

NONDISCRIMINATION AS IT APPLIES TO FEDERAL TRANSIT ADMINISTRATION PROGRAMS

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY.

The Federal Transit Administration's (FTA) policies and requirements are designed to clarify and strengthen equal employment opportunity (EEO) procedures for FTA grant recipients by requiring submission of written EEO plans and approval of such plans by FTA. Experience has demonstrated that a program requirement at the application stage is necessary to assure that affirmative action is properly and earnestly undertaken by grant recipients. The requirements prescribed by FTA accomplish that objective while diminishing vestiges of discrimination among FTA's large grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of EEO programs should occur with minimal increase in costs to such applicants and recipients.

All project sponsors receiving financial assistance pursuant to a FTA-funded project shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, national origin, age, or disability. Such project sponsors will take affirmative action to ensure that job applicants and employees are treated non-discriminatorily, without regard to race, color, creed, sex, national origin, age, or disability.

The above policies are supported by 42 U.S.C. 2000d–Title VI of the Civil Rights Act of 1964; 28 CFR Part 42.406–Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs; and 49 CFR Part 21–Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the inclusion and implementation of the following components:

- a. Statement of Policy - An EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. The policy must be placed conspicuously so that employees, applicants, and general public are cognizant of the agency's EEO commitment.
- b. Designation of EEO Personnel - An applicant/grantee must designate a person who will carry out EEO program objectives. This assures that EEO program objectives are given the highest priority, and that responsibility for implementing the program is

assigned to this person.

- c. Utilization Analysis - The utilization analysis consists of two parts: (1) work force analysis which shows utilization of minorities and women throughout the work force, by departments, promotional opportunities, salaries; and (2) availability analysis showing the presence of minorities and women in the local labor market.
- d. Goals and Timetables - As a result of identifying underutilization and determining the availability of minorities and women, grantees are able to project future hiring over a given period of time. Such goals and timetables enable FTA to measure an applicant's/grantee's progress in hiring minorities and women.
- e. Assessment of Present Employment Practices - An applicant/grantee must provide with his/her EEO/affirmative action program (and thereafter as conditions change) statistical information relative to his/her present employment practices, including recruitment efforts, selection process, salaries, promotions, terminations, and discipline. This information indicates whether minorities or women are being considered for employment or are participating in employment.
- f. Dissemination of EEO Policy - An applicant/grantee must provide documentation indicating entities to which the EEO policy and program have been disseminated. Information regarding the policy and program are normally disseminated internally and externally to appropriate media, public and private employment agencies, schools, colleges, training organizations, and community groups.
- g. Internal Monitoring and Reporting System - An internal monitoring and reporting system must be established to enable the grantee to evaluate progress in EEO implementation. This system serves to: (1) assess accomplishments; (2) evaluate the need for corrective action; and (3) identify those units which have failed to achieve a goal or implement affirmative action.

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE DATA WILL BE USED.

The data derived from written EEO and affirmative action plans will be utilized by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

3. CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE THE BURDEN.

The information collection burden has been simplified, and if there are questions, FTA grantees are provided technical assistance upon request. Requests for technical assistance are acted upon by the Office of Civil Rights. Additionally, the Office of Civil

Rights uses information technology with all reporting data applicable to this program. This has resulted in a slightly reduced workload for grantees and FTA.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION.

There is no duplication.

5. IF THE COLLECTION OF INFORMATION INVOLVES SMALL BUSINESS OR SMALL ENTITIES, DESCRIBE THE METHOD USED TO MINIMIZE BURDEN.

The EEO program is not applicable to businesses. The responsibility for collecting EEO information at FTA-assisted construction work sites is that of the Office of Federal Contract Compliance, U.S. Department of Labor. Increasingly, grant recipients are contracting with privately-owned transportation companies that provide mass transit service. These grant recipients are obtaining from this privately-owned transit companies' information showing the companies are providing equal employment opportunity to job applicants and its work force.

6. DESCRIBE CONSEQUENCES TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE INFORMATION WERE NOT COLLECTED OR COLLECTED LESS FREQUENTLY.

Information collection for the EEO program was originally an annual requirement for grant recipients. Administrative requirements were changed so grantees did not have to report as frequently. Currently, each year, only one-third of the total universe of grantees required to submit an EEO program do so. The EEO program is needed because there are, at times, rapid turnovers in the grantees' work force, particularly at the entry level, and the constant change in other employment areas, such as recruitment, promotions, and terminations. Information collection needs to be kept frequent because grantees are required to monitor their recruitment and employment. A less frequent reporting period would make it difficult to determine the progress made by the grantee.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT REQUIRE THE COLLECTION TO BE CONDUCTED IN A MANNER INCONSISTENT WITH THE GUIDELINES IN 5 CFR PART 1320.6.

This information collection requirement is consistent with guidelines in 5 CFR Part 1320.6.

8. DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY.

Fat's Office of Civil Rights discusses EEO program requirements with the American Public Transit Association's Minority Affairs Committee and grant recipients' EEO Officers on an ongoing basis. In this interaction, FTA has learned that despite grantees making gains in the

employment of minorities and women, EEO programs are still needed to correct deficiencies in certain job categories, such as officials/managers, and that Fat's EEO requirements are not costly or burdensome to grant recipients. Comments from these external sources has caused FTA to review its circular to assure provisions therein are relevant and applicable to such issues as sexual harassment and "glass ceiling."

A 60-day Federal Register Notice was published on May 30, 2006 (pages 30716 and 30717), soliciting comments prior to submission to the Office of Management and Budget (OMB). No comments were received. A 30-day Federal Register Notice was published on August 17, 2006 (pages 47560 and 47561).

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.

No payment or gift is made to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

All information collected is certified to comply with the Freedom of Information Act, the Privacy Act of 1974, and Office of Management and Budget Circular A-108. Confidentiality is promised, when requested, for information exempt from mandatory public disclosure requirements of the Freedom of Information Act.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE.

One of the components of an EEO program is that the grantee report on employees in job categories and the range of salaries for each of these categories. Some grantees have raised concerns regarding the inclusion of salaries as part of the work force analysis.

Information relating to salaries is needed to ensure that minorities and women are paid salaries comparable to other employees in the same job categories.

In its reviews and investigations, FTA reviews the grantees' employment application form for questions which may be potentially discriminatory and which might be used by the grantee to reject an otherwise qualified applicant. Such questions may relate to age, religion,

height, weight, color of eyes or hair, number of children, whether the applicant rents or owns his/her home and number of automobiles in the family. Where such questions are found, the Office of Civil Rights has recommended their elimination from the application form.

12. PROVIDE ESTIMATE OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION AND ANNUALIZED COST TO RESPONDENTS.

Approximately 280 grant recipients are required to prepare EEO submissions during each 3-year period. (Submissions are "staggered" so that one-third of the recipients submit a program the first year, another one-third, the next, and another the third). Based on a survey of grantees, it is estimated that the average time now spent in the preparation of EEO programs is 25 hours. Grant recipients spend 7,000 hours (280 grantees x 25 hours per submission per grantee) in the 3-year period. Annualized, the burden is 2,335 hours (280/3) or (93 grantees per year x 25 hours = 2,325 hours).

While the range of labor costs vary between small and large grantees, our estimate is that the average hourly labor rate is about \$19.00. Total labor costs to all grantees during the 3-year period is \$256,500 (30 hours x \$19.00 per hour x 450 grantees). The annualized cost is \$85,500 (\$256,500/3). The estimate of the printing and equipment cost in the 3-year period for each grantee is about \$125, for a total overhead amount of \$56,250 (\$125 x 450 grantees.) Annualized, this is \$18,750 (\$56,250/3). The total estimated annual cost to all grantees is \$104,250 (\$85,500 + 18,750 = \$104,250).

13. ESTIMATE OF TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION (NOT INCLUDING THE COST OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

There are no additional costs beyond those estimated in Items 12 and 14.

14. PROVIDE ESTIMATE OF THE TOTAL ANNUALIZED COST TO THE FEDERAL GOVERNMENT.

A total of 10 Civil Rights Officers review EEO program submissions. On an average, the 10 spend approximately 12 percent of their total annual duty hours, or approximately 230 hours per year (11% x 2080 hours), reviewing programs. With an average grade of GM-13, at an hourly rate of \$40, the total cost of labor hours for the 10 officers is \$92,000 (230 hours x \$40 x 10). At an estimated 10 percent overhead rate, total overhead is \$9,200 (10% x \$92,000). The total estimated cost to the federal government is \$101,200 (\$92,000 + \$9,200).

15. EXPLAIN THE REASONS FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.

The burden hours for this submission have not changed.

16. PLANS FOR TABULATION AND PUBLICATION FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED.

FTA does not anticipate the publication of its EEO data.

17. IF SEEKING APPROVAL NOT TO DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL, EXPLAIN THE REASONS.

There is no reason not to display the expiration date of OMB approval.

18. EXPLAIN ANY EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19 OR OMB FORM 83-I.

No exceptions are stated.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

FTA does not anticipate the publication of its EEO data for statistical use.

Attachments to Justification Statement

60-Day Federal Register Notice

30-Day Federal Register Notice

42 U.S.C. 2000d–Title VI of the Civil Rights Act of 1964

28 CFR Part 42.406–Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs

49 CFR Part 21–Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.