

Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – February 14, 2019

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## Human Resources Division

For the period July 1, 2016 through December 31, 2017





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

February 14, 2019

Mr. Ronald J. Arigo, Chief Human Resources Officer  
Human Resources Division  
1 Ashburton Place, Room 301  
Boston, MA 02108

Dear Mr. Arigo:

I am pleased to provide this performance audit of the Human Resources Division. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2016 through December 31, 2017. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Human Resources Division for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump  
Auditor of the Commonwealth

cc: Michael J. Heffernan, Secretary, Executive Office for Administration and Finance

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## LIST OF ABBREVIATIONS

DMH	Department of Mental Health
DOT	Department of Transportation
DPH	Department of Public Health
DTA	Department of Transitional Assistance
DYS	Department of Youth Services
EO	executive order
HR	human resources
HRD	Human Resources Division
ODEO	Office of Diversity and Equal Opportunity
POL	Massachusetts State Police

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## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Human Resources Division (HRD) for the period July 1, 2016 through December 31, 2017. In this performance audit, we examined HRD's compliance with Executive Order (EO) 526, including determining whether HRD ensured that executive branch agencies complied with reporting requirements for affirmative action plans and diversity plans and whether HRD imposed any remedial courses of action on noncompliant agencies.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">9</a></b>	HRD did not always ensure that executive branch agencies filed required affirmative action and diversity plans in a timely manner.
<b>Recommendations</b> <b>Page <a href="#">13</a></b>	<ol style="list-style-type: none"><li>1. HRD should establish policies and procedures for the Office of Diversity and Equal Opportunity to ensure that its staff consistently enforces agency compliance with EO 526. The policies and procedures should include a policy regarding imposing remedial courses of action, such as hiring freezes, on agencies that do not comply with EO 526.</li><li>2. HRD should implement monitoring controls to ensure that these policies and procedures are adhered to.</li></ol>
<b>Finding 2</b> <b>Page <a href="#">15</a></b>	HRD did not ensure that all agencies submitted progress reports documenting actions taken toward meeting plan goals.
<b>Recommendation</b> <b>Page <a href="#">17</a></b>	HRD should develop policies and procedures to monitor the tracking of all affirmative action and diversity plan progress reports to ensure that all agencies are working toward, and reporting on, meeting their goals in the two-year plan cycle. These policies and procedures should also establish the conditions under which HRD will take remedial actions against noncompliant agencies.

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## OVERVIEW OF AUDITED ENTITY

The Human Resources Division (HRD) was established under Section 4A of Chapter 7 of the Massachusetts General Laws, as amended by Section 23 of Chapter 46 of the Acts of 2015. HRD is a division of the Executive Office for Administration and Finance that provides human-resources (HR) services to the Commonwealth's executive branch and is its central personnel department. In addition, HRD administers the Commonwealth's civil service system for state agencies and many local governments. According to HRD's website,

*[HRD] is responsible for attracting, hiring and developing people to do purposeful work. We partner with agencies to build and support a high-performing diverse workforce. . . .*

*Our programs and services include:*

- *Recruiting new employees*
- *Delivering learning and development opportunities for existing employees*
- *Administering HR policy, employee benefits, and compensation*
- *Offering employee self-service HR related support*
- *Administration of collective bargaining agreements and contracts*
- *Ensuring an inclusive, safe and productive workplace*
- *Administering examinations for public safety and promotional opportunities*

HRD received state appropriations of \$2,802,000 in both fiscal year 2017 and fiscal year 2018. It expended \$2,423,269 in fiscal year 2017 and \$1,066,144 from July 1, 2017 through December 31, 2017. As of December 31, 2017, HRD had a total of 125 employees.

### Office of Diversity and Equal Opportunity

On June 17, 2003, the Governor signed Executive Order (EO) 452, which, among other things, established the Office of Diversity and Equal Opportunity (ODEO) within HRD and provided for a director of ODEO to be selected and supervised by HRD's chief HR officer.

According to EO 452, ODEO's overall goals are as follows:

- *Creating a State workplace that welcomes, respects and values people of all abilities, cultures, nationalities, religions, races, genders, sexual orientations, ethnic backgrounds and veteran's status;*

- *Ensuring that diversity is reflected in all state government activities, including planning, decision-making and design and delivery of services to customers;*
- *Identifying and removing barriers to making programs and services accessible to all the citizens of Massachusetts;*
- *Developing partnerships with public and private organizations to share best practices for enhancing diversity;*
- *Planning and implementing community outreach and diversity recruitment programs to increase the diversity of job applicants;*
- *Establishing guidelines for Secretariat diversity plans and ensuring the compliance of each Secretariat with its diversity plan.*
- *Complying with all federal and state reporting requirements. Ensuring that all activities are in compliance with applicable state and federal laws.*

ODEO is also responsible for ensuring that executive branch agencies comply with EO 452. Each agency is required to complete an affirmative action plan and diversity plan every two years and to report each year on its progress toward self-determined goals established in the plans.

During our audit period, ODEO was administered by a director, a compliance manager, a recruitment and outreach manager, and a Veterans Program coordinator. According to HRD officials, ODEO expenditures for the period July 1, 2016 through December 31, 2017 totaled \$518,313.

## **EO 526**

On February 17, 2011, the Governor signed EO 526 (see [Appendix A](#)), which reaffirmed the Commonwealth's commitment to civil rights and provided for transgender people to have equal access to executive branch employment and programs.

According to Section 4 of EO 526, the order's purpose is to ensure the following:

*All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Equal opportunity and diversity shall be protected and affirmatively promoted in all state, state-assisted, and state-regulated programs, activities, and services. Non-compliance shall subject violators to such disciplinary or remedial actions as permitted by law. This provision applies, but is not limited to, the use and operation of facilities owned, leased, funded or subject to control by the Commonwealth; the sale, lease, rental, financing, construction, or development of housing; state-licensed or chartered health care facilities, educational institutions, and businesses; education, counseling, and training programs; and public schools.*

Section 7 of EO 526 gives the ODEO director the authority to do the following:

- *Establish guidelines for agency affirmative action and diversity plans ("plans");*
- *Review all such plans and either approve, return for amendment, or reject them;*
- *Establish periodic reporting requirements for agencies concerning the implementation of their plans and all actions taken to ensure compliance with this Executive Order and applicable state and federal laws;*
- *Provide assistance to agencies in achieving compliance with their plans and with applicable federal and state laws;*
- *Monitor and assess the status of agency compliance and investigate instances of non-compliance; and*
- *Where appropriate, determine and impose remedial courses of action, including the potential imposition of a freeze on all personnel requisitions [used to establish open positions] and appointment forms [used to appoint people to positions] submitted by any non-compliant agency to the Chief Human Resources Officer.*

## **Affirmative Action Plans**

HRD's "Guidelines for Implementing Executive Order 526" define affirmative action as follows:

*A policy or program that seeks to redress past discrimination by increasing opportunities for under-represented groups. For example, in the area of employment, affirmative action is accomplished by taking specific steps to identify, recruit, hire and/or develop for advancement, persons who are identified as part of a specific protected class.*

EO 526 requires each executive branch agency to create an affirmative action plan every two years to develop strategies and incorporate goals and analytics to monitor progress toward the goals.

The "Guidelines for Implementing Executive Order 526" state that affirmative action plans must include the following:

*(1) Statement of policy, (2) Statement of dissemination, (3) Designation of Diversity Officer (affirmative action and equal opportunity) responsibilities, (3a) Assessment of Employment Practices, (4) Identification of Problem areas, (5) Organizational Profile, (6) Development and execution of Equal Opportunity and Affirmative Action oriented programs, (7) Resolution process, and (8) Outline recruitment efforts and strategies for Persons with disabilities and Vietnam Era Veterans.*

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## Diversity Plans

The “Guidelines for Implementing Executive Order 526” define diversity as follows:

*A policy or program that values differences among the Commonwealth’s employees and all those with whom it does business. These differences include but are not limited to race, gender, gender identity or expression, color, national origin and ancestry, religion, age, mental/physical disabilities, sexual orientation, veteran’s status, organizational level, economic status, geographical origin, marital status, communication and learning styles, and . . . other characteristics and traits. The goal of this policy is to develop an inclusive environment that capitalizes on each individual’s talents, skills and perspectives in order to increase organizational productivity and effectiveness.*

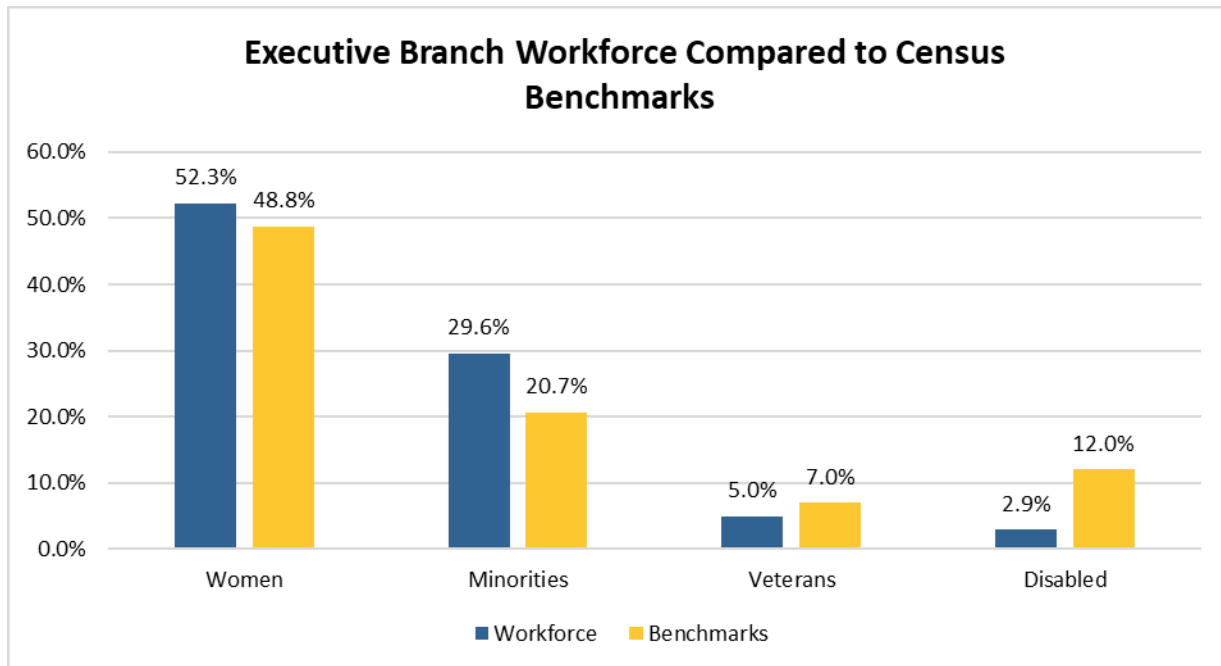
The guidelines further state that diversity plans must contain (1) an agency vision, (2) an agency mission statement, and (3) diversity goals with a written strategy and measures. EO 526 requires each executive branch agency to create a diversity plan every two years to develop strategies and incorporate goals and analytics to monitor progress toward the goals.

## Progress Reports

Progress reports allow HRD to evaluate an agency’s progress toward established goals outlined in its affirmative action and diversity plans, including the agency’s assessment of whether its goals were ultimately met and what steps it took toward meeting its goals. Periodic reporting is also done in an effort to identify and remove artificial barriers to equal opportunity in hiring, training, promotion, transfer, and reasonable accommodation. Reports help agencies create inclusive and diverse workforces. These reports must be submitted to HRD 60 days after the end of each fiscal year, on August 30.

## Workforce

The chart below shows the demographics of the Commonwealth’s executive branch workforce as of December 31, 2017 compared to benchmarks based on the United States Census Bureau’s American Community Survey 2010 census information for Massachusetts, which was used in ODEO’s 2017 annual report.



For specific workforce demographics for individual executive branch departments, see [Appendix B](#).

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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Human Resources Division (HRD) for the period July 1, 2016 through December 31, 2017. When reviewing HRD's documentation of when executive branch agencies submitted their affirmative action and diversity plans, we extended our examination period through July 2018.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer, the conclusion we reached regarding each objective, and where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did HRD ensure that executive branch agencies' affirmative action and diversity plans complied with the reporting requirements of Executive Order (EO) 526?	No; see Findings <u>1</u> and <u>2</u>
2. Did HRD impose remedial courses of action on executive branch agencies that did not complete affirmative action and diversity plans in accordance with EO 526?	No; see Finding <u>1</u>

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives through inquiries and observations. We evaluated the design of controls over HRD management's review and approval of affirmative action and diversity plans.

In addition, we performed the following procedures to obtain sufficient, appropriate audit evidence to address the audit objectives.

- We inspected HRD's report-tracking records that listed all of the most recent affirmative action and diversity plans that were due from executive branch agencies by September 15, 2017, as well as the plans that were actually submitted, and approved by HRD, by May 25, 2018. Although there are 67 different executive branch agencies that are expected to file these plans,

HRD told us it had not required 2 of them to submit affirmative action plans because they had too few employees for these plans to be effective.

- We reviewed the 53 affirmative action plans submitted on or before May 25, 2018 by executive branch agencies to ensure that they were complete (i.e., that they contained all the information required by the “Guidelines for Implementing Executive Order 526”).
- We reviewed the 52 diversity plans that were submitted on or before May 25, 2018 by executive branch agencies to ensure that they were complete (i.e., that they contained all the information required by the “Guidelines for Implementing Executive Order 526”).
- For the 18 executive branch agencies that did not submit both required plans, and/or that submitted plans that were not approved by HRD on or before May 25, 2018, we reviewed agency email correspondence with HRD and asked HRD management what remedial courses of action it had taken with noncompliant agencies, if any.
- We judgmentally selected 20 of the 53 affirmative action plans, and 20 of the 52 diversity plans, that were submitted on or before May 25, 2018 by executive branch agencies to ensure that they were approved by HRD.
- We reviewed the two most recent annual affirmative action plan and diversity plan progress reports that were submitted by executive branch agencies (due August 30, 2016 and August 30, 2017) to determine to what extent they had reported that the goals that they had established in their plans had been met. For 2016, 33 agencies submitted affirmative action plan progress reports and 35 submitted diversity plan progress reports. For 2017, 25 agencies submitted affirmative action plan progress reports and 31 submitted diversity plan progress reports.

We used Microsoft Excel tracking log spreadsheets provided by HRD to identify the agencies that submitted affirmative action and diversity plans and the dates on which HRD approved the plans. We analyzed the spreadsheets by testing for hidden data, columns, worksheets, formulas, or active filters. We traced a judgmental sample of 10 affirmative action plans and 10 diversity plans to data in the spreadsheets. Additionally, we obtained a list of all executive branch agencies from mass.gov and compared it to the spreadsheets to determine whether each spreadsheet properly listed each agency that was required to complete each plan. We determined that the data were sufficiently reliable for the purposes of this report.

## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### **1. The Human Resources Division did not always ensure that executive branch agencies filed required affirmative action and diversity plans in a timely manner.**

During our audit, we identified the following instances of noncompliance with the report filing requirements of Executive Order (EO) 526 and related guidance provided by the Human Resources Division (HRD):

- Although each executive agency's most recent affirmative action plan was required to be submitted to HRD by September 15, 2017, 12 of the 65 executive branch agencies that were required to submit these plans had not done so as of the date of our audit testing in this area (May 25, 2018).
- Of the remaining 53 agencies that were required to submit affirmative action plans to HRD by September 15, 2017, 50 submitted them after the due date.
- Although each agency's most recent diversity plan was required to be submitted to HRD by September 15, 2017, 15 of the 67 agencies that were required to submit these plans had not done so as of the date of our audit testing in this area (May 25, 2018).
- Of the remaining 52 executive branch agencies that were required to submit diversity plans to HRD by September 15, 2017, 49 submitted them after the due date.

Overall, 18 different executive departments had not submitted at least one of the required plans as of May 25, 2018. These 18 agencies were the Division of Administrative Law Appeals, Appellate Tax Board, Commission Against Discrimination, Department of Mental Health (DMH), Department of Public Health (DPH), Department of Revenue, State Police (POL), Department of Transitional Assistance (DTA), Department of Veterans' Services, Department of Youth Services (DYS), Division of Capital Asset Management and Maintenance, Executive Office for Administration and Finance, Department of Transportation (DOT), Military Division of the Massachusetts National Guard, Comptroller of the Commonwealth, Public Employee Retirement Administration Commission, Soldiers' Home in Chelsea, and Soldiers' Home in Holyoke.

Despite the significant number of executive branch agencies that HRD identified through monitoring that did not file the required plans, HRD had not taken any remedial actions to enforce agency compliance. Because HRD did not ensure that executive branch agencies submitted the required

affirmative action and diversity plans, the Commonwealth cannot be sure that its executive branch agencies are taking the measures necessary to achieve all the intended results of EO 526.

## Workforce Demographics

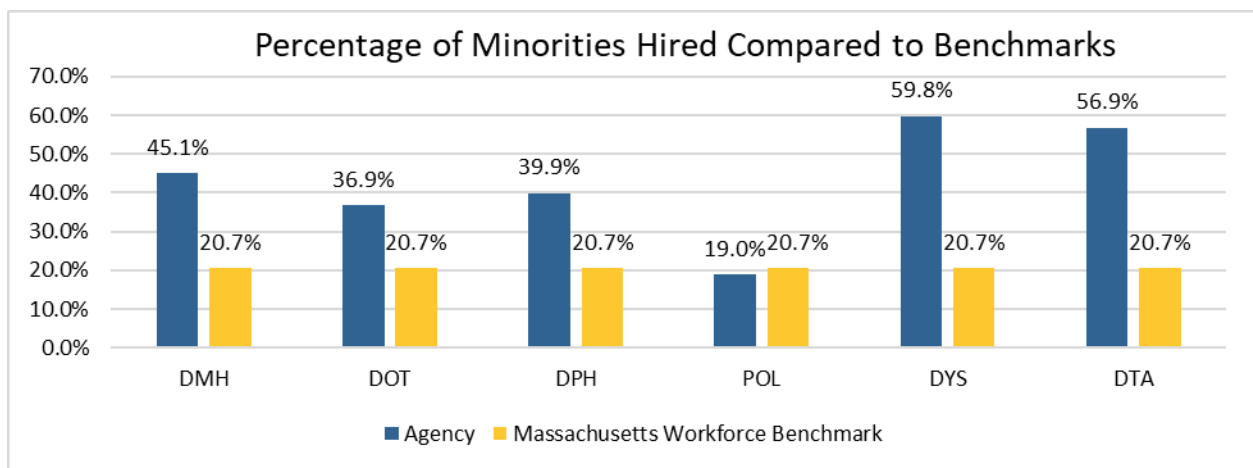
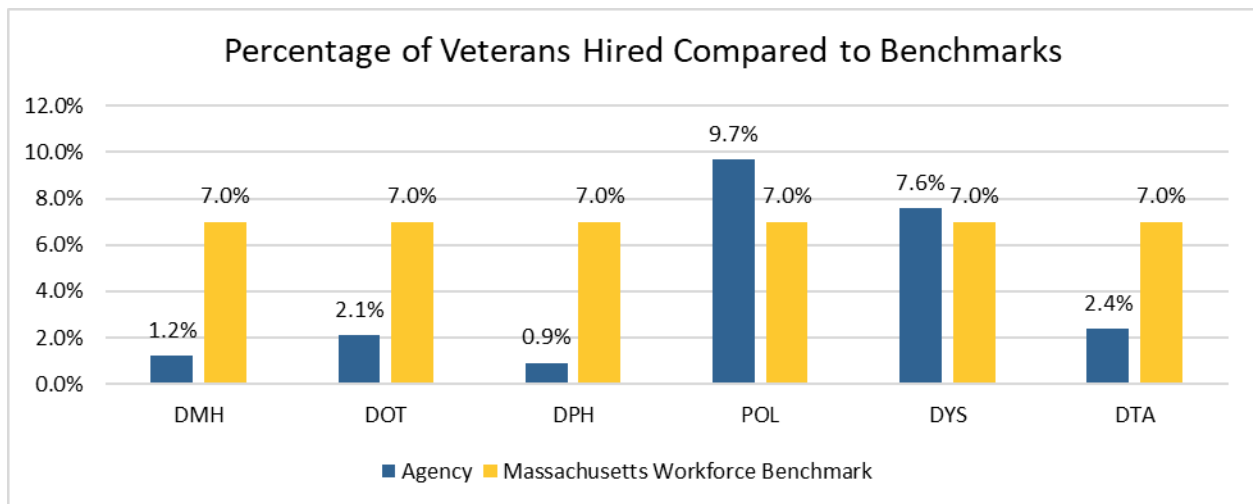
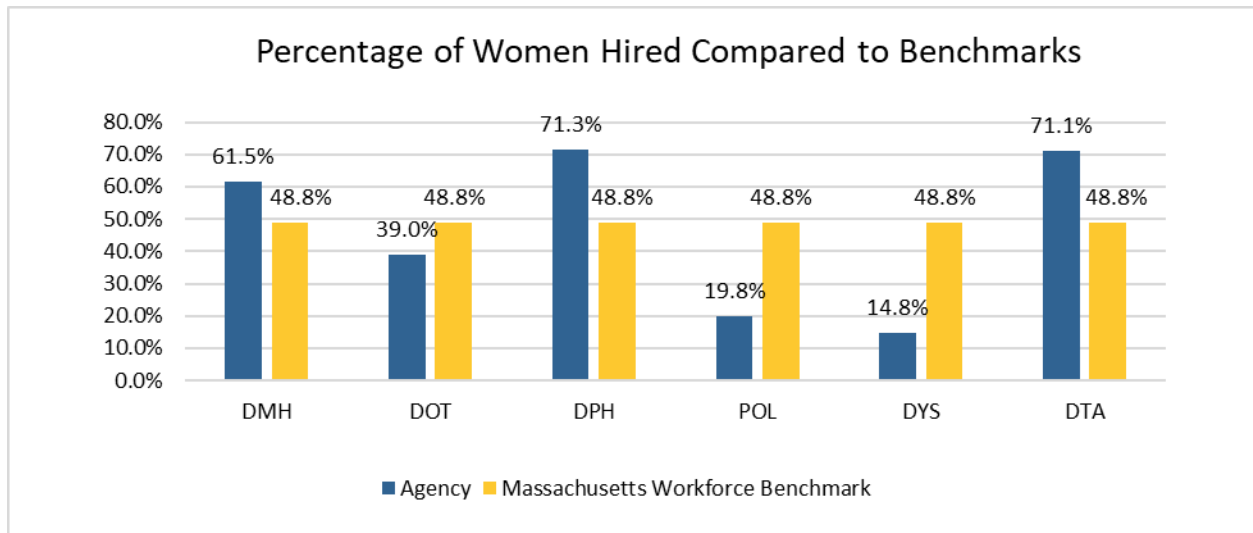
Of the agencies that had not submitted their most recent affirmative action and/or diversity plans as of May 25, 2018, DMH, DOT, DPH, POL, DYS, and DTA did the majority of the hiring (1,906 of 2,174 employees, or 87.7%) during our audit period. The following list details hiring at these agencies during the audit period:

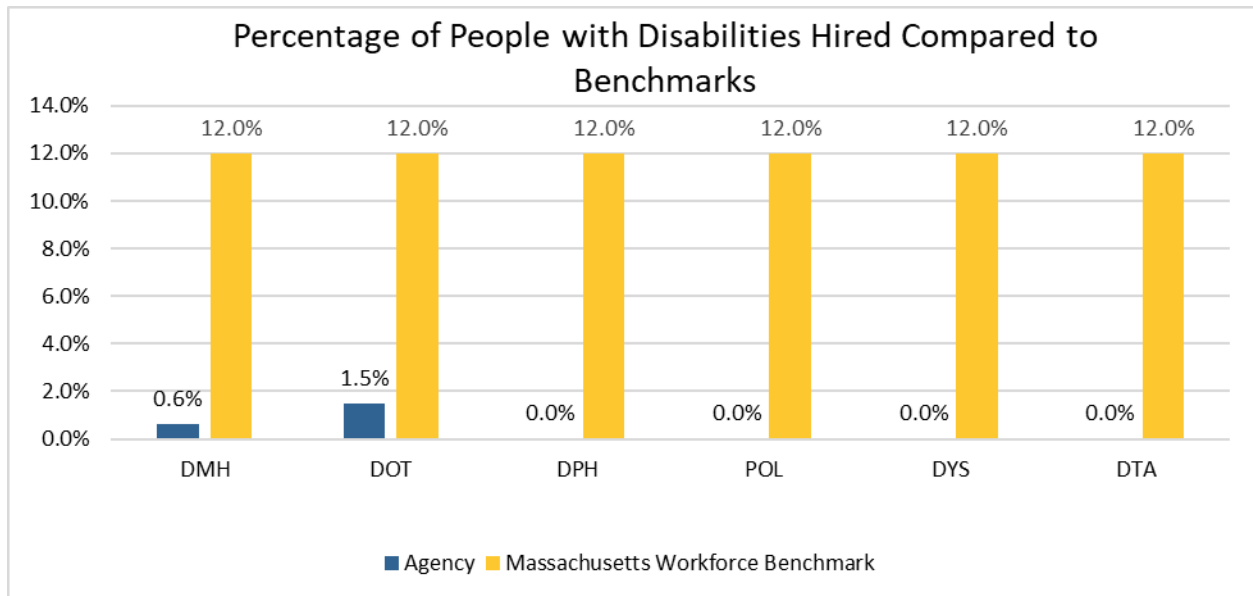
- DMH hired 499 employees, of whom 307 (61.5%) were women, 225 (45.1%) were minorities, 6 (1.2%) were veterans, and 3 (0.6%) had disabilities.
- DOT hired 336 employees, of whom 131 (39.0%) were women, 124 (36.9%) were minorities, 7 (2.1%) were veterans, and 5 (1.5%) had disabilities.
- DPH hired 328 employees, of whom 234 (71.3%) were women, 131 (39.9%) were minorities, 3 (0.9%) were veterans, and 0 had disabilities.
- POL hired 268 employees, of whom 53 (19.8%) were women, 51 (19.0%) were minorities, 26 (9.7%) were veterans, and 0 had disabilities.
- DYS hired 264 employees, of whom 39 (14.8%) were women, 158 (59.8%) were minorities, 20 (7.6%) were veterans, and 0 had disabilities.
- DTA hired 211 employees, of whom 150 (71.1%) were women, 120 (56.9%) were minorities, 5 (2.4%) were veterans, and 0 had disabilities.

We reviewed these agencies' hires for the period July 1, 2016 through December 31, 2017 and compared them to the state's overall workforce diversity benchmarks,<sup>1</sup> as detailed below.

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1. Overall workforce diversity benchmarks were based on the United States Census Bureau's American Community Survey 2010 census data for Massachusetts, which was used in the Office of Diversity and Equal Opportunity's 2017 annual report.





DOT, POL, and DYS were behind in their hiring of women during the audit period. All the agencies were significantly behind in their hiring of people with disabilities. Additionally, DMH, DOT, DPH, and DTA lagged in their hiring of military veterans. However, five agencies exceeded the overall workforce diversity benchmark for minorities, and the sixth nearly met the benchmark.

### Authoritative Guidance

Section 3 of EO 526 requires state agencies to complete affirmative action and diversity plans:

*All state agencies shall develop and implement affirmative action and diversity plans to identify and eliminate discriminatory barriers in the workplace; remedy the effects of past discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are members of under-represented groups; and ensure diversity and equal opportunity in all facets, terms, and conditions of state employment. Such plans shall set forth specific goals and timetables for achievement, shall comply with all applicable state and federal laws, and shall be updated, at a minimum, every two years.*

HRD issued a memorandum to all executive branch agencies on August 4, 2017 stating that the most recent plans, covering fiscal years 2018 and 2019, were due September 15, 2017.

Section 7 of EO 526 gives the director of HRD's Office of Diversity and Equal Opportunity (ODEO) the authority to ensure compliance with the EO and impose remedial courses of action on noncompliant agencies:

- *Review all such plans and either approve, return for amendment, or reject them . . .*
- *Where appropriate, determine and impose remedial courses of action, including the potential imposition of a freeze on all personnel requisitions and appointment forms submitted by any non-compliant agency to the Chief Human Resources Officer.*

To facilitate the timely filing of these reports, HRD should hold all agencies to the same standard and impose remedial actions on agencies that do not file these reports by established deadlines and have no reasonable explanation for not doing so.

## Reasons for Noncompliance

HRD management told us that all noncompliant agencies were in communication with HRD about becoming compliant when submitting their fiscal year 2018/2019 plans and that therefore HRD did not believe it was necessary to take any remedial actions. HRD management also told us that they take the following steps to ensure that agencies comply with EO 526:

- contacting agencies' diversity officers to understand the cause of the noncompliance
- establishing reasonable timelines for agencies to become compliant
- offering technical assistance on the completion of plans
- referring matters to agency management to ensure accountability
- imposing freezes on personnel requisitions (as a last resort)

However, HRD could not provide us with any documentation to substantiate that it had implemented any of these measures. Further, HRD does not have any policies or procedures regarding imposing remedial measures on noncompliant agencies.

## Recommendations

1. HRD should establish policies and procedures for ODEO to ensure that its staff consistently enforces agency compliance with EO 526. The policies and procedures should include a policy regarding imposing remedial courses of action, such as hiring freezes, on agencies that do not comply with EO 526.
2. HRD should implement monitoring controls to ensure that these policies and procedures are adhered to.

## Auditee's Response

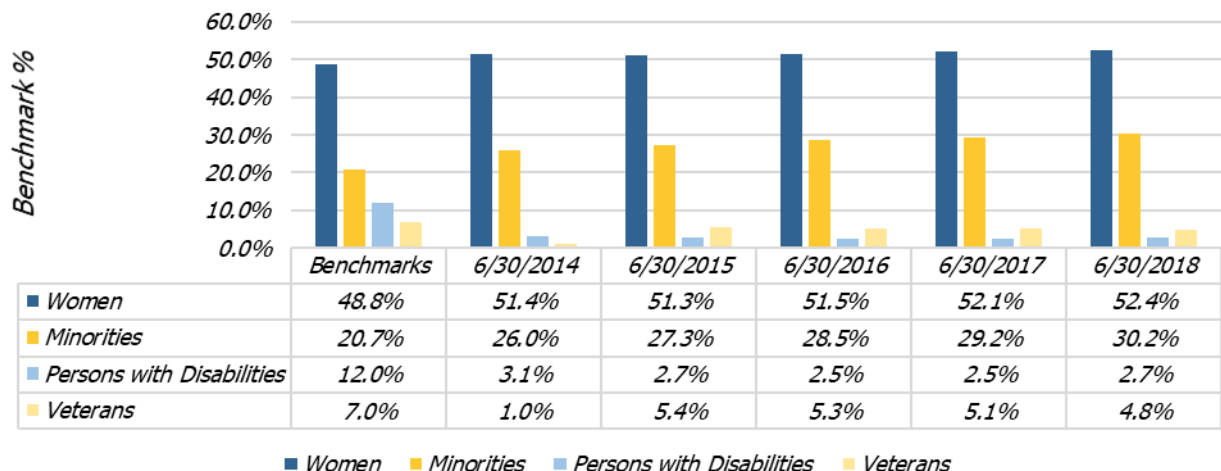
*HRD agrees that Affirmative Action and Diversity plans were not always filed in a timely manner. There are multiple factors that may have contributed to an agency's failure to meet the stated*

*deadlines, which were shared during the audit. HRD and its Office of Diversity and Equal Opportunity ("ODEO") is committed to improving its control processes and will review its current policies and procedures to make the necessary revisions that will ensure a greater enforcement of timely submission of Affirmative Action and Diversity Plans. Further, we will develop a communication plan to share changes with all Executive Branch agencies alerting them to the policy changes and the consequences of non-compliance moving forward. . . .*

*Our aim is to have a diverse and inclusive workforce that reflects the population we serve. The total workforce benchmarks are set out in the memo to Executive Department Agency Heads dated August 4, 2017, which was shared with the auditors via email on October 3, 2018. The benchmarks referenced in the memo specify that they relate to the "Total Civilian Labor Workforce." It is these benchmarks by which we mark our progress, based on representation in the Commonwealth's overall workforce. The benchmarks are not and have never been related to hiring. In order to illustrate historical progress, we have included the attached table detailing workforce demographics compared to these benchmarks [see table below].*

*Despite the late submission of plans, the Commonwealth's overall Total Workforce meets or exceeds stated benchmarks in half of the four protected categories, Women and Minorities. The remaining two categories, Veterans and Persons with Disabilities, require employee self-identification. At least annually, Veterans and Persons with Disabilities are invited to self-identify by their agencies. Self-Identification is a completely voluntary process in which some employees participate, but many do not. It is our belief that due to the voluntary nature of self-identification, the stated numbers underrepresent the true nature of our workforce despite our best recruitment and hiring efforts. . . .*

**Attachment A—Five Years—Workforce Demographics compared to Benchmarks**



## **Auditor's Reply**

We agree with HRD that the benchmarks mentioned in this finding are used by HRD in analyzing diversity across the total workforce of the Commonwealth. Accordingly, our report states that we compared the state's overall workforce diversity benchmarks against hiring by the six agencies that had conducted most of the hiring during the period July 1, 2016 through December 31, 2017 but had not submitted affirmative action and/or diversity plans as of May 25, 2018.

Further, we do not dispute HRD's assertion that because veterans and people with disabilities are invited to identify themselves as belonging to these categories, their numbers in the overall workforce and in the executive branch may be understated. The focus of our audit was not on whether executive branch agencies met workforce diversity benchmarks, but on how effectively HRD administered the process of ensuring that executive agencies met the report filing requirements of EO 526. As noted above, we found that despite the significant number of executive branch agencies HRD identified through monitoring that did not file the required plans, HRD had not taken any remedial actions to enforce agency compliance and therefore, in the Office of the State Auditor's opinion, the Commonwealth cannot be sure that its executive branch agencies are taking the measures necessary to achieve all the intended results of EO 526.

However, based on its response, HRD is taking measures to ensure that executive branch agencies file required affirmative action and diversity plans in a timely manner.

## **2. HRD did not ensure that all agencies submitted progress reports documenting actions taken toward meeting plan goals.**

HRD did not ensure that all executive branch agencies submitted affirmative action and diversity plan progress reports by the annual deadline. These progress reports provide HRD with annual updates on an agency's progress toward achieving its affirmative action and workforce diversity goals for training, hiring, and employee awareness. Although HRD had identified a significant number of executive branch agencies that did not file the required progress reports, it had not taken any remedial actions. Without the information in these reports, HRD cannot determine to what extent executive branch departments are meeting the hiring goals they have established to comply with EO 526.

Specifically, we noted the following issues from our audit period:

- Thirty-two (49.2%) of 65 agencies never submitted the affirmative action plan progress reports due August 30, 2016.
- Forty (61.5%) of 65 agencies never submitted the affirmative action plan progress reports due August 30, 2017.
- Twenty-seven (81.8%) of the 33 affirmative action plan progress reports received that were due August 30, 2016 were late, as were 11 (44%) of the 25 that were due August 30, 2017.
- Of the 25 agencies that submitted August 30, 2017 progress reports, only 5 (20%) reported that they had met their goals for the two-year cycle.
- Thirty-two (47.8%) of 67 agencies had not submitted diversity plan progress reports as of August 30, 2016, and 36 (53.7%) of 67 had not submitted them as of August 30, 2017.
- Seven (20%) of the 35 diversity plan progress reports received that were due August 30, 2016 were late, as were 3 (9.7%) of the 31 that were due August 30, 2017.
- Of the 31 agencies that submitted progress reports that were due August 30, 2017, only 13 (41.9%) reported that they had met their goals for the two-year cycle.
- Overall, 35 (52.2%) of 67 agencies never submitted any required progress reports during the audit period. These 35 agencies hired 3,004 (57.9%) of the 5,186 employees hired by agencies that were required to comply with EO 526.

The hiring information shows that the agencies that submitted all of the required progress reports were as successful as those that did not do so, or more successful, in hiring women, minorities, veterans, and people with disabilities.

### **Authoritative Guidance**

Section 3 of EO 526 states that affirmative action and diversity plans “shall set forth specific goals and timetables for achievement.” Additionally, Section 3.2 of HRD’s “Guidelines for Implementation of Executive Order 526” states,

*On an annual basis, the secretariats and agencies shall submit progress updates on their Affirmative Action and Diversity Plans. These reports should be submitted sixty days after the close of the fiscal year, or August 30th.*

Included in these updates on affirmative action and diversity plans are updates to agency goals, which are a required part of each plan. HRD management told us that these goals are to be completed within the two-year plan cycle.

Section 7 of EO 526 states that HRD's ODEO director has the authority to "establish periodic reporting requirements for agencies concerning the implementation of their plans and all actions taken to ensure compliance with this Executive Order." The section also gives the director of ODEO the authority to ensure compliance with the order and impose remedial courses of action on noncompliant agencies:

*Where appropriate, determine and impose remedial courses of action, including the potential imposition of a freeze on all personnel requisitions and appointment forms submitted by any non-compliant agency to the Chief Human Resources Officer.*

To facilitate the timely filing of these progress reports, HRD should hold all agencies to the same standard and impose remedial actions against agencies that do not file these reports by established deadlines with no reasonable explanation.

### **Reasons for Noncompliance**

HRD management told us that all noncompliant agencies were in communication with HRD about becoming compliant with EO 526 and therefore, HRD did not believe it was necessary to take any remedial actions. However, HRD's records did not indicate to what extent noncompliant agencies had been contacted regarding missing progress reports.

HRD did not have any policies and procedures in place for ODEO staff members to track the timely filing of progress reports for affirmative action and diversity plans, to communicate with agencies regarding noncompliance, or to take remedial actions against noncompliant agencies.

### **Recommendation**

HRD should develop policies and procedures to monitor the tracking of all affirmative action and diversity plan progress reports to ensure that all agencies are working toward, and reporting on, meeting their goals in the two-year plan cycle. These policies and procedures should also establish the conditions under which HRD will take remedial actions against noncompliant agencies.

### **Auditee's Response**

*HRD/ODEO acknowledges that we can improve the monitoring of the submission of progress reports, as these progress reports provide HRD/ODEO with information as to how agencies are progressing towards achieving their stated Affirmative Action and Diversity goals.*

*HRD/ODEO will follow the recommendations of the Audit team and implement tighter monitoring controls to ensure adherence to the stated policy and procedures. Going forward HRD will: work*

*to develop an electronic tickler alerts system to send more timely reminders of outstanding items on [affirmative action] and Diversity Plans; and review and revise current protocols as necessary to ensure greater enforcement leading to swifter agency remedial action.*

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## OTHER MATTERS

### Non-discrimination, Diversity and Equal Opportunity Advisory Council

Section 9 of Executive Order (EO) 452 establishes an advisory council with the following responsibilities:

*The Advisory Council shall provide written recommendations to the Governor no less than semi-annually. Such recommendations shall include, but not be limited to, specific actions that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished and that diversity and equal opportunity are considered in the management of the Commonwealth.*

The requirements of the Advisory Council were modified under EO 526:

- 13.2 *The Advisory Council's work shall include, but need not be limited to, making written recommendations to the Governor concerning actions, policies, and practices that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.*
- 13.3 *The Advisory Council shall meet at such times and places as determined by the Chair and shall submit an initial report containing its written recommendations to the Governor no later than 60 days following the appointment of the Council's 15 members. Thereafter, the Advisory Council shall meet at least semi-annually and submit supplemental reports to the Governor no less than once per year.*

Although it was not part of our audit objectives, while obtaining an understanding of the entity and operating environment, we found that the Governor's Non-discrimination, Diversity and Equal Opportunity Advisory Council did not meet during our audit period. According to Human Resources Division (HRD) management, all council members resigned their positions at the end of Governor Patrick's last term and no new council members have been appointed. HRD officials told us that in lieu of appointing a Governor's Non-discrimination, Diversity and Equal Opportunity Advisory Council for recommendations on diversity, Governor Baker issued EO 559, elevating the Office of Access and Opportunity to the Governor's Office; it had been under the authority of the Secretary of Administration and Finance in the previous administration. In addition, in February 2018, the Governor established two additional advisory councils: the Black Advisory Council and the Latino Advisory Council.

### Auditee's Response

*HRD/ODEO believes the section entitled "Other Matters: Non-Discrimination, Diversity and Equal Opportunity Advisory Council" exceeds the scope of the audit objectives and therefore should not be included in the final Audit report. As stated to the Auditors, HRD reiterates that the current*

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*compilation of Councils established by Governor Baker meet the goals of the Equal Opportunity Advisory Council.*

### **Auditor's Reply**

The Governor's Non-discrimination, Diversity and Equal Opportunity Advisory Council was established to ensure that the objectives of EO 526 were accomplished. Although it was not part of our audit objectives, during our audit we identified this issue with the council's activities and determined that it was necessary to disclose to the public both the status of the council and the measures the administration has taken to address this matter.

## APPENDIX A

### Executive Order 526



DEVAL L. PATRICK  
GOVERNOR

OFFICE OF THE GOVERNOR  
**COMMONWEALTH OF MASSACHUSETTS**  
STATE HOUSE • BOSTON, MA 02133  
(617) 725-4000

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

By His Excellency

DEVAL L. PATRICK  
GOVERNOR

EXECUTIVE ORDER NO. 526

**ORDER REGARDING NON-DISCRIMINATION, DIVERSITY,  
EQUAL OPPORTUNITY, AND AFFIRMATIVE ACTION**

(Superseding Executive Order 478)

WHEREAS, the Constitution of the Commonwealth of Massachusetts is based on a belief in freedom and equality for all individuals and in the duty of Government to safeguard and foster these rights;

WHEREAS, the Executive Branch of the Commonwealth of Massachusetts recognizes the importance of non-discrimination, diversity, and equal opportunity in all aspects of state employment, programs, and activities;

WHEREAS, creating a culture of inclusion that values and promotes diversity and equal opportunity for all individuals is the central objective of this Executive Order and the goal of my administration;

WHEREAS, while acknowledging the many efforts and accomplishments of the past, the Commonwealth can and must do more to ensure that non-discrimination, diversity and equal

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OFFICE OF THE  
LIEUTENANT GOVERNOR  
REGULATIONS DIVISION

opportunity are safeguarded, promoted, and reflected in state workplaces, decisions, programs, activities, services, and contracts; NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. I, do hereby order as follows:

Section 1. This Executive Order shall apply to all state agencies in the Executive Branch. As used in this Order, "state agencies" shall include all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

Section 2. Non-discrimination, diversity, and equal opportunity shall be the policy of the Executive Branch of the Commonwealth of Massachusetts in all aspects of state employment, programs, services, activities, and decisions. Each executive officer and agency head serving under the Governor, and all state employees, shall take immediate, affirmative steps to ensure compliance with this policy and with applicable federal and state laws in connection with both the internal operations of state government as well as their external relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, in discharging its duties, shall consider the likely effects that its decisions, programs, services, and activities will have on achieving non-discrimination, diversity, and equal opportunity.

Section 3. All state agencies shall develop and implement affirmative action and diversity plans to identify and eliminate discriminatory barriers in the workplace; remedy the effects of past discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are members of under-represented groups; and ensure diversity and equal opportunity in all facets, terms, and conditions of state employment. Such plans shall set forth specific goals and timetables for achievement, shall comply with all applicable state and federal laws, and shall be updated, at a minimum, every two years.

Section 4. All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state

shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Equal opportunity and diversity shall be protected and affirmatively promoted in all state, state-assisted, and state-regulated programs, activities, and services. Non-compliance shall subject violators to such disciplinary or remedial actions as permitted by law. This provision applies, but is not limited to, the use and operation of facilities owned, leased, funded or subject to control by the Commonwealth; the sale, lease, rental, financing, construction, or development of housing; state-licensed or chartered health care facilities, educational institutions, and businesses; education, counseling, and training programs; and public schools.

Section 5. All Executive Branch contracts entered into after the effective date of this Order shall contain provisions prohibiting contractors and subcontractors from engaging in discriminatory employment practices; certifying that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and committing to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. Such provisions shall be drafted in consultation with the Office of the Comptroller and the Operational Services Division, which shall develop and implement uniform language to be incorporated into all Executive Branch contracts. The provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

Section 6. All state agencies shall exclude from any forms requesting information any item or inquiry expressing or soliciting specifications as to race, color, creed, religion, national origin, ethnicity, gender, age, sexual orientation, gender identity or expression, or disability, unless the item or inquiry is expressly required by statute or is deemed by the Massachusetts Commission Against Discrimination, the Massachusetts Office on Disability, the

Human Resources Division, or the Office of Diversity and Equal Opportunity to be a bona fide qualification or otherwise required in good faith for a proper purpose.

Section 7. The Office of Diversity and Equal Opportunity ("ODEO"), as presently established within the Human Resources Division of the Administration and Finance Secretariat, shall be responsible for ensuring compliance with this Executive Order and with all applicable state and federal laws. ODEO shall have a Director (the "Director"), who shall be selected by and serve at the pleasure of the Governor. The Director shall report to the Commonwealth's Chief Human Resources Officer and submit periodic written reports to the Governor. The Director shall have the authority to:

- Establish guidelines for agency affirmative action and diversity plans ("plans");
- Review all such plans and either approve, return for amendment, or reject them;
- Establish periodic reporting requirements for agencies concerning the implementation of their plans and all actions taken to ensure compliance with this Executive Order and applicable state and federal laws;
- Provide assistance to agencies in achieving compliance with their plans and with applicable federal and state laws;
- Monitor and assess the status of agency compliance and investigate instances of non-compliance; and
- Where appropriate, determine and impose remedial courses of action, including the potential imposition of a freeze on all personnel requisitions and appointment forms submitted by any non-compliant agency to the Chief Human Resources Officer.

Section 8. Each Secretariat shall appoint a Diversity Director. Each agency shall appoint a Diversity Officer. Diversity Directors and Officers shall have a direct reporting relationship to their Secretary or Agency head; shall also report to the Director of ODEO; and shall coordinate their component's compliance with the requirements of this Order and applicable federal and state laws. Through the Diversity Directors and Officers, and in compliance with the reporting guidelines and requirements established by ODEO, all state agencies

shall submit periodic reports to the Director of ODEO concerning the status and implementation of their affirmative action and diversity plans.

Section 9. The Massachusetts Office on Disability ("MOD"), through its Director, shall be responsible for advising, overseeing and coordinating compliance with federal and state laws protecting the rights of persons with disabilities, including but not limited to the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12131-12134; Section 504 ("504") of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Article CXIV of the Massachusetts Constitution; and Chapter 6, §§ 185-87; Chapter 93, § 103; Chapter 151B; and Chapter 272, §§ 92, 98, and 98A of the Massachusetts General Laws. MOD shall serve as the Executive Branch's designated ADA and Rehabilitation Act Coordinator, and shall provide information, training, and technical assistance and promulgate guidelines reflecting best practices, policies and procedures concerning persons with disabilities. Each agency shall appoint an ADA/504 Coordinator who shall report directly to the agency head and work with MOD concerning issues involving persons with disabilities. Notification of such appointment shall be made to MOD's Director.

Section 10. Pursuant to guidelines established by ODEO and MOD, all agency heads, managers, supervisors, and employees shall attend mandatory diversity training within one year of the effective date of this Order. For future hires, such training shall be part of the standardized orientation provided to new employees.

Section 11. ODEO and MOD shall promulgate guidelines establishing a complaint resolution process for individuals who allege non-compliance by state agencies with applicable federal and state laws prohibiting discrimination. In instances where this process does not resolve the complaint, the Director of ODEO may refer to the Massachusetts Commission Against Discrimination ("MCAD") or to MOD any information concerning conduct that the Director believes may constitute a violation of the law. The MCAD shall initiate investigations and, where necessary, file complaints against those agencies and persons whom it has reason to believe are in violation of the laws of the Commonwealth or the United States.

Section 12. In performing their responsibilities under this Order, ODEO, MOD, and the MCAD shall have the full cooperation of all state agencies, including compliance with all requests for information.

Section 13. The Governor's Non-discrimination, Diversity and Equal Opportunity Advisory Council ("Advisory Council") is hereby established to advise the Governor concerning policies, practices, and specific actions that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.1 The Advisory Council shall consist of fifteen persons, including a Chair, each of whom shall be appointed by the Governor. All members shall serve without compensation at the pleasure of the Governor in a solely advisory capacity.

13.2 The Advisory Council's work shall include, but need not be limited to, making written recommendations to the Governor concerning actions, policies, and practices that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.3 The Advisory Council shall meet at such times and places as determined by the Chair and shall submit an initial report containing its written recommendations to the Governor no later than 60 days following the appointment of the Council's 15 members. Thereafter, the Advisory Council shall meet at least semi-annually and submit supplemental reports to the Governor no less than once per year.

Section 14. Nothing in this Executive Order shall be construed to preclude or otherwise limit the continuation or implementation of any lawful affirmative action programs or other programs that support the objectives of this Executive Order.

Section 15. This Executive Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.



Given at the Executive Chamber  
in Boston this 17 day of February  
in the year of our Lord two  
thousand and eleven, and of the  
Independence of the United States  
of America two hundred and thirty-  
five.

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line.

DEVAL L. PATRICK, GOVERNOR  
Commonwealth of Massachusetts

A handwritten signature in black ink, appearing to read "William Francis Galvin", written over a horizontal line.

William Francis Galvin  
Secretary of the Commonwealth

**GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS**

## APPENDIX B

### Workforce Demographic by Department as of December 31, 2017

Department Name	Women	Minorities	Veterans	People with Disabilities
Executive Office of Energy and Environmental Affairs	40.8%	21.0%	16.2%	2.1%
Department of Agricultural Resources	58.2%	20.7%	2.3%	0%
Department of Conservation and Recreation	26.1%	11.4%	1.4%	6.7%
Department of Environmental Protection	44.6%	15.1%	1.5%	5.7%
Department of Fish and Game	37.6%	4.0%	4.3%	0.3%
Department of Public Utilities	47.5%	25.0%	3.1%	1.9%
Department of Energy Resources	46.8%	9.7%	1.6%	0%
Executive Office for Administration and Finance	38.5%	24.9%	0.9%	3.0%
Division of Administrative Law Appeals	66.7%	16.7%	3.3%	3.3%
Appellate Tax Board	53.3%	12.0%	2.4%	12.0%
Bureau of State Office Buildings	20.3%	21.7%	0%	7.2%
Civil Service Commission	47.6%	23.8%	23.8%	0%
Department of Revenue	57.0%	25.0%	1.2%	5.6%
Developmental Disabilities Council	55.8%	0%	0%	11.6%
Division of Capital Asset Management and Maintenance	37.5%	29.3%	3.2%	1.2%
State Library	90.9%	27.3%	0%	0%
Group Insurance Commission	69.0%	46.6%	0%	8.6%
Human Resources Division	65.4%	41.3%	0%	9.3%
Office on Disability	33.3%	11.1%	0%	55.6%
Operational Services Division	61.0%	25.7%	0%	4.5%
Executive Office of Housing and Economic Development	44.4%	20.4%	3.7%	0%
Office of Business Development	63.6%	18.2%	0%	0%
Department of Telecommunications and Cable	66.1%	19.4%	0%	14.5%
Department of Housing and Community Development	63.0%	40.8%	3.1%	7.0%
Division of Banks	44.5%	27.3%	2.5%	2.5%
Division of Insurance	45.7%	29.2%	0.8%	5.1%
Division of Professional Licensure	39.1%	21.2%	7.5%	2.9%

Department Name	Women	Minorities	Veterans	People with Disabilities
Division of Standards	18.5%	18.5%	0%	6.2%
Massachusetts Marketing Partnership	58.8%	23.5%	0%	0%
Office of Consumer Affairs and Business Regulation	86.4%	50.0%	0%	4.5%
Executive Office of Education	57.0%	35.8%	1.2%	6.0%
Department of Early Education and Care	81.3%	32.3%	0%	6.6%
Department of Elementary and Secondary Education	73.3%	19.4%	1.4%	7.3%
Executive Office of Health and Human Services	63.3%	34.4%	1.8%	3.9%
Commission for the Blind	66.0%	21.7%	0.8%	18.1%
Commission for the Deaf and Hard of Hearing	89.0%	15.4%	0%	28.1%
Department of Children and Families	82.0%	34.3%	0.5%	2.8%
Department of Developmental Services	66.7%	42.4%	0.8%	1.2%
Executive Office of Elder Affairs	77.8%	14.8%	1.9%	3.7%
Department of Mental Health	58.4%	35.4%	1.7%	1.7%
Department of Public Health	70.0%	36.4%	1.0%	0.9%
Department of Transitional Assistance	77.4%	46.6%	1.8%	3.5%
Department of Veterans' Services	44.9%	22.2%	34.9%	11.9%
Department of Youth Services	26.5%	48.7%	4.2%	1.3%
Rehabilitation Commission	76.0%	29.6%	1.5%	14.9%
Office for Refugees and Immigrants	92.9%	54.3%	7.1%	14.3%
Soldiers' Home in Chelsea	76.0%	34.3%	6.6%	3.6%
Soldiers' Home in Holyoke	62.8%	46.9%	3.9%	2.9%
Executive Office of Public Safety and Security	41.2%	29.4%	3.7%	4.8%
Office of the Chief Medical Examiner	68.4%	23.3%	7.2%	1.1%
Department of Criminal Justice Information Services	63.6%	27.3%	0%	3.0%
Department of Correction	20.1%	14.7%	18.0%	1.5%
Department of Fire Services	51.4%	2.3%	12.4%	1.1%
State Police	17.1%	10.5%	19.6%	0.2%
Massachusetts Emergency Management Agency	45.4%	6.4%	7.6%	3.7%
Military Division of the Massachusetts National Guard	17.7%	10.6%	27.3%	0.4%
Municipal Police Training Committee	69.6%	4.3%	8.7%	0%
Parole Board	56.6%	20.2%	8.1%	0%

Department Name	Women	Minorities	Veterans	People with Disabilities
<b>Sex Offender Registry Board</b>	52.2%	19.1%	0%	6.4%
<b>Executive Office of Technology Services and Security</b>	26.6%	24.4%	4.5%	1.1%
<b>Department of Transportation</b>	29.5%	25.4%	2.1%	2.1%
<b>Executive Office of Labor and Workforce Development</b>	59.9%	35.5%	4.5%	9.7%
<b>Commission against Discrimination</b>	66.7%	45.9%	1.4%	4.2%
<b>Disabled Persons Protection Commission</b>	73.7%	21.1%	2.9%	4.7%
<b>Center for Health Information and Analysis</b>	56.0%	31.2%	1.5%	3.9%
<b>Office of the Comptroller of the Commonwealth</b>	57.4%	36.7%	2.5%	8.5%
<b>Massachusetts Teachers' Retirement System</b>	66.1%	33.2%	1.1%	0%
<b>Public Employee Retirement Administration Commission</b>	55.4%	13.0%	0%	1.9%