

H. CARL McCALL
STATE COMPTROLLER



A.E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 26, 1998

Mr. George Sinnott
President
Civil Service Commission
State Office Campus
Albany, NY 12239

Re: 97-F-27

Dear Mr. Sinnott:

According to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law, we have reviewed the actions taken by officials of the New York State Department of Civil Service (Department) as of October 21, 1997, to implement the recommendations in our prior audit report 95-S-28. The prior report issued on December 1, 1995, examined the Department's oversight of the New York State's affirmative action program.

Background

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 is in accordance with the statutory requirements of the State's Human Rights Law and the mandates of Title VII of the Federal Civil Rights Act. In addition, State Executive Orders issued by past Governors (which apply only to State agencies) have required the agencies to act affirmatively to develop avenues of entry and mobility for certain classes of individuals to improve their representation in the State agency workforce. These classes are referred to as the protected classes and comprise women, minorities, individuals having disabilities and Vietnam era veterans. The Department categorizes minorities as Black, Hispanic, Asian/Pacific and Native American.

On September 15, 1976, Governor Carey signed Executive Order 40, 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 the formulation and coordination of State agency affirmative action plans, policies and programs, and in ensuring the

implementation of these plans, policies and programs. The President of the Civil Service Commission is designated as chairperson for the Committee, which includes several senior State policymakers.

On April 8, 1980 Governor Carey signed Executive Order 40.1, 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. Executive Order 40.1 also established the Affirmative Action Advisory Council, which comprises the affirmative action officers from each State agency. The Council was given the role of advising the Executive Committee for Affirmative Action on the concerns of affirmative action officers and advising the President of the Civil Service Commission on all existing and proposed policies, procedures, practices and programs related to affirmative action.

On February 18, 1983 Governor Cuomo signed Executive Order 6 (Order), 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 and continued the roles of the Affirmative Action Advisory Council and the Executive Committee for Affirmative Action. The Order emphasized the need to provide new employment opportunities for individuals in protected classes.

The President of the Civil Service Commission has delegated the responsibility for monitoring the implementation of, and ensuring compliance with, agency affirmative action plans to the Department's Division of Diversity Planning and Management (Division). The Division was appropriated \$1.3 million for the 1994-95 fiscal year and had a staff of 24 on December 31, 1994. At the time of our follow-up review, the Division has been appropriated \$910,000 for the 1997-98 fiscal year and had a staff of 15.

The Order does not apply to the judicial or legislative branches of New York State government or to public authorities. It is generally accepted that the Order does not apply to the Comptroller or Attorney General, because they are independently elected officials. Both the Comptroller and the Attorney General have issued their own Executive Orders establishing affirmative action plans for their agencies.

When a new Governor is elected, the Executive Orders from prior Governors are subject to review and revision. Effective January 5, 1995, Governor Pataki ordered a review and evaluation of all Executive Orders, which are to remain in full force until otherwise revoked, continued or modified. At the time of this follow-up review Executive Order 6 was in effect.

Summary Conclusions

In our prior audit, we found that the Department's oversight of New York State's affirmative action program was in need of improvement. We also found that various features of the civil service system made it difficult to hire and promote protected class individuals, many of actions required by the Order had not been implemented and the Executive Committee for Affirmative Action had met only once between November 1987 and August 1994.

In our follow-up review, we found that Department officials have made some changes in the civil service system that could potentially also serve to improve the opportunities to hire and promote protected class individuals. However, based on statistical data contained in the Department's annual Workforce Management plans, the Department was unable to demonstrate that appreciable changes had occurred in

the representation of protected classes in the State agency workforce, since our prior audit. In addition, we found that Department officials have not implemented most of our prior audit recommendations. Oversight of New York State's affirmative action program is, therefore, still in need of improvement.

Summary of Status of Implementation

Of the six prior audit recommendations, one has been fully implemented, two have been partially implemented and three have not been implemented.

Follow-up Observations

Recommendation 1

The President of the Civil Service Commission, as Chairperson of the Executive Committee for Affirmative Action, should work with the other members of the Committee and the Department of Civil Service to:

Give State agencies greater flexibility in hiring and promoting candidates by such actions as:

- *proposing legislation that modifies the rule of three,*
- *increasing the use of examinations that take into account experience and job performance,*
- *expanding the use of zone scoring,*
- *decentralizing responsibilities for administering examinations,*
- *reducing the number of job titles,*
- *expanding the use of internships, and*
- *establishing employment outreach programs and resume banks.*

Status - Fully Implemented

Agency Action - The Department has taken a number of steps to implement the various elements of this recommendation. First, the Governor's Task Force on the New York State Civil Service System issued a report in December 1995. The report contained four sections that addressed elements of this recommendation:

- Reducing and Consolidating State Titles - the report indicates that in 1989, New York State had more than 7,000 job titles. The Department has been successful in reducing the number of titles. In 1994, the number of titles had been reduced to 6,220 and at the time of our follow-up review the number of titles had been reduced to 5,389. The report indicated that the Department will attempt to reduce the number of titles by one-third over the next four years.

- Increasing the Use of Band Scoring - one element of this recommendation was that the

Department should propose legislation that would modify the rule of three. It is believed that the rule of three when used with traditional point by point scoring limits the number of candidates that can be considered for appointment. While the Department has not proposed such Legislation, it has increased the use of band scoring. The increased use of band scoring considerably opens the field of candidates who can be considered for appointment. The report indicates that in 1994, the Department band scored only 15% of written exams, 50% of oral exams and 65% of all training and experience evaluations. Department officials indicated that since 1995, all examinations have been band scored.

- Reinstituting a New York State Management Internship Program - the report indicates that the Department will make the development and administration of a cost effective public management internship program a priority. The Department has announced such a program.
- Improving Services Through the Use of Technology - the report indicates that the Department will improve accessibility and distribution of information to the public and to other State and municipal agencies. State employees and the public will be able to schedule examinations over the phone. They have provided this capability to State employees but have not yet provided this capability to the public. The report also indicates that information on upcoming examinations will also be available over an on-line computer bulletin board. This information and other general information are available from the Department's home page.

In addition to the information contained in this report, Department officials provided the following:

- evidence showing since the issuance of the prior report, the use of training and experience examinations increased from 262 to 337 examinations. Likewise, the total number of decentralized examinations increased from 109 to 123 examinations.

- in the area of community outreach, officials from the Division of Diversity Planning and Management indicated that since our prior audit they have increased the number of community-based organizations to whom they send upcoming job/examination announcements. At the time of our prior audit the list contained the names of over 200 organizations. There are now over 440 organizations to whom they send these announcements. The Department has also established a prototype for a computerized resume bank which will improve identifying candidates for targeted titles and positions.

Recommendation 2

The President of the Civil Service Commission, as Chairperson of the Executive Committee for Affirmative Action, should work with the other members of the Committee and the Department of Civil Service to:

Identify the actions that can be taken, including organizational restructuring, to improve the coordination between the affirmative action officers and State agency personnel offices.

Status - Not Implemented

Agency Action - In the Department's 90-day response to this audit, Department officials indicated that they were considering establishing an ad hoc committee to review organizational structures, procedures and practices that impact coordination of affirmative action related matters between affirmative action officers and personnel offices.

During our follow-up review, Department officials provided a memo sent to all State agencies, which requested that each agency personnel officer involve the agency's affirmative action officer in as many aspects of the examination process to ensure examinations do not adversely impact protected class groups.

Department officials also supplied copies of minutes of the Affirmative Action Advisory Committee indicating that the Commissioner had met with them.

Auditors' Comments - In our prior audit, discussions with the affirmative actions officers indicated that their efforts have not been effectively coordinated with the activities of the personnel offices. For example, some officers told us they often were not involved in recruiting employees, developing competitive examinations, approving competitive appointments, and approving non-competitive appointments.

During our follow-up review, Department officials indicated that they have not yet established the ad hoc committee they had indicated would be established.

Department officials gave us copies of the meeting minutes of the Affirmative Action Advisory Council. From January 1995 through May 1997, the council met 24 times. There was evidence of the Commissioner or his representatives meeting with the council or members of the council six times. However, this issue was not addressed.

Recommendation 3

The President of the Civil Service Commission, as Chairperson of the Executive Committee for Affirmative Action, should work with the other members of the Committee and the Department of Civil Service to:

Reconsider the suitability of the Department of Civil Service to both administer the civil service system and oversee the affirmative action program.

Status - Not Implemented

Agency Action - Department officials maintain due consideration has been given to the suitability of the Department to both administer the civil service system and oversee the affirmative action program. In the Department's 90-day response to our prior audit officials indicated that:

“Despite the State's past performance in affirmative action programs over the past twelve years, the placement of responsibility for future affirmative action initiatives in the Department of Civil Service is both administratively and programmatically a sound approach in dealing with the interactive responsibility of affirmative action and human resource management for the State of New York.

As the lead personnel agency for merit and fitness, the Department of Civil Service should permanently retain responsibility for affirmative action administration.”

During our follow-up review, Department officials provided us copies of the minutes from the July 10, 1997 meeting of the Governor's Executive Committee (Committee) for Affirmative Action as evidence the issue of the Department's suitability to both administer the civil service system and oversee the affirmative action program received full consideration. The minutes indicate that the Commissioner presented his thoughts to the Committee members relative to the future of the Department's Division. He asked the members for feedback on the notion of possibly moving some of the Division's functions to more appropriate divisions or agencies.

Auditors' Comments - We can find no evidence in the minutes to the issue of the Department's suitability to both administer the civil service system and oversee the affirmative action program. As noted in the background section of this report, the Governor's Executive Committee for Affirmative Action, which includes several senior State policymakers, was established to advise the Governor and to assist the Commissioner of Human Rights in the formulation and coordination of State agency affirmative action plans, policies and programs, and in ensuring the implementation of these plans, policies and programs. The President of the Civil Service Commission is designated as chairperson for the Committee.

The audit recommendation indicates that “ . . . President of the Civil Service Commission, as Chairperson of the Executive Committee for Affirmative Action, should work with the other

members of the Committee and the Department of Civil Service to. . . .” Since the issuance of our prior audit, the Committee has met only once. The Committee meeting minutes do not address the Department’s role in affirmative action as the lead State agency but rather the Chairperson’s concerns about the continued assignment of certain functions to the Division. We believe this recommendation is still appropriate and therefore, should be addressed.

Recommendation 4

The President of the Civil Service Commission, as Chairperson of the Executive Committee for Affirmative Action, should work with the other members of the Committee to:

Re-evaluate the administrative approach taken by New York State in implementing its affirmative action program.

Status - Not Implemented

Agency Action - Department officials indicated in their 90-day response to the prior audit that:

“An evaluation of the administrative approach taken by the Department of Civil Service in implementing its affirmative action program under Executive Order 6 is currently in progress. Upon completion of this assessment, a proposed plan with recommendations will be forwarded to the Executive Chamber.”

During our follow-up review, we asked Department officials to provide us with information regarding the Department's evaluation. Department officials indicated they could not do so. We asked Department officials if either any specific Department employees or a committee had been charged by the Commissioner to conduct this evaluation. Department officials indicated the Commissioner has not charged anyone specifically with this responsibility.

Auditors' Comments - In conducting our follow-up review, we found that many conditions noted in our prior audit still exist. Some of these conditions are as follows:

- We indicated in our prior audit that the Executive Committee for Affirmative Action is required by Executive Order 6 to advise the Governor and the President of the Civil Service Commission in matters relating to New York State's affirmative action program. We found that the Committee had met just once between November 1987 and August 1994. We indicated that the Committee's lack of activity has created the impression that top State officials are not committed to affirmative action. In our follow-up review, we found that the Committee has met just once (July 10, 1997) since our prior audit. We reviewed the minutes from this meeting and found that the Commissioner told the Committee that our prior audit “. . . declared affirmative action under Executive Order No. 6, during 1983-94, a complete failure.” The Commissioner also indicated in the minutes some of the initiatives the Department had taken as a result of the Governor's Task Force report which addressed issues in Recommendation 1.

The minutes do not suggest that the Commissioner addressed any of the other prior audit recommendations with the Committee. There was no indication the Commissioner requested the

Committee's input on how these recommendations should be addressed.

- In addition, the Affirmative Action Advisory Council (AAAC), is required by Executive Order 6 to advise the President of the Civil Service Commission on matters relating to the affirmative action program. The AAAC is also required to submit quarterly progress reports on its activities to the President of the Civil Service Commission. In our prior audit, we found that the AAAC had met regularly but the most recent quarterly report submitted covered the period through September 1991. In our follow-up review, we found the AAAC has continued to meet regularly. Department officials could not provide any evidence that the AAAC has submitted quarterly reports as required or whether the Commissioner had taken any action regarding non-receipt of these reports.

- Also, our review of documentation provided by Department officials indicated that many agencies are still not complying with various provisions of Executive Order 6. In our prior audit, we found that agencies did not have full time affirmative action officers as required, affirmative action officers did not report directly to agency heads and annual reports were submitted late or had not been submitted as required. We found similar conditions exist and did not find any evidence of Departmental action to obtain compliance.

Recommendation 5

The President of the Civil Service Commission, as Chairperson of the Executive Committee for Affirmative Action, should work with the other members of the Committee to:

Develop procedures that will provide better assurance that the objectives of the affirmative action program are achieved. Such procedures should include:

- *independent monitoring of agency activities relating to affirmative action,*
- *the development of performance indicators for assessing the progress New York State agencies, on an agency level and overall, in achieving the goals of the affirmative action program, and*
- *periodic reports to the Governor comparing the composition of the State agency workforce to the composition of the available labor force in New York State.*

Status - Partially Implemented

Agency Action - Department officials completed Affirmative Action Program Administration Reviews (AAPAR) for 54 agencies. The purpose of the reviews was to assess the progress of State agencies in achieving the goals of agency affirmative action programs. These reviews measured the performance of the agencies on 22 separate and distinct performance measures.

The Department produces an annual report, the Work Force Management Plan. The report provides various statistical information on the State workforce and at each agency.

Auditors' Comments - In our follow-up review, we found that while Department officials have completed AAPARs for 54 State agencies, they never communicated the results of these reviews to agency heads. In addition, although these reports show that agencies are not in compliance with some requirements of

the Order, the Department could not demonstrate that they had taken any action to address non-compliance. Department officials also did not indicate how often these assessments would be done. There was also no indication that the results of these reviews were presented to either the Commissioner or the Executive Committee for Affirmative Action.

Department officials have not yet developed overall Statewide performance indicators.

Department officials have not produced periodic reports to the Governor comparing the composition of the State agency workforce to the composition of the available labor force in New York State. The Department's Work Force Management Plan that they produce annually does not contain this data.

Department officials indicated in their 90-day response to our prior audit, that the administration was committed to renewing the compilation and publication of the Ethnic Survey Report that they had not published since 1982. This document would provide data comparing the composition of the State agency workforce to the composition of the available labor force in New York State. This document has yet to be published.

Recommendation 6

The President of the Civil Service Commission, as Chairperson of the Executive Committee for Affirmative Action, should work with the other members of the Committee to:

Re-evaluate the employment goals and timetables provided to the agencies by the Department of Civil Service to ensure that they are relevant to the agencies.

Status - Partially Implemented

Agency Action - Department officials indicated that as a result of our prior audit, they conducted site visits to a number of agencies. They concluded that the goals and timetables need to be revised. However, they have not yet determined how this should be accomplished.

Auditors' Comments - In our prior audit, we found that a number of agency affirmative action officers did not believe the employment goals and timetables were realistic for their agencies.

Department officials should establish employment goals and timetables that are relevant for all agencies. Without such, the effectiveness of the State's affirmative action program cannot be evaluated.

Contributors to this report were William Challice, Frank Russo, Gerald Tysiak, Aaron Fruchter, Donald Geary and Tom Kulzer.

We would appreciate your response to this report within 30 days, indicating any action planned or taken to address any unresolved matters discussed in this report. We also thank Department management and staff for the courtesies and cooperation extended to our auditors during this review.

Yours truly,



Carmen Maldonado
Audit Director

cc: D. Arduin, DOB
T. Pillsworth