



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA CERTIFIED U.S. MAIL

February 24, 2017

Scott Weaver
Secretary
New Mexico Department of Public Safety
P.O. Box 1628
Santa Fe, New Mexico 87504-1628

Re: Compliance Review of the New Mexico State Police (15-OCR-422)
Compliance Review Report

Dear Secretary Weaver:

As you know, the Office for Civil Rights (OCR), within the Office of Justice Programs (OJP) of the U.S. Department of Justice (DOJ), initiated a compliance review of the New Mexico Department of Public Safety (DPS or Department), focused on the New Mexico State Police (NMSP), on April 10, 2015. This review was conducted in accordance with the nondiscrimination provisions in the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and its implementing regulations.¹

Our review indicates that the NMSP's policies and practices governing the recruitment, selection, and retention of female state police officers are consistent with the requirements of the Safe Streets Act and its implementing regulations. The NMSP has an extensive recruiting program, which includes an advanced online marketing campaign. After carefully analyzing the collected employment data with the assistance of experts, the OCR found that the NMSP's hiring selection devices do not have a statistically significant adverse impact on women. The NMSP also has policies in place, including comprehensive equal employment opportunity policies, to encourage female officers to remain NMSP officers.

In 2014 data published by the Federal Bureau of Investigation (FBI), the NMSP's percentage of female state police officers ranked twentieth out of thirty-eight properly reporting states.² Currently, female officers hold about 7% of the NMSP officer positions.³ This report contains

¹ 42 U.S.C. § 3789d(c)(1) (2012); 28 C.F.R. §§ 42.201-.308 (2016).

² FBI, UNIFORM CRIME REPORT PROGRAM, CRIME IN THE UNITED STATES, 2014, tbl.76 (Full-time State Law Enforcement Employees by State, 2014), <http://go.usa.gov/x9Pke>. The FBI did not report on New Mexico's officers in Table 76 of the 2015 Uniform Crime Report.

³ DPS, EEOP Utilization Report 12 (Aug. 19, 2015) (on file with the OCR).

recommendations to help the NMSP strengthen its Safe Streets Act-mandated equal employment opportunity program (EEO) and to recruit, hire, and retain more female troopers.

The Compliance Review of the NMSP focused on employment practices affecting women in the recruitment, selection, and retention of entry-level NMSP officers from 2012 through 2015.⁴ In preparing this Report, the OCR relied on information that the DPS provided in response to the OCR's data requests. The OCR also interviewed with more than thirty female state police officers and a cross section of the NMSP command staff during our September and October 2015 on-site visits, and in subsequent telephone calls.

I. OCR's Women In Law Enforcement Compliance Review Initiative

This Compliance Review is part of a broader OCR compliance review initiative to evaluate the efforts of law enforcement agencies to employ women as sworn officers.⁵ The OCR selected state law enforcement agencies as the focus of its initial women-in-policing compliance reviews based on research from the Bureau of Justice Statistics (BJS) showing that, from 1987 to 2007, state law enforcement agencies had the lowest percentage of female sworn officers in comparison to local police departments and sheriffs' offices.⁶ The BJS report also found that the percentage of female officers grew within state law enforcement agencies at a much slower rate than in local jurisdictions.⁷ Because this information suggests that state agencies might face challenges in hiring and retaining female officers, the OCR prioritized compliance reviews of state police agencies.⁸

As a recipient of financial assistance from the OJP, the DPS must abide by the nondiscrimination provisions in the Safe Streets Act, which, among other things, prohibit discrimination in employment based on sex.⁹ The OCR selected the DPS for a compliance review based on

⁴ Specifically, the OCR examined the recruitment and selection of the NMSP's 84th through 89th entry-level academy classes, or "Recruit Schools." During the course of the Compliance Review, but outside of the timeframe examined by the OCR, the NMSP started two additional Recruit Schools: (1) the 90th Recruit School, which started with forty-one recruits, and graduated 20 state police officers; and (2) a lateral academy class that started with four recruits and graduated all four as state police officers.

⁵ This OCR project aligns with the DOJ's strategic plan, which prioritizes the enforcement of federal laws prohibiting discrimination in employment. DOJ, DEPARTMENT OF JUSTICE STRATEGIC PLAN FOR FISCAL YEARS 2014-2018, 34-36, <http://go.usa.gov/x9Pku>. Additionally, the President's Task Force on 21st Century Policing identified increasing the diversity, including gender diversity, of the nation's law enforcement agencies as a critical tool for promoting the legitimacy of these agencies. DOJ, OFFICE OF COMMUNITY ORIENTED POLICING SERVS., FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (May 2015), 16-17, <http://go.usa.gov/x9PkS>.

⁶ LYNN LANGTON, BJS, WOMEN IN LAW ENFORCEMENT, 1987- 2008 (June 2010), <http://go.usa.gov/x9P83>.

⁷ *Id.*

⁸ From 1987 to 2007, the percentage of female sworn officers increased from approximately 8% to nearly 12% in local police departments and from approximately 4% to approximately 7% in state police agencies; in the same time period, the percentage of female sworn officers declined slightly from less than 13% to roughly 11% in sheriffs' offices. LANGTON, *supra* note 6, at 3 fig. 4.

⁹ 42 U.S.C. § 3789d(c)(1).

several factors, including the substantial amount of DOJ funding it has received and the diverse demographic makeup of the state.¹⁰ At the inception of the Compliance Review, the DPS was receiving over eleven million dollars in grant awards from the OJP.¹¹

II. Relevant Legal Obligations

A. Safe Streets Act EEOP Requirements

As a condition for receiving financial assistance covered by the Safe Streets Act, recipients agree to comply with the Safe Streets Act's regulations governing the development of a written EEOP.¹² When preparing an EEOP, the regulations direct a recipient to analyze "any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion)."¹³

An EEOP must include a variety of analyses, including a comparison between the recipient's workforce demographics in major job categories and the demographics of qualified individuals in the relevant labor market.¹⁴ When recipients identify significant labor market underutilization in their EEOPs, they must present a corrective action plan to achieve equal employment opportunity.¹⁵ The regulations also require funded employers to review all elements of their hiring process, including the administration of tests and other selection devices, to ensure that they are equitable and to develop a recruitment plan to attract minority candidates.¹⁶ Funded employers must also assess their efforts to retain employees, including an annual analysis of their promotion process and training programs to determine whether they treat women equitably.¹⁷ The EEOP regulations advise recipients to "conduct a continuing program of self-evaluation" to guarantee that their employment practices do not have a discriminatory effect.¹⁸ Major recipients, like the DPS, which are public entities that receive a grant of \$500,000 or more and have fifty or more full-time employees, must submit a utilization report to the OCR for review as part of their EEOP.¹⁹ Each utilization report provides a snapshot of the number of the recipient's employees within specific job categories, cross-classified by race, national origin, and sex, and

¹⁰ 28 C.F.R. § 42.206(c)(2)-(4).

¹¹ The DPS receives multiple open OJP awards that are subject to the nondiscrimination provisions of the Safe Streets Act. *See, e.g.*, DPS, FY 2015 Justice Assistance Grant Program, Bureau of Justice Assistance Project No. 2015-DJ-BX-0670 (Oct. 1, 2013 - Sept. 30, 2017) (award for \$1,537,777.00) and DPS, FY 2014 Justice Assistance Grant Program, Bureau of Justice Assistance Project No. 2014-DJ-BX-1204 (Oct. 1, 2013 - Sept. 30, 2017) (award for \$1,782,915.00).

¹² 28 C.F.R. pt. 42, subpt. E (2016).

¹³ *Id.* § 42.303(a).

¹⁴ *Id.* § 42.304.

¹⁵ *Id.* § 42.304(g)(1).

¹⁶ *Id.* § 42.303(c), .304(g).

¹⁷ *Id.* § 42.303(a), (c)(3); *id.* § 42.304.

¹⁸ *Id.* § 42.306(a).

¹⁹ *Id.* §§ 42.204(b), .302(d); *see also Questions and Answers and Self-Test Scenarios*, OCR <http://go.usa.gov/x9P8c> (last visited Feb. 23, 2017).

identifies whether a recipient has an “underutilization rate.” This rate compares the percentage of employees of a protected class in a particular job category to the percentage of qualified workers of the same protected class in the relevant labor market.

B. Prohibition of Employment Discrimination Based on Sex

The Safe Streets Act prohibits discrimination based on sex, including any discrimination against female applicants or employees.²⁰ The legal analysis of employment discrimination claims under the Safe Streets Act relies on the standards of Title VII of the Civil Rights Act of 1964 (Title VII), as amended.²¹ Under Title VII, the OCR may prove discrimination in multiple ways, including by demonstrating that a certain policy has a disparate impact on the employment of a protected class of individuals.²² To establish a prima facie case of disparate-impact discrimination, one must identify a facially neutral policy or practice and then provide evidence, usually through statistical data,²³ that the challenged policy or practice has a disproportionately negative effect on a protected class.²⁴ The employer may rebut the prima facie case by proving that the challenged employment practice did not cause the disparate impact²⁵ or by presenting evidence that the challenged practice or policy is “job related for the position in question and consistent with business necessity.”²⁶ Even if the employer can show that business necessity, or public interest for a public entity, justifies the contested policy or practice, the employer may still be in violation of the law if the employer could have achieved its legitimate purpose by other reasonable means that have a less disparate impact on the protected class.²⁷

III. Organizational Structure of the DPS and the NMSP

A state cabinet-level secretary serves as the chief executive of the DPS. On July 1, 2015, an agency reorganization merged all three law enforcement branches of the DPS – the NMSP, the Motor Transportation Police Department (MTPD), and the Special Investigations Division (SID) – into the New Mexico State Police Division of the DPS.²⁸ Following the merger, nearly 150

²⁰ 42 U.S.C. § 3789d(c)(1).

²¹ 28 C.F.R. § 42.203(c); 42 U.S.C. § 2000e-e-17 (2012).

²² 42 U.S.C. § 2000e-2(k); *see also* Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971) (holding that Title VII prohibited employer from requiring employees to have a high school education when the requirement had a disparate impact on African Americans and the employer could not demonstrate that the requirement was related to job performance); Murphy v. Derwinski, 990 F.2d 540, 544 (10th Cir. 1993) (applying a sex-based disparate impact theory of discrimination).

²³ Dothard v. Rawlinson, 433 U.S. 321, 330-31 (1977) (holding statistics related to height and weight of applicants showed discriminatory impact on women); Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 307-08 (1977) (finding statistical disparities showed a pattern of discrimination).

²⁴ 42 U.S.C. § 2000e-2(k)(1)(A)(i).

²⁵ *Id.* § 2000e-2(k)(1)(B)(ii).

²⁶ *Id.* § 2000e-2(k)(1)(A)(i).

²⁷ *Id.* § 2000e-2(k)(1)(A)(ii).

²⁸ The Department of Public Safety Reorganization Act, ch. 3, 2015 N.M. Legis. Serv. (West) (codified as amended at N.M. STAT. §§ 9-19-4 to -7, 10-11-2, 29-2-1.1 to -25, 29-7-3 to -12, 60-3A-1 to -8.1, 65-1-2 to -35, 66-1-4.2, 66-3-302, 66-7-314 to -505 (2016)).

commissioned officers who were assigned to the MTPD and the SID joined the NMSP.

In addition to the NMSP Division, the DPS also oversees the statewide Law Enforcement Academy (LEA), which provides law enforcement training to entry-level officers from local jurisdictions across New Mexico. The LEA's training program is distinct from the training regimen for NMSP recruits, which is administered through the State Police Academy (SPA or Academy). Although separate from the LEA, the NMSP has adopted some of the LEA-developed standards for screening its applicants and training its entry-level officers, as discussed in greater detail below. Other DPS divisions provide policy, administrative, information technology, and technical support to the Department.

The state police chief leads the NMSP and also serves as one of two deputy secretaries of the DPS. In its current, post-merger structure, the NMSP Division of the DPS includes seven bureaus. The largest is the Uniform Bureau, which manages the primary patrol function of the NMSP. Officers in the Uniform Bureau perform traditional highway patrol functions, such as responding to emergency calls, patrolling highways, and conducting crash investigations. The deputy chief of the Uniform Bureau oversees twelve districts, as well as the SPA and the recruiting function, which are run through the Training and Recruiting Bureau. With limited exception, new state police officers start their careers in the Uniform Bureau after completing the Academy.²⁹

The NMSP also includes five other bureaus: Investigations, Special Operations, Commercial Vehicle Enforcement (CVE),³⁰ Standards, and Communications.³¹ The Investigations Bureau investigates crimes statewide, including homicides and the trafficking of illegal substances, and is responsible for conducting officer-involved shooting reviews for the NMSP, local jurisdictions, and tribes. The Special Operations Bureau comprises five specialized groups, the Aircraft Section; the Specialty Teams such as the Crash Reconstruction Unit, Explosive Ordinance Disposal Team, the Search and Recovery Dive Team, and the Tactical Team; the Search and Rescue team; Fleet Operations; and the Homeland Security/Hazardous Materials team. The CVE Bureau monitors the operation of commercial motor vehicles and hazardous material shipments. The Communications Bureau oversees the DPS Communications Centers and their civilian dispatchers who support more than thirty public safety agencies statewide, including the NMSP and local fire agencies. The Standards Bureau conducts administrative investigations into allegations of NMSP employee misconduct and develops DPS policies and procedures.

²⁹ An example of an exception would be if a recruited pilot was placed directly in the Special Operations Bureau, which oversees the aircraft section, instead of the Uniform Bureau.

³⁰ The MTPD was renamed the CVE in 2015.

³¹ DPS, Organization and Administration, DPS Policies and Procedures, Policy No. ADM: 43 Attachment A (February 2017).

IV. Officer Recruitment

A. DPS' EEOP

As discussed above, the DPS must develop an EEOP that analyzes the impact of its employment practices on women and minority individuals and submit its utilization report and accompanying analysis to the OCR for review.³² The DPS is in substantial compliance with this obligation. On November 13, 2013, and August 19, 2015, the DPS filed with the OCR its utilization reports covering the period under review.³³ As of August 2015, of the DPS' 687 sworn officer positions, men held 638 (92.9%), and women held 49 (7.1%).

The DPS' utilization reports identified underutilization rates for most females in the Protective Services job category, which includes data for Sworn Officials and Sworn Patrol Officers. The following chart lists the underutilization rates identified by the NMSP in the most recent reports submitted to OCR.

Underutilization Rates for Female Sworn Officers³⁴

Date of DPS Utilization Report	White		Hispanic or Latino		Black or African American		American Indian or Alaska Native		Asian	
	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official
Nov. 13, 2013	-7%	-6%	-19%	-8%	0%	-1%	-4%	-1%	0%	1%
Aug. 19, 2015	-7%	-6%	-19%	-6%	0%	-1%	-4	-1%	0%	1%
Oct. 28, 2016	-7%	-6%	-18%	-5%	0%	-1%	-5%	-1%	0%	0%

These underutilization rates demonstrate that the NMSP has continuing challenges in hiring a sworn officer workforce that resembles the community it serves.

The NMSP addressed these data in both its utilization reports and its 2016 Fiscal Year Recruiting Plan (2016 Recruiting Plan). In acknowledging the underutilization of the female workforce, the NMSP 2015 utilization report remarked that the agency had successfully recruited female applicants, but found that the NMSP's strenuous, twenty-two-week paramilitary SPA eliminated a large portion of these female applicants. The 2016 Recruiting Plan states that the NMSP will review its workforce utilization reports to identify underrepresentation of females and minority individuals in the commissioned officer role, using standards developed by the Equal Employment Opportunity Commission (EEOC). If underrepresentation exists, the NMSP stated that it would adopt a plan of action to address it, including developing recruiting materials to

³² 28 C.F.R. pt. 42, subpt. E.

³³ The NMSP filed its most recent utilization report with the OCR on October 28, 2016.

³⁴ This chart only contains those racial and national origin categories that include at least one NMSP officer. The negative percentages that appear in the chart indicate the categories in which the NMSP's workforce underutilizes female officers as compared to the relevant labor market.

appeal to female and minority applicants and contacting education institutions with high minority or female enrollments.

B. The NMSP's Recruitment Plan

The 2016 Recruiting Plan has three primary objectives: (1) increase the SPA graduation rate to 66%,³⁵ (2) employ part-time recruiters in the district offices, and (3) focus recruiting efforts on individuals who want to live in noncompetitive duty stations (i.e., outside of the two metropolitan areas of Albuquerque/Santa Fe and Las Cruces/El Paso) and on groups underrepresented in the NMSP. The 2016 Recruiting Plan's section titled "EEO Recruitment" is most relevant to this Compliance Review. This section describes the NMSP's efforts to recruit women and minority individuals. These efforts include participating in career days and job fairs; notifying community organizations and education and training facilities of employment opportunities; participating in school activities that promote careers within the NMSP; updating recruiting materials to appeal to underrepresented groups in the current workforce; and expanding recruiting sources, with an emphasis on sources providing referral services to women, minorities, and veterans.

C. The NMSP's Recruitment Process

The NMSP continuously accepts applications for entry-level officer positions through its nmsp.com website. If a candidate submits an application after the NMSP has admitted a new class of recruits to the SPA, the NMSP holds the application so that it can consider the candidate during the next selection cycle. In recent years, the NMSP has run two SPA classes each year. The number and size of each SPA class varies depending on operational needs and budgetary constraints.

A major leads the NMSP's Training and Recruiting Bureau (TRB), which during the time period examined for this Compliance Review, included two and a half other full-time officers. Currently, the TRB major is supervising three full-time officers and one sergeant. To be assigned to the recruiting function, officers must have a minimum of two years of patrol duty, be in good standing with the NMSP, have good public speaking skills, and have a letter of recommendation from a NMSP employee. The TRB officers visit job fairs, colleges, and military bases to answer questions and distribute information on career opportunities with the NMSP; conduct recruit testing; maintain contact with each individual who starts an online application; and log applicant activity into the TRB's database. The recruiters typically contact each applicant within twenty-four hours after the receipt of an online interest card and provide each applicant with a study guide for the written test and a "stay in shape guide" to help prepare applicants for the physical fitness test.

The NMSP's recruitment efforts include a well-funded media marketing campaign run by a New Mexico-based media company. Among other things, this media vendor manages television and

³⁵ The NMSP's 89th Recruit Class in July 2015 graduated approximately 61% of the recruits that started the SPA.

radio advertising, generates promotional items to distribute at recruiting events, produces website videos, and creates and manages online advertisements. The TRB also maintains a strong social media presence; the recruiters have administrative access to the NMSP Facebook, Twitter, Pinterest, LinkedIn, and YouTube accounts, on which TRB employees post recruiting-related content and field questions about the NMSP selection process. Additionally, the NMSP has recently hired a full-time employee to oversee Social Media/Marketing.

The NMSP reports that its nationwide online advertising campaign has been successful; approximately 90% of the individuals who expressed interest in applying to the NMSP learned about the NMSP through its online marketing efforts and website. The NMSP recently allowed its media vendor access to its website to track applicants and optimize results, including “remarketing” to individuals who initially clicked on a recruiting advertisement but did not complete the application process. The NMSP places online advertisements on both traditional websites (e.g., sporting and martial arts sites) and on Facebook and other social media platforms. The NMSP has selected advertisements that are easily viewed and accessed on mobile devices. The NMSP also uses an electronic application form that is optimized for mobile devices. Several of the advertisements prominently feature women officers to encourage females to apply to the NMSP.

The NMSP’s media vendor reports to the TRB each week on the advertising campaign, which allows the NMSP to quickly make any needed changes. The media vendor also provides a comprehensive report to the NMSP on the marketing campaign for each completed recruiting cycle. This report contains detailed data on the practices that were successful during the course of the campaign as well as ways to improve the campaign based on past results. For example, based on past performance, the media vendor can more accurately target the NMSP’s advertising to the categories of websites or geographic areas that produced the most applicants during the prior marketing cycle. The NMSP indicated that if it allows the media vendor greater access to its recruitment database and related electronic systems, the vendor can further refine its advertising algorithm to reach more female applicants.

The TRB also has informal partnerships with state agencies, colleges and universities, military installations, and community organizations to recruit from these sources. One particularly useful partnership with the New Mexico National Guard allows TRB recruiters to attend military drills to distribute promotional materials and answer questions about the NMSP application process. The NMSP estimates that between 25% and 40% of their officers have a military background.

The NMSP relies on officers in each of the districts throughout the state to visit local job fairs and community events, and to conduct other local recruiting activities. Currently, district officers do not track the recruiting activity they undertake. The NMSP has a newly-created team of trained part-time district recruiters to enhance recruitment efforts throughout the state. In addition to attending events to reach prospective job applicants in New Mexico, NMSP recruiters also focus on nearby states including, California, Texas, Arizona, Utah, Nevada, and Colorado.

As a recruiting incentive, the DPS provides additional pay to experienced officers.³⁶ The DPS also has a “guaranteed duty location program” designed to keep prospective officers in the communities where they live.³⁷ This program allows entry-level officers to be posted to their home communities if there is a vacancy. The OCR’s interviews with the NMSP staff indicated, however, that the NMSP rarely uses this option. The NMSP does, however, strive to station recruits as close to their desired location as possible as long as a position is available.

It is current practice for the TRB’s major to meet weekly with the chief and deputy chief to provide updates, and review the status of applications and recruiting process activities. There is also an informal practice whereby, the NMSP chief, TRB major, and, in some cases, other senior leaders, meet at the end of a recruiting period to jointly review and identify recruiting successes and areas for improvement, making any needed changes.

Since 2012, the NMSP has increased both the number and percentage of female applicants. The NMSP received 133 applications to attend the 84th Recruit School, which began in July of 2012. Women submitted less than 7% of these applications. In comparison, women applicants comprised 12.5% of the 350 applications that the NMSP received for the 89th Recruit School, which began in July of 2015. The NMSP’s 2015 utilization report indicates that the civilian labor force comparable to the sworn patrol officer position is 38% female, indicating that the NMSP’s current female applicant rate is lower than the proportion of women in the relevant labor pool.

D. Recommendations

The NMSP’s recruitment program substantially complies with the requirements of the Safe Streets Act regulations. A lower proportion of females apply to be NMSP officers, however, than are represented in the relevant labor pool. To assist the NMSP in its efforts to address this disparity, the OCR makes the following recruitment-related recommendations:

- Institutionalize the NMSP’s effective practices, such as
 - the senior-level review of recruiting cycle data, including underutilization rates and successful practices;³⁸
 - the use of data-driven online marketing;
 - partnerships with educational and military institutions; and

³⁶ DPS, State Police Recruiting and Selection, DPS Policies and Procedures, Policy No. TRG: 05, 5 (Nov. 12, 2014) [hereinafter State Police Recruiting and Selection Policy].

³⁷ *Id.*

³⁸ As discussed in detail above, the Safe Streets Act requires a departmental review of underutilization rates and recruiting practices. See 28 C.F.R. § 42.303. The NMSP’s practice of including the chief and other senior-level officers in this review at the conclusion of each recruiting cycle is an additional, useful practice.

- regular contact with applicants, including providing them with study and fitness guides.³⁹

Formalizing these practices, by codifying them, entering into written agreements with outside entities, or otherwise, will allow the effective practices to remain in place after personnel changes.⁴⁰ To encourage consistency, it is suggested that the NMSP strive for regular documentation of these effective practices.

- Conduct information sessions and application workshops designed for female applicants. This type of targeted community outreach can encourage women to apply for state police officer positions.⁴¹
- Develop an internship program that can showcase a career with the NMSP to female students and possibly provide a pipeline of female applicants. Such a program would allow female students to get a first-hand look at the challenges and rewards of a career with the NMSP.⁴²

V. Selection of Officers

The OCR examined the NMSP's selection of entry-level troopers from 2012 through 2015. During this period, the NMSP ran and graduated six academy classes. In total, the NMSP hired 270 male and 27 female recruits to begin the SPA. These academy classes graduated 164 male and 16 female officers.

A. Application and Screening Process

1. Minimum Qualifications

Under New Mexico state law and DPS policy,⁴³ an applicant who wishes to serve as an NMSP officer must (1) be a United States citizen, (2) be at least twenty-one years of age before completing the SPA, (3) have a high school diploma or its equivalency, (4) have sixty hours of

³⁹ Recently, the DOJ and the EEOC conducted an interagency research initiative to help law enforcement agencies recruit, hire, retain, and promote a diverse set of officers. The resulting report, *Advancing Diversity in Law Enforcement*, identified many of the recruiting practices the NMSP uses as "promising practices" for increasing diversity in law enforcement. DOJ and EEOC, *ADVANCING DIVERSITY IN LAW ENFORCEMENT*, iv-v, 26, 29, 32 (October 2016), <http://go.usa.gov/x9P8r> [hereinafter *Advancing Diversity in Law Enforcement*].

⁴⁰ *Id.* at v, 26.

⁴¹ *Id.* at 26, 28.

⁴² *Id.* at iv, 28-29.

⁴³ N.M. STAT. §§ 29-2-6 to -2-8, -7-6 (2016); N.M. CODE R. § 10.29.1.10 (2016); State Police Recruiting and Selection Policy, *supra* note 36.

college credit or two years of military or law enforcement service,⁴⁴ (5) be of good moral character,⁴⁵ (6) pass a physical examination,⁴⁶ (7) hold a valid driver's license, (8) pass a psychological examination, (9) pass a written examination, (10) have a good driving record, and (11) comply with the New Mexico State Police Anti-Drug Use Policy.⁴⁷

2. Screening Process

A brief description of each of the steps in the NMSP's application and screening process for hiring an entry-level officer is below. State statute, administrative code, DPS policy, and the general practice of the TRB inform how the NMSP selects its future officers.⁴⁸

a. Online Application

The NMSP posts job announcements and the initial employment application on its website. Applicants must submit basic personal information (e.g., name, address, place of birth, age) and confirm that they meet the minimum eligibility requirements discussed above. The application requests other information, including the applicant's employment history, social status (e.g., marital status, dependents), education and training, and references.

After applicants submit their applications, a member of the TRB examines the application to ensure that each applicant meets the minimum qualifications. The NMSP does not reject applications on account of minor omissions or deficiencies that an applicant may easily correct. Once the TRB recruiters finish their initial review, the NMSP sends written notification to applicants who do not meet the minimum requirements of their disqualification. Upon receipt of an application, the NMSP sends the candidate information, which is also available on the NMSP website, on the elements of the selection process, the expected duration of the selection process, and the procedure for reapplication.

⁴⁴ Recruits may apply when they have completed sixty college credit hours or when they have thirty college credit hours and apply for credits earned at the SPA, which is accredited to award thirty credits through the San Juan College in Farmington, NM. If recruits do not have thirty college credit hours, they may attend the SPA and then, within two years, obtain the requisite sixty college credit hours by attending college part time. N.M. STAT. § 29-2-6 (B).

⁴⁵ This includes no felony convictions or dishonorable discharges from the United States armed forces and, within the three-year period prior to the application, no convictions, or guilty or *nolo contendere* pleas, to any violation related to aggravated assault, theft, driving while intoxicated, controlled substances, or other crime involving moral turpitude. N.M. CODE R. § 10.29.1.10(A)(4).

⁴⁶ The physical examination contains a vision screening; the applicant must have 20/30 corrected vision or 20/100 uncorrected vision, with normal depth perception and satisfactory color vision. State Police Recruiting and Selection Policy, *supra* note 36, at 2.

⁴⁷ This policy disallows: steroid use within eighteen months of application; marijuana, synthetic marijuana, barbiturates, stimulants, or hashish use within twenty-four months of application; cocaine, LSD, methamphetamine, or mushrooms use within five years of application; PCP or heroin use within ten years of application; a pattern of abuse of prescription opiates; and illegal sale or distribution of drugs. State Police Recruiting and Selection Policy, *supra* note 36, at 3-4.

⁴⁸ N.M. STAT. §§ 29-2-7, -7-6; N.M. CODE R. § 10.29.9; State Police Recruiting and Selection Policy, *supra* note 36.

b. Physical Fitness Test

After an applicant's online application is approved by the TRB, the applicant will take the physical fitness test. The NMSP has adopted the minimum standards established by the LEA Board,⁴⁹ which every law enforcement officer in the State of New Mexico must meet as a matter of law in order to be certified, for its own physical fitness screening.⁵⁰ These criteria require applicants to perform at standards based on the fortieth percentile standards of the Cooper Institute for Aerobics Research (Cooper Institute), a nonprofit organization dedicated to preventive medicine that, among other things, aggregates and distributes information about physical fitness tests.⁵¹ To pass the pre-employment physical fitness test, applicants must complete fifteen push-ups in one minute, twenty-seven sit-ups in one minute, a mile-and-a-half run in fifteen minutes and fifty-four seconds, and a 300-meter run in seventy-one seconds. This test has neither gender nor age norms.

The TRB administers the test in Santa Fe and in Las Cruces. If applicants fail one element of the physical fitness test, they may retake the failed portion of the test on the same day. If applicants do not pass the test during one administration, they may retake the physical fitness test multiple times prior to the chief's final selection of an SPA class.

c. Written Examination

State law requires the NMSP's applicants to take a written examination.⁵² The NMSP administers a general aptitude test, the CTB McGraw-Hill Test of Adult Basic Education, on the same day as the physical fitness test. Applicants must answer 70% of the items on the examination correctly to advance in the selection process.

d. Polygraph

After passing the physical fitness and written tests, the NMSP schedules applicants for a polygraph examination. Prior to the polygraph examination, applicants must complete and submit a nineteen-page personal history statement titled the "pre-polygraph interview." This questionnaire covers a variety of topics, including the applicant's employment history, military service, use of controlled substances, driving record, arrest record, and any criminal activity. An NMSP staff member trained in administering polygraph examinations conducts the tests. According to the NMSP polygraph administrators, the NMSP only uses the examinations as an investigative aid, and the NMSP does not typically eliminate applicants from the selection process based solely on failing the polygraph examination.

⁴⁹ The LEA Board has authority over all basic law enforcement training and officer certification rules in New Mexico. N.M. STAT. § 29-7-4 (2016). It operates independently of the Department Public Safety, with Board membership established as a matter of law. *Id.* at § 29-7-3.

⁵⁰ *Id.* at § 29-7-6; N.M. CODE R. § 10.29.9.

⁵¹ *See About, COOPER INST.*, <http://www.cooperinstitute.org/about/> (last visited Feb. 23, 2017).

⁵² N.M. STAT. § 29-2-8.

e. Background Check

The NMSP contracts with trained background investigators to conduct background checks of each applicant. The investigators review applicants' employment and criminal history, check their references, review their financial history, and verify their residency and qualifying credentials. The investigators interview applicants and their families, which includes a discussion of all financial information, the applicant's spouse's support of the applicant's decision to join the NMSP, and the applicant's willingness to relocate. After this interview, the applicant must write a short essay, which is included in the final background check. During the background check process, the NMSP conducts additional interviews with an applicant's relatives, references, acquaintances, associates, and neighbors. Investigators also check an applicant's social media accounts. NMSP investigators include information on an applicant's credit report and arrest record in the final background check report. The NMSP states that this information does not automatically eliminate a candidate. The investigator gives an overall rating to the applicant's interview and investigation, but only the chief of the NMSP or the TRB major can make the decision to disqualify an applicant based on the background check.

f. Meeting with the Oral Interview Board

If applicants pass the background investigation, the NMSP then schedules them for an oral interview in Santa Fe. During the oral interview, the applicant meets with three NMSP officers who ask a series of fourteen standard questions, as well as additional questions taken from information in the applicant's background investigation. The standard questions cover topics ranging from the applicant's description of integrity to the applicant's willingness to relocate. Each member of the interview board rates the applicant's answers on a scale of one to five, with one indicating that the answer was problematic and five indicating an exceptional answer. Following the interviews, TRB personnel add the scores from the panel members to give an overall score for each applicant. The chief subsequently considers this score as one factor in selecting the final SPA class.

g. Psychological Examination

The purpose of the psychological examination is to ensure that the applicant is free of any emotional or mental condition that might adversely affect performance as a law enforcement officer. The NMSP contracts with a licensed psychologist to conduct the psychological examinations, which are scored either pass or fail, using criteria set by the LEA.

h. Conditional Offer of Employment

After passing each of the above stages, the NMSP extends the candidates an employment offer. Notably, the NMSP conditions this offer on both passing the medical screening and being selected for the SPA by the chief.

i. Medical Screening

The NMSP contracts with a licensed physician to perform a medical examination to ensure that the applicant has no physical condition that might adversely impact performance as a law enforcement officer. The physician assesses whether the applicant is able to do several essential physical activities of an NMSP officer, including using the applicant's body to support, control, or disarm another individual, as necessary; bending, twisting, and climbing to conduct searches, direct traffic, and engage in other necessary law enforcement activities; and firing a weapon in a dark environment with a flashlight in one hand.⁵³ Additionally, the physician must give medical clearance for the candidate to participate in the SPA's physical activity regimen, which requires applicants to meet the fitness standards discussed above, complete two agility courses, and participate in a conditioning program that involves physical activity at least one hour per day, three days per week, as well as defensive tactics and firearms training.⁵⁴

The physician conducts the medical screen by gathering a medical history statement and conducting standard laboratory tests including blood chemistry, urinalysis, electrocardiogram, and a drug screen. The physician also tests the applicant's vision, hearing, cardiovascular system, respiratory system, gastrointestinal system, and other systems.⁵⁵ After an applicant passes these tests, the physician certifies a statement of the applicant's condition and indicates whether the applicant has passed the minimum medical standards established by the LEA.

j. Chief's Selection and Final Offer of Employment

Upon successful completion of the medical examination, the NMSP adds the applicant to a list of individuals who have passed each NMSP selection device. Prior to the start of an SPA class, the chief reviews this list and makes a final selection of applicants who will be offered entry into the SPA. The state legislature indirectly sets the number of applicants accepted for each recruit class by setting the amount of funding to hire officers, which varies from year to year. The SPA can accommodate up to sixty-four recruits at one time.

When the chief selects an applicant, the NMSP sends the applicant a written final offer of employment. All NMSP recruits are employees of the NMSP when they begin professional training at the SPA.

3. Initial Officer Training at the State Police Academy

Once hired, the recruit must complete the twenty-two week paramilitary SPA to become a sworn officer employed by the NMSP. The recruit must meet certain requirements, including (1) achieving and maintaining a minimum level of physical fitness; (2) passing each block of instruction with a minimum score of 70%; (3) developing proficiency with all departmental

⁵³ DPS Training Center, Medical Examination Procedure 3 (Jan. 17, 2012).

⁵⁴ *Id.* at 5.

⁵⁵ *Id.* at 15-18.

weapons; (4) learning to respond, investigate, and provide enforcement at all accident, criminal and narcotic, driving while intoxicated (DWI), and domestic violence incidents; (5) developing techniques for dealing with the public; (6) learning the command structure of the NMSP, the functions of the bureaus and divisions within the DPS, and the Department's daily activity logs, correspondence, and other official documents; (7) learning basic Spanish; and (8) completing cultural awareness training.⁵⁶

To exit the Academy, recruits must meet the minimum physical fitness exit standards which are required of all law enforcement officers statewide, as a matter of law, in order to be certified.⁵⁷ These standards, like the physical fitness entrance requirements, are established by the LEA Board, and in the case of exit standards are based on the sixtieth percentile of the Cooper Institute standards. Recruits must be able to complete twenty-five push-ups in one minute, thirty-seven sit-ups in one minute, a one-and-a-half-mile run in fourteen minutes and fifteen seconds, and a 300-meter run in sixty-four seconds. The SPA also requires recruits to complete two obstacle courses. Recruits demonstrate their proficiency with NMSP-issued weapons by qualifying two consecutive times, with a minimum score of 80%, on all applicable firearms courses.⁵⁸ There are three phases in the qualifications process, simulating day, night, and stress conditions. The NMSP requires the recruits to complete each firearms course using a variety of NMSP-issued weapons.⁵⁹ The SPA instructors observe the recruits participation in hands-on, simulated scenarios to determine whether the recruits are proficient in defensive tactics.

The instructors provide most other SPA-required material through in-classroom lectures. After each block of instruction, the SPA gauges recruit knowledge by written tests, including examinations that measure the recruits' knowledge of survival Spanish, use-of-force guidelines, emergency vehicle operation, the rules of evidence and other legal principles, interaction with persons with mental impairments, sex crimes, collision investigation, domestic violence, traffic law, and DWI detection and a field sobriety test (which includes a practical examination). The SPA recruits also take the statewide Law Enforcement Officer Certification Examination, which the LEA administers.

The NMSP conducts and maintains records of exit interviews with the recruits that leave the SPA prior to graduation. The TRB reviews these exit interviews. The OCR found that during the period under review, all female recruits who exited the Academy prior to graduation did so voluntarily. The stated reasons for departure included physical injury, not feeling physically or mentally prepared for the rigors of the Academy, and the need to be at home with children.

⁵⁶ DPS, Organization and Administration, DPS Policies and Procedures, Policy No. ADM: 43 app. E (Aug. 29, 2015).

⁵⁷ N.M. STAT. § 29-7-6 (2016); N.M. CODE R. § 10.29.9 (2016).

⁵⁸ DPS, Carrying of Firearms, ADM: 13, 6 (May 1, 2014).

⁵⁹ DPS, Firearms Training Manual, NMSP (Sept. 23, 2011).

B. Analysis of Possible Sex-based Discrimination in the Hiring Process

As discussed above, the OCR may prove sex-based discrimination in multiple ways, including by showing that an organization's selection and hiring policies and practices, although neutral on their face, have a disparate impact on female applicants.⁶⁰ To analyze whether the NMSP's selection and hiring processes had a disparate impact on female applicants, the OCR retained the statistical consulting services of Dr. Janice Madden, professor of regional science, sociology, urban studies, and real estate, at the University of Pennsylvania. Dr. Madden and her team at Econsult Corporation analyzed disparities based on sex for each step in the NMSP's officer selection process, both for each recruit class and for all classes in aggregate. As discussed in Dr. Madden's attached report,⁶¹ she found that none of the selection devices that the NMSP used during the time period under review had a statistically significant adverse impact on women or any racial subset of women. The table below summarizes her overall findings for each selection device.

Appendix Table							
Screening Device Outcomes by Sex for the 84th through 89th Recruit Classes							
Screening Device	Women Applicants			Men Applicants			Probability Chance Causes Difference
	Number		%	Number		%	
	Passed	Took	Passed	Passed	Took	Passed	
Age over 21	121	121	100.0%	959	959	100.0%	NA
US Citizen	121	121	100.0%	959	959	100.0%	NA
High School	121	121	100.0%	959	959	100.0%	NA
No Felony Record	121	121	100.0%	959	959	100.0%	NA
Locate Anywhere in NM	121	121	100.0%	959	959	100.0%	NA
At Least 30 College Credit Hours	31	121	25.6%	223	959	23.3%	0.570
Driver's License	120	121	99.2%	958	959	99.9%	0.212
PAT	67	79	84.8%	605	678	89.2%	0.257
PAT (w/ Hispanic Men only)	67	79	84.8%	382	415	92.0%	0.053
Written Exam	60	67	89.6%	567	619	91.6%	0.499
Written Exam (w/ White Men only)	60	67	89.6%	148	153	96.7%	0.049
Polygraph	46	52	88.5%	450	518	86.9%	1.000
Background Check	41	45	91.1%	384	429	89.5%	1.000
Interview	39	40	97.5%	352	369	95.4%	1.000
Psychological Evaluation	30	37	81.1%	270	324	83.3%	0.816
Conditional Offer	30	31	24.8%	262	281	27.3%	0.589
Medical Examination	28	28	100.0%	251	251	100.0%	NA
Drug Test	28	28	100.0%	247	248	99.6%	1.000
Offered Academy	21	28	75.0%	213	247	86.2%	0.156
Graduated Academy	16	27	59.3%	164	270	60.7%	0.442

⁶⁰ 42 U.S.C. § 2000e-2(k); *see also* Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971); Murphy v. Derwinski, 990 F.2d 540, 544 (10th Cir. 1993).

⁶¹ *See* app. A. Also attached, as Appendix B, is Dr. Madden's *curriculum vitae*.

The OCR's review of NMSP policies and interviews with NMSP officers found no evidence of sex-based discrimination, intentional or otherwise, in the NMSP's hiring process. We note that the NMSP did not provide the OCR with information indicating that it is complying with the Safe Streets Act's regulatory requirement to periodically review each of its selection devices to ensure that they are nondiscriminatory and have no disparate impact on female applicants or recruits.⁶²

C. Recommendations

The OCR makes the following selection-related recommendations

- The NMSP should evaluate whether its employment criteria, standards, and selection devices are directly aligned with the skills needed to be an NMSP officer and do not serve as an unnecessary barrier to prospective female officers.⁶³ As part of this evaluation, the NMSP should
 - Review the nature and structure of the SPA to ensure that the training objectives and paramilitary nature of the Academy meet the Department's needs.⁶⁴
 - Confirm that the factors considered during background and credit checks are job related and assess the applicant's suitability for employment.⁶⁵ For example, some law enforcement agencies have successfully modified their review of background and credit checks to avoid automatically screening out a qualified candidate for past drug use or financial hardship without giving the applicant the opportunity to contextualize any perceived problems.⁶⁶ The NMSP should also ensure that all outside investigators who conduct applicant background checks have access to the information needed to complete these reviews.⁶⁷
- The NMSP must regularly review each of its selection devices to ensure that they are nondiscriminatory and have no disparate impact on female applicants or recruits.⁶⁸

⁶² 28 C.F.R. 42.303(a), (c)(2) (2016).

⁶³ Advancing Diversity in Law Enforcement, *supra* note 39, at iv.

⁶⁴ There is some evidence that a more collegial training environment increases the graduation rate of female recruits. BRIAN REAVES, BJS, STATE AND LOCAL LAW ENFORCEMENT ACADEMIES, 2006 (2009), 11, <http://go.usa.gov/x9P8j>.

⁶⁵ DOJ, THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS (2006), 114, <http://go.usa.gov/x9P8D>.

⁶⁶ Advancing Diversity in Law Enforcement, *supra* note 39, at iv, 21-22, 30, 38, 55-56.

⁶⁷ See UNITED STATES GOV'T ACCOUNTABILITY OFFICE, CRIMINAL HISTORY RECORDS: ADDITIONAL ACTIONS COULD ENHANCE THE COMPLETENESS OF RECORDS USED FOR EMP'T-RELATED BACKGROUND CHECKS (2015), GAO-15-162, Intro., <http://go.usa.gov/x9P85>.

⁶⁸ 28 C.F.R. 42.303(a), (c)(2) (2016).

VI. Retention

The NMSP's EEOP obligations under the Safe Streets Act regulations, discussed above, include assessing its efforts to retain employees.⁶⁹ Training opportunities, equal employment and family leave policies, and promotional opportunities contribute to an organization's ability to retain its employees.

A. Post-Academy Training

The Safe Streets Act regulations require a recipient to conduct an annual self-assessment of its training programs to determine whether these programs treat women equitably.⁷⁰ If, as a result of this analysis, a recipient concludes that women do not receive the same type and amount of training opportunities as men, it should describe what timely steps it will take to correct the deficiency. The NMSP did not provide the OCR with evidence that it has a system for annually monitoring whether its training programs are equitable for female officers.⁷¹

1. Field Training Evaluation Program

Upon graduation from the SPA, a probationary officer participates in the Field Training and Evaluation Program (FTEP).⁷² In the FTEP, probationary officers ride with field training officers (FTOs) for a total of fourteen weeks, divided into four phases. Each probationary officer rides with a different FTO for the first three phases, which last four weeks each. The probationary officer spends the last two weeks of the FTEP shadowing the initial FTO. At each stage, the FTO tests the probationary officer's knowledge and documents the new officer's job proficiency through daily observation reports. The probationary officer also takes a written test during the probationary period. The NMSP has "Coach Officers" who oversee the FTEP as well as peer officer support teams, which are teams made up of other commissioned officers who can provide guidance to probationary officers.

After completing the FTEP, the NMSP assigns officers to regular patrol duty as a one-person unit. The officer remains in probationary status for two years.⁷³ Probationary officers receive quarterly evaluations from their superiors.

2. In-Service Training

All New Mexico certified law enforcement officers must receive a minimum of forty hours of

⁶⁹ *Id.* §§ 42.303(a), (c), .304.

⁷⁰ *Id.* § 42.303(c)(3).

⁷¹ 28 C.F.R. § 42.303(c)(3) (2016).

⁷² DPS, State Police Training, DPS Policies and Procedures, Policy No. TRG: 04 (Feb. 19, 2014).

⁷³ Among the NMSP officers that graduated in the 84th through the 88th Recruit Classes, only male officers were either discharged during the probationary period (three) or had their probation extended (five).

training bi-annually.⁷⁴ Much of this training is on mandatory topics, including safe pursuit, domestic violence incident response, hate crime response, firearms training, child abuse incident response, interaction with persons with mental impairments, and legal updates.⁷⁵ The code allows officers to receive discretionary training on other topics that will improve their job-related knowledge or skills.

During the Compliance Review, in November of 2015, the NMSP sent five female officers to attend the International Association of Chiefs of Police's Women's Leadership Institute.⁷⁶ In March 2016, the NMSP sponsored the training, "Building Warrior Women," which twenty female NMSP officers attended. Most female officers interviewed by the OCR did not raise any concerns about their training opportunities, but a small minority felt that the Department did not approve enough of their training requests.

B. EEO Policies, Practices, and Related Training

Under the Safe Streets Act's nondiscrimination provisions and its implementing regulations, the DPS must protect its employees from employment discrimination, including harassment and retaliation.⁷⁷ The DPS has thorough policies on these subjects and a robust training and investigation protocol to ensure compliance with the Safe Streets Act and other federal and state laws prohibiting discrimination. The DPS has also designated an equal employment opportunity officer (EEO officer) to monitor its EEOP, as required by the Safe Streets Act regulations.⁷⁸

1. EEO Policy: Content

The DPS has a collection of policies that govern equal employment opportunity,⁷⁹ anti-discrimination, harassment, and retaliation;⁸⁰ and the investigation and resolution of complaints about these matters⁸¹ (collectively EEO Policies). The EEO Policies prohibit discrimination based on race, sex, age, national origin, disability, religion, color, sexual orientation, gender identity, genetic information, marital status, spousal affiliation, or veteran's status.⁸² These Policies require the Department to comply with federal and state equal employment opportunity laws, including Title VII. The EEO Policies also contain a detailed definition of prohibited

⁷⁴ N.M. CODE R. § 10.29.7 (2016).

⁷⁵ *Id.* at § 10.29.7.8.

⁷⁶ *Women's Leadership Institute*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, <http://www.iacp.org/WLI> (last visited Feb. 23, 2017).

⁷⁷ 42 U.S.C. § 3789d(c)(1) (2012); 28 C.F.R. § 42.203(b)(9) (2016).

⁷⁸ 28 C.F.R. § 42.304(i).

⁷⁹ DPS, Equal Employment Opportunity, DPS Policies and Procedures, Policy No. ADM: 07 (May 3, 2013) [hereinafter Equal Employment Opportunity Policy].

⁸⁰ DPS, Anti-Discrimination, Harassment, and Retaliation, DPS Policies and Procedures, Policy No. ADM: 34 (Dec. 23, 2013) [hereinafter Anti-Discrimination Policy].

⁸¹ DPS, Investigation and Resolution of Complaints, DPS Policies and Procedures, Policy No. ADM: 36 (Dec. 23, 2013) [hereinafter Complaint Policy].

⁸² Equal Employment Opportunity Policy, *supra* note 79, at 1.

harassment and forbid retaliation for opposing discrimination or participating in an investigation of possible discrimination. Under the EEO Policies, “consensual sexual or romantic relationships between DPS employees are strongly discouraged. These same types of relationships are prohibited if one employee has supervisory authority over the other employee.”⁸³

The EEO Policies designate a departmental EEO officer who is responsible for coordinating compliance with nondiscrimination laws and policies and providing training on these topics. The EEO officer also oversees the investigation of discrimination, harassment, and retaliation complaints. Department supervisors are responsible for, among other things, maintaining an environment free of discrimination, promptly reporting any alleged discrimination or harassment, and taking any action necessary to correct discrimination and harassment. Under the EEO Policies, all employees and supervisors should report discrimination and harassment to the EEO officer.⁸⁴ An individual who wishes to report alleged discriminatory conduct should do so within ninety days from the last alleged incident. The EEO Policies do not require discrimination complaints to be in writing. Employees who are uncomfortable reporting discrimination or harassment to an immediate supervisor may bypass the chain of command and report to any supervisor or to the EEO officer.⁸⁵

The EEO Policies establish procedures for a formal investigation of discrimination complaints. These procedures allow the EEO officer to determine if the complainant is amenable to mediation and to facilitate mediation if the complainant consents. If informal resolution is unsuccessful or inappropriate,⁸⁶ the EEO Policies detail the steps and standards used in a formal, impartial administrative inquiry. These formal investigations are typically completed within fifteen to thirty days. The EEO Policies require that the investigator preserve all witness interviews and other evidence, formally notify the witnesses that their statements will be maintained in confidence, and distribute the Department’s prohibition on retaliation to all parties and witnesses.

At the completion of the investigation, the EEO officer will issue a written report and recommendation. Where a law enforcement officer’s conduct is in question, the chief makes the final determination, after considering the written report and the EEO officer’s recommendation, whether any discipline should be imposed. The EEO Policies outline possible disciplinary sanctions for an employee found to violate civil rights laws, which may include dismissal. The EEO Policies contain record-keeping requirements, including standards governing the provision of copies of the reports to the involved parties. Either party can respond in writing to the report

⁸³ Anti-Discrimination Policy, *supra* note 80, at 5.

⁸⁴ However, an individual who has been subject to discrimination but chooses not to report the conduct will not be subject to discipline on this basis.

⁸⁵ If the complaint is against the EEO officer, the complaint may go to any supervisor.

⁸⁶ Per the policy, informal resolution is inappropriate to address allegations of threats, violations, intimidation, physical touching, assault, or retaliation; when the respondent has been previously counseled or disciplined for discrimination or related conduct; or when the respondent has previously entered into a mediation agreement regarding similar conduct. Investigation Policy, *supra* note 81, at 2.

and decision, which is considered a formal rebuttal and is included in the official file. The Department conducts an annual analysis of its civil rights grievances.

2. EEO Policy: Training and Notification to Officers

The DPS requires posting the EEO Policies on the Department's internal network and its public website; distributing them to all supervisory personnel; reviewing them during annual supervisory training; posting them in the Human Resources Office; and providing them to contractors, subrecipients, and job applicants. The SPA recruits take a one-day, in-person class on the EEO Policies and the NMSP's nondiscrimination obligations during the Academy. They are then tested on these policies. The NMSP supervisors also take an in-person EEO training. Supervisor performance evaluations take into consideration compliance with the EEO Policies.⁸⁷ All other NMSP officers take an annual online EEO training. As part of their annual evaluation, NMSP officers must certify that they read and understood the EEO Policies. During the OCR's interviews with DPS employees, all reported taking the annual online EEO training.

The NMSP provided the OCR with its EEO training materials, which described each supervisor's responsibility to ensure compliance with state and federal civil rights laws. This detailed training outlines what constitutes prohibited different treatment, harassment, and retaliation, as well as the steps that employees can, and in the case of supervisors must, take to address these issues. The NMSP EEO training uses scenario-based vignettes to provide examples of how the prohibited conduct may be identified and addressed.

During the period the OCR reviewed, the NMSP reported that it received seven internal complaints of sex discrimination. For each of the complaints, the NMSP conducted an impartial, documented investigation. The investigations into three of the internal complaints sustained the charges, and the NMSP suspended the accused employee. For one of the internal complaints, the NMSP sustained the charge, and the accused employee received a letter of reprimand. In another matter, the NMSP sustained the charge and the accused employee resigned directly after his interview with the EEO officer. In two of the internal complaints, the NMSP did not have sufficient evidence to support the claims and did not sustain the charges. During this time period, two outside parties sued the DPS alleging sex discrimination by an NMSP officer. In both instances, the reviewing court dismissed the complaints against the DPS with prejudice. The NMSP also reported to the OCR that a male employee filed an EEOC charge against the DPS alleging sex discrimination. The EEOC dismissed the allegation for lack of probable cause.

All of the officers interviewed by the OCR indicated that they were familiar with the EEO Policies and related procedures and stated they felt that if they raised concerns of sex discrimination, including sexual harassment, the NMSP would take these concerns seriously and address them fairly. The officers who had been involved in the DPS EEO complaint process, either as complainants, witnesses, or supervisors, all reported to the OCR that the current DPS EEO director handled the complaints and investigations effectively.

⁸⁷ Anti-Discrimination Policy, *supra* note 80, at 8.

3. Family Leave Policies

Adopting and maintaining adequate family leave policies is an important component of retaining female employees.⁸⁸ According to NMSP policy “employees affected by pregnancy, childbirth, and related medical conditions will be treated the same as persons affected by other medical conditions.”⁸⁹ In other words, NMSP does not provide officers separate maternity, paternity, or adoption leave, but employees who are pregnant, who have new children, or who must take leave to care for family members may use a combination of sick leave, annual leave, compensatory time, personal holiday, or other types of standard leave, in addition to any leave donated from other employees, to take time off from work.⁹⁰ Employees may qualify for protections under the Family and Medical Leave Act (FMLA) of 1993,⁹¹ which provides twelve weeks of unpaid, job-protected leave to eligible employees for some pregnancy, childbirth, and parenting circumstances. The NMSP policies recognize that some pregnant officers may have a need for modified or limited duty.⁹² Officers who desire modified or limited duty must submit their request to an immediate supervisor, who will then confidentially communicate the request to the DPS Human Resources Department. With such requests, officers must include a medical certification of the health condition and the anticipated date of return to normal duties.

None of the female officers interviewed by the OCR expressed problems with using the departmental leave system for maternity leave or requesting modified/limited duty related to pregnancy. Some officers confirmed that they took pregnancy leave without issue. One former female NMSP officer stated, however, in her exit interview that her supervisor’s reluctance to approve her FMLA-leave requests to care for her family was one of the reasons for her early retirement.

C. Promotion Process

Overall, there were very few complaints from female NMSP officers about the training or working conditions within the Department. A few female officers did raise a concern that promotion decisions were not transparent.

The NMSP promulgated its promotion standards in a Department policy that details the minimum requirements for promotion, as well as the procedure the NMSP uses to make

⁸⁸ See THE WHITE HOUSE, PRESIDENTIAL MEMORANDUM—MODERNIZING FEDERAL LEAVE POLICIES FOR CHILDBIRTH, ADOPTION AND FOSTER CARE TO RECRUIT AND RETAIN TALENT AND IMPROVE PRODUCTIVITY (2015), <http://go.usa.gov/x9P8U>.

⁸⁹ DPS, Absences From Work, DPS Policies and Procedures, Policy No. PRS: 15 (May 20, 2015).

⁹⁰ *Id.*

⁹¹ Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2012).

⁹² DPS, Modified/Limited Duty, DPS Policies and Procedures, Policy No. PRS: 19 (June 25, 2015). This policy establishes the use of modified or limited duty for all employees, due to injury, illness, pregnancy, or inability to perform their normal duties because of temporary restrictions placed upon them by their health care provider.

promotional decisions.⁹³ To be considered for a promotion to sergeant, a candidate must have at least five years of satisfactory experience. Candidates take a written test, which will account for 20% of the final score for all candidates that advance to the next round of the promotional process. Those candidates who receive a score on the written examination that is in the top one third of test takers are invited to take the next examination at the NMSP's Assessment Center. There, the NMSP uses real-time, simulated scenarios to which the candidates must respond. The Assessment Center score comprises 40% of the candidate's final score. The remaining portion of each candidate's final score is based on seniority (20%) and annual evaluations (20%), with bonus points awarded for post-secondary educational attainment.⁹⁴ After the NMSP ranks the candidates by their the final score, the chief typically goes down the list and offers the highest ranked candidate the opportunity to be promoted to the sergeant position at one of the available posts. The NMSP allows the chief to use "the rule of three," which allows the chief to skip over one or two more highly ranked candidates to offer a lower ranked officer a promotion if necessary to meet the needs of the Department. For more senior promotions, such as to lieutenant, captain, or major, the chief establishes the process by which the NMSP selects candidates. The NMSP regulations do not require that the chief adopt specific selection devices for promotion to more senior ranks.

From 2012 through 2015, the NMSP offered to promote officers to sergeant 106 times, with nine offers going to female officers.⁹⁵ In reviewing the sergeant promotions, the OCR found that both male and female candidates frequently rejected offers of promotion because they did not want to move to the location where the NMSP determined there was a need for a new sergeant. Female officers rejected a promotion to sergeant four times, and male officers rejected a promotion to sergeant thirty-two times. In the same time period, the NMSP promoted twenty-nine male officers, but no female officers, to the rank of lieutenant. During the period of review, the chief only invoked the "rule of three" once, deciding not to offer a promotion to a male officer based on recent poor performance evaluations.

In August 2015, during the period examined by the OCR, there were three male deputy chiefs, sixteen male captains, and twenty-nine male lieutenants, while no female officers held any of these ranks. At the time there was one female major and there were five male majors, and there were six female sergeants and seventy-eight male sergeants. Overall, female officers held seven out of 141 of the positions ranked sergeant or above, or approximately 5% of these positions. Currently there are three male deputy chiefs; one female major and five male majors; one female captain and sixteen male captains; and three female lieutenants and forty male lieutenants. There are eight female sergeants and one hundred and one male sergeants. Overall, female officers hold thirteen out of 191 of the positions ranked sergeant or above, or approximately 7% of these positions. Female officers also hold about 7% of all the NMSP officer positions.

⁹³ DPS, Promotional Standards, DPS Policies and Procedures, Policy No. PRS: 03 (Feb. 19, 2014).

⁹⁴ A candidate receives one bonus point for sixty college credit hours or an Associate's Degree, two points for a Bachelor's Degree, and three points for a Master's Degree.

⁹⁵ This is a duplicated count, as some officers turned down an initial or second offer of promotion.

D. Recommendations

The OCR makes the following retention-related recommendations to assist the NMSP's efforts to retain female officers:

- The NMSP must design a system for annually monitoring the effectiveness of its training programs, including the FTEP Program and in-service training programs, and determine whether these programs are equitable for female officers.⁹⁶ This assessment should collect information on each training opportunity for officers; the officers who apply for the training, classified by sex; the officers selected to participate in the training, classified by sex; and the reasons for selecting or rejecting each applicant. The NMSP should also examine whether it sufficiently notifies officers of available training opportunities, supplies adequate information to officers about the selection process for training programs, and provides equitable training opportunities to male and female officers. New Mexico regulations require the NMSP to retain its training records for ten years;⁹⁷ therefore, these records should be accessible to the NMSP to inform its review of its training program and its impact on female officers. The NMSP also has a training committee that meets quarterly,⁹⁸ which can play a critical role in conducting the necessary training assessment.
- The NMSP should consider developing a formal mentorship program for officers. It should also institute a leadership training program.⁹⁹ A lack of mentoring opportunities and leadership development can present a barrier to advancement and promotion for women.

VII. Conclusion

Based on the foregoing, the OCR finds that the NMSP is in substantial compliance with the requirements of the Safe Streets Act and its regulations governing employment practices affecting the recruitment, selection, and retention of female entry-level officers. The OCR has offered recommendations to assist the DPS in maintaining its compliance with the Safe Streets Act in recruiting, hiring, and retaining women officers. The OCR is available to offer technical assistance to assist the NMSP in implementing these recommendations.

The closure of this Compliance Review will be limited to the specific facts of the matter and does not preclude the DOJ from taking additional appropriate action to evaluate a recipient's compliance with any of the laws enforced by DOJ. Additionally, closing this Compliance

⁹⁶ 28 C.F.R. § 42.303(c)(3) (2016).

⁹⁷ N.M. CODE R. § 1.18.790 (2016).

⁹⁸ DPS, State Police Training, DPS Policies and Procedures, Policy No. TRG: 04 3 (Feb. 19, 2014).

⁹⁹ The Advancing Diversity in Law Enforcement initiative identified these programs as essential to providing underrepresented officers with the "support, guidance, and resources they need to succeed on the job, enjoy their careers, and earn promotions." Advancing Diversity in Law Enforcement, *supra* note 39, at v. See also *id.* at 33–34, 44.

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Review does not affect a recipient's requirement to comply with all applicable federal laws and regulations, provided that the recipient remains subject to such laws and regulations.

The DPS and the NMSP should be mindful that federal law protects persons who participated in the OCR's Compliance Review from retaliation for having provided information to the OCR. The OCR will initiate an investigation if it should receive credible evidence of reprisal.

I appreciate the cooperation from you and your staff, who have been helpful at every stage of the investigation.

Sincerely,



Michael L. Alston
Director

Attachments

Cc: The Honorable Susana Martinez
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Appendix A

**New Mexico Department of Public Safety
Sex Disparities in Screening**

**Janice Fanning Madden, PhD
Econsult Corporation**

December 2016

I have been retained by the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice as an expert labor economist and statistician to determine whether the New Mexico Department of Public Safety's ("DPS") hiring selection devices have a disparate impact on women or any racial subset of women. I was asked to analyze whether there are differences based on sex in the likelihood of a candidate passing each selection device the DPS used to hire state troopers from 2012 through 2015.

I am a labor economist with extensive experience in the analysis of labor markets and, in particular, differentials based on sex in labor markets. I am tenured as a Professor of Regional Science, Sociology, and Real Estate at the University of Pennsylvania ("Penn"). I received a Bachelor of Arts in Economics from the University of Denver and completed a Masters of Arts and a Doctor of Philosophy in Economics at Duke University. Since I arrived at Penn in 1972, I have undertaken research dealing with the effects of age, race, sex, and urban location on labor market outcomes and metropolitan variations in income distribution. My work has been published in the most prestigious economics journals and I have written five books on these topics. Further, I have testified as an expert witness on labor economics and statistics in over 45 cases in federal and state courts. Other qualifications are included in the attached curriculum vitae.

I analyzed the DPS-produced data to determine if there were disparities based on sex, or racial or ethnic subsets of sex, for several stages of the DPS' screening process, as presented in the data file. I conclude that there are no statistically significant disparities based on sex. Based on my examination of the various screens that the New Mexico State Police (NMSP) used in the

hiring process, I conclude that there is no evidence of sex disparities, regardless of whether women were compared to all men, or to white men or to Hispanic men only.¹

Summary of Analysis

The DPS selection process is divided into two sections. During the first portion, the DPS reviews whether the applicant meets the threshold requirements for DPS employment. This first review assesses whether the applicant is at least 21 years old; is a U.S. Citizen; has graduated from high school or has obtained a GED; has earned 30 hours of college credits; agrees to accept employment anywhere in New Mexico; has a valid driver's license, and has not received a felony conviction in the last three years. These first screens were passed by all men and all women who applied, including age, citizenship, possessing a high school diploma, no felony record, and willingness to accept an appointment anywhere in New Mexico. The driver's license requirement was met by all but one female applicant and one male applicant, resulting in no significant sex difference.

The Chief of the NMSP may delay appointment in the agency for candidates who have not earned at least 30 hours of college credits so that they may complete the remaining hours of college credits. The DPS data show that most candidates do not have 30 college credit hours, yet they remain in the pools. There are no statistically significant sex differences in the likelihood of meeting the college credit criteria, which are met either by completing 30 college credit hours or having spent two years in the military: 25.6% of the women and 23.3% of the men do.

If the applicant meets these qualifications, the DPS schedules the applicant for the physical Agility Test (PAT) and the written test. While the PAT pass rate for women was less

¹ There were insufficient numbers of applications from African American men and Asian men for a statistical analysis of disparities for women relative to these groups.

than for men (for the 84th through 89th recruit classes, women passed 84.8% of the time while men passed 89.2%), this does not represent a statistically significant difference.² Women's pass rate on the written exam (89.6%) was also insignificantly lower than men's (91.6%).³

Those who pass both the PAT and written exams are then scheduled for a polygraph examination: 88.5% of the women and 86.9% of the men passed the polygraph. Thereafter, DPS initiates the background check process for those applicants who successfully completed the polygraph, and 91.1% of the women and 89.5% of the men passed the background check. There are no statistically significant differences by sex in passing either the background check or the polygraph.

Before conditional offers are made the DPS conducts an in-person interview, which was passed by 97.5% (all but one) of the women and 95.4% of the men (no statistically significant difference by sex). Finally, there is a psychological evaluation, which was passed by 81.1% of the women and 83.3% of the men (no statistically significant difference by sex).

After the interviews and psychological evaluation, candidate packages are forwarded to the Chief of the NMSP to be considered for a conditional appointment. In consultation with the recruitment team, the Chief makes selections based on each candidate's complete application package. Pursuant to state law, the Chief weighs the moral character of the applicants during his selection. Those applicants who have received a conditional offer are subsequently scheduled for a medical examination, which was passed by all women and men in this time period, with no

² The PAT pass rates were 89% for white men and 92% for Hispanic men. The 84.8% pass rate for women was borderline statistically significantly lower than that for Hispanic men (at a probability of 0.053).

³ The written exam pass rates were 96.7% for white men and 90.1% for Hispanic men. The 89.6% pass rate for women was borderline statistically significantly lower than that for white men (at a probability of 0.049).

statistical difference by sex. Before entering the State Police Academy, the applicants must also undergo a pre-employment drug screening. The drug screening was passed by all candidates. Only after all these steps are completed successfully may applicants enter the State Police Academy.

Description of the Statistical Method

The statistical method I used to reach my conclusions, Fisher's Exact Test, is universally accepted for testing differences in outcomes between two groups. I compared the pass rates of female applicants to the pass rates of male applicants. If the male pass rate exceeded the female pass rate, the comparison is consistent with the screening device having disparate effects on female applicants. The difference may also indicate the magnitude of the sex disparity. The analysis proceeds in five steps.

First, I create "boxes" and sort men and women applicants who were subject to a specific screen into separate boxes.⁴

Second, I identify the applicants of each "sex" who passed the specific screen being analyzed.

⁴ Screening device outcomes for women applicants were analyzed using three different comparison groups: all men, white men, and Hispanic men. I report the one case where the comparison to all men yielded different results than to men sorted by ethnicity, which is the case of the written exam described above and discussed in more detail below. Further, I test for differences in passing each screening device for each sex/ethnic grouping for each class, 84th through 89th, individually. The only class that had different results was the 88th. For this class, women's pass rate for the PAT was very low, at 56.3%, and was statistically significantly lower than men's pass rate, which was 89.9%. The women's pass rate was also significantly lower than white men's (86.7%) and Hispanic men's (94.2%). This was the only one of the 392 comparisons made that, individually, had a probability of occurring less than 0.05 (or more than 2 standard deviations) of the time in the absence of "true" sex disparities. Because such outcomes could occur for up to 19.6 such individual comparisons with no "true" sex disparities, this disparity is consistent with sex neutral screening processes.

Third, I define women's expected share of screen passers for each specific screen as women's share of the men and women subject to the screen (i.e., in either box).

Fourth, I define the expected number of women who pass the screen. The expected women's *percentage share* of passers is computed as women's share of all applicants subject to the screen. Then, the expected *number* of women who pass is the expected women's share of passers times the total number of actual screen passers.

For example, there were 678 men and 79 women taking the PAT for the 84th through 89th recruit classes. Women, therefore, were 10.4% of the test taker pool. I expect that women's share of PAT passers is equal to their share of test takers (that is, 10.4%). A total of 672 candidates (67 women and 605 men) passed the PAT for the 84th through 89th recruit classes. Therefore, 70.1 women are expected to pass, relative to the 67 who actually passed, so the PAT yields a "shortfall" of 3.1 women passers (subtracting 67 from 70.1).

Fifth, I compare the total actual number of women passing to the expected number and evaluate statistically whether any differences could have occurred by chance. I use Fisher's exact test to compute the statistical significance of any difference between women and men in passing rates for a specific screen. Statistical significance measures the probability that a difference could have occurred by chance. This test computes all possible sex differences in pass rates that could occur, given the numbers of men and women subject to the screen and the number who pass it. Then, all of the possible outcomes are "lined up" in the order of the number of women passing. The probability that the number of women who actually pass could have occurred by chance, then is the number of cases where the number of women who pass is equal to, or greater than, the number who actually passed divided by the total number of possible outcomes. If that calculation yields a proportion that is less than, or equal to, 0.05, the difference in pass rates is evaluated as "statistically significant."

All sex differences in outcomes from screening devices (with all men, white men only, or Hispanic men only) were evaluated with this technique. As described above there was only one analysis, or comparison, of the 84th through 89th recruit classes that yielded a proportion (or probability) that was less than, or equal to, 0.05. That comparison was for the pass rates on the written exam for all women versus white men, where the proportion was 0.049. Another, the comparison between PAT pass rates for women and for Hispanic men, was only slightly above 0.05, at 0.053. Because (1) these proportions are very close to 0.05; (2) a statistically significant result is expected to occur for 5 percent of tests in the absence of any sex bias; and (3) I have conducted 56 such comparisons, I conclude that this single disparity, or statistically significant difference, is consistent with a sex neutral process. We expect, in the absence of any “true” disparities by sex, that an average of 2.3 comparisons out of these 56 would yield a proportion of approximately 0.05.

Conclusion

Women applicants were, on average, just as likely to pass each screening device, including the PAT, as were men applicants of the 84th through 89th recruit classes.

Appendix Table							
Screening Device Outcomes by Sex for the 84th through 89th Recruit Classes							
Screening Device	Women Applicants			Men Applicants			Probability Chance Causes Difference
	Number		%	Number		%	
	Passed	Took		Passed	Took		
Age over 21	121	121	100.0%	959	959	100.0%	NA
US Citizen	121	121	100.0%	959	959	100.0%	NA
High School	121	121	100.0%	959	959	100.0%	NA
No Felony Record	121	121	100.0%	959	959	100.0%	NA
Locate Anywhere in NM	121	121	100.0%	959	959	100.0%	NA
At Least 30 College Credit Hours	31	121	25.6%	223	959	23.3%	0.570
Driver's License	120	121	99.2%	958	959	99.9%	0.212
PAT	67	79	84.8%	605	678	89.2%	0.257
PAT (w/ Hispanic Men only)	67	79	84.8%	382	415	92.0%	0.053
Written Exam	60	67	89.6%	567	619	91.6%	0.499
Written Exam (w/ White Men only)	60	67	89.6%	148	153	96.7%	0.049
Polygraph	46	52	88.5%	450	518	86.9%	1.000
Background Check	41	45	91.1%	384	429	89.5%	1.000
Interview	39	40	97.5%	352	369	95.4%	1.000
Psychological Evaluation	30	37	81.1%	270	324	83.3%	0.816
Conditional Offer	30	31	24.8%	262	281	27.3%	0.589
Medical Examination	28	28	100.0%	251	251	100.0%	NA
Drug Test	28	28	100.0%	247	248	99.6%	1.000
Offered Academy	21	28	75.0%	213	247	86.2%	0.156
Graduated Academy	16	27	59.3%	164	270	60.7%	0.442

Appendix B

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PERSONAL: U.S. Citizen

EDUCATION: Duke University, Durham, North Carolina
M.A., Economics, 1971
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University of Denver, Colorado
B.A., *cum laude*, Economics, 1969

EMPLOYMENT:

University of Pennsylvania, Philadelphia, PA:

Professor, Department of Sociology, 1994 to present; Department of Regional Science, 1988 to 1994; Associate Professor, 1979-88; Assistant Professor, 1972-78. Professor, Department of Real Estate, The Wharton School, 1990 to 2016.

Associate Chair, Department of Sociology, 2009-11.

Chair, Graduate Group in Demography, 2007-8.

Director of Alice Paul Research Center and the Women's Studies Program, chair, Women's Studies Undergraduate Major, University of Pennsylvania, 1988-1991; 2002-2004.

Interim Director (1998-99); Director of the Masters of Government Administration Program (2000-2002), Fels Institute of Government.

Vice Provost for Graduate Education, 1991 to 1999.

Undergraduate Chair, Department of Regional Science, 1979-91.

Member of the Graduate Groups in Regional Science, in Demography, in Sociology, and in City and Regional Planning.

Research Associate, Population Studies Center.

Professor, Fels Center of Government, 1999 to present.

Co-Director, Penn-Temple Philadelphia Economic Monitoring Project, 1987-91.

Visiting Scholar, Research Division, Federal Reserve Bank of Philadelphia, 1999-2000 and 2005.

Visiting Scholar, Indonesia Second University Development Project, University of Indonesia, Jakarta, 1991.

Member and Consultant, Scientific Advisory Committee, U.S. Army Family Research Program, 1987-92.

Consultant, HCR, Washington, D.C. 1983-85.

Faculty, Federal Judicial Center, Washington, D.C. 1983-84.

Board of Directors (1980-2002) and Consultant (1980-present), Econsult Corp., Philadelphia, PA.

Consultant, U.S. Equal Employment Opportunity Commission, 1979-1991.

Consultant, U.S. Department of Justice, 1984-1988.

Consultant, Abt Associates, Cambridge, Mass., 1979-81.

Staff Economist, National Commission on Employment and Unemployment Statistics Washington, D.C., 1978.

Instructor, Department of Economics, Duke University, Durham, NC, 1971-72.

Consultant, Low Income Housing Corporation, Durham, NC, 1971.

Economist, Federal Power Commission, Washington, D.C., 1970.

AIIESEC intern, Computer Programmer, Ladapoulos Paper Mill, Patras Greece, 1968.

HONORS AND AWARDS:

Boettcher Scholar, 1965-69

Phi Beta Kappa, 1969

AAUW Outstanding Senior Woman, 1969

James B. Duke Fellow, 1969-72

Manpower Development and Training Act Dissertation Fellow, 1972

Robert C. Daniels Foundation Term Chair in Urban Studies, 1990-2000

Academic Excellence Award, Trustees' Council of Penn Women, 1997

Leadership Alliance Award, 1999

Woman of Distinction, 2000, *Philadelphia Business Journal*
Fritz Pollard Alliance (NFL) Game Ball Award, 2004
Faculty Award, Friars Senior Society of the University of Pennsylvania, 2004
Ballard Scholar, University of Pennsylvania Real Estate Center, 2005
Penn Women's Center 2007 Leadership Award
Fellow, Regional Science Association International, elected 2009
Faculty Fellow, Penn Urban Research Institute, 2009
Chair, North American Regional Science Council, 2010
David E. Boyce Award, North American Regional Science Council, 2010
Chair of the Board, American Academy for Political and Social Sciences, 2011-present
President, North American Regional Science, 2014

PUBLICATIONS:

Books:

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“Are Gender Differences in the Gay Pay Gap Due to Unmeasured Gender-Linked Characteristics, Household Division of Labor, or Greater Bias Against Gay Men?” with Pearl Kyei, May 2013.

Academic Conference and Invited Presentations (last five years):

“The Anatomy of Declining Racial Segregation: Large US Metropolitan Areas, 1970-2013,” North American Regional Science, Portland, OR, November 14, 2015.

“Foreign Born Population Concentration and Neighborhood Growth and Development within U.S. Metropolitan Areas,” with Matt Ruther and Rebecca Tesfai, Urban Affairs Association, Miami, FL April 10, 2015.

“The Anatomy of Declining Racial Segregation: Large US Metropolitan Areas, 1970-2009,” Western Regional Science Association, Phoenix, AZ, February 16, 2015.

“Labor, Economics, and Discrimination,” University of Houston, Department of Africana Studies, February 6, 2015.

“The Demography of Commuting: How Population Groups Create and Respond to Cities,” North American Regional Science Association, Washington, DC, Presidential Lecture, November 2014.

“The Anatomy of Declining Racial Segregation: Large US Metropolitan Areas, 1970-2009,” Southern Regional Science Association, San Antonio., TX, March 28, 2014.

“The Anatomy of Declining Racial Segregation: Large US Metropolitan Areas, 1970-2009,” USC Lusk Center Rena Sivitraniidou Annual Research Symposium, Los Angeles, CA, March 7, 2014.

“Gayborhoods: The Economics and Demographics of the Concentration of Gays within Large American Metropolitan Areas,” Association for Real Estate and Urban Economics, Philadelphia, PA, January 2014.

“Gayborhoods: The Economics and Demographics of the Concentration of Gays within Large American Metropolitan Areas,” Association for Public Policy and Management, Washington, DC, November 2013.

“Gender Differences in the Gay Pay Gap: Unmeasured Gender-Linked Characteristics, Household Division of Labor, or Greater Bias against Gay Men?” with Pearl Kyei, Association for Public Policy and Management, Washington, DC, November 2013.

“Gayborhoods: The Economics and Demographics of the Concentration of Gays within Large American Cities,” North American Regional Science Meetings, Ottawa, Canada, November 2012.

“Performance-Support Bias and the Gender Pay Gap among Stockbrokers,” Research Seminar of the Women and Public Policy Program, John F. Kennedy School, Harvard University, September 20, 2012.

“Advancing Women: Where We Are Today,” Network of Executive Women, Rancho Palos Verdes, California, August 1, 2012.

“Are Gender Differences in the Gay Pay Gap Due to Unmeasured Gender-Linked Characteristics, Household Division of Labor, or Greater Bias Against Gay Men?” Women and Family Researchers Network Conference, New York City, June 16, 2012.

“Changing Racial and Poverty Segregation in Large US Metropolitan Areas, 1970-2009,” North American Regional Science Meetings, Miami FL, November 10, 2011.

“Anti-Discrimination Policy and Output-based Pay: The Case of Stock Broker Commissions,” Association for Public Policy Analysis and Management, November 4, 2010, Boston, MA

“Connecting Changes in Racial Segregation and Poverty Segregation in Large U.S. Metropolitan Areas, 1970-2000,” North American Regional Science Meetings, Denver, CO November 12, 2010.

Reports:

“Statement of Janice Fanning Madden on HB 1890,” Labor and Industry Committee Public Hearing, Commonwealth of Pennsylvania, Harrisburg PA, September 18, 2014

“The Demographic and Income Dynamics of Shifts within Large Metropolitan Areas, 1970-2000: Explaining Variations in Racial and Poverty Segregation across Large Metropolitan Areas” Office of Policy Development and Research, U.S. Department of Housing and Urban Development Grant H-21443RG (June 2006)

“Are the Suburbs Really Changing? Examining Changes in the Distribution of Income and Poverty Among Suburban Municipalities of Large Metropolitan Areas” Center on Urban and Metropolitan Policy, The Brookings Institution (January 2001)

“Interstate Sales and Employment Effects in the Wholesale Trade and Retail Trade Industries of Changes in the Federal Minimum Wage Legislation, 1958-77” Contract No. J-9-M-0-0072, Minimum Wage Study Commission (March 1981).

“The Effects of Employment Location and Scheduling of Work Shifts on Women's Employment Opportunities” Grant No. 91-42-78-31, Department of Labor (January 1981).

"The Geographic Targeting of Job Programs" Contract No. 99-0-2698-50-24, National Commission for Employment Policy, (October 1980).

"Report on House Bill 2044: Consequences for the General Assistance Population (joint with others), Senate, Commonwealth of Pennsylvania (May 1980).

"Effects of Changing Household Structure on Cities" Grant No. R01-H-31400-01, National Institute on Mental Health, (June 1980).

"Evaluating the Returns to the Education of Women: Economic Rationale for Sex Differences in Education" Grant No. NIG-G-74-0094, National Institute of Education, (January 1977).

"Evaluating the Returns to the Education of Women" Spencer Foundation, (January 1975).

"The Economics of Sex Discrimination" Grant No. 91-37-72-26 Manpower Administration, U.S. Department of Labor, (July 1972).

FELLOWSHIPS AND GRANTS:

Wharton Sports Business Initiative, "Differences in the Success of NFL Coaches by Race, 2003-2008: Is There Still Evidence of Last Hire, First Fire?" July 2008-June 2009

Penn Urban Research Institute, "Faculty Forum: Cities around the World: Networks, Form, Function" January 2006-July 2007 co-investigators: Richard Estes and Don Kettl.

U.S. Department of Housing and Urban Development, "The Demographic and Income Dynamics of Shifts across Suburban Municipalities within Large Metropolitan Areas: 1970-2000." June 2004-September 2005.

Alfred P. Sloan Foundation, "Parents on the Fast Track in Demanding Professions." (with Jerry Jacobs) September 2003-April 2004.

Ronald McNair Grant to support undergraduate students to prepare for Ph.D. education, 2000-5, \$1 million.

Brookings Foundation, "The Changing Demographics of Suburbs: Implications for City-Suburban Cooperation," May 1998-May 2000.

National Science Foundation "Analysis of Variation in the Intrametropolitan Distribution of Income and Earnings," February 1993-March 1995. REU June-August 1993.

W.E. Upjohn Institute for Employment Research, "Changes in Income Inequality within U.S. Metropolitan Areas," January 1993- December 1995.

Patricia Roberts Harris Grant to support doctoral students at Penn, 1993-8, \$1.7 million.

William Penn Foundation joint with Ben Franklin Partnership, "Temple-Penn Philadelphia Economic Monitoring Project" July 1988-June 1991.

Faculty Grant, Mellon Foundation Program on Assessing and Revitalizing the Social Sciences, "Industrial Transitions, Work Schedule Changes and the Welfare of American Workers" May 1987 - December 1987. Faculty Grant, Mellon Foundation Program on Assessing and Revitalizing the Social Sciences, "City Residences and the Employment of Black Women Who Head Households" August 1986 - February 1987.

Public Policy Initiatives Fund, "The Economic Significance of Displacement for Workers: An Empirical Investigation of Gender Differences," July 1985 - June 1986.

Faculty Grant, Mellon Foundation Program on Assessing and Revitalizing the Social Sciences, "Racial Wage Gradients in the Philadelphia, New York, and Washington, D.C. Labor Markets: An Examination of the Gilded Ghetto Debate" May 1985 - December 1985.

National Commission on Employment Policy, "Geographic Boundaries of Labor Markets" June 1980 - October 1980.

Minimum Wage Study Commission, U.S. Department of Labor, "Interstate Employment Effects of the Federal Minimum Wage Law," March 1980 - February 1981.

U.S. Department of Labor, "The Effects of Employment Location and Scheduling of Work Shifts on Women's Employment Opportunities," September 1978 - May 1980.

National Institute of Mental Health, R01-MH-31400-01 "Effects of Changing Household Structure on Cities," July 1978 – July 1980.

National Institute of Education, "Evaluating the Returns to the Education of Women," September 1974 - May 1976.

Spencer Foundation, "Evaluating the Returns to the Education of Women," January 1974 - December 1974.

University of Pennsylvania Faculty Fellowship, "Deriving a Spatial Labor Supply Curve," June 1974 - September 1974.

OTHER PROFESSIONAL ACTIVITIES:

North American Regional Science Council:

Elected President for 2014;

Elected Council Chair, 2010;

Elected by membership to council, 1992-95 and 2008-11;

Member, Benjamin R. Stevens Dissertation Fellowship Committee, 2005-8, Chair, 2006;

Chair and Organizer, North American Regional Science Meetings, Philadelphia, PA,

November 20-22, 2003. Association for Public Policy Analysis and Management (APPAM):

Elected Secretary, 2012-2014;
Elected member of Policy Council (representative of the Institutional Representatives),
2008-2012;
Chair, Doctoral Dissertation Prize Committee, 2007;
Elected Secretary, Association Institutional Representatives Committee, 2007-9.

Member, American Academy of Political and Social Sciences Board, 2001-7; 2010-present; member
of Finance Committee, 2003-present; chair of the board, 2011-present.

Member, National Academies Committee on National Statistics' Panel on Measuring and Collecting
Pay Information from U.S. Employers by Gender, Race, and National Origin, 2011 to
present. Published report: *Collecting Compensation Data from Employers* (Washington, DC:
National Academy Press, 2013).

Chair, National Research Council Committee on Assessing the Portfolio of the Science Resources
Studies Division of the National Science Foundation, 1998-2000. Published report: *Measuring
the Science and Engineering Enterprise: Priorities for the Division of Science Resources Studies*
(Washington, DC: National Academy Press, 2000).

Association of Graduate Schools (AGS):

President, 1996-97;
Elected member of Steering Committee, AAU/AGS Project for Research on Doctoral
Education, 1993-00.
Elected to Executive Committee, 1994-8.

Association of American Universities (AAU) Committee on Graduate Education, 1996-98.

Elected to Board, Council of Graduate Schools, 1996-1999.

Graduate Record Examination Board (AGS representative) 1994-8; Research Committee.

Editorial Boards:

International Economic Review, 1978-1993
Economic Geography, 1991-1995
Women and Work, 1984-present
Urban Studies, 1996-2012;
U.S. editor, 1997-2001
Journal of Regional Science, 2012-2019

Advisory Board, The H. John Heinz III School of Public Policy and Management, Carnegie Mellon
University, 1992-1998.

Advisory Committee, Graduate School of Arts and Sciences, Emory University, 1999

External Review Committees, The Sanford Institute of Public Policy, Duke University, 1995; graduate education at the University of Virginia, 1997, Graduate School of Arts and Science, Washington University at St. Louis, 2005.

Review Committee, Ontario Council on Graduate Studies, Canada, December 1998-March 1999.

Oversight Committee, Career Planning Center for Beginning Scientists and Engineers, National Academy of Sciences, 1996-1999.

Member, Committee on Vocational Education and Economic Development in Depressed Areas, National Research Council, National Academy of Sciences, 1982-83; prepared *Education for Tomorrow's Jobs* (Washington, D.C.: National Academy Press, 1983).

Review Panel, NSF Faculty Awards for Women, Social and Economic Science, 1991.

American Economic Association Committee on the Status of Women in the Economics Profession, 1975-78.

Advisory Council, Office of Employment and Training, City of Philadelphia, 1981-84; Budget Committee; Executive Committee; Chair, Long Range Planning Committee.

Friends Select School:

Member, Board of Trustees, member, 1991-2000, 2002-2011;
Vice-Chairman, Board of Trustees, 1993-6;
Chair of Finance Committee, 1998-2000; member 1991-present.
Chair of Financial Aid Committee, 2009-2011.

Board of Directors, Lombard Swim Club, 2010-present.

Chair of Audit Committee, 2013
Chair of Finance Committee, 2013-14
Treasurer, 2014-15.

Advisory Board, Philadelphia Child Support Project, 1987-1990.

Board of Directors, Creative Alternatives for Women, Jenkintown, Pa., 1979-82.

Board of Commissioners, Fellowship Commission, 1981-82.

Referee: American Economic Review; Journal of Political Economy; American Sociological Review; Economics of Education Review; Journal of Business and Economics; International Economic Review; Journal of Human Resources; Land Economics; Journal of Regional Science; Urban Studies; Regional Science and Urban Economics; International Regional Science Review; Regional Studies; Journal of Urban Affairs; Regional Science and Urban Economics; Journal of Public Policy and Management; Economic Development and Cultural Change; Growth and Change; Journal of Sports Economics; Journal of Peace Science; Policy Analysis; Signs: A Journal of Women in Culture and Society; Environment and Planning; Urban Studies;

Geographic Analysis; The Professional Geographer; Industrial Relations; Industrial and Labor Relations Review; Journal of Economic Behavior and Organization; Social Science Research; Cityscape; Social Forces; Sociological Quarterly; Annals of Regional Science; Survey Research Center - Institute for Social Research, University of Michigan; National Council on Employment Policy, Washington, D.C.; American Academy, Berlin Germany.

Research Proposal Reviewer: National Institute of Education, U.S. Department of Health, Education and Welfare; National Science Foundation--Economics, Geography and Regional Science, Social Indicators, Sociology, and Public Policy and Regulation Sections.

COURSES TAUGHT:

Undergraduate: Quantitative Methods of Urban and Regional Analysis, Economics of Discrimination, Sociology of Discrimination, Location Theory, Principles of Economics, Principles of Regional Science, Urban Economics.

Graduate: Microeconomic Theory, Regional Development and Human Capital Investment, Workshop in Labor Economics, Location Theory and Regional Analysis, Regional Labor Market Issues, Gender and the Labor Market, Research in Demography, Economic Demography; Research Methods in Demography, Economics and the Public Sector.

FACULTY COMMITTEES AT PENN:

Head, Regional Science Department Graduate Admissions Committee, 1973-77
Member, Regional Science Department Dissertation Proposals Committee, 1973-77
Member, SAS Women's Advisory Committee, 1975-77, 1979-85, 2009-12.
Member, SAS Women's Studies Governing Board, 1974-76
Member, SAS Distributional Requirements Subcommittee, 1975-77
Member, SAS Women's Studies Evaluation Committee, 1976-77
Member, University Benefits Committee, 1976-77
Member, SAS Regional Science Chairman Search Committee, 1976-77
Chair, Faculty Senate Nominating Committee, 2008 (member 1978, 1980)
Hearing List, University Grievance Panel, 1979-82
Member, Search Committee for Executive Vice President, 1981
Member, SAS Undergraduate Statistics Education Committee, 1982
Chair, Faculty Senate Committee on the Faculty, 1981-82 (Member 1980-81, 2000-2004)
Member, President's Affirmative Action Council, 1982-1988 and 1991-1999.
Vice President, Women for Equal Opportunity at the University of Pennsylvania, 1981-82
Chair, Faculty Senate Committee on the Economic Status of the Faculty, 1984-85 (Member 1982-84); (Member 2000-2003); (Member 2011-present).
Member, Urban Studies Committee, 1982-85.
Chair, SAS Committee on Academic Freedom and Responsibility, 1986-1987 (Member 1987-1988).
Member, SAS Social Sciences Division Planning Committee, 1986-1988
Member, University Academic Planning and Budgeting Committee, 1987-90.
Member, Advisory Council, Women's Center, 1987-present.
Member, Provost's Committee for Planning the Academic Information Environment, 1988-1990.

Chair, SAS Committee on Committees, 1990-91 (Member 1989-90).
 Faculty Affirmative Action Officer for the Social Sciences, SAS 1990-91.
 Member, IRMC Education Subcommittee (use of computers in education), 1990-91.
 Member, Provost's Staff Council, 1991-99.
 Member, Minority Permanence Committee, 1992-99.
 Member, Task Force on Revision of Just Cause and Other Personnel Procedures, 1992-93.
 Member, Provost's Committee on Urban/Regional Programs, 1994-95.
 Member, Search Committee for Associate Provost, 1995.
 Member, Penn World Wide Web Steering and Advisory Committees, 1995-99.
 Member, Executive Committee, Martin Luther King Holiday Activities, chair, external relations subcommittee, 1995-99.
 Member, Council on Advice, University Chaplain's Office, 1995-96.
 Member, Department of Sociology Undergraduate Curriculum Committee, 1995-97.
 Member, Student Services Re-engineering Committee, 1996-97.
 Member, Department of Sociology Executive Committee, 1997-98, 2001-2002, 2006, 2007-8.
 Member, Personnel Committee, Department of Real Estate, 1996-98.
 Member, Program, Executive, and Curriculum Committees, Fels Center of Government, 1997-2002.
 Member, Personnel Committee, Department of Sociology, 1997-98, 2003-4, 2005-6 (chair), 2007-2009, 2009-2011(chair), 2013-14 (chair).
 Chair, Student Health Insurance Committee, 1997-98, member, 1998-99.
 Member, Distance Learning Committee, 1997-98.
 Co-Chair, Ph.D. Funding Committee, 1997-99.
 Chair, President's Committee on Asian American Students, 1998.
 Member, SAS Saul Steinberg Lecture Committee, 1998.
 Chair, Gender Equity in Athletics, 1999-2002.
 Member, Deputy Provost Search Committee, 1999.
 Member, Search Committee for Director of Fels Program, 1998-99, 2008.
 Member, SAS Personnel Committee, 2000-2002.
 Member, Gender Equity Task Force, 2000-2002.
 President, Penn Chapter of Phi Beta Kappa, 2001-2002; Vice-President 2000-2001.
 Member, Provost's National Research Council Study of Graduate Programs Committee, 2001-4.
 Member, University Committee on Graduate Prizes, 2002.
 Chair, University Planning Committee on Organizations, Institutions, and Leadership, 2001-02.
 Member, University Committee on School of Social Work, 2001.
 Member, Dean Search Committee, School of Social Work, 2002-2003.
 Member, Penn Middle States Committee on Graduate Education; chair of student support subcommittee, 2002-2004.
 Member, Spatial Data Analysis Graduate Planning Committee, 2004-2006.
 Chair, University TA Teaching Prize Committee, 2004.
 Member, Executive Committee, Penn Institute for Urban Research, 2004-present.
 Member, Masters of Urban Spatial Analytics Faculty Committee, 2004-present.
 Member, University Minority Equity Committee, 2004-5.
 Member, Faculty Senate Executive Committee, 2007-11.
 Chair, Extraordinary Recruitment Committee, Department of Sociology, 2008-9.
 Member, University Review Committee for Penn Institute for Urban Research, 2009.
 Member, Women's Faculty Forum, 2009-present.
 Chair, Faculty Committee for Fels, 2009-2012; member 2000-present.
 Chair, Faculty Senate Faculty Climate Survey Review Committee, 2011-2013.

Member, Board of Penn Senior and Emeritus Faculty, 2011-2014.
Member, Advisory Committee Gender, Sexuality and Women's Studies, 2010-2014.
Chair, Penn Urban Research Institute Review Committee, 2014.
Faculty Panelist, Sexual Misconduct Hearing Committee, 2015-16.