



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

CIRCULAR

UMTA C 4704.1

July 26, 1988

Subject: **EQUAL EMPLOYMENT OPPORTUNITY PROGRAM GUIDELINES FOR GRANT
RECIPIENTS**

1. **PURPOSE.** The purpose of this circular is to provide guidance and instructions necessary to carry out the equal employment opportunity (EEO) provisions of Section 19 of the Urban Mass Transportation Act of 1964 (UMT Act), as amended, as they relate to all Urban Mass Transportation Administration (UMTA) programs. This will be accomplished through the prescription of requirements and procedures which, if followed, will ensure that no person in the United States shall on the grounds of race, color, creed, national origin, sex, or age be excluded from participation in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity funded in whole or in part through financial assistance by UMTA. Similar prohibitions of employment discrimination on the basis of handicap apply to these projects, programs, and activities under Section 504 of the Rehabilitation Act of 1973.
2. **CANCELLATION.** This circular cancels UMTA Circular 1155.1, "UMTA Interim Equal Employment Opportunity Policy and Requirements for Grant Recipients," dated 12-30-77.
3. **SCOPE.** This circular applies to all assistance authorized by the UMT Act and all programs administered by UMTA.
4. **REFERENCES.**
 - a. Equal Pay Act of 1963, 29 U.S.C. 201;
 - b. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d;
 - c. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e;
 - d. UMT Act of 1964, as amended, 49 U.S.C. 1601;
 - e. Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a;
 - f. Title IX of the Education Amendments of 1972, Public Law 92-318;
 - g. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794;
 - h. 28 CFR Part 42, Subpart F, "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs";
 - i. 29 CFR Part 1605, "Guidelines on Discrimination Because of Religion";
 - j. 29 CFR Part 1606, "Guidelines on Discrimination Because of National Origin";

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- k. 29 CFR Part 1607, "Uniform Guidelines on Employee Selection Procedures";
- l. 29 CFR Part 1620, "The Equal Pay Act";
- m. 29 CFR Part 1625, "Age Discrimination in Employment Act";
- n. 49 CFR Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964";
- o. 49 CFR Part 27, "Nondiscrimination on the Basis of Handicap in Financial Assistance Programs";
- p. DOT Order 1000.12, "Implementation of the Department of Transportation Title VI Program," dated 1-19-77; and
- q. Part II, Section 110(a) of the UMTA Standard Grant Contract, dated 9-87.

5. BACKGROUND.

- a. Since 1977, UMTA has required an assessment of a recipient's EEO program to determine compliance with Title VI of the Civil Rights Act of 1964 and Part II, Section 110(a) of the UMTA Standard Grant Contract (formerly 109a), as part of the grant approval process. This was done through the issuance of UMTA Circular 1155.1.
- b. In 1982, the UMT Act was amended to include Section 19, "Nondiscrimination." Both Title VI and Section 19 prohibit discrimination on the part of recipients that have been funded by UMTA. Title VI prohibits discrimination on the basis of race, color, or national origin where a primary purpose of Federal financial assistance is to provide employment. Section 19 prohibits employment discrimination in all programs and activities that receive financial assistance from UMTA, expands prohibitions of discrimination to include sex, age, and creed, and authorizes affirmative action to assure nondiscrimination. In addition, discrimination on the basis of handicap is prohibited in UMTA-assisted programs and activities by the Rehabilitation Act of 1973, as amended.
- c. The guidelines and instructions contained in this circular are intended to reflect changes in UMTA programs, regulations, and rules since 1977, and to respond to the needs of those affected classes identified in Section 19 of the UMT Act. This circular has been updated to provide recipients with a thorough understanding of the UMTA EEO requirements.

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CHAPTER I

GENERAL

1. PURPOSE. Section 19 of the UMT Act states:

- "(a) (1) GENERAL. - No person in the United States shall on the grounds of race, color, creed, national origin, sex, or age be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through financial assistance under this Act. The provisions of this section shall apply to employment and business opportunities and shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964.
- (2) AFFIRMATIVE ACTION. - The Secretary shall take affirmative action to assure compliance with subsection (a) (1) of this section."

To achieve EEO, UMTA is authorized by the Secretary to implement Section 19 for each program or activity providing financial assistance by issuing generally applicable rules, regulations, and requirements. The responsibility of UMTA is to ensure that grant applicants, recipients, subrecipients, contractors, or subcontractors of Federal financial assistance provide EEO to its employees, and those applying for employment in a manner consistent with Section 19 and other applicable legal requirements for nondiscrimination.

This circular provides information on the methods UMTA will use to enforce EEO requirements in accordance with its responsibilities under Section 19. The circular includes information, guidance, and instructions on the objectives of the UMTA EEO program and a detailed description of the components that must be included in a recipient's EEO program. Overall, a recipient, subrecipient, or contractor's program must prohibit discrimination based on race, color, creed, national origin, sex, age, or handicap. Although the guidance in this circular primarily addresses specific affirmative EEO program components required to eliminate discrimination on the bases of race, sex, and national origin, recipients, subrecipients, and contractors also must comply with applicable legal requirements for employment nondiscrimination on the basis of creed, age, and handicap. Legal standards prohibiting discrimination against persons 40 or older are established in the Age Discrimination in Employment Act of 1967 and in regulations and guidance interpreting this Act issued by the U.S. Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1625. Legal standards for nondiscrimination on the basis of creed, including the obligation for reasonable accommodation of religious needs of employees and applicants, are set out in 29 CFR Part 1605, implementing Title VII of the Civil Rights Act of 1964. Recipients also are referred to 29 CFR Part 1606, 29 CFR Part 1607, and to provisions of 29 CFR Part 1620. These regulations and guidance are incorporated by reference.

While Section 19 does not address employment discrimination against qualified handicapped persons, such discrimination is prohibited by Section 504 of the Rehabilitation Act of 1973. The implementing regulation is contained in 49 CFR Part 27, and is incorporated by reference.

2. OBJECTIVES. The objectives of the UMTA EEO program are:
 - a. To ensure that UMTA applicants, recipients, subrecipients, contractors, and/or subcontractors will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or handicap;
 - b. To ensure that UMTA applicants, recipients, subrecipients, contractors, and/or subcontractors will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to: hiring, promotion or upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, disciplinary actions, rates of pay or other forms of compensation, and selection for training, including apprenticeship. It shall also include a written, affirmative action plan designed to achieve full utilization of minorities and women in all parts of the work force; and
 - c. To ensure that UMTA applicants, recipients, subrecipients, contractors, and/or subcontractors will post in conspicuous places and make available to employees and applicants for employment, notices setting forth the recipient's EEO policy. In addition, applicants/employees will be notified of the recipient's procedures for filing complaints of discrimination internally, as well as externally with the EEOC, a local human rights commission, and/or the U.S. Department of Transportation (DOT).
3. DEFINITIONS. For purposes of this circular, the following definitions will be used:
 - a. Affirmative Action Plan means a written, detailed, results oriented set of procedures designed to achieve prompt and full utilization of minorities and women at all levels and in all parts of the recipient's work force.
 - b. Agency refers to an applicant, recipient, subrecipient, or contractor.
 - c. Applicant means an eligible public entity or organization that submits an application for financial assistance under any UMTA program.

- d. Compliance refers to a condition in which UMTA has found that the applicant, recipient, or subrecipient has met the requirements in this circular, and there is no indication or evidence of discrimination on the basis of race, color, creed, national origin, sex, age, or handicap.
- e. Concentration means a higher representation of a particular group (e.g., Blacks, Hispanics, women, etc.) in a job category or department as compared to their representation in the relevant labor market.
- f. Contractor means any entity or organization which has entered into a contract with an UMTA applicant, recipient, or subrecipient.
- g. Discrimination refers to any act, or any failure to act, which has the purpose or effect of limiting, excluding, or denying a person employment opportunity because of race, color, creed, national origin, sex, age, or handicap.
- h. Good Faith Efforts refers to those actions taken to achieve the objectives of the EEO program. These actions may include, but are not limited to, the establishment and conduct of processes to implement specific provisions of this circular.
- i. Minority or Minority Group Persons includes the following:
 - (1) Black (not of Hispanic origin): All persons having origins in any of the Black racial groups of Africa;
 - (2) Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
 - (3) Asian or Pacific Islander: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa; and
 - (4) American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- j. National Origin means the particular Nation where a person was born or where the person's parents or ancestors were born.
- k. Noncompliance means a failure to meet the requirements of this circular and guidance issued pursuant to the circular or failure to implement an approved EEO program.

- l. Primary Recipient means any recipient that is authorized or required to request Federal assistance on behalf of subrecipients and distributes such financial assistance to subrecipients for the purpose of carrying out a program.
- m. Probable Noncompliance refers to a condition in which UMTA has found that the applicant, recipient, or subrecipient does not fully satisfy these requirements and has requested the applicant, recipient, or subrecipient to take remedial or corrective actions to achieve compliance or has initiated an enforcement action against the applicant, recipient, or subrecipient.
- n. Recipient means any State, political subdivision, instrumentality, or any public or private agency, institution, department or other organizational unit, to whom financial assistance is directly extended by UMTA.
- o. Secretary means the Secretary of DOT.
- p. Subcontractor means any entity or organization which has entered into a subcontract relating to transit service delivery with a contractor to provide a service in connection with a program or activity initiated by an applicant, recipient, or subrecipient.
- q. Subrecipient means any entity that receives UMTA financial assistance through a primary recipient.
- r. UMTA Activity means any program of assistance authorized by sections of the UMT Act; the Federal Aid Urban Systems Program, 23 U.S.C. 142(a) (2); and the Interstate Transfer Program 23 U.S.C. 103(4) (e).
- s. Underutilization refers to a condition where there are fewer minorities and/or women in a particular job category or department than would reasonably be expected based on their presence in the relevant labor force.

CHAPTER II

COVERAGE

1. GENERAL. All programs administered by UMTA are subject to Section 19 of the UMT Act. These include the assistance programs authorized by the UMT Act, 23 U.S.C. 142(a)(2), and 23 U.S.C. 103(e)(4). These programs are also covered by the implementing regulations 28 CFR Part 42, Subpart F and 49 CFR Part 21. In addition, all recipients are required to comply with Part II, Section 110(a) of the UMTA Standard Grant Contract.

The obligations set forth by this circular are to be redelegated to any contractor/subcontractor required to provide EEO on behalf of a recipient.

2. THRESHOLD REQUIREMENTS. Any applicant, recipient, or subrecipient is required to comply with program requirements in Chapter III if it meets the following thresholds:

- a. Employs 50 or more transit-related employees*; and
- b. Requests or receives capital or operating assistance under Sections 3, 4(1), or 9 of the UMT Act; assistance under 23 U.S.C. 142(a)(2) or 23 U.S.C. 103(e)(4), or any combination thereof, in excess of \$1 million in the previous Federal fiscal year; or requests or receives planning assistance under Sections 8 and/or 9 in excess of \$250,000 in the previous Federal fiscal year.

3. STATE-ADMINISTERED PROGRAMS.

- a. The UMTA EEO objectives apply to those programs that are administered by designated State agencies. Generally, these programs include the UMTA elderly and handicapped and rural assistance programs funded under Sections 16(b)(2) and 18 of the UMT Act, respectively. In addition, some States administer the UMTA planning and formula capital/operating assistance programs funded under Sections 8 and/or 9 of the UMT Act for urbanized areas under 200,000 population.

* A transit-related employee is an employee of an UMTA applicant, recipient, or subrecipient who is involved in any aspect of an agency's mass transit operation funded by UMTA. For example, a city planner involved in planning bus routes would be counted as part of the recipient's work force, but a city planner involved in land use would not be counted.

- b. Pursuant to a Memorandum of Understanding, the Federal Highway Administration (FHWA) has been delegated the lead responsibility to review and approve EEO programs submitted by State DOTs. In coordination with FHWA, UMTA reviews these programs and those of other State agencies to assure that EEO is provided to the work force related to mass transportation. In those instances in which State DOTs or other state agencies provide mass transportation, such agencies will submit their EEO programs, as required by this circular, directly to UMTA for review and approval. In the Memorandum of Understanding, UMTA has the lead responsibility for reviewing EEO programs submitted by Metropolitan Planning Organizations (MPOs) that meet the thresholds of this circular.
- c. State agencies must administer their EEO programs in the following manner:
- (1) All designated State agencies will have the responsibility for assuring that their subrecipients are in compliance with the UMTA EEO objectives contained in Chapter I of this circular.
 - (2) All designated State agencies will maintain and provide data and report to UMTA as specified in Chapter III of this circular or at the discretion of the UMTA Area Civil Rights Officer. Data may be requested, especially in those cases where the designated State agency or subrecipient is the subject of an "onsite" compliance review by UMTA.
 - (3) All subrecipients will be responsible for complying with the EEO objectives contained in this circular. UMTA recommends that designated State agencies request EEO programs from their subrecipients as specified in this circular. This will enable designated State agencies to determine if subrecipients are in compliance with UMTA EEO objectives.

During the triennial review or at the discretion of the UMTA Area Civil Rights Officer, UMTA may request from designated State agencies the procedures and criteria used to determine the EEO compliance of subrecipients. UMTA may conduct independent onsite EEO compliance reviews of subrecipients to examine their records and to determine compliance with the UMTA EEO objectives and requirements.

4. CONTRACTING OUT AND PRIVATIZATION/COMPETITIVENESS PROGRAMS. In the planning and development of a recipient's contracting out and privatization/competitiveness programs, full consideration must be given to the EEO ramifications of such program planning and development. Such decisions must be justified on the basis of sound business planning.

Disparate impact on minority and female employees must be considered and appropriate steps taken to mitigate any hardships which might result from such decisions.

5. FREQUENCY OF UPDATE. Each applicant, recipient, or subrecipient meeting the EEO circular threshold requirements shall submit to UMTA an updated EEO submission on a triennial basis or as major changes occur in the work force or employment conditions. At the discretion of the UMTA Office of Civil Rights, less information may be requested where the recipient's previously submitted EEO program has not changed significantly.
6. OTHER INFORMATION. The UMTA Area Civil Rights Officer may request information, in addition to that required by this circular, from an applicant, recipient, or subrecipient to resolve questions concerning EEO compliance. In certain instances, less information will suffice. In cases in which additional information is needed, this request will be made in writing to the applicant, recipient, or subrecipient. Failure to submit information requested by UMTA may delay completion of a compliance review or delay the further consideration of a pending grant application(s).

Failure by an applicant, recipient, or subrecipient to comply with the terms of this circular may result in a finding by UMTA of noncompliance with Section 19 and Section 110(a) of the UMTA Standard Grant Contract and the imposition of appropriate sanctions.

CHAPTER III

EEO PROGRAM COMPONENTS

1. OVERVIEW. This chapter describes the components that must be addressed and incorporated in a recipient's EEO program pursuant to Section 19 of the UMT Act.

While Section 19 prohibits discrimination on the basis of "race, color, creed, national origin, sex, or age," this circular primarily addresses and prescribes specific affirmative programmatic components to assure nondiscrimination by applicants, recipients, and subrecipients on the basis of race, national origin, and sex. This circular also requires recipients and contractors to comply with prohibitions against discrimination on the basis of age established in the Age Discrimination in Employment Act of 1967, as amended, and prohibitions against discrimination on the basis of creed, as set out in EEOC guidelines interpreting Title VI of the Civil Rights Act of 1964 (see Chapter I). This circular also incorporates by reference requirements for compliance with prohibitions against discrimination on the basis of handicap established in DOT regulations implementing the Rehabilitation Act of 1973, as amended, 49 CFR Part 27.

2. PROGRAM REQUIREMENTS. The major components of an EEO program follow:

- a. Statement of Policy. An EEO program must include a statement issued by the chief executive officer regarding EEO policy affecting all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. The EEO policy statement must be placed in conspicuous locations so that employees, applicants, and the general public are cognizant of the agency's EEO commitment. The written EEO policy statement must include:
 - (1) The recipient/subrecipient/contractor's commitment to EEO for all persons, regardless of race, color, creed, national origin, sex, or age. At its discretion the agency may include handicap;
 - (2) A commitment to undertake an affirmative action program, including goals and timetables, in order to overcome the effects of past discrimination on minorities and women;
 - (3) That the responsibility for the implementation of the EEO program is assigned to an agency executive (e.g., Manager/Director of EEO);
 - (4) That all management personnel share in this responsibility and will be assigned specific tasks to assure compliance is achieved;

- (5) That applicants and employees have the right to file complaints alleging discrimination with the appropriate official;
 - (6) That performance by managers, supervisors, etc., will be evaluated on the success of the EEO program the same way as their performance on other agency's goals; and
 - (7) That successful achievement of EEO goals will provide benefits to the recipient/subrecipient/contractor through fuller utilization and development of previously underutilized human resources.
- b. Dissemination. Formal communication mechanisms should be established to publicize and disseminate the agency's EEO policy, as well as appropriate elements of the program, to its employees, applicants, and the general public.
- (1) Internally. Managers and supervisors should be fully informed of the agency's policy by actions such as:
 - (a) Written communication from the chief executive officer;
 - (b) Inclusion of the EEO program and policy in the agency's personnel and operations manual; and
 - (c) Meetings held (e.g., at a minimum semiannually) to discuss the EEO program and its implementation.
 - (d) Non-supervisory staff should be informed of the agency's EEO policy and program by actions such as:
 - 1 Posting official EEO posters and the policy statement on bulletin boards, near time clocks, employees' cafeteria and snack bars, and in the employment/personnel office;
 - 2 Including the EEO policy in employee handbooks, reports, manuals, and union contracts;
 - 3 Meeting with minority and female employees to get their suggestions in implementing and refining the EEO program; and
 - 4 Presentation and discussion of the EEO program as part of employee orientation and in all training programs.

- (2) Externally. The agency should disseminate its EEO policy and programs to regular recruitment sources, such as:
 - (a) Employment agencies; hiring halls; unions; educational institutions; minority, handicapped, and women's organizations; civil rights organizations; community action groups; training organizations (e.g., Opportunities Industrialization Centers of America, Inc.); and others who refer applicants.
 - (b) Public media sources, especially radio and television stations, newspapers, magazines, and other journals (especially those oriented to the handicapped and minority populations). All advertisements for personnel should include a statement that the recipient is an "EEO employer."
- c. Designation of Personnel Responsibility. The importance of an EEO program is indicated by the individual the agency has named to manage the program and the authority this individual possesses. An executive should be appointed as Manager/Director of EEO who reports and is directly responsible to the agency's chief executive officer. Since managing the EEO program requires a major commitment of time and resources, the Manager/Director of EEO should be given top management support and assigned a staff commensurate with the importance of this program. The EEO program manager should be identified by name in all internal and external communications regarding the agency's EEO program. This person should be financially compensated at the same level as other top management officials. The most essential requirements for an effective EEO Officer are:
 - (1) Sensitivity to, and an awareness of, the varied ways in which discrimination occurs;
 - (2) Total commitment to EEO program goals and objectives;
 - (3) Knowledge of civil rights precepts, policies, rules, regulations, and guidelines; and
 - (4) Sufficient authority and ability to work and communicate with others (e.g., department heads) to achieve EEO goals and objectives.

The EEO program responsibilities, should, at a minimum, include the following:

- (1) Developing and recommending EEO policy, a written EEO program, and internal and external communication procedures;

- (2) Assisting management in collecting and analyzing employment data, identifying problem areas, setting goals and timetables, and developing programs to achieve goals;
- (3) Designing, implementing, and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed;
- (4) Reporting periodically to the chief executive officer on progress of each unit in relation to the agency's goals;
- (5) Serving as liaison between the agency, Federal, State, and local governments, regulatory agencies, minority, handicapped and women's organizations, and other community groups;
- (6) Assuring that current legal information affecting affirmative action is disseminated to responsible officials;
- (7) Assisting in recruiting minority, handicapped and women applicants and establishing outreach sources for use by hiring officials;
- (8) Concurring in all hires and promotions; and
- (9) Processing employment discrimination complaints.

Although the agency's EEO program manager has primary responsibility for implementing the agency's EEO plan, carrying out EEO and affirmative action is an integral function of all officials, managers, and supervisors. Management—from the supervisor of the smallest unit to the chairman of the board or chief executive officer—bears the responsibility of ensuring that the agency's EEO policies and programs, as outlined in its EEO program, are carried out. Managers are expected to carry out the following responsibilities, as part of their job, in implementing the agency's EEO program:

- (1) Assisting in identifying problem areas and establishing agency and unit goals and objectives;
- (2) Being actively involved with local minority organizations, women's and handicapped groups, community action organizations and community service programs designed to promote EEO;
- (3) Participating actively in periodic audits of all aspects of employment in order to identify and to remove barriers obstructing the achievement of specified goals and objectives;

- (4) Holding regular discussions with other managers, supervisors, and employees to assure the agency's policies and procedures are being followed;
 - (5) Reviewing the qualifications of all employees to assure that minorities, handicapped persons, and women are given full opportunities for transfers, promotions, training, salary increases, and other forms of compensation;
 - (6) Participating in the review and/or investigation of complaints alleging discrimination;
 - (7) Conducting and supporting career counseling for all employees; and
 - (8) Participating in periodic audits to ensure that each agency unit is in compliance (e.g., EEO posters are properly displayed on all employee bulletin boards).
- d. Utilization Analysis. The purpose of the utilization analysis is to identify those job categories where there is an underutilization and/or concentration of minorities and women in relation to their availability in the relevant labor market. It is also to establish the framework for goals and timetables and other affirmative actions to correct employment practices that contributed to any identified absence, underutilization, or concentration.
- (1) A utilization analysis consists of a work force analysis and an availability analysis. The work force analysis requires a statistical breakdown of the recipient's work force by each department, job category (e.g., Officials/Managers, Clericals, Dispatchers, Bus Operators, Mechanics, Bus Cleaners, etc.), grade/rank of employee (e.g., Road Supervisor, I or II; Mechanic, A or B; etc.), and job title. Each of the above should be cross-referenced by race, national origin, and sex. This analysis should be structured in lines of progression by departmental units to insure that promotional opportunities will be considered. A table or chart is recommended for formulating this analysis (see Appendix A). Also, principal duties and rates of pay must be indicated for each job category, grade/rank of employee, and job title for each employee. Where auxiliary duties are assigned, or where more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made. Where the applicant, recipient, or subrecipient operates more than one shift or assigns employees within each shift to varying locations, indicate the number by race, national origin, and sex on each shift and in each location.

- (2) An availability analysis is a comparison of the participation rates of minorities and women at various levels in the work force with their availability in relevant labor markets. A labor market has both geographic and occupational components. Different geographic areas and labor force data should be used for different job categories. As an example, professional positions would likely have a regional or national recruiting area as opposed to a local recruiting area as would be the case for less skilled jobs. Moreover, recruiting areas should reflect nearby concentrations of minority-group persons who may have been historically excluded from consideration.
- (3) Occupational data (in addition to general population and unemployment information), along with training and promotional opportunities, should be considered in determining the availability of persons for those employment opportunities from which minorities and women have traditionally been excluded. In determining availability for job categories not requiring special skills or abilities, general population or work force age data may be suitable. Community and area labor statistics by race, national origin, and sex can be obtained from the U.S. Department of Commerce, Bureau of the Census, and its publications; U.S. Department of Labor, Bureau of Labor Statistics, and the Women's Bureau; State and local governments, especially State employment services and MPOs. Detailed occupational data by race, national origin and sex, in categories required for EEO reports (e.g., Professionals, Officials and Managers, Technicians, Office and Clerical Workers, Craft Workers) is available in special affirmative action data packages from many State employment services. Similar data is available from the Research and Analytical Services Staff of the EEOC.
- (4) Applicants, recipients, subrecipients, or contractors should present this data in a table or chart form for the job categories and job titles being analyzed (see Appendix A). Data used should be the most recent, accurate, and relevant. Also, in assessing availability and projecting goals from such availability, the program should also indicate the data given the greatest weight and reasons underlying the decision.
- (5) In performing the work force and availability analyses, the applicant, recipient, or subrecipient should have racial data cross-classified by sex to ascertain the extent to which minority-group women or minority-group men may be underutilized. Likewise, minority-group data should be broken down by specific racial groups (i.e., Black, Hispanic, Asian and Pacific Islander, and American Indian or Alaskan Native).

- e. Goals and Timetables. Goals and timetables are an excellent management tool to assist in the optimum utilization of human resources. Specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in the utilization analysis. Usually, long-range goals will be designed to eliminate underutilization in job categories where it has been identified. Based on the utilization analysis, the recipient/subrecipient/contractor should establish goals and timetables designed to correct any identified deficiencies. The goals and timetables should be attainable, in terms of the analysis and the entire program of affirmative action, to remedy existing employment practices that may unjustifiably be contributing to underutilization. In establishing the size of goals and the length of timetables, the recipient/subrecipient/contractor should consider results which can reasonably be expected from putting forth every good faith effort to make the overall affirmative action program work. If goals and timetables are not met, there is an obligation to justify this failure following the recipient's annual evaluation of the EEO program. The justification for failing to meet a goal(s) should address such factors as: whether the anticipated job openings materialized, the availability of persons whose employment could have resulted in the goal(s) being achieved, and the adequacy of recruitment and other affirmative actions to change existing employment practices so that the goal(s) could be achieved.

Long-range goals are usually stated as percentages, although numerical projections are recommended where feasible. Such goals should consider the fact that availability of traditionally underutilized or underemployed groups is not constant. Future projections should be taken into consideration. Generally, an EEO program will be formulated with long-range goals to be attained within a period of 4 to 5 years.

Short-term or intermediate numerical goals should be set and pursued in order to assure accomplishment of long-range goals. Short-term goals represent the net increase in minority and/or women's employment in a particular job category within the next 12 months. Short-term goals should be stated, both as actual numbers and percentages, and should be based on anticipated job openings, job group availability, and the long-range goals set for minorities and/or women in the particular job category. Projections of vacancies should also be established in terms of a job progression chart in order to determine which vacancies can be filled immediately by underutilized persons and the possibilities of these persons being promoted into upper-level positions in terms of long-range goals.

Short-term or intermediate goals should be weighted and established so that they are likely to produce the greatest results. As an example, if the recipient/subrecipient/contractor has no members of a specific affected group in a particular job classification, initial short-term goals should be set higher to maximize the expectation of recruitment and selection from the affected group. On the other hand, if the employer has a good representation of traditionally underutilized groups in the lower steps of the job progression, and members of each affected group are moving into higher steps of the job progression with regularity, a lower allocation of openings at the upper level may be adequate.

In developing goals and timetables to correct underutilization, the employer should use the following guidelines for goal-setting:

- (1) Involve personnel staff, department and division heads, local and unit managers in the process;
- (2) Set goals that are significant, measurable, and attainable;
- (3) Make goals with timetables specific for planned results;
- (4) Consider anticipated attrition, expansion, contraction (especially the impact on employment of projected contracting out and privatization/competitiveness activities), turnover in the work force, and availability of persons with required skills;
- (5) Consider effects of changes in existing employment practices that may contribute to underutilization in increasing availability of minorities and women (see paragraph (6) below); and
- (6) Goals should not be rigid and inflexible, but must be targets reasonably attainable by applying every good faith effort to make all aspects of the affirmative action program work.

The monitoring and reporting system, which is discussed later in this section, should be utilized to prescribe and revise short-term goals. The system should allow for revision of long-range goals to reflect availability of traditionally underutilized persons.

Agencies must analyze in detail all employment practices relating to recruitment, selection, salaries, promotions, terminations, standards of discipline, seniority, maternity/paternity leave, height and weight requirements, etc. All problems must be noted and a proposed course of remedial action must be enumerated in the agency's submitted EEO program. Agencies are urged to consult EEOC, Federal Sector Programs Office, Washington, D.C., for further guidance in the development of EEO programs.

- f. Assessment of Employment Practices to Identify Causes of Underutilization: Affirmative Action to Remedy Problem Areas. Recipients/subrecipients/contractors must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. All problem areas must be identified and a proposed program of remedial, affirmative actions enumerated in the agency's submitted EEO program. The assessment and identification of problem areas should evaluate the impact of the agency's employment practices on all of its employment patterns including recruitment, selection, promotion, termination, transfer, layoff, disciplinary action, compensation and benefits, training, etc. This assessment should include the following:
- (1) A narrative description and an analysis of all recruitment and employment selection procedures from the agency's last EEO submission, including position descriptions, application forms, recruitment methods and sources, interview procedures, test administration and a determination of their nondiscriminatory impact and validity, educational prerequisites, referral procedures, and final selection methods;
 - (2) A narrative description and analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures, and formal and informal training programs from the agency's last EEO submission;
 - (3) A narrative description and analysis of procedures and practices regarding wages, salary levels, and other forms of compensation and benefits;
 - (4) A narrative description and analysis of disciplinary procedures and discharge and termination practices; and
 - (5) A reasonable assessment to determine if the employment of affected classes of persons is inhibited by external factors (e.g., not knowing where to apply for jobs, the availability of bilingual materials and information, etc.).

The narrative descriptions and analyses should be presented in a detailed fashion. Where written, formal, or scored tests are used in the employment selection process, the agency should identify the test, describe the procedures followed in administering and scoring the test, the weight that is given to test scores, how a cut-off score is established, and whether the test has been validated to predict or measure job performance and if so, an assessment of its nondiscriminatory impact, and a description of the validation study. All other selection procedures must comply with requirements of 29 CFR Part 1607. In general, the guidelines require that a selection procedure that has an adverse impact on the employment of minorities or women must be validated or otherwise justified as necessary for successful job performance, in accordance with procedures specified in the guidelines.

These analyses must contain statistical data to document the impact of the employment practices by race, national origin, and sex. At a minimum, the analyses must contain the following:

- (1) The number of individuals by race, national origin, and sex, applying for employment within the past year. The number, by race, sex, and national origin, of those applicants who were offered employment and those who were actually hired;
 - (2) The number of employees in each job category, by race, national origin, and sex, who have applied for promotion or transfer within the past year. The number in each job category, by race, national origin, and sex, who were promoted or transferred; and
 - (3) The number of disciplinary actions and terminations, by race, national origin, and sex, within the past year. The number and types of disciplinary actions and terminations (e.g., indefinite supervision, loss of pay, demotion, etc.).
- g. Monitoring and Reporting System. An important part of any successful EEO program is the establishment of an effective and workable internal monitoring and reporting system. This system should serve the following basic purposes:
- (1) Assessing EEO accomplishments;
 - (2) Enabling the agency to evaluate the EEO program during the year and to take any necessary corrective action regarding the development and execution of programs or goals and timetables;
 - (3) Identifying those units which have failed to achieve a goal or to implement affirmative action; and
 - (4) Providing a precise and factual data base for future projections.

The reporting system should provide documentation to support actions that affect minority and women job applicants or employees. Management should be kept informed of program effectiveness.

The creation of an EEO advisory committee, reflective of all segments of the community and the agency's work force, can be an effective tool in this regard.

CHAPTER IV

TYPES OF COMPLIANCE REVIEWS

1. GENERAL. This chapter describes the manner in which UMTA will monitor compliance of applicants, recipients, and subrecipients with Section 19. Included in this chapter are descriptions of the type of compliance reviews UMTA will conduct. Also included are criteria and procedures UMTA will use in its review process to determine compliance with the EEO program. Applicants, recipients, and subrecipients may use this chapter to develop local programs to monitor compliance with EEO programs in order to fulfill their obligations under the regulations.
2. COMPLIANCE REVIEWS. UMTA will perform pre- and post-award compliance reviews which will be conducted by designated civil rights staff.
 - a. Application Reviews. Application reviews are conducted in response to applications for assistance authorized under any section of the UMT Act. The purpose of these reviews is to determine EEO compliance with Section 19. Application reviews will consider:
 - (1) The information provided in response to the EEO program components listed in Chapter III;
 - (2) The findings and recommendations of EEO reviews previously conducted by UMTA or the applicant/recipient and the corrective actions undertaken as a result of those reviews; and
 - (3) Other information deemed necessary and appropriate by UMTA as well as information submitted by the recipient in support of the application.
 - b. Post-Approval Reviews. UMTA will conduct post-approval reviews as a part of its ongoing monitoring responsibilities. These reviews will be conducted at least once every 3 years. The review may be either a "desk audit" or "onsite." Although the EEO review process is independent of the Triennial Review process, to the maximum extent possible, these post-approval reviews will be conducted in conjunction with scheduled Triennial Reviews. These reviews will consider:
 - (1) Results of the application review, including information required by the EEO program components specified in Chapter III;
 - (2) The overall efforts made by the recipient to ensure compliance under Section 19, including any compliance reports prepared by the recipient;

- (3) If "onsite," inspection of all materials pertaining to implementation of their EEO program and verification that all employment policies and practices are consistent with Section 19; and
 - (4) Other information that is necessary and appropriate to make a determination that the recipient or subrecipient is in compliance with Section 19.
- c. Discretionary Followup Reviews. Followup reviews will be conducted by UMTA, as appropriate, to assure that EEO programs of recipients/subrecipients are implemented in a manner consistent with Section 19. Two such reviews would include, but not be limited to:
- (1) A review to determine whether a recipient is honoring its commitment represented by the certification to UMTA that it is complying with its responsibilities under Section 19; and
 - (2) A compliance review conducted in response to a specific complaint alleging discrimination. Other factors that may initiate such reviews include, but are not limited to:
 - (a) The level of assistance being provided by UMTA;
 - (b) The availability of minorities and women in the geographical area;
 - (c) The level and representation of minority and female employment within the recipients' work force;
 - (d) Complaints or other allegations of discrimination by minority and female employees and applicants; and
 - (e) The findings of the pre- and post-award compliance reviews.

The above-mentioned reviews will be structured on a case-by-case basis in order to assess compliance by the recipient with these requirements. The UMTA compliance review report shall contain statements of fact and recommendations, including corrective actions deemed necessary and appropriate.

3. COMPLIANCE DETERMINATION. A compliance determination will be based on an analysis of information submitted under Chapter III, as well as a review and an analysis of all data gathered and findings made as a result of a "desk audit" or "onsite" review. In addition, analysis of all other information submitted in response to specific requests by UMTA will be considered.

Failure by an applicant, recipient, or subrecipient to submit information requested by UMTA may delay completion of a compliance review thus, delaying the further consideration of a pending grant application(s).

CHAPTER V

REMEDIAL ACTIONS AND ENFORCEMENT PROCEDURES

1. GENERAL. This chapter describes the procedures and requirements for initiating remedial actions in cases of noncompliance or probable noncompliance with Section 19, and summarizes the enforcement procedures UMTA will follow in those instances when a grant applicant, recipient, or subrecipient refuses or fails to comply voluntarily with remedial measures.
2. REMEDIAL ACTIONS. Remedial actions are required in cases where UMTA has determined that an applicant, recipient, or subrecipient is in noncompliance or probable noncompliance with the requirements in this circular, or where UMTA has found evidence of discrimination prohibited under Section 19.

Remedial actions refer to specific tasks which must be undertaken by a applicant, recipient, or subrecipient. In setting remedial actions, UMTA intends for the applicant, recipient, or subrecipient to agree to a voluntary plan of action to correct deficiencies and ensure continued compliance with Section 19. In cases where UMTA determines that remedial action is necessary and appropriate to ensure compliance with Section 19, the following procedures will be adhered to:

- a. Letter of Finding/Remedial Action Plan. Where UMTA has conducted a compliance review, or other review, audit, or complaint investigation, and has made a finding of noncompliance or probable noncompliance, UMTA will send a Letter of Finding to the grant applicant, recipient, or subrecipient identifying the deficiencies observed. This letter will request the grant applicant, recipient, or subrecipient to submit a Remedial Action Plan for correcting the deficiencies cited in the Letter of Finding, and recommend voluntary corrective actions deemed necessary and appropriate by UMTA.
- b. Applicant/Recipient Response. Within 30 days of the receipt of the UMTA Letter of Finding, the applicant, recipient, or subrecipient must submit a Remedial Action Plan and, if necessary, sufficient reasons and justification for UMTA to reconsider any of its findings or recommendations. The Remedial Action Plan shall:
 - (1) List all corrective actions accepted by the applicant, recipient, or subrecipient;
 - (2) Describe how the corrective actions will be implemented;
 - (3) Include a written assurance that the applicant, recipient, or subrecipient will implement the accepted corrective action(s) and has the capability to implement the accepted corrective action(s) in the manner discussed in the plan; and

- (4) All requests for reconsideration shall:
- (a) State which of UMTA's findings or recommendations the applicant, recipient, or subrecipient requests UMTA to reconsider;
 - (b) Provide a justification for the request to reconsider, including any evidence or information supporting such a request; and
 - (c) Include a written assurance that on the basis of the requested reconsideration, the applicant, recipient, or subrecipient is or otherwise will come into compliance.

- c. Final Remedial Action Plan. Within 30 days after receiving the grantee's response, UMTA shall review the submitted Remedial Action Plan and any request for reconsideration and decide what remedial action(s) are necessary and appropriate to bring the applicant, recipient, or subrecipient into compliance. If necessary, before making a decision, UMTA may conduct a site visit to substantiate information or statements contained in the grantee's response.

UMTA shall issue its decision, including its findings and recommendations, as part of a Final Remedial Action Plan. The Final Remedial Action Plan will be sent to the applicant, recipient, or subrecipient for review and consent. Consent infers that the applicant, recipient, or subrecipient agrees to initiate action(s) specified in the plan.

The applicant, recipient, or subrecipient has 15 days to agree or disagree with the Final Remedial Action Plan.

If an applicant, recipient, or subrecipient agrees, UMTA will amend its EEO finding to probable compliance or full compliance, and a letter stating the amended compliance determination will be sent to the grantee.

If an applicant, recipient, or subrecipient does not agree with the Final Remedial Action Plan, it must submit a written statement of its reasons for not agreeing to the remedial actions contained in the plan. Under such circumstances the applicant, recipient, or subrecipient will be held in noncompliance, and a meeting will be scheduled with the applicant, recipient, or subrecipient within 30 days to resolve the stated disagreements.

3. ENFORCEMENT PROCEDURES. Enforcement action refers to an action taken by UMTA to suspend, terminate, refuse to grant or continue Federal financial assistance to an applicant, recipient, or subrecipient. Enforcement action is appropriate in cases where all means of informal resolution have failed to get the grantee into compliance.

If there appears to be a failure or threatened failure to comply, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the applicant, recipient, or subrecipient may be subjected to suspension, termination, refusal to grant or to continue Federal financial assistance, or any other sanctions authorized by law.

Any applicant, recipient, or subrecipient adversely affected by the content of a final order shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility, or if it brings itself into compliance with this circular and provides reasonable assurance that it will fully comply.

- a. Any applicant, recipient, or subrecipient adversely affected by an order may at any time request the Administrator to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant, recipient, or subrecipient has met the requirements. If the Administrator determines that those requirements have been satisfied, he/she shall restore eligibility.
- b. If the Administrator denies any such request, the applicant, recipient, or subrecipient may submit a request for a hearing in writing, specifying why it believes UMTA to have been in error. The request shall be given an expeditious hearing, with a decision on the record, in accordance with the rules or procedures issued by the Administrator. The applicant, recipient, or subrecipient will be restored to such eligibility if it proves at such a hearing that it has satisfied the requirements.

While post-termination proceedings are pending, the sanctions imposed by the final order shall remain in effect.

CHAPTER VI

DISCRIMINATION COMPLAINTS

1. GENERAL. This chapter provides information on the UMTA procedures for filing complaints alleging discrimination on the basis of race, color, or national origin, sex, age, or handicap. Applicants, recipients, and subrecipients are encouraged to adopt separate procedures for local disposition of EEO complaints under Section 19, which are consistent with these guidelines.

Any person who believes that he or she, individually, or as a member of any specific class of persons, has been subjected to discrimination on the basis of race, color, creed, national origin, sex, age, or handicap may file a written complaint with UMTA or the Secretary of Transportation. A complaint must be filed within 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

UMTA recommends that EEO complaints be initially filed with the applicant, recipient, or subrecipient for resolution. In those cases where the complainant is dissatisfied with the resolution by the applicant, recipient, or subrecipient, or the case is not being resolved in a timely manner, the same complaint may be submitted to UMTA, the Secretary, EEOC, or a State agency for investigation.

Unless otherwise permitted, the final determination of all EEO complaints affecting programs administered by UMTA will be made by the Office of the Secretary, DOT.

2. SUBMISSION OF COMPLAINTS.

- a. Filing Complaints of Discrimination.

- (1) Complainants may submit written complaints to the UMTA Director, Office of Civil Rights, the UMTA Area Civil Rights Officers, and/or the Departmental Director of Civil Rights (see Appendix B).
- (2) In cases where the complainant is unable or incapable of providing a written statement, but wishes DOT to investigate alleged discrimination, a verbal complaint of discrimination may be made to the UMTA Director, Office of Civil Rights or an UMTA Area Civil Rights Officer. The complainant will be interviewed by an UMTA civil rights official authorized to receive complaints. If necessary, the UMTA civil rights official will assist the person in converting verbal complaints to writing. All complaints must, however, be signed by the complainant or his/her representative.

b. Complaint Format.

- (1) All complaints must be in writing and signed by the complainant or his/her representative before action can be taken. Complaints shall state, as fully as possible, the facts and circumstances surrounding the alleged discrimination.
- (2) UMTA will provide the complainant or his/her representative with a written acknowledgement that UMTA has received the complaint within 10 working days. Concurrently, UMTA will transmit the complaint to the Departmental Office of Civil Rights which will determine if the complaint has investigative merit.

c. Determination of Jurisdiction and Investigative Merit. The Departmental Office of Civil Rights, based on the information in the complaint and additional information provided by UMTA, will determine if DOT has jurisdiction to pursue this matter and whether the complaint has sufficient merit to warrant an investigation. These determinations will be made within 15 working days after the receipt of the complaint from UMTA. A complaint shall be regarded as meriting investigation unless:

- (1) It clearly appears on its face to be frivolous or trivial;
- (2) Within the time allotted for making the determination of jurisdiction and investigative merit, the party complained against voluntarily concedes noncompliance and agrees to take appropriate remedial action;
- (3) Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or
- (4) Other good cause for not investigating the complaint exists (e.g., respondent is presently under investigation by another Federal agency).

3. REQUEST FOR ADDITIONAL INFORMATION FROM COMPLAINANT AND/OR RESPONDENT.

In the event that the complainant or respondent has not submitted sufficient information to make a determination of jurisdiction or investigative merit, the Departmental Office of Civil Rights may request additional information from either party. This request shall be made within 15 working days of the receipt of the complaint by the Departmental Office of Civil Rights and will require that the party submit the information within 60 working days from the date of the original request. Failure of the complainant to submit additional information within the designated timeframe may be considered good cause for a determination of no investigative merit. Failure of respondent to submit additional information within the designated timeframe may be considered good cause for a determination of noncompliance and subject to possible enforcement action as addressed in Chapter V of this circular.

4. NOTIFICATION OF DISPOSITION. The Departmental Director of Civil Rights shall notify within 5 days by registered letter the complainant, party charged, and primary recipient (if not the respondent) of the disposition:
 - a. In the event of a decision not to investigate the complaint, the notification shall specifically state the reason for the decision.
 - b. In the event the complaint is to be investigated, the notification shall state the grounds of DOT jurisdiction, inform the parties that an investigation will take place, and request any additional information needed to assist the investigator in preparing for the investigation.
5. REFERRAL TO OTHER AGENCIES. When DOT lacks jurisdiction, the Departmental Director of Civil Rights shall refer the complaint to other State or Federal agencies, informing the parties of the action.
6. COMPLAINT INVESTIGATION.
 - a. Departmental Investigation. The Departmental Office of Civil Rights may elect to conduct its own investigation of the complaint. The investigation may be conducted by "desk audit" or an "onsite" investigation. When DOT lacks jurisdiction, the Departmental Office of Civil Rights will refer the complaint to the responsible State or Federal agency, informing the complainant of this action.
 - b. Referral of Complaint to UMTA. Cases determined by the Departmental Office of Civil Rights to have investigative merit may be sent back to UMTA to conduct an "onsite" investigation or may be recommended for a comprehensive EEO review of the recipient.
 - c. Priority Complaints. All incoming complaints shall be examined to determine if the discrimination alleged would be irremediable if not dealt with promptly. If such a determination is made, the complaint shall be given priority status. The processing, investigation, and determination of such complaints shall be accelerated to advance significantly the normal completion date of the process.
 - d. Investigator's Preparation. Before beginning the investigation, the investigator shall send a letter of introduction, establishing the times and dates for the "onsite" investigation and interviews. This preparation shall be completed within 30 working days after the assignment has been given to the investigator, contingent upon the investigator's workload and resources.