



U.S. Department
of Transportation

**Federal Transit
Administration**

PROPOSED CIRCULAR

FTA C 4704.1A

March 3, 2016

**Subject: EQUAL EMPLOYMENT OPPORTUNITY (EEO) REQUIREMENTS AND
GUIDELINES FOR FEDERAL TRANSIT ADMINISTRATION RECIPIENTS**

1. **PURPOSE.** The purpose of this Circular is to set out requirements and provide guidance to recipients and subrecipients of Federal Transit Administration (FTA) financial assistance necessary to carry out the Equal Employment Opportunity (EEO) provisions of Federal law, including Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d), Title II of the Genetic Information Nondiscrimination Act of 2008, as amended (42 U.S.C. § 2000ff), 49 U.S.C. § 5332 (b) of the Federal Transit Act, U.S. Department of Transportation (DOT) EEO implementing regulations (49 C.F.R. Part 21), and the FTA Master Agreement.

Employment discrimination on the basis of disability applies to these projects, programs, and activities under Section 504 of the Rehabilitation Act of 1973. Military veterans employment and reemployment rights are covered under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. §§ 4301–4335). The requirements of these statutes are also covered by this Circular.

2. **CANCELLATION.** This Circular cancels UMTA Circular 4704.1, “Equal Employment Opportunity Program Guidelines for Grant Recipients” dated July 26, 1988.
 3. **SCOPE.** This Circular applies to all assistance authorized by the Federal Transit Laws (49 U.S.C. Chapter 53) and all programs administered by FTA.
 4. **AUTHORITIES.**
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53
 - b. 49 C.F.R. § 1.51
 5. **WAIVER.** FTA reserves the right to waive any requirements of this Circular to the extent permitted by law.
 6. **FEDERAL REGISTER NOTICE.** In conjunction with the publication of this Circular, FTA published a notice in the Federal Register seeking comments regarding the development of the Circular.
 7. **AMENDMENTS TO THE CIRCULAR.** FTA reserves the right to update this Circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this Circular. FTA will post updates on our website at www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on “sign up for email updates” for more information.
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8. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this Circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

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EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS AND GUIDELINES
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Chapter 1 – Introduction and Applicability

1.1 Introduction

The Federal Transit Administration (FTA) is one of 12 operating administrations within the U.S. Department of Transportation (DOT) headed by an Administrator who is appointed by the President of the United States. FTA functions through a Washington, DC, headquarters office, 10 regional offices, and 5 metropolitan offices that assist transit agencies in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Since 1977, DOT has required recipients of transit funding meeting certain criteria to have Equal Employment Opportunity Programs (EEOs) in place and to comply with applicable laws.

This Circular reflects changes in the laws, regulations, and guidance since the Urban Mass Transportation Administration (UMTA), FTA's predecessor agency, issued Equal Employment Opportunity Program Guidelines for Grant Recipients (Circular 4704.1) in 1988.

This Circular explains FTA's Equal Employment Opportunity (EEO) program requirements, elaborates on FTA's specific reporting requirements, and explains the complaint and oversight process.

1.2 Organization of this Circular

Chapter 1 explains the statutory and regulatory authority for the EEO program requirements, executive orders, and regulations that establish the context for ensuring nondiscrimination in employment on the grounds of race, color, religion, national origin, sex, or age. This chapter also explains the applicability of this Circular to FTA grantees, discusses state-administered programs, and provides definitions of terms used throughout the Circular.

Chapter 2 explains the seven required elements of an EEO and explains what should be included in EEO materials for FTA review.

Chapter 3 explains how FTA carries out its oversight and enforcement responsibilities related to EEO.

1.3 Authorities

Under Federal Transit Laws, FTA is responsible for ensuring that its grantees do not engage in employment discrimination:

A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under this chapter because of race, color, religion, national origin, sex, or age. (See [49 U.S.C. § 5332\(b\)](#).)

This provision applies to employment opportunities and supplements employment protections found in Title VI of the Civil Rights Act of 1964 (Title VI). The Title VI regulations prohibiting employment discrimination are found at 49 C.F.R. Part 21.5(c) – Nondiscrimination in Federally Assisted Programs of the Department of Transportation. It is important to note that while Title VI and Part 21 only prohibit discrimination based on race, color, and national origin, Federal Transit law (49 U.S.C. 5332) expanded protections to include religion, sex, and age. In this context, the term “sex” is inclusive of gender identity

discrimination and sexual orientation discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals.

Title VII of the Civil Rights Act of 1964 (Title VII), as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991, prohibits discrimination on the basis of race, color, religion, national origin, or sex in all institutions with 15 or more employees—including state and local governments and labor organizations. (See [42 U.S.C. § 2000e et seq.](#)) Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits discrimination on the basis of genetic information. (See [42 U.S.C. § 2000ff et seq.](#)) The U.S. Equal Employment Opportunity Commission (EEOC) is the enforcement authority for Title VII and provides the official interpretation of employment laws that prohibit discrimination as outlined 29 C.F.R. FTA defers to the most current regulations and guidance issued by EEOC when making complaint and compliance determinations. EEOC regulations and guidance are incorporated by reference.

Section 503 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act of 1993, requires firms holding Federal contracts or subcontracts in excess of \$10,000 to “take affirmative action to employ and advance in employment qualified individuals with disabilities.” (See [29 U.S.C. § 793.](#))

Section 504 of the Rehabilitation Act of 1973 states, “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (See [29 U.S.C. § 794.](#))

DOT regulations implementing provisions of the Rehabilitation Act are contained in 49 C.F.R. Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance:

No qualified person with a disability shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation. (See [49 C.F.R. 27.7\(a\).](#))

Other nondiscrimination laws may also apply to recipients of Federal assistance. The Equal Pay Act of 1963, as amended, prohibits discrimination between employees on the basis of sex by paying wages at a rate less than that paid to employees of the opposite sex for equal work. (See [29 U.S.C. § 206\(d\)](#)) The Age Discrimination in Employment Act of 1967, as amended, prohibits employment discrimination against employees based on age. (See [29 U.S.C. § 621 et seq.](#)) Title IX of the Education Amendments of 1972, as amended, prohibits discrimination under education programs or activities receiving federal assistance. (See [20 U.S.C. §§ 1681 et seq.](#)) The Americans With Disabilities Act of 1990, as amended, prohibits discrimination against persons with disabilities. (See [42 U.S.C. § 12101 et seq.](#)) Military veterans’ employment and reemployment rights are covered under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. §§ 4301–4335).

Regulations implementing provisions of the statutes referenced above are identified in Appendix A.

The statutes and regulations referenced above will be referred to, collectively, as “Equal Employment Opportunity statutes and regulations” within this Circular.

1.4 Applicability

The FTA Master Agreement requires all applicants, recipients, subrecipients and contractors receiving funding to comply with applicable Federal civil rights laws and regulations and to follow applicable

Federal guidance. FTA applicants, recipients, subrecipients and contractors who meet both of the following threshold requirements must implement the EEO program elements:

- Employs 50 or more transit-related employees¹
- 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

FTA requires the agency to request EEOPs from their subrecipients and contractors as specified in Chapter 2 of this Circular. This will enable agencies to determine and document that subrecipients and contractors comply with Equal Employment Opportunity statutes and regulations.

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

1.5 State-Administered Programs

This Circular applies to state-administered programs covered by Federal Transit laws and FTA Master Agreement funding categories such as elderly, disabled, and rural assistance programs funded under Enhanced Mobility of Seniors and Individuals with Disabilities (§ 5310), Formula Grants for Rural Areas (§ 5311), Bus and Bus facilities (§ 5339), and other specialized grant programs funded through FTA.

This Circular also applies to states that administer FTA planning and formula capital/operating assistance program funds under Urbanized Area Formula Grants (§ 5307) and Metropolitan and Statewide Planning funds (§§ 5303, 5304, and 5305).

Pursuant to a Memorandum of Understanding (MOU) with the Federal Highway Administration (FHWA), FTA has the responsibility for reviewing, monitoring, and approving the state DOT's EEO Program in accordance with FTA's regulations, policies, and guidance. FHWA has the responsibility for reviewing, monitoring and approving the state DOT's EEO Program in accordance with FHWA's regulations, policies, and guidance. Although FHWA currently requires an annual to multiyear program submission, FTA requires EEOP submissions on a triennial basis.

FTA requires state agencies to administer their EEOPs in the following manner:

- All state-designated agencies are responsible for maintaining and providing data and reports to FTA as specified in Chapter 2 of this Circular or at the discretion of the FTA Office of Civil Rights.
- All state-designated agencies are responsible for ensuring and documenting that their subrecipients and contractors comply with Equal Employment Opportunity statutes and regulations.
- FTA requires state DOTs to request EEOPs from their subrecipients and contractors as specified in Chapter 2 of this Circular. This will enable agencies to determine and document that subrecipients and contractors comply with Equal Employment Opportunity statutes and regulations.

¹ When calculating the total number of transit-related employees, agencies are required to include all part-time employees and employees with collateral duties that support the transit program. For example, a budget analyst who processes payments for the transit program would be considered a transit-related employee.

1.6 Definitions

This Circular uses the following definitions:

Adverse impact refers to a substantially different rate of selection in hiring, promotion, or other employment decision that works to the disadvantage of members of a race, sex, or ethnic group, or individuals with disabilities in the context of EEOC's Uniform Guidelines On Employee Selection Procedures at 29 C.F.R. Part 1607. See also the definition of disparate impact below.

Applicant means a person or entity that submits an application, request, or plan that requires approval by the FTA Administrator or by a primary recipient as a condition of eligibility for financial assistance from FTA.

Agency means a recipient or subrecipient of financial assistance from FTA.

Complainant refers to a party that makes a complaint that he or she or any specific individual or class of persons has been subjected to discrimination or retaliation prohibited by any civil rights authority.

Compliance refers to a status wherein FTA finds an applicant, recipient, or subrecipient meets the requirements in this Circular and there is no indication or evidence of employment discrimination.

Concentration means a higher representation of a particular group (e.g., Blacks, Hispanics, women, etc.) in a job category or department as compared with their representation in the relevant labor market.

Contractor refers to any entity or organization that has entered into a contract relating to transit service delivery with an applicant, recipient, or subrecipient.

Disability, with respect to an individual, means (a) physical or mental impairment that substantially limits one or more major life activities, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. (See [42 U.S.C. § 12101 et seq.](#))

Discrimination means any action or inaction, whether intentional or unintentional, in any program or activity of a recipient, subrecipient, or contractor that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, religion, national origin, sex, age, genetic information, or disability.

Disparate impact refers to practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on a protected class. This concept is sometimes referred to as “adverse impact.”

Disparate treatment occurs when members of a race, sex or ethnic group, or individuals with disabilities have been denied the same employment, promotion, membership, or other opportunities as have been available to other employees or applicants. (See [29 C.F.R. § 1607.11.](#))

Employee means an individual employed by an employer. People who are not employed by the employer, such as independent contractors, are not covered.

Employer means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

Equal Employment Opportunity Program (EEO) refers to a written, detailed, results-oriented set of procedures designed to achieve prompt and full utilization of people within a protected class at all levels and in all parts of the recipient's workforce, including compensation.

Equal Employment Opportunity statutes and regulations refer to all statutes and regulations that provide employment and discrimination in employment protections. These statutes and regulations are referenced in section 1.3 of this chapter and Appendix A to this Circular.

Federal financial assistance includes:

- Grants and loans of Federal funds
- The grant or donation of Federal property and interests in property
- The detail of Federal personnel
- The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient
- Any Federal agreement, arrangement, or other contract that includes provision of assistance as one of its purposes

FTA activity means any program of assistance authorized by the Federal Transit laws that FTA administers under Title 49.

Good faith efforts are documented actions taken to achieve EEOP objectives. These actions may include, but are not limited to, establishing and conducting processes to implement specific provisions of this Circular.

Minority persons include:

- American Indian and Alaska Native, which refers to individuals with origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment
- Asian, which refers to individuals with origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam
- Black or African American, which refers to individuals with origins in any of the Black racial groups of Africa
- Hispanic or Latino, which includes people of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race
- Native Hawaiian or Other Pacific Islander, which refers to people with origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands
- Multiracial populations, which include individuals with origins in more than one of the Federally designated racial categories

National origin means the particular nation where a person was born or where the person's parents or ancestors were born.

Noncompliance refers to a failure to meet the requirements of Equal Employment Opportunity statutes and regulations or failure to implement an approved EEOP.

One-person rule means underutilization is declared if the number of females/minorities in a job group is as much or more than one person below the number that would cause the job group representation percentage to match exactly the availability percentage

Primary recipient means any FTA recipient that extends Federal financial assistance to another recipient.

Programs or activities means all the operations of any entity receiving DOT financial assistance, as described in 49 C.F.R. § 21.23(e).

Protected class means any category of person or status protected by any Equal Employment Opportunity statute or regulation.

Recipient or Grantee means any public or private entity that receives Federal financial assistance from FTA, whether directly from FTA or indirectly through a primary recipient. The term does not include any ultimate beneficiary under any such assistance program.

Secretary refers to the Secretary of the Department of Transportation or any person to whom he or she has delegated authority in a particular matter.

Subrecipient means an entity that receives Federal financial assistance from FTA through a primary recipient.

Subcontractor means any entity or organization that 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.

Transit-related employee refers to an employee of an FTA applicant, recipient, subrecipient, or contractor who is involved in any aspect of an agency's public transit operation funded by FTA. For example, a city planner involved in planning bus routes would be counted as part of the recipient's workforce, but a city planner involved only in land use would not be counted.

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 market.

Chapter 2 – EEO Program Requirements

This chapter describes the elements of an EEOP required for compliance and explains how to prepare EEOP materials for FTA review.

2.1 Frequency of Update

FTA requires each applicant, recipient, subrecipient, or contractor that meets the threshold requirements of this Circular to submit an updated EEOP on a triennial basis or as major changes occur in the workforce or employment conditions.

FTA's Office of Civil Rights may request additional information from an applicant, recipient, subrecipient,² or contractor to resolve questions concerning EEO compliance. Failure to submit information requested by FTA may delay the award of FTA funds or the processing of grant applications. FTA requires agencies to retain all records that would enable FTA to ascertain whether they have complied or is complying with Equal Employment Opportunity statutes and regulations for a minimum of three years.

2.2 EEO Program Elements

FTA requires an EEOP to contain the following seven elements:

1. Statement of Policy
2. Plan for disseminating an agency's Statement of Policy, both internally and externally
3. Designation of appropriate personnel responsible for carrying out the EEOP, including the designation of an EEO Officer
4. Utilization analysis
5. Assessment of an agency's employment practices
6. Goals and timetables to correct identified areas of underutilization or concentration
7. Plan for monitoring and reporting on the EEOP

2.2.1 Statement of Policy

FTA requires an agency's EEOP to include a signed and dated EEO policy statement issued by its Chief Executive Officer/General Manager, or equivalent (CEO/GM), covering all employment practices, including recruitment, hiring, promotions, terminations, transfers, layoffs, classification, compensation, training, benefits, and other terms and conditions of employment. (See Attachment 2 for a sample EEO Policy Statement.)

FTA requires written policy statements to:

- Express the agency's commitment that all employment actions, including but not limited to recruitment or recruitment advertising, hiring, upgrading, selection for training, promotion, transfer, demotion, layoff, termination, rates of pay or other forms of compensation, use of facilities, and treatment of employees will be administered without regard to race, color, religion, national origin, sex (including gender identity and sexual orientation), age, genetic information, disability, veteran status, or other protected class.

² Throughout this chapter, recipients, subrecipients, contractors and applicants are referred to as "an agency" or as "agencies."

- Commit to develop a written nondiscrimination program that sets forth the policies, practices and procedures, with goals and timetables, to which the agency is committed and make the EEOP available for inspection by any employee or applicant for employment upon request
- Explain that the responsibility for implementing the EEOP is assigned to an agency executive who reports directly to the CEO/GM
- State that applicants and employees have the right to file complaints alleging discrimination with the EEO Officer or office
- State that all management and supervisory personnel share in this responsibility and are assigned specific tasks to ensure and achieve compliance
- State that the agency evaluates the performance of managers, supervisors, and others based on the success of the EEOP in the same manner that the agency evaluates their performance in other agency programs

FTA requires the name and contact information for the EEO Officer to be included in the policy statement. FTA expects agencies to update their EEO policy annually, or after the naming of a new CEO/GM or EEO Officer.

2.2.2 Dissemination

FTA requires agencies to formally publicize and disseminate their EEO policy statement by posting it in conspicuous locations so that employees, applicants, and potential applicants are aware of the agency's commitment to EEO. Agencies are required to disseminate their EEO policy internally and externally.

Internal Dissemination

FTA requires each agency to communicate the existence of its EEO policy and program to employees, applicants and potential applicants by:

- Providing written communications from the CEO/GM
- Posting official EEO materials (e.g., Federal and state labor laws poster(s)) and the agency's policy statement on bulletin boards, near time clocks, in employees' break rooms, and in the employment/personnel office
- Including the EEO policy statement in the agency's personnel and operations manual, employee handbooks, reports and manuals
- Meeting with top management officials (e.g., bus operations, human resources, planning, marketing, etc.) at least quarterly to discuss the EEOP and its implementation
- Meeting with employees of protected classes and affinity groups to seek input on the program implementation
- Conducting periodic EEO training for employees and for managers
- Conducting EEO training for all new supervisors or managers within 30 days of their appointment

In addition to posting and publicizing the EEO policy statement, a good practice is to include the policy statement in employee orientation materials and to require new employees to sign a form acknowledging they have read and understand the policy. The policy can also be included with other core agency policies.

FTA requires appropriate documentation that the EEO policy and program have been brought to the attention of employees. This includes maintaining agendas and sign-in sheets for meetings conducted when the EEO policy and its implementation are explained.

External Dissemination

When there is outreach and/or advertising to recruitment entities (e.g., employment agencies, educational institutions, minority, and women organizations), FTA requires agencies to disseminate their EEO policy to those entities. All recruitment ads (e.g., newspapers, magazines, websites, and social media) must state that the agency “is an equal employment opportunity employer.”

2.2.3 Designation of Personnel Responsibility

The designation of an agency’s EEO Officer responsible for EEOP management and oversight reflects the agency’s EEO commitment. As such, FTA requires agencies to designate an executive as EEO Officer who will report to and is directly responsible to the agency’s CEO/GM. Since managing the EEOP requires a commitment of time and resources, FTA requires agencies and their senior managers to give the EEO Officer support and assign sufficient staff to successfully carry out the EEOP.

FTA requires agencies to name the EEO Officer and publicize the individual’s contact information in all internal and external communications regarding the agency’s EEOP. FTA encourages agencies to compensate the EEO Officer at the same level as other agency executives.

FTA requires agencies to ensure that no conflicts of position or conflicts of interest occur or appear to occur with respect to the EEO Officer’s role. This means separating the EEO Officer from human resources official(s) in order to maintain the integrity of the EEO investigative and decision-making process.

Maintaining distance between the fact-finding and defensive functions of an agency enhances the EEO Officer’s credibility and the integrity of the EEO complaint process. FTA requires the functional unit that reviews EEO matters be separate and apart from the unit that represents the agency in EEO complaints. Impartiality and the appearance of impartiality are important to the credibility of the EEOP.

Essential Characteristics for EEO Officers

Effective EEO Officers have:

- Sensitivity to, and an awareness of, the varied ways in which discrimination occurs
- Total commitment to EEO goals and objectives
- Knowledge of civil rights laws, policies, rules, regulations, and guidelines
- Sufficient authority and ability to work and communicate with others (e.g., department heads) to achieve EEO goals and objectives

EEO Officer’s EEOP Responsibilities

FTA requires the EEO Officer’s EEOP responsibilities to include, at a minimum:

- Developing the EEO policy statement and a written EEOP
 - Assisting management in collecting and analyzing employment data, identifying problem areas, setting goals and timetables, and developing programs to achieve goals
 - 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
 - Reviewing the agency’s nondiscrimination plan with all managers and supervisors to ensure that the policy is understood and is followed in all personnel activities
 - In conjunction with human resources, periodically reviewing employment practices policies (e.g., hiring, promotions, training), complaint policies, grievance procedures, and union agreements
-

- Reporting at least quarterly to the CEO/GM on each department's progress in relation to the agency's goals and on contractor and vendor compliance
- Serving as liaison between the agency, Federal, state, county, and local governments, regulatory agencies, minority, women, disability organizations, and other community groups
- Maintaining awareness of current EEO laws, and ensuring the laws affecting nondiscrimination are disseminated to responsible officials
- Investigating complaints of discrimination
- Providing EEO training for employees and managers
- In conjunction with human resources, advising employees and applicants of available training programs and professional development opportunities and the entrance requirements
- Auditing postings of the EEO policy statement to ensure compliance information is posted and up-to-date

To ensure complaints are investigated effectively, FTA requires all individuals investigating EEO complaints to have formal EEO investigative training. Implementing an Alternative Dispute Resolution program (e.g., mediation) has proven to be a highly valuable tool in resolving discrimination disputes in a timely, mutually acceptable, and cost-effective manner.

Agency EEO Responsibilities

Although the EEO Officer is primarily responsible for implementing an agency's EEOP, all officials, managers, and supervisors are responsible for carrying out EEO and do not discriminate based on a protected class. All managers—from the supervisor of the smallest unit to the Board Chair or CEO/GM—bear responsibility for ensuring that agency EEOP policies and programs are carried out.

EEO responsibilities for agency officials, supervisors and managers include:

- Participating actively in periodic audits of all aspects of employment to identify and to remove barriers obstructing the achievement of specified goals and objectives
- Holding regular discussions with other managers, supervisors, employees, and affinity groups to ensure agency policies and procedures are being followed
- In conjunction with the EEO Officer, maintaining and updating the personnel database for generating reports required for the nondiscrimination program
- Cooperating with the EEO Officer in review of information and investigation of complaints
- Encouraging employee participation to support the advancement of the EEOP (e.g., professional development and career growth opportunities, posting promotional opportunities, shadowing, mentoring)

A good practice is to establish an advisory committee that reflects all segments of the community and the agency's workforce. Though broader than EEO, another good practice is to implement diversity and inclusion strategies. This can include work with affinity groups or diversity advisory committee(s) and/or use of suggestion boxes (written or electronic).

2.2.4 Utilization Analysis

FTA requires agencies to complete a utilization analysis as part of their triennial submission. A completed utilization analysis identifies job categories that have an underutilization and/or concentration of minorities and women in relation to their availability in the relevant labor market. The analysis also establishes the framework for goals and timetables to correct employment practices that contributed to any identified underutilization or concentration.

This analysis, which is based on categories and data used in the EEOC EEO-4 report, consists of a workforce analysis and an availability analysis.

Workforce Analysis

The workforce analysis includes the number of employees and salary ranges for each job category in the EEO-4 report for the following subcategories for men and women:

- White (not Hispanic or Latino)
- American Indian/Alaska Native (not Hispanic or Latino)
- Black or African American (not Hispanic or Latino)
- Hispanic or Latino
- Asian (not Hispanic or Latino)
- Native Hawaiian and Other Pacific Islander (not Hispanic or Latino)
- Two or more races (not Hispanic or Latino)

Table 2-1 summarizes the EEO job categories for EEO-4 reports.

Table 2-1 – EEO-4 Job Categories – State and Local Governments

Number	Category
1	Officials and Administrators
2	Professionals
3	Technicians
4	Protective Service Workers: Sworn
5	Protective Service Workers: Non-sworn
6	Administrative Support Workers
7	Skilled Craft Workers
8	Service and Maintenance Workers

FTA has developed an example reporting table with completion instructions. The Microsoft Excel workbook is available for download from the FTA website [\[insert hyperlink\]](#). Pursuant to an MOU with EEOC, agencies who submit EEO-4 reports to EEOC can access their current utilization numbers and complete the rest of the analysis in FTA’s electronic database system. For agencies that use alternate formats for reporting the utilization analysis, FTA requires such reports to contain the information provided in the Attachment 3.

Although FTA requires utilization data summarized for each job category, agencies are encouraged to compile workforce statistics for each department, job category, grade/rank of employee (e.g., Road Supervisor I or II, Mechanic A or B, etc.), and job title to include salary ranges and principal duties for the jobs in each subcategory. In such analyses, FTA encourages agencies to organize job categories into structured lines of progression by departmental units showing promotional opportunities.

Availability Analysis

Agencies must also compile information on the availability of minorities and women in the workforce at large and to analyze participation rates of minorities and women at the various levels in the workforce in comparison with their availability in the relevant labor market. A labor market has both geographic and occupational components. FTA requires agencies to use relevant geographic areas and labor force data for different job categories. For example, executive management and professional positions would likely have a regional or national recruiting area compared with a local recruiting area for the lower-skilled jobs. Agencies have the discretion to identify the reasonable recruiting area for their job groups. However, agencies must explain why they selected specific recruiting areas in their program submission. In addition

to considering general population and unemployment information, FTA encourages agencies to consider training and promotional opportunities in determining the employment availability of traditionally excluded minorities and women.

The availability data is an input to the utilization analysis and is required for all of the job categories as well as the racial/ethnic subcategories for men and women. The results of the analysis will identify any underutilized subcategories in specific job categories. The analysis will also show the concentration of minorities and women in specific job categories. FTA requires agencies showing underutilization and/or concentration to quantify plans over the next three years by entering this information into the chart (either the downloaded spreadsheet or a separate chart) and providing an accompanying narrative.

2.2.5 Goals and Timetables

The completed utilization analysis will show where problems may exist in the agency. Based on these statistics, the agency will be able to set numerical goals and timetables. FTA requires agencies to provide percentage and numerical goals (using the one-person rule) along with timetables for the next three-year period for any categories of underutilization identified in the utilization table. (See sample Microsoft Excel workbook on FTA's website.)

Failure to Meet Previous Goals and Timetables

FTA requires agencies that fail to meet their goals to justify the reasons for this failure. This justification shall include efforts made by the agency to reach the goal and any new efforts based on the results of the utilization analysis and employment practices.

Long-Term Goals and Short-Term Goals

FTA recommends the following approaches for establishing long-term and short-term goals:

- Long-term goals look ahead two years or more and consider both the current and future projected availability of traditionally underutilized groups as well as opportunities to add employees due to increases in capital or operating funds.
- Short-term goals represent anticipated net changes in the number and percent of women and minority employees by job category in the next year. FTA encourages agencies to base short-term goals on anticipated job openings and job group availability in the context of the long-term goals. FTA also encourages agencies to identify and forecast vacancies in a job progression chart that indicates which vacancies underutilized employees can immediately fill and explain the potential for these employees to be promoted.

In developing goals and timetables, FTA expects agencies to use the following guidelines:

- Involve human resources, department and division heads, and district/unit managers in the process. Since they will ultimately be responsible for achieving the goals, they are in the best position to know the potential job openings in their departments. For agencies that have multiple facilities or districts and analyses point to specific locations with utilization issues, FTA recommends including these managers in the process.
 - Set goals that are realistic and measurable.
 - Ensure that goals and associated timetables are specific and linked to planned results.
 - Consider anticipated levels of attrition, expansion, and succession planning in the context of the availability of people with required skills.
 - Consider effects of changes in existing employment practices.
 - Create goals that are not rigid and inflexible, but are reasonably attainable targets by applying every good faith effort to make all aspects of the nondiscrimination program work.
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FTA requires agencies to use the monitoring and reporting system discussed in Section 2.2.7. Further, FTA requires agencies to prescribe and revise short-term goals in a manner that will lead to meeting long-term goals.

In an effort to enhance the EEOP implementation, FTA requires agencies to collect reports from unit managers on a scheduled basis to determine what goals are being met and to review these reports with all levels of management.

2.2.6 Assessment of Employment Practices

Although the utilization statistics will identify where problem areas exist in an agency, they will not help to determine why they exist. To achieve short- and long-term goals, agencies must identify and correct the causes of underutilization and/or concentration of minorities and women in the agency.

Agencies can use self-analysis to ascertain whether their employment practices are contributing to underutilization and/or concentration. FTA requires agencies to document their employment practices in both narrative and statistical formats with sufficient detail to identify any practices that may operate as employment barriers.

FTA requires agencies to identify all problem areas and propose a program of remedial actions as part of their EEO program. A proper assessment and identification of problem areas evaluates the impact of an agency's evaluation of external factors (e.g. applicants not knowing where to apply for jobs or the unavailability of bilingual materials and information) and internal factors (e.g., recruitment, testing, hiring, promotions, transfers, seniority, training, compensation, benefits, disciplinary procedures, and terminations). These required assessment elements, along with requirements for individuals with disabilities and veterans, are discussed below. Proper analyses evaluate the impact of an agency's practices on any identified underutilization or concentration.

Recruitment and Selection

FTA requires a narrative that describes and analyzes an agency's current recruitment and selection policies and procedures. A careful evaluation and review of every step of the employee selection process is necessary to ensure that job requirements, hiring standards, and methods of selection and placement are nondiscriminatory. (See EEOC's [Uniform Guidelines on Employee Selection Procedures](#).)

Everyone in the agency who recruits, interviews, hires, promotes, trains, or takes disciplinary actions requires training in the use of objective, job-related standards. A good practice is to conduct job analyses to identify actual tasks performed and the importance of specific employee skills or traits needed for the job. Agencies must ensure that job descriptions and hiring standards reflect major job functions and do not require qualifications that are higher than needed.

Testing

When agencies use written, formal, or scored tests in the employment selection process, FTA requires them to identify the test and to describe their test administration procedures. This includes weighting test scores (including setting individual question cut-off scores) and establishing threshold scores for passing the test.

FTA requires agencies to explain whether they have had the test validated to predict or measure job performance and, if so, provide an assessment of its nondiscriminatory impact with a description of the validation study test and selection procedures. Further testing guidance is available on EEOC's [website](#).

Promotions and Transfers

FTA requires a narrative that describes and analyzes an agency's current policies and standard procedures for promotions and transfers and explains the criteria for advancement and how employees are made aware of the standards to meet.

Good practices include offering:

- Training to employees, personnel, and management staff on proper interview techniques
- Counseling to assist employees in identifying promotional opportunities, and
- Training and educational programs to increase promotion and transfer opportunities

Seniority Practices

FTA requires agencies to provide a narrative of their agency's current seniority policies and procedures for union and non-union workers.

Both agencies and unions are responsible for nondiscrimination under Title VII. An agency cannot evade nondiscrimination responsibilities on the basis of union contract terms covering employees. FTA requires agencies to review and revise union agreements wherever current provisions are identified as barriers to equal employment.

Training

FTA requires agencies to describe their training programs, including descriptions of formal and informal training programs and policies and procedures for selection of training candidates. The discussion must evaluate the impact of an agency's training practices on promotion opportunities. FTA also requires agencies to track all supervisory and non-supervisory training and course objectives and list course attendees.

FTA requires agencies to describe efforts to locate, qualify, and train employees in protected classes. A good practice is to periodically review minority and female employees' training and promotion potential of and to encourage eligible employees to apply.

Compensation and Benefits

FTA requires agencies to describe wages, salary levels, and other forms of compensation and benefits policies and procedures. The analysis will evaluate the impact of the agency's compensation and benefits practices on any protected class.

FTA requires agencies to review their wage and salary structure to make sure discrimination is not occurring with respect to compensation. Such reviews compare job descriptions and actual job functions of jobs held by employees in protected classes, the length of service, and other factors affecting pay rates. FTA requires agencies to review all benefits (e.g., retirement plans, medical and hospital plans) and conditions of employment to see that they are equally available to all employees.

Further compensation guidance is available on EEOC's [website](#).

Disciplinary Procedures and Termination Practices

FTA requires agencies to describe and analyze their disciplinary procedures and discharge/termination practices. The standard for determining when a person shall be terminated, demoted, disciplined, or laid off must be the same for all employees.

FTA requires agencies to describe their progressive discipline procedures. For analysis purposes, this means placing employees in similarly situated groupings (e.g. subject to the same schedule of disciplinary charges and/or by labor contract). FTA requires separate analyses for employees subject to different disciplinary processes (e.g., represented employees, non-represented employees, at-will employees, etc.).

Many agencies have layoff guidelines or clauses in union contracts that are based on last-hired, first fired. While this practice appears to be neutral, it can have a disparate effect on employees within a protected class who were only recently employed or were blocked out of seniority due to discrimination. Similar to seniority practices, FTA encourages agencies to carefully review and revise union agreements wherever current provisions are identified as barriers to equal employment.

FTA requires agencies to review and chart the various forms of discipline imposed on employees, cross-referenced by protected class. FTA requires agencies to maintain personnel action logs (e.g., applicant flow, promotion, termination, and training) to be used in completing the required statistical employment practices and in evaluating and monitoring any potential adverse impact.

Statistical Impact of Employment Practices on Minorities and Women

FTA requires agencies to provide statistical data that show any potential impact of employment practices on minorities and women since the last EEO submission. This includes:

- The number of applicants for employment in each job category and the number hired, cross-referenced by sex and race
- The number of employees in each job category who applied for promotion or transfer and the number in each job category promoted or transferred, cross-referenced by race and sex
- The number and types of disciplinary actions (e.g., indefinite suspension, loss of pay, demotion, etc.), tailored to the language used in union contracts and agency policies and procedures
- The number of voluntary/involuntary terminations, cross-referenced by sex and race

FTA requires agencies to establish privacy protocols that protect self-identifying information and keep this information separate from application materials and to clearly explain such protocols to applicants and employees invited to self-identify. This includes having procedures that strictly limit access, such as using a separate sheet for self-identifying information. For online applications, this includes ensuring that the self-identifying section remains separate from the application.

FTA has developed a sample adverse impact analysis in a Microsoft Excel workbook available for download [\[insert hyperlink\]](#) from FTA's website. FTA requires agencies to complete the spreadsheets (or alternate documentation containing the same information) by providing current, accurate, and relevant data accompanied by a narrative explaining the source of the data and the results of the analysis. Raw data is not acceptable. FTA notes that determining adverse impact is not a pure arithmetic exercise since other factors contribute to a proper analysis of employment practices. In addition, FTA does not require analysis for any groups constituting less than two percent of the applicable workforce.

Similar to the utilization analysis, FTA requires agencies to collect reports from unit managers on a scheduled basis to discuss any areas of potential adverse impact and to review results with all levels of management.

Individuals with Disabilities and Veterans

FTA requires statistical data that show any potential impact of an agency's employment practices on persons with disabilities and veterans. This includes the number of applicants for employment in each job category and the number hired and promoted, cross-referenced by sex and race. Having this data will assist in measuring the effectiveness of outreach and recruitment efforts for persons with disabilities and veterans. Example summary tables are included in the sample Microsoft Excel workbook on the "Hires" and "Promotions" tabs.

2.2.7 Monitoring and Reporting

An important part of any successful EEOP is establishing an effective and workable internal monitoring and reporting system, to:

- Assess the results of remedial actions taken since the last program submission.
- Enable agencies to evaluate their EEOP during the year and to take any necessary corrective action regarding the development and execution of programs, goals, and timetables. FTA requires agencies to conduct such evaluations quarterly, at a minimum
- Produce documentation that supports actions to implement the plan for minority and female job applicants or employees and informs management of the program's effectiveness.

Agency Monitoring

FTA requires EEOPs to describe:

- Methods to monitor the EEO components identified in this chapter (e.g., dissemination, utilization analysis, statistical employment practices, timeframe to reach goals, all identified barriers and the progress of the action plan)
- Procedures used to determine EEO compliance of subrecipients and contractors such as collection and review of their EEOPs, visits to facilities to ensure proper posting of the EEO Policy Statement, etc.
- Procedures for reviewing union contracts, in conjunction with human resources, to ensure there is not a disparate impact
- Process for monitoring complaints (e.g., describe the tracking system, monitoring of trends, timeliness of investigations, resolutions, reporting to management)

FTA requires agencies to have a clearly described complaint process that includes employees knowing where and how to file a complaint. FTA requires agencies to maintain a log that documents the name of the complainant, basis of the complaint(s), the protected group, date of initial contact, date of resolution, resolution reached, and the name of the investigator.

FTA requires agencies to maintain cumulative records on applicants, hires, transfers, promotions, training and termination. Such records provide current information needed to prepare yearly targets and to identify where the program isn't working or working effectively enough to meet the goals.

Agency Reporting

FTA requires EEOPs to describe frequency and results of:

- Meetings held between the CEO/GM and the EEO Officer to discuss the progress of the EEO plan and the results of the monitoring (including but not limited to, hiring, promotions, status of EEO complaints)
- All EEO-related meetings held between the EEO Officer and management, including topics covered, follow-up actions
- EEO Officer's meetings with human resources and hiring officials to review current EEO goals and statistics on employment practices and policies (e.g., verifying that job descriptions contain legitimate position requirements and that all testing has been validated)

FTA requires agencies to maintain records documenting progress and efforts to ensure nondiscrimination (e.g., agendas and sign-in sheets for training or meetings, job postings published, advertisements placed, a log of recruitment locations and dates).

Required EEO Attachments

- List of subrecipients and/or contractors who are being monitored and the services they provide
 - Proof of review of subrecipients and/or contractors' EEO (e.g., letter or memo to the subrecipient)
 - Organization chart showing the reporting relationships of all positions (include names and titles)
 - A copy of the goals and timetables from the previous program submission
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Chapter 3 – EEO Compliance Oversight, Complaints, and Enforcement

This chapter describes how FTA monitors applicants and recipients that receive Federal transit funding. The chapter also describes procedures individuals are to follow for filing complaints alleging employment discrimination, and FTA’s process for initiating remedial actions for noncompliance or probable noncompliance with Equal Employment Opportunity statutes and regulations.

FTA is charged with ensuring that applicants and recipients receiving Federal transit funding develop and implement an effective EEOP that will prevent discrimination against employees or applicants for employment based on a protected class. FTA is also charged with ensuring that applicants and recipients require their subrecipients and contractors to develop an effective EEOP and that the applicants and recipients monitor the implementation of these EEOPs.

FTA’s EEO oversight role falls under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation–Effectuation of Title VI of the Civil Rights Act of 1964, 49 U.S.C. § 5332, and the FTA Master Agreement. FTA’s compliance authority is described in § 21.11 (Conduct of Investigations) and 49 U.S.C. § 5332(c), while § 21.13 (Procedure for Effecting Compliance) and 49 U.S.C. § 5332(d), describe the Department of Transportation’s available legal remedies. Equal Employment Opportunity statutes and regulations for which FTA does not have direct enforcement authority, the FTA coordinates and cooperates with the appropriate agency.

In discussing oversight, complaint, and enforcement procedures, this chapter often references obligations under Title VI of the Civil Rights Act of 1964. However, its general guidance should be applied to oversight, complaint, and enforcement of other Equal Employment Opportunity statutes and regulations as appropriate.

3.1 Compliance Oversight

Each grantee annually signs FTA’s Master Agreement, thus agreeing it will comply with Federal law, including Equal Employment Opportunity statutes and regulations. In addition, each grantee annually signs FTA’s certifications and assurances, self-certifying that it is complying with Federal law. FTA assesses compliance through grantee self-certification, as well as grant reviews, complaint investigations, and site visits such as:

- [Triennial Reviews](#) of grantees receiving § 5307 Urbanized Area Formula Grants
- [State Management Reviews](#) of grantees receiving § 5311 Non-Urbanized Area Formula Grants

49 C.F.R. § 21.11(a) requires FTA to conduct compliance reviews of its recipients. These reviews are separate from and may be in addition to a Triennial Review or State Management Review and will be conducted either as a desk audit or an on-site visit. The review may cover all or a portion of the recipient’s compliance with EEO. Such reviews are conducted at the discretion of FTA, and the scope of a review is defined on a case-by-case basis.

3.1.1 EEO Compliance Review Factors

The following factors contribute to the selection of a recipient for a specialized compliance review:

- Lawsuits, complaints, or investigations conducted by organizations other than FTA alleging the recipient is noncompliant with Equal Employment Opportunity statutes and regulations
- Alleged noncompliance brought to the attention of FTA by other Federal, state, or local agencies
- An incomplete or insufficient EEO program submitted by the recipient
- EEO findings or recommendations on prior triennial, state management, or planning certification reviews that have not been sufficiently resolved or implemented, or repeat findings in any FTA review concerning EEO

3.1.2 Scope

In general, EEO compliance reviews will assess the information and documentation required and/or submitted as part of the EEO program. These requirements and standards are set forth in Chapter 2 of this Circular.

3.1.3 Compliance Reporting and Follow-up

After conducting a site visit, FTA issues a report that includes advisory comments and/or findings of deficiency or no deficiency for each of the relevant requirements.

Recipients of Federal funding are required to undertake corrective actions to address findings of deficiency within a specified timeframe following finalization of the report. FTA works with agencies to confirm implementation of corrective actions.

If a recipient fails to take appropriate corrective action in response to the findings of deficiency in the report, FTA may initiate proceedings that could result in actions taken by the U.S. DOT to suspend, terminate, refuse to grant or continue Federal financial assistance to a recipient; make a referral to the Department of Justice (DOJ) with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States; or other means authorized by law.

3.2 Complaints

DOT describes the conditions for filing a complaint in [49 C.F.R. § 21.11\(b\)](#):

Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by [Part 21] may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination unless the time for filing is extended by the Secretary.

FTA requires applicants and recipients to adopt local procedures consistent with Equal Employment Opportunity statutes and regulations for the disposition of EEO complaints. FTA also encourages complainants to seek resolution locally and to file complaints with FTA only when dissatisfied with how the complaint was resolved or when the case is not being resolved in a timely manner.

3.2.1 How to File a Complaint

Individuals or any specific class of individuals, personally or through a representative, may submit a complaint to FTA. Those wishing to submit a complaint may do so independent of an applicant or recipient's complaint process. FTA provides an optional [Civil Rights Complaint Form](#) on its website for complainants to complete within 180 days from the date of the alleged discrimination. FTA's practice is to encourage riders and others to resolve issues with local agencies when possible before filing a complaint with FTA.

3.2.2 EEOC Referrals

FTA refers individual complaints of employment discrimination to the EEOC. In instances when a complaint alleges both individual discrimination and discriminatory employment practices, FTA may join EEOC in the complaint investigation.

3.2.3 Complaint Acceptance

Upon accepting a complaint for investigation, FTA will notify the applicant or recipient that it is the subject of an EEO complaint and ask the applicant or recipient to respond in writing to the complainant's allegations. If the complainant agrees to release the complaint to the applicant or recipient, FTA will provide the agency with the complaint. If the complainant does not agree to release the complaint to the applicant or recipient, FTA may choose to close the complaint.

3.2.4 Investigations

FTA will undertake a prompt investigation whenever a complaint indicates a possible failure to comply with Equal Employment Opportunity statutes and regulations. The investigation will include, where appropriate, a review of the pertinent practices and policies of the applicant or recipient; the circumstances under which the possible noncompliance occurred, and other factors relevant to a determination as to whether the applicant or recipient has failed to comply with Equal Employment Opportunity statutes and regulations.

As part of its EEO oversight responsibilities, FTA investigates complaints it receives alleging applicant or recipients' discriminatory employment practices. In responding to complaints, FTA considers the facts and circumstances at issue. FTA does not represent the interests of individual complainants but rather the interests of the Federal government.

3.2.5 Findings

After FTA has concluded its investigation, FTA's Office of Civil Rights will transmit to the complainant and the applicant or recipient one of the following letters based on its findings:

- A letter indicating FTA did not find a violation according to Equal Employment Opportunity statutes and regulations
- A letter indicating the applicant or recipient is in violation of Equal Employment Opportunity statutes and regulations

3.2.6 Administrative Closure

Generally, FTA will administratively close EEO complaints shortly after the intake stage or later in the investigative process, under any of the following circumstances:

- The complainant decides to withdraw the complaint.
 - The complainant is not responsive to FTA's requests for information or to sign a consent release form.
 - FTA has conducted or plans to conduct a related compliance review of the recipient against which the complaint has been lodged.
 - Litigation has been filed raising similar allegations involved in the complaint.
 - The complaint has been investigated by another agency and the resolution of the complaint meets DOT regulatory standards.
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- The complaint allegations are foreclosed by previous decisions of the Federal courts, the Secretary, DOT policy determinations, or DOT's Office of Civil Rights.
- FTA obtains credible information that the allegations raised by the complaint have been resolved.
- The complaint continues a pattern of previously filed complaints involving the same or similar allegations against the same applicant, recipient or other recipients that have already been found factually or legally insubstantial by FTA.
- The same complaint allegations have been filed with another Federal, state, or local agency, and FTA anticipates that the recipient will provide the complainant with a comparable resolution process under comparable legal standards.
- The death of the complainant or injured party makes it impossible to investigate the allegations fully.

3.3 Effecting Compliance

Corrective actions are required in cases where FTA has determined that an applicant or recipient of Federal transit funding is in noncompliance or probable noncompliance with the requirements in Equal Employment Opportunity statutes and regulations. FTA asks applicants or recipients who are in noncompliance or probable noncompliance with Equal Employment Opportunity statutes and regulations to undertake corrective actions informally. If noncompliance or probable noncompliance cannot be corrected informally the applicant or recipient may be subject to remedial action or proceedings under 49 C.F.R. §§ 21.13, 21.15, 21.17, 21.19, or 49 U.S.C. § 5332(d), as discussed in this section.

3.3.1 Procedures for Securing Voluntary Compliance

FTA may determine an applicant or recipient is in noncompliance or probable noncompliance with Equal Employment Opportunity statutes and regulations after FTA completes an investigation in response to an EEO complaint, compliance review, or other audit. Prior to taking measures to effect compliance, FTA will attempt to resolve the matter informally by using the procedures described below.

Notification to the Applicant or Recipient

When FTA has determined that an applicant or recipient is in noncompliance or probable noncompliance with Equal Employment Opportunity statutes and regulations, it will transmit a letter to the applicant or recipient that describes FTA's determination and requests the applicant or recipient to voluntarily take necessary and appropriate corrective action(s).

Applicant or Recipient Response

The applicant or recipient must submit a remedial action plan within 60 days of receiving FTA's letter that includes a list of planned corrective actions and, if necessary, sufficient reasons and justification for FTA to reconsider any of its findings or recommendations. FTA will require the applicant or recipient's plan to:

- List all corrective action(s) accepted by the applicant or recipient
 - Describe how the corrective actions will be implemented, including a timeline for compliance and a plan for reporting progress to FTA
 - Include a written assurance that the applicant or recipient 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
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- A copy of the board resolution, meeting minutes, or similar documentation with evidence that the board of directors or appropriate governing entity or official(s) has approved the remedial action plan

Request for Reconsideration

An applicant or recipient may request FTA to reconsider its findings. FTA requires applicants or recipients to provide a justification for the request, including any evidence or supporting information, as well as written assurance that the applicant or recipient will come into compliance with Equal Employment Opportunity statutes and regulations on the basis of the requested reconsideration. FTA requires the applicant or recipient to submit such requests within 30 days of receiving the finding.

FTA Review of the Response

Within 45 days after receiving the applicant or recipient's response, FTA will 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 or recipient into compliance. If necessary, before making a decision, FTA may conduct a site visit to substantiate information or statements contained in the applicant or recipient's response. FTA will issue a decision, including its findings and recommendations, as part of a final remedial action plan which will be sent to the applicant or recipient for review and consent. Consent means the applicant or recipient agrees to initiate the action(s) specified in the plan.

Conditions for Declining the Remedial Action Plan

The applicant or recipient has 15 days from the date of notification by FTA to agree or disagree with the final remedial action plan. If an applicant or recipient disagrees with this plan, FTA requires a written statement of its reasons for not agreeing to the remedial actions contained in the plan. Under those circumstances, the applicant or recipient will be considered in noncompliance, and FTA will schedule a meeting with the recipient within 30 days to resolve the disagreement(s).

3.3.2 Proceedings

When FTA and the applicant or recipient cannot agree on a final remedial action plan and the applicant or recipient continues to be in noncompliance or probable noncompliance with Equal Employment Opportunity statutes and regulations, FTA may suspend, terminate, or refuse to grant or continue Federal financial assistance to the applicant or recipient. This will generally occur when all means of informal resolution have failed to get the applicant or recipient to comply with the law. FTA may refer a matter to the Department of Justice (DOJ) with a recommendation for appropriate proceedings to be brought to enforce any rights of the United States under any law of the United States or any assurance or other contractual undertaking. (See [49 C.F.R. § 21.13](#) and [49 U.S.C. § 5332\(e\)](#).)

Termination of or Refusal to Grant or to Continue Federal Financial Assistance

In accordance with 49 C.F.R. § 21.13(c), FTA will not suspend, terminate, or refuse to grant or continue Federal financial assistance until:

- FTA has notified the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means
 - FTA has found, after opportunity for a hearing, that the applicant or recipient has failed to comply with DOT statutes and regulations
 - The Secretary of Transportation has approved the action
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- Thirty days have passed after FTA has filed a full written report of the circumstances and the grounds for such action with the Transportation and Infrastructure Committee of the House of Representatives and the Banking, Housing, and Urban Affairs Committee of the Senate

In accordance with 49 U.S.C. § 5332 (d), FTA will not exercise enforcement actions until the applicant or recipient has not regained compliance within a reasonable amount of time after notice of noncompliance.

Other Means Authorized by Law

In accordance with 49 C.F.R. § 21.13(d), FTA will not refer the matter to DOJ or take any other action to effect compliance until:

- FTA has determined that compliance cannot be secured by voluntary means
- FTA has notified the applicant or recipient of its failure to comply and the action FTA intends to take
- At least 10 days have passed since the notice was mailed to the applicant or recipient. During this 10-day period, FTA will make additional efforts to persuade the applicant or recipient to comply with the regulation and to take appropriate corrective action

In accordance with 49 U.S.C. § 5332 (d), FTA will not refer the matter to DOJ until the applicant or recipient has not regained compliance within a reasonable amount of time after notice of noncompliance.

3.3.3 Hearings

Whenever FTA has determined that it is appropriate to terminate or refuse to grant or continue Federal financial assistance, FTA will provide the applicant or recipient with an opportunity for a hearing prior to such action. FTA will provide reasonable notice of the hearing by registered or certified mail, return receipt requested, to the applicant or recipient. The notice will advise the applicant or recipient of the proposed action, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action. The notice will either:

- Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request the FTA Administrator to schedule a hearing, or
- Advise the applicant or recipient that the matter in question has been scheduled for a hearing at a stated place and time. The time and place will be reasonable and subject to change for cause

FTA will advise the complainant (if any) of the time and place of the hearing. (See [49 C.F.R. § 21.15.](#))

Waiver of Hearing

An applicant or recipient may waive a hearing and submit written information and argument for the record. FTA will deem the failure of an applicant or recipient to request a hearing or to appear at a hearing for which a date has been set to be a waiver of the right to a hearing under Section 602 of the Civil Rights Act of 1964 and 49 C.F.R. § 21.13(c) and to be consent for FTA to make a decision on the basis of the available information.

Time and Location of Hearing

Hearings will be held at the FTA Headquarters office in Washington, D.C., at a time fixed by the FTA Administrator unless another location is required for the convenience of the applicant, recipient, or FTA.

Hearing Officer

Hearings will be held before the Secretary of Transportation or before a hearing examiner appointed in accordance with 5 U.S.C. § 3105.

Right to Counsel

In all proceedings carried out under the authority of 49 C.F.R. § 21.15, the applicant or recipient, and FTA have the right to be represented by counsel.

Procedures, Evidence, and Record

Pursuant to 49 C.F.R. § 21.15(d), the hearing, decision, and any administrative review thereof will be conducted in conformity with 5 U.S.C. §§ 554–557 and in accordance proper rules of procedure relating to the conduct of the hearing, giving of certain notices to the applicant or recipient, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. FTA and the applicant or recipient will be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

3.3.4 Judicial Review

Pursuant to 49 C.F.R. § 21.19, when FTA or DOT issues a final order after a hearing on the record, such final action is subject to judicial review. Pursuant to 49 U.S.C. § 5332(e), the Attorney General may bring a civil action for appropriate relief under certain circumstances. All other judicial review is governed by the respective Equal Employment Opportunity statutes and regulations.

Attachment 1 – References

- a. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq.
 - b. Equal Pay Act of 1963, as amended, 29 U.S.C. § 206
 - c. Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.
 - d. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 793 and 794.
 - e. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, 38 U.S.C. §§ 4301 et seq.
 - f. Americans With Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.
 - g. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.
 - h. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.
 - i. Title II of the Genetic Information Nondiscrimination Act of 2008, as amended, 42 U.S.C. § 2000ff et seq.
 - j. Federal Transit Laws, 49 U.S.C. § 5301 et seq.
 - k. 28 C.F.R. Part 42, Subpart F, Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs
 - l. 29 C.F.R. Part 1605, Guidelines on Discrimination Because of Religion
 - m. 29 C.F.R. Part 1606, Guidelines on Discrimination Because of National Origin
 - n. 29 C.F.R. Part 1607, Uniform Guidelines on Employee Selection Procedures
 - o. 29 C.F.R. Part 1620, The Equal Pay Act
 - p. 29 C.F.R. Part 1625, Age Discrimination in Employment Act
 - q. 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964
 - r. 49 C.F.R. Part 27, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Financial Assistance
 - s. Executive Order 11246, Equal Opportunity in Federal Employment (September 24, 1965)
 - t. DOT Order 1000.12, “Implementation of the Department of Transportation Title VI Program,” (January 19, 1977)
 - u. DOT Order 1000.18, “External Civil Rights Complaint Processing Manual,” (September 2007)
 - v. FTA Master Agreement
-

Attachment 2 – Sample EEO Policy Statement

[Agency Name] has a strong commitment to the community we serve and our employees. As an equal opportunity employer, we strive to have a workforce that reflects the community we serve. No person is unlawfully excluded from employment opportunities based on race, color, religion, national origin, sex (including gender identity and sexual orientation), age, genetic information, disability, veteran status, or other protected class.

[Agency Name] Equal Employment Opportunity (EEO) policy applies to all employment actions, including but not limited to, recruitment, hiring, selection for training, promotion, transfer, demotion, layoff, termination, rates of pay or other forms of compensation, and use of facilities.

All applicants and employees have the right to file complaints alleging discrimination. As [Agency Name]’s [President, General Manager/CEO, Executive Director], I maintain overall responsibility and accountability for [Agency Name]’s compliance with its EEO Policy and Program. To ensure day-to-day management, including program preparation, monitoring, and complaint investigation, I have appointed [Name, title and contact information] as [Agency Name]’s EEO Officer. [Name] will report directly to me and acts with my authority with all levels of management, labor unions, and employees.

All [Agency Name] executives, management, and supervisory personnel, however, share in the responsibility for implementing and monitoring [Agency Name]’s EEO Policy and Program within their respective areas and will be assigned specific tasks to ensure compliance is achieved. [Agency Name] will evaluate its managers’ and supervisors’ performance on their successful implementation of [Agency Name]’s policies and procedures, in the same way [Agency Name] assesses their performance regarding other agency’s goals.

[Agency Name] is committed to undertaking and developing a written nondiscrimination program that sets forth the policies, practices and procedures, with goals and timetables, to which the agency is committed and make the EEOP available for inspection by any employee or applicant for employment upon request.

I am personally committed to a workplace that acts upon its daily responsibility to treat all applicants and employees with dignity and respect, as well equitably under the guidelines of our EEO Policy and Program.

Signature
[President, General Manager/CEO, Executive Director]

Date

Attachment 3 – Sample Excel Charts

[illegible]

[illegible]

Terminations

Job Category (Use EEO-4)	Total		W		AI/AN		B		H/L		A		NHOPI		M	
	Male	Female	M	F	M	F	M	F	M	F	M	F	M	F	M	F
1 - Officials & Administrators																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2 - Professionals																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3 - Technicians																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4 - Protective Service: Sworn																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5 - Protective Service: Non-sworn																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
6 - Administrative Support																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7 - Skilled Craft																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8 -Service & Maintenance																
Total Workforce	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Involuntary Terminations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number Retained	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retention Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ratio to Highest Rate	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Potential Adverse Impact (Yes/No)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Notes:

[illegible]

[illegible]

Instructions for Completing Utilization Worksheet

Users are limited to entering data into specific cells (dark yellow).

[See http://www.eeoc.gov/employers/eeo4survey/e4instruct.cfm](http://www.eeoc.gov/employers/eeo4survey/e4instruct.cfm)

Enter the annual salary range to the nearest \$1,000 for all employees in that category. Where applicable, annualize hourly rates based on 2,080 hours per year, rounded to the nearest \$1,000.

Enter the number of male and female employees in each group W–White, AI/AN–American Indian/Alaska Native, B–Black or African American, H/L–Hispanic or Latino, A–Asian American, NHOPI–Native Hawaiian and Other Pacific Islander, or Multi–Multiracial.

Enter the availability of male and female employees for each group based on workforce data. Cite the source of this data in the notes at the bottom of the spreadsheet. See Section 2.2.4 of EEO Circular for more information.

Any underutilization is calculated automatically and highlighted in **red**. For any categories showing underutilization, enter agency plans to address percent of utilization over the next four years. In notes field, explain any anticipated impediments in addressing underutilization and other information.
