AAO in that agency possesses real authority, and that the leadership of the agency fully supports the AAO. Agency staff should also be required to fully cooperate with the AAO in that person's efforts to comply with affirmative action laws, regulations, and rules, including, but not limited

[26] *See id.* at 15, 36 [Mr. Adeen-Hasan] and 30-31 [Ms. Bradwell] (noting that lack of enforcement, non-compliance, and lack of monitoring are issues affecting the ability of AAOs to carry out their job responsibilities).

[27] *See* Section III.B.1 below. The Commission is currently investigating the nature of such a position as implemented by other states. The Commission also notes that both the AAAC and the Upstate New York Albany Chapter of Blacks in Government support the creation of a CDO position in the Governor's Office. *See, e.g.*, Hrg. Tr., Ex. A at 4; *id.* at 37-39, 50-52 [Ms. Bradwell]; *id.* at 49-50 [Mr. Adeen-Hasan]; *id.* at 90-91, 93-95 [Mr. Simpson].

to, the internal investigation of discrimination complaints and the affording of any reasonable accommodations required under the law.

These directives can, for example, be provided by the person designated in the Governor's Office to implement the State's affirmative action policy, as noted in Recommendation No. 1 above. Moreover, this recommendation requires some tailoring to the particular circumstances of each agency. Specifically, the Commission is sensitive to the fiscal and other constraints that smaller agencies face. Thus, differences in staffing levels and allocated resources should be accounted for in implementing this recommendation. Additionally, important size and compliance differences that apply to Upstate New York communities and agencies may require particular attention or additional training and recruitment initiatives that may or may not be required in other regions of the State.[28]

3. The AAO Position Within the State Agency

RECOMMENDATION NO. 3:	*Confirm that each agency AAO is a high-level person on staff who reports directly to the agency head.*
RECOMMENDATION NO. 4:	*Clearly define the responsibilities of the agency AAO in writing.*
RECOMMENDATION NO. 5:	*Ensure that the agency AAO has expertise in the field and is devoted to achieving the objectives of the position.*

The AAO should be a high-level staff person at the agency who can command authority by virtue of holding the AAO position. The AAO should also report directly to the agency head so that clear communication and direction about implementing and complying with the State's affirmative action policy can be achieved.[29] At a bare minimum, the AAO should not be a part of, or report to, the human resources area within the agency. Doing so presents not only an

[28] *See generally id.* at 61-67.

[29] *See id.*, Ex. D at 4 ("We agree with the recommendations, especially having the officer be a high level position within the agency reporting directly to the head of the agency.").

optics problem regarding the AAO's apparent authority and respect within the agency, but a potential impediment to carrying out the AAO's duties. Indeed, the AAO should have at least as much authority as the head of human resources.[30]

Additionally, the responsibilities of the AAO should be clearly defined in writing to eliminate any ambiguity as to the AAO's roles and responsibilities within the agency and within the larger State workforce framework. The Department of Civil Service's effort to conduct an occupational study of the duties of the AAO in order to update the roles and responsibilities of the position should be helpful toward that end.[31] Moreover, the AAO should be someone who is devoted to achieving the objectives of the position. The position cannot be filled by someone who primarily has other responsibilities and implements the State's affirmative action policy as an additional responsibility. Rather, the converse should be the case, namely, the person's primary responsibility should be to implement the State's affirmative action policy, while balancing secondary or tertiary responsibilities. Additionally, the AAO should be someone with demonstrable expertise in the field of affirmative action, with knowledge of the laws, rules, and regulations governing the field, in addition to having an intimate familiarity with Executive Order No. 6 and the Model Plan.

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[30] *See id.* at 33 [Mr. Adeen-Hasan] ("There are some affirmative action officers that report to human resources. There are also some affirmative action officers that report to the deputy commission[er] of the division and there are some affirmative action officers who have a direct reporting relationship to the commissioner of the agency. And we think that that's crucial because that sets the tone.").

[31] *See id.*, Ex. A at 5 (supporting the updating of titles to those "more contemporary and descriptive"). The Commission is informed that the revised titles and descriptions are in tentative draft form at this time and will be released by the Department of Civil Service in short order.

4. The Need for Ongoing Training

RECOMMENDATION NO. 6:	*Provide ongoing training and continuing education to agency AAOs.*

As a complement to Recommendation No. 5 above, AAOs should receive ongoing training in the field, perhaps through continuing education programs.[32] In that way, AAOs will remain abreast of changes in the law and can implement the State's commitment to affirmative action armed with knowledge of the latest and most current developments.

B. Long-Term Approaches

In order to significantly increase the recruitment and retention of protected class members in State government and institutionalize the importance of diversity across all State agencies, the role of the AAO must also take into account whether there are appropriate structures in place to ensure that diversity professionals can be successful in their efforts to increase diversity. Toward that end, below are action steps that may be taken on a more long-term basis to address the issues outlined in this report. Principles of diversity management neither conflict with nor supplant affirmative action efforts or steps; rather, they are natural complements of each other and are each components of the State's overall goal to increase the diversity of its workforce.[33]

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[32] *See id.* ("Ongoing training and continuing education in AA/EEO is essential to the job of an Affirmative Action Officer. Although currently there are some AAO's that are very knowledgeable in the field, there are also some AAO's that have been placed in the titles and have not been trained in AA/EEO."); *id.* at 79 [Mr. Simpson] (noting that, at one time, "180 hours were dedicated to training affirmative action officers"). *See also id.* at 110, 112 [Ms. Serrano] (emphasizing the importance of diversity training as a step towards preventing workplace discrimination).

[33] *See* Hrg. Tr., Ex. A at 5 ("[I]t is important to recognize that EEO/AA measures are essential to attaining and retaining diversity in the workplace.").

In the Commission's view, adopting a diversity management model will better enable the State to comply with and implement its affirmative action policy.[34] In sum, the Commission's long-term recommendations are:

RECOMMENDATION NO. 7:	*Adopt a diversity management model to increase diversity in the State's workforce and consider centralizing this function within the Governor's Office.*
RECOMMENDATION NO. 8:	*Review best practices, as well as models for diversity management implementation, as New York determines what policies and practices it will use to carry out its commitment to workforce diversity.*
RECOMMENDATION NO. 9:	*Conduct a review of competencies needed for today's diversity professionals, incorporate them into the classification standards for AAOs, and develop training courses for current AAOs that encompass competencies needed for 21st century diversity professionals.*

1. Moving From an Affirmative Action Model to a Diversity Management Model

RECOMMENDATION NO. 7:	*Adopt a diversity management model to increase diversity in the State's workforce and consider centralizing this function within the Governor's Office.*

Affirmative action has been a policy directive in the State of New York since 1976. Executive Order No. 6, which was signed by Governor Cuomo in 1983 and re-issued by every governor since then, constitutes the current policy. It requires that the principles of equal employment opportunity and affirmative action be carried out in the State's personnel system and directs the Department of Civil Service to enforce the State's policy of ensuring "full and equal opportunity for minorities, women, disabled persons and Vietnam era veterans at all occupational levels of state government." Affirmative action originates from the Civil Rights

[34] *See id.*, Ex. D at 4 ("We agree with your first report that State government should evaluate various 'diversity management' models and practices in the private sector. When the CEO of a private company embraces 'diversity management', it is reflected in all aspects of the corporation.").

Movement of the 1960s and was first implemented by President John F. Kennedy in 1961 through Executive Order No. 10925, which imposed "affirmative action" obligations on firms performing procurement contracts for the Federal government and established the President's Committee on Equal Employment Opportunity. This order also required federal contractors, in order to receive federal funds, to measure employment practices, submit affirmative action plans, and develop a workforce that was reflective of the community in which they worked. In 1963, these obligations were extended to federal construction contractors through President Kennedy's Executive Order No. 11114.[35] Title VII of the Civil Rights Act of 1964 and the New York State Human Rights Law (Executive Law, Article 15) set forth the legal framework for affirmative action programs on the State level.

Modeled after the Federal government's program, affirmative action in New York requires State agencies under the authority of the Governor's Office to aggressively seek to overcome the effects of past discrimination against minorities, women, disabled persons, and veterans by (1) making positive and continuous efforts in their recruitment, employment, retention, and promotion; and (2) actively seeking to remove barriers that artificially limit the professional and personal development of individuals who are members of these protected classes. To implement affirmative action on the agency level, Executive Order No. 6 requires each agency to (1) develop a written affirmative action plan; (2) designate an employee to be the agency's full-time AAO; and (3) submit an annual report on the agency's affirmative action good faith efforts.

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[35] President Lyndon B. Johnson continued the obligations of the Kennedy Administration orders and transferred enforcement responsibility to the Secretary of Labor through Executive Order No. 11246. That executive order was amended in 1967 by Executive Order No. 11375 to extend the equal employment opportunity programs it provided to include the prohibition of discrimination on account of sex.

Although Executive Order No. 6 has increased opportunities for protected class members in the State's workforce since its adoption, these gains have not gone far enough. In April 2005, The New York State Assembly Puerto Rican/Hispanic Task Force issued a report entitled, "Hispanics & African Americans Need Not Apply: The Alarming Under-representation of Minorities in the New York State Government Workforce" ("April 2005 Report"). Among other things, this report argued that minorities, such as Hispanics and African Americans, do not hold top administrative or policymaking positions; that their representation is still not representative of the population of the State; and that there has been very little opportunity for upward mobility for Hispanics and African Americans, who are concentrated in the lower salary grades in the civil service system. The April 2005 Report also raised the issue that the lack of enforcement of Executive Order No. 6 rendered AAOs ineffective in carrying out their responsibilities.

More recently, the Department of Civil Service issued a report entitled, "Diversity in the New York State Government Workforce: A Look at the Last Decade, and the Next" ("March 2009 Report"), in which it examined the overall State government workforce regarding the representation of minorities, women, and persons with disabilities during the years 1998-2008 by comparing the composition of the State's workforce with the overall statewide labor force during that same time period. The March 2009 Report pointed out that nearly all protected class groups continue to be underrepresented in the job categories within State Government. In addition, the March 2009 Report provided empirical evidence that there is a heavy concentration of protected class members in the lower salary grades, *i.e.*, those at the SG-23 level and below.

Many experts argue that New York State's challenges in increasing diversity are not unique. Moreover, many organizations have found that solely focusing on the affirmative action model to increase diversity has done little to increase the representation of protected class

members at the middle management and senior leadership positions. As R. Roosevelt Thomas, Jr. suggests in his article "From Affirmative Action to Affirming Diversity" (*Harvard Business Review*, March-April 1990), the problem is not recruiting protected class members at the entry level; the problem is making better use of their potential at every level, especially in middle-management and leadership positions. Mr. Thomas argues that affirmative action is still needed to create a diverse workforce at every level, but he urges organizations to move beyond affirmative action to the concept of managing diversity.

Instead of simply changing the representation of their workforce, which is the ostensible goal of affirmative action programs, organizations dedicated to a diverse workforce include action steps and measures that create an inclusive environment maximizing the talent resulting from maintaining a diverse workforce. The challenge, therefore, is to capitalize on the State's diversity and ensure that its workforce not only reflects the diversity of its citizens, but also maximizes the diverse talents that such a workforce will bring.

Moreover, the State need not rely on a single approach to diversify its workforce, nor does it have to abandon its commitment to affirmative action. Frederick A. Miller and Judith H. Katz, in their book *The Inclusion Breakthrough: Unleashing the Real Power of Diversity* (2002), suggest that organizations that want to improve their diversity efforts need to go beyond affirmative action. They argue that "increasing diversity efforts to meet affirmative action goals is superficial if the organization is not prepared to include an increased range of differences in its day to day activities and interactions." This unpreparedness often occurs because, in many cases, a demographically diverse organization lacks the workplace environment required to leverage the diversity it has. According to Mr. Miller and Ms. Katz, "diversity without inclusion does not work."

Although affirmative action and diversity management are two separate concepts, functioning together, they have been proven to improve the representation of protected class members in organizations and create inclusive work environments. It is the concept of managing diversity, however, that presents an opportunity for the State to take its efforts to diversify its workforce to the next level. One of the drawbacks of using only affirmative action to create a diverse workforce is the over-reliance on the AAO at the agency level. However, focusing on broader diversity initiatives will require leaders at the highest levels of State government, as well as management at all levels, not just the AAO, to commit to diversity. To develop a more productive, fair, and efficient State government that can meet the challenges of the 21st century workplace, creating a diverse workforce must move beyond affirmative action compliance and toward integrating diversity into the fabric of the State's activities and operations.

In his book *Beyond Race and Gender: Unleashing the Power of Your Total Work Force By Managing Diversity* (1992), R. Roosevelt Thomas, Jr. defined managing diversity as a way of treating diversity as an asset by including in the organization "a comprehensive managerial process for developing an environment that works for all employees." At bottom, managing diversity is about managing the complexities created by an increasingly diverse workforce.[36] Diversity management is an integral component of effective human resource management, as it has a direct influence on the effectiveness of policy formulation and service delivery within any

[36] *See* Hrg. Tr. at 16 [Mr. Adeen-Hasan] ("Diversity management invokes on creating an environment that recognizes diversity and recognizes the skill and abilities of everyone, and recognizes our multifaceted society as an available asset as a means of improving the workplace environment to be in. The goal of diversity management is to create [an] inclusive work environment and community."). *See also id.* at 116, 118 [Ms. Hanks] ("[A]ffirmative [ ] action is the federal government's interest to ensure equal employment opportunity by preventing discrimination in the employment practices and to report on the progress. . . . Diversity is broader than affirmative action. . . . Diversity is important because by educating management and staff on how to work effectively in a diverse environment[, it] helps the state prevent discrimination, to provoke inclusiveness.").

organization. As achieving workforce diversity becomes strategically important to achieving organizational outcomes, diversity management needs to be viewed as an integrated planning and management tool. This way of thinking is echoed by Mr. Miller and Ms. Katz in *The Inclusion Breakthrough*, which posits that having a diverse workforce does not automatically mean that diversity will be a valuable asset that contributes to an organization's success. That is, to realize the value of a diverse workforce, they suggest that there must be "strategic intent" to unleash that diversity.

Indeed, diversity management addresses the need to foster diversity and inclusiveness in the workplace. Sonia Ospina, in "Managing Diversity in Civil Service: A Conceptual Framework for Public Organizations" (presented at United Nations Expert Group Meeting on Managing Diversity in the Civil Service, May 3-4, 2001), recounts that approaches to diversity in the workforce have evolved from "affirmative action and equal employment opportunity which were needed to increase representation of minorities and women and reduced discriminatory practices in employment" to "changing the workplace culture and employment practices." Ms. Ospina further suggests that "diversity management represents the state of the art in theory and practice of workforce diversity." She argues that approaches to diversity must be more than episodic and random, but, rather, systemic and linked to existing systems and core organizational activities to form a "coherent whole." It must be a strategic issue and a proactive decision to undergo long-term organizational change. She encourages public organizations to do more than pursue proportional representation and target minority groups for interacting with clients of a similar background, and to use the diverse backgrounds to enhance productivity, create new opportunities, and develop new systems and strategies. Ms. Ospina leads readers to conclude that the answer to the question of how government can respond to doing more with less is to

embrace diversity management, as it is a tool that helps organizations emphasize innovation, creativity, and diversity perspectives to solve problems and make decisions, instead of increasing budgets and adding new programs.

In that regard, as mentioned briefly in the March 2009 Report, many organizations have established a CDO position to lead their diversity management efforts. Although more prevalent in the private sector and in higher education, some governmental entities have also created CDOs. For example, the Commonwealth of Pennsylvania, the State of Maryland, and, in the Federal government, the Department of State and the Internal Revenue Service have all recently established CDO positions. In her article "Supersized Performance" (*Profiles in Diversity Journal*, March/April 2004), Monica Hawkins describes the CDO as a "business strategist who orchestrates change and influences leadership to build sustainable high performance." CDOs are often placed at the highest levels of an organization, alongside the chief financial officer, chief operating officer, chief information officer, and other "C" level executives who report directly to the chief executive officer. This role may be important as New York looks at ways to provide the leadership needed to establish an aggressive approach to implementing diversity management.[37]

Unlike the affirmative action model, the diversity management model is much more strategic and driven by the leadership of an organization, rather than any one individual in a traditional affirmative action role. However, there must be a senior-level employee in each agency whose primary responsibility is to develop and implement the diversity program.[38] This

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[37] *See id.* at 37-39, 50-52 [Ms. Bradwell], 49-50 [Mr. Adeen-Hasan], and 90-91, 93-95 [Mr. Simpson] (proposing parameters and structure for a CDO position in New York State).

[38] Among other things, this senior-level employee would need to provide training on diversity management, in addition to affirmative action and equal employment opportunity. *See id.* at 42-43 [Ms. Bradwell].

person should have the ultimate responsibility for recruiting, developing, and retaining a diverse workforce and creating a culture of inclusion. Notably, administering an affirmative action-equal opportunity program, reviewing discrimination complaint investigations, and monitoring the demographics of an agency to identify barriers to employment of protected class members are separate and apart from providing diversity training, recruiting, and retention activities for all employees, and providing direction and guidance on how to use diversity as a strategy to increase productivity and organizational effectiveness. In a small agency, these responsibilities could likely be handled by one employee; in larger agencies, these different roles should most likely be separated. For example, to make these separate duties more manageable in a large agency, perhaps a person with the title of "Director of Diversity Management" could assist in implementing the diversity program developed by an affirmative action/equal employment opportunity specialist and a diversity specialist.

2. Best Practices in Diversity Management

RECOMMENDATION NO. 8:	*Review best practices, as well as models for diversity management implementation, as New York determines what policies and practices it will use to carry out its commitment to workforce diversity.*

There is an abundance of literature on best practices in diversity management. This literature is often broken down by industry, some focusing on what works well in the private sector and academia, some focusing on non-profit organizations and government. Research in this area has revealed that there are best practices that can lend some guidance in addressing New York's specific challenges to increasing diversity. The State should prospectively identify and consider these best practices.[39]

[39] *See id.*, Ex. A at 6.

Alexandra Kalev, Erin Kelly, and Frank Dobbin, in their article "Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies" (*American Sociological Review*, 2006, Vol. 71), discuss the efficacy of different approaches to affirmative action and diversity in Corporate America by measuring the outcomes of seven common diversity programs on the representation of white men, white women, black women, and black men in the management ranks of private sector firms. These researchers hypothesized that, because most women and African Americans were crowded in the lowest ranks of management, an effective diversity program would move them into upper-level management. The seven approaches studied were affirmative action plans, diversity committees and taskforces, diversity managers, diversity training, diversity evaluations for managers, networking programs, and mentoring programs.

Their study, published in 2006, found that the diversity programs that establish organizational responsibility – affirmative action plans, oversight of diversity via full-time staff positions and departments, and oversight and advocacy by diversity committees – result in greater increases in diversity at the managerial level than the other programs. According to the authors, these structures create accountability, authority, and expertise, which they concluded are necessary elements in a successful diversity initiative. Furthermore, this study found that having these structures in place makes training, performance evaluations, networking, and mentoring programs more effective.

In 2001, Neil E. Reichenberg, who at the time was the Executive Director of the International Public Management Association for Human Resources (an organization that represents the interests of human resource professionals at the federal, state, and local levels of government), compiled a list of best practices in government in a document he prepared for the

United Nations Expert Group Meeting on Managing Diversity in the Civil Service called "Best Practices in Diversity Management." In this work, Mr. Reichenberg outlined eight best practices of governmental entities that were selected as best practice organizations in the area of diversity. In sum, the following practices were generally found to be important in a successful diversity initiative by governmental entities:

- development of a formal process that is contained in laws, rules, or procedures (law or executive order)
- decentralization of diversity efforts with a central governing body outlining requirements for the development of an individual agency plan tailored to its specific needs
- diversity training that was provided to the entire workforce and incorporated into mentoring efforts, leadership training, and management-by-results programs
- utilization of affirmative action to identify goals to increase representation and compile workforce data
- establishment of creative programs unique to a specific agency to enhance effectiveness of their affirmative action efforts
- formation of review committee responsible for establishing policies, providing technical assistance, reviewing/approving plans, and monitoring progress
- linking of recruitment, career development, and retention strategies to organizational performance
- establishment of accountability for results by the use of measurable criteria to evaluate success in managing diversity

In 2000, the U.S. Office of Personnel Management ("OPM") recognized the need to plan proactively for workforce changes by broadening its efforts to diversify the workforce of the Federal government beyond the legalities of equal employment opportunity and affirmative action through developing a guide for federal agencies entitled "Building and Maintaining a Diverse, High Quality Workforce: A Guide for Federal Agencies." With its mission being "to build and maintain a diverse, highly qualified workforce," OPM realized that the need was not

only to build a diverse, high-quality workforce by implementing activities to attract, recruit, and hire employees, but also the equally important need to maintain this workforce with activities to develop, manage, reward, and retain employees.

OPM's approach to diversity includes "embrac[ing] the business, cultural and demographic dimensions of diversity as well as the legal dimension." It defines diversity in terms of these four dimensions. OPM emphasizes the business case for diversity by encouraging Federal agencies to view diversity management programs as a "critical link in achieving the agency's specific mission or business needs." According to OPM, diversity includes addressing different cultural perspectives in the workplace. Based upon a 1996 survey conducted by the U.S. Merit Systems and Protection Board that had found that minorities and non-minorities have significantly different perceptions about the degree to which discrimination is present in the workplace, OPM determined that accurate data about representation in an agency's workforce is important in order to make sure employee perceptions are based on facts rather than upon misinformation or misconceptions. OPM also addressed communication issues across differing cultural backgrounds.

OPM further looks at the demographics in the Federal government based upon its personnel data as compared to the civilian labor force to determine areas of underrepresentation for minorities, women, and people with disabilities in each agency and grade level. As part of its diversity initiative, OPM also maintains its commitment to affirmative action and adheres to equal employment opportunity laws that protect against discrimination. Indeed, OPM's "how to" guide for Federal agencies has been adopted and implemented in some states.

According to Tamu Chambers and Norma M. Riccucci in their article "Models of Excellence in Workplace Diversity" (Carolyn Ban and Norma Riccucci eds., *Public Personnel*

Management: Current Concerns, Future Challenges (1997)), successful diversity management implementation strategies include:

- ongoing, long-term, institutionalized efforts to change the culture, mission, and structure of the organization
- ongoing training and educational programs
- strong leadership from the top (Agency Head and CEO)
- resource commitment even in times of fiscal stress
- putting a business case in the forefront: (1) representative bureaucracy organization-wide and at the upper levels to (2) remain competitive in labor force, (3) develop ability to hire quality workers, and (4) improve effectiveness of service delivery
- viewing diversity differently from affirmative action, and not just renaming efforts without making significant changes to old affirmative action programs

Ms. Chambers and Ms. Riccucci also discussed how government should measure diversity success.[40] These measures include:

- increases in the number of women and people of color in all job categories
- gains in the number of women and people of color at the highest job categories
- gains in the number of women and people of color in positions traditionally dominated by white males
- decreases in the number of grievances and lawsuits based on race, gender, disability, etc.
- increases in the number of internal grievances as an indicator that training and educational efforts around diversity are working by heightening employees' expectations to be treated fairly and with dignity
- positive feedback from citizenry and press
- increases in the number of new hires who are women and people of color
- awards and ceremonies to honor accomplishments around diversity

[40] *See id.* at 67-71 (discussing identifiable metrics and measuring outcomes).

3. Competencies for 21st Century Diversity Professionals

RECOMMENDATION NO. 9:	*Conduct a review of competencies needed for today's diversity professionals, incorporate them into the classification standards for AAOs, and develop training courses for current AAOs that encompass competencies needed for 21st century diversity professionals.*

Working to develop a diverse and inclusive organization requires designating one or more staff members whose task is to support and coordinate the agency's efforts and work collaboratively with the executive management and other staff to realize the agency's diversity goals. Assigning a senior-level manager to implement a diversity management program will not only increase the credibility of the diversity efforts, but will also increase the impact on the agency.

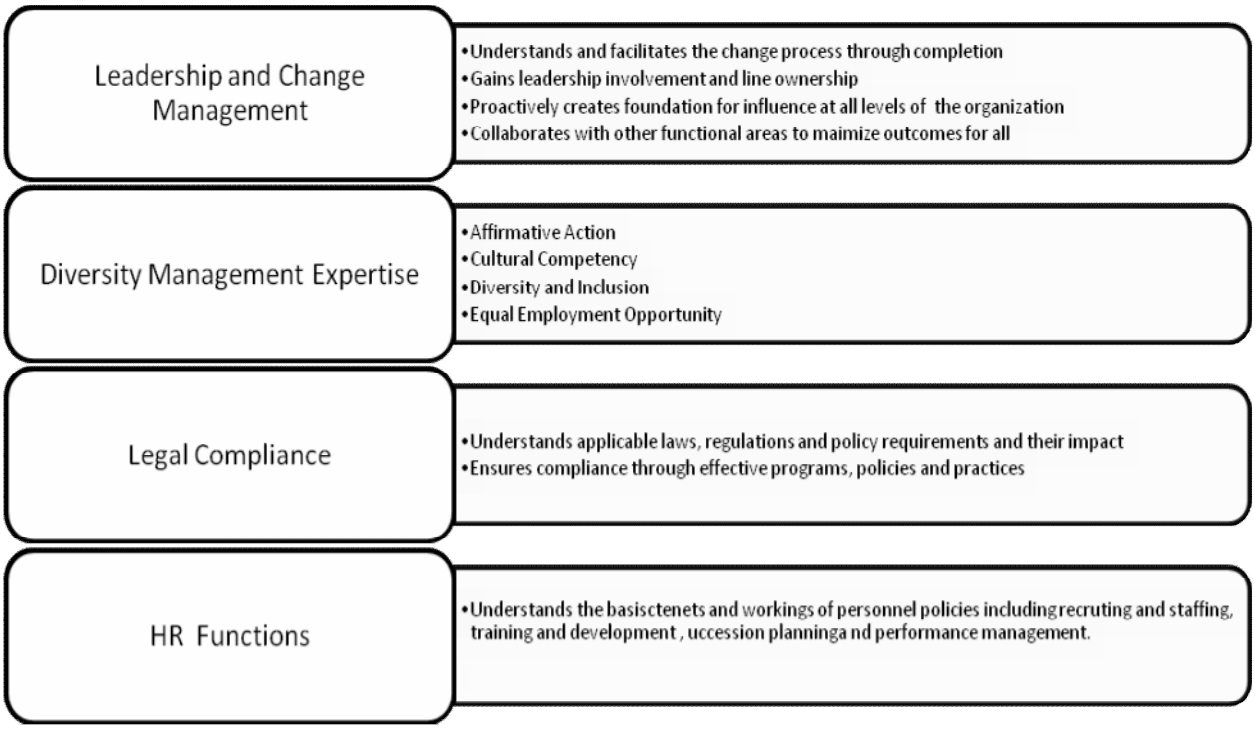
The realities of today's changing demographics, legal implications, challenges in carrying out organizational missions, and fiscal limitations require diversity practitioners to meet higher expectations than before, thus requiring those working in the field of diversity management to possess a wide range of knowledge, skills, and experience. According to the Society for Human Resources Management ("SHRM") (perhaps the world's largest association devoted to human resource management), the practice of diversity management encompasses specialized knowledge of concepts, such as diversity and inclusion, cultural competence, affirmative action, and equal employment opportunity, as well as organizational behavior concepts, including change and relationship management.[41]

In May 2008, The Conference Board, a not-for-profit membership organization of global companies that provides research and information to help businesses strengthen their

[41] *See* SHRM, "Introduction to the Human Resources Discipline of Diversity," at http://www.shrm.org/hrdisciplines/Diversity/Pages/DiversityIntro.aspx (last visited June 28, 2010).

performance and better serve society, published a research report setting forth a competency model for 21st century diversity and inclusion practitioners in the private sector. Entitled "Creating a Competency Model for Diversity and Inclusion Practitioners" ("The Competency Report"), the report identifies competencies (*i.e.*, knowledge, skills, abilities, behaviors, and attributes) believed to be necessary for an individual to be successful in championing and supporting an organization's diversity and inclusion initiatives. Notably, the private sector's approach to diversity management takes the form of a human resources professional carrying out the diversity initiatives, including supplier diversity programs, similar to New York State's Minority and Women-Owned Business Program, and employment matters. The Competency Report addresses the private sector where many private organizations have implemented a variety of strategies to recruit, integrate, and manage a diverse workforce and to harness the potential of all employees. Because these strategies may also be adaptable to, and prove helpful in, the public sector, discussions of some of the competencies the private sector has found to be necessary for practitioners, which also apply to the public sector, are worth considering.

Today's diversity professionals need to have knowledge, skills, and abilities that are more than just compliance with the affirmative action laws and obligations. As the figure below illustrates, among the added skills and abilities needed to successfully increase diversity in agencies and statewide are developing and motivating a changing workforce, fostering an inclusive workplace environment, and linking diversity to organizational strategy.



Specifically, the diversity professional needs to be competent and have a facility in at least four main areas: (1) leadership and change management; (2) diversity management expertise; (3) legal compliance; and (4) human resource functions.

- Leadership and change management refer to understanding and facilitating the process of change the agency is undergoing, gaining both leadership involvement and line ownership over that process, proactively creating a foundation for influence at all levels of the agency, and collaborating with other areas in the agency to maximize the benefits.

- Diversity management expertise refers to the foundational knowledge of affirmative action, cultural competency, diversity, inclusion, and equal employment opportunity.

- Legal compliance refers to the understanding of applicable laws, regulations, and policy requirements and their impact, as well as ensuring that compliance takes place through effective programs, policies, and practices.

- Human resource functions refer to the understanding of basic tenets and workings of personnel policies, including recruiting, staffing, training and development, succession planning, and performance management.

In order to advance workforce diversity, the State needs to carefully examine the role that AAOs have traditionally played and decide on a structure that will standardize the functions of those who will be responsible for carrying out any new approach to increasing diversity in the workforce and ensuring an inclusive work environment.

IV. CONCLUSION

The Commission hopes that serious consideration will be given to the findings, conclusions, and recommendations in this report regarding, specifically, the role and responsibilities of the AAOs and, more generally, the steps that can be taken to move from merely implementing the State's affirmative action policy towards embracing a more comprehensive diversity management model. As the Commission continues its statutory mission to investigate and, if appropriate, report on other aspects of increasing diversity in the State government workforce, it looks forward to engaging in a productive and meaningful dialogue with the Governor, the Governor's Diversity Task Force, the Department of Civil Service, the Affirmative Action Advisory Council, the Legislature, and all other interested parties and entities.

Exhibit A

Chapter 705 of the Laws of 2006
(Codified at New York Civil Service Law § 7-A)

§ 7-a. Commission on increasing diversity in the state government workforce.

1. There is hereby established in the department an independent commission on increasing diversity in the state government workforce. Such commission shall not be subject to the supervision or control of the department, the commission or the president. The commission on increasing diversity in the state government workforce shall examine, evaluate and make recommendations concerning ways to increase the number of minority workers in state service.

2. The commission on increasing diversity in the state government workforce shall be composed of fifteen members, to be appointed as follows: nine members shall be appointed by the governor, three members shall be appointed by the temporary president of the senate, and three members shall be appointed by the speaker of the assembly. Of the nine members appointed by the governor, at least one member shall represent each of the following: the department, the office of employee relations, the governor's appointments office, a prominent civil rights organization representing blacks, a prominent civil rights organization representing Hispanics, and a prominent civil rights organization representing Asians. All the members appointed by the temporary president of the senate and the speaker of the assembly shall be representatives of a protected class as established by federal statutory or case law. Every member of the commission shall serve at the pleasure of the official who appointed him or her. The members shall be broadly representative of the geographic areas of the state and the diverse minority communities of the state. The governor shall designate the chair and vice-chair of the commission from among his or her appointees. Vacancies in the membership of the commission shall be filled in the manner provided for original appointments.

3. The commission on increasing diversity in the state government workforce:

(a) shall recommend ways in which to increase the number of minority workers in state service;

(b) shall study how to diversify the workforce in state service during the replacement of the existing workforce as it ages out and retires;

(c) shall review the diversity hiring practices of other states and the federal government, including reviewing the Presidential Management Interim Program model for recruiting and advancing Hispanic and African-American college graduates, and recommend the best outcome practices;

(d) shall review and recommend changes to the existing hiring and promotion practices that will help diversify the workers in state service at all levels of service;

(e) shall review and recommend the means by which to best provide information to students and faculty at colleges and universities in the state on the employment and promotion opportunities in state service;

(f) shall review and recommend recruiting and employment practices that will bring Hispanics into jobs classified as shortage category occupations, as well as other occupations;

(g) shall review and recommend any flexibilities that exist in the state civil service system to bring minorities into jobs classified as shortage category occupations, as well as other occupations;

(h) shall review and recommend procedures that the department should take to develop and promote the participation of minority state employees in career development programs;

(i) may meet within and without the state, shall hold public hearings and shall have all the powers of a legislative committee pursuant to the legislative law;

(j) to the maximum extent feasible, shall be entitled to request and receive, and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission or agency of the state as it may reasonably request to properly carry out its powers and duties pursuant to this section; and

(k)(1) shall, on or before April first, two thousand seven, report to the governor and the legislature its findings, conclusions and recommendations,

(2) shall, on or before April first, two thousand eight, report to the governor and the legislature on the status of and any actions taken on the recommendations made pursuant to subparagraph one of this paragraph, and

(3) shall, on or before April first, two thousand nine, report to the governor and the legislature on the status of and any actions taken on the recommendations made pursuant to subparagraph one of this paragraph, and which actions have and have not been taken to provide for diversity in the state government workforce.

4. The members of the commission on increasing diversity in the state government workforce shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this section.

Exhibit B

Executive Order No. 40

(Assigning responsibilities of certain State agencies and State Division of Human Rights for ensuring equal employment opportunity for minorities, women and the disabled in State government and establishing the Governor's Executive Committee for Affirmative Action.)

In pursuit of New York State's policy against discrimination as expressed in the State Constitution and the State Human Rights Law, it is the responsibility of the New York State Division of Human Rights to enforce the State's policy of ensuring full and equal employment opportunity for minorities, women and the disabled at all levels of State government.

Therefore, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, I, Hugh L. Carey, Governor of the State of New York, do hereby establish the following:

I. Responsibilities of State Agencies and the State Division of Human Rights.

1. Each State agency or department shall develop a written affirmative action program, including the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity for minorities, women and the disabled. This plan shall be submitted to the Division of Human Rights by every State agency or department no later than December 1, 1976. The Division of Human Rights shall review and evaluate these plans on an agency-by-agency basis and, where necessary, assist the agencies in improving and implementing their programs.

2. In furtherance of the foregoing, the State Department of Civil Service shall provide technical assistance to the Division of Human Rights and to the agencies, where appropriate. The State Department of Civil Service shall submit regularly to the Division of Human Rights, upon the request of the division, reports of the composition of the work force of each State agency and department by sex and ethnic identity, for all job categories, salary grades and civil service classifications. Each State agency or department shall cooperate with the Division of Human Rights by duly complying with all requests for such further data as the Division of Human Rights deems necessary to effectuate the purposes of this order. The Division of Human Rights shall review and evaluate these reports on an agency-by-agency basis.

3. In accordance with Executive Order No. 8, dated April 11, 1975, the Women's Division in the Executive Chamber shall assist the Division of Human Rights and the agencies by providing its expertise and guidance in areas of special sensitivity and concern to women. However, the requirement in Executive Order No. 8 for biannual reports to the Governor is hereby revoked and superseded by the reporting provisions of this Executive Order. Agency heads shall continue to supply to the Governor any information which the Governor or the Director of the Women's Division requests to demonstrate implementation of Executive Order No. 8.

4. The Division of Human Rights will monitor affirmative action efforts in all State agencies and provide quarterly reports of those efforts to the Governor.

II. Establishment of the Governor's Executive Committee for Affirmative Action.

1. A committee shall be established within the Executive Department to be known as the Governor's Executive Committee for Affirmative Action. It shall consist of the President of the Civil Service Commission who shall serve as chairperson, the Commissioner of Human Rights, the Appointments Officer to the Governor, the Secretary of State, the Director of the Budget, the Director of the Women's Division, the Industrial Commissioner, the Director of the Office of Employee Relations, and the Special Assistant to the Governor for Urban Affairs. The committee shall designate a vice-chairperson, who shall serve at the pleasure of the committee and who shall perform the duties of chairperson in the chairperson's absence and at such other times as the chairperson may direct.

2. The committee shall advise the Governor and assist the Commissioner of Human Rights in the formulation and coordination of plans, policies and programs relating to affirmative action in all State departments and agencies and in assuring effective implementation of such policies, plans and programs by such agencies. The committee shall submit to the Governor each year a written report of the committee's activities and recommendations.

III. Revocation of Prior Executive Order and Effective Date.

Executive Order No. 27, dated May 7, 1968, and continued by Executive Order No. 1, dated January 1, 1975, is hereby revoked and superseded by this Executive Order.

Signed: Hugh L. Carey

Dated: September 15, 1976

Exhibit C

Executive Order No. 40.1

In furtherance of New York State's policy of equal opportunity, and in order to ensure the completion and full implementation of the affirmative action efforts instituted pursuant to Executive Order No. 40, dated September 15, 1976, I, Hugh. L. Carey, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

I. Continuation of the Governor's Executive Committee for Affirmative Action.

1. The Governor's Executive Committee for Affirmative Action is hereby continued, and its membership shall hereafter consist of the following: the President of the State Civil Service Commission who shall serve as chairperson, the Commissioner of Human Rights, the Appointments Officer to the Governor, the Secretary of State, the Director of the Budget, the Industrial Commissioner, the Director of Employee Relations, the Commissioner of Commerce, the Director of the Women's Division, the Advocate for the Disabled, and the New York State Director of Veterans' Affairs. The committee shall designate a vice-chairperson, who shall serve at the pleasure of the committee and who shall perform the duties of chairperson in the chairperson's absence and at such other times as the chairperson may direct.

2. The committee shall continue to perform its duties of advising the Governor and reporting to him annually as established pursuant to Executive Order No. 40, and it shall assume additional duties and responsibilities as set forth below.

II. Completion of Review of State Agencies' Affirmative Action Plans.

1. By July 31, 1980, the State Division of Human Rights shall complete its review and evaluation of those written affirmative action plans submitted by State agencies and departments which have not yet been approved pursuant to Executive Order No. 40.

2. In furtherance of the foregoing, the affected State agencies shall cooperate with the Division of Human Rights and other appropriate agencies in order to complete the review and evaluation of all written affirmative action plans by July 31, 1980.

3. The time limits set forth in this paragraph may only be extended with the approval of the Governor's Executive Committee for Affirmative Action.

III. Responsibilities of the President of the Civil Service Commission and the Department of Civil Service.

1. The President of the Civil Service Commission, working through the Department of Civil Service, shall be responsible for monitoring the implementation of the written affirmative action plans of the State agencies. Accordingly, the Division of Human Rights shall immediately transmit to the President of the Civil Service Commission all such written plans heretofore approved by the division and shall, not later than July 31, 1980, transmit such plans as may be unapproved as of the date of this Executive Order.

2. In its role as lead agency in the implementation of affirmative action plans, it shall be the responsibility of the Department of Civil Service to provide technical assistance, direction and training, as appropriate, to individual State agencies in their efforts to implement their affirmative action plans; to monitor, on a continuing basis, the implementation and the need for revising or amending such plans; and to recommend such changes as may be necessary or appropriate in law, rule, regulation or policy to support the State's affirmative action efforts. It shall also be the responsibility of the department to provide the staff work for the development of comprehensive statewide affirmative action policies, goals, objectives and implementation strategies.

3. Within 120 days of the date of this Executive Order, the Department of Civil Service shall issue guidelines for the revision of the current affirmative action plans of State agencies. These guidelines shall provide for the development of affirmative action strategies for the employment of Vietnam era veterans and disabled persons.

IV. Responsibilities of the Division of Human Rights.

1. The Division of Human Rights, in addition to its duties pursuant to Article 15 of the Executive Law, and those assigned to it by paragraph II of this Executive Order, shall advise and cooperate with the Department of Civil Service in the development of guidelines for the broadening of affirmative action plans with respect to Vietnam era veterans and disabled persons.

2. The Division of Human Rights shall also advise and cooperate with the Department of Civil Service in the review of any amendments proposed to be made to previously approved affirmative action plans which are transmitted to the Department of Civil Service for approval pursuant to paragraph V(1) below.

V. Responsibilities of All State Agencies.

1. The head of each State agency shall be responsible for the implementation of the agency's affirmative action program and for developing, subject to approval by the Department of Civil Service, a broadened affirmative action plan and program, including provisions for the inclusion of affirmative action strategies for the employment of Vietnam era veterans and disabled persons.

2. The head of each State agency shall designate one full-time employee as the agency's affirmative action officer and report such designation to the President of the Civil Service Commission. The affirmative action officer shall report directly to the agency head, participate in mandatory training to be provided by the Department of Civil Service, and shall have such subordinate staff as may be appropriate to accomplish his or her duties. The numbers and levels of such staff shall be based on such factors as agency size, complexity, need for affirmative action, and the amount of State and Federal funds administered.

3. By December 1 each year, each State agency shall submit an Annual Report on Affirmative Action to the Governor's Executive Committee for Affirmative Action. Such submission shall include, in a format to be designed by the Department of Civil Service, a report on the agency's employment actions with respect to minorities, women, disabled persons and

Vietnam era veterans, and shall identify the agency's achievements, deficiencies, proposed solutions to problems, the need for external assistance and such other matters as may be appropriate or requested. This reporting requirement shall not be deemed to supersede the requirement of Executive Order No. 8 with respect to reports to be submitted to the Governor regarding the representation of women in the State's work force. Each agency shall submit a copy of its Annual Report on Affirmative Action to the Department of Civil Service and to the Division of Human Rights.

4. Upon the request of the committee, the head of each State agency, or the agency's principal deputy, shall meet with the Governor's Executive Committee for Affirmative Action and report in person to such committee on the agency's affirmative action program. It shall be the Executive Committee's responsibility to schedule such meetings, and it shall be the duty of every agency head to comply with such requests for data or other information or reports as the Executive Committee may deem appropriate for analysis and review in advance of such meeting.

VI. Establishment of the Affirmative Action Advisory Council.

1. There is hereby established the New York State Affirmative Action Advisory Council. It shall consist of the affirmative action officers designated by each State agency pursuant to paragraph V(2) of this Executive Order, and of such other officers and employees as may be deemed appropriate.

2. It shall be the responsibility of the Advisory Council to advise the Governor's Executive Committee on Affirmative Action of the concerns of the professional affirmative action officers and to provide staff services to the Governor's Executive Committee in such program areas as may be selected by such committee. It shall also be the responsibility of the Advisory Council to assist in the development of uniformity and efficiency in the State's comprehensive affirmative action program and to advise the Department of Civil Service on all existing and proposed policies, procedures, practices and programs relating to or affecting affirmative action. Executive secretarial services shall be provided to the Advisory Council by the Department of Civil Service.

3. As members of the Affirmative Action Advisory Council, it shall be the duty of each affirmative action officer to submit, on behalf of the agency he or she represents, such periodic affirmative action reports to the council as may be deemed necessary to effectuate the purposes of this Executive Order.

VII. Revocation of Prior Executive Order and Effective Date.

Except as expressly continued by this Executive Order, Executive Order No. 40, dated September 15, 1976, and continued by Executive Order No. 79, dated January 1, 1979, is hereby revoked and superseded by this Executive Order.

Signed: Hugh L. Carey

Dated: April 8, 1980

Exhibit D

Executive Order No. 6

(Assigning responsibilities of the State Department of Civil Service, and certain State agencies for insuring equal employment opportunity for minorities, women, disabled persons and Vietnam era veterans in State government and establishing the Governor's Executive Committee for Affirmative Action.)

It is the policy of the State of New York that equal opportunity be assured in the State's personnel system and affirmative action provided in its administration, in accordance with the requirements of the State's Human Rights Law and the mandates of Title VII of the Federal Civil Rights Act, as amended. Accordingly, it is the responsibility of the State's Department of Civil Service to enforce the State's policy of ensuring full and equal opportunity for minorities, women, disabled persons and Vietnam era veterans at all occupational levels of State government.

NOW, THEREFORE, by virtue of the authority vested in me by the constitution and Laws of the State of New York, I, Mario M. Cuomo, Governor of the State of New York, do hereby order as follows:

I. Responsibilities of the President of the Civil Service Commission.

1. The President of the Civil Service Commission shall issue guidelines for the preparation of annual affirmative action plans and statewide goals and objectives for the employment of minorities, women, disabled persons and Vietnam era veterans. The Department of Civil Service shall also provide the staff work for the development of comprehensive statewide affirmative action policies, goals, objectives and implementation strategies.

2. The President of the Civil Service Commission, in consultation with the Governor's Executive Committee for Affirmative Action (the "Executive Committee") established pursuant to Article II of this Order, shall be responsible for monitoring the implementation of the written affirmation action plans of State agencies on a continuing basis, including the need for revising or amending such plans, and shall provide quarterly reports on progress to the Governor, incorporating recommendations for improving and strengthening such efforts.

3. Upon a finding by the President of the Civil Service Commission of substantial non-compliance by a State agency or department with the requirements or terms of this Order, the President of the Civil Service Commission shall notify the agency or department of such finding and propose a remedial plan of action. The agency or department shall have thirty days from the receipt of such notice to accept the remedial plan or submit an alternative remedial plan acceptable to the President. Should the agency or department fail to act within such period, the President of the Civil Service Commission is authorized to assume responsibility for the implementation of the plan until he is satisfied that the agency or department will implement the plan in compliance with the provisions of this Order.

4. The President of the Civil Service Commission shall prepare annually a report of the composition of the work force of each State agency and department by sex and ethnic identity for all job categories, salary grades and civil service classifications. The President of the Civil Service Commission shall also conduct studies to identify and resolve problems in eliminating underrepresentation and underutilization of minorities, women, disabled persons and Vietnam era veterans and shall amend or repeal such rules and regulations within the scope of his authority which may adversely affect employment opportunities of minorities, women, disabled persons and Vietnam era veterans and shall make recommendations to the Governor and the Executive Committee concerning the adoption or amendment of other laws, rules and regulations for the same purpose.

5. The President of the Civil Service Commission, in consultation with the Executive Committee, shall review existing and proposed procedures for the abolition of positions and reduction of the state's work force and make recommendations designed to minimize the effect of such procedures on women, minorities, disabled persons and Vietnam era veterans.

II. Responsibilities of the Governor's Executive Committee for Affirmative Action.

1. The Governor's Executive Committee for Affirmative Action is hereby established and its membership shall hereafter consist of the following: the President of the Civil Service Commission who shall serve as chairperson, the Commissioner of the Division of Human Rights who shall serve as vice-chairperson, the Secretary to the Governor, the Appointments Officer to the Governor, the Secretary of State, the Director of the Budget, the Commissioner of Labor, the Director of Employee Relations, the Director of the Women's Division, the Advocate for the Disabled, and the New York State Director of Veterans' Affairs. The vice-chairperson shall perform the duties of chairperson in the chairperson's absence and at such times as the chairperson may direct.

2. The Committee shall advise the Governor and assist the President of the Civil Service Commission in the formulation and coordination of plans, policies and programs relating to affirmative action in all State departments and agencies and in assuring effective implementation of such policies, plans, and programs by such agencies.

3. Upon request of the Executive Committee, the head of each State agency, or the agency's principal deputy, shall meet with the Committee and report in person to such Committee on the agency's affirmative action program. It shall be the Executive Committee's responsibility to schedule such meetings, and it shall be the duty of every agency head to comply with such requests for data or other information or reports as the executive Committee may deem appropriate for analysis and review in advance of such meeting.

III. Development and Implementation of Affirmative Action Programs by State Agencies.

1. Each State agency or department shall develop a revised written affirmative action program, where necessary, including the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity for minorities, women, disabled persons and Vietnam era veterans. The plan shall include an analysis of previous agency action to increase employment opportunities for members of these groups. The plan shall be submitted

to the President of the Civil Service Commission by every State agency or department no later than June 1, 1983. The President of the Civil Service Commission shall review and evaluate these plans on an agency-by-agency basis and, where necessary, assist the agencies in improving and implementing their programs. The President shall also review the reports submitted by State agencies prior to January 1, 1983, and report to the Governor within one hundred and twenty days of their receipt on the status of the agency programs and make recommendations for improving and strengthening them.

2. The head of each State agency or department shall designate an employee as the agency's full-time affirmative action officer and report such designation to the President of the Civil Service Commission and the Executive Committee. The affirmative action officer shall report directly to the agency head and shall have such supportive staff as may be appropriate to accomplish his or her duties. The numbers and levels of such staff shall be based on such factors as agency size, complexity, need for affirmative action, and the amount of State and federal funds administered.

3. By March 1 of each year, beginning in 1984 each State agency or department shall submit an annual report on affirmative action to the Executive Committee. Such submission shall include, in a format and pursuant to standards issued by the President of the Civil Service Commission, a report on the agency's employment actions with respect to minorities, women, disabled persons and Vietnam era veterans, and shall identify the agency's achievements, deficiencies, proposed solutions to problems, the need for external assistance and such other matters as may be appropriate or requested. Each agency shall submit a copy of this annual report on affirmative action to the Department of Civil Service.

4. Each State agency or department shall cooperate with the President of the Civil Service Commission and the Executive Committee to provide any information, data and reports as may be deemed necessary.

5. The Women's Division, the Division of Veterans' Affairs, the Advocate for the Disabled and any other agency, committee, commission or other entity specifically designated by the Governor shall assist the President of the Civil Service Commission and State agencies in the implementation of this Executive Order, by providing expertise and guidance in their areas of special sensitivity and concern.

IV. The Affirmative Action Advisory Council.

1. There is hereby established the State Affirmative Action Advisory Council (the "Advisory Council"). It shall consist of the Affirmative Action Officers of each agency designated pursuant to Article III, paragraph two of this Order. The business of the Advisory Council shall be conducted pursuant to by-laws adopted by the members and subject to the approval of the President of the Civil Service Commission.

2. It shall be the responsibility of the Advisory Council to advise the President of the Civil Service Commission on all existing and proposed policies, procedures, practices and programs relating to or affecting affirmative action.

3. The Advisory Council shall submit a quarterly report of its activities to the President of the Civil Service Commission. It shall also provide assistance to the Executive Committee when necessary and appropriate.

V. Revocation of Previous Executive Order and Effective Date.

Executive Order Number 40, dated September 15, 1976, and amended by Executive Order Number 40.1, dated April 8, 1980, is revoked and superseded by this Executive Order.

Signed: Mario M. Cuomo

Dated: February 18, 1983

Exhibit E

1984 Model Affirmative Action Plan

[annexed on the following pages]

AFFIRMATIVE ACTION PLAN

1984

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Exhibit E

The Internal Agency Auditing and Reporting Systems (Model Affirmative Action Procedures) which were originally established as a separate companion document to the Model Plan, will in this document be merged. From this point in the plan the various sections of the model procedures will follow directly after the corresponding sections of the model plan.

I. INTERNAL AGENCY AUDITING AND REPORTING SYSTEMS (Model Affirmative Action Procedures)

Part IVC2 of the Model Affirmative Action Plan specifies in detail, routine agency personnel operations within which affirmative action involvement is a critical requirement. The following model procedures have been developed to facilitate agency implementation of Part IVC2 requirements. In addition, they aid Affirmative Action Officers in developing and maintaining the information systems needed to monitor affirmative action progress and to report to external agencies such as Civil Service.

These procedures form the basis of a uniform, consistent statewide standard for the establishment of minimally acceptable policies, procedures, and practices. They may be adopted in whole or in part, depending on what procedures agencies already have in place. For example, where agencies have acceptable procedures already in operation, they may choose not to adopt the corresponding model procedures.

The model procedures offer agencies the essential ingredients for internal auditing and reporting systems that are capable of providing critical information on the selection process as it operates within the agency. They offer agencies the needed ability to gauge the impact that their routine personnel operations have on the employment opportunities of protected class individuals.

The information made available by these systems will enable agencies to operate informed and focused affirmative action programs and to more effectively manage their personnel processes in a manner that minimizes the intrusion of discriminatory practices. Without such documented information and insight, agency affirmative action programs are, at best, "hit and miss" operations with random outcomes.

With the assurance of personnel processes that are designed to make the State's work force more accessible to the incredible diversity of talent which is available, the State of New York will be better prepared to meet the service needs and challenges that lie ahead in the coming decade. We will also have a more solid framework within which to begin to address the long-range work force planning issues of skill shortages and overages, training and re-training, and the redeployment of workers.

Listed below for your information and convenience are the key components of these procedures as they relate to specific sections of Part IVC2 of the Model Affirmative Action Plan:

Procedure(s)	Part IV.C.2.
Recruitment Procedures	IV.C.2d
Applicant Flow Procedure	IV.C.2e
Physical-Medical Standards Review Procedure	IV.C.2f

Procedure(s)	Part IV.C.2.
Appointment Review Procedure	IV.C.2g(1)
Consolidated Affirmative Action Guidelines Related to Counseling, Notices of Discipline and Other Adverse Personnel Actions	IV.C.2g(2) IV.C.2h and IV.C.2i
Reductions-In-Force Procedure	IV.C.2g(2)
Exit Audit and Interview Procedure	IV.C.2g(3)
Employee Training Data Collection	IV.C.2j

POLICY STATEMENT

It is the policy of the [Agency Name] to provide equal employment opportunity to all people without regard to race, color, sex, religion, age, national origin, disability, sexual preference, or Vietnam Era Veteran status. As [Commissioner] of the [Agency Name], I am personally committed to assuring that the [Agency Name] will act affirmatively to develop avenues of entry and mobility for minorities, women, individuals with disabilities, and Vietnam Era Veterans through the following activities:

- Development of programmatic approaches to the elimination of all unjust exclusionary employment practices, policies and consequences;

- Development of educational and training programs for all employees, with emphasis on our goals of upgrading minorities, women, individuals with disabilities and Vietnam Era Veterans;

- Development of personnel practices, policies, and career ladders to assist and encourage upward mobility of employees restricted to lower levels;

- Development of mechanisms for swift and judicious resolution of complaints of discrimination consistent with our policy, the Governor's Executive Orders, and other applicable statutes; and

- Provision of reasonable accommodations to enable qualified individuals with disabilities to enjoy equal employment opportunities and equal terms, conditions and privileges of employment.

To effectuate this policy, we have designed a plan which conforms with all relevant Federal and State non-discrimination laws and regulations including but not limited to: the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act, the Vietnam Era Veteran's Readjustment Act of 1974, the New York State Human Rights Law and Governor Cuomo's Executive Order 6. The plan applies to all job classifications and titles in the [Agency Name] State and all types of appointments under the [Agency Name] jurisdiction. It governs all [Agency Name] employment policies, practices and actions including, but not limited to: recruitment, hiring, discipline, rate of pay or other compensation, advancement, reclassification, reallocation, promotion, demotion, discharge and employee benefits.

To assist me in my responsibility as chief executive officer for an effective affirmative action program, I have appointed [or will appoint no later than April 30, 1984] a full-time Affirmative Action Officer, [specify name or title,] to be responsible for day-to-day implementation of necessary programs and policies as outlined in the plan which will be available in the Affirmative Action Office. I will see that the Affirmative Action Office is provided with all agency resources necessary for the execution of its program responsibilities. Moreover, all managers, supervisors, and employees must make consistently diligent efforts to implement this policy in day-to-day program and employment decisions.

The mission of [agency name] is to [short statement of mission]. Affirmative action considerations will be an integral part of all agency activities performed in the furtherance of our mission and in meeting our responsibilities to the State's citizens.

[SIGNED BY AGENCY HEAD]
DATE

POLICY STATEMENT

AAP I 1. S

It is the policy of the [Agency Name] to provide equal employment opportunity to all people without regard to race, color, sex, religion, age, national origin, disability, sexual preference, or Vietnam Era Veteran status. As [Commissioner] of the [Agency Name], I am personally committed to assuring that the [Agency Name] will act affirmatively to develop avenues of entry and mobility for minorities, women, individuals with disabilities, and Vietnam Era Veterans through the following activities:

- Development of programmatic approaches to the elimination of all unjust exclusionary employment practices, policies and consequences;

- Development of educational and training programs for all employees, with emphasis on our goals of upgrading minorities, women, individuals with disabilities and Vietnam Era Veterans;

- Development of personnel practices, policies, and career ladders to assist and encourage upward mobility of employees restricted to lower levels;

- Development of mechanisms for swift and judicious resolution of complaints of discrimination consistent with our policy, the Governor's Executive Orders, and other applicable statutes; and

- Provision of reasonable accommodations to enable qualified individuals with disabilities to enjoy equal employment opportunities and equal terms, conditions and privileges of employment.

To effectuate this policy, we have designed a plan which conforms with all relevant Federal and State non-discrimination laws and regulations including but not limited to: the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act, the Vietnam Era Veteran's Readjustment Act of 1974, the New York State Human Rights Law and Governor Cuomo's Executive Order 6. The plan applies to all job classifications and titles in the [Agency Name] and all types of appointments under the [Agency's] jurisdiction. It governs all employment policies, practices and actions including, but not limited to: recruitment, hiring, discipline, rate of pay or other compensation, advancement, reclassification, reallocation, promotion, demotion, discharge and employee benefits.

To assist me in my responsibility as Chief Executive Officer for an effective affirmative action program, I have appointed an Affirmative Action Officer, [specify name or title,] to be responsible for day-to-day implementation of necessary programs and policies as outlined in the plan, which will be available in the Affirmative Action Office. I will ensure that the Affirmative Action Office is provided with all agency resources necessary for the execution of its program responsibilities. Moreover, all managers, supervisors and employees must make consistently diligent efforts to implement this policy in day-to-day program and employment decisions.

The mission of [Agency Name] is to [short statement of mission]. Affirmative action considerations will be an integral part of all agency activities performed in the furtherance of our mission and in meeting our responsibilities to the State's citizens.

[SIGNED BY AGENCY HEAD]
DATE

PART II

DISSEMINATION OF POLICY

AAP II 1. L

The [Agency] will undertake the activities listed below to disseminate its Affirmative Action Plan and Program, both internally and externally.

A. Internal

1. A copy of the agency's Affirmative Action Policy Statement will be posted on each floor of every building on at least one bulletin board that is conspicuous and accessible to employees and to the public.

2. A copy of the agency's Affirmative Action Policy Statement will be distributed to each employee and will be included in the agency's policy and/or personnel manual.

3. Protected class employees will be represented in any agency brochures, publications, manuals, reports and advertisements which depict the agency work force.

4. Agency newsletters will include descriptions of the agency's Affirmative Action Policy and Plan, and will reinforce the agency's commitment to equal employment opportunity and Affirmative Action through periodic updates.

5. Meetings will be scheduled at least annually with managers and supervisors from all sections to review the Affirmative Action Plan, to discuss program goals and objectives, and to explain their responsibilities for implementation.

6. Union officials will be informed of the agency's Affirmative Action Policy and their cooperation will be sought.

B. External

1. The Affirmative Action Plan will be made available to the public upon requests to the [specify office].

2. The agency's Affirmative Action Policy will be made known to recruitment sources through oral and written communi-cation, including methods that are accessible to individuals with disabilities.

3. The agency Affirmative Action Policy will be made known to organizations, colleges and community groups interested in encouraging equal employment opportunities for minorities, women, individuals having disabilities, and Vietnam Era Veterans. (see Compliance Manual, Part II C for listing of resources.)

4. All applicants will be informed of the agency's Affirmative Action Policy.

5. All vendors and suppliers with whom the Agency conducts business will be notified of the agency's Affirmative Action Policy and their cooperation will be required.

6. The agency will ensure that agency purchase orders indicate that the agency is an Equal Opportunity/ Affirmative Action employer.

C. Feedback

Procedures will be established and enforced to obtain information from employees, advocacy groups and consumers of the agency's services about the efficacy of and the need to improve the agency's Affirmative Action Program. These may include:

- Interviewing protected class employees;
- Surveying employees, outside agencies, and advocacy groups; and
- Obtaining evaluations from affirmative action training program participants.

A. [Insert Title of Agency Head]

Consistent with applicable laws, rules and regulations, and Executive Orders, ultimate responsibility for the achievement of equal opportunity in the [Agency] through the use of the Affirmative Action Plan and other means lies with the [insert title of Agency Head].

B. Affirmative Action Officer

The [Agency Head] has delegated day-to-day programmative responsibility for the agency's Affirmative Action Program to Affirmative Action Officer, who reports directly to the [Agency Head].

The duties of the agency Affirmative Action Officer include, but are not limited to, the following:

- planning, developing, coordinating, implementing and monitoring the agency's Affirmative Action Program;
- working with the Personnel Office in the agency's recruitment and examination program including: participation in examination planning conferences

  - reviewing proposed minimum qualifications for all positions

- maintaining resume files;
- reviewing, monitoring and making recommendations on agency personnel policies
- consulting, developing and participating in affirmative action training programs
- assuring that reasonable accommodations are provided to all known qualified applicants and employees with disabilities
- researching, compiling and analyzing data related to the representation of protected class employees in the agency's work force
- participating in conferences, meetings, forums, discussion groups, panels and seminars concerned with affirmative action and equal employment opportunity
- keeping abreast of laws, rules, regulations and court decisions affecting the agency's Affirmative Action Program
- coordinating Affirmative Action activities in the agency's central, [regional and institutional] offices and ensuring that all locations are in compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act
- developing employment goals with specific emphasis on programs for training entry and promotional titles
- developing and implementing systems for monitoring and attaining such goals
- developing an internal discrimination complaint procedure
- investigating and resolving complaints of discrimination made by employees and applicants who are members of the protected classes
- informing complainants of rights and external avenues of redress

C. **Responsibilities of [Personnel/Human Resource Office]**

The Personnel Officer shall establish and maintain a close working relationship with the Affirmative Action Officer in the implementation of the agency's human resource management program (see Part IV).

Responsibilities shall include, but are not limited to, the following:

- maintaining all personnel records in a manner consistent with applicable laws and regulations, as well as the requirements of the Affirmative Action Plan;
- developing and maintaining all personnel directives in a manner that is consistent with applicable laws and regulations and the Affirmative Action Plan;
- continuously reviewing the classification of positions, procedures, benefit packages, leave policies, training and career development programs and other employment practices to assure that all such practices conform with current legal and regulatory requirements, and the Affirmative Action Plan; and
- implementing the approved affirmative recruitment plan to enable all protected class individuals to have equal access to the employment opportunities available

D. **Responsibilities of Other Agency Offices/Divisions**

The Executive, Staff Development, Finance and Legal Offices [specify appropriate units in your agency] shall provide organizational linkages and hold regular meetings with the Affirmative Action Officer to ensure that the Affirmative Action Officer is informed of the activities of these offices and has an opportunity to evaluate the affirmative action impact of these activities. These offices shall also ensure that affirmative action goals and objectives are met within their respective program areas.

E. **Responsibilities of Managers and Supervisors**

The obligations of managers and supervisors include, but are not limited to:

- assisting the Affirmative Action Officer in the identification of problem areas and the establishment of numerical and programmatic goals and timetables;
- providing all protected class staff members with full opportunity to participate in training and career enrichment activities, including workshops, seminars, and tuition reimbursement;
- providing reasonable accommodations to employees with disabilities in order that they may enjoy equal benefits and privileges of employment, including training and enrichment activities;
- providing staff appointed to Affirmative Action Committees with the time and support necessary to assure their full participation in Committee activities;
- developing and maintaining an active information sharing network with agency Affirmative Action staff;
- including in staff performance evaluations an assessment of each individual's knowledge, awareness and sensitivity to the department's Affirmative Action Plan and Program;
- conducting periodic evaluations of targeted program areas to assure equal treatment of protected class service consumers;
- assuring that reasonable accommodations are made in policies, practices or procedures as necessary to avoid discrimination on the basis of disability;
- participating in Affirmative Action/Equal Employment Opportunity training provided to supervisory and management personnel;

E. **Responsibilities of Managers and Supervisors** (cont'd)

- consistently and equitably applying discipline rules and other personnel actions and procedures; and
- providing accurate reports and information as required for affirmative action purposes.

F. **Agency Affirmative Action Committee Responsibilities**

This agency shall have an Affirmative Action Advisory Committee to serve as an advisory group to the [Agency Head] through the Affirmative Action Officer. Nominees will e solicited from throughout the organization. Efforts will be made to have representation of all protected classes. Where necessary, representatives may be appointed from external advocacy groups. Ex-officio members of this committee shall be selected from various program areas or executive staff as needed for technical input. Representatives of bargaining units and employee caucus groups shall also be included. Training will be provided to committee members to increase their effectiveness.

NOTE: Agencies with facility or regional structure should indicate how the structure will be taken into account in the functioning of the Affirmative Action Advisory Committee.

The committee's responsibilities include:

- assistant in the dissemination of the affirmative action information;
- developing specific recommendations concerning the agency's Affirmative Action Plan;
- assisting in identifying areas where the plan is not responsive to the needs of protected class employees;
- assisting in identifying and expanding recruitment sources to attract a broader pool of applicants;
- [Other specify]

A. Establishment of New Goals and Timetables

The [Agency's] Affirmative Action goals are, in fact, flexible goals. They represent voluntarily established good faith quantitative employment objectives for minimum progress within an established time frame. They are not, nor should they be viewed as, quotas, since they are not fixed hiring rates ordered or approved by a court to remedy unlawful discrimination.

Goals and Timetables are set by a utilization analysis which compares the composition of the current agency work force to the composition of the available labor force for each Federal Occupational Category (FOC) as reported by the 1980 U.S. Population Census. Goals are set in accordance with New York State, Standard Metropolitan Statistical Area (SMSA), and County labor force availability by FOC as appropriate. Whenever underutilization of a protected class exists, a placement rate is specified as a guide to achieving the long range goal necessary to bring the current number of employees into parity with the available labor force.

A timetable for every protected class group for which a goal is set is determined by the degree of underutilization, the placement rate specified, and the agency turnover rate. The timetable is the projected time to achieve goals based on the number of appointments reasonably expected on an annual basis.

The timetable for achieving parity within any Federal Occupational Category (FOC) is naturally dictated by labor turnover within the FOC and is based upon a historical perspective of the turnover which is projected forward. Actual labor turnover may vary considerably due to various factors beyond an agency's control. Consequently, an agency's efforts to achieve parity will be evaluated by actual labor turnover rather than projected labor turnover.

B. Implementation Strategies

After establishing goals and timetables for eliminating the underutilization of protected class groups within each FOC, [Agency Name] will identify appropriate strategies for achieving these goals. Strategies may include, but are not limited to: Use of available flexibility in hiring, transfer, job restructuring, training, recruitment, etc. (See Compliance Manual Part I D, Implementation Strategies.)

C. Systemic Considerations Impacting Ongoing Affirmative Action Implementation

1. Introduction

The purpose of this section of the Plan is to integrate Affirmative Action considerations into the routine personnel operations of [Agency]. The agency will establish detailed procedures that provide for ongoing input from the agency's Affirmative Action Office, and which require that affirmative action be taken into account in the routine implementation of personnel policies and procedures.

2. Formal Policies and Practices

a. Civil Service Rules and Regulations

Traditional interpretations and applications of Civil Service laws, rules and regulations, instead of producing a representative work force have often resulted in and perpetuated the denial of employment opportunities to protected class members in New York State Government Service. To resolve this problem, effective immediately and on an ongoing basis, [Agency] with the cooperation, advice, and guidance of Civil Service, shall seek to interpret and utilize existing statutes, regulations, and policies so as to increase the representation of protected class groups and meet established goals and timetables pursuant to Executive Order 6. Civil Service will assist this agency in the exploration and affirmative use of such mechanisms as 70.4 transfers, New Missions, 55-b/55-c appointments, other than competitive class appointments, position classifications/ reclassifications, traineeships, and transition programs to promote the hiring and career advancement of protected class members.

To ensure its input in agency policy, the Affirmative Action Office shall be routinely consulted by other executive and/or administrative offices via executive staff meetings, routing of written materials, and other appropriate means.

Other activities in which the [Agency] may engage under this section include, but are not limited to the following:

- conducting adverse impact/affirmative action analyses of specific Civil Service laws, rules, and regulations
- notifying Civil Service regarding the adverse impact of Civil Service statutes or policies and advancing recommendations for addressing problem areas (e.g. suggesting legislation to amend or expand the Civil Service Law)

b. Examination Activity

To ensure that affirmative action becomes an integral and ongoing element of all the agency's examination activity, the Affirmative Action and Personnel Offices will immediately begin utilizing the Affirmative Action Guide for Agency Examination Activity (see Compliance Manual, I C) as the agency procedure for the routine and systematic involvement of the two offices in general examination activity.

OR

[If an agency chooses to use only portions of the Affirmative Action Guide for Agency Examination Activity, the agency must develop a complete set of procedures detailing the activities of the agency Affirmative Action and Personnel Offices at each step in the examination process. These procedures must be specified in this section of the plan.]

c. Review of Job Qualifications

The agency will review job qualifications for all agency titles. Experience, education, license and language requirements must be job related and should be broad enough to allow for competition by representatives of various protected classes. To the extent that

physical and medical job requirements for specific titles tend to screen out individuals with disabilities, such qualifications must be valid and job related, and necessary for the safe performance of the job. Review will take place according to the following schedules:

Schedule 1

Agency Titles Possessing Physical, Medical and/or Mental Requirements

Pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, the [Agency] shall review ALL agency titles which have physical and/or medical requirements. The following agency titles shall be reviewed:

[L I S T T I T L E S]

Timetable: April 1, 1984 - March 31, 1985

Schedule 2

Non-competitive and Labor Class Titles

Job qualifications of the following non-competitive and labor class agency titles shall be reviewed:

[L I S T T I T L E S]

Timetable: April 1, 1984 - March 31, 1985

Schedule 3

Competitive Class Titles

The review of minimum qualifications for this class will be conducted in conjunction with agency examination activity.

Whenever a significant number of competitive positions are anticipated to be filled provisionally and/or temporarily, a review of minimum qualifications of these title(s) shall be conducted prior to making appointments.

d. Recruitment

The Personnel and Affirmative Action Offices will undertake appropriate outreach and recruitment activities for examinations (see Compliance Manual, Parts I C and II C) as well as for provisional, temporary, and other-than-competitive appointments. As needed, the [Agency] shall seek assistance from the Recruitment Unit of the Civil Service Division of Diversity Planning and Management, to develop and implement recruitment strategies. [Agency] will maintain viable contact with protected class recruitment sources. Job openings and examinations shall be adequately publicized via print media, radio, television, and community public affairs programs which specifically serve protected classes. Field

recruitment and mailings shall be undertaken as additional means of notifying protected class groups of employment opportunities. Advertising for job openings will be accessible to individuals who have disabilities.

Timetable: April 1, 1984 - Ongoing

Advertisement - When advertising an exam, Affirmative Action Officers should consider the candidate population. What newspapers and/or magazines do they read? Is it possible that potential candidates may be working? Knowledge of these facts will help decide what media to use and at what times to air announcements. If advertising in the New York City Metropolitan area for jobs which are located in Albany, or vice versa, have an "800" line for applicants to call for additional information.

College Recruitment - Campus recruitment is usually coordinated with college career planning and placement offices. While these are two sources, they are not usually the best ones for minority group recruitment. Therefore, Affirmative Action Officers/Personnel Officers should also contact all minority group organizations and Equal Opportunity placement offices on campus. Campus recruitment is most productive for exams which require only a bachelor's or master's degree and no experience. Since colleges usually hold career days during the first semester in the senior year, Affirmative Action Officers should contact colleges with high enrollment of targeted groups to obtain specific information regarding career days or job fairs.

Community Based Organization Recruitment - Community based organizations are a good medium to reach protected class individuals. For more information on community based organizations, contact the appropriate Division of Affirmative Careers Technical Assistance Services Section. The section can provide Affirmative Action Officers with a listing of community based organizations **WHICH INCLUDE: CHURCHES, PROFESSIONAL ORGANIZATIONS, COLLEGES,** contact people, information by geographic area as well as the ethnicity and **GENDER** of the client population(s) serviced.

RECRUITMENT PLANNING

Recruitment planning should begin as early as possible in the exam plan. The recruitment plan should be in place at least four weeks before the exam announcement is issued. Since the Department of Civil Service generally allows six weeks between the issue date and the application deadline, there is limited time available to complete mailings, advertise and make field visits. The recruitment plan should include the following elements:

- Exam title and number
- Goal(s) to be achieved
- Groups being targeted
- Recruitment methods and geographpic area(s) to be covered via mailings, media, college recruitment (2-year degree, 4-year degree), community based organizations, resume files or a combination of these methods. NOTE: For most examination recruitment programs, a combination of methods works best.
- Recruitment activities, staff assignments and deadline for completion.

For example:

Budget - funding available and projected expenditures (for such items as staff, travel and advertising)

Evaluation - To be viewed as effective, a recruitment effort's results must be measurable. Success is measured in terms of targeted applicants who as a result of the recruitment effort:

1. filed for the exam
2. took the exam
3. passed the exam
4. were placed

Written records should also be kept for each field contact, documenting results of the visit (see Attachment 1).

How to Establish a Recruitment Schedule

- Determine community based organizations **AND**/or colleges to be visited. Select colleges with a high enrollment of the targeted groups and requisite degree program
- Make telephone contacts and set appointments **TO MAKE FIELD PRESENTATIONS**
- Prepare recruitment schedule (see Attachment 2)

Schedules should include:

1. organization name, address and telephone number
2. contact person(s)
3. date and time of appointment(s)

- Send confirmation letters
- Gather all materials necessary for the presentation(s)
- Review the examination announcement(s) and application form(s), anticipate questions, write an outline or plan for presentation, look for selling points or problem areas, (e.g., required bonding). (See Attachment 3)
- Mail materials in advance whenever feasible

Following each field visit presentation, a written report should be prepared documenting all aspects of the recruitment effort (see sample Field Visit Report Form - Attachment 1).

Conducting Recruitment Presentations

- Arrive at the field visit site at least one-half hour prior to presentation
- Organize materials
- Give presentation according to outlined instructions (Attachment 3)
- Allow time for questions from the group
- Distribute announcements and applications
- Be available for individual consultation

NOTE: SECTION ON "EVALUATION OF RECRUITMENT" HAS BEEN ELIMINATED

OTHER RECRUITMENT TECHNIQUES

It is also important to:

- Participate in job fairs, career days and the extra-curricular activities sponsored by minority communities
- Use **BILINGUAL** leaflets **FOR VARIOUS PROTECTED CLASS GROUPS**
- Contact community agencies (professional, para-professional or clerical). In 1979, the Bureau of National Affairs did a survey on recruitment policies and practices and found that local community agencies are considered the most effective source for minorities and the disabled.
- Participate in ethnic fairs or festivals such as:

    1. Black History Month
    2. Hispanic Heritage **MONTH**
    3. Black and Puerto Rican Caucus **WEEKEND**
    4. **NATIONAL DISABILITY MONTH**

- Maintain contact with **PROTECTED CLASS** churches, **FRATERNITIES**, **SORORITIES** and veterans' associations
- Advertise in minority circulation newspapers - use the statement "Equal Opportunity/Affirmative Action Employer."
- Encourage minority employees to refer potential candidates
- Make application forms accessible--use self-addressed return envelopes
- Have agency program staff available to answer questions
- Encourage people to apply as soon as possible
- Promote test training courses with community leaders to help applicants pass test
- Maintain contact with organizations servicing persons with disabilities; make potential candidates aware that reasonable accommodations are routinely provided to make both examination site and test content accessible for known disabled persons.

Outreach recruitment demands that recruiters possess a certain degree of sensitivity, tenacity, and persuasiveness as well as a thorough knowledge of the job qualifications and related career ladder potential. Recruiters should be familiar with the salaries and fringe benefits of comparable positions in the private sector. With regard to negative candidate responses, recruiters should be aware that candidates may display such attitudes where an agency has a poor image or poor record in the past hiring of protected class members.

RECRUITMENT FOR TEMPORARY POSITIONS

In general, field recruitment is not practical for temporary positions because this type of recruitment is neither time nor cost effective. For these types of positions, Affirmative Action Officers should use the following sources:

- The Technical Assistance Services Section(s) of the Division of Affirmative Careers
- Resume files
- Employee referrals--meet with minority employees and tell them about the vacancies
- Selected community based organizations
- Other affirmative action practitioners
- Minority media

RECRUITMENT FOR NON-COMPETITIVE POSITIONS

For agencies with a large number of non-competitive positions, Affirmative Action Officers/Personnel Officers should recruit continuously using the various recruitment methods presented in this procedure under "Considerations for competitive exam recruitment." Affirmative Action Officers/Personnel Officers are encouraged to contact the Division of Affirmative Careers for assistance.

RECRUITMENT FOR LABOR CLASS POSITIONS

For labor class positions, Affirmative Action Officers are advised to:

1. Contact community based organizations with training programs that prepare candidates for labor-type positions (e.g., maintenance service programs).
2. Place posters or flyers in community based organizations encouraging candidates to contact the Affirmative Action Office for information on positions.

ROLES OF THE PERSONNEL OFFICER

Each policy decision made by the agency which impacts on the recruiter's role should be discussed with the agency's recruitment staff so that they may be able to answer questions which often arise during recruitment visits. Agency Personnel Officers can also assist in the design of brochures and literature explaining fringe benefits and retirement programs.

ROLE OF DIVISION OF AFFIRMATIVE CAREERS

The Division of Affirmative Careers is available to assist State agencies with affirmative action recruitment efforts by providing agencies with technical assistance and, whenever possible, with human resources to conduct recruitment drives.

At an agency's request, the Division of Affirmative Careers can provide the following:

- Recruitment Resource Listing available statewide or for a specific region, for all protected classes or for a specific targeted group. Address labels are available for a fee.
- Address labels for protected class individuals who applied for past exams with similar minimum qualifications and who may qualify for the exam for which the agency is now recruiting (a fee is required).
- **NUMERICAL CODES - THIS SECTION HAS BEEN OMITTED**
- Data on the number of protected class members by **GENDER** and ethnicity, who applied for the exam
- Data on the number of applicants who failed to appear for the exam and those who took the exam and information on the number of candidates who passed or failed the exam by **GENDER** and ethnicity.
- Reference material regarding nationwide recruitment resources.

e. Interviewing and Pre-Employment Activity

The Personnel Office will inform the Affirmative Action Office of interviews of candidates prior to scheduling them. Notification will include the following information:

- Position for which interview is being conducted
- Names and addresses of applicants
- Number/names and titles of interviewers
- Location of interview
- Selection standards
- Accommodations requested by disabled candidates
- Eligibility list, where appropriate

Prior to the holding of interviews, the Affirmative Action Officer shall review the aforementioned and:

- Identify applicant's protected class status and potential need for reasonable accommodations where possible

Note: Applicant responses to requests for protected class information must be voluntary. In addition an individual may be asked if he/she has a disability only when all of the following conditions are met:

- The agency is taking remedial, voluntary or affirmative action to overcome past discrimination against persons with disabilities;
- It is clearly stated to the disabled applicant that the information is intended for use solely in connection with its remedial, voluntary or affirmative action efforts;
- It is clearly stated that the information is requested on a voluntary basis and that there will be no adverse treatment for refusal to provide such information;
- The information is kept confidential and maintained separately by the Affirmative Action Office.

- Ensure that interviewers are briefed on how to conduct legal, non-discriminatory pre-employment inquiries and are knowledgeable about accommodations that may have to be arranged
- Instruct interviewers not to initiate inquiries about a candidate's disability (Interviewers may inquire how the candidate can perform the duties of the position.)
- Ensure that the standards for selection are consistent for all interviewees
- Ensure that the location is accessible

In addition, the Affirmative Action Officer will, on a yearly basis, review all agency pre-employment forms and remove all inappropriate inquiries. All references to disability will be removed as well as any illegal inquiries regarding disability, race, sex, marital status, national origin, age, credit rating, etc. Any appropriate changes pursuant to future legislation and/or executive mandate will be made.

D. APPLICANT FLOW PROCEDURES

1. PURPOSE

In accordance with subsection IV C2 (e), Interviewing and Pre-Employment Activity of the Model Plan, the Applicant Flow procedure is developed to aid agencies in the collection, maintenance and analysis of applicant flow data. The Applicant Flow Procedure is a tool which will enable an Affirmative Action Officer to assess the agency's overall and specific performance in the area of protected class recruitment and outreach. In addition, applicant flow data should be routinely reviewed to identify and address impediments to an agency's good faith effort.

This procedure is to be used by agencies in conjunction with all agency pre-employment activity. It should be applied whenever applicable to vacant or soon to be established positions which have been posted, advertised for, or where the appropriate eligible list will be canvassed. Collected data must be obtained voluntarily and kept separate from any existing personnel file. Contract provisions (e.g., bidding, seniority, rosters) may prevail in the application of this procedure in certain circumstances.

The authorization for the agency collection of protected class data comes from the New York State Department of Civil Service, which designates the Affirmative Action Officer or his/her representative to collect the data for affirmative action purposes.

With regard to qualified disabled applicants, proper collection and use of applicant flow data is critical to the identification of these candidates for the purposes of providing reasonable accommodations during pre-employment selection activities.

The Personnel Officer is aware of any vacant position(s) prior to filling. He/She is also aware of agency options in filling the position(s) (e.g., list appointment(s), non-competitive appointment(s), provisional appointment(s). This information is shared with the Affirmative Action Officer to allow him/her to take the necessary steps to collect protected class data on all applicants. In cases where the protected class status of applicants is known to the agency, (i.e. current employees being considered for promotional

appointment) there is no need to request individuals to complete the survey form. However, information on all such candidates must be recorded appropriately on the Applicant Flow Forms.

Where agencies possess regional offices or facilities, individuals can be designated in each office or facility to be responsible for the coordination of data collection. Cooperation between all concerned parties is critical.

PROCEDURE FOR COMPLETING SURVEY OF APPLICANTS FOR EMPLOYMENT AND APPLICANT DATA FORMS

Responsible Party	Procedures
PERSONNEL OFFICER	(1) Completes item 1 on Survey of Applicants for Employment Form and sends form to all applicants with pre-addressed stamped return envelopes.
APPLICANT	(2) Completes Survey of Applicants for Employment Form and returns it to the agency Affirmative Action Officer.
AFFIRMATIVE ACTION OFFICER	(3) Collects Survey of Applicants for Employment forms and transfers data onto Applicant Flow Data Form.
	(4) Maintains Survey of Applicants for Employment and Applicant Flow Data Forms in confidential files in the Affirmative Action Office.

NOTE: Once applicant interviews are completed and the Appointment Review Form is filled out (see page ____ of this manual), the Affirmative Action Officer is to transfer the Candidate Information Concerning Disposition (Item 9) from the Appointment Review Form onto the Applicant Flow Data Form to complete this process.

DEFINITIONS AND FORMS

Vacant Position - A vacant position is defined as any vacancy or anticipated vacancy which the agency has announced, posted, canvassed, recruited for or in any way has advertised with the intention of filling (this includes positions which have been posted but may still be awaiting Budget action or approval).

Applicant - An applicant is any individual applying to an agency for a vacant position. For the purposes of this procedure walk-ins are defined as individuals who come to an agency to apply for employment not associated with a specific vacant position. Walk-ins are not considered applicants.

Unqualified Applicant - An applicant applying to an agency for a vacant position for which he/she doesn't meet the minimum qualifications.

Affirmative Action Office Survey of Applicants for Employment Form - This form is to be mailed to and completed by all applicants who are actively applying for the job(s) to be filled. The form is to be mailed out by the Personnel Officer and returned to the Affirmative Action Officer using a pre-addressed stamped return envelope.

Applicant Flow Data Form - This form is to be completed by the Affirmative Action Officer consolidating information gathered on individual Survey of Applicants for Employment Forms and Appointment Review Forms (see Appointment Review Form Item 9).

AFFIRMATIVE ACTION OFFICE
SURVEY OF APPLICANTS FOR EMPLOYMENT FORM

Your reply to this survey will help the Affirmative Action Office to monitor the equity of selection procedures. The information you provide will be kept confidential, separate from your application, and will only be used in connection with assuring that our equal employment opportunity/affirmative action policies are carried through appropriately. Your response is voluntary. You will not be penalized if you choose not to reply.

1-A Agency _____ Facility/Region _____
Code _____ Address _____

1-B CIVIL SERVICE TITLE(S) FOR WHICH YOU ARE APPLYING:
_____

2-A NAME: _____ B. Date: _____

3. MAILING ADDRESS: _____
No. Street City/Town State Zip Code

4. SOCIAL SECURITY #: _____

5. SEX: Male ___ Female ___

6. Are you 40 years of age or older? Yes ___ No ___

7. ARE YOU A VIETNAM ERA VETERAN? Yes ___ No ___ For the purpose of this survey, a Vietnam era veteran is defined as any person who served on active duty in the Armed Forces of the United States (for other than training purposes), any part of which occurred between December 22, 1961 and May 7, 1975, and who was discharged or released with other than a dishonorable discharge.

8. PLEASE CHECK THE LINE NEXT TO THE TERM WHICH DESCRIBES YOUR ETHNIC/RACIAL ORIGIN:

___ White (not of Hispanic Origin) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East.
___ Black (not of Hispanic origin) - A person having origins in any of the Black racial groups of Africa.
___ Hispanic - A person of Puerto Rican, Mexican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
___ Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Philippine Islands or Samoa.
___ American Indian or Alaskan Native - A person having origins in any of the original peoples of North America and who maintains tribal affiliation or community recognition.

9. REFERRAL SOURCES:

In order that we may evaluate our recruitment efforts, please provide us with information on you learned about the position you are applying for with this agency.

CIRCLE ONE:

A. Eligible List
B. Publicly Posted Announcement
C. Newspaper Advertisement
D. New York State Job Service
E. Social and Fraternal Organization(s)
F. Women's Rights Organization(s)
G. Radio or Television
H. Private Employment Office(s)
I. Political Organization(s)
J. Relative or Friend
K. State Employee (Not Related)
L. College Placement Office
M. Minority Rights Organization(s)
N. Handicapped Rights Organization(s)
O. Office of Vocational Rehabilitation
P. Affirmative Action Officer
Q. Veteran's Organization(s)
R. Personnel Office
S. Governor's Appointments Office
T. Legislative Referral
U. Agency Posting
V. Other
W. Unknown

10. IF ONE OR MORE OF THE FOLLOWING APPLIES TO YOU - YOU ARE CONSIDERED DISABLED
- you have a physical or mental impairment which substantially limits one or more major life activities such as seeing, hearing, walking or communicating
- a record of such impairment exists, as in the cases of a history of cancer, epilepsy, or heart attack
- you have been classified as disabled by a school or agency
- you are regarded by others as having such an impairment whether actually having one or not

If you are disabled, New York State would like to include you in our affirmative action program. Prior to the time of your interview, you can assist us by telling us about any special methods, skills and/or procedures which you require at the time of interview (e.g., a wheelchair, accessible location) or which would enable you to perform the duties of positions for which you might not otherwise seem qualified because of your disability. We would also like to know what reasonable accommodations this agency could make to enable you to perform the job properly and safely, including special equipment, changes in physical layout at the job, elimination of certain duties relating to the job, or other reasonable accommodations.

A. Are you disabled:

/___/ Yes /___/ No

B. Do you require special accommodations

/___/ Yes /___/ No (Please specify below or attach additional sheets)

Thank you for your cooperation. If you have any questions about this survey or about our Equal Employment Opportunity/Affirmative Action Program, Please write or call Mr./Ms. _____, Affirmative Action Officer; telephone number (___)_____.

Please return this form by _____close of business.

INSTRUCTIONS:

Using the codes below complete the Applicant Flow Data Form appropriately (please type or write legibly). Regional Offices should complete and return this form to the agency Affirmative Action Officer.

CODES

Ethnic Category

0 - White
1 - Black
2 - Hispanic
3 - Asian or Pacific Islander
4 - American Indian or Alaskan Native
U - Unknown

Disposition

1 - Hired
2 - Interviewed, offer extended but refused
3 - Interviewed, No offer extended
4 - No Offer
5 - Interviewed, Offer extended
6 - Did not report for Interview
7 - No interview offered
8 - Could not contact
9 - Unqualified applicant
10 - Other
11 - See Item 9 on Appointment Review Form

Referral Source

A. Eligible List
B. Publicly Posted Announcement
C. Newspaper Advertisement
D. NYS Job Service
E. Social & Fraternal Organization(s)
F. Women's Rights Organization(s)
G. Radio or Television
H. Private Employment Office(s)
I. Political Organization
J. Relative or Friend
K. State Employee (not related)
L. College Placement Office
M. Minority Rights Organization(s)
N. Handicapped Rights Organization(s)
O. Office of Vocational Rehabilitation
P. Affirmative Action Officer
Q. Veterans' Organization
R. Personnel Office
S. Governor's Appointments Office
T. Legislative Referral
U. Agency Posting
V. Other
W. Unknown

APPLICANT FLOW DATA FORM
(This form is to be filled out by the Affirmative Action Officer/Designee)

Agency/Code _____

Title and Salary Grade _____ Facility/Region _____

Federal Occupational Category _____ Office Location/Bureau _____

Jurisdictional Classification _____ Date _____

Name of Applicant	Social Security Number	Sex Code	Ethnic Code	Disabled	Vietnam Era Veterans	Referral Source	Interview Date/None	Disposition	Appointment Date	Comments

Exhibit E

f. Medical Examinations/Standards

In those limited instances where pre-employment medical examinations are necessary to confirm the presence of bona fide occupational qualifications, the Personnel and Affirmative Action Officer shall assure that pre-employment medical exmainations meet the following criteria:

- That a conditional offer of employment is made
- That all employees or prospective employees take such examinations
- That any information regarding disability is kept confidential

Note: With the consent of the disabled employee, such information may be provided to:

- Supervisors or managers to assist in making necessary accommodations
- First aid and safety personnel
- Government officials investigating compliance with Sections 503/504 requirements, the Americans With Disabilities Act, Executive Order 6, and/or New York State Division of Human Rights Law

Further, the Affirmative Action Office shall review all medical standards against standards related to performance of the essential duties of the job in order to avoid disqualifying otherwise qualified disabled candidates.

Timetable: April 1, 1984 - Ongoing

E. PHYSICAL-MEDICAL STANDARDS REVIEW PROCEDURE

Purpose

The purpose of the Physical Medical Standard Review procedure is to provide agency Affirmative Action Officers with a process to review physical-medical standards of agency titles against standards related to performance of the essential duties of the job in question, in order to avoid disqualifying otherwise qualified disabled applicants. (This proceudre is to be used in accordance with subsection IV C2 (f) Medical Examinations/Standards of the Model Affirmative Action Plan.)

When competitive class titles are being considered, review of physical medical standards should be conducted in conjunction with examination planning. It is recommended that the need for physical-medical standards and tests for jobs in the non-competitive, labor or exempt class be reviewed for appropriateness on an annual basis or more often if problems or special circumstances exist (e.g. seasonal hirings).

To facilitate the Affirmative Action Officer's completion of this task a partial listing of titles possessing physical-medical requirements (for which the Department of Civil Service conducts medical examinations) has been provided. Special attention should be given to other job titles for which medical exams and/or physical standards may be required pursuant to agency policy (e.g. the Office of Mental Health has two policies which require that its Mental Hygiene Therapy Aide staff undergo medical examinations as a condition of employment), classification standards, job descriptions or other factors.

NOTE: Post-offer/Pre-employment Medical Examinations are necessary to confirm the presence of bona fide occupational qualifications (BFOQS).

PROCEDURE FOR CONDUCTING PHYSICAL/MEDICAL STANDARDS REVIEWS

Responsible Party	Procedure
Personnel Officer	1. As agency titles possessing physical-medical requirements are scheduled for examination the Personnel Officer informs the Affirmative Action Officer as soon as the title is scheduled.
Affirmative Action Officer	1. Reviews the state physical-medical requirements against standards related to performing the essential duties of the job in order to identify non BFOQ. 2. If after his/her review the AAO finds the presence of non BFOQ he/she will consult with the Personnel Officer and program staff to discuss the matter and formulate an agency position. This position will be advanced and the issues resolved with appropriate staff from the Department of Civil Service, (Staffing Services, Testing, Class and Comp., Diversity Planning and Management and Employee Health Services) prior to the conduct of a scope conference for the title(s) in question. (It is strongly recommended that the Affirmative Action Officer be part of any agency team meeting with Department of Civil Service staff to establish and/or review physical-medical standards.) No exam is to be scheduled or held before the physical-medical standards, if any, are finalized.

NOTE: The agency Personnel and Affirmative Action Officers share the responsibility for ensuring that pre-placement medical exams meet the following criteria:

- that a conditional offer of employment is made
- that all employees or prospective employees take such examinations
- that any information regarding disability is kept confidential, separate and apart from personnel records, (with consent of the disabled employee, such information may be provided to supervisors or managers to assist in making necessary accommodations, to first aid and safety personnel; and government officials investigating compliance with the ADA, Section 504 requirements, Executive Order 6 and/or New York State Division of Human Rights Law).

g. Personnel Transactions

(1) Hiring and Promotions

Upon selection but PRIOR to the appointment of applicants/candidates to competitive, non-competitive, and labor class positions, agency interviewers shall provide the Affirmative Action Office with the following information:

- List of candidates
- Protected class status of candidates, if known
- Title of position
- Number of positions to be filled

The Affirmative Action Officer will compare the list of candidates to the Confidential Agency Roster and other confidential files to identify protected class members.

In cases where protected class members are not included among the candidates to be considered, the Personnel Office will provide an explanation for their absence.

When a protected class member has been interviewed but not selected for appointment, a justification for the non-selection (as well as identification of the person making the hiring decision) will be submitted for review to the Affirmative Action Office. This justification shall contain a comparison of the job qualifications of the person selected with the job qualifications of the person selected with the job qualifications of the protected class member not selected.

If a person with a disability is among those candidates not selected, the memorandum of justification shall include a list of any accommodations considered as required. In making non-competitive, labor class, provisional or temporary appointments, due consideration will be given to agency hiring goals, as stated in the agency goals and timetables.

F. APPOINTMENT REVIEW PROCEDURE

PURPOSE

In accordance with subsection C2g (1) Hirings and Promotions of the Affirmative Action Model Plan, agency Affirmative Action Officers will use this procedure to conduct protected class reviews and analysis of agency appointments. The Affirmative Action Appointment Review Procedure is a tool which will enable agencies to:

- Keep abreast of hiring trends and Affirmative Action gains/deficiencies within the organization.
- Conscientiously pursue and monitor affirmative action progress in relation to goal attainment as well as address chronic problems related to underutilization.
- Ensure that affirmative action considerations are consistently taken into account by all agency personnel charged with making hiring decisions.

This procedure is to be used by agencies after the conduct of interview/selection activities but prior to extending offers of employment and/or appointments to candidates. The procedure should be applied whenever applicable to agency positions without regard to position status or grade assignment.

NOTE: Use candidate information recorded on the Appointment Review Model Form (Item 9) to update and complete the Applicant Flow Data Form.

PROCEDURES FOR CONDUCTING AFFIRMATIVE ACTION APPOINTMENT REVIEWS

Responsible Party	Procedures	Additional Considerations
INTERVIEWER AND/OR PROGRAM MANAGER	A. After completion of all interviews, the Appointment Review Form is filled out and sent to the Affirmative Action Officer with a copy to the PERSONNEL OFFICER for review. **NOTE:** Personnel Officer's copy excludes protected class information. NO OFFER OF EMPLOYMENT SHOULD BE EXTENDED AT THIS POINT.	A-1 When completing the form the Interviewer/Program Manager should list in order of preference his/her candidate selections for appointments (see Item 9). A-2 In addition he/she should state how these individuals best met the selection criteria. When a protected class member was interviewed and not selected for appointment, justification for the non-select must be provided (see Item 11). Where protected class data is missing it is the responsibility of the Affirmative Action Officer to obtain such information where available, and to complete the form. Sources for protected class data include Confidential Agency Rosters, Applicant Flow Surveys.

Responsible Party	Procedures	Additional Considerations
AFFIRMATIVE ACTION OFFICER	B. Upon receipt of the Appointment Review Form the Affirmative Action Officer reviews the field of candidate(s) and justification(s) provided.	B-1 The appointment review process should require no more than ten business days. B-2 The justification(s) must clearly demonstrate that equal opportunity was afforded to all candidates. B-3 If disabled individuals were included in the pool of interviewees, an explanation of reasonable accommodations requested and provided (if any) must be included in response to Item 9, Candidate Information on the Appointment Review Form.
	C. If the form indicates that the selection provided equal opportunity to all candidates and that affirmative action has been considered throughout the process, the Affirmative Action Officer will sign off on the contemplated appointment. Copies of the approved form will be sent to both the Personnel Officer and/or Program Manager as appropriate. All protected class information will be removed from these copies by the Affirmative Action Officer before they are forwarded to the Personnel Officer or Program Manager. The original is to be maintained in the Affirmative Action Office.	

Responsible Party	Procedures	Additional Considerations
	D. If the form is incomplete, unclear, or if the Affirmative Action Officer disagrees with the recommendation, he/she will immediately request a meeting with the Personnel Officer and/or Program Manager (as appropriate to reach agreement on the selection (Item 16 should not be completed at this point).	D-1 If no agreement is reached at the meeting, Item 16 should be marked Disapproved, completed appropriately and dated by the Affirmative Action Officer. A copy of the form is then sent to the agency head or designee. The matter will be resolved at this level and the final decision communicated to all concerned parties as appropriate.
PERSONNEL OFFICER	E. Will notify the successful candidate(s) and place on payroll.	
	F. Notifies unsuccessful candidates of non-selection.	

NOTE: No new hires, rehires, promotions, or transfers will be effected until they have been reviewed and approved by the Affirmative Action Officer.

DEFINITIONS AND FORMS

Appointments - Appointments will include new hires, rehires, transfers, and promotions.

Candidates - Candidates are regarded as individuals who, depending on the circumstances, are either reachable list eligibles and are being considered for immediate list appointments and/or individuals who are considered qualified applicants for the position(s) in question.

Appointment Review Form - This form is to be completed by the interviewer at the end of the interview/selection process and sent to the Affirmative Action Officer for review and comment prior to effecting an appointment or extending an offer of employment.

APPOINTMENT REVIEW FORM

AGENCY/CODE _____

To: AFFIRMATIVE ACTION OFFICE (ORIGINAL) ____ FROM: Facility/
PERSONNEL OFFICE (COPY) Region _____

**See "Note" below Div./Bureau _____

1. Civil Service title of position to be filled 2. Grade 3. Item # 4. Location

1-a In House Title (if any) 5. Juris/Class 6. Recommended Appointee

7. Type of Appointment: Non-List ___ List ___ Perm ___ Cont. Perm ___

Temp. ___ Prov. ___ Eligible List Title and No. _____ Other _____

8. Type of Action: Re-Hire ___ New Hire ___ Promotion ___
Transfer/Reassignment _____ Other (please explain) _____

9. Candidate Information:

Enter information for all candidates interviewed in order of preference. In cases where all candidates interviewed are reachable for appointment, rank on the eligible list is not to be used as a selection factor (see Item 11 of this form). All known protected class members and AA Office referrals in the candidate field must be included in the interview process. Use additional sheets if necessary. Protected class status is being collected for the purpose of meeting AA reporting requirements. It is illegal to request this information from candidates. Record information only if known or by visual assessment. If disabled individuals were included in the candidate pool, please specify if reasonable accommodations were requested and/or provided for the interview.

Name	Ethnicity	Sex	VEV	Disab	Disposition	Date of Interview

ETHNIC CODES	SEX	VEV	DISABILITY
00 - White	M - Male	Y - Yes	Y - Yes
01 - Black	F - Female	N - No	N - No
02 - Hispanic		U - Unknown	U - Unknown
03 - Asian/Pacific Islander			
04 - Native Amer/Alaskan Native			
U - Unknown			

DISPOSITION/APPOINTMENT AVAILABILITY

1. Qualified
   a. Scheduled interview - no show
   b. Interviewed - candidate temporarily unavailable
   c. Interviewed - candidate unavailable
   d. Interviewed - candidate available
   e. Interview - no request for candidate availability made

2. Not Qualified

**NOTE: P.O. copy is returned to AA Office when position is filled or within 30 days whichever is sooner.

10. Indicate those factors such as previous or current work experience, education, skills, abilities, work requirements, and any related criteria which were applied in assessing candidate(s) for the position(s). **NOTE:** numerical ratings or point scales must be approved in advance by the Personnel and Affirmative Action Officers.

_____

_____

_____

---

11. On a separate sheet, describe how each of the candidates met or failed to meet the criteria listed in Item 10. Include any relevant information which will help explain how your order of preference in Item 9 was made. **NOTE:** for list appointments, rank on the eligible list is not to be the only selection criteria. When known protected class members have been interviewed but not recommended for appointment, justification must be provided.

---

12. RECRUITMENT SOURCES (if known)

_____

_____

_____

(e.g. Governor's Appointments Office Referrals, eligible list, postings, resumes)

---

13. Please print name of person(s) who conducted interview(s) and telephone number(s)	14. Signature of Bureau/ Program Head	15. Date
Tel ( )	Tel ( )	/ /

To Interviewer: Send original form to AA Office and a photocopy to Personnel

16. <u>To be completed by Affirmative Action Officer</u>

APPROVED _____ DISAPPROVED _____
list reason(s)

_____

_____

Signature of Affirmative Action Officer and date

Date copy sent to Personnel

_____ _____

Date copy sent to Agency Head/Designee

_____

17. Signature of Agency Head/Designee and Date

_____

(2) Separations: Transfers, Terminations, Resignations, and Layoffs

Personnel actions resulting in protected class employees leaving the agency will be reviewed by the Affirmative Action Office before becoming final.

When such actions involve known disabled employees, the Affirmative Action Officer will investigate the situation as soon as possible to ascertain that such separation is not attributable to the failure or unwillingness of the agency to provide reasonable accommodations.

Whenever protected class individuals are faced with possible layoff the Personnel and/or the Administrative Officer will work in conjunction with the Affirmative Action Officer to develop the agency reduction in force plan and recommend agency actions to aid in the retention of protected class employees. [Agency] will utilize 55.b appointments when possible to maintain continuity of employment for known disabled employees.

Reduction-In-Force Procedure

Purpose

The purpose of the Reduction-in-Force Procedure is to introduce and guide Affirmative Action Officers through procedures and techniques which can be employed to reduce the effect that an agency's reduction-in-force (RIF) has on its protected class employees.

These procedures are introduced to augment subsection IV C2 g(2), Separations: Transfers, Terminations, Resignations and Layoffs, of the Model Affirmative Action Plan.

For more specific information on Reduction-in-Force procedures and legislation, consult Section 2300 of the State Personnel Management Manual, Sections 80, 80-a and 81 of Civil Service Law and the Department of Civil Service booklet titled Information For State Employees Affected By Layoff.

Layoffs or Reduction-In-Force (RIF)

Procedure

While it is virtually impossible for an Affirmative Action Officer to prevent or stop layoffs, it is possible to nullify some of the negative effects that the layoffs could have on an agency's protected class employees.

The critical areas of concern for Affirmative Action Officers when preparing for layoffs (more formally known as a reduction-in-force or RIF), are the titles to be affected, their geographic locations and/or layoff units. Once agency management has made final decisions on these two factors, it is virtually impossible for an Affirmative Action Officer to reduce any negative impact on protected class employees. Therefore, it is imperative for all Affirmative Action Officers to be as active as possible, as early as possible, in the process of making these decisions jointly with agency management. Affirmative Action Officers identifying titles having significant protected class representation, can work towards having the number of layoffs in these titles reduced or eliminated from the agency's RIF plan.

The following list encompasses the most important activities in which an Affirmative Action Officer can be involved when preparing for a RIF:

1. Before the RIF Plan is Implemented

   a. Become very familiar with Sections 80, 80a, and 81 of the Civil Service Law and all Civil Service publications and policy memoranda concerning layoffs.

   b. Become familiar with your agency's layoff units as negotiated between labor and management.

   c. Insure that Affirmative Action staff is an integral part of the agency RIF planning committee.

   d. Determine the actual number and percent representation of protected class individuals in each agency title by layoff unit.

   e. Prevail upon agency management not to unduly impact those titles, layoff units or geographic areas having the largest number or percent representation of protected class individuals.

   f. Consider recommending that language parenthetic or other parenthetics be added immediately to current agency titles and fill the new jobs with qualified protected class members.

   g. Become familiar with the requirements for transfers as covered under Sections 52.6, 70.1 and 70.4 of Civil Service Law.

   h. Press to have all qualified protected class members made permanent or contingent permanent in their current competitive or non-competitive class titles in order to provide protection in case of layoff. This may mean scheduling required physical/medical or oral tests for individuals needing them in order to qualify for a permanent eligible list appointment.

2. After Agency Approval of RIF Plan

   a. Help plan and be in attendance at all informational meetings held just prior to the actual layoffs for agency management and employees. Be visible and informed and make sure employees are also.

   b. Acquire personal training and experience data from all protected class employees in affected titles and determine who may be eligible for reinstatement or provisional or eligible list appointment to unaffected titles within and outside of the agency.

   c. Request that all proposed appointments for individuals from outside of the agency be frozen until you have determined that a current agency employee cannot be appointed, promoted, transferred or reassigned to the vacancy. (This should include appointments to all jurisdictional classes.) If Program Managers plead for quick appointments to keep their programs running, insist that only temporary appointments (Section 64.1 Civil Service Law) be offered to non-agency individuals.

d. Request (from the Personnel Office) a copy of the Civil Service determination(s) for each title affected by the RIF as it (they) will apply to placement rosters, preferred lists and reemployment rosters. Also request determinations made for transfer appropriateness under Sections 52.6 and 70.1 of the Civil Service Law. Use this information to assist employees in affected titles to transfer to or be appointed to unaffected titles within and outside of the agency.

e. Make your agency's RIF known to as many State agency Affirmative Action Officers and affirmative action organizations as possible and ask for assistance in placing protected class members who are scheduled for termination or displacement due to the RIF. This should also include the Affirmative Action Advisory Council and the Personnel Council.

3. Conducting an Abolition of Positions Impact Analysis

Whenever an AAO finds that adverse impact occurs for a protected class group, every effort should be made to find alternative ways that will eliminate or minimize the adverse impact. On the next few pages are instructions and forms for conducting an abolition of positions adverse impact analysis.

INSTRUCTIONS FOR COMPLETING SUMMARY OF TOTAL WORK FORCE ABOLITION OF POSITIONS IMPACT ANALYSIS

Definition of Terms

a. Present Work Force

Ethnic and sex profile of employees on payroll prior to abolition of positions.

b. Number of Employees to be Terminated

Ethnic and sex profile of employees to be terminated as a consequence of abolitions of positions.

c. Termination Rate

Is obtained by dividing the number of employees to be terminated by the number of present employees.

$$\frac{B = \text{Number of employees to be terminated}}{A = \text{Number of present employees}}$$

d. Termination Ratio

For ethnic minorities, the termination ratio is obtained by dividing the termination rate of whites by the termination rate of the particular ethnic group in question.

The termination ratio for any given ethnic group should only be computed when the termination rate for that given group is greater than the termination rate of whites.

$$\text{Termination Ratio For Blacks} = \frac{\text{Termination rate of Whites}}{\text{Termination rate of Blacks}}$$

$$\text{Termination Ratio For Hispanics} = \frac{\text{Termination rate of Whites}}{\text{Termination rate of Hispanics}}$$

$$\text{Termination Ratios For Asian/Pacific Islander} = \frac{\text{Termination rate of Whites}}{\text{Termination rate of Asian/Pacific Islanders}}$$

$$\text{Termination Ratio For Native Americans} = \frac{\text{Termination rate of Whites}}{\text{Termination rate of Native Americans}}$$

For women, the termination ratio is obtained by dividing the termination rate of males by the termination rate of women.

The termination ratio for women should only be computed when their termination rate is greater than the termination rate of males.

$$\text{Termination Ratio For Women} = \frac{\text{Termination rate of Males}}{\text{Termination rate of Women}}$$

Compare the termination ratios to the 4/5 Rule (80%) to determine if adverse impact is present. If the termination ratio is less than 80% (.80), then there is generally adverse impact.

Adverse Impact

Whenever you find that adverse impact occurs for a given group, every effort should be made to find alternative ways that will eliminate or minimize the adverse impact.

NOTE: This procedure is based on guidelines issued by the Office of Federal Contract Compliance.

REDUCTION IN FORCE (RIF) TERMINOLOGY

Reduction-In-Force - The abolition of positions in the competitive, non-competitive or labor class due to economy, consolidation or abolition of functions, curtailment of activities or other causes.

Placement Roster - A list of permanent employees who are expected to be laid off or demoted due to a RIF within the next six months and who are eligible for permanent appointment to other jobs as determined by the Department of Civil Service. Their names are available from either your Personnel Office or the Department of Civil Service prior to the date of displacement.

Preferred List - A list of permanent employees who have already been displaced and are eligible for permanent appointment to titles at the same or a lower salary grade which are usually in the same occupational field. Names are certified to an agency's Personnel Office by Civil Service.

Re-employment Roster - A list of permanent employees who have already been displaced and are eligible for permanent appointment to titles at the same or lower salary grade which are not in the same occupational field. Names from this roster are available only after the Preferred List for a title has been depleted of all names.

Vertical Displacement - Taking the position of the least senior employee at the next lower level title in the direct line of promotion within the same layoff unit.

Retreat - Taking the position of the least senior employee in the same layoff unit in a lower level title last held permanently by the retreating employee.

Layoff Unit - An entire agency, facility, division or geographic region within which layoffs, bumping and retreat occur. Layoff units are determined on an agency-by-agency basis and are subject to labor-management negotiations.

Affected Title - Any title identified by the agency RIF plan which will undergo a loss of positions during a RIF.

Seniority - For the purpose of layoff, seniority is defined as the date of original permanent appointment in the classified service and continuous serve since that date. However, veterans get 2 1/2 years of additional seniority and disabled veterans get 5 additional years. Legally blind employees must be considered more senior than any other employees in their same title and status.

Continuous Service - For purposes of determining seniority dates, (or for non-competitive and labor class employees, eligibility for rights), employment with New York State must be continuous unless it is interrupted by a period of one year or more when the employee is out of State service. Employees on leave are considered to be in service.

Reassignment - Although agencies can reassign employees at any time, during abolition of position situations, more senior employees are often offered positions in other locations in their same title. Permanent employees who refuse a reassignment and are consequently separated from service are not considered to be "laid-off" under the law and therefore cannot bump or retreat to lower level positions. However, the Department of Civil Service will place the names of such employees on preferred lists and reemployment rosters if the reassignment required taking a position in another county.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

DIVISION OF DIVERSITY PLANNING AND MANAGEMENT

ANALYSIS OF DISABLED INDIVIDUALS & VIETNAM ERA VETERANS AGENCY SEPARATIONS BY ABOLITION OF POSITIONS

Agency _____
Federal Occupational Category _____
Salary Grade/Job Group/Goal Set _____
Date _____
Prepared by: _____
Telephone No. _____

	TOTAL DISABLED		TOTAL VIETNAM ERA VETERANS	
	No.	%	No.	%
Present Number of Employees				
Number of Employees After Layoffs				
Employees to be Laid Off				

_____
Signature of Appointing Authority

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

DIVISION OF DIVERSITY PLANNING AND MANAGEMENT

SUMMARY OF TOTAL WORK FORCE

ABOLITION OF POSITIONS IMPACT ANALYSIS

Agency _____
Federal Occupational Category _____
Salary Grade/Job Group/Goal Set _____
Date _____
Prepared by _____
Telephone No. _____

	WHITE	BLACK	HISPANIC	ASIAN/ PAC.ISL.	AMERICAN NATIVE ALASKAN NATIVE	FEMALES	MALES
Present Work Force							
Number of Employees to be Terminated							
Termination Rate							
Termination Ratio							

_____
Signature of Appointing Authority

Exhibit E

(3) Exit Audits and Interviews

The Affirmative Action and Personnel Offices will conduct an exit audit whenever any protected class member leaves the agency. An exit interview will be conducted when one or more of the following conditions prevail:

- Whenever an agency separation involves a known disabled employee (in such a case, accommodations required and provided to the employee must be evaluated)
- Whenever the result of an exit audit indicates that an affirmative action problem may exist

Timetable: April 1, 1984 - Ongoing

G. EXIT AUDIT AND INTERVIEW PROCEDURES

PURPOSE

The Exit Audit and Interview Procedures were developed to assist agencies in identifying trends in employee separations, and in developing strategies for employee retention, with specific attention given to protected class members. These procedures are in accord with subsection IV C2g (3), Exit Audits and Interviews of the Model Affirmative Action Plan.

The exit audit should be utilized whenever an employee leaves the agency. The exit interview is to be conducted whenever an agency separation involves a known disabled employee (in such a case accommodations required and provided must be evaluated) and/or whenever the result of an exit audit indicates that an Affirmative Action problem may exist.

PROCEDURES FOR EXIT AUDITS

Responsible Party	Procedures
PERSONNEL OFFICER	(1) Whenever an employee separates from the agency, he/she will be provided the "Employee Exit Audit" form with instructions to complete it and return it to the Affirmative Action Officer.
EMPLOYEE	(1) Will fill out, sign, and forward the "Exit Audit" form to the Affirmative Action Officer.
AFFIRMATIVE ACTION OFFICER	(1) Will review all "Exit Audit" forms; note reason for leaving and any recommendations made. If the employee has indicated that he/she is leaving due to a perceived problem of discrimination or lack of Equal Opportunity, the Affirmative Action Officer will contact the employee and extend an invitation for a voluntary confidential exit interview. (2) Upon completion of the review, the Affirmative Action Officer will take follow-up action, if appropriate, (e.g., contacting program managers), detach the Protected Class Data Section from the exit audit forms and forward the completed forms to the Labor Relations/Personnel Officer for further analyses.
LABOR RELATIONS/PERSONNEL OFFICER	Maintains Exit Audit forms in confidential files (for ____ years) for the purpose of further analyses.

PROCEDURE FOR CONDUCTING EXIT INTERVIEWS

Responsible Party	Procedures
PERSONNEL OFFICER	(1) Whenever an employee separates from the agency, he/she will be provided the "Employee Exit Audit" form with instructions to complete and return it to the Affirmative Action Officer.
EMPLOYEE	(1) Will fill out, sign and forward the Exit Audit Form to the Affirmative Action Officer.
AFFIRMATIVE ACTION OFFICER	(1) Must provide an opportunity for all known disabled employees, who are leaving the agency, to have a voluntary confidential exit interview. In addition, if a non-disabled employee has indicated that he/she is leaving due to a perceived problem of discrimination or lack of equal opportunity, an invitation for a voluntary confidential exit interview will be offered to the employee. (2) Conducts voluntary confidential interview with the employee and completes the Exit Interview Questionnaire. (3) Upon completion of the interview, will review, and if necessary, investigate the allegations taking appropriate measures to resolve the issue(s). (4) Maintains the Exit Interview Questionnaire in a confidential file in the Affirmative Action Office.

DEFINITIONS

Exit Audit - The exit audit is a procedure used to assist the agency in identifying trends in employee separations and in developing strategies for employee retention, with specific attention given to protected class members. The Personnel Officer will provide all employees leaving the agency with an Exit Audit form and the Affirmative Action Officer will process all completed audit forms.

Exit Interview - An exit interview is a voluntary confidential interview conducted pursuant to the exit audit process when one or more of the following conditions prevail:

- Whenever an agency separation involves a known disabled employee (in such a case, accommodations requested by and provided to the employee must be evaluated)

- Whenever the result of an exit audit indicates that an affirmative action problem may exist

Distinction between Exit Audits and Exit Interviews

The exit audit may be satisfied by the employee filling out the exit audit form and submitting it to the Affirmative Action Officer. The exit interview must be a one-on-one exchange between the Affirmative Action Officer and the employee during which the Affirmative Action Officer records, in writing, the responses to certain questions posed to the employee. The written results of the exit interview should be kept by the Affirmative Action Officer in a confidential file separate from the employee's personnel file. The completed exit audit form (minus the protected class data section) should be maintained by the Labor Relations/Personnel Officer.

Exit Audit Form

TO: Affirmative Action Office

FROM: (Name) _____ SS# _____
Division _____
Bureau _____

1. Title/Grade of Employee 2. Iten No. 3. Location 4. Appointment Date _____
Separation Date _____

5. Type of Appointment

/__/ Permanent /__/ Provisional /__/ Contingent Permanent /__/ Temporary

6. Jurisdictional Class

7. Reasons for Separation (Circle all that apply)

- Personal
- End of Temporary Employment
- Termination (disciplinary)
- Termination (probation)
- Forced Resignation
- Transfer to another State agency
- Leave State government
- Better Position (higher salary)
- Eligible list appointment
- Return to School
- Retirement
- Maternity Leave
- Military Leave
- Sick Leave
- Discrimination & or Harassment
- Other (please specify)

8. I hereby request a confidential interview with a member of the Affirmative Action Office
(check box) /__/

Employee Comments:

(Use additional sheets of paper, if necessary)

Employee Signature: _____ Date: _____

AFFIRMATIVE ACTION OFFICE USE ONLY:

AAO Signature: _____ Date Signed: _____

To AAO:
Detach this section before transmitting the document to the Labor Relations/Personnel Officer

- - - -

Exit Audit Procedure

Purpose

The purpose of the exit audit procedure is to assist the agency in identifying trends in employee separations and in developing strategies for employee retention, with specific attention given to protected class members. The exit audit procedure will help assure that the goals of Equal Opportunity and Affirmative Action are being met without unduly impeding the selection, hiring, and promotion processes.

This procedure has been developed to implement Part IV C (3) Exit Audits and Interview of the Model Affirmative Action Plan and should be utilized for all employee separations except layoffs.

- -

(fold over)

Name of Agency Affirmative Action Officer
Name of Agency
Location of Agency
City, State, Zip Code

Exit Interview Questionnaire

(To be filled out by the Affirmative Action Officer and maintained in a secured confidential file in the Affirmative Action Office.)

Affirmative Action Officer/AA Designee _____

Agency/Unit _____ Date of Interview _____

Employee Name _____ Title _____

Social Security # _____

Appointment Date _____ Separation Date _____

- -

I. Opening Statements

DISABLED EMPLOYEE

Affirmative Action Officer states to the employee:

"This interview is being conducted pursuant to the New York State's affirmative action policy. It is the policy of the State and of this agency to interview all known disabled employees prior to their separation from this agency for the purpose of evaluating our performance in providing reasonable accommodations for the disabled. The contents of this exit interview shall be used as a human resource management/affirmative action tool. Statements herein will be treated as confidential and will not become part of your personnel folder."

PROTECTED CLASS MEMBERS WITH AFFIRMATIVE ACTION PROBLEMS

Affirmative Action Officer states to the employee:

"Your Exit Audit Form indicates that you have a specific problem which caused you to leave the agency."

II. Interview Questions

1) Please identify the problem and/or situation which has lead you to leave the agency (be as specific as possible, e.g., who, what, when, where, and why)? _____

2) Is there anything else that you wish to state concerning your separation? _____

3) What actions would have had to be taken in order for you to have been willing to remain in this agency? _____

4) What actions would you recommend to improve the quality of work life for employees in this agency?_____

_____

_____

(For Disabled Individuals, continue with the following questions:)

5) While working for this agency, did you self-identify as being disabled for the purpose of receiving reasonable accommodations?

Yes ____ No____

5a) If not, why not?_____

_____

_____

6) Do you feel you have been given reasonable accommodations with regard to your employment at this agency?_____

_____

_____

7) What actions would you recommend to improve the accommodations this agency provides its disabled employees?_____

_____

_____

8) What actions would you recommend to improve the quality of worklife for disabled employees in this agency?_____

_____

_____

(Use additional sheets of paper if necessary)

_____
Affirmative Action Officer

_____
Date

h. Demotion and Disciplinary Actions

The Personnel or Employee Relations Office will inform the Affirmative Action Office of situations where demotions, other than those resulting from formal discipline processes, are being considered against protected class employees. Where formal disciplinary action is being taken pursuant to negotiated agreement or Civil Service Law, a copy of the Notice of Discipline or Statement of Charges shall be sent to the Affirmative Action Office simultaneously with the service of such notices to protected class employees. The Affirmative Action Officer will review and thoroughly investigate all such notices. For disabled employees, accommodations required and provided will be carefully analyzed in the review.

i. Counseling

Protected class employees having difficulty in job performance will be afforded the opportunity to be counseled prior to any unfavorable employment action's being taken. Supervisors/managers will contact the Affirmative Action Officer to assist in the provision of such counseling.

H. CONSOLIDATED AFFIRMATIVE ACTION GUIDELINES RELATED TO COUNSELING, NOTICES OF DISCIPLINE AND OTHER ADVERSE PERSONNEL ACTIONS

PURPOSE

This section has been developed to assist agencies in the implementation of subsections IV C2.g (2) Separations, IV C2h, Demotion and Disciplinary Actions, and IV C2i, Counseling, of the Model Affirmative Action Plan.

Consolidation of the subject sections was developed to interface with that part of the employment cycle in which individual employee counselings may become predicates for adverse personnel transactions (e.g., terminations of non-permanent employees, notices of discipline, voluntary resignations and voluntary demotions or separation).

These guidelines are not intended to circumvent or supersede counseling by supervisors or the labor relations processes. Rather their purpose is to afford protected class employees, who are perceived to have difficulty in job performance, the opportunity to be given affirmative guidance and assistance prior to any unfavorable employment actions being taken and/or to address any instances of unlawful discrimination.

Upon beginning work and during orientation Personnel will provide each employee with a copy of the Affirmative Action Policy Statement. Through this procedure the Affirmative Action Office will encourage protected class employees to utilize its resources to correct any discriminatory employment practices.

From an affirmative action point of view, timely and appropriate counseling of protected class employees by supervisors is critical for their successful development and retention. It is for this reason that the Affirmative Action Guidance and Assistance portion of these guidelines is comprehensive and detailed. The consolidated guidelines have been established to provide for the appropriate involvement and follow-up by agency Affirmative Action Officers in the early stages of problem situations involving agency employees. It is a major affirmative action tool which will enable agencies to lessen the number of avoidable adverse personnel transactions and separations.

1. Notification

It is the responsibility of supervisors/managers to notify the Affirmative Action Office in writing (e.g. by carbon copy) when the first counseling memorandum is issued and considered to be the first step prior to recommending disciplinary or other adverse personnel action (e.g. termination of a non-permanent employee). Once advised, the Affirmative Action Officer conducts a review, evaluates the specific circumstances and takes follow-up action (including contacting managers, supervisors, and/or employees) as appropriate.

NOTE: It is the responsibility of the Affirmative Action Officer to brief and update all managers and/or supervisors of their role and responsibility on these and other affirmative action review procedures on an annual basis. Supervisors should also be made aware that they will be held accountable as to how effectively they facilitate and cooperate with these initiatives.

Finally, with specific regard to employee separations, the Affirmative Action Officer should note significant trends in employee separations and analyze their implications. In addition, the Affirmative Action Officer will monitor and take appropriate action on agency inequities in the application of penalties such as fines and suspensions (see Affirmative Action Model Plan, subsection IV C21, Self-Evaluation AAP page __).

NOTE: For separations involving known disabled employees, see procedures for conducting "Exit Audits and Interviews."

PROCEDURE FOR AFFIRMATIVE ACTION GUIDANCE AND ASSISTANCE PROCESS

Responsible Party	Procedures
AGENCY MANAGER/SUPERVISOR	Notifies the Affirmative Action Officer, in writing, (e.g. by carbon copy) when the first counseling memorandum are issued and considered to be the first step prior to recommending disciplinary or other adverse personnel action.
AFFIRMATIVE ACTION OFFICER	(1) Conducts review of the counseling memoranda. (If it is determined that no further action is warranted at this time, the Affirmative Action Officer will document this on the Consolidated Summary Form and communicate the same to all appropriate parties.)
	(2) If the follow-up action determined to be necessary includes interviewing an employee, the Affirmative Action Officer will use the sample Employee Interview Form to document the result of the contact session and formulate his/her recommendations.

(3) Contacts the Labor Relations/Personnel Officer (within three working days) to inform him/her that the employee contact session was conducted, communicates the findings and works toward a resolution of the outstanding issues.

(4) Enters appropriate data and disposition onto the Consolidated summary Form.

NOTE: Protected class employees should be encouraged to contact the Affirmative Action Officer for guidance and assistance especially if they believe some form of adverse personnel action is being contemplated. In the case of employees endangered by probationary termination, consultation with the Affirmative Action Officer at the earliest opportunity is critical to avoid dismissals.

PROCEDURE FOR RESPONDING TO NOTICES OF DISCIPLINE (NOD)

Responsible Party	Procedures
LABOR RELATIONS/PERSONNEL OFFICER	Sends copies of Notices of Discipline to Affirmative Action Officer.*
AFFIRMATIVE ACTION OFFICER	1) Conducts review of Notices of Discipline and if necessary, takes follow-up action. 2) Maintains Notices of Discipline in confidential files for Semi-Annual Reports and analysis.
LABOR RELATIONS/PERSONNEL OFFICER	Sends copies of Notices of Discipline dispositions to Affirmative Action Officer for informational and affirmative action reporting requirement purposes.
AFFIRMATIVE ACTION OFFICER	Enters appropriate data onto the Consolidated Summary Form.

NOTE: *When a serious incident occurs involving a protected class employee, it is the responsibility of the Labor Relations/Personnel Officer to notify the Affirmative Action Office by telephone immediately.

If appropriate guidance and assistance has not been afforded to the employee prior to this point, then it should be offered before the Notice of Discipline is effected.

DEFINITIONS AND FORMS

Sample Employee Interview Form

The sample employee interview form is used for recording a detailed account of the contact session between the Affirmative Action Officer and agency employee. This form must be kept in a locked confidential file in the affirmative action office.

Consolidated Summary Form

The consolidated summary form is an aggregate form used to log protected class information on individual agency employees who participate in affirmative action contact sessions, or who have been disciplined (fined, suspended, demoted or terminated) during the reporting period. This form is to be used to fulfill the requirements of the semi-annual affirmative action reporting process to the Division of Diversity Planning and Management and for auditing purposes. This form must be kept in a locked confidential file in the affirmative action office.

Adverse Personnel Actions

For the purposes of this discussion, adverse personnel actions include, but are not limited to, the following disciplinary actions: terminations; demotions; fines and suspensions. Adverse Personnel actions also include terminations of non-permanent employees, probationary terminations, voluntary resignations and voluntary demotions.

Sample Employee Interview Form

(To be filled out by the Affirmative Action Officer and maintained in a secured confidential file in the Affirmative Action Office.)

Agency/Unit: _____

Date of Affirmative Action Employee Contact Session _____

Region/Location _____

Employee Name: _____

Title: _____ Social Security # _____

Reason for Employee Referral:

_____

_____

_____

_____

Summary of Interview:

_____

_____

_____

_____

_____

(use additional sheets if necessary)

Follow Up: _____

_____

_____

Resolution: _____

_____

_____

Referred for AA Contact Session By: _____
Name and Title

Date of Employee Referral: _____

Codes To Be Utilized
On
Consolidated Summary Form

ITEMS

(4) Ethnicity:
- 00 White
- 01 Black
- 02 Hispanic
- 03 Asian/Pacific Islander
- 04 American Indian/Alaskan Native

(5) Sex:
- 01 Male
- 02 Female

(6) Disabled:
- 01 Yes
- 02 No
- 03 Unknown

(7) Vietnam Era Veteran:
- 01 Yes
- 02 No
- 03 Unknown

(9) Federal Occupational Categories:
- 01 Officials/Administrators
- 02 Professionals
- 03 Technicians
- 04 Protective Service Workers
- 05 Para-Professionals
- 06 Office/Clerical
- 07 Skilled Craft
- 08 Service-Maintenance

(11) Action Taken
- 01 Transfer
- 02 Resignation
- 03 Termination
- 04 Counseling
- 05 Demotion
- 06 Disciplinary Action
- 07 Suspension
- 08 Other

CONSOLIDATED SUMMARY FORM
(This form is to be completed and maintained by the A.A.O.)

(1) Date	(2) Name	(3) Initial Hire	(4) Eth	(5) Sex	(6) Dis	(7) Viet Vet	(8) Position Held	(9) EEO-4 Category	(10) Org Unit Assigned	(11) Action(s) Taken	(12) Date of Counseling	(13) Reason for Action

Instructions:

This Consolidated Form is used to document the protected class status of individual employees who particiate in an affirmative action contact session or who are counseled, demoted, disciplined and/or separated from the agency through transfer, resignation, or termination (layoff information will be gathered through another instrument). This form will be used to fulfill the requirements of the semi-annual Affirmative Action Reporting Process to the Division of Diversity Planning and Management and for auditing purposes. Data on separated employees should be verified by completed Exit Audit forms where possible. (See reverse side for codes.)

j. Training and Career Development

Protected class employees will be encouraged and given every opportunity to participate in training and career mobility opportunities.

The Staff Development and Affirmative Action Officers will work together:

- to ensure that no protected class member is denied participation based on his/her protected class status or need for reasonable accommodations
- to make training sites and programs accessible in accordance with Section 504 of the Rehabilitation Act and the Americans With Disabilities Act
- to make all supervisors aware of their responsibility to fairly nominate employees for training
- to make protected class employees aware of training opportunities available
- to develop procedures that will monitor training participation and nomination for equity

The Staff Development Officer and the Affirmative Action Officer will develop a suitable mechanism which can routinely provide the Affirmative Action Office with:

- names of employees nominated for training
- course title, type of program (e.g., tuition, reimbursement, in-house training, etc.)
- criteria for participant selection
- training site
- names of employees selected for participation
- reasonable accommodations for disabled individuals considered or provided.

The Affirmative Action Officer will review and retain the information. The Affirmative Action Officer will identify the protected class members nominated for training and forward that information to the Human Resource Management Office. When protected class employees are nominated but not selected for various training courses, it will be the responsibility of the Affirmative Action Officer and Staff Development Officer to examine the reasons for non-selection and explore alternatives.

I. Employee Training Data Collection Procedure

Purpose

The purpose of the Employee Training Data Collection procedure is to assist agencies in monitoring the participation of protected class members in training programs and to ensure that training opportunities are available to all employees. This procedure is to be used to implement subsection IV C2 (j), Training and Career Development of the Model Affirmative Action Plan. Training is an important employment activity since it provides the opportunity for individual employees to develop and/or improve upon existing skills in various, and often critical, aspects of their employment (e.g., work assignments, career mobility, performance on the job, transfers or promotional opportunities, test taking skills, organizational/managerial techniques and personal and human growth).

The Staff Development Officer or Personnel Officer (SDO/PO) and the Affirmative Action Officer should routinely interact in administering training programs to insure equal opportunity to all agency employees. The Affirmative Action Officer is responsible for establishing monitoring systems to identify and evaluate any trends that may indicate the existence of problems affecting protected class employee participation in training programs. Where adverse impact is demonstrated, the Affirmative Action Officer should attempt to identify systemic and/or other artificial barriers affecting the training program and with appropriate agency staff develop mechanisms to minimize/eliminate the impact of such barriers.

Definitions and Forms

Applicant

An employee who submits a training application.

Candidate

An appliant who meets training requirements, if any.

Selected Employee

A candidate selected to participate in a training program.

Participant/Trainee

A selected employee who attends the training program/course.

Note: Some training programs/courses have an attendance requirement for course completion.

Selection Criteria

Factors which should be considered in prioritizing and/or selecting participants for training should include the following (these factors are not listed in order of importance):

- job relatedness of proposed training
- employee seniority
- educational/experience requirements of the training course
- prerequisite requirements for acceptance in the training course
- protected class status of applicants
- individual training history
- number of times the employee applied for the training course
- supervisory comments (and approval or disapproval)
- workload considerations (special project, unusually high backlog)
- length of program
- cost of training (to agency, to the individual)
- bargaining unit

Cross Training Courses - are courses sponsored by a specific bargaining unit but which may be opened up for the participation of non-bargaining unit members.

NOTE:

- Individual's training background and records should be significant factors in the selection process.

- Supervisory approval is required for attendance at courses held during normal working hours. However, lack of such approval should not be used to automatically disqualify an interested candidate.

  The criteria for disapproval should be questioned and evaluated in cases affecting protected class employees. The Affirmative Action Officer and the SDO/PO shall take the necessary steps to ensure that the reasons for the disapproval of applications are reasonable, work-related and applied consistently.

Staff Development Officer/Personnel Officer (SDO/PO)

The Staff Development Officer is responsible for administering the training function in agencies. This procedure assumes that, in agencies which do not possess SDOs, the training function is performed by the Personnel Officer.

Employee Training Data Collection Form (ETDC) (sample included)

This form is to be used by the Affirmative Action Officer and SDO/PO to transmit and record protected class employee information.

Types of Training Programs

Training programs can be grouped into three categories. These groupings and their respective participant selection processes are outlined as follows:

Training Programs Sponsored by Employee Organizations

Training sponsored by an employee organization (e.g. CSEA, PEF, Council 82) is provided on a regular basis throughout the year. Usually membership in the corresponding employee organization is required. For training programs offered by the Division of Management/Confidential Affairs of the Governor's Office of Employee Relations, it is expected that candidates' positions are designated Management/Confidential. Occasionally a cross training arrangement makes it possible for an employee in a given employee organization to participate in training usually available only to members of another employee organization.

The nomination procedure for employee organization-sponsored training usually follows the following format:

- Staff Development Officer/Personnel Officer (SDO/PO) reviews all training applications for eligibility, completeness of form and initially ranks candidates in suggested order of selection. The ranking of candidates is conducted in accordance with the negotiated selection criteria and in consideration of agency needs. The Affirmative Action Officer's primary responsibility in the nomination procedure is to ensure that information on the protected class status of candidates is available and included as a selection criterion in the ranking of candidates.

NOTE:

- For certain CSEA sponsored courses (e.g., CSEAP and LEAP courses), agencies may have limited knowledge of employees who have applied because applications are sent directly to the coordinating organization for further action.

- Final selection of candidates for bargaining unit sponsored training is affected by factors outside of the agency's jurisdiction (e.g., number of slots allotted to the agency, selected employees withdrawing from courses).

In this method of selection, ranking of the candidates is the most critical determination in the final selection process. The Affirmative Action Officer's responsibility is to participate as early as possible in the final ranking process to ensure that protected class status is included among other selection factors.

- In-House or Agency Training Programs

In-house courses are distinguished from other training activities or programs in the following ways:

- Programs are provided for agency employees only
- Membership in a particular bargaining unit may not be a significant factor for determining eligibility
- Selection criteria and final candidate nominations are generally at the discretion of the agency

The agency's Affirmative Action Officer should work in conjunction with the SDO/PO as soon as the decision to offer any course is made. Interaction throughout the entire process (e.g., elimination of artificial barriers, accessibility, establishment of admission requirements, employee selection criteria, relevant announcement content, format and distribution) is critical.

The Affirmative Action Officer's involvement should continue until the final selection of participants has been made and confidence exists that affirmative action considerations were included in the process.

Other Types of Training

Training included in this category is offered/sponsored by organizations outside State service, such as:

- colleges, universities
- State Advisory Councils
- independent consultant(s)
- other (professional organizations, special interest groups)

It is the SDO/PO's responsibility to publicize these training opportunities throughout the agency/facility(ies) to ensure that qualified and interested employees have an opportunity to apply and to be considered as candidates. The role of the agency Affirmative Action Officer is to ensure that protected class status is considered in selection criterion for making the final selection and, along with the SDO/PO to ensure that protected class employees are made aware of any available sources of financial assistance, such as negotiated or Management/Confidential tuition reimbursement programs and agency tuition support programs.

EMPLOYEE TRAINING DATA COLLECTION FORM
(ETDC)

Agency Name/Code _____ ( )

Facility Name/Code _____ ( )

Staff Development Officer/Personnel Officer(SDO/PO) _____

Affirmative Action Officer _____

Course Title _____

Deadline for Applications _____19____

Date to SDO/PO _____19____

Page _____ of _____

1. _____ 2. (To Be Provided by AAO) 3. _____

Name	SS#	Line No.	Sex	Ethnicity	Vietnam Era Veteran	Self-Ident Disabled (1)	Final Determination 1, 2, 3 or 4	Comments

NOTE: This form is to be completed by the SDO/PO and returned to the AAO.

(1) If reasonable accommodations were provided, specify in the comment section.

(2) See codes for information on back of form.

(3) If adverse impact is indicated provide explanation in comment section.

Codes To Be Utilized On ETDC Form

Section 2:

A) Sex

Male: M Female: F

B) Ethnicity

00 White
01 Black
02 Hispanic
03 Asian/Pacific Islander
04 Native American - Alaskan Native

C) Vietnam Era Veteran

01 Yes 02 No 03 Unknown

D) Disabled

01 Yes
02 No
03 Unknown
04 Yes - reasonable accommodations required, see attached

Section 3:

E) Determination

1. Not qualified
2. Qualified, Not selected
3. Qualified, Selected

   a attended/completed training
   b did not attend/complete training

4. Other (e.g. supervisor's disapproval, workload, withdrew)

Affirmative Action Data Collection For Training Activities

The role of the Affirmative Action Officer in the collection, use and maintenance of agency employee training data is two fold.

First, the AAO is responsible for providing the SDO/PO with timely information on the protected class status information on applicants/candidates in order to ensure their consideration in the nomination/selection process. (It will be left to each agency's discretion to develop a suitable mechanisms for transmitting this information from the AAO to the SDO/PO). Second, the AAO is responsible for reviewing and analyzing data relative to the participation of protected class employees in training courses. Equipped with ETDC forms from various courses, as well as the listing of individuals who actually completed these courses, the AAO will conduct an analysis to determine whether adverse impact exists. Where adverse impact is present, the AAO will consult with the SDO/PO (and other appropriate parties) to develop ways to minimize or eliminate adverse impact on the affected group(s). Aggregate training data will be prepared by the AAO and reported on in the agency's Semi-Annual Program Activity Report. The AAO will maintain all ETDC forms in secure and confidential files.

PROCEDURE FOR COMPLETING EMPLOYEE TRAINING DATA COLLECTION FORMS (ETDC)

Responsible Party	Procedures
SDO/PO	Publicizes/distributes/posts training announcements throughout agency/facilities so all employees interested in the training program and/or program managers wishing to nominate employees for training have the opportunity to do so.
AAO and SDO/PO	Ensures announcements are accessible to all protected class employees and that the issue of reasonable accommodation has been adequately addressed.
SDO/PO	Reviews all applications to ensure that individuals meet requirements. Fills out the pertinent information on the Employee Training Data Collection Form (ETDC) and contacts Affirmative Action Officer for protected class status of applicants.
AAO	Provides protected class status information to SDO/PO for further action. (Protected class information will be provided by the deadline established by SDO/PO).
SDO/PO	Considers protected class information when making final selection recommendation and returns ETDC form to AAO with appropriate comments and selection determination. (No copy of the ETDC form shall be kept in the SDO/PO office due to the presence of protected class information).
AAO	Reviews and utilizes ETDC forms for purposes of affirmative action reporting and conducting further analysis on agency training patterns and trends. (It is strongly suggested that AAO convene a meeting with the SDO/PO and any other appropriate parties to discuss and review the agency's training posture on an annual basis). Affirmative Action Officer maintains ETDC forms in confidential office files.

k. Performance Evaluations

The Personnel and Affirmative Action Officers will ensure that supervisors conducting performance evaluations are briefed on how to evaluate the work performance of all employees in an objective, non-discriminatory manner. When evaluating disabled employees, supervisors will consult the Affirmative Action Officer to determine that:

- reasonable accommodations are provided
- necessity to provide reasonable accommodations is not confused with performance factors
- job modification or restructuring is not confused with assessing full performance of job duties
- employees are assessed on actual job performance, not on the basis of their disabled status

Supervisors and managers will be advised that Affirmative Action compliance will be included as a criterion in their performance appraisals. A review of performance evaluation results will be conducted to determine their objectivity, fairness, and effectiveness.

Factors utilized in this review include, but are not limited to, the following:

- dispersion of protected class employees' ratings in relation to the work force demographics
- number of protected class employees making rating decisions
- number of appeals upheld/denied and demographics of the same
- trends in ratings of protected class employees in comparison to non-protected class employees.

l. Self-Evaluation

[Agency] will review and evaluate all personnel policies and procedures to assess their impact upon protected class representation in the agency work force. The [Agency] will develop procedures which provide for the routine interfacing of the Affirmative Action, Human Resource Management and Fiscal Management Offices to assure that affirmative action considerations are continually part of the critical phases of the agency's employment process.

[LIST THOSE WHICH WILL BE EXAMINED]

m. Other Issues for Consideration

Other aspects of the agency's operations will be examined and appropriate action taken. They will include, but are not limited to, the following:

(1) Quality of Work Life

The agency will explore the ways in which agency and statewide policies designed to improve the quality of work life are connected to affirmative action efforts. Some areas for exploration include:

- sexual harassment policies (see Executive Order 19)
- sexual orientation issues (see Executive Order 28.1)
- flexible and part-time work opportunities (see Executive Order 68)
- Employee Assistance Programs

(2) Equal Opportunity/Affirmative Action Policies in Areas Other Than Agency Employment

The agency will study equal opportunity/affirmative action policies not directly related to agency employment to determine how they intersect with and affect the implementation of this Affirmative Action Plan. This study will include the following:

- requirements for ensuring equal employment opportunities for minority group members and women by state contractors and meaningful participation by minority and women-owned business enterprises in the performance of state contracts under Article 15-A of the Executve Law.
- requirements of Federal agencies and other funding sources
- requirements affecting private sector, educational or other governmental institutions
- policies concerning equal opportunity/affirmative action in provision of services to the public and/or client populations
- policies affecting relationships with community based organizations and other groups representing the interests of protected class members

(3) Informal Policies and Practices

The [Agency] recognizes that informal policies and practices are not part of its official decision making structure; however, they often determine how formal rules are implemented. Therefore, while it is difficult to identify and correct these informal procedures, it is imperative that their existence be acknowledged and considered in the agency Affirmative Action Plan. All employees in the [Agency] have a responsibility to examine any informal procedure in which they participate, for example:

- In the face of a viable recruitment plan, are vacancies still filled via word of mouth?
- Do managers/supervisors pass over protected class employees to select employees with whom they personally identify for promotion opportunities or special career enhancing training or assignments?
- Are small numbers of protected class individuals hired to fill highly visible positions which lack organizational credibility?
- Do interviewers informally discourage potential protected class eligibles when attempting to reach a "favorite son"?

PART V

VIETNAM ERA VETERANS

PART V

VIETNAM ERA VETERANS

A. Policy Statement

Vietnam Era Veterans are a protected class and are due the same considerations as the other protected classes under this Affirmative Action Program. Therefore, all the policies and procedures outlined in this Plan apply to Vietnam Era Veterans as well as to the other protected classes.

This agency will take affirmative action to employ and advance in employment Vietnam Era Veterans. Such action applies to employment practices, including, but not limited to, the following:

> Hiring, promotion, demotion, transfer, recruitment or recruitment advertising, rates of pay or other forms of compensation, as well as selection for training.

The agency will comply with the Department of Civil Service requirements for the collection and maintenance of information on all employees who meet the definition of Vietnam Era Veterans.

Efforts will be made to assure that Vietnam Era Veterans will be represented on all committees which deal with employment practices and policies: e.g. Affirmative Action Committee, search/selection committees, grievance and appeal committees.

B. Definitions

For the purpose of compliance with this policy, a Vietnam Era Veteran is considered to be:

> Any person who served on active duty, in the Armed Forces of the U.S., any part of which occurred between December 22, 1961 and May 7, 1975 and was discharged or released with other than a dishonorable discharge.
>
> A member of the National Guard or Reserve component of the Armed Forces cannot be afforded the preference unless the service resulted from a federalization of the Guard or the Reserve duty was for other than training purposes.

C. Recruitment Sources

The agency will seek to recruit Vietnam Era Veterans from organizations, institutions and agencies such as those listed in the Compliance Manual, Part II C.

D. Referral to Services

The agency shall refer Vietnam Era Veterans to appropriate social and human services organizations, institutions and agencies as needed. (See Compliance Manual, Part II C for a list of resources.)

PART VI

INDIVIDUALS WITH DISABILITIES

PART VI
DISABLED INDIVIDUALS

A. POLICY STATEMENT

[AGENCY] will take affirmative action to employ, and insure non-discrimination in opportunity, to persons with disabilities who meet the requirements of an employment position they hold or seek to hold and who can perform the essential functions of the position with or without reasonable accommodations.

Such action applies to employment and equal opportunity practices including:

- recruitment (and recruitment advertising)
- application
- hiring and promotion
- advancement
- tenure
- layoff
- training
- employee evaluations
- work place accessibility
- reassignment
- leave
- such other terms, conditions and privileges of employment as may apply.

B. THE AMERICANS WITH DISABILITIES ACT (ADA)

The ADA gives civil rights protections to, and prohibits discrimination against, persons with disabilities. It guarantees equality of opportunity for persons with disabilities in employment, public accommodations, transportation, telecommunications, and state and local government services. Title II of the ADA addresses a public entity's employment policies and practices pursuant to the law, in addition to compliance standards for construction, alterations and self evaluation.

C. COVERED INDIVIDUALS

For purposes of coverage under this Affirmative Action Plan a disabled individual is one who (a) has a physical or mental impairment which substantially limits one or more major life activities, (b) has a record of such impairment, or (c) is regarded as having such an impairment. The term "substantially limits" means the degree to which the impairment affects employability. A disabled individual who is likely to experience difficulty in securing, retaining, or advancing in employment will be considered substantially limited. Major life activity, as defined here, would include seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself and working.

Accordingly, those persons with disabilities indicated in (a) above, would include, but not be limited to those with paralysis, epilepsy, AIDS, substantial hearing or visual impairments, or mental retardation. Those persons with disabilities indicated in (b) above, would include for example, persons who have recovered from, or are in recovery for, cancer, mental illness, or alcoholism. Persons with disabilities indicated above in (c) would, for example, include a qualified individual with a severe facial disfigurement.

A broader, more detailed, definition of relevant disabilities appears on the DAC-325 Self-Identification Survey utilized by the Department of Civil Service.

D. SELF-IDENTIFICATION OF PERSONS WITH DISABILITIES

[AGENCY] will invite all employees and applicants for employment to identify themselves as persons with disabilities. Any and all self-identification is voluntary pursuant to the Americans With Disabilities Act, and retained in confidential files by [AGENCY] Affirmative Action Office. With the expressed consent of a self-identified person with a disability, information regarding the disability may be shared as follows:

- supervisors and managers may be informed regarding restrictions on the work or duties of persons with disabilities and regarding reasonable accommodations.

- first aid and safety personnel may be informed when and to the extent appropriate if the condition might require emergency treatment.

- governmental officials investigating compliance with statutes such as the Americans With Disabilities Act or Sections 504, 503 of the Rehabilitation Act of 1973 shall be informed.

The agency's pre-employment form for the self-identification of applicants as disabled will be separate from the regular application form and, upon completion by an applicant, will be sealed and forwarded directly to the Affirmative Action Officer. This form will be kept confidential. If a candidate requests any accommodations for the interview, the Affirmative Action Officer will assess the reasonableness of the request and assure that reasonable accommodations are provided. Some candidates may choose to place a request for accommodations directly with the Personnel Office. The Personnel Office will immediately forward these requests to the Affirmative Action Office.

Besides providing applicants with the opportunity to request needed accommodations for the initial interview the pre-employment self-identification form will include the following statement:

> If you are disabled, [AGENCY] would like to include you in our affirmative action program. It would assist us if you tell us about any special methods, skills and procedures which enable you to perform the duties of positions for which you might not otherwise seem qualified because of your disability, so that you will be considered for any positions of that kind. We would also like to know the accommodations which this agency could make to enable you to perform the job properly and safely, including special equipment, changes in physical layout at the job, elimination of certain duties relating to the job, or other accommodations.

So that Department of Civil Service records may remain current, [AGENCY] will encourage all employees and applicants for employment to participate in self-identification efforts and surveys for persons with disabilities conducted by that agency and, as appropriate, observe the confidentiality of same. (Civil Service Form DAC-325 appears as an addendum to this text.)

E. **MEDICAL EXAMINATIONS/STANDARDS**

[AGENCY], in accordance with the Americans With Disabilities Act, does not require a job applicant to take a medical examination before making a job offer; nor does [AGENCY] make any pre-employment inquiry about a disability or the nature or severity of a disability.

However, [AGENCY] may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry when this is required of all entering employees in the same title. Where Pre-Employment Medical Examinations are necessary to confirm the presence of bona fide occupational qualifications (BFOQ's), [AGENCY] Affirmative Action Office in conjunction with the Personnel Office and the Department of Civil Service as appropriate will:

- undertake periodic reviews of physical/medical standards, including during examination planning, for competitive class positions for appropriateness.

- ensure that a conditional offer of employment has been made and that all employees or prospective employees in that title have taken such examinations.

- ensure that any information regarding disability is kept confidential.

- ensure that any disqualification based upon that examination is job related and consistent with business necessity.

A partial listing of job titles possessing physical-medical requirements (for which the Department of Civil Service conducts medical examinations) appears as an addendum to this text.

F. **REASONABLE ACCOMMODATIONS**

If a person with a disability is qualified to perform essential job functions except for limitations caused by disability, [AGENCY] will consider whether those limitations are alleviated by a reasonable accommodation. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee who is a person with a disability to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified person with a disability has rights and privileges equal to those of all other employees. Such reasonable accommodation may include, but not be limited to:

- restructuring a job
- modification of work schedule
- acquiring or modifying equipment
- providing qualified readers or interpreters
- modifying examination, and training

Reasonable accommodations may need to be provided by managers to new employees as well as to employees already on staff. Reasonable accommodations may be needed to assist with normal work routines, as well as in-service training or staff meetings, supervisory meetings, reassignments, transfers, promotions and other employment activities. Assuring reasonable accommodations is a shared responsibility. It is important for employees who require some type of reasonable accommodations to make sure that new managers know what accommodations have been provided in the past, with enough advance notice so that they can continue to be provided. In addition to arranging reasonable accommodations, managers should also take responsibility for seeing that information about accommodations provided, or considered but not provided, is recorded by the Affirmative Action Officer. This will provide a resource to which training or management staff may refer in the future for information regarding reasonable accommodations which need to follow the employee as new employment situations or training arise.

[AGENCY] is not required to make a reasonable accommodation if such accommodation would impose an undue hardship on the operation of the agency. An undue hardship is an action requiring significant difficulty or expense when considered on a case by case basis.

G. RETENTION OF EMPLOYEES DISABLED

The [AGENCY] will make every effort to retain employees who acquire disabilities while in service. Before employees are terminated as being too disabled to continue work, (e.g. under Section 72 of the Civil Service Law), the Affirmative Action Officer and the Personnel Office will be informed so that every alternative opportunity can be examined before the employee actually leaves service. Given enough notice, it may be possible to provide support services, informational counseling, referral to needed resources, transfer or reassignment, or it may be possible to obtain coverage under Sections 55-b/c of Civil Service Law (see Compliance Manual, Part II B). Consideration will be given to training for those employees who acquire disabilities, if such training would permit retention.

H. COMPLAINT PROCEDURES

Applicants and employees who are disabled may utilize the complaint procedures described elsewhere in the plan for protected classes (see Part VII, Discrimination Complaint Procedures). Persons with disabilities may also file complaints under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the New York State Human Rights Law. Persons with disabilities may contact the Affirmative Action Officer if they have any questions.

I. COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973

NOTE: Only those agencies that receive direct or indirect Federal funding should complete this section.

Compliance with the requirements of Section 504 of the federal Rehabilitation Act of 1973, as amended, is a critical adjunct to our agency affirmative action efforts.

One of the basic requirements of Section 504 is that affected agencies complete self-evaluation and transition plans.

The Section 504 Self-Evaluation and Transition Plan for [AGENCY] was completed as of [DATE] and was filed with the Office of the Advocate for the Disabled as of [DATE].

OR

The Section 504 Self-Evaluation and Transition Plan for [AGENCY] is in process with completion anticipated by [DATE]. A copy will be filed with the Office of the Advocate for the Disabled on that date.

OR

A Section 504 Self-Evaluation and Transition Plan for [AGENCY] is neither completed nor in process because [give explanation, i.e. our agency is not affected by this federal statute].

The Section 504 contact person in [AGENCY] is [NAME], [TITLE], [TELEPHONE NUMBER].

J. RECRUITMENT SOURCES

The agency will seek to recruit disabled individuals from organizations, institutions and agencies such as those listed in the Compliance Manual, Part II C.

PART VII

DISCRIMINATION COMPLAINT PROCEDURE

PART VII

DISCRIMINATION COMPLAINT PROCEDURE

A. Introduction

Equality of opportunity is a civil right in New York State under the provisions of Article 15 of the New York State Executive Law (Human Rights Law). Every employee and applicant for employment has the right to seek employment and to be employed in a climate that is free from restraint, intimidation, harassment or coercion. This complaint procedure has been devised to provide for uniformity and equity in the resolution of allegations of discrimination in employment. It will be well publicized throughout the agency.

B. Purpose

This procedure has been designed to allow the agency the opportunity to resolve complaints internally. It is in no way intended to duplicate or circumvent options available to claimants through (1) employee organizations, (2) the New York State Division of Human Rights, (3) the Equal Employment Opportunity Commission, (4) U.S. Justice Department/Office for Civil Rights, (5) any compliance agency designated under Section 504 of the Rehabilitation Act of 1973, or the Americans With Disabilities Act, (6) Office of Federal Contract Compliance Programs, (7) other regulating agencies as may be appropriate, and (8) the judicial system. Use of this procedure will not suspend any time limitations for filing complaints otherwise set by law, rule or regulation.

This procedure applies to all complaints of discrimination in employment based on race, color, national origin, creed. age, sex, marital status, religion, mental or physical disability, arrest record, criminal conviction, sexual preference, or Vietnam Era Veteran status. This procedure will serve as well for filing complaints under Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act. It can be used by any employee or applicant for employment. Complaints may be based on any alleged act or omission in the nature of discrimination including, but not limited to:

Interviewing	Shift Assignment
Hiring	Promotion
Discipline	Transfer
Dismissal	Working Conditions
Performance Evaluations	Harassment (race, sex, color, national origin, etc.)
Job Assignment	Agency Policies and Other Terms or Conditions of Employment
Training Opportunities	

NOTE: Complaints of discrimination based on Sexual Orientation should be sent directly to the New York State Division of Human Rights.

Each employee has the right to representation by his or her labor representative in the event that the complaint involves a possible violation of contract.

C. Definitions

Discrimination - unlawful consideration or treatment of a person or group (either intentional or unintentional) based on race, color, national origin, creed, age, sex, marital status, religion, mental or physical disabilities, arrest record, criminal conviction, sexual preference, or Vietnam Era Veteran status.

Discrimination in Employment

1. Where the failure or refusal to hire, promote or train any individual or otherwise treat the individual equally with respect to compensation, terms, conditions or privileges of employment would not have occurred but for race, color, national origin, creed, age, sex, marital status, religion, mental or physical disabilities, arrest record, criminal conviction, sexual preference, or Vietnam Era Veteran status.

2. To limit, segregate or classify employees in such a way as to deprive or tend to deprive an individual of employment opportunities on the basis of the person's race, color, national origin, creed, sex, marital status, religion, mental or physical disabilities, arrest record, criminal conviction, sexual preference, or Vietnam Era Veteran status.

D. Responsibility

1. [Agency Head]

The [Agency Head] is responsible for the adoption and implementation of this complaint procedure and for assuring that sufficient staff is assigned and trained to properly carry it out. The [Agency Head] will also assure that it is well publicized throughout the agency.

If it is determined that a person has been subjected to an unlawful act of discrimination, the Secretary of State will issue instructions for remedial action including disciplinary action where appropriate.

2. Affirmative Action Officer

The Affirmative Action Officer is responsible for coordinating complaint proceedings. This includes counseling complainants, delegating investigations, and informing complainants of their right to file their complaint with other entitles.

3. Other Staff

All agency employees must cooperate with the Affirmative Action Officer in the investigation of complaints.

OPTION FOR LARGE AGENCIES, OR AGENCIES WITH WIDE GEOGRAPHIC DISTRIBUTION ONLY

In order to expedite the prompt investigation of complaints, the responsibility for complaint handling activities may be delegated to a person or persons in the same geographical region as the claimant. The delegated activities may include counseling, conciliation and investigation.

Staff will be trained to conduct confidential investigations. To assure that equity and consistency prevail, the Affirmative Action Officer will direct the investigation and must be consulted before any conciliation or remedy is made final.

E. Discrimination Complaint Procedure

1. The Process

a. Any person with a complaint of discrimination should contact the agency Affirmative Action Officer. Complaints should be made within sixty (60) working days of the occurrence of the event which gave rise to the complaint. If the deadline is missed because of circumstances beyond the complainant's control, the Affirmative Action Office will make the determination as to the reasonableness of requests and may extend the period to file to a maximum of one year.

b. The Affirmative Action Officer (or his/her designee) will advise the complainant, counsel the complainant, explain the internal procedure, explain the other options available to the employee including time limitations for filing complaints with State or Federal compliance agencies and assist in completing the complaint form.

c. The Affirmative Action Officer (or his/her designee) shall interview the complainant and study relevant documents.

d. The Affirmative Action Officer (or his/her designee) shall interview witnesses and further investigate the situation. At each opportunity, the Affirmative Action Officer will seek conciliation or an informal settlement that is satisfactory to the parties concerned. The Affirmative Action Officer is responsible for investigating the feasibility and legality of any remedies that are proposed with the agency counsel and employee relations officer as it appears necessary.

e. When the investigation is completed, the Affirmative Action Officer shall prepare a written report including recommendations for the agency head.

f. The agency head shall issue the final decision and recommendations in writing to the parties concerned.

g. The agency head's decision is final. If the complainant is not satisfied with the attempts to resolve the problem, the claimant may seek remedy through other sources.

h. At any point in the procedure, the claimant may withdraw the charge using the withdrawal form.

NOTE: See Compliance Manual, Part III A for appropriate forms.

2. Time Frame

The agency will reach a decision within sixty (60) working days beginning from the date on which the written complaint is received.

3. Confidentiality

The substance of the investigation will remain confidential. No party or staff member shall disclose the results of the investigation or parts thereof. The Affirmative Action Officer will inform all charged parties of the factual allegations and give them an opportunity to respond to all charges and evidence.

4. Accessibility

The agency will provide such assistance as may be necessary to enable a complainant to understand and participate in the complaint process. This may include sign language interpreters, wheelchair attendants, braille copiers, sound amplification equipment or foreign language interpreters.

5. Retaliation

Any employees who participate in the procedure may do so without fear or retaliation. It will be made clear that retaliation against an employee who has filed a discrimination complaint will result in disciplinary action.

6. Time Accruals

There will be no charge to accruals for time take in conjunction with this procedure.

7. Outcomes

The outcome of an investigation is either dismissal of the complaint or remedial action. The complainant will be notified in writing of the outcome. If remedial action is ordered, the following avenues may be considered, consistent with the relevant law, rules and regulations, and negotiated agreements:

- placement of a person in a position that the individual would have been entitled to, had the discriminatory practice not occurred;
- promotion of a person who was refused advancement because of a discriminatory circumstance;
- hiring a person who was refused employment because of discriminatory circumstance;
- disciplinary action against a respondent in accordance with the appropriate employee agreement or regulations.

NOTE: 1. Individuals who have been appointed as a result of discriminatory practice will not be penalized.

2. The above is not an exhaustive list of possibilities. Each case must be judged on its own merit.

8. Follow-up

The Affirmative Action Officer will maintain a log and file of complaints received. Six weeks from the date of a decision, the Affirmative Action Officer will determine whether the [Agency Head's] directives have been carried out, or whether the case needs to be reopened. The findings will be reported to the [Agency Head] for appropriate action.

9. Record Keeping

The agency will keep a record of the status and determination of all complaints for at least two years. Cases that are unresolved and subject to external reviews will be maintained indefinitely or until they are resolved.

PART VIII

TRAINING

PART VIII

TRAINING

A. Statement of Commitment To Training

Affirmative action training of all employees is a necessary element in the implementation of the agency's Affirmative Action Program. The administration of this agency is committed to affirmative action training as a means of providing managers and supervisors with the skills needed to work effectively with a diverse, widely representative work force. All employees will have access to information on Affirmative Action and their rights and responsibilities in Affirmative Action/Equal Employment Opportunity matters.

B. Purpose

The purpose of the training program is to develop knowledge and understanding of affirmative action and the reason for its existence in the public sector. The training component has the following goals:

- to provide historical information on affirmative action and its function in the public sector;
- to expand the knowledge of the affirmative action legal process and its application in the work environment;
- to develop understanding of affirmative action principles, goals and objectives in the public sector;
- to identify the agency's specific affirmative action goals and their impact on agency functions and overall mission;
- to increase human awareness and sensitivity towards affirmative action issues;
- to increase employees understanding of the need for affirmative action.

C. Assignment of Responsibility for Training

Responsibility for the overall program coordination and implementation is assigned to the Affirmative Action Officer, and the [Staff Development Office or specify other appropriate office]. The Affirmative Action Office is responsible for the appropriateness and accuracy of curriculum content, and for establishing training priorities so that the affirmative action training supports the overall Affirmative Action Plan.

The [Staff Development Office or other specified office] will be responsible for the provision of training and the logistics involved in scheduling and presenting training programs throughout the agency with the minimum disruption of the everyday agency operations.

D. Identification of Target Groups

Employees who share similar responsibilities based on their occupational status in the work force will be identified and grouped for training. Affirmative Action training will be provided for the respective groups.

Employees in [Agency] will be grouped as follows:

- executive staff, division, department heads and others with policy making status;

- personnel administrators, staff development and labor relations personnel and others with human resources responsibilities;

- middle management with recruitment interviewing and hiring responsibilities;

- supervisory personnel with performance evaluation and general supervisory responsibilities;

- employee advocate groups including Affirmative Action Committee members, union representatives, and others;

- employees who provide services and who would, therefore, need to be particularly sensitive to issues relating to affirmative action;

- employees at large who should be made aware of their rights and responsibilities towards affirmative action and towards achieving agency affirmative action goals.

OR

[Indicate Agency Groupings, if different from above]

E. Curriculum

Training programs will meet the objectives and follow the content outline listed below. This curriculum will vary in degree of detail, complexity, emphasis and length of training sessions, in accordance with the needs of the trainee group.

1. Objectives of Training Sessions

At the end of this training, participants will be able to:

- understand Equal Employment Opportunity/Affirmative Action and similarities and differences;
- have a working knowledge of commonly used affirmative action terms;
- know which groups are protected classes;
- have a basic knowledge of major affirmative action legislation, rules and regulations, and executive orders, from the 1960's to the present;
- tie affirmative action concepts and goals to agency mission;
- understand agency affirmative action responsibilities;
- understand individual responsibility to affirmative action.

2. Topical Outline

Introduction

- Goals/objectives of program (training expectations)
- Course overview
- Assessment of participants' expectations

Affirmative Action/EEO Definitions and Terminology

- Protected classes
- Commonly used affirmative action terms

Historical and Legal Background

- Civil Rights Act of 1964, as amended
- Equal Pay Act of 1963
- Age Discrimination Act of 1967
- Rehabilitation Act of 1973 (Sections 503, 504)
- Americans With Disabilities Act
- Vietnam Era Veterans Readjustment Act of 1974
- New York State Human Rights Law
- Executive Order 6 and other executive orders
- Other pertinent legislation and sample of major court cases

Agency Responsibilities

- Affirmative Action Plan, goals and timetables
- Affirmative Action Officer role and function
- Relationship of affirmative action to agency mission
- Relationship of affirmative action to organizational structure
- Discrimination complaint procedure

Individual Responsibility for Affirmative Action

- Hiring/training/promoting/retraining of employees
- Performance evaluation/appraisal and supervising employees
- Individual role/function in the agency and towards agency affirmative action mission

Conclusion

- Wrap up of issues presented/discussed
- Question/Answer period

F. **Training Schedule**

The training program will commence [Date]. Specific scheduling and progress will be reported quarterly.

PART IX

ANNUAL REPORT ON AGENCY AFFIRMATIVE ACTION ACTIVITIES

PART IX

ANNUAL REPORT ON AGENCY AFFIRMATIVE ACTION ACTIVITIES

[Insert Annual Report]

PART IX

ANNUAL REPORT ON AGENCY AFFIRMATIVE ACTION ACTIVITIES

Exhibit F

2007 Agency Head and Affirmative Action Officer Survey

Agency Head questions

1. Does your agency have an Affirmative Action Officer? (Y/N) If yes:

2. Who is it? _____

3. Have you delegated day-to-day programmatic responsibility for your agency's Affirmative Action Program to your agency's Affirmative Action Officer? (Y/N)

4. To whom does your agency's Affirmative Action Officer report? _____

5. How many one-on-one meetings have you had concerning affirmative action with your agency's Affirmative Action Officer this calendar year?

6. Is your agency's Affirmative Action Officer included in senior staff meetings? (Y/N)

7. Does your Affirmative Action Officer work full time in affirmative action? (Y/N)

8. What is the affirmative action structure in your agency? Please indicate the number of professional staff in your agency doing affirmative action full time, by geographic area and salary grade. _____

9. What is your agency's Budget allocation for affirmative action for this fiscal year? $_____

10. Have you signed an Affirmative Action Policy Statement for your agency within the past year? (Y/N)

11. What actions have you taken within the past year to draw staffs' attention to Affirmative Action issues and the importance of promoting diversity in the workplace?
_____

12. Who in your agency is responsible for M/WBE? _____

Affirmative Action Officer questions

Please answer these questions about your agency's Affirmative Action program:

1. Has your agency head delegated day-to-day programmatic responsibility for your agency's Affirmative Action Program to you? (Y/N) If no, to whom has the responsibility been delegated? _____

2. Do you report directly to the Agency Head? (Y/N) If no, to whom do you report? _____

3. Is your agency's Affirmative Action Policy Statement posted on each floor of each building of your agency? (Y/N) If no, where is the Policy Statement posted? _____ Is the Policy Statement posted on at least one bulletin board that is conspicuous and accessible to employees and to the public? (Y/N)

4. How many meetings have you had this calendar year with your agency's Executive Office to give you an opportunity to evaluate the affirmative action impact of their activities? _____

5. How many meetings have you had this calendar year with your agency's Staff Development Office to give you an opportunity to evaluate the affirmative action impact of their activities?___

6. How many meetings have you had this calendar year with your agency's Finance Office to give you an opportunity to evaluate the affirmative action impact of their activities? ____

7. How many meetings have you had this calendar year with your agency's Legal Office to give you an opportunity to evaluate the affirmative action impact of their activities? _____

8. How many meetings have you had this calendar year with your agency's Personnel/ Human Resources Office to give you an opportunity to evaluate the affirmative action impact of their activities? _____

9. Do you regularly receive information regarding your agencies workforce such as turnover information, demographic changes, and information on the number of expected retirements? _____

10. Do you plan, develop, coordinate, implement and monitor your agency's Affirmative Action Program? (Y/N)

11. Does your agency have an internal discrimination complaint procedure? (Y/N) If yes, who is responsible for administering the discrimination complaint procedure? _____

12. How many employees are in your agency, including employees in regional offices and facilities? _____

13. What is your agency's Budget allocation for affirmative action for this fiscal year?
$_____

14. What is the affirmative action structure in your agency? Please indicate the number of **professional staff** in your agency doing affirmative action full time, by geographic area and salary grade? _____

15. How many **professional staff** in your agency were doing affirmative action in 1994? If you do not know, please indicate that. _____

16. How many **support staff** whose primary job is affirmative action are in your agency, including employees in regional offices and facilities? (Allow for fractions) ____

17. Do any of your staff perform affirmative action duties on a part-time basis? _____If so, please indicate the number of professional and/or support staff who perform affirmative action duties on a part-time basis? _____

18. What geographic/demographic changes have you seen in your recruitment pool in the past five years? _____

19. What percent of your agency's work force is expected to retire in the next five years? _____

20. What kind of programs and/or initiatives do you employ in your agency to retain members of the protected classes? _____

21. What affirmative action initiatives have you developed? _____

22. What affirmative action initiatives are you planning? _____

23. What affirmative action initiatives would you undertake if you had the resources (your wish list)? _____

24. What could be done to help you become a more effective Affirmative Action Officer (e.g., training)? _____

Do you or your staff: (set up as "always, sometimes or never" responses)

25. Provide AA/EEO training to agency employees?

26. Work with your agency's personnel/human resource office regarding recruitment, hiring, retention, training and promotion activities within the agency?

27. Review minimum qualifications for positions?

28. Conduct recruitment targeted at underutilized groups?

29. Maintain resume files or databases of protected class applicants?

30. Participate in or review the interview process to ensure that standards for selection are consistent for interviewees?

31. Monitor the hiring process to ensure that your agency's goals are met?

32. Review and sign off on agency personnel appointments?

33. Participate in examination planning (Scope) conferences?

34. Research, compile and analyze data related to the representation of protected class employees in the agency's work force?

35. Conduct utilization analyses of your agency's titles and/or occupational categories to identify which protected class groups are underutilized?

36. Develop employment goals based on utilization analyses?

37. Communicate your agency's employment goals to your agency's managers?

38. Conduct exit interviews.

39. Participate in conferences, meetings, forums, discussion groups, panels and seminars concerned with affirmative action and equal employment opportunity?

40. Coordinate Affirmative Action activities in your agency's central, [regional and institutional] offices?

41. Ensure that all locations are in compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act?

42. Assure that reasonable accommodations are provided to known qualified applicants and employees with disabilities?

43. Keep abreast of laws, rules, regulations and court decisions affecting the agency's Affirmative Action Program?

44. Investigate and resolve complaints of discrimination made by employees and applicants who are members of the protected classes?

45. Inform complainants of rights and external avenues of redress?

46. Prepare responses to complaints filed with the New York State Division of Human Rights, EEOC, etc.?

Do you or your staff have these responsibilities? Please check all that apply:

47. ADA Coordinator
48. Sexual Harassment Prevention Training
49. Medical Parking
50. Diversity Training
51. Coordinating Diversity Calendar/Events
52. Oversight of the M/WBE Program
53. Contract Compliance
54. Mediation Program
55. Succession Planning
56. Workplace Violence Investigation
57. New Employee Orientation
58. Religious Accommodation
59. Other (Please specify):_____

What percent of your time is spent doing the following activities? (Must total 100%)
(fill in the blank questions)

60. Meeting with managers (other than affirmative action and M/WBE managers of your agency)

61. Employment activities (Setting goals, recruiting, exam planning (scope) conferences, reviewing appointments, etc)

62. Diversity and cultural sensitivity training and event planning

63. Reasonable accommodations (Training, meetings with managers, providing technical assistance, resolving physical barriers issues, etc.)

64. Discrimination complaints (Training, investigation of complaints, responding to Human Rights/EEOC, etc)

65. M/WBE activities

66. Other affirmative action activities, list them (open-ended response)

67. Non-affirmative action activities, list them (open-ended response)

Indicate the topics where training is needed for you or your staff, and the number of people who would attend the training:

68. State AA/EEO Policy
69. Computations of Underutilization
70. Civil Service Law
71. Federal and State Employment Law - e.g., NYSHRL, Title VII, ADA, ADEA
72. Federal requirements/guidelines - e.g., EEOC, E.O. 11246, Uniform Guidelines

73. Court cases and affirmative action
74. Discrimination – What it is, what causes it, and how to prevent it.
75. Discrimination Complaint Process - how to conduct a legal investigation, how to work with other agencies (DHCR, EEOC, DOL)
76. Sexual Harassment – What it is, how to prevent it, how to conduct a legal investigation.
77. Protected Class Status – What are the protected classes and why.
78. Adverse Impact Analysis
79. Identifying barriers to equal employment
80. Recruitment Methods Targeted at Protected Classes
81. Workplace Diversity – The changing work force (age, race, gender, etc.)
82. Reasonable Accommodations – Requirements, what is "reasonable", what has been done
83. Workforce Planning – What it is, succession planning, knowledge transfer, recruitment, etc?
84. Appointment flexibilities – Transfers (52.6, 70.1, 70.4), special examinations (4.2b, 70.4), jurisdictional classes, etc.

85. Other (Please specify):_____

86. How many AA/EEO **training opportunities** have you or your staff participated in over the last 12 months? _____

87. Please indicate your **amount of experience** as an AAO?

0-3 years 3-5 years 5-7 years 7 or more years