

DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

SUPPORTING STATEMENT

Nondiscrimination as It Applies to FTA Grant Programs
(OMB Control No. 2132-0542)

ABSTRACT

This is a request to the Office of Management and Budget (OMB) to approve the OMB Control Number 2132-0542, Nondiscrimination as It Applies to FTA Grant Programs, Information Collection Request (ICR), which is currently due to expire on June 30, 2017, and extend it for three years. This request is to revise the ICR because of decrease in respondents and burden hours.

1. Circumstances that make the collection necessary.

The Federal Transit Laws, 49 U.S.C. 5332(b), provide that “no person in the United States shall on the grounds of race, color, religion, national origin, sex, or age be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any project, program or activity funded in whole or in part through financial assistance under this Act.” This applies to employment and business opportunities and is in addition to the provisions of Title VI of the Civil Rights Act of 1964.

Since 1977, as part of the grant approval process, FTA has required grantees to submit EEO programs to demonstrate compliance with Title VII of the Civil Rights Act of 1964 and Section 13 of the FTA Master Agreement. The FTA Master Agreement applies to Federal assistance authorized by Federal public transportation laws codified at 49 U.S.C. Chapter 53; Title 23, United States Code (Highways); and other Federal legislation FTA administers to the extent FTA so determines.

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 concurrence of such plans by FTA. Experience has demonstrated that a program requirement at the application stage is necessary to ensure that affirmative action is properly and earnestly undertaken by grant recipients.

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; Federal Transit Law at 49 U.S.C. 5332(b); and 49 CFR Part 21–Nondiscrimination in Federally Assisted Programs of the Department of Transportation.

2. How, by whom, and for what purpose the information is to be used.

When recipients submit a request for federal financial assistance they must provide specific plans and analysis to ensure that the Civil Rights program requirements are met. No special form is used to collect this information. Each plan may differ in size and format, but each grantee's plan must adhere to specific program requirements prior to receipt of funding assistance. The data derived from the written EEO and affirmative action plans is used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity helps 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 based on race, color, religion, national origin, sex, age, genetic information, disability, veteran status or retaliation. All recipients of FTA funds are required to comply with the terms of a Master Agreement, which becomes part of the grant agreement. "Section 13. Civil Rights" of the Master Agreement states that recipients agree to comply with all applicable civil rights laws and regulations, except as otherwise determined in writing by the federal government. Any FTA applicant, recipient, sub-recipient, and contractor who meet both following threshold requirements must implement all the EEO Program elements:

- Employs 100 or more transit-related employees, and
- Requests or receives capital or operating assistance in excess of \$1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of \$250,000 in the previous Federal fiscal year.

Agencies that have between 50 and 99 transit-related employees are required to prepare and maintain an EEO Program that includes the statement of policy, dissemination plan, designation of personnel, assessment of employment practices, and a monitoring and reporting system. These smaller agencies are not required to conduct a utilization analysis with goals and timetables or to submit the EEO Program to FTA every four years. Instead, these agencies will be required to provide the EEO Program to FTA if requested by the Office of Civil Rights or for a State Management Review or Triennial Review. Before the new circular, the employee threshold was 50 transit-related employees with a EEO plan submission every three years. To decrease the burden on transit agencies, FTA changed the threshold to 100 transit-related employees with a four-year plan submission.

FTA requires the agencies to request EEO Programs from their sub-recipients and contractors who meet the EEO Program threshold described above. This will enable agencies to determine and document that sub-recipients and contractors comply with EEO statutes and regulations.

FTA applicants, recipients, sub-recipients, and contractors who do not meet the EEO Program threshold above are not required to submit an EEO Program to FTA, but are still required to comply with all Equal Employment Opportunity statutes and regulations.

Circular 4704.1A, Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients provides information on the methods FTA will use to enforce EEO requirements in accordance with its responsibilities under Federal Transit Laws and 49 CFR Part 21.

3. Describe whether collection of information involves information technology and any consideration of using information technology to reduce the burden.

All recipients of FTA funds are required to use FTA's TrAMS system from the initial application stage through post-award management. Additionally, the Office of Civil Rights uses TrAMS for the EEO Program submissions. This has improved communications and the processing of program requirements. The use of internet technology by 100% of recipients has improved communications and reduced long-term costs associated with EEO as Applies to FTA Grant Program.

4. Describe efforts to identify duplication. Show specifically why similar information already available cannot be used or modified for use for the purposes described in Item 2.

There is no duplication. The information collected by FTA is not available from any other source.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

FTA has minimized the burden of small agencies by allowing agencies that have 50–99 transit-related employees to prepare and maintain an EEO Program that includes the statement of policy, dissemination plan, designation of personnel, assessment of employment practices, and a monitoring and reporting system. These smaller agencies are not required to conduct a utilization analysis with goals and timetables or to submit the EEO Program to FTA every four years. Instead, these agencies will be required to provide the EEO Program to FTA if requested by the Office of Civil Rights or for a State Management Review or Triennial Review.

6. Describe consequences to federal program or policy activities if the information were not collected or collected less frequently, as well as any technical or legal obstacles to reducing burden.

On October 31, 2016 FTA issued an updated EEO Circular, FTA C 4704.1A. Under the updated circular, recipients are required to submit an EEO Program every four years as opposed to every three years; therefore, the recipients would not have to report as frequently.

The EEO program is necessary due to the rapid turnover in the grantees' work force, particularly at entry-level positions, and the constant change in other employment areas, such as recruitment, promotions, and terminations. Information must be collected on a frequent basis 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 would cause an information collection to be conducted in a manner inconsistent with 5 CFR 1320.6.

The collection is consistent with 5 CFR Part 1320.6.

8. Describe efforts to consult with persons outside the agency to obtain their views.

A 60-day Federal Register notice was published on March 15, 2017 Vol. 82, No.49 (page 13923), soliciting comments prior for the approval of this information collection to submission to the Office of Management and Budget (OMB). No comments were received. The 30-day Federal Register notice was published on June 19, 2017 Vol.82, No. (page 27956).

FTA issued a notice of availability of the proposed Circular and a request for comments in the Federal Register (81 FR 11348) on March 3, 2016. The comment period closed May 2, 2016. The FTA Circular 4704.1A was a revision and update to Circular 4704.1, which was last updated in 1988. FTA also consulted with the Equal Employment Opportunity Commission, DOT Departmental Office of Civil Rights and the Federal Highway Administration before finalizing the Circular.

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 respondents.

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 provided, when requested, for information exempt from mandatory public disclosure requirements of the Freedom of Information Act.

11. 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. The report does not provide names of individuals or their specific salary. The salary is based on the EEO category. Information relating to salaries is needed to ensure that minorities and women are paid salaries comparable to other employees in the same job categories.

12. Estimates of the hour burden of the collection of information and annualized cost to respondents.

Estimated Total Annual Number of Respondents: 53

Estimated Total Annual Burden Hours: 1,575

Estimated Total Cost: \$ 45,410

Requirement	Number of Respondents (Annualized)	Frequency of Response (Every four years)	Burden per Submission (labor-hours)	Annual Hour Burden (labor-hours)
<u>Prepare Program & Submission</u>	53	1	30	1,575

Total Annual Hour Burden 1,575

Estimated hourly cost of preparing information collected \$25 per hour

Estimated annualized cost to respondents for hour burdens \$46,410

Approximately 210 grant recipients are required to prepare EEO submissions during each 4-year period. Annualized, there are 53 (actual is 52.5) respondents. Based on a discussion with 4-6 grantees (small and large), it is estimated that the average time now spent in the preparation of an EEO program is 30 hours. Grant recipients spend 6,300 hours (210 grantees x 30 hours per submission per grantee) in the 4-year period. Annualized, the burden is 1,575 hours (210 grantees per year (210/4) x 30 hours = 1,575 hours).

While the range of labor costs vary between small and large grantees, our estimate is that the average hourly labor rate is approximately \$25.00. Total labor costs to all grantees during the 4-year period is \$157,500 (30 hours x \$25.00 per hour x 210 grantees). The annualized cost is \$39,375 (\$157,500/4). The estimate of the printing and equipment cost in the 4-year

period for each grantee is approximately \$134, for a total overhead amount of \$28,140 (\$134 x 210 grantees). Annualized, this is \$7,035 (\$28,140/4). The total estimated annual cost to all grantees is \$46,410 (\$39,375 + 7,035 = \$46,410).

13. Estimate of total annual cost burden to respondents or record keepers resulting from the collection of information (not including the cost of any hour burden shown in Items 12 and 14).

The information collected and reviewed is required in the course of normal business and there is no additional cost beyond that shown in Items 12 and 14.

14. Estimates of annualized cost to the federal government.

A total of 10 Civil Rights Officers review EEO program submissions. On an average, the 10 spend approximately 11 percent of their total annual duty hours, or approximately 230 hours per year (11% x 2080 duty hours per year) reviewing programs. With an average grade of GS-13, at an hourly rate of \$43, the total cost of labor hours for the 10 officers is \$98,900 (230 hours x \$43 x 10). At an estimated 10 percent, overhead rate, total overhead is \$9,890 (10% x \$98,900). The total estimated cost to the federal government is \$108,790 (\$98,900+ \$9,890).

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of OMB Form 83-I.

As a result of the new EEO Circular, and in an effort to reduce the burden on smaller agencies, there is a decrease in respondents from 97 in 2014 to 53 in the current submission. As result, there is a correlating decrease in the burden hours from 2,425 hours in 2014 to 1,575 hours in the current submission.

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 of OMB Form 83-I.

No exceptions are stated.